



2003

PARLIAMENT OF TASMANIA

**PARLIAMENTARY STANDING COMMITTEE OF
PUBLIC ACCOUNTS**

Inquiry into the

FEDERAL HOTELS AGREEMENT

Laid upon the Tables of both Houses of Parliament

*The Committee was appointed under the provisions of section 2 of the Public Accounts Committee Act
1970 (No 54)*

MEMBERS OF THE COMMITTEE

LEGISLATIVE COUNCIL

Hon A.W. Fletcher (Chair)
Hon C. L. Rattray
Hon J. S. Wilkinson

HOUSE OF ASSEMBLY

Mr B.R. Best (24 June 2003 – 21 August 2003)
Ms L.T. Giddings (to 24 June 2003 and from 21 August 2003)
Mr P. C. Gutwein (from 28 August 2003)
Hon M. T. Hidding (to 28 August 2003)
Mr G. L. Sturges

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1 SUMMARY OF NOTINGS, FINDINGS & RECOMMENDATION

The new Deed between the Government and Federal Hotels and its return to taxpayers

The Committee Notes that:

- *Over the period 1 July 2003 to 31 December 2008 the new Deed will deliver an estimated \$12 million to the State, over and above that which would have flowed to the State had the original Deed remained in force.*
- *The effect of the cap negotiated between the Government and Federal Hotels and included in the 2003 Deed limits;*
 1. *The maximum number of gaming machines in individual hotels to 30 and the maximum number of gaming machines in individual clubs to 40.*
 2. *The overall maximum number of gaming machines permitted in the State at 3680, an increase of 287 on the current figure. Of the 3680 gaming machines, the maximum number permitted in hotels and clubs is set at 2500.*
- *The new Deed places a legal obligation on Federal Hotels to use its best endeavours to continue to improve player protection measures and to support the Crown's initiatives in that field.*
- *The new Deed delivers a benefit to hotels and clubs in that Federal Hotels is expressly prohibited from recovering from hotels and clubs any amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System.*
- *By early 2005 a new premium standard tourist resort at Coles Bay with a capital cost of at least \$25 million will have been completed.*
- *The Coles Bay development will result in the creation of approximately 180 ongoing jobs in addition to substantial flow-on benefits to the Tasmanian economy.*

The Committee Finds that:

- *The State is financially advantaged by approximately \$2 million per year in additional revenue if the Gaming Control Amendment Bill 2003 is passed by the Parliament.*

- *Although unquantified, it is the view of the Committee that the inclusion in the Deed of a requirement that limits the level of charges able to be levied on hotels and clubs by Federal Hotels is likely to have associated flow-on social benefits such as increased viability and profitability of venues. This may, in turn, lead to increases in areas such as employment and investment.*
- *It is likely that a Coles Bay development would have proceeded in some form in the absence of the renegotiated Deed but as a result of signing the Deed, Federal Hotels assumed a legal obligation to undertake the development to a premium standard and with a range of obligations relating to the use of Tasmanian contractors, labour and materials.*

Transparency in the negotiation of the Deed

The Committee Notes that:

- *The Government, on the advice of the Treasurer, instigated the renegotiation of the Deed to achieve its social policy objective of a cap on gaming machine numbers.*
- *The Government made the initial approach to Federal Hotels in early 2003.*
- *The key personnel involved in the negotiation process were Mr Don Challen, Secretary of the Department of Treasury and Finance representing the Government and Mr Greg Farrell and Mr Andrew Eakins representing Federal Hotels.*
- *The Government had two key, non-negotiable issues it sought to have included in a revised Deed. These were the cap on gaming machine numbers as well as an increase in the applicable tax rates.*
- *Negotiations took place between the Government and Federal Hotels until approximately two weeks before the Deed was signed on 18 March 2003.*

The Committee Finds that:

- *The Deed-specific negotiations were not open to anyone other than the negotiating parties.*
- *The commercial in confidence nature of the detailed negotiations between the Government and Federal Hotels, on the development of the 2003 Deed, was proper and consistent with accepted contract negotiation principles.*

The quality of the deal extracted by the Government in the Deed

The Committee Finds that:

- *The wording of Term of Reference (c) requires both the PAC and witnesses to make a subjective assessment, as to what constitutes 'quality'.*

- *Federal Hotels and the Government are satisfied with the quality of the deal.*
- *Peak hospitality industry representatives including the AHA and the Australian Liquor, Hospitality & Miscellaneous Workers Union seem satisfied with the quality of the deal.*
- *TasCOSS, Anglicare, the Inter-Church Gambling Task Force and the Greens plus a small number of individual industry participants each submitted that they were dissatisfied with the quality of the deal.*
- *It is unable to determine from the submissions whether or not the increased financial return to the State flowing from the renegotiated Deed meets the test of 'quality'.*
- *The social and financial benefits flowing to the State are greater than the benefits flowing to the State under the 1993 Deed.*
- *Among those who submitted that the Deed failed their test of 'quality' was a view that the Government's key social achievement in capping the number of machines in the market was beneficial.*

The non-competitive nature of the negotiation of the Deed

The Committee Notes that:

- *The Government required the cooperation of Federal Hotels in order to achieve an immediate cap on gaming machine numbers through the renegotiation of the Deed.*
- *Federal Hotels said that it would not have agreed to enter into negotiations with the Government to develop the 2003 Deed if the process had been on anything other than a non-competitive basis.*
- *Any demand by Government to reduce the number of gaming machines currently in use and permitted to be in use by the 1993 Deed, would have aborted meaningful negotiations towards an agreed cap.*
- *The Government was cognisant of the potential National Competition Policy ramifications of a renewed exclusive Deed with Federal Hotels.*
- *The Government, through the Treasurer, took steps to determine the likely position of the National Competition Council in relation to a renewed exclusive Deed for the provision of gaming in Tasmania.*
- *The Government has developed, and submitted to the National Competition Council, a Regulatory Impact Statement to demonstrate the public benefit in its decision to continue the exclusive arrangement with Federal Hotels.*

- *The Government's Regulatory Impact Statement is currently being considered by the NCC.*

The Committee Finds that:

- *Any unilateral move by the Government to terminate or invalidate the current Deed to facilitate a competitive tendering process, prior to 2009, would have the potential to raise issues relating to sovereign risk as well as creating a potential for civil action leading to financial compensation.*
- *Any unilateral move by the Government to terminate or invalidate the current Deed, against the will of Federal Hotels, would seriously damage the Government and impact negatively on Tasmania's standing as a State in which to do business.*
- *It is probable that the number of gaming machines in operation throughout Tasmania would exceed the proposed cap figure of 3680 if the Government waited until after the expiry of the current Deed on December 31, 2008 to impose a cap.*
- *The interests of Tasmania are best served by having a single operator of gaming machines in hotels and clubs.*

Other issues relevant to the Deed

Cross Subsidisation - The Committee Notes that:

- *A number of those making submissions to the Committee asserted that Federal Hotels uses the revenue generated from their gaming operations to subsidise the provision of accommodation, functions and food and beverages.*
- *Issues such as cross subsidisation of certain elements of an operation are not matters referred to in either the 1993 or 2003 Deed.*

Cross Subsidisation - The Committee Finds that:

- *It was unable to conclude whether cross-subsidisation occurs.*

Lack of an Appeals Mechanism - The Committee Notes that:

- *Both the 1993 Deed and the proposed Deed gives to Network Gaming the exclusive right to allocate and manage gaming machines in Tasmanian hotels and clubs.*
- *There is a limited opportunity for unsuccessful applicants to have their application reconsidered.*

Lack of an Appeals Mechanism - The Committee Finds that:

- *The exclusive right to allocate machines to hotels and clubs granted to Federal Hotels by the 1993 Deed and reaffirmed by the proposed Deed, imposes on Federal Hotels a responsibility to act in the best interests of the venues to which they have granted machines.*

- *If there is to be a cap on the number of machines available to the market there will always be operators who feel aggrieved because they have been unsuccessful in an application.*
- *Neither the 1993 Deed nor the 2003 Deed mention appeal rights for aggrieved parties.*
- *Federal Hotels should develop a code of practice which enables:*
 1. *Any applicant for gaming machines to be clearly aware of the criteria to be used in the assessment of that application.*
 2. *Any operator of gaming machines to be clearly aware of operational key performance indicators so that they can make efforts to address the problem of underperforming gaming machines*

Monopoly Power - The Committee Notes that:

- *Federal Hotels, through its subsidiary companies, conducts business as both a provider of gaming machines (through Network Gaming) and as an operator of gaming machines (through its two casino properties and the Vantage Hotel Group).*
- *To address its concerns on this issue, the Tasmanian Gaming Commission has imposed a series of conditions on all hotel properties owned by Federal Hotels through the Vantage Hotel Group to ensure that these properties are not favoured relative to any other venue.*
- *The Tasmanian Gaming Commission has imposed a percentage cap on the total number of gaming machines able to be operated by venues owned by Federal Hotels. The present level of this cap is 25% of the total number of machines in hotels and clubs.*
- *Federal Hotels has given the hotel industry an undertaking to compete in the market place if Vantage Hotels seeks further hotel acquisitions.*

Monopoly Power - The Committee Finds that:

- *There is a need for the Tasmanian Gaming Commission to closely and continuously monitor the market activity of the Federal Group of companies so that the present level of ethical but dominant participation in the market, as both provider and operator, is maintained.*

Public Consultation on the Number of Gaming Machines - The Committee Notes that:

- *The review process required under the 1993 Deed regarding the maximum number of gaming machines in any one club or hotel was not undertaken.*
- *Social welfare groups were of the opinion that they would be formally consulted as part of this review.*

- *The Government was aware of the findings and recommendations of the 2002 Legislative Council Select Committee report into the Impacts of Gaming Machines.*
- *Anglicare, TasCOSS and the Tasmanian Inter-Church Gambling Taskforce all provided submissions that were considered and reported upon by the 2002 Legislative Council Select Committee Report into the Impacts of Gaming Machines.*

Public Consultation on the Number of Gaming Machines - The Committee Finds that:

- *The review process required to be conducted as a condition of the 1993 agreement regarding the maximum number of gaming machines in any one club or hotel was not undertaken.*
- *On becoming aware that the Government had entered into negotiations with Federal Hotels, the Tasmanian Gaming Commission took the decision not to proceed with the review process.*
- *Such a formal consultative process would have permitted public input only on the issue of venue limits to form the basis for detailed negotiations with Federal Hotels.*
- *Some interested community groups had an expectation that a formal consultation process would be undertaken by Government prior to it reaching a policy position on gaming machine numbers.*
- *In reaching its policy decision to cap the number of gaming machines the Government did not formally consult with interested community groups.*
- *The Government consults with a range of community organisations on a regular basis to discuss a diverse range of social issues - including gaming.*
- *The Government received no policy advice from the Gaming Commission relating to the need to introduce a cap on the number of gaming machines.*

The Gaming Commission - The Committee Notes that:

- *There are significant concerns held by sections of the community in relation to the independence of the Tasmanian Gaming Commission.*
- *The Government has not acted on the recommendation of the Legislative Council Select Committee on the Social Impacts of Gaming Machines in relation to the independence of the Tasmanian Gaming Commission.*

The Gaming Commission - The Committee Finds that:

- *There is a perception amongst those who gave evidence to the Committee that the Tasmanian Gaming Commission is compromised by the Secretary of the*

Department of Treasury and Finance also holding the position of the Chair of the Tasmanian Gaming Commission.

- *It received no evidence to support the assertion that the Tasmanian Gaming Commission is compromised in its role as a result of the Chair also holding the position of Secretary of the Department of Treasury and Finance.*
- *The Gaming Commission has no capacity to influence the quantum of the gaming taxation revenue flowing to the State.*

Recommendation

- *That the Legislative Council pass the Gaming Control Amendment Bill 2003.*

2 THE PUBLIC ACCOUNTS COMMITTEE

The *Public Accounts Committee Act 1970*¹ provides for the establishment of a joint committee, comprising three members from the Legislative Council and three from the House of Assembly.

The statutory function of the Committee is as follows:

The Committee must inquire into consider and report to the Parliament on any matter referred to the Committee by either House relating to:

- (a) the management, administration or use of public sector finances; or
- (b) the accounts of any public authority or other organisation controlled by the State or in which the State has an interest.

The Committee may inquire into, consider and report to the Parliament on: -

- (a) any matter arising in connection with public sector finances that the Committee considers appropriate; and
- (b) any matter referred to the Committee by the Auditor-General.

The Committee has the power to summon witnesses to appear before it to give evidence and to produce documents and, except where the Committee considers that there is good and sufficient reason to take it in private, all evidence is taken by the Committee in public.

The current membership of the Public Accounts Committee (PAC) is: -

Hon A W Fletcher MLC	Mr B R Best MHA (24 June 2003 – 21 August 2003)
Hon C L Rattray MLC	Ms L T Giddings MHA (to 24 June 2003 and from 21 August 2003)
Hon J S Wilkinson MLC	Mr P C Gutwein MHA (from 28 August 2003)
	Hon M T Hidding MHA (to 28 August 2003)
	Mr G L Sturges MHA

In its work, the Committee has been supported by Ms Heather Thurstans and Mr Simon Buddle in analysis and report development. The Committee is grateful for their positive contribution.

¹ The Public Accounts Committee Act 1970, No.54 of 1970 and subsequent amendments in the Public Accounts Committee Act No 89 of 1997.

3 THE GAMING CONTROL ACT 1993 AND ASSOCIATED DEED

The effect of the *Gaming Control Act 1993* is to ratify and give the force of law to the Deed between the Government and Federal Hotels and to provide a detailed legislative framework for the regulation and control of gaming in Tasmania.

Under the Deed, in return for the exclusive rights to operate gaming machines for a 15-year period ending on 31 December 2008, Federal Hotels agreed to:

- Undertake building and upgrading work at both the Wrest Point and Country Club casinos at an estimated capital cost of \$25 million, employing an extra 300 people following the completion of the works and the extension of gaming machines.
- Guarantee revenue to the Crown from gaming machine operations in casinos of \$21.4 million in respect of the 1996-97 and subsequent financial years up to and including the year 2000.
- Operate gaming machines in licensed clubs and hotels from 1 January 1997.
- Examine the commercial viability of keno and, if viable, introduce keno into licensed clubs and hotels.
- Maintain the Wrest Point and Country Club casinos as international style casinos.
- Continue to spend at least \$8 million a year promoting and marketing tourism.
- Pay tax on gaming machine gross profit at the rate of:

Gross Profit	Tax Payable
\$30 million or less	15.88% of Gross Profit ²
Between \$30 million and \$35 million	20.88% of Gross Profit ³
\$35 million or greater	25.88% of Gross Profit ⁴

- Pay tax on table gaming and keno gross profit at the rate of 5.88%⁵ of the gross profit.
- Pay annual Casino Licence fees. These are indexed to the movements in the Consumer Price Index and currently stand at approximately \$840,000⁶ per casino.

The *Gaming Control Act 1993* repealed the *Northern Casino Act 1978*, the *Wrest Point Casino Licence and Development Act 1968*, and the *Wrest Point Casino (Further Agreement) Act 1976* to provide for a single act controlling gaming at casinos and other approved venues.

² Changed from 25% on 1 July 2001 in response to the introduction of the Goods and Services Tax

³ Changed from 30% on 1 July 2001 in response to the introduction of the Goods and Services Tax

⁴ Changed from 35% on 1 July 2001 in response to the introduction of the Goods and Services Tax

⁵ Changed from 15% on 1 July 2001 in response to the introduction of the Goods and Services Tax

⁶ As at July 2003

The Gaming Control Act 1993 provides a detailed legislative framework for the control and regulation of gaming in Tasmania.

4 THE 2003 DEED

The Deed negotiated between the Government and Federal Hotels, signed on 18 March 2003 places a number of covenants on Federal Hotels.

Under the Deed, Federal Hotels is required to:

- Exclude from their charges to all clubs and hotels, all amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System.
- Conduct table gaming on every day of each year at both Wrest Point and the Country Club, and provide both the number of tables and range of games sufficient to meet patron demand from time to time.
- Undertake the development of a new premium standard tourist resort near Coles Bay:
 - a) Including accommodation, convention, restaurant and recreation facilities;
 - b) With infrastructure development (such as the provision of sewerage, water and electricity services and site works) or actual construction starting by October 2003 and the project to be completed by early 2005; and
 - c) At a capital cost of at least \$25 million.
- Use Tasmanian contractors, labour and materials for the construction of the Coles Bay development where possible and commercially feasible to do so.
- Introduce a flexible operating model that permits a licensed premises gaming operator of a club or an hotel to choose, from the selection available from the Federal Hotels, the games and gaming machines that the operator considers most appropriate for those premises.
- Use their best endeavours to continue to improve player protection measures and to support the Crown's initiatives in that field.
- Pay tax on gaming machine gross profit at the rate of:

Gross Profit	Tax Payable
\$30 million or less	20.88% of Gross Profit
Between \$30 million and \$35 million	20.88% of Gross Profit
\$35 million or greater	25.88% of Gross Profit

- Pay tax on table gaming gross profit at the rate of 0.88% of the gross profit.

- Pay tax on keno gross profit at the rate of 5.88% of the gross profit.
- Pay annual Casino Licence fees of approximately \$1,349,600 per casino.

5 REFERRAL TO THE PUBLIC ACCOUNTS COMMITTEE

- Following a process of negotiation between the parties, the new Deed for a 15-year period commencing 1 July 2003 between the Government and Federal Hotels was signed on 18 March 2003.
- Subsequent to this, on 15 April 2003, the Treasurer, Dr Crean, delivered a statement in the Legislative Council providing details of the new Deed as well as the Government's rationale in pursuing changes to the existing Deed.
- On 21 May 2003 the *Gaming Control Amendment Bill 2003* and the associated Deed was introduced into the House of Assembly and subsequently passed all stages.
- Following introduction of the Bill to the Legislative Council, on 29 May 2003 the Legislative Council agreed to a motion to have the new Deed referred to the Public Accounts Committee.

6 THE TERMS OF REFERENCE

On 29 May 2003, the Standing Committee of Public Accounts received a reference from the Legislative Council to investigate and report upon:

- a) The new Deed between the Government and Federal Hotels and its return to taxpayers;
- b) Issues related to transparency in the negotiation of the Deed;
- c) Issues relating to the quality of the deal extracted by the Government in the Deed;
- d) The non-competitive nature of the negotiation of the Deed; and
- e) Any other issues relevant to the Deed.

7 SUBMISSIONS RECEIVED AND EVIDENCE TAKEN

The Committee advertised in the three Tasmanian regional newspapers and received a total of thirteen written submissions. Details of these are listed in Appendix A.

A number of supplementary documents were provided to the Committee during the inquiry. Details of these are listed in Appendix B.

In addition, four parties were called to give evidence. Details of these parties are listed in Appendix C.

8 THE NEW DEED BETWEEN THE GOVERNMENT AND FEDERAL HOTELS AND ITS RETURN TO TAXPAYERS

It is in the best interests of the taxpayers that any deal negotiated for the exclusive right to operate casinos and gaming machines maximises the potential returns to the State. In addition, any deal should provide for appropriate measures to address any negative effects of gaming as well as providing for ongoing viability of the operator.

The Public Accounts Committee was of the view that the new Deed delivers returns to the taxpayers in two areas. These being:

- financial returns; and
- social returns.

These two issues will now be considered in detail.

8.1 Financial Return to the State

8.1.1 Consideration of the Evidence

The new Deed was seen by the Committee to deliver a number of financial returns to the State mainly as a result of revisions to the various tax rates and casino licence fees.

A comparison of the financial aspects of the current and new Deed is summarised in the table below.

	Original (1993) Deed	New (2003) Deed
Gaming Machines		
Gross Profit \$30 million or less	15.88% of Gross Profit *	20.88% of Gross Profit #
Gross Profit between \$30 million and \$35 million	20.88% of Gross Profit *	20.88% of Gross Profit #
Gross Profit \$35 million or greater	25.88% of Gross Profit *	25.88% of Gross Profit
Table Gaming		
	5.88% of Gross Profit**	0.88% of Gross Profit
Keno		
	5.88% of Gross Profit**	5.88% of Gross Profit**
Community Service Levy		
Hotels	4% of Gross Profit	4% of Gross Profit
Clubs	2% of Gross Profit	4% of Gross Profit
Casino Licence Fee (per casino)		
	\$840,000 per annum	\$1,349,600 per annum

* Changed from 25%, 30% and 35% on 1 July 2001 in response to the introduction of the Goods and Services Tax

** Changed from 15% on 1 July 2001 in response to the introduction of the Goods and Services Tax

From 1 July 2013 rate increases to 25.88% on total gross profit

The Committee has noted the reduction in tax take from the business of table gambling.

In his evidence to the Committee, Mr Challen explained the rationale for this reduction. Mr Challen said:

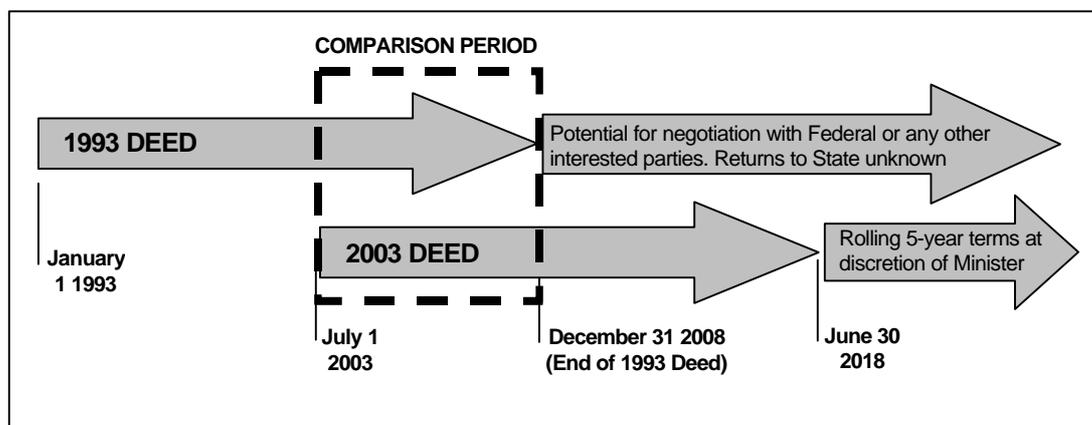
“Through my Gaming Commission connections I had been aware that table gaming is not very profitable; on the other hand, it is a form of gaming that is very popular with the community. I suggested reducing the table gaming tax rate to give the operator a commercial incentive to keep table games going, to have more games available and a wider availability of games.”⁷

The gambling tax rates (ie. for gaming machines, table gaming and keno) contained within the 1993 Deed were effectively reduced from 1 July 2001. This was in accordance with the requirements of the Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relations and the introduction of a tax credit system, under the Goods and Services Tax (GST), which refunds the casino operator for GST paid on casino gaming gross profits. These revised gambling tax rates make provision for the GST levied on gambling operator's margins and were implemented by the *Gaming Control Amendment (Minor Gaming and Miscellaneous Amendments) Act 2001*.

In determining the financial returns flowing to the State as a result of the new Deed, the Committee has taken care to ensure that estimates and comparisons are only made between timepoints where sufficient data exists to permit this.

Diagram A presents a timeline of the 1993 Deed as well as the 2003 Deed. It is evident from this diagram that a period of ‘overlap’ exists between 1 July 2003 and 31 December 2008. It is therefore possible, for this period, to estimate the expected revenue that would flow to the State under each of the Deed arrangements as well as calculate the difference in revenue between the 1993 and 2003 Deeds.

Diagram A



⁷ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.45.

The estimated annual financial returns to the State, until 31 December 2008, as a result of the new Deed are as follows:

Deed Component	Estimated Financial Outcome
Gaming Machine Taxation	Additional \$1.5 million per annum
Community Service Levy	Additional \$170,000 per annum
Table Gaming Taxation	Reduction of \$320,000 per annum ⁸
Casino Licence Fee	Additional \$1 million per annum

This equates to a net increase to the State of approximately \$2 million per annum.

Over the period 1 July 2003 to 31 December 2008 this represents an estimated additional \$12 million dollars to the State.

In relation to this issue, Federal Hotels makes the following statement in its submission:

“For its part, Federal Hotels has agreed to pay increased gaming machine taxes, casino licence fees and community support levies as well as assist the Government with its player protection initiatives. These additional payments will total around \$60 million over the life of the agreement [ie. until June 30, 2018].”⁹

The Treasurer, Dr Crean, also made a similar assertion in his evidence to the Committee:

“That improvement is around \$55 million extra over the 15-year agreement.”¹⁰

The estimate of Federal Hotels and Dr Crean is based on a comparison between the estimated revenues from the 1993 and 2003 Deeds. A key assumption underpinning this estimate is that the level of taxes and charges resulting from the 1993 Deed will continue for an additional 10 years after the cessation of the 1993 Deed in 2008.

The Committee is of the view that any comparisons post 31 December 2008 would be little more than speculation given that on this date the rights and obligations conferred on the parties in the 1993 Deed cease to exist. The result of this is that there are no reliable figures against which the estimated financial returns under the 2003 Deed, post 31 December 2008, can be compared.

8.1.2 The Public Accounts Committee Notes that

- **Over the period 1 July 2003 to 31 December 2008 the new Deed will deliver an estimated \$12 million to the State, over and above that which would have flowed to the State had the original Deed remained in force.**

⁸ The estimate of a Reduction of \$320,000 per annum is based on Federal Hotels' submission to the Public Accounts Committee.

⁹ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 1.

¹⁰ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.12.

8.1.3 The Public Accounts Committee Finds that

- **The State is financially advantaged by approximately \$2 million per year in additional revenue if the Gaming Control Amendment Bill 2003 is passed by the Parliament.**

8.2 Social Return to the State

8.2.1 Consideration of the Evidence

Of the submissions received by the Committee several raised issues relating to the social impact of gambling on individuals and families. The impact of gambling on rural economies was also raised by Mr. Booth MHA, the Tasmanian Greens representative.

The Committee is aware of and notes that a Select Committee of the Legislative Council inquired into and reported in depth on these issues just a few months ago.

The PAC, at an early meeting took the decision not to intrude into the matters of concern already considered and reported upon by the Select Committee of the Legislative Council.

The PAC notes that the Government has not formally responded to the recommendations of the Legislative Select Committee report on the Impacts of Gaming Machines.

The PAC presumes that the Government's commitment to its stated policy, now enunciated in the new Deed, overrides the Legislative Council Committee's recommendations.

The new Deed was seen by the Committee to deliver the following social benefits to the State:

- The capping of gaming machine numbers.
- The undertaking by Federal Hotels to "continue to improve player protection measures and to support the Crown's initiatives in that field."¹¹
- The exclusion from Federal Hotels' charges to all clubs and hotels, all amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System.
- The development of a premium standard tourist resort and associated infrastructure at Coles Bay.

These four issues will now be considered in detail.

¹¹ 2003 Deed, Clause 4.4.

8.2.1.1 Capping of gaming machine numbers

A key social return to the State flowing from the negotiation of the new Deed is a cap on machine numbers.

A number of those making submissions to the Committee, including Anglicare and the Tasmanian Inter-Church Gambling Task Force indicated a qualified support for the principle of imposing a cap on gaming machine numbers. In general, these bodies believe that further research into the social impacts of gaming machines should have been conducted prior to the determination of the cap.

The capping of gaming machine numbers in Tasmania was the Government's stated 'key' driver for the renegotiation of the Deed with Federal Hotels and was covered in detail by the Treasurer, Dr Crean, in his Ministerial Statement.¹²

Dr Crean reiterated this in his evidence to the Committee:

*"I have this view that whilst gambling in any form, including gaming machines, is a freedom for individuals and the vast majority don't have any social problems with the availability of that freedom, some people do, as is the case with horse racing or any other form of gambling. It is a fact of life that there are a small proportion of people who undertake that activity and who become addicted. Whilst in Tasmania the percentage is relatively small compared to other States, it nevertheless is a percentage and it does involve people who have problem gambling. There is a clear correlation between an increase in problem gambling and the degree of rollout availability of the form of gambling - in this case the gaming machines. There is clear evidence that if the Government were able to do something to put a cap on the current rollout then that would have an impact in terms of problem gambling into the future."*¹³

Under the 1993 Deed the only limit on gaming machine numbers in Tasmania is a theoretical maximum figure derived by multiplying the number of hotels and clubs in the State with the maximum number of machines permitted in each of these type of venues. The evidence suggested a possible further rollout of 1500 gaming machines.

8.2.1.2 The Committee Notes that

The effect of the cap negotiated between the Government and Federal Hotels and included in the 2003 Deed limits;

- 1. The maximum number of gaming machines in individual hotels to 30 and the maximum number of gaming machines in individual clubs to 40.**
- 2. The overall maximum number of gaming machines permitted in the State at 3680, an increase of 287 on the current figure. Of the 3680 gaming machines, the maximum number permitted in hotels and clubs is set at 2500.**

¹² *Gaming Machines in Tasmania* - Ministerial Statement – Dr Crean, Legislative Council, 15 April 2003.

¹³ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.3.

8.2.1.3 Player Protection Undertaking

A further social return to the State from the new Deed is the legal obligation placed on Federal Hotels under Clause 4.4 of the Deed. Under this clause, Federal Hotels is required to undertake that:

“Throughout the term of the Exclusive Right, the Companies will use their best endeavours to continue to improve player protection measures and to support the Crown’s initiatives in that field.”¹⁴

8.2.1.4 The Committee Notes that

- **The new Deed places a legal obligation on Federal Hotels to use its best endeavours to continue to improve player protection measures and to support the Crown’s initiatives in that field.**

8.2.1.5 Exclusion of Central Monitoring System Costs

Another social benefit negotiated under the new Deed relates to the requirement of Clause 4.1(b). This requires Federal Hotels to:

“Exclude from their charges to clubs and hotels, all amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System.”¹⁵

In its submission to the Committee, The Australian Hotels Association, as the peak body representing the interests of hotels in Tasmania, supports the reasoning behind, and outcome of, Clause 4.1(b). In its submission, the AHA indicates that passing on to hotels the additional charges, such as those attributable to the cost of monitoring, operating and re-developing the Central Monitoring System may have the effect of reducing:

“...the current level of investment in the hotel industry or restrict the capacity for hotels to service the repayments related to previous investment. This would have been to the detriment of the tourism industry at a time when additional investment is required to respond to increased tourism numbers.”¹⁶

8.2.1.6 The Committee Notes that

- **The new Deed delivers a benefit to hotels and clubs in that Federal Hotels is expressly prohibited from recovering from hotels and clubs any amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System.**

¹⁴ 2003 Deed

¹⁵ Ibid

¹⁶ Australian Hotels Association., Submission to Public Accounts Committee, 2003, p. 2.

8.2.1.7 The Committee Finds that

- **Although unquantified, it is the view of the Committee that the inclusion in the Deed of a requirement that limits the level of charges able to be levied on hotels and clubs by Federal Hotels is likely to have associated flow-on social benefits such as increased viability and profitability of venues. This may, in turn, lead to increases in areas such as employment and investment.**

8.2.1.8 Development of Coles Bay Tourist Resort

As outlined in Section 2 of this report, a prominent component of the 2003 Deed is the requirement for Federal Hotels to undertake the development of a new premium standard tourist resort (referred to by Federal Hotels as *Hazards at Freycinet*) near Coles Bay. Clause 4.2(c) of the Deed also requires Federal Hotels to:

“In undertaking the development described in clause 4.2(a) or any alternative development, they will engage Tasmanian contractors and labour and will use Tasmanian materials, where it is possible and commercially feasible to do so.”

In his evidence to the Committee, Mr Farrell made the following comments in relation to the direct employment and flow-on benefits arising from the development at Coles Bay:

“We are anticipating the high season employment to be about 180 people. That is directly with the resort, that is not directly with a large number of other providers of tourism activities and infrastructure that will be actually supported by the resort, so we see the Hazards at Freycinet will have a significant impact on Coles Bay.”¹⁷

“We also intend to commence a cruise boat operation on the East Coast, which will be above that of the 140 to 180 employed seasonally at the Hazards.”¹⁸

“Spin off benefits to the Coles Bay community are already starting to emerge, for example the sewer and fresh water upgrade, a substantial proportion of which is being funded by Federal.”¹⁹

On the basis of the above evidence, the social benefits (ie. investment, direct and indirect employment and social infrastructure provision) flowing to Tasmania, and the East Coast in particular, as a result of the Coles Bay development would appear to be significant.

The Committee did, however, explore a line of questioning to determine whether the Coles Bay development would be considered to be an outcome secured through the

¹⁷ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.14.

¹⁸ Ibid, p.16.

¹⁹ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 7.

negotiation of the Deed or whether, as suspected, there was a high likelihood of this development occurring regardless of any renegotiation of the Deed.

When asked by the Committee whether the development of the Coles Bay resort was an outcome of the negotiation of the Deed with the Government, Mr Farrell responded:

“The company announced that it had an intention to develop [prior to the signing of the renegotiated Deed]. We had acquired the site and we had an intention to develop the Hazards at Freycinet. There is absolutely no doubt though, and I touched on it earlier, that the agreement with the Government assists no doubt in the ANZ, our chief financier, having the confidence to continue to support the company with its objectives. There is absolutely no doubt that the new agreement allows us to have the support of the bank to build something which we believe will be of a defining quality or a world-class tourism development for the company and for Tasmania and it also then, in a sense, allows the quality for that development to be maximised.”²⁰

In addition, Mr Farrell stated before the Committee:

“Without the confidence of our business going forward, which is very much aligned to the agreement that is before the House, we will still build a very good quality hotel that will be lovely for tens of thousands of people to stay in over many years, however we would not have the financial wherewithal to commit to a defining world-class Tasmanian iconic resort which I believe the location requires.”²¹

When asked to provide his impression of whether the Coles Bay development was a key outcome negotiated under the Deed, Mr Challen responded:

“I didn’t feel I was extracting that agreement. I felt that Federal Hotels had effectively committed themselves to do that in terms of their public announcements and their discussions with business leaders and so on. It was no secret that they were talking about that development, but I thought it was important to lock it into the agreement so that it was very clear that it was going to happen if this deal was going ahead.”²²

8.2.1.9 The Committee Notes that

- **By early 2005 a new premium standard tourist resort at Coles Bay with a capital cost of at least \$25 million will have been completed.**
- **The Coles Bay development will result in the creation of approximately 180 ongoing jobs in addition to substantial flow-on benefits to the Tasmanian economy.**

²⁰ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.14.

²¹ Ibid, p.30.

²² Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.49.

8.2.1.10 The Committee Finds that

- **It is likely that a Coles Bay development would have proceeded in some form in the absence of the renegotiated Deed but as a result of signing the Deed, Federal Hotels assumed a legal obligation to undertake the development to a premium standard and with a range of obligations relating to the use of Tasmanian contractors, labour and materials.**

9 ISSUES RELATED TO TRANSPARENCY IN THE NEGOTIATION OF THE DEED

The Committee determined that for the purpose of this Inquiry, Term of Reference (b) should deal only with issues related to the transparency of the Deed-specific negotiations between the Government and Federal Hotels.

The Committee is aware, however, that a number of parties making submissions to the Inquiry raised issues relating to broader consultation with the Government on gaming related matters in Tasmania. The Committee determined that evidence on these issues should be examined under any other issues relevant to the Deed.

The Committee determined that in regard to issues related to transparency in the negotiation of the Deed there are two separate needs. These being:

- The need to obtain a comprehensive understanding of the processes that led to the negotiation of the new Deed; and
- The need to understand the reason or reasons why the deed-specific negotiations were conducted on a commercial-in-confidence basis.

These issues will now be considered in detail.

9.1 Negotiation of the Deed

9.1.1 Consideration of the Evidence

Based on evidence provided by the two parties involved in the negotiation of the Deed, namely the Government and Federal Hotels, it would appear that:

- The impetus for the renegotiation of the Deed with Federal Hotels came from the Treasurer, Dr Crean. He stated in his evidence to the Committee that:

“In my mind I was going to approach Federals at some time, which I did in January...”²³

²³ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.10.

- The Government, through the Treasurer’s Office, approached Federal Hotels in early 2003 with a view to commencing discussion on a possible renegotiation of the Deed.
- The purpose of this approach was to progress the Government’s social agenda and the associated policy position with regard to the capping of the number of gaming machines permitted in the State.

The Secretary of the Department of Treasury and Finance stated in his evidence to the Committee:

“...the starting point of my instructions from the Treasurer was that he wanted to achieve a cap on the statewide number of gaming machines.”²⁴

- This initial approach led to a series of meetings between representatives of the Department of Treasury and Finance and Federal Hotels.
- The key personnel involved in the negotiation process were Mr Don Challen, Secretary of the Department of Treasury and Finance representing the Government and Mr Greg Farrell and Mr Andrew Eakins representing Federal Hotels.
- The Government had two key, non-negotiable issues it sought to have included in a revised Deed. These were the cap on gaming machine numbers as well as an increase in the applicable tax rates.
- Significant negotiations took place, up until approximately two weeks prior to the signing of the Deed on 18 March 2003.
- During these negotiations both parties moved from their initial opening positions to a final position that was acceptable to both parties. The evidence given to the Public Accounts Committee by Mr Farrell and Mr Challen highlights this point. In relation to the negotiated position contained within the new Deed, Mr Farrell stated:

“We clearly wanted to pay less and we clearly wanted a longer licence and slightly different conditions within that licence. Ultimately though we agreed to the additional taxation, particularly those effective from 2003 to 2009, and agreed to the manner in which the licence was constructed in the Deed that we signed.”²⁵

- The main benefit to Federal Hotels, as stated by Mr Farrell was:

“In a business sense, quite frankly the only benefit for Federal Hotels was the extension of the licence period, which would provide the company with a greater degree of certainty about its business position going forward, allow

²⁴ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.42.

²⁵ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.27.

for its investment decisions in new and existing businesses, and enable it to better plan to meet its forward capital expenditure requirements.”²⁶

- Mr Challen explained the Government’s initial negotiation position as:

“...much tougher in terms of the tax take, as you would expect and I was looking for a much shorter period of the extension of the licence.”²⁷

- Mr Challen provided the following overview of the outcomes of the negotiation process:

“They [Federal Hotels] obviously gave up some control over what goes on in individual venues so we have made their business model a bit more complicated. They have taken on some additional costs that I don’t think they contemplated at the beginning of the agreement in terms of what they can recover from venues. Mr Farrell, I think, would have preferred a longer-term agreement if he could have achieved that. He took some persuading that it was reasonable to increase the licence fees and tax rates as much as we did. There were many things, though, that he readily agreed to; for instance, the support for player protection measures and so on.”²⁸

9.1.2 The Committee Notes that

- **The Government, on the advice of the Treasurer, instigated the renegotiation of the Deed to achieve its social policy objective of a cap on gaming machine numbers.**
- **The Government made the initial approach to Federal Hotels in early 2003.**
- **The key personnel involved in the negotiation process were Mr Don Challen, Secretary of the Department of Treasury and Finance representing the Government and Mr Greg Farrell and Mr Andrew Eakins representing Federal Hotels.**
- **The Government had two key, non-negotiable issues it sought to have included in a revised Deed. These were the cap on gaming machine numbers as well as an increase in the applicable tax rates.**
- **Negotiations took place between the Government and Federal Hotels until approximately two weeks before the Deed was signed on 18 March 2003.**

²⁶ Ibid, p.6.

²⁷ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.48.

²⁸ Ibid, p.49.

9.2 Deed-Specific Negotiations with Federal Hotels

9.2.1 Consideration of the Evidence

In relation to this issue, Federal Hotels state in their submission to the Committee that:

“It was of paramount importance that the negotiations be conducted in a confidential manner. There are many stakeholders involved in this and our view is that negotiations of a commercially sensitive nature should be conducted entirely privately. If the parties ultimately agree to a position, then that position is the public position. Any position prior to having a signed agreement, in our view is tantamount to causing anxiety to interest by other parties, which would be entirely unacceptable.”²⁹

“...due to the highly sensitive commercial issues involved, Federal insisted that any re-negotiation be undertaken on a commercial-in-confidence basis as to do otherwise would have shown a high level of commercial imprudence on Federal’s behalf.”³⁰

The Australian Hotels Association supports the position of Federal Hotels on this matter. It states in its submission to the Committee that:

“Although there is an argument that the public (through the Parliament) should have the opportunity to scrutinise contracts, this would set a dangerous precedent if any Government deal had to be subjected to scrutiny and possible amendment by the Parliament. No commercial organisation would ever want to deal with the Government in this type of environment.”³¹

9.2.2 The Committee Finds that

- **The Deed-specific negotiations were not open to anyone other than the negotiating parties.**
- **The commercial in confidence nature of the detailed negotiations between the Government and Federal Hotels, on the development of the 2003 Deed, was proper and consistent with accepted contract negotiation principles.**

²⁹ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.28.

³⁰ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 3.

³¹ Australian Hotels Association., Submission to Public Accounts Committee, 2003, p. 3.

10 ISSUES RELATING TO THE QUALITY OF THE DEAL EXTRACTED BY THE GOVERNMENT IN THE DEED

The wording of Term of Reference (c) requires both the PAC and witnesses to make a subjective assessment, as to what constitutes ‘quality’.

The Committee has determined that for the purposes of this inquiry, the quality of the deal extracted by the Government should be measured in terms of:

- The financial return to the State;
- The social return to the State; and
- The satisfaction of the parties to the Deed and members of the Tasmanian community as represented by those tendering submissions, in relation to the renegotiated Deed.

10.1 Financial and Social Return

The financial and social benefits negotiated under the revised Deed have been examined and discussed in detail under Term of Reference (a).

These can be summarised as:

- An additional \$2 million per annum until 31 December 2008;
- The capping of gaming machine numbers at 3680;
- The undertaking by Federal Hotels to “continue to improve player protection measures and to support the Crown’s initiatives in that field”;³²
- The exclusion from Federal Hotels’ charges to all clubs and hotels, all amounts attributable to the cost of monitoring, operating and re-developing the Central Monitoring System; and
- The development of a premium standard tourist resort and associated infrastructure at Coles Bay.

10.2 The Satisfaction of Various Stakeholders

10.2.1 Consideration of the Evidence

In relation to the satisfaction of the parties with the deal negotiated by Government the Managing Director of Federal Hotels, Mr Farrell, said in his evidence to the Committee:

³² 2003 Deed, Clause 4.4.

“We believe the agreement negotiated between the company and the Government in a sense was the best possible outcome the State Government could achieve whilst getting an agreement from the company. There was no more blood to be squeezed, no more machines to be cut, no less time we would agree for the additional licence period. At the end of the day, we essentially came to a position to say that there is no more room, we either can find an agreement within the terms of the Government we find acceptable and those terms which the board of Federal Hotels would find acceptable. That is what essentially led to the closing of the deal. At the same time, we believe that socially and politically, the agreement balances the requirements of all the major stakeholders in the State.”³³

In addition, Federal Hotels’ submission states:

“The Government has negotiated the maximum possible benefit for the State whilst still being acceptable to Federal. It has met its social objective and has extracted significant further taxes from Federal. Any further imposts would have made the agreement totally unacceptable to this company.”³⁴

Further to this, the Government’s lead negotiator, Mr Challen stated in his evidence to the Committee:

“It was a very typical negotiation. It was played pretty hard. It went on for a long time. Both sides had some key things they had to achieve. There were some areas where both sides were willing to compromise and, as I say, my judgment at the end of it was I was pretty comfortable in recommending it to the Government.”³⁵

TasCOSS’ comments in relation to the quality of the deal extracted by Government are based solely on the appropriateness of the rolling term renewal mechanism contained in the 2003 Deed. TasCOSS states in its submission that:

“A four year notice period applies to the Rolling Term, this condition is too nebulous, protects neither party in any true sense and gives the community no confidence in the deal struck between the Crown and the Company.”³⁶

The Australian Hotels Association raises two issues in relation to its assessment of the quality of the deal. The first of these being:

“Because of the responsible nature of the introduction and current operation of gaming in Tasmania, the AHA contends that there is little justification for the introduction of a cap on the number of gaming machines.”³⁷

And the second:

³³ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.2.

³⁴ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 5.

³⁵ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.46.

³⁶ TasCOSS., Submission to Public Accounts Committee, 2003, p. 3.

³⁷ Australian Hotels Association – Tasmanian Branch., Submission to Public Accounts Committee, 2003, p. 3.

*“Another component of the deal that is questionable concerns the continuing inequity between hotels and clubs. Currently, clubs are permitted a maximum of 40 machines and hotels are permitted a maximum of 30 machines. There appears to be little justification for this inequity as both hotels and clubs are equally committed to responsible gambling practices within their venues. This could have been an opportunity to bring the arrangements for hotels and clubs into line.”*³⁸

Anglicare states in its submission:

*“Anglicare welcomes a legislated state-wide cap on the number of gaming machines permitted in Tasmania and the setting of a limit on the number permitted in each venue. However, the cap offered in the proposed new Deed was negotiated with Federal Hotels without conducting research into the negative impact that gaming machines are having on our community.”*³⁹

In a similar vein, the Inter-Church Gambling Taskforce states in their submission:

*“We heartily endorse the principle of placing an overall cap on gaming machine numbers, as provided for in the Bill under consideration, but strongly believe that a rigorous, independent social and economic study should have been conducted to determine what was a socially responsible level for the cap before the Deed was signed.”*⁴⁰

The Australian Liquor, Hospitality and Miscellaneous Workers Union (LHMU) in its submission to the Committee supports the community benefit resulting from the Deed and implies support for the Deed in calling for the passing of the legislation by the Legislative Council. The LHMU states that the community benefit:

*“... can be seen in the community levy, the contribution towards tourism and also the fact that they are employing significant amounts of Tasmanians and ensuring those workers have decent, safe jobs. The continued security of member’s jobs are reliant on the legislation before you.”*⁴¹

And that:

*“It is the LHMU belief that the legislation as it currently stands should be passed by the Legislative Council.”*⁴²

In relation to the quality of the deal extracted by the Government in the Deed, the Tasmanian Greens state in their submission that:

³⁸ Ibid, p. 3.

³⁹ Anglicare., Submission to Public Accounts Committee, 2003, p. 3.

⁴⁰ Inter-Church Gambling Taskforce., Submission to Public Accounts Committee, 2003, p. 4.

⁴¹ Australian Liquor, Hospitality and Miscellaneous Workers Union – Tasmanian Branch., Submission to Public Accounts Committee, 2003, p. 2.

⁴² Ibid, p. 2.

“The Greens argue that the early renegotiating of the 1993 Deed and the resulting amendments to the Gaming Control Act 1993 provided a timely opportunity for key reforms recommended in the Select Committee’s 2002 Report, yet the Government failed to utilise that opportunity.”⁴³

And that:

“The ‘quality of the deal’ is undermined severely by this lack of political will to address significant concerns in a meaningful manner, and relegates the instigation of an EGM [Electronic Gaming Machine] upper limit following a further 287 machines, as a politically expedient short-cut.”⁴⁴

10.2.2 The Committee Finds that

- **The wording of Term of Reference (c) requires both the PAC and witnesses to make a subjective assessment, as to what constitutes ‘quality’.**
- **Federal Hotels and the Government are satisfied with the quality of the deal.**
- **Peak hospitality industry representatives including the AHA and the Australian Liquor, Hospitality & Miscellaneous Workers Union seem satisfied with the quality of the deal.**
- **TasCOSS, Anglicare, the Inter-Church Gambling Task Force and the Greens plus a small number of individual industry participants each submitted that they were dissatisfied with the quality of the deal.**
- **It is unable to determine from the submissions whether or not the increased financial return to the State flowing from the renegotiated Deed meets the test of ‘quality’.**
- **The social and financial benefits flowing to the State are greater than the benefits flowing to the State under the 1993 Deed.**
- **Among those who submitted that the Deed failed their test of ‘quality’ was a view that the Government’s key social achievement in capping the number of machines in the market was beneficial.**

⁴³ Tasmanian Greens., Submission to Public Accounts Committee, 2003, p. 6.

⁴⁴ Ibid, p. 6.

11 THE NON-COMPETITIVE NATURE OF THE NEGOTIATION OF THE DEED

The Committee is of the view that there are two interrelated issues that warrant investigation in relation to the non-competitive nature of the negotiation of the Deed. These being:

- The non-competitive nature of the negotiation of the 2003 Deed; and
- National Competition Policy issues.

These issues will now be considered in detail.

11.1 The Non-Competitive Nature of the Negotiation of the 2003 Deed

11.1.1 Consideration of the Evidence

Under the 1993 Deed between the Government and Federal Hotels, Federal Hotels is provided with the exclusive right to conduct gaming operations in Tasmania until 31 December 2008.

In order to achieve its stated policy objective of introducing an immediate cap on gaming machine numbers the Government, in the view of the PAC, had two options available to it. These were to:

- Seek to alter the conditions of the 1993 Deed, either directly or through legislation; or
- Seek immediate renegotiation of the current Deed with Federal Hotels.

11.2 Alteration of the Current Deed or Legislation

11.2.1 Consideration of the Evidence

Any moves by the Government to alter the existing Deed with Federal Hotels prior to its termination date of 31 December 2008, or to impose specific conditions (eg machine number limitations) on the conduct of gaming operations through the enacting of legislation may have the potential to result in a case for compensation by Federal Hotels. In addition, such a move would be likely to reflect negatively on the Tasmanian Government. Federal Hotels state in their submission:

“ The existing agreement can be varied only by mutual consent unless the Government is prepared to create a very serious sovereign risk precedent that

*would be very damaging to the reputation of Tasmania as a place in which to invest.*⁴⁵

This is consistent with the views of Mr Challen who in his letter to the Committee dated 24 July states:

*“...the Government had little choice but to honour the Deed terms, or face issues relating to sovereign risk and the likelihood of financial compensation.”*⁴⁶

During his evidence to the Committee, Mr Booth tabled a document by Mr Michael Stokes providing a legal opinion on the power of the Parliament to amend the Deed between the Government of Tasmania and Federal Hotels.

In summary, this legal opinion states:

“There is no limit to the power of the Tasmanian Parliament to amend or repeal the Deed to enact legislation which is inconsistent with it.

*The Government will not be liable in damages or in any other remedy to Federal Hotels or the other parties to the Deed if the Parliament amends or repeals the Deed.”*⁴⁷

11.3 Renegotiation of the Deed with Federal Hotels

11.3.1 Consideration of the Evidence

The Government has stated that it was its desire to implement an immediate cap on gaming machine numbers. In order to achieve its stated objective, the Government relied on the willingness of Federal Hotels to enter into negotiations on the issue of capping gaming machine numbers. This provided Federal Hotels with a powerful position in relation to the manner in which the negotiations were to be conducted. This is evidenced in Federal Hotels’ submission that states:

*“Federal could not have agreed to an openly competitive process as it would have placed itself at a considerable disadvantage given the on-going tenure of the existing agreement.”*⁴⁸

And importantly:

*“Federal would not have been willing to re-negotiate its agreement under those circumstances.”*⁴⁹

⁴⁵ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 2.

⁴⁶ Letter, Mr D W Challen, Secretary, Department of Treasury and Finance, 24 July 2003.

⁴⁷ Legal Opinion, Mr Michael Stokes LL B(Hons)(Tas), M Phil(Oxon)

⁴⁸ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 7.

It is also apparent that Federal Hotels saw that the process sought by the Government was a:

“...re-negotiation of an existing agreement rather than a public tender or public bidding process.”⁵⁰

11.3.2 The Committee Notes that

- **The Government required the cooperation of Federal Hotels in order to achieve an immediate cap on gaming machine numbers through the renegotiation of the Deed.**
- **Federal Hotels said that it would not have agreed to enter into negotiations with the Government to develop the 2003 Deed if the process had been on anything other than a non-competitive basis.**
- **Any demand by Government to reduce the number of gaming machines currently in use and permitted to be in use by the 1993 Deed, would have aborted meaningful negotiations towards an agreed cap.**

11.3.3 The Committee Finds that

- **Any unilateral move by the Government to terminate or invalidate the current Deed to facilitate a competitive tendering process, prior to 2009, would have the potential to raise issues relating to sovereign risk as well as creating a potential for civil action leading to financial compensation.**
- **Any unilateral move by the Government to terminate or invalidate the current Deed, against the will of Federal Hotels, would seriously damage the Government and impact negatively on Tasmania’s standing as a State in which to do business.**

11.4 What if no Immediate Cap was Introduced?

11.4.1 Consideration of the Evidence

In the absence of an immediate cap on gaming machine numbers, it has been asserted by Federal Hotels that there is the potential for the number of gaming machines to increase significantly above the negotiated capped figure of 3680. Federal Hotels state in their submission:

⁴⁹ Federal Hotels., Submission to Public Accounts Committee, 2003, p. 7.

⁵⁰ Ibid, p. 3.

*“In the absence of these caps, and in order to prepare itself for any potential new entrant into the market in 2009, Federal would need to roll out an additional 1,500 machines before that date. This would then total some 4,900 gaming machines spread throughout Tasmania.”*⁵¹

The exact number of additional machines that may be introduced in the absence of a cap is subject to a large number of variables and is therefore impossible to accurately determine. In his evidence to the Committee, Mr Challen stated that it is his opinion that the potential number of machines that could be operated in Tasmania in a non-capped environment is:

*“...certainly significantly above the number of machines that are in the marketplace at the moment.”*⁵²

11.4.2 The Committee Finds that:

- **It is probable that the number of gaming machines in operation throughout Tasmania would exceed the proposed cap figure of 3680 if the Government waited until after the expiry of the current Deed on December 31, 2008 to impose a cap.**

11.5 National Competition Policy Issues

11.5.1 Consideration of the Evidence

In relation to the non-competitive nature of the negotiation of the Deed, the Committee sought to gain an understanding of the measures taken by the Government to ensure that National Competition Policy (NCP) issues were considered by the Government during the renegotiation process with Federal Hotels. In addition, the Committee sought to identify the implications of the 2003 Deed in regard to the NCP payments.

The Commonwealth Government makes NCP payments to the States and Territories (on a per capita basis), where they achieve satisfactory progress against the NCP and related reform obligations.

The NCP payments are the means by which 'gains' from reform are distributed throughout the community. The payments recognise that, although the States and Territories are responsible for significant elements of NCP, much of the direct financial return accrues to the Commonwealth Government via increases in taxation revenue that flows from greater economic activity.

The National Competition Council advises the Federal Treasurer on whether the States and Territories have achieved satisfactory progress and so meet the conditions for receipt of payments. This is reported through the NCP Assessments.

⁵¹ Ibid, p. 2.

⁵² Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.44.

Under NCP all States and Territories agreed to a package of reforms, including the requirement to review and reform all laws that restrict competition unless it can be demonstrated that the restrictions are in the public interest.

The Committee is aware of the National Competition Council's 2002 Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms Report. In relation to gaming in Tasmania, this report states that:

"Tasmania's legislation contains some significant restrictions on competition, most notably the exclusive Deed between Tasmania and the Federal Hotels group for the operation of gaming machines for 15 years from 1 January 1994, with the introduction of gaming machines into hotels and clubs from 1997. Tasmania has stated that it has no intention, of entering into any more exclusive arrangements in the gaming area, at this stage. The Government has stated that while it is not possible to predict future circumstances, if a future Government were to enter into any form of exclusive arrangement, this would only occur if such a policy was found to be fully justified in the public interest."

In his letter to the Committee dated 24 July 2003, Mr Challen responded as follows to the statements contained within the NCC's 2002 Assessment.

"...the Government did advise the NCC in December 2001 that when the exclusive arrangements under the Deed expire on December 31 2008, the Government did not intend to seek a renewal of these exclusive arrangements with Federal Hotels. This statement accurately reflected the position of the Government at the time, but I hasten to add that no proposals for renewing, amending or abolishing exclusivity in the Tasmanian gaming market were being contemplated when this statement was made. In other words, there was no reason to engage the NCC in a discussion on this issue at the time, given that at that point it would have been purely hypothetical, all expectations being that the current arrangements would run their course until 2008.

Subsequent to providing this advice in 2001, the Government has been presented with an opportunity to review the current arrangements within the context of some specific proposals and growing community concern about the potential for increased access to gaming through a further roll-out of gaming machines under the 1993 Deed. Accordingly, in order to apply a cap on gaming machines numbers in Tasmania, the Government reviewed its position regarding the costs and benefits of entering into another exclusive arrangement."⁵³

In addition, Dr Crean, in his evidence to the Committee, referred to a conversation in late 2002 with the then President of the National Competition Council, Mr Graeme Samuel. In this conversation, Dr Crean discussed, and received implied support from Mr Samuel, for the granting of a further exclusive gaming licence in Tasmania. Dr Crean stated in his evidence to the Committee that he initiated discussions with the NCC:

⁵³ Letter, Mr D W Challen, Secretary, Department of Treasury and Finance, 24 July 2003.

“To see whether they would have any major concern about it. We still have to go through the process of justifying the public benefit. If the National Competition Council were fairly relaxed about it, even though we would put a robust case, we could have a greater certainty that that would get up as against if they considered it a major National Competition Council issue - which they didn't and which I determined at that meeting.”⁵⁴

11.5.2 The Committee Notes that

- **The Government was cognisant of the potential National Competition Policy ramifications of a renewed exclusive Deed with Federal Hotels.**
- **The Government, through the Treasurer, took steps to determine the likely position of the National Competition Council in relation to a renewed exclusive Deed for the provision of gaming in Tasmania.**
- **The Government has developed, and submitted to the National Competition Council, a Regulatory Impact Statement to demonstrate the public benefit in its decision to continue the exclusive arrangement with Federal Hotels.**
- **The Government's Regulatory Impact Statement is currently being considered by the NCC.**

11.5.3 The Committee Finds that

- **The interests of Tasmania are best served by having a single operator of gaming machines in hotels and clubs.**

12 ANY OTHER ISSUES RELEVANT TO THE DEED

The submissions received by the Committee raised a number of issues in relation to Term of Reference (e). From these submissions, the Committee identified five key issues. Namely:

- The perception that Federal Hotels is able to subsidise their operations from the profits generated through gaming and therefore compete unfairly with other operators;
- The lack of an appeals process or independent arbiter to resolve disputes relating to the allocation of gaming machines;
- The perceived abuse by Federal Hotels of their monopoly position, especially in relation to conflicts of interest that arise from Federal Hotels' activities as both a provider and operator of gaming machines;

⁵⁴ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.10.

- The Public was not made aware that the Government had entered into talks with Federal Hotels to renegotiate the Deed. The lack of communication to the public of this fact as well as the lack of a formal pre-negotiation policy setting mechanism has been cause for considerable concern among a number of those making submissions to the Committee.
- A perceived lack of independence of the Tasmanian Gaming Commission.

These five issues will now be considered in detail.

12.1 Subsidised Activities

12.1.1 Consideration of the Evidence

It was asserted by a number of parties making submissions to the Committee that as a result of the revenue flowing from the exclusive licence to operate gaming machines, Federal Hotels is able to subsidise accommodation, function and food and beverage rates in its existing properties to the detriment of other tourism and accommodation operators.

The following excerpt from the Doherty Hotels submission highlights this issue:

“ Our concern is and always has been, the monopoly that Federal Hotels had with gaming because we believe that this gives them an unfair monopoly and the ability to cross-subsidise profits made out of poker machines to other areas – being accommodation and food and beverage. This is particularly evident, and there are several very clear examples how this has happened in the past but right now in Hobart there are several large billboards advocating roast dinners for \$4.90 at the Casino. We believe that it is totally uneconomical to produce a roast dinner for such a price and this only shows that it is being used as a lure to the poker machines and disadvantages other accommodation and restaurant providers on the island.”⁵⁵

Mr James makes a similar assertion in his submission to the Committee:

“The effect of this monopoly on the Hotels, Clubs AND Restaurants that do not have gaming and therefore cannot subsidise food delivery and other activities like advertising, functions (most especially competing on pricing).”⁵⁶

These assertions were put to Mr Farrell by members of the Committee on 16 July 2003, to which he replied:

“If you look at the way in which we operate our businesses, none of our businesses are operated in a way which could be said to be cannibalising

⁵⁵ Doherty Hotels Pty Ltd., Submission to Public Accounts Committee, 2003, p. 1.

⁵⁶ James, Mr G., Submission to Public Accounts Committee, 2003, p. 3.

other businesses. It is true to say that at the Hotel Tasmania we have \$4.50 roasts and we serve thousands of people a week. It is also true to say that that business makes money on its food and we use very affordable and extended hours of dining in that restaurant as one of the key competitive reasons why that hotel is so successful. Do we do that because we can afford to do it? No, we do that because for that hotel it is a key success factor and the fact is we can make money in the way in which the kitchen is set up and based on the volume of meals at a lower break-even point than we can at the Country Club.”⁵⁷

12.1.2 The Committee Notes that

- **A number of those making submissions to the Committee asserted that Federal Hotels uses the revenue generated from their gaming operations to subsidise the provision of accommodation, functions and food and beverages.**
- **Issues such as cross subsidisation of certain elements of an operation are not matters referred to in either the 1993 or 2003 Deed.**

12.1.3 The Committee Finds that

- **It was unable to conclude whether cross-subsidisation occurs.**

12.2 Lack of an Appeals Mechanism

12.2.1 Consideration of the Evidence

Three of the submissions received by the PAC raised issues relating to the lack of any formal or informal appeal mechanism available to venues that have their application for gaming machines refused by the sole provider of machines, Network Gaming.

The submission from Young and Davis states:

“ After having had our venue assessed as being suitable for gaming machines and then being refused we have found it extremely frustrating that there are absolutely no avenues of appeal open to us. There is no independent body, Government or otherwise, to look into our concerns. We have not been provided with any reason/s specific to our business as to why we are deemed an unsuitable venue. We have not been able to obtain any information re: Criteria which needs to be addressed. The only explanation, offered to others who have investigated this matter on our behalf, is that allowing us to operate gaming machines might impact negatively upon the viability of neighbouring venues.”⁵⁸

On the same topic, Mr James states in his submission:

⁵⁷ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.36.

⁵⁸ Young, Mr M and Davis, Ms K., Submission to Public Accounts Committee, 2003, p. 1.

*“The Treasurer has disregarded one of the worst parts of the previous legislation that allows Federals to select ‘financially viable’ hotels for gaming while denying without satisfactory explanation competing Hotels, e.g. Both Margate Hotel and Snug Hotel applied at the same time for gaming only Snug received gaming. This has had the crippling affect of undermining Margate Hotel and essentially crippling it’s growth.”*⁵⁹

In evidence to the Committee, Mr Farrell outlined the processes available to unsuccessful applicants as:

*“...[an] aggrieved party would make further representations to Network Gaming and Network Gaming would then have to review the circumstances in which it made its decision and go back to that party to say whether in fact it was felt appropriately or otherwise about the decision. In some instances Network Gaming will ask that a venue re-present itself in a further 12 months, after a further 12 months of ascertaining what circumstances may have changed.”*⁶⁰

In addition, Federal Hotels contend that industry peak bodies such as the Australian Hotels Association and Clubs Tasmania operate as advocates for disgruntled members to check on the business practices of Federal Hotels and Network Gaming in particular. In relation to this issue Federal Hotels state:

*“... the industry is represented by major associations apart from Network Gaming, so in this case you have the Australian Hotels Association – Tasmania Branch – an extremely well connected, well organised, professional organisation – and you have Clubs Tasmania. In the event then that Network Gaming had operated in a way which was seen to be against the interest of the members of the AHA, the company would have had substantial representations by those organisations. In all reality, over all the years I have been involved in this business, I would have to say this is not the case.”*⁶¹

The Chairman, when questioning Mr Farrell said:

“But, in effect, a party has no appeal other than to Caesar?”

To which Mr Farrell responded:

*“Yes, as is the case in many other commercial operations, such as the TOTE. In our view it is entirely appropriate and as this Bill before the House has become known, we are now seeing parties clearly positioning themselves publicly saying they want gaming machines and we won’t give them to them.”*⁶²

⁵⁹ James, Mr G., Submission to Public Accounts Committee, 2003, p. 4.

⁶⁰ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.33.

⁶¹ Ibid, p.33.

⁶² Ibid, p.33.

“In a sense, what we have tried to do is be responsible, not only to the community but also to the venues. One of the things that Network Gaming, I believe, has done to a very high degree is to say to venues that want to have gaming and can, in our view, demonstrate that they are a fit and proper business and a fit and proper person to the Gaming Commission, that in the majority of cases they have to commit substantial levels of investment to prepare their business for that opportunity. In our view then, Network Gaming has a very clear obligation to the very best of its ability to assess that that venue will be successful. In many cases we are asking venues to re-equip, paint, better training, better food and beverage facilities, better parking, to position themselves as being a good reflection of our business model. They are given an obligation; if they prepare themselves for this then they will be given a level of gaming machines but we can't give them an obligation that they will be successful. So if they are not successful and those machines are subsequently removed, then those people have made a significant investment in the business opportunity that is now not successful.”⁶³

The Treasurer expressed the view of the Government in relation to this matter in his evidence to the Committee. Dr Crean said:

“...that is a commercial decision that is made by the operator and it is a matter between the operator and the venues. It is not an issue that should be a negotiating point given the nature of the policy decisions and the agreement.”⁶⁴

12.2.2 The Committee Notes that

- **Both the 1993 Deed and the proposed Deed gives to Network Gaming the exclusive right to allocate and manage gaming machines in Tasmanian hotels and clubs.**
- **There is a limited opportunity for unsuccessful applicants to have their application reconsidered.**

12.2.3 The Committee Finds that

- **The exclusive right to allocate machines to hotels and clubs granted to Federal Hotels by the 1993 Deed and reaffirmed by the proposed Deed, imposes on Federal Hotels a responsibility to act in the best interests of the venues to which they have granted machines.**
- **If there is to be a cap on the number of machines available to the market there will always be operators who feel aggrieved because they have been unsuccessful in an application.**

⁶³ Ibid, p.33.

⁶⁴ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.6.

- Neither the 1993 Deed nor the 2003 Deed mention appeal rights for aggrieved parties.
- Federal Hotels should develop a Code of Practice which enables:
 1. Any applicant for gaming machines to be clearly aware of the criteria to be used in the assessment of that application.
 2. Any operator of gaming machines to be clearly aware of operational key performance indicators so that they can make efforts to address the problem of underperforming gaming machines.

12.3 Monopoly Power

12.3.1 Consideration of the Evidence

Following on from the issue of the lack of an appeals body, a number of submissions referred to the power afforded to Federal Hotels through their ownership of the provider of gaming machines, Network Gaming. Coupled with this is the fact that Federal Hotels, through its subsidiary the Vantage Hotel Group owns a number of hotel properties throughout Tasmania. Submissions specifically referred to the fact that Network Gaming is the body responsible for determining which suitably licensed operators/venues are provided with gaming machines. In addition, Network Gaming also controls the variations in machine numbers across venues, ie. the granting of additional machines and the removal of underperforming machines.

The submission from Young and Davis states:

“The power of the placement of machines should be in the hands of an independent body, with no vested or financial interest, whose task would be to follow strict guidelines and to allocate suitable venues, gaming machine licences.”⁶⁵

Given the exclusivity of the Deed and the fact that Federal Hotels operates in the market as both an operator of machines, through Network Gaming and an operator of hotels, through the Vantage Group the Committee sought clarification of what measures, if any, exist to prevent Federal Hotels abusing this situation.

In relation to the potential for Federal hotels to exploit its position as both a provider and an operator of gaming machines, Mr Don Challen, in his role as the Chairman of the Tasmanian Gaming Commission stated:

“The issue is one that has concerned the commission and the commission has placed some conditions on the involvement of Federal Hotels through the Vantage Group in the operation of licensed venues - when I say 'licensed' I

⁶⁵ Young, Mr M and Davis, Ms K., Submission to Public Accounts Committee, 2003, p. 2.

mean venues that are licensed for gaming machines. The approach that the commission has taken is to impose a series of conditions that are designed to ensure that venues in the Vantage Group are not favoured relative to any other venue. For instance, this goes back to July 1999 when we received the first application for approval of gaming machines and keno at a location that is in that group.”⁶⁶

The series of conditions imposed by the Tasmanian Gaming Commission and referred to by Mr Challen in his evidence to the Committee are as follows:

“In respect of gaming operations the relationship between a licensed premises gaming operator owned by the companies must be identical in character to that which applies to the licensed premises gaming operators not owned by the company.

The gaming operator must enter into a contractual relationship with a licensed premises gaming operator owned by the companies that is consistent with the standard contract between a licensed premises gaming operator and the gaming operator that has been approved by the Commission under section 77 of the Gaming Control Act.

The gaming operator must not favour a licensed premises gaming operator owned by the companies over any other licensed premises gaming operator in its dealings, including the supply, configuration and maintenance of gaming products.

A licensed premises gaming operator owned by the companies must be part of a marketing group which is available to other licensed premises gaming operators.

Licensed premises gaming operators owned by the companies must not represent more than 30 per cent of the venues in a marketing group.

Australian National Hotels and its related companies will not exercise its voting power within a marketing group to prevent a licensed premises gaming operator not owned by the company as joining that marketing group.”⁶⁷

Further to this, the Tasmanian Gaming Commission has imposed a limit on the number of gaming machines that can be owned by companies within the Vantage Group. This limit originally started at 15 per cent of all gaming machines in hotels. The limit since 1 July 2002 has been 25 per cent which effectively places a cap on the number of machines that can be in hotels within their group.

Mr Challen described the evolution of this figure in his evidence to the Committee:

“There were four steps. We [the Tasmanian Gaming Commission] imposed a condition that said Until 30 June 2000 your machines can't represent more than 15 per cent of the total machines in hotels, and until 30 June 2001 it was

⁶⁶ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.54.

⁶⁷ Ibid, p.55.

18 per cent, and then until 30 June 2002 it was 22 per cent, and subsequently it was 25 per cent."⁶⁸

When asked by Mr Hidding whether the limits were negotiated Mr Challen answered:

*"No. The Commission just imposed them."*⁶⁹

In addition to the formal measures put in place by the Tasmanian Gaming Commission, Federal Hotels has made a commitment to hotels and clubs this it will not operate in a manner that may be construed as an abuse of its market position. Mr Farrell explained this undertaking as:

*"We then entered into discussions with industry on the basis that this is our intention to do this [i.e. purchase hotels] because obviously there were some concerns. The concerns were, 'Surely, you've got a stand-up start into being in a position where you could be seen to be using the system to your advantage'. We made it very clear then, although there is no legal obligation for the company to have done this, that the company would not buy a hotel that did not have gaming machines, though we could, that was ideally situated to have gaming machines - this is over the last five years - apply to ourselves through Network Gaming with a fool-proof business case, which I am sure that we could do, Network Gaming, quite frankly, would then look at it and say, 'This is a damned good opportunity for gaming. It's a wonderful business case - committed management - we'll provide gaming machines to that venue' That would have been a very good way, quite frankly, for this business to have been able to create wealth but at the same time though it would have created, in our view, very clearly a very strong perception, 'Well, you're helping yourself to the cookie jar' or whatever analogy you wish to use. So we said we wouldn't do that. We said that if we want to operate gaming machines in licensed hotels we would stand in the market and buy that hotel and we would operate that hotel then as a hotel that already had gaming machines and which is in fact what we have done."*⁷⁰

12.3.2 The Committee Notes that

- **Federal Hotels, through its subsidiary companies, conducts business as both a provider of gaming machines (through Network Gaming) and as an operator of gaming machines (through its two casino properties and the Vantage Hotel Group).**
- **To address its concerns on this issue, the Tasmanian Gaming Commission has imposed a series of conditions on all hotel properties owned by Federal Hotels through the Vantage Hotel Group to ensure that these properties are not favoured relative to any other venue.**

⁶⁸ Ibid, p.57.

⁶⁹ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.57.

⁷⁰ Farrell, Mr G., Federal Hotels, Transcript of Evidence, 16 July 2003, p.33.

- **The Tasmanian Gaming Commission has imposed a percentage cap on the total number of gaming machines able to be operated by venues owned by Federal Hotels. The present level of this cap is 25% of the total number of machines in hotels and clubs.**
- **Federal Hotels has given the hotel industry an undertaking to compete in the market place if Vantage Hotels seeks further hotel acquisitions.**

12.3.3 The Committee Finds that

- **There is a need for the Tasmanian Gaming Commission to closely and continuously monitor the market activity of the Federal Group of companies so that the present level of ethical but dominant participation in the market, as both provider and operator, is maintained.**

12.4 Public Consultation on the Number of Gaming Machines

12.4.1 Consideration of the Evidence

It is apparent from a number of the submissions received that a number of parties, including Anglicare, TasCOSS, the Tasmanian Inter-Church Gambling Task Force and the Tasmanian Greens, hold concerns in relation to the level of public consultation held in relation to the negotiation of the new Deed. It is apparent that these groups sought to play a role in the determination of the Government's policy on key issues, such as venue limits and overall gaming machine numbers, prior to the commencement of the detailed, Deed-specific negotiations with Federal Hotels.

These concerns would appear to have been exacerbated by the failure of the Tasmanian Gaming Commission and Federal Hotels to carry out the review of gaming machine club and hotel venue limits as specified under Section 9 (f) of the 1993 Deed and the fact that the consultation with the broader community promised by the Tasmanian Gaming Commission in its 2001-02 Annual Report, as a component of this review, did not eventuate.

In relation to this issue, Anglicare state in their submission:

“At the time that the new Deed was being negotiated, Anglicare was expecting the TGC to consult with us over a review of the venue limits on gaming machines. The existing Deed states that, “During the period of six months commencing on the 1st day of January 2003 the Gaming Commission and the Companies will jointly undertake a review of the maximum number of gaming machines in any one club or hotel.” The TGC said that they would seek community views before undertaking discussions with Federal Hotels.

However, the review was not undertaken. According to the Chair of the TGC the Government had commenced negotiations over a new Deed before the Commission commenced the review. In a letter to Anglicare, Chair of the

*TGC Don Challen said, "as the new Deed will set venue limits at current levels, with no provision for any increase, the Tasmanian Gaming Commission has determined there is no need to consult with Federal Hotels and the broader community on gaming machine limits in hotels and clubs from 1 July 2003. This letter was dated 17 April, one month after the new Deed was signed and 4 months into the 6 month period designated for a review of venue limits. Mr Challen explained that he was unable to undertake a review of venue limits "until the outcome of the negotiations became clear." This is clearly unsatisfactory as the TGC should have been in a position to seek community views before a new Deed was negotiated and signed"*⁷¹

In a similar vein TasCOSS in its submission noted:

"There has been no consultation with the community about the numbers of gaming machines within hotels and clubs in Tasmania. Furthermore the Tasmanian Gaming Commission have provided no explanation as to why this clause within the previous Deed was not met."

*"TasCOSS contents (sic) that unless a consultation, as specified in the previous Deed, occurs no new Deed can be considered credible or believable."*⁷²

The Tasmanian Inter-Church Gambling Taskforce states in its submission:

*"The original agreement still had five and a half years to run and neither we nor other members of the public had any inkling that such negotiations were taking place. They were conducted in secrecy with no opportunity for anyone to have input on what measures to protect the public interest should be incorporated in any new agreement."*⁷³

In seeking to understand the level of public consultation undertaken by the Government in relation to the issue of a cap on gaming machine numbers Dr Crean was asked by the Committee to list the groups that were consulted as well as outline the general tenor of their input. Dr Crean's response was:

*"It [the consultation] was in relation to a number of social issues. I have regular meetings with TasCOSS and Anglicare. I have raised this issue; they've raised it with me in the past even when I wasn't Gaming Minister. I meet with them regularly; I have since I've become Treasurer and we've taken on many of the issues that they have raised across a range of policy areas and it was in that context that they asked my opinion and I had investigated what their particular views were in relation to this issue."*⁷⁴

⁷¹ Anglicare Tasmania Inc., Submission to Public Accounts Committee, 2003, p. 2.

⁷² TasCOSS, Submission to Public Accounts Committee, 2003, p. 2.

⁷³ Tasmanian Inter-Church Gambling Taskforce, Submission to Public Accounts Committee, 2003, p. 3.

⁷⁴ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.6.

In response to this answer the Chair of the Public Accounts Committee asked the follow-up question:

“So your advice is that among the community groups you consulted with, with Anglicare, there were views in relation to this need for a cap on gaming machines?”⁷⁵

To which Dr Crean responded:

“Without indicating that we were thinking of entering into an arrangement with Federals along these lines, no, but in terms of the general social issue of the relationship between capping and problem gambling, yes.”⁷⁶

12.4.2 The Committee Notes that

- **The review process required under the 1993 Deed regarding the maximum number of gaming machines in any one club or hotel was not undertaken.**
- **Social welfare groups were of the opinion that they would be formally consulted as part of this review.**
- **The Government was aware of the findings and recommendations of the 2002 Legislative Council Select Committee report into the Impacts of Gaming Machines.**
- **Anglicare, TasCOSS and the Tasmanian Inter-Church Gambling Taskforce all provided submissions that were considered and reported upon by the 2002 Legislative Council Select Committee Report into the Impacts of Gaming Machines.**

12.4.3 The Committee Finds that

- **The review process required to be conducted as a condition of the 1993 agreement regarding the maximum number of gaming machines in any one club or hotel was not undertaken.**
- **On becoming aware that the Government had entered into negotiations with Federal Hotels, the Tasmanian Gaming Commission took the decision not to proceed with the review process.**
- **Such a formal consultative process would have permitted public input only on the issue of venue limits to form the basis for detailed negotiations with Federal Hotels.**

⁷⁵ Ibid, p. 6.

⁷⁶ Ibid, p. 6.

- **Some interested community groups had an expectation that a formal consultation process would be undertaken by Government prior to it reaching a policy position on gaming machine numbers.**
- **In reaching its policy decision to cap the number of gaming machines the Government did not formally consult with interested community groups.**
- **The Government consults with a range of community organisations on a regular basis to discuss a diverse range of social issues - including gaming.**
- **The Government received no policy advice from the Gaming Commission relating to the need to introduce a cap on the number of gaming machines.**

12.5 Independence of the Tasmanian Gaming Commission

12.5.1 Consideration of the Evidence

A number of submissions to the Committee raised the issue of the independence of the Tasmanian Gaming Commission.

This issue was thoroughly examined by the 2002 Legislative Council Select Committee into the Impacts of Gaming Machines. The report subsequently prepared by this Committee contained a single recommendation in relation to the Tasmanian Gaming Commission. The recommendation of this Committee was that:

“The Tasmanian Gaming Commission be restructured to ensure total separation from Government.”⁷⁷

Whilst somewhat outside the Terms of Reference of this Inquiry, the Committee is of the view that the submissions on this issue should be examined under any other issues relevant to the Deed. The Committee notes that this issue appears to be of greatest concern to social welfare bodies (ie. Anglicare, TasCOSS and the Inter-Church Gambling Taskforce).

The major issue of concern relates to a lack of independence and perceived conflict of interest by the Chair of the Gaming Commission given his dual role as both the Chair of the Commission as well as the Secretary of the Department of Treasury and Finance. The following excerpts from submissions received by the Committee provide an overview of the concerns held by a number of individuals and community groups in relation to the current situation.

Anglicare stated that:

“With no staff of its own and advice coming only from the Department of Treasury and Finance, it is Anglicare’s belief that that the TGC is simply a

⁷⁷ Legislative Council Select Committee 2002 Report – ‘Impacts of Gaming Machines’

division of the Department of Treasury and Finance and not the independent body Parliament intended. Until we have a truly independent gaming commission, Tasmanians cannot be assured of the duty of care expected of Government on gaming issues.”⁷⁸

Mr Greg James stated that:

“The Treasurer has ignored community calls for the Gaming Commission to be at arms length from the collection of revenue and administration. There is a prevailing view that the Commission is compromised by the inclusion of Treasury Officials on this Board. Indeed it is like most Commissions on such delicate revenue raising that it would appear to be compromised.”⁷⁹

TasCOSS stated that:

“TasCOSS argues that the transparency in the negotiations of the Deed have been undermined by a conflict of interest inherent within the Tasmanian Gaming Commission due to the Chair holding the position of Secretary of the Department of Treasury and Finance.”⁸⁰

The Inter-Church Gambling Taskforce stated that:

“The unacceptability of the present situation where the Secretary of Treasury is also Chairman of the Tasmanian Gaming Commission was clearly illustrated by these negotiations. The responsibility of the Gaming Commission Chairman is to regulate the industry in such a way as to protect the interests of consumers, notably by constraining enticements to gamblers (especially problem gamblers) to lose more than they can afford, is in clear conflict with the natural desire of Treasury to maximise the Government’s take from gambling.”⁸¹

The Tasmanian Greens stated that:

“Resolving the current conflict of having the State government being both the regulator of the gaming systems and simultaneously a major revenue beneficiary of that same industry is imperative. The Greens firmly believe that this dual regulatory/beneficiary role is inherently dangerous and prohibitive to the development of good public policy.”⁸²

The Committee put these assertions to Mr Challen in his role as the Chairman of the Tasmanian Gaming Commission to which Mr Challen responded:

⁷⁸ Anglicare Tasmania Inc., Submission to Public Accounts Committee, 2003, p. 6.

⁷⁹ James, Mr G., Submission to Public Accounts Committee, 2003, p. 5.

⁸⁰ TasCOSS., Submission to Public Accounts Committee, 2003, p. 3.

⁸¹ Tasmanian Inter-Church Gambling Taskforce., Submission to Public Accounts Committee, 2003, p. 5.

⁸² Tasmanian Greens., Submission to Public Accounts Committee, 2003, p. 10.

“...I think there are some real benefits in having the person who is responsible for the staff that service the Gaming Commission being part of that body because it gets me involved and gives me a very active interest in what is going on in the Commission. I ask people to observe the behaviour of the Commission. What have we done that people are unhappy about? Are there any ways in which we have failed to carry out our responsibilities as fully as the Parliament might have expected?”⁸³

When asked whether he saw anything unusual in the situation where the Chair of the Gaming Commission acted as the principal negotiator of the agreement between the Government and Federal Hotels, Dr Crean replied:

“As head of Treasury, no. The fact that he is the Gaming Commissioner does not exclude him from doing it for the very reasons that I indicated, that he can perform the two functions independently as he has done very well for some time.”⁸⁴

12.5.2 The Committee Notes that

- **There are significant concerns held by sections of the community in relation to the independence of the Tasmanian Gaming Commission.**
- **The Government has not acted on the recommendation of the LC Select Committee on the Social Impacts of Gaming Machines in relation to the independence of the Tasmanian Gaming Commission.**

12.5.3 The Committee Finds that

- **There is a perception amongst those who gave evidence to the Committee that the Tasmanian Gaming Commission is compromised by the Secretary of the Department of Treasury and Finance also holding the position of the Chair of the Tasmanian Gaming Commission.**
- **It received no evidence to support the assertion that the Tasmanian Gaming Commission is compromised in its role as a result of the Chair also holding the position of Secretary of the Department of Treasury and Finance.**
- **The Gaming Commission has no capacity to influence the quantum of the gaming taxation revenue flowing to the State.**

⁸³ Challen, Mr D., Department of Treasury and Finance, Transcript of Evidence, 16 July 2003, p.58.

⁸⁴ Crean, Dr D., Transcript of Evidence, 12 August 2003, p.5.

13 RECOMMENDATION

That the Legislative Council pass the Gaming Control Amendment Bill 2003.

Parliament House
Hobart
3 September 2003

A.W. Fletcher
Chairman

14 WRITTEN SUBMISSIONS TAKEN INTO EVIDENCE – APPENDIX A

Company	Name	
The Federal Hotels Pty Limited - Received 10 July 2003	Mr Greg Farrell Managing Director	1
Anglicare Tasmania Inc - Received 10 July 2003	Mr Chris Jones Chief Executive Officer	2
Mr Mick Young & Ms Kathy Davis Received 11 July 2003	20 Thelma Street Newstead	3
Australian Liquor Hospitality & Miscellaneous Workers Union Received 14 July 2003	Mr David O'Byrne Branch Secretary	4
Tasmanian Inter-Church Gambling Taskforce Received 14 July 2003	Mr Eric Lockett	5
Doherty Hotels Pty Ltd Received 14 July 2003	Mr Michael Doherty Managing Director	6
Australian Hotels Association Received 14 July 2003	Mr Daniel Hanna General Manager	7
Oyster Cove Inn Kettering Received 14 July 2003	Mr Gregory James	8
TasCOSS Received 15 July 2003	Ms Lis DeVries	9
Nine Eleven Australia Pty Ltd Received 15 July 2003	Mr James Bleasel Managing Director	10
Gray's Hotel George Town Received 16 July 2003 RECEIVED IN CONFIDENCE	Mr Chris McIndoe	11
Mr Donald B Ramritu Received 22 July 2003	375 Macquarie Street South Hobart	12
Mr Tim Brammall & Ms Jane Lazaroff Received 1 August 2003	PO Box 38 Coles Bay	13
Tasmanian Greens Received 31 July 2003	Mr Kim Booth MHA	14

15 DOCUMENTS TAKEN INTO EVIDENCE – APPENDIX B

Opinion on the power of the Parliament to amend the Deed between the Government of Tasmania and Federal Hotels and others of 25/10/1993 incorporated in the Gaming Control Act 1993 as Schedule 1 by Michael Stokes LL B (Hons), M Phil (Oxon).	Mr Kim Booth MHA 12 August 2003	15
Measuring the Economic Impact of Electronic Gaming Machines in Regional Areas - Bendigo, a case study.	Mr Kim Booth MHA 12 August 2003	16
Copy of Gaming Control (Ensure Parliament Oversight of Poker Machines Cap) Amendment Bill 2003.	Mr Kim Booth MHA 12 August 2003	17
Letter from Anglicare Tasmania Inc re Evidence to the Committee.	Dated 1 August 2003	18
Letter from Mr D W Challen Secretary Department Treasury & Finance dated re Public Accounts Committee Inquiry into Deed with Federal Hotels.	Dated 24 July 2003	19
Changes to Casino and Gaming Licence Arrangements and the Introduction of a State-wide cap on Gaming Machine Numbers Received 15 August 2003	Department of Treasury & Finance (May 2003)	20
Additional comment to Submission	Mr Michael Doherty Dated 13 August 2003	21

16 LIST OF WITNESSES – APPENDIX C

Mr Greg Farrell Managing Director Federal Hotels Mr Andrew Eakins Federal Hotels Mr Brendan Blomeley Federal Hotels	16 July 2003	22
Mr Don Challen Secretary Department of Treasury and Finance	16 July 2003	22
The Hon Dr David Crean MLC	12 August 2003	23
Mr Kim Booth MHA	12 August 2003	23