

## Background

JSCIFGM 88

Below is a brief submission to the Joint Select Committee (JSC) on Future Gaming Markets.

The author has some relevant background relating to these matters including:

- Chair of the Tasmanian Gaming Commission/Tasmanian Liquor and Gaming Commission (TLGC) 2008-2016;
- Secretary, Department of Health and Human Services 2007; and
- Deputy Secretary and Secretary, Department of Justice 2001-2006. During this period I also held the statutory position of Director of Corrective Services for approximately 3 years.

A background document provided to interested parties in the work of the JSC is the 2008 report to the then Treasurer on possible policy options emerging from the first SEIS. I was principal author of that document.

As I re-read that document prior to drafting this submission it appeared to me little has changed in the last 8 years – with one exception. The then distant but emerging concerns about online gaming – particularly online sports betting - have become very much front and centre. In 2009 I heard an 'industry strategist' clearly detail the future of the gaming industry. He said the future was to put gaming opportunities in everyone's pocket through the use of internet linked handheld devices and to 'normalise' betting by intensely linking betting to the 'sporting experience' of ordinary Australians, particularly young males. The strategist explained how this new market would generate the 'replacement' growth required as the revenues from EGMs inevitably declined as demographics changed. This the industry has done superbly well.

The capacity of the traditional State and Territory regulators to address this mushrooming growth in online sports betting has been shown to be completely inadequate. The clear powers of the Commonwealth in this area of internet/electronic communications activity have not been brought to bear. On at least 2 occasions the State and Territory regulators have written to the relevant Commonwealth Minister pointing out their deep concerns with, and powerlessness to address, this insidious process of 'normalisation' of betting on sports activity via internet enabled devices. To the best of my knowledge no response has ever been received.

The policy options to minimise harms caused by gaming, principally harms cause by EGMs, put forward by the TGC in 2008 were not taken up to any great extent. The most pertinent outcome was the direction of the then Treasurer to develop a mandatory code of conduct for the Tasmanian gaming industry. The *Responsible Gambling Mandatory Code of Practice for Tasmania* became effective in early 2013.

The quality of the debate around gaming has not been very high. Opponents have been too fixated on berating governments for their 'dependence' on revenues gained from unfortunates addicted to EGM play. The gaming industry has run specious arguments based on the 'rights of the recreational gambler' while insisting that very few people suffer harms from EGMs, that those that do have 'personal' problems and that those problems need to be addressed rather than further limitations placed on either the way EGMs work or access to them. And if there are some problems then no interventions should occur until someone 'proves' they will work.

At least in the Tasmanian context it is a very long bow to suggest that the Government is 'dependent' on revenues from addicted EGM players. In rough figures the annual direct revenue return to the Tasmanian government from EGMs is \$50 – 55 million. Estimates of the contribution to that figure from addicted/at risk gamblers vary. But even assuming 40%, of this is a tax take from these most vulnerable, giving a quantum of about \$20 – 25 million p.a., when the 'all sources' annual government expenditure for the State is about \$5 billion p.a., the 'dependence' argument is hard to sustain. What can be argued is that revenues from EGMs have become integral to the business models and survival of a large number of pubs and clubs across the State and to the State's single largest hospitality and accommodation provider. In my opinion it is for this reason that no Tasmanian Government will seriously consider the removal of EGMs completely.

The industry argument that few people are harmed by EGMs, and that it is their lack of personal control that is the issue, is also very hard to sustain. Firstly, the number of people with gambling problems is almost certainly underestimated in the research both because of the research methodologies used and the nature of the problem(s) respondents are randomly questioned about. There is a reasonably good evidence base to suggest that all surveys of addictive behaviours generated outcomes that underestimate the true extent of unacceptable/anti-social behaviour. Secondly, the true measure of EGM harm should be assessed against those who regularly use the machines, not the entire adult population. People with an EGM problem gamble often – that's what addicts do. On figures provided within the Productivity Commission Report of 2010 only about 4% of Australians play the pokies on a weekly or more basis. If we only look at this 'exposed' group of regular players then, according to the PC Report evidence, the proportion being harmed balloons to between 20% to 40%. The question then becomes 'would we allow any other machine to be freely available to any adult to engage with when somewhere between a quarter to a half of those who use them with any regularity suffer significant harm?'

Thirdly, it is true many of those addicted to EGMs have other health and/or social problems in their lives. This does not however reduce the culpability of the machines in fostering unhealthy and addictive EGM gaming. By their own admission, and that of those who have left the industry, Australian EGM manufacturers spend tens of millions each year on experts in human behaviour refining the characteristics of machines to better attract and retain gamblers and to extract maximum revenues from them. They do so in the absolute knowledge that such machine attributes work more effectively on the lonely, confused, abused and distressed than those with healthy and socially engaged lives.

## **Comments of Specific Terms of Reference**

*(a) consideration of community attitudes and aspirations relating to the gambling industry in Tasmania with particular focus on the location, number and type of poker machines in the State.*

Consideration of all the Terms of Reference should reasonably take place within the context of the document '*Hodgman Liberal Government post-2023 Gaming Structural Framework*'.

This very much limits the range of discussion about '*community attitudes and aspirations*' as it takes off the table the option of a withdrawal of EGMs. It is highly likely that a ballot of Tasmanians would see such a withdrawal as the preferred option with the second most popular being the limitation of EGMs to the two casinos.

The opening of the Wrest Point Casino in 1973 and, to a lesser extent the Country Club Casino in 1982, was an attempt by then governments to create a 'point of difference' for the nascent Tasmanian tourism industry. Being the first casino in Australia Wrest Point was touted to provide the exotic attraction needed to lure sophisticated tourists from mainland Australia and overseas. Even the pokies were a novelty and table gaming would attract the high rollers.

The extension of EGMs to pubs and clubs was driven by far less glamorous circumstances. In the early 1990's Tasmania's financial position was parlous. On 1 December 1993 the then Government Leader in the Legislative Council, Peter McKay, gave the Second Reading Speech for the Gaming Control Bill and in that clearly indicated that the extension of EGMs into community settings was tinged with financial desperation:

"On 16 April the Premier and the Minister for Racing and Gaming released a joint statement in which they sought to put the debate on gaming machines into its correct financial context. They pointed out that the revenue from any decision to extend gaming machines would be needed to continue to put the State's finances on a sustainable basis.....They pointed out that gaming machines are the only significant option the State has to increase revenue in a way that will not adversely affect economic growth and job creation."

It was to be a pokies led recovery.

Of course neither casinos nor EGMs now provide a 'point of difference'. EGMs are a national hobby in every State and Territory except WA. Casinos exist in all States and Territories and no 'high rollers' or 'whales' are attracted to this State. Our casinos generate 90% or more of their gaming revenue from EGMs and almost all of the money put into Tasmanian EGMs comes from Tasmanians.

In business terms the net result has been to create just over 100 SMEs and one large enterprise wherein EGM revenue is an essential/important element in their viability.

It is indisputable that proportionately more of the non- casino based EGMs available to the industry are clustered in low socio economic areas. It is my opinion that if the cap of 30 EGMs per hotel were removed we would quickly see the emergence of a number of 'super venues' located in areas where the industry knows the patronage would be highest. The high value venues can be easily mapped merely by observing which venues have been acquired by a small number of large players in the industry.

It has been suggested that a gradual reduction in the total number of EGMs would be of benefit and reduce harms. This would only be the case if the reductions occurred in the locations where machines are intensively played. Significant numbers of EGMs could be 'surrendered' from low profitability clubs and pubs without material loss of revenue to the Federal Group – but perhaps with material consequences to the club or pub.

The current Government has indicated future relocation of EGMs in the community (not the casinos) should be subject to some form of 'public interest test'. Evidence from interstate, particularly Victoria, shows how fraught these processes can be. To date, the result seems to

be huge expenditure of community and regulator effort for little concrete return. A simpler idea might be to create a 'maximum EGM population density ratio' and then tell the industry it has 5 years to meet the target number.

*(b) review of the findings of the Social and Economic Impact Studies conducted for Tasmania;*

As I said in my opening remarks I do not believe much has changed since the then TGC's 2008 Report to the Treasurer on the first SEIS. That and subsequent SEISs' have provided some useful but relatively unsurprising information. The TGC/TLGC has always referred to these reports – and any other relevant research – when attempting to craft harm minimisation interventions.

I also believe that, by their very nature, the SEIS output has largely been about the status quo. Given the nature of the exercise the researchers look at the impacts of the current industry and cannot ask what impacts different scenarios might have – such as no EGMs.

It is also my opinion that the current 3 year cycle for the SEISs is too short given the nature of the core gaming industry in Tasmania and the rate of measurable social /demographic/economic change. Regulators and governments have barely had time to absorb and respond to one SEIS when the cycle has commenced again. A 5 yearly study cycle would be more appropriate.

*(c) consideration of the document entitled "Hodgman Liberal Government post-2023 Gaming Structural Framework";*

This document largely says that the status quo will remain in terms of the range and availability of gaming options.

The proposal to allow 'high roller' licenses is unsurprising given recent history. Should such a venue(s) be developed it should be with legislated certainty that such a venue, regardless of its future viability, can never be open to local residents and can never be given licenses for other than casino type table gaming.

A reduction of the EGM cap of 150 machines is largely an irrelevance unless those machines are removed from over-serviced, high use areas.

The document mentions that the CSL will be reviewed for both quantum and utilisation. Regardless of the outcome, any CSL should be uniformly applied to all EGM licenses including the casinos. This should occur, if for no other reason, on the grounds of financial equity for all license holders. Additionally, the possibility has now been raised that the EMGs in pubs and clubs will be owned by a party or parties other than the Federal Group. To give the Federal Group a financial advantage in EMG operation over the non-casino players is unfair.

As a past regulator the second of the 'Guiding Principles' within the document the '*Hodgman Liberal Government post-2023 Gaming Structural Framework*' causes me great concern. It reads:

*'The regulation of the gaming industry should be designed to create a sustainable industry with the highest standards of probity whilst minimising harm caused by problem gambling'.*

Currently the TLGC as regulator has no obligation to consider the 'sustainability' of the industry as it carries out its responsibilities.

Its harm minimisation responsibility was added to the *Gaming Control Act 1993* in 2008 and states:

*Section 125 (ea) to foster responsible gambling and minimise the harm from problem gambling;*

During my tenure as Chair of the TLGC the industry repeatedly opposed harm minimisation on the grounds that the sustainability of the industry would be threatened. The TLGC was not forced to argue that 'sustainability' would not be put at risk before any measure to limit harm could be implemented. In fact the TLGC has repeatedly and publically acknowledged that any effective harm minimisation must and will reduce the revenues to all parties – otherwise it obviously hasn't worked!

I would suggest that this Joint Committee should vigorously oppose the imposition on the TLGC of any obligation to ensure its actions do not impact on the 'sustainability' of the industry. Obligations of both harm minimisation and sustainability have the potential to render the TLGC impotent to reduce harm to individuals and the community

Other matters relating to the tender are discussed under other TORs.

*(d) an assessment of options on how market-based mechanisms, such as a tender, to operate EGMs in hotels and clubs could be framed;*

The government decision to market test the pub and club based EGMs potentially offers the best opportunity in a generation to make changes to both access to EGMs and to the operation of the machines themselves such that they pose less risks to regular users and without significant detriment to the enjoyment of occasional, recreational users.

It would not be difficult to design a tender evaluation process that gave real weight (say 1/3<sup>rd</sup>) within the selection criteria to offers to change the operation of machines (eg reduction of spin rates, \$1 dollar minimum bets, reduction in wagering lines etc) and reduction in access (hours of operation, limits to EGM numbers by geographic location etc). Obviously this would come at a cost. As these harm minimisation initiatives would reduce losses, particularly losses from problem and at risk gamblers, the bidders would factor those losses within their bid pricing.

Another issue would also arise given the Government's decision not to tender those EGMs based within the casinos. A bidder offering to provide 'safer' machines or more controlled access within the pubs and clubs may find themselves at a competitive disadvantage to the Federals Group who could continue to operate higher risk/return machines with more operating hours. Such advantages could be significant; particularly should the casinos continue to have the advantage of not paying the CSL. A possible way around this might be to accept a bidder's offer to provide 'safer' machines in pubs and clubs and give them a

significant lead in time to replace/adapt the existing machines (say 20% of machines each year with a 5 year deadline). The same machine characteristics could then be made mandatory for all Tasmanian EGMs within the same timeframe. In this neither party would suffer a comparative disadvantage and machine turnover would occur at a rate allowing cost amortisation for existing machines.

From a harm minimisation and regulation perspective the preferred tender scope should be for a single operator to take over all pub and club licenses – basically the current ‘Oasis’ operation. A secondary, but probably manageable, option would be to tender the licenses on a regional basis with bidders able to bid for one, two or all regions.

The option for individual or groups of venues to bid for licenses should not be considered. Interstate experience has shown that such an ownership model results in dangerous inter venue competition to attract more gamblers and very high costs for the government in oversight and compliance. One of the strengths of the current deed is that the Federals Group has not overtly promoted inter venue competition and has a single, Statewide model for advertising, staff training, maintenance and oversight. While the Federals Group may have argued against the introduction of some harm minimisation measures, such as the Mandatory Code, they have usually acted as a good corporate citizen when those measures have been incorporated within the regulations and rules of gaming.

*(e) Consideration of future taxation and licensing arrangements, informed by those in other jurisdictions;*

There is little to be gleaned from the other jurisdictions in these matters. Such arrangements have largely been the result of historical factors, the will of various governments at various times and the relative strength and influence of the industry at various times in each location.

Taxation and licensing of ‘portable’ gaming modalities (eg on line/telephone bookmaking) has largely been a race to the bottom with companies moving to the lowest cost jurisdiction – usually the NT.

In the context of this Inquiry we are dealing overwhelmingly with gaming markets that are almost entirely Tasmanian. Tasmanian gamblers spending Tasmanian money. Very little of that money will go ‘off shore’ regardless of the licensing and taxation arrangements adopted in the future or the rhetoric of the gaming industry. If there is an existential threat to the local gaming industry it comes from the internet, not Tasmanian taxation and licensing arrangements.

Licensing arrangements should be as robust as necessary and put the least burden possible in terms of compliance and enforcement. Certainly the *Gaming Control Act 1993* is in drastic need of a complete revision. It is too long, incorporates far too much material better addressed in subordinate legislation, or powers given to the TLGC, and is basically user unfriendly.

*(f) A review of harm minimisation measures and their effectiveness, including the CSL;*

Firstly, the CSL is a funding source, not a harm minimisation measure. It is used to fund a range of activities some of which are related to harm minimisation and some, such as community based sporting and recreation activities, which are not. All of these activities could be funded from alternative sources or from the general revenue.

The advantage of having a source of funds as the CSL from which harm minimisation can be funded is that these monies are not subject to the annual Budget processes or to the priority setting decisions of various Departments. That said, there have been somewhat questionable uses of the CSL for funding an ongoing program within DHHS, Neighbourhood Houses, and funding of local government entities from the sport and recreation allocation.

I believe the CSL should be maintained and extended to EGMs within the casinos. There is a kind of justice in having revenues from EGMs used to address the harms generated by them.

I do not intend to talk about harm minimisation methods and their efficacy at length. These matters have been at least partially addressed in the SEISs and the Productivity Commission Report of 2010.

Tasmania can reasonably argue that it has the most rigorous harm minimisation framework in Australia – but given the laissez faire approaches taken in the other jurisdictions this is not a massive achievement. Some of the most effective measures to date relate to keeping note acceptors and ATMs out of pubs and clubs, limiting the number of lines on machines, limiting access to funds through controls on EFTPOS and ATM withdrawals, limiting the attractiveness of casino based ‘rewards’ membership, limiting the size of cash payouts and having some controls on venue advertising.

However, many of the other measures taken have been ‘proxy’ measures put in place because of decisions taken by successive governments not to significantly change the basic operation of EGMs nor limit access to the machines through changes to opening hours, geographic limits on machine numbers or ‘time outs’ on individual machines after extended periods of use by an individual. The industry has argued that forcing significant changes to the base operation of machines would ‘orphan’ the Tasmanian machines and circumscribe the ability to purchase replacement machines and games. They argue the Tasmanian industry is just too small to influence national and international machine and game design. Given that there are about 200,000 EGMs in Australia and a cap of 3,680 in Tasmania there may be some merit in the argument. However, it should be noted that the Perth casino has survived with much less volatile and ‘modern’ machines without any signs of civil disturbance in the West. Spin rates and pace of play are much lower on the Perth casino EGMs.

It is, in my opinion, highly likely that limitations on opening hours would assist in reducing harms caused to problem and at risk gamblers. Such gamblers ‘chase losses’ and many are likely to have consumed more alcohol when they do so late at night or in the early hours. In off the record conversations with several community based venue operators they have admitted that the very late/very early EGM players are the most likely to have problems. Some operators argue that some reduction in opening hours, as long as universally imposed would also reduce their overheads by allowing them to reduce staff costs at times when they have few ‘recreational’ gamblers or social drinkers left on the premises.

In summary, there are a range of more aggressive harm minimisation measures that could provide improved outcomes for problem and at risk gamblers in that their rate of losses would reduce and their 'time at machine' would be less. Such measures would likely mean access to a more limited range of machines and games, reduced opening hours for venues and would reduce return to the industry and government.

*(g) consideration of the duration and term of licenses for the various gaming activities post 2023;*

No comment

*(h) any other matters incidental thereto.*

The long term future of gaming markets is likely to be outside the control of the Tasmanian Government. EGM use has been plateaued or been in decline for the last several years. It appears likely that this will continue as a trend as the current population cohort ages and dies. It is arguable that, proportionately, problem and at risk gamblers will become a larger and larger proportion of remaining users. By and large the Xbox/Iphone generation find it difficult to get excited by interaction with EGMs.

The industry itself has recognised that the future is the internet, the Iphone and the normalisation of betting through saturation advertising and gaming integration with the operation of major sporting codes and their coverage on free to air and pay TV. Control of these developments falls within the purview of the Commonwealth Government and successive governments have shown little or no interest in the problem.

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