

TASMANIA

**GAMING CONTROL AMENDMENT BILL
2003**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Part 2 substituted
PART 2 – 2003 Deed
 6. Approval, execution and effect of 2003 Deed
 7. Provisions of this Act to prevail over 2003 Deed
6. Section 13 amended (Granting of casino licence and gaming operator's licence)
7. Section 22 amended (Action to be taken if licence cancelled, &c.)
8. Section 28 amended (Determination of application)
9. Section 29A inserted
 - 29A. New licence cannot take effect until former licence expires
10. Section 76ZZM amended (Commission to act in accordance with 2003 Deed and agreements between Crown and licence holder)
11. Part 5, Division 1A inserted
 - Division 1A – Limitations on gaming machine numbers*
 - 101A. Interpretation of Division

101B. Gaming machines: limit on overall numbers
101C. Gaming machines: limit on numbers allowed in
individual clubs and hotels

12. Section 146 amended (Casino licence fee)
13. Section 150 amended (Taxation in respect of licensed operator)
14. Section 151 amended (Community support levy)
15. Section 152 repealed
16. Part 9, Division 2A inserted
Division 2A – Gaming machine rental
153AA. Gaming machine rental
17. Schedule 1 substituted
Schedule 1 – Deed

GAMING CONTROL AMENDMENT BILL 2003

(Brought in by the Secretary to Cabinet, Steven Kons)

A BILL FOR

An Act to amend the *Gaming Control Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Gaming Control Amendment Act 2003*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent but if this Act does not receive the Royal Assent until after 1 July 2003 it is taken to have commenced on 1 July 2003.

Principal Act

3. In this Act, the *Gaming Control Act 1993** is referred to as the Principal Act.

*No. 94 of 1993

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “Deed” and substituting the following definition:

“2003 Deed” means –

- (a) the Deed made on 18 March 2003 between The Federal Hotels Pty Limited, Australian National Hotels Pty Limited, Tasmanian Country Club-Casino Proprietary Limited and the Crown in right of the State of Tasmania, a copy of which is set out in Schedule 1; and
- (b) any deed made as a supplement to the Deed referred to in paragraph (a);
- (b) by omitting the definition of “existing licence”.

Part 2 substituted

5. Part 2 of the Principal Act is repealed and the following Part is substituted:

PART 2 – 2003 DEED**Approval, execution and effect of 2003 Deed**

6. (1) The 2003 Deed is ratified and approved.

(2) The provisions of the 2003 Deed have the force of law as if those provisions were enacted by this Act.

Provisions of this Act to prevail over 2003 Deed

7. If there is an inconsistency between a provision of this Act and a provision of the 2003 Deed, the provision of this Act prevails.

Section 13 amended (Granting of casino licence and gaming operator's licence)

6. Section 13 of the Principal Act is amended as follows:

(a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

(1) In this section –

“**2003 commencement day**” means the day on which the *Gaming Control Amendment Act 2003* commences;

“**existing casino licence**” means a casino licence in force immediately before the 2003 commencement day;

“**existing gaming operator's licence**” means a gaming operator's licence in force immediately before the 2003 commencement day.

(2) On the 2003 commencement day, the Commission must –

- (a) grant to the holder of an existing casino licence (or to a corporation related to the holder of that licence) a casino licence in respect of the same premises or part of premises for which the existing casino licence was granted; and
- (b) grant to the holder of an existing gaming operator's licence (or to a corporation related to the holder of that licence) a gaming operator's licence.

(3) After the 2003 commencement day, the Commission may grant to the holder of an existing casino licence (or to a corporation related to the holder of that licence) a casino licence in respect of any other premises or part of premises.

- (b) by omitting from subsection (4) "Deed" and substituting "2003 Deed";
- (c) by omitting subsection (5) and substituting the following subsection:

(5) A licence granted under subsection (2) or (3) –

- (a) is to be in accordance with the 2003 Deed; and
 - (b) may be made subject to such other conditions, consistent with the 2003 Deed, as the Commission thinks fit.
- (d) by omitting subsection (6);

- (e) by omitting subsections (8) and (9) and substituting the following subsections:

(8) As soon as a casino licence is granted under subsection (2)(a), the existing casino licence referred to in that subsection is revoked.

(9) As soon as a gaming operator's licence is granted under subsection (2)(b), the existing gaming operator's licence referred to in that subsection is revoked.

Section 22 amended (Action to be taken if licence cancelled, &c.)

7. Section 22(1) of the Principal Act is amended as follows:

- (a) by inserting "or is due to expire," after "surrendered,";
- (b) by omitting "the licence." and substituting "a new licence of the same kind."

Section 28 amended (Determination of application)

8. Section 28(1) of the Principal Act is amended by omitting "The Commission" and substituting "Subject to sections 29 and 29A, the Commission".

Section 29A inserted

9. After section 29 of the Principal Act, the following section is inserted in Part 3:

New licence cannot take effect until former licence expires

29A. If an application for a casino licence or gaming operator's licence has been made because an existing licence of that kind is due to expire, the new casino licence or new gaming operator's licence is not capable of taking effect until the existing licence has actually expired.

Section 76ZZM amended (Commission to act in accordance with 2003 Deed and agreements between Crown and licence holder)

10. Section 76ZZM of the Principal Act is amended by omitting "Deed" and substituting "2003 Deed".

Part 5, Division 1A inserted

11. After section 101 of the Principal Act, the following Division is inserted in Part 5:

Division 1A – Limitations on gaming machine numbers

Interpretation of Division

101A. In this Division –

"club" means a venue in respect of which both of the following are in force:

- (a) a club licence within the meaning of the *Liquor and Accommodation Act 1990*;

- (b) a licensed premises gaming licence;

“2003 commencement day” means the day on which the *Gaming Control Amendment Act 2003* commences;

“gaming machine” does not include a gaming machine on a vessel owned or operated by a company formed and incorporated under section 5 of the *TT-Line Arrangements Act 1993*;

“hotel” means a venue, other than a club, in respect of which a licensed premises gaming licence is in force.

Gaming machines: limit on overall numbers

101B. On and after the 2003 commencement day –

- (a) the maximum number of gaming machines that may be installed in the State at clubs and hotels is 2 500; and
- (b) the maximum number of gaming machines that may be installed in the State at clubs, hotels and casinos is 3 680.

Gaming machines: limit on numbers allowed in individual clubs and hotels

101C. On and after the 2003 commencement day –

- (a) the maximum number of gaming machines that may be installed at any one club is 40; and

- (b) the maximum number of gaming machines that may be installed at any one hotel is 30.

Section 146 amended (Casino licence fee)

12. Section 146 of the Principal Act is amended as follows:

- (a) by omitting subsections (2) and (3) and substituting the following subsections:

(2) Subject to subsection (3), the monthly licence fee payable under subsection (1) is –

- (a) for the financial year commencing on 1 July 2003, \$112 500.00; and
- (b) for any subsequent financial year, the monthly licence fee for the previous financial year multiplied by the relevant factor.

(3) A monthly licence fee calculated in accordance with subsection (2) is to be rounded to the nearest one hundred dollars, with fifty dollars being rounded to the next one hundred dollars.

- (b) by omitting the definition of “changeover day” from subsection (4);
- (c) by omitting the definition of “nominated day” from subsection (4).

Section 150 amended (Taxation in respect of licensed operator)

13. Section 150 of the Principal Act is amended as follows:

- (a) by omitting subsections (2) and (3) and substituting the following subsections:

(2) The tax payable under subsection (1) in respect of the monthly gross profits derived from games approved under section 103 is a sum equivalent to 0.88% of those profits.

(2A) The tax payable under subsection (1) in respect of the monthly gross profits derived from keno is a sum equivalent to 5.88% of those profits.

(3) Until 30 June 2013, the tax payable under subsection (1) in respect of the monthly gross profits derived from gaming machine games is –

- (a) if the cumulative gross profits of the licensed operator for that form of gaming do not exceed \$35 000 000, a sum equivalent to 20.88% of the monthly gross profits; or
- (b) if the cumulative gross profits of the licensed operator for that form of gaming exceed \$35 000 000, a sum equivalent to the total of –
- (i) 20.88% of that part of the monthly gross profits derived during that part of that month occurring before the cumulative gross profits

so exceeded \$35 000 000;
and

- (ii) 25.88% of that part of the monthly gross profits derived during that part of that month occurring when and after the cumulative gross profits so exceeded \$35 000 000.

(3A) On and from 1 July 2013, the tax payable under subsection (1) in respect of the monthly gross profits derived from gaming machine games is a sum equivalent to 25.88% of those profits.

- (b) by omitting from subsection (4) “payable under subsection (3)” and substituting “referred to in subsection (3)”.

Section 151 amended (Community support levy)

14. Section 151 of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) A gaming operator must, from the gross profits derived from gaming machine games in each month, pay to the Treasurer a community support levy.

(2) The community support levy is a sum equal to 4% of those monthly gross profits.

- (b) by omitting from subsection (3) “A sum payable under subsection (1)” and substituting “A community support levy”;

- (c) by omitting from subsection (3) “each” and substituting “the”;
- (d) by omitting from subsection (4) “levy” and substituting “community support levy”.

Section 152 repealed

15. Section 152 of the Principal Act is repealed.

Part 9, Division 2A inserted

16. After section 153 of the Principal Act, the following Division is inserted in Part 9:

Division 2A – Gaming machine rental

Gaming machine rental

153AA. (1) In this section –

“agreed” means agreed to by the Commission and the Companies, after the Commission has consulted –

- (a) in the case of hotels, the Australian Hotels Association; and
- (b) in the case of clubs, the Registered Clubs Co-operative Society or such other body, if any, as in the reasonable opinion of the Commission represents the common interests of clubs in this State;

“club” means a venue in respect of which both of the following are in force:

- (a) a club licence within the meaning of the *Liquor and Accommodation Act 1990*;
- (b) a licensed premises gaming licence;

“Companies” means the Companies within the meaning of the 2003 Deed;

“hotel” means a venue, other than a club, in respect of which a licensed premises gaming licence is in force.

(2) Nothing in the 2003 Deed is to be taken as preventing the Companies from charging a club or hotel –

- (a) an agreed rental fee to cover the cost to the Companies of supplying that club or hotel with gaming machines; and
- (b) an agreed maintenance fee to cover the cost to the Companies of servicing and, if necessary, repairing those gaming machines.

Schedule 1 substituted

17. Schedule 1 to the Principal Act is repealed and the following Schedule is substituted:

SCHEDULE 1 - DEED

Section 3



**THE FEDERAL HOTELS PTY LIMITED,
AUSTRALIAN NATIONAL HOTELS PTY LIMITED
and
TASMANIAN COUNTRY CLUB CASINO
PROPRIETARY LIMITED**

AND

**THE CROWN IN RIGHT OF THE
STATE OF TASMANIA**

D E E D

THE CROWN SOLICITOR OF TASMANIA

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TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION..... 2

2. EXCLUSIVE RIGHT 6

3. ROLLING TERM 7

4. COMPANIES' COVENANTS 7

5. CROWN'S COVENANTS..... 9

6. GENERAL 10

7. DEFAULT AND TERMINATION OF DEED..... 10

8. INDEMNITIES..... 12

9. NOTICES 13

10. RELATIONSHIP OF PARTIES 15

11. GOVERNING LAW 15

12. APPLICATION OF LAW 15

13. DISPUTE RESOLUTION..... 15

14. WAIVER..... 16

15. ASSIGNMENT..... 17

16. FORCE MAJEURE 17

17. SEVERANCE..... 18

This Deed is made the 18 th day of March 2003,

Between: **The Federal Hotels Pty Limited** (ACN. 004 108 249) a company incorporated in the State of Victoria whose registered office is at 812 Pacific Highway, Chatswood in New South Wales, and

Australian National Hotels Pty Limited (ACN. 009 477 552) a company incorporated in the State of Tasmania whose registered office is at 410 Sandy Bay Road, Sandy Bay in Tasmania,

(the operators of the Wrest Point Hotel Casino), and

Tasmanian Country Club-Casino Proprietary Limited (ACN 009 516 189) whose registered office is at Country Club Avenue, Prospect Vale in Tasmania, (the operator of the Country Club Casino),

(together, "the Companies");

And: **The Crown In Right Of The State Of Tasmania** ("the Crown"), represented by the Department.

Recitals:

A The Crown has agreed to grant to the Companies the Exclusive Right;

B The Companies have agreed:

- (a) to exclude from their charges to all Clubs and Hotels, all amounts attributable to the cost of maintaining, operating and re-developing the Central Monitoring System;
- (b) to conduct all popular Casino Games at Wrest Point and the Country Club during the hours indicated by the demands of patrons, on every day of each year;
- (d) to use their best endeavours to continue to improve player protection measures and to support the Crown's initiatives for that purpose;
- (e) to undertake development of a new premium standard tourist resort near Coles Bay;

- (i) including accommodation, convention, restaurant and recreation facilities;
 - (ii) with construction starting by October 2003 and the project being completed by early 2005; and
 - (iii) at a capital cost of at least \$25 Million;
 - (f) to introduce a flexible operating model that permits a Licensed Premises Gaming Operator of a Club or an Hotel to choose from the selection then available from the Companies, the games and Gaming Machines that the operator considers most appropriate for those premises;
- C** The Crown plans to amend the Act (inter alia) as described in clause 5.1;
- D** The Companies and the Crown have agreed to enter into this Deed to record their respective rights and obligations.

The Parties agree as follows:

1. Definitions and Interpretation

1.1 In this Deed, unless the context precludes it:

“**Act**” means the *Gaming Control Act 1993*;

“**Business Day**” means a day on which banks are open for business in Hobart;

“**Casino Licence**” has the meaning defined in the Act;

“**Casino Games**” means games played in casinos but does not include games played on Gaming Machines or Keno approved for play at a casino;

“**Casino Operations**” means the conduct of Casino Games and Keno and the operation of Gaming Machines at premises approved for the operation of a casino by the Gaming Commission under the Act;

“**Central Monitoring System**” means the hardware and software approved by the Gaming Commission, located both on the premises of the Companies and in licensed gaming venues, that is necessary to record and maintain the data that flows to and from Gaming Machines. The Central Monitoring System includes the transmission of data both to and from the Gaming Machines but does not include:

- (a) the data monitoring hardware and software approved by the Gaming Commission that is a component of each Gaming Machine; or
- (b) the necessary wiring installed in each licensed gaming venue;

“Club” means premises in respect of which:

- (a) a licence to possess Gaming Machines or participate in games of Keno has been issued under the Act; and
- (b) a licence referred to in section 10 of the *Liquor and Accommodation Act 1990* has issued;

“Companies” means Federal Hotels Pty Limited, Australian National Hotels Pty Limited, and Tasmanian Country Club-Casino Proprietary Limited, and their successors and assigns;

“Corporations Act” means the *Corporations Act 2001 (Cwth.)*;

“Country Club” means the Country Club Casino situated at Prospect Vale in Tasmania;

“CPI” means:

- (a) the Consumer Price Index: All Groups Index For Hobart published from time to time by the Australian Bureau of Statistics;
- (b) if the Consumer Price Index is suspended or discontinued an index published by the Australian Bureau of Statistics that the parties agree reflects movements of the costs of living in Hobart;

“Crown” means the Crown in Right of the State of Tasmania;

“Deed” or **“this Deed”** means this Deed;

“Department” means the Department of Treasury and Finance;

“Exclusive Right” means the exclusive right to:

- (a) conduct Casino Operations;
- (b) operate Gaming Machines; and
- (c) conduct games of Keno;

in Tasmania;

“Gaming Commission” means the Tasmanian Gaming Commission established under Section 123 of the *Gaming Control Act 1993*;

“Gaming Machine” has the meaning defined in the Act;

“Gross Profit” has the meaning defined in the Act;

“**Force Majeure Event**” means (for all obligations under this agreement):

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash out, lightning, storm or tempest or consistent inclement weather;
- (b) strikes, lockouts, stoppages or restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot or civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment except when the breakdown is due to failure by the Party claiming Force Majeure Event to maintain the plant, machinery and equipment in a proper manner;
- (e) restraints, embargoes or other unforeseeable actions of the government of the Commonwealth of Australia;
- (f) any other cause, impediment or circumstance beyond the Companies’ reasonable control:
 - (i) that could not be taken into account when this Deed was executed;
 - (ii) the consequences of which could not be avoided in this Deed; and
 - (iii) that makes performance of the Companies’ obligations impossible (rather than merely uneconomic or more onerous);

and (only for the Companies’ obligations under clauses 4.2 and 4.3), includes the default of any suppliers under any material contracts to which the Companies are a party, but, does not include, in any circumstances, a lack of, or an inability to use, money or available funds for any reason.

“**Hotel**” means premises other than a Club or a casino in respect of which a licence to possess Gaming Machines or participate in games of Keno has been issued under the Act;

“**Indexed**” means adjusted as at the 1st July in each year in accordance with the movement in the March quarter CPI compared to the March quarter CPI for the previous year;

“**Keno**” has the meaning defined in the Act;

“**Legislation**” means the legislation referred to in clause 5.1;

“**Licensed Premises Gaming Operator**” has the meaning defined in the Act;

“**Minister**” means the Minister responsible for administering the Act;

“**Rolling Term**” means a succession of discrete five-year periods:

- (a) each replacing the last;
- (b) the first, starting 15 years and one day after the Starting Date; and
- (c) renewable annually on the anniversary of the start of the first five-year term, at the Minister's discretion;

“**Starting Date**” means:

- (a) the date from which the Legislation takes effect, if that is on or before 30th June 2003; and
- (b) otherwise, 1st July 2003;

“**Wrest Point**” means the Wrest Point Hotel Casino situated at Sandy Bay Road, Sandy Bay in Tasmania;

“**Writing**” and similar words includes typing, lithography, photography, and other modes of representing or reproducing words in a tangible and visible form and “**written**” has a corresponding meaning.

1.2 In this Deed, unless the context precludes it:

- (a) “including” and similar words do not imply any limitation;
- (b) words importing the singular include the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) other parts of speech and grammatical forms of a defined word or phrase have a corresponding meaning;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (f) a reference to a thing (including a chose-in-action or other right) includes a part of that thing;
- (g) a reference to a clause, party, schedule or attachment is a reference to a clause of the Deed, and a party, schedule or attachment to, the Deed and a reference to the Deed includes a schedule and attachment to the Deed;

- (h) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
 - (i) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
 - (j) a reference to a party to a document includes that party's successors and permitted assigns;
 - (k) an agreement on the part of two or more persons binds them jointly and severally, unless specified otherwise; and
 - (l) a reference to an agreement, other than this Deed, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing.
- 1.3 If the day on, or by which something must be done is not a Business Day, then that thing must be done on or by the following Business Day.
- 1.4 Headings are for convenience only and do not affect the interpretation of the Deed.
- 1.5 The Deed is not to be construed adversely to a party, only because that party prepared it.

2. Exclusive Right

- 2.1 The Crown grants the Exclusive Right to the Companies:
- (a) for 15 years from the Starting Date; and
 - (b) following that, for the duration of the Rolling Term, subject to the terms of this Deed.
- 2.2 The Exclusive Right is granted conditionally upon the Companies complying strictly with:
- (a) all the terms of this Deed; and
 - (b) all laws that apply to them.
- The Companies acknowledge that the Crown has an absolute discretion to cancel all or any part of the Exclusive Right under clause 7 without being liable to pay compensation.

- 2.3 The Exclusive Right does not extend to cover any rights granted under the provisions of the *TT-Line Gaming Act 1993*.

3 Rolling Term

- 3.1 The Rolling Term will be renewed annually unless the Minister determines otherwise.
- 3.2 The Minister may determine not to renew the Rolling Term in his or her absolute discretion and need not give any reason for the determination.
- 3.3 The Rolling Term will be subject to:
- (a) a licence fee fixed under the Act;
 - (b) the conditions determined by the Gaming Commission; and
 - (c) the Act.

A licence fee or the conditions to be applicable to the Rolling Term, will take effect from the end of the Rolling Term current when the licence fee or the conditions are imposed. The parties intend that the Companies will have at least four years' notice of any change to the licence fee or the conditions to be applied to the Rolling Term.

4. Companies' Covenants

- 4.1 In consideration of the grant of the Exclusive Right, the Companies covenant with the Crown that, throughout the term of the Exclusive Right, they will:
- (a) not negligently, knowingly or wilfully do anything, or allow anything to be done, that in any way impairs the operation of this Deed or dilutes the obligations of the Companies under it, (but nothing in this sub-clause (a) prejudices the Companies' rights to take action under this Deed);
 - (b) exclude from their charges to all Clubs and Hotels, all amounts attributable to the cost of maintaining, operating and re-developing the Central Monitoring System;
 - (c) 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.

These obligations do not prevent the Companies from changing or varying the types, or the daily hours of operation, of table games to maintain their commercial viability.

- 4.2 The Companies covenant with the Crown that:
- (a) (subject to clause 4.3), they will undertake development of a new premium standard tourist resort near Coles Bay:
 - (i) including accommodation, convention, restaurant and recreation facilities;
 - (ii) 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
 - (iii) at a capital cost of at least \$25 Million;
 - (b) 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;
 - (c) they will introduce a flexible operating model that permits a Licensed Premises Gaming Operator of a Club or an Hotel to choose, from the selection then available from the Companies, the games and Gaming Machines that the operator considers most appropriate for those premises.
- 4.3 If, after exhausting all reasonable efforts, the Companies cannot obtain the regulatory approvals (on commercially reasonable terms) necessary to complete the development described in clause 4.2(a), the Companies will negotiate in good faith with the Crown to agree on either:
- (a) a reasonable extension of the times allowed under clause 4.2(a)(ii), if it is reasonably likely that an extension of time will enable the Companies to obtain those regulatory approvals; or
 - (b) otherwise, an equivalent development on another site in Tasmania.
- 4.4 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.

5. Crown's Covenants

- 5.1 As soon as practicable after this Deed is executed, the Minister will introduce the Legislation into the Parliament of the State to amend the Act providing, inter alia, that:
- (a) unless clause 6(b) applies, the deed referred to in section 6 of the Act ceases to have effect;
 - (b) this Deed is ratified and approved;
 - (c) the provisions of this Deed have the force of law as if those provisions were enacted by the Legislation;
 - (d) if a provision of the Act and a provision of the Deed are inconsistent, then the provisions of the Act will prevail;
 - (e) the Gaming Commission has power to issue, and must issue, a licence or licences to the Companies for the Exclusive Right;
 - (f) the maximum number of Gaming Machines permitted:
 - (i) in Tasmania, will be 3,680 (excluding Gaming Machines operated on vessels operated by the TT-Line);
 - (ii) in all Hotels and Clubs, will be 2,500 in total;
 - (ii) in each Hotel, will be 30; and
 - (iii) in each Club, will be 40;
 - (g) the applicable tax rates from the Starting Date for Gaming Machines and Casino Games will be:
 - (i) for Gaming Machines:
 - A until 30th June 2013, 20.88 percent upon the first \$35 Million of Gross Profit and 25.88 percent upon the rest of the Gross Profit; and
 - B from 1st July 2013, 25.88 percent of Gross Profit;
 - (ii) for Casino Games, 0.88 percent of Gross Profit;
 - (h) the annual fee for each Casino Licence will be \$1.3496 Million, Indexed;
 - (i) the community support levy applicable to Clubs under section 151 of the Act will be increased to 4 percent from the Starting Date.

- 5.2 The Crown will use its best endeavours to ensure that the Legislation commences on or before 1st July 2003 and takes effect from its commencement date.
- 5.3 Subject to clause 6, if the Legislation does not commence on or before 1st July 2003, then it will provide that its provisions will have effect retrospectively from 1st July 2003.

6. General

If, by 1st August 2003 (or such later date as the parties agree), the Legislation:

- (a) has not been enacted; or
- (b) has been enacted, but with amendments that prevent the Crown from complying with its obligations under this Deed,

then from that date, this Deed ceases to bind the parties who will have no claim against each other about anything done or omitted to be done under this Deed.

7. Default and Termination of Deed

- 7.1 The Crown may give notice (except in the case of the breach of a fundamental term, in which case no notice is required) to the Companies that, within twenty (20) Business Days of receiving the notice, they must remedy the default described in the notice, if:

- (a) any tax or licence fee payable by any of the Companies remains unpaid for one month after it has become due, whether demanded or not; or
- (b) the Companies breach any of the terms of this Deed; or
- (c) any of the Companies fail to comply with the requirements of a notice given by the Crown, the Gaming Commission or the Minister under this Deed; or
- (d) any of the Companies fail to comply with any law; or
- (e) any of the Companies have distress or execution levied or issued against any of their property and it is not paid out within seven days; or
- (f) an application (which is not withdrawn, dismissed or the subject of an injunction, within 20 Business Days), is made to a court for an order appointing a liquidator or provisional liquidator, or a liquidator or

- provisional liquidator is appointed in respect of any of the Companies, whether or not under an order; or
- (g) (except to reconstruct or amalgamate while solvent, on terms approved by the Crown, for the purposes of this Deed), any of the Companies enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or an assignment for the benefit of, all or any class of, or it proposes a reorganisation, moratorium or other administration involving any of its creditors; or
 - (h) any of the Companies resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so (except to reconstruct or amalgamate while solvent on terms approved by the State for the purposes of this Deed) or is otherwise wound up or dissolved; or
 - (i) any of the Companies is, or states that it is, insolvent; or
 - (j) as a result of the operation of section 459F(1) of the *Corporations Act* any of the Companies is taken to have failed to comply with a statutory demand; or
 - (k) any of the Companies is, or makes a statement from which the State may reasonably deduce for the purposes of this Deed, that it is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*; or
 - (l) any of the Companies takes a step to obtain protection or is granted protection from its creditors, under any applicable legislation; or
 - (m) a resolution is passed to appoint an administrator or a receiver and manager, or an administrator or a receiver and manager is appointed to any of the Companies.
- 7.2 For the purposes of clause 7.1 the parties agree that clauses 4.1, 4.2, 4.3 and 4.4 are fundamental terms of this Deed.
- 7.3 If a default described in a notice is remedied within the time allowed under the notice, then the notice will be of no further force and effect.
- 7.4 If a default described in a notice is not remedied within the time allowed under the notice, then:
- (a) if the default is:
 - (i) incapable of being remedied; and

- (ii) minor in nature and effect,
the Crown must accept the Companies' reasonable offer of compensation, made within the time allowed by the notice, in lieu of exercising its rights under paragraph (b) of this clause; and
 - (b) in any other case, the Crown may cancel the Deed by written notice to the Companies, without prejudice to any action, suit or other remedy of the Crown for any other antecedent breach of covenant.
 - 7.5 Despite the provisions of this clause 7, the Companies will not be treated as being in default if a bona fide dispute has arisen between the parties and it has been submitted for resolution under clause 13;
 - 7.6 If the Crown cancels this Deed for default by any of the Companies, then the Companies must pay to the Crown liquidated damages equal to all revenue lost by the Crown from the date of actual default until the Crown is in a position to select and licence another gaming operator or operators. The Crown must use all reasonable endeavours to select and licence another operator or operators as soon as practicable after the Deed is cancelled under this clause 7;
 - 7.7 If the Crown terminates the Deed under this clause 7, then the Crown may enter into any agreements that it thinks fit with any person or persons for the conduct of Casino Operations and Gaming Machines and Keno operations whether those agreements are exclusive and the Companies acknowledge that they will have no right of action against the Crown.
- 8. Indemnities**
- 8.1 Throughout the term of the Exclusive Right, the Companies agree to indemnify the Crown, its agents, servants or workmen and to keep them indemnified against:
 - (a) any cost, claim or demand brought against the Crown, its agents, servants or workmen arising out of the Companies' rights and entitlements under this Deed, if the Crown, its agents, servants or workmen have not acted negligently or unlawfully to cause the cost, claim or demand;

- (b) any claim or demand of a non-insurable nature arising as a result of an action on the part of the Companies;
- (c) any liability to any employee, servant, agent or other person engaged by the Companies or to their estate for:
 - (i) personal injury to; or
 - (ii) death of; or
 - (iii) damage to any of the property of, any such person arising from the performance of their services to the Companies.

8.2 The indemnities in clause 8.1:

- (a) are continuing obligations of the Companies, separate and independent from any other obligations of the Companies and survive the termination of this Deed;
- (b) do not extend to cover the Crown if a Court of competent jurisdiction has decided that the Crown is liable under an action brought against it, despite the existence of this clause 8; and
- (c) do not prevent the Companies from taking action against the Crown under the terms of this Deed.

9. Notices

9.1 A notice, demand, consent in writing or other communication to be given or made under this Deed is taken to have been duly given or made when:

- (a) hand delivered in writing; or
 - (b) sent by prepaid certified or registered post; or
 - (c) sent by facsimile transmission (to the listed facsimile number);
- to the party to which the notice or demand or consent is required or permitted to be given or made under this Deed, at the following addresses:

The Companies: General Manager
 West Point Hotel Casino
 410 Sandy Bay Road
 SANDY BAY TAS 7005
 Facsimile Number (03) 6225 2424

The Crown: Secretary
 Department of Treasury & Finance
 21 Murray Street
 HOBART TAS 7000
 Facsimile Number (03) 6223 2755

- 9.2 A notice, demand, consent in writing or other communication is taken to have been duly served:
- (a) in the case of hand delivery, when delivered;
 - (b) if sent by prepaid certified or registered post, on the third Business Day after the date of posting;
 - (c) if sent by facsimile transmission, at the time shown in the transmission report as at the time that the whole facsimile was sent, if that report states that the transmission was completed before 5.00 p.m. on a Business Day, otherwise at 9.00 a.m. on the next Business Day.
- 9.3 A notice, demand, consent in writing or other communication given or made under this Deed is sufficient if it is:
- (a) in the case of the Companies, under the hand of the Companies or their authorised agent or solicitors;
 - (b) in the case of the Crown, under the hand of the Secretary of the Department or the Crown's agent or solicitors.

A printed or copied signature is sufficient to send a notice, demand, consent in writing or other communication by facsimile transmission.

10. Relationship of Parties

Except as expressly provided in this Deed, nothing contained or implied in it, will:

- (a) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose, or to create or be taken to create a partnership; or
- (b) create, or be taken to create, an agency or trust.

11. Governing Law

This Deed is governed by the laws of Tasmania and the parties submit to the non-exclusive jurisdiction of its courts and agree, without preventing any other mode of service permitted by law, that any document required to be served in any proceedings may be served in the manner in which notices and other written communications may be given under Clause 9.

12. Application of Law

Unless application is mandatory by law, any present or future suit, ordinance, proclamation, order, regulation or moratorium, whether State or Commonwealth does not apply to this Deed so as to abrogate, impair, diminish, fetter, delay or otherwise prejudicially affect any rights powers or discretions given or accruing to the Companies or the Crown.

13. Dispute Resolution

- 13.1 If a dispute arises about any of the clauses in this Deed or the rights and obligations of either party, then the parties must use all reasonable endeavours to settle the dispute within ten (10) Business Days of both parties becoming aware of the dispute. To assist in resolving a dispute at first instance, it must be discussed at management level and failing satisfactory resolution, a committee consisting of a representative from the Crown and a representative from the Companies, with an independent third person to act as mediator, will be established to try to resolve the dispute.
- 13.2 If the parties have complied with clause 13.1 and dispute has not been settled, then either party may require that the dispute be referred for mediation

by an independent consultant expert in the area of the dispute. The independent consultant is to be appointed by two persons one of whom is a nominee of the Crown and the other a nominee of the Companies. Failing agreement by the nominees of the Crown and the Companies, the expert will be nominated by the President of the Law Society of Tasmania (or its successor body), at the request of either party.

- 13.3 In making a determination, an independent consultant is taken to be acting as an expert and not as an arbitrator.
- 13.4 Neither the Crown nor the Companies are entitled to commence or maintain an action, whether by way of legal proceedings or arbitration, relating to a dispute until it has been referred to and determined by the independent consultant as provided for in this clause 13.
- 13.5 Either party is entitled to reject the decision of the independent consultant and, once the independent consultant has reached a determination, nothing in this clause 13 prohibits either party from pursuing any other legal remedies available to that party.
- 13.6 Each party must ensure that a notice of dispute given under this clause contains full particulars of the dispute, to ensure that all determinations are expeditiously completed.
- 13.7 The cost of a determination by an independent consultant is to be paid by the Crown and the Companies in proportions determined by the independent consultant.

14. Waiver

- 14.1 A waiver by a party of a provision of, or a right, remedy or power of the Crown or the Companies under this Deed:
- (a) is not effective unless it is in writing; and
 - (b) is effective only in the specific instance and for the specific purpose for which it is given.
- 14.2 No:
- (a) failure or delay by a party to exercise a right, remedy or power under this Deed; or

- (b) failure or delay by a party to insist that the other party strictly complies with an obligation under this Deed; or
- (c) custom or practice of the parties at variance with the terms of this Deed;

constitutes a waiver of the Crown's or the Companies' right to demand strict compliance with this Deed.

15. Assignment

No party to this Deed may assign, or part with, or be relieved from any of its rights powers and obligations arising under this Deed, or assign or part with the benefit of it, without first obtaining the written consent of all other parties.

16. Force Majeure

16.1 If a party to this Deed is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) except for the payment of money, the obligations under this Deed of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event for as long as:
 - (i) it continues to prevent the party giving the notice from performing its obligations; and
 - (ii) it would prevent any other potential operator or operators from conducting Casino Operations and Gaming Machines and Keno operations.

16.2 A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this obligation does not require a party to settle

any industrial dispute in a manner that would, in the bona fide view of that party, unreasonably disadvantage that party.

- 16.3 During any period in which a party to this Deed is not performing its obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing, without incurring any liability to that party.
- 16.4 If a notice is given under clause 16.1 and the Force Majeure Event continues for more than 60 Business Days, either party may terminate this Deed by giving at least 30 Business Days written notice to the other party.

17 Severance

- 17.1 If a provision of this Deed is void or voidable or unenforceable, by either party, but would not be void or voidable or unenforceable if it were read down and is capable of being read down, then it must be read down accordingly.
- 17.2 If, despite clause 17.1, a provision of this Deed is still void or voidable or unenforceable by either party, then:
 - (a) if the provision would not be void or voidable or unenforceable if a word or words were omitted, then that word or those words (as the case may be) are severed; and
 - (b) in any other case, the whole provision is severed, and the remainder of this Deed has full force and effect.

Executed by the parties this day.

The Common Seal of)	
The Federal Hotels Limited)	(C.S.)
fixed in the presence of:)	
G. D. Farrell		A. Eakins
<i>Director</i>		<i>Secretary</i>

The Common Seal of Australian)
National Hotels Pty Ltd fixed) **C.S.**
in the presence of:)
G. D. Farrell) **A. Eakins**
Director) *Secretary*

The Common Seal of Tasmanian)
Country Club-Casino Pty Ltd) **C.S.**
fixed in the presence of:)
G. D. Farrell) **A. Eakins**
Director) *Secretary*

Signed for and on behalf of)
The Crown In Right Of The State Of)
Tasmania by The Honourable)
Dr. David Mackenzie Crean, MLC) **D. M. Crean**
being and as the Treasurer of the State)
of Tasmania, in the presence of:)

Signature of Witness: **D. W. Challen**
Full Name: Donald W. Challen
Address: 21 Murray Street, Hobart
Occupation: Secretary, Department of Treasury and Finance