

THE JOINT PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON TUESDAY 12 AUGUST 2003.

FEDERAL HOTELS AGREEMENT

Dr DAVID CREAN, TREASURER WAS CALLED AND EXAMINED.

CHAIR (Mr Fletcher) - Treasurer, could I thank you for the support that you will give us in regard to the inquiry that we are conducting. The inquiry of course is a reference from the Legislative Council and the terms of reference are fairly specific. We have made early judgements that it is not the role and function of this committee to repeat the role and due functions of the earlier Legislative Council's select committee of inquiry ranging across all the broad aspects of the gaming industry in Tasmania. We have endeavoured to stay specifically within the terms of reference that have been granted to us and, to that extent, we have called some witnesses. We have received quite a number of submissions from other interested parties, some of whom have focused very squarely on the terms of references, others have gone to a wider range of inputs. What we would like to do today is provide you with an opportunity, if you desire, it to generally review the situation where things are in relation to this agreement and then we would endeavour to ask questions that are based on the sequence of the terms of reference to clarify some matters.

I suppose the major reason for the request to have you meet with us today flows from an earlier discussion or interview briefing with Mr Challen, and his referral of certain policy matters to you as the representative of Government. It may be that we will want to discuss aspects of policy matters as we go through.

Dr CREAN - I have nothing to say in opening, I have said it all. I made a comprehensive ministerial statement. It is out there in the public. I am here to answer questions and I would be happy to take any questions you want to ask me.

CHAIR - Okay. Mr Hidding, would you like to open the batting?

Mr HIDDING - Thank you for your time, Treasurer. With regard to one of the parties to the deed, Mr Farrell, and to Mr Challen, who was the person tasked with negotiating on behalf of the Tasmanian people, the evidence to date seems to say that there was never any question in the mind of either Mr Farrell or the Government - through Mr Challen - that there was any competition for these licences.

Dr CREAN - Licence, not licences.

Mr HIDDING - Yes, a licence to carry out a number of things. There was never any competition, nor was any competition in their minds at the time. Therefore, it seemed to have been an attempt to tell the committee that these licences were in fact for life and that the 2008 date was in fact quite an arbitrary time and that you could, because of the consensus between two parties, do it at any time beforehand. The 2008 thing seemed to

be just a blip in time by which something else needed to have been negotiated. Is it your view that Federal Hotels have the gaming licence in this State for life?

Dr CREAN - No, it is not. As has been the case in the past, we have negotiated licences at different times. Federal have held the exclusive licence since its operation in the early 1970s. I have noted the comments in relation to competition. I have also read the transcripts so far; I think Mr Challen answered this very well. But the issue of competition is about not opening up the one licence to competitors. The issue of competition is whether you bring in more than one licence. Whilst it's theoretically possible to have more than one competing for the one licence, given that it's exclusive - and Mr Challen went into this - in the real world, certainly myself as Treasurer and this Government are not going to, at this point in time, say to a good corporate citizen as Federal has been - investing the hundreds of millions that they have - all of a sudden say to them that we're going to provide you with a stranded asset. The real world is that that wouldn't occur.

Where the reality lies in relation to competition is if we introduce more than one licence so that you have competition in the marketplace for the gambling dollar. I've been on record stating that it is my view and a policy decision of the Government that we don't want that to happen because we believe that opening up the gambling dollar to competition will only exacerbate the issue of problem gambling, which, I might add, in Tasmania is relatively low. Nevertheless it is a problem and that's where the decision by the Government came from to attempt to impose a cap on the rollout of gaming machines.

Mr HIDDING - There is some new language developed here following the evidence given by the two previous people and that is that there be a 'stranding of the asset', that they can't be separated. All this time we've been talking about the licence to operate casinos and the licence to operate network gaming in this State. They are in fact two entirely separate organisations and in fact are operated by the Farrell family as two distinct businesses. Network gaming is one, the casinos are another.

I don't think anybody seriously imagined that we could negotiate a new deal on the casinos with any genuine new operator for casinos. After all they own the two major properties. But is it not true -

Dr CREAN - Why not? You're saying that it's all right to open up in one area, why not go the full hog?

Mr HIDDING - Because essentially the difference is you've got two \$50 million properties at each end of the island and they have the casino licences. It would surely be far more difficult to negotiate them than it would be on the network gaming licence, which after all is intellectual property, with lines owned by Telstra to a system owned and controlled out of a single room in a building -

Dr CREAN - With significant investment in infrastructure by the company, so it's not as though there's not a stranded asset there in that case. Maybe not to the same degree but still the principle is the same.

Mr HIDDING - That's right. I accept that. But was there no thinking in your mind that a TABCorp or a Tattersalls could in fact, for reasonably minimal outlay given the size of the take we're talking about - a net profit of \$30 million a year - have put a deal to the Tasmanian people to compete for that licence to run network gaming in this State? They after all run it elsewhere perfectly well.

Dr CREAN - We have a regulated market and we're very happy with the regulated market that operates. What we had in this situation was the Government initiating the position whereby we wanted to do something about the current rollout of machines. That was the impetus behind going to Federals and saying that the Government was interested in this; how can we go about determining that. We then proceeded with the agreement on that basis. So if that had not have been the situation I wouldn't have made an announcement to Parliament, legislation wouldn't have been introduced, and we wouldn't be in this committee now and we wouldn't be talking about it until the end of 2008. But the reason we are is because the Government made a policy decision that we wanted to put a cap on gaming machines and that's where it all started.

Mr HIDDING - In your mind there is no way that TABCorp or Tattersalls or anyone else, given that they came up with all the probity things or whatever, could have competed for that section of the market. I am not saying joining in; I am saying replacing the current owner of that public good, the current owner of that asset that has been granted to them. Could that not have been competed for by another player and therefore drive up the return to the Tasmanian people?

Dr CREAN - It's irrelevant; it is hypothetical. We couldn't do it now, even if we wanted to or anyone else wanted to. The fact is we would have just carried on and not done anything until the normal agreement expired at the end of 2008. So it is a hypothetical, irrelevant issue.

Mr HIDDING - At which point, at the end of 2008, if you ever got there, did you see that another competitor, such as the two I have mentioned, could sit around the table with you and talk about that licence?

Dr CREAN - I didn't even think about it because the issue was, what can the Government do now in a policy sense to ensure that there is a cap on the rollout of gaming machines. The only way that we could do that was to negotiate a new agreement with Federals. So it wasn't about TABCorp or anyone else, it was about the agreement with Federals. We wanted to negotiate an agreement that could attain for us as a government the policy objective of putting a cap on gaming machines.

Mr STURGES - Just following on from that line of questioning; Treasurer, why did the Government see it as desirable to put the cap on?

Dr CREAN - 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.

Mr RATTRAY - While you were in the process of negotiating with Federals in regard to the cap of the number of machines that would be rolled out into the future, were you still able to get a reasonable deal for the State in the whole structure of the new deed?

Dr CREAN - I think so. It was a package deal and, as I say, if the capping of gaming machines was rejected by Federals, then there would have been no agreement. That was the impetus of the agreement. When we started talking to Federals, and when Don Challen commenced the negotiations of course, it became a whole issue of, if we were to attain our policy objective of capping the machines, of what would Federal Hotels ask in return, and during the course of the negotiations what else could we extract as a government as a result of an agreement that was to the benefit of Tasmania? That is how the agreement and negotiations evolved.

CHAIR - Treasurer, I have a series of questions in relation to the same sorts of issues. Mr Sturges asked why the cap; what was the need for the cap. Perhaps you might explain to me in a little more detail; from where did the public policy advice come that there was a need for a cap? How did you make a judgment that there was a need to contain the number of gaming machines in hotels and clubs?

Dr CREAN - Well, it was common knowledge that the number of problem gamblers and the increase over a future time period correlated with the rollout of machines and greater accessibility. The more machines, more people use them, therefore the increased likelihood among those who use them that you will have an increase in problem gambling. That was almost axiomatic but it was something that was also demonstrated in the 1999 Productivity Commission report and a few other reports that had looked at this issue and had come to the same conclusion. But you really do not need reports to tell you that it is a logical step, that if you have greater availability, more people are going to use the machines. So it is greater access to people and when you have greater access to people, because problem gamblers are inherent, as a part of people participating in this activity then you are going to have a greater increase in problem gambling.

CHAIR - Perhaps I should ask a further question. The 1993 act provides a statutory obligation on the Gaming Commission to investigate and to provide you with policy advice. Did the Gaming Commission provide you with any policy advice with regard to the maturity of the market or the need to cap the machines?

Dr CREAN - No. I was aware as an individual, as Treasurer of Tasmania, taking over responsibility for gaming after the last election, that there certainly was a public issue here. As I repeat for the third time, that whilst problem gamblers were there and it was a problem for Tasmania, relatively it was small. Whilst I do not agree entirely with all the views expressed about this, it certainly was a perception and that is why I decided to initiate the policy objective of putting a cap on gaming machines.

CHAIR - Are you aware of the gaming commissioner, Mr Challen's, statements on the *Hansard* that he believed that the gaming market was reaching a maturity?

Dr CREAN - Yes, and he did qualify that and we did go through this at the Estimates Committee at budget time as well. He was talking about the rate of increase in profitability, if you like, not the fact that there was no incentive for anyone to put in more machines. They were two different issues and he qualified that very well in the transcript.

CHAIR - Do you think that Mr Challen in his role as commissioner brings a certain independence to that role? It should be at arms length when giving policy advice or making recommendations to Government as commissioner; is he seen to be at arms length?

Dr CREAN - I do not know that this is relevant to this particular discussion. That was a subject of another inquiry and the answer in comment on that inquiry was, yes, he is independent and he can exercise two functions at once.

CHAIR - Do you see anything unusual at all then that a person, as the independent chairman of the commission, should be the principle negotiator of the agreement between the Government and the company or companies?

Dr CREAN - 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.

CHAIR - Do you think there was a public perception that duality of roles could lead to a conflict of interest?

Dr CREAN - No, I do not believe so. People have raised the issue. Some people have but, as the subject of another inquiry, they were answered by Mr Challen and I fully supported what he says.

CHAIR - Could you then advise me if Mr Challen, acting as gaming commissioner, ever provided policy advice to the Government in relation to gaming?

Dr CREAN - Not since I've been the Gaming minister. As I said, in relation to this particular aspect on policy, the policy has been developed from within the Government, as has been the policy decision not to allow competition in the marketplace for the gambling dollar.

CHAIR - The Premier stated in answer to a question in the Assembly that you had consulted with community groups with regard to the need to cap the number of gaming machines in hotels and clubs. Could you advise me which community groups you consulted with and what was the general tenor of their input?

Dr CREAN - It 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.

CHAIR - 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?

Dr CREAN - 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.

Mr BEST - Treasurer, we have had some questioning of previous witnesses along the lines of which hotels get machines and which don't. There's been some general questioning along the lines that where a hotel may miss out that hotel may appeal that decision. Given that it's a privately controlled situation with Federals, have you any comments that you wanted to make? There is some doubt about how anything like that would operate.

Dr CREAN - This wasn't an issue nor should it have been an issue in a negotiated agreement because it was specifically, from our point of view, around the social issues and then extracting what we could once the agreement to negotiations progressed. In terms of the issue that you raise I am aware of it in relation to a few hotels that have had this problem for some years, but 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.

CHAIR - Could I then just to expand that further. Could I ask you to explain the relationship between the Government and Federal Hotels. Could I conclude that the relationship is one of a business being licensed to carry out a commercial function and once the licence is granted the companies operate according to the agreement they have reached but in no other ways can the Government intervene in the business decisions that are made by the companies? Is that a fair summary of the relationship or would you care to expand on it further?

Dr CREAN - The agreement is on the basis of providing the licence and in relation to returns to the State. In this case the cap on machines was subject to the deed of agreement. An initial deed was negotiated, as you know, in 1993. The same sorts of principles were used for the negotiation in this particular deed. But, again, I stress that the impetus for the negotiation was purely the opportunity for the Government to pursue the policy objective of getting a cap on gaming machines.

CHAIR - Clearly I am trying to differentiate between a government-owned corporation or a government business enterprise, which can be dictated to by ministerial order under certain conditions, and Federal Hotels, which operates under a licence but is a separate entity and is totally responsible for business decisions and has no responsibility for government social policy.

Dr CREAN - What they do in a social sense is up to them. Again, I read the transcript from Greg Farrell and he went into some detail about their approach, given that they are in the business of running gaming machines, in terms of the rollout their approach under the current or previous arrangements in a social sense. We would accept that if they wanted to they could have rolled out more than is currently the case. I think Greg Farrell explained in some detail his philosophy behind why they had not. In that sense, it is their decision but in terms of this deed of agreement, contractual arrangement, we followed

the principles of the previous deed of agreement - there are certain standard principles. Again, the impetus of it, the driving force, the central element, if you like, was to put a cap on gaming machines.

CHAIR - There have been some who have argued that the Government had an opportunity to drive a more active social policy through the renegotiation of this agreement, social policy in relation to problem gamblers and the impact of gambling upon regional economies and the like. Was that a consideration? Was that a matter that Mr Challen was advised to pursue vigorously in the negotiations?

Dr CREAN - As I say, the thing that the Government believed could be achieved that would have a real and lasting benefit in terms of a future increase in problem gamblers was to get a cap on gaming machines. That was the drive; that was the central element of it. We toed and froed, if you like, over weeks and I think months over what we could negotiate in relation to other matters.

Mr HIDDING - Dr Crean, the evidence from Mr Farrell led us to believe in no uncertain terms that the Farrell family believes that the deal that they have with the State of Tasmania is one that at some stage well before 2008 would have been renegotiated in a friendly fashion. It would appear that your recent negotiations with them reflect that you share that view. I am not sure whether you got the same briefing note that we did from the under Treasurer following his appearance here where I asked him some questions about the National Competition Council and he could not answer them. He has now explained to the committee that in fact your Government advised the National Competition Council in December 2001 that when the exclusive arrangements under the deed expire on 31 December 2008, your Government did not intend to seek a renewal of those exclusive arrangements with Federal Hotels. So only two years or 18 months ago you believed that this was a deal that was up for full commercial renegotiation at the end of 2008; you advised the National Competition Council of that. You either genuinely believed that or you have duded the National Competition Council. You went on, a very short period after, to negotiate with the Farrell family in a way that in fact entrenched exclusivity in this market. The National Competition Council, in response to what you said in 2001, said in its report in the 2002 assessment about Tasmania's legislation, the NCC believes that Tasmania has 'no intention of entering into any more exclusive arrangements in the gaming area'. Did Federals become aware of this view that you made to the National Competition Council? They would surely have read this.

Dr CREAN - Again, I wasn't Gaming minister at that time. That probably would have come through discussions with Treasury officers and the National Competition Council. Governments at any time have total flexibility within certain parameters, and we certainly do in relation to matters like this. In fact, that has absolutely been superseded because I had a personal discussion with the head of the National Competition Council at that time, Graeme Samuel, in relation to this issue of the capping of gaming machines and the whole issue of opening up the gambling dollar to competition. I indicated to him at that time that my strong view, for a number of reasons, was that we should continue an exclusive relationship, that we shouldn't open it up to competition and I wanted to use the opportunity to put a cap on gaming machine numbers.

Mr HIDDING - My question is this: on the one hand you've got the beneficiary of the licence who firmly believes, as he told this committee, that all things being equal, things

like probity and good performance - and, let us face it, with that family that is unlikely to be a problem because they are a terrific operator - a renewal of their deal was axiomatic - it was going to happen. That is what he believed.

Dr CREAN - That could not possibly be the case. You are getting an exclusive licence confused with opening it up for competition. I certainly as Treasurer wouldn't be leaving a corporate citizen such as Federals, or anyone for that matter in Tasmania, with a stranded asset, as I indicated before. The issue that Federals could not have been certain about was whether the Government was going to open up the gambling dollar for competition post 2008.

Mr HIDDING - So there was some nervousness? Obviously there was movement at the station because you told the NCC one thing -

Dr CREAN - I answered that.

Mr HIDDING - We were told here by Mr Challen that the Government did advise the NCC that the Government did not intend to seek a renewal of those exclusive arrangements with Federals. In that atmosphere, can you place on the record whether you approached Federal Hotels to renegotiate the licence or whether they approached you?

Dr CREAN - No, I had discussions with Federal. I saw Graeme Samuel in December last year. I had discussions with Federal certainly after that - I think it was January - and indicated how we might proceed in relation to our policy objective of getting a cap on gaming machines. That is where it commenced. But I say to you again, don't get fixated on old news. I said that that has been superseded and governments have a right to do that, as long as they inform the participants - in this case the National Competition Council - and I did through the head of the National Competition Council. He did not raise any concerns with me at all in relation to that.

Mr HIDDING - So the people of Tasmania if they had read, and some did, the 2002 assessment of the National Competition Council, were comfortable in their view that the Bacon Labor Government, if they stayed in power, would take this deal through to somewhere near fruition and negotiate a commercial deal with Federals - hopefully, they would come up trumps and they would continue - but there would be commercial contestability. This is what this inquiry is about, whether there was contestability and whether there was any element of an uncontested deal and therefore a lesser result to the Tasmanian people.

Dr CREAN - Well, you talk about contestability. If there had been contestability -

Mr HIDDING - Not in the marketplace, another player.

Dr CREAN - You are the Leader of the alternative Government; you disagree with what I said you should be leaving a corporate citizen such as this, who had invested hundreds of millions in the State and invested in assets, that opening it up should leave them with these significant stranded assets.

Mr HIDDING - No contestability, so they have a licence for life.

Dr CREAN - No, I have answered the question. It would be handy if you would like to indicate on the record whether you agree or disagree with what I said. I have answered this, Mr Chairman, and we can go over it two or three times.

CHAIR - I think in this position here I hope my confreres would ask questions as members of the joint Public Accounts Committee and that you in response would answer questions, no matter where they come from and what their background is, as they are as members of the joint Public Accounts Committee, not as another role that they play at another time, as we are here focused on -

Dr CREAN - That is all right but I have answered this question two times and I made the very strong point as to why I answered it in that way, yet the member, who is also the Leader of the Opposition, an alternative government, seems to be saying that this is the wrong answer. I simply ask the question: it would be handy to know what the member's particular view was. I don't know that there is anything in the rules that prevents him from doing so.

Mr HIDDING - I will let you know outside the rules, don't worry.

CHAIR - I would prevent him from doing so.

Mr HIDDING - He would, he would leap across me and stop me from answering.

Mr HIDDING - One of the questions I asked, you did provide an answer for but I want to ask it once more and see if you can answer it in a little more fulsome way. There did seem to be some equivocation when I asked you about who approached whom. It is very important in my mind as to whether this was a subject that came up in discussion from an organisation who has told this committee that they believed that some time, well before 2008, it was time to do footsy and get this thing back for another 20 years. Who approached whom?

Dr CREAN - These are value judgments. There is no way that they would have known that we are going to talk 'footsy', as you put it, to get it back on for 20 years because the agreement hadn't been settled, so how could they have known that. The point is, and again I said it, that as the new minister I had a meeting with Federals and we talked over a number of unrelated issues. I indicated at that time during the meeting that it was the Government's desire to see if we could put a cap on gaming machines now, so that is where it started from.

CHAIR - When would that meeting have been held?

Dr CREAN - I think it was January - it was after I saw the National Competition Council head. It could have been late December. I saw Mr Samuels early December but I think it was probably January.

Mr WILKINSON - Am I right in saying that you were concerned when you saw Graeme Samuels that it would be contrary to the NCC policy if this agreement was struck.

Dr CREAN - No, because nothing is contrary to NCC policy in terms of competition if it can be justified in the public benefit.

Mr WILKINSON - Why did you have to see him?

Dr CREAN - 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.

Mr WILKINSON - So as a result of what was discussed at that meeting with Graeme Samuels do you believe that the agreement that was about to be negotiated wasn't contrary to NCC policy?

Dr CREAN - I didn't specifically go to Mr Samuels and say, 'We are going to negotiate an agreement', because I didn't know that we were at that stage. I hadn't even approached Federals. In my mind I was going to approach Federals at some time, which I did in January, and I wanted to be clear in my mind that there wasn't a major national competition policy issue here.

Mr WILKINSON - When then did it become your belief or policy that you wished to put a cap on the rollout of gaming machines? You spoke with Federals in January?

Dr CREAN - Yes.

Mr WILKINSON - Was it November you spoke with Graeme Samuels?

Dr CREAN - December.

Mr WILKINSON - So obviously it would seem, if I'm reading it correctly, that after the conversation you had with Graeme Samuels you then came back and spoke with the party in relation to putting a cap on the rollout of gaming machines?

Dr CREAN - I initiated the discussions, as I indicated, that it was the Government's desire to proceed with the policy objective.

Mr WILKINSON - What I am trying to ascertain is the time between your conversation with Mr Samuels and the time when you put to Government that there shouldn't be any further rollout with gaming machines.

Dr CREAN - In terms of Government?

Mr WILKINSON - Yes, in terms of Government.

Dr CREAN - I'm the minister; I pursue things independently -

Mr WILKINSON - I understand that.

Dr CREAN - then in the end this agreement had to be ticked off by Cabinet. Along the way, during the negotiations, I informed the Premier as to how we were proceeding and, as I

say, Cabinet had to tick off, which they did. We had the debate in Cabinet, which we do in relation to -

Mr WILKINSON - Can I ask when that was?

Dr CREAN - Cabinet?

Mr WILKINSON - When Cabinet ticked off.

Dr CREAN - I haven't got those off the top of my head but I can easily get the date on which Cabinet considered this issue.

Mr WILKINSON - Am I right in saying things appear to move fairly swiftly from the time you spoke with Graeme Samuels until the time it was discussed and then ticked off in Cabinet? I'm not saying there's any conspiracy theory in it.

Dr CREAN - Four or five months. Again, we wanted to initiate this as quickly as possible.

Mr WILKINSON - The policy that came out was, one, you want a cap on the rollout of gaming machines. As a result of effecting that, you had to strike a new deal with Federals. Were there any other things that you wished to obtain in that discussion with Federals other than and over and above the cap on gaming machines?

Dr CREAN - Not as the impetus for the agreement. As I said, if Federals had said, 'There's absolutely no way that we're going to countenance any capping whatsoever', the current agreement would have rolled out. But when we got to a position where Federals indicated that they would consider that as an issue and we started to negotiate, well obviously other things came into play - which I think Mr Challen indicated in his interview.

Mr STURGES - You've probably answered a fair bit of this but I want to move away from the process to outcome. I know you've made a comprehensive statement but just for the benefit of this inquiry could you perhaps give us a rating, give us your assessment of the outcome in financial and social terms for Tasmania?

Dr CREAN - I think the social outcome, which again was the impetus for the agreement, is that if there had been no new agreement and the current agreement had run to 2008, and particularly with the uncertainty for Federals in that situation, particularly in relation to what Mr Hidding has indicated in relation to the statement to and by the National Competition Council, that they would have had a concern that maybe competition would have been introduced post 2008. They would then have had to review their approach to the rollout of gaming machines and, under the current arrangement, our assessment was that there could have been 1 500-plus more machines come 2008. I must say, with a bit of leeway I wanted to get it down to the below the 290 cap. Federals obviously wanted it higher so a negotiated settlement came to the point of 290-odd. So that is 290 as compared with the potential of 1 500-plus. So the difference between that is a clear correlation with the difference between problem gamblers now and into the future. So there is a clear social benefit there.

In terms of the financial benefit, we took the opportunity to negotiate an improved outcome in terms of the taxation benefit. I have seen a lot of comment in relation to this in the media and comparisons with other states and so on. What I think people have to understand is that a tax rate was negotiated in 1993, which was passed by the Parliament as a fair and reasonable taxation arrangement. We used that as the basis and hoped we could get an improvement. We did. That improvement is around \$55 million extra over the 15-year agreement. But add that to the existing tax that they were paying and Federals will be contributing something like \$850 million in taxation to the State Government over the course of the 15 years.

Mr HIDDING - The punters will.

Dr CREAN - In terms of taxation. The argument has been that they are not being taxed enough, as if it is not much at all. But it is a significant amount. We built on the existing tax arrangement and we have extracted another \$55 million so that Federals will return about \$850 million to the State's coffers over the next 15 years and that is substantial by anyone's measure and a good outcome.

Mr RATTRAY - During the discussions, Treasurer, leading up to the agreement that you have put in place with Federals, I have always understood that if you do business with people that you can rely on and that you have confidence in to carry on and carry out the job that is required - and particularly in this case the outcome for the State, as you have just explained - what factor, if any, would the performance of Federals over the years that they have been in the State have had in your confidence to take this step to bring forward from 2008 to 2003 and make this new deal? What sort of corporate citizens have they been to the State?

Dr CREAN - It was an important aspect, not only materially - as I said, they are a good corporate citizen - but in terms of the regulatory regime that ensures that you get proper operation of this sort of enterprise. I think that our regulatory regime is second to none and has produced a good outcome. The track record of Federals was an important aspect and I do not think anyone can dispute that track record. I do not think anyone seriously is. They have been a big investor for Tasmania; they have invested way beyond their essential business function as it commenced. They are the biggest marketer of the State for tourism products outside Tourism Tasmania; it is substantial in its own right. They have invested heavily in tourism infrastructure and been able to achieve outcomes in terms of tourism and infrastructure that would not have been achieved had they not been operating in Tasmania and probably if it had been operating under a different operator. So it was important in the consideration.

Mr HIDDING - There is a development on the east coast being planned as part of this deal. Mr Farrell told this committee that this new deal provides his bankers with the comfort to finance this \$25 million, 150 room development at some \$450-500 a night. This week the average occupation on the east coast of Tasmania for four to five-star beds is around 7 per cent. Do you have any concerns about cross subsidisation from one benefit from the granting a gaming licence into a competitive market such as tourism, such as the accommodation market? Are there any National Competition Council issues in one company utilising the benefits of a new 20-year deal to build a facility that on the face of it doesn't look commercial? What do you say to other tourism operators who normally

would welcome anybody in if the business plan stacks up because there is some there for everybody? Are there any National Competition Council issues there?

Dr CREAN - No, what I'd say to you is if you believe what you're saying you are trying to rewrite company law. Investors all over Australia, all over the world, invest in new enterprises so is that cross subsidisation? They use profitability from their core business to invest in other businesses; is that cross subsidisation? Of course it isn't and this is no different.

Mr HIDDING - If you're providing an extraordinary benefit -

Dr CREAN - Extraordinary benefit?

Mr HIDDING - Could it be that you're providing an extraordinary benefit that allows this company to build something that is otherwise not commercial?

Dr CREAN - On that basis your previous government provided an extraordinary benefit - I think it's a nonsense argument. This is a company that has been operating with its core enterprise since the early 1970s and it's operated in a market that the State has created, previous governments created, a gambling market and it's returned significant revenue to the State, but it's also made significant revenue and profitability. Now to agree with your line of thinking, you're asking me to say that it's not right that a company that has a core business is not able to invest those profits in any other business. I just think that's nonsense and it really is contrary to the way businesses operate all around the world.

CHAIR - Treasurer, I think we've probably reached a stage where we could call a cessation to this inquiry at this stage. Members have asked questions across a wide scale; they are satisfied with a broad range of answers and we appreciate that and thank you for your attendance.

Dr CREAN - Thank you.

THE WITNESS WITHDREW.

Mr KIM BOOTH WAS CALLED AND EXAMINED.

CHAIR (Mr Fletcher) - Kim, perhaps you would like to speak to your submission.

Mr BOOTH - Thank you, Chairman. I would like to work through the submission and give you the opportunity to ask me any questions that you have.

CHAIR - We would only ask questions, I think, if there were aspects of your submission that we do not understand or we wish to challenge in some way.

Mr HIDDING - Or if it is different to anything you have in *Hansard* already, if you have changed your views on anything.

Mr BOOTH - First of all I put it to this committee that it behoves them to reject this bill. I believe the Government is not of good faith with this legislation.

CHAIR - I should have explained to you that our terms of reference are fairly narrow. They relate to the deed and matters flowing from the negotiation of the deed and it really is not about the bill before the Parliament. Although the deed is central to the bill, we are discussing the deed here.

Mr BOOTH - I put it to you that the Government is not of good faith in putting this deed forward. We have just heard from Dr Crean that the main reason or the only reason in fact that they have raised in regard to this bill is in order to introduce a cap on machines. I would put it to this committee that there are other provisions for implementing a cap. In fact I would refer the committee to a bill that we tabled and debated and in fact was defeated by the Government and the Opposition, the Gaming Control (Ensure Parliament oversight of Poker Machines Cap) Amendment Bill 2003 which has already been debated by the House of Assembly. I am not sure whether the Legislative Council is aware of that. Have you seen that particular piece of legislation?

CHAIR - It is on our desk.

Mr BOOTH - Because I can table that for you if you would like. It is not submitted as part of our evidence.

CHAIR - I do not see where it is relevant to your submission. Your submission is in relation to the deed and the reference that has been given to the Public Accounts Committee is quite specific.

Mr BOOTH - This goes to the matter of whether it is a good deal or not for the community.

CHAIR - You should advise me under which term of reference you intend to raise this issue.

Mr BOOTH - Do you have a copy of those terms because it is the term of reference as to whether it is a good deal or not. On that basis, I do not think it is a good deal for the State because if the Treasurer is talking about introducing a cap, which is the reason the Government has given for this new deed, there is provision for a cap immediately,

which, as I said, is there in that legislation that we introduced. I would also like to table for the committee the opinion of Professor Michael Stokes in regard to the power of the Parliament to amend the deed between the Government which essentially is to do with capping the bill. The Government have argued that in fact their hands are tied, they have no capacity to alter the deed because otherwise they would be sued by Federal Hotels or they would not have the power to somehow mend the current deed. It is quite clear from Professor Michael Stokes that the Parliament does have the capacity to change it. In fact, he says 'the Government will not be liable in damages or in any other remedy to Federal Hotels or other parties to the deed if the Parliament amends or repeals the deed'.

Mr WILKINSON - Would you agree that if governments went around breaking agreements with companies or businesses that have entered into agreements with them, that wouldn't be a good message to be sent to other people who want to do business, not only in Tasmania but any other State? In other words, if governments are out there entering into an agreement, after parties have entered into due process and have come to a conclusion that this is the agreement, then in order to get a government's way what they do is forget about the agreement that they entered into in good faith and enter into this new agreement, without running out to the expiration of the agreement that they had entered into. That to me would send a totally wrong message out to any other person or business that wants to do business in this State or any other State.

Mr BOOTH - Well, of course that is not the situation here. The reality is that the legislation as it's drafted - the act - allows for the Government to amend the deed at any time. The advice from Michael Stokes is that where the act contradicts the deed then the act takes precedence. Federal Hotels signed up to this deal that included a provision, as Michael Stokes' advice will show, that in fact it was quite within the Government's right not only as a sovereign - which he has given advice about as well - but also within the terms of the current act to amend it at any time they liked, and where there was a contradiction or an anomaly then the act would prevail. So they do have a capacity to do that.

CHAIR - I think we should ask you to table that. We have not had notice of that advice. We haven't read it so it would be wrong for us to be asking questions about it or trying to discuss it.

Mr BOOTH - To expand on that, I suppose the other thing I would say in response to that is that the Government also has a responsibility not only to honour agreements that it might make from day to day on a commercial basis, but anybody dealing with a government realises it is dealing with a sovereign and that there is a need from time to time to change legislation - and laws are changed. There are all sorts of things that happen, properties are rezoned, shop trading hours are changed. There are any number of times that you could argue that the Crown ought not change anything but then you would be saying that our social processes and laws would be locked in stone and cast back in the seventeenth century or something. We have to accept that there will be changes. What the Government also has of course is a responsibility to the people of Tasmania.

Mr WILKINSON - What you're saying then is totally different to what I put to you previously. There is a contract entered into between two parties. If that contract has been entered into between two parties what I am saying is - and my question was - it would not be a good message to be sent out to any other person who wants to do business in this State, to go around breaching that contract. Sure enough, a different

story at the end of 2008 when the contract comes up again. Whilst a contract is in place I don't believe anybody should be going around breaching contracts.

Mr BOOTH - The point about that is that, if you look at that advice, I don't believe that the contract is broken by putting a cap on. I believe there is provision within the current bill. I agree you wouldn't want to send out a negative image to anyone who wanted to invest, but I don't believe that's the case here. We clearly have the right to do that; Parliament has the right.

In regard to the social contract with the people of Tasmania, I believe that if you don't accept Michael Stokes' advice that the bill overrides the deed, then you have the predominant responsibility to the people of Tasmania and other businesses that have made representations to the committee to protect them. They should weigh the indecent haste with which the Government appears to be heading down the track of giving a 20-year rollout on these machines, with an additional 287 machines. You have to look at what the State is going to get out of that and what Federal is going to get - and what Federal is going to get is a bloody good deal! They're getting a 20-year exclusive monopoly on gaming machines, against a background of community concern about it, and against admissions by the Treasurer that in fact they were concerned enough to want to insert a cap on the machines now rather than waiting until the end of 2008. They chose to put a cap on, but in a fairly behind-the-scenes, closed-door, exclusive deal. The community of Tasmania have come out the losers and Federal has come out the beneficiary of probably \$150 million or so. I could go on about the deal - and will do no doubt about the value of it - but if you're to strike the deal in the first place it is a lousy deal anyway.

I believe the committee should consider, if they refer to that advice, that there is a process here, that the Government isn't acting in good faith. They could have supported our bill. When this bill came through they did not expose it to proper democratic processes as well. I think it should be something that should be taken into consideration, that this bill has not been allowed the passage of proper debate in Parliament, that the Government gagged their own bill when it was coming through and prevented the lower House discussing the ramifications of the bill and debating the clauses. They then attempted to push it through the Legislative Council, I believe, without waiting for the Public Accounts Committee inquiry into it, which was quite an extraordinary process for myself as a new parliamentarian. I find it extraordinary that the democracy of the land would be taken in contempt, if you like, by the Government; they wouldn't allow this to be subject to proper scrutiny. I am very pleased that in fact we have an opportunity now to come before this committee and raise some of the issues that we wanted to before.

I suppose you have the option of rejecting the bill or allowing the bill to go through unmodified, which is a huge opportunity lost for the Legislative Council to bring some responsibility into this. I think we have all heard the submissions from people, like Anglicare, TasCOSS and agencies groups that are dealing with the fallout of these machines in the community. It is more than anecdotal, but we are not the ones who are dealing with it at the coalface. People who are coming and begging for the Government to act responsibly on this. I think you have a great opportunity, through this committee, to reject the bill or make amendments that will reflect what the community wants and what is fair for the future as well, to impose a decent deal. If it is your mind to not put this out to competition and not try to expose it to a proper market, at least extract

a decent deal out of Federals so that there is some money to put back into the social wreckage that is created by these machine locusts in the community.

Turning to my submission, I would like to briefly touch on it and if you want to ask questions, please do.

CHAIR - You shouldn't do us the discourtesy of presuming we haven't read it. We wouldn't like you to read it to us again.

Mr BOOTH - Well, would you like to ask me questions and if there is something I think you have missed I can elaborate on it. Would that be a way to go?

In regard to the new deed, I believe the process ought to have been fully public and transparent. I think it is a poor thing that the Government has conducted this deal behind closed doors.

CHAIR - How would you do that?

Mr BOOTH - In my view - and it has come from my experience as a businessman running my own businesses for many years - you simply don't do deals like this where you deal yourself a lousy hand. You would expose this to competition. I think there are probity issues here, that the Government, as a stakeholder in this deal - as a 30 per cent participant in the take of these machines - is foolish. The Greens if of course that they ought to roll these machines back into the casinos and out of the pubs and clubs because I think they are doing enormous social harm.

CHAIR - You have used the analogy, 'You sold me timber and you transported it to Binalong Bay free of charge and I thought you did yourself a lousy deal and you thought you did yourself a good deal', so it is a matter of perception, isn't it? But how do we do that deal in public, to bring the public into it? I just don't see how you can do that. There has to be negotiation by the parties to the contract in good faith with an agreed outcome.

Mr BOOTH - Thank you for your generous comment about the deal I gave you on the timber, but in that case I was, if you like, dealing myself out of a consideration by offering to deliver to free, but the contract was between myself and you. In this case this is a contract between the people of Tasmania and a fairly powerful company and because the Government of Tasmania represent the people of Tasmania they need a stronger process of scrutiny than a private individual.

CHAIR - I just have trouble with the process. What do you do; do you put up a table in Franklin Square and invite everyone to gather around while you negotiate the outcomes? What would be the actual process?

Mr BOOTH - Well, if you are responsible Government what you do is you have look at what has gone before with the actual deal that you are looking at and you decide whether socially it is appropriate to roll out any more machines or whether you ought to be looking at winding them back when the current deed expires at the end of 2008. If you decide that you are going to go ahead with it then you have a look at the social consequences. We know that the Legislative Council has a select committee of inquiry which has all the recommendations. You would look at it and say, 'Maybe we ought,

before we even think about rolling out this deal, to be looking at the recommendations of the committee, particularly in regard to the social and economic impact it leaves in the community'. Unless you have some hard data you are only relying on anecdotal evidence. You have no idea what harm you are creating by rolling these out for another 20 years. So, to me, the first part of the process would be to implement the recommendations of your own House's inquiry. Once you have them then you are able to assess whether you want to go ahead with any sort of deal with Federal or anybody else for that matter. If you decide that you are going to deal yourself into the equation and be part of the revenue stream that comes from these things, you would put it up for tender. You would announce your intention publicly and you would say, 'In the interests of the best deal for Tasmania and transparency and so forth, we are going to advertise this as a full and open public process, put it up for tender and see what comes in on the table'. Then you can negotiate with them.

Federal would I suppose already have an inside running in a sense that they understand the industry. They already own some venues themselves, they have the experience and they would be in a position to compete. It is exactly the same competition that all other industries in Australia are subjected to now and ought properly to be as well.

CHAIR - Perhaps I shouldn't ask questions in relation to this because I haven't seen Professor Stokes' advice although I have seen advice from the Solicitor-General in relation to the matter. You couldn't convince me that the Parliament should be involved to overturn a contractual arrangement between the Government and another private party to overturn the sovereign risk. If I believe that, as an individual, 1 January 2009 is the first time we can address this matter, isn't it, and during that time there can be, if the will was there by the companies, a substantial increase in the number of gaming machines available in the community.

Mr BOOTH - Well, I don't believe that is the case and I don't believe it for three reasons. First of all, I think that we can introduce a cap and it's no breach of contract, so I would argue with you about that. It is not a matter of cancelling the current deed; it is simply confirming that the Government has the right to cap the machines, which they have up until last year in a very formal way. You would simply put a cap on then until the deed expires in 1 January 2009. You would go through a process of probity, through due process and you would get an actuary or some consulting firm to calculate what the value of this deal is. I think Rene has referred to the fact that it is a lousy deal and I can probably produce some evidence there later about that. It is probably half to a third of what it ought to be worth to the people in the right of Tasmania anyway. So I don't think you are actually in a position of breaking a contract. You are simply saying, from a sensible business point of view, that this is actually not very well done. It is a lousy deal for the taxpayer of Tasmania. There is a way of assessing its value and they haven't done that.

Mr HIDDING - Just for the record, I wouldn't want the record to construe my silence as being agreement or otherwise. There is a deal of conjecture and debate going on here that I have chosen not to engage in because I want to keep my powder dry for when we actually debate this to come up with a report. But I think Mr Booth made some very good points in his submission. I have highlighted some of them and I will be using some of them. It is very useful.

Mr BEST - Likewise, Mr Chairman, just for the *Hansard*, I had no idea Mr Booth was going to appear today until I arrived at 2.20 p.m. and so I do not have any questions for him.

Mr STURGES - Mr Chairman, just for the record I have read the Greens' submission submitted by Mr Booth on their behalf and I have no questions either.

Mr BOOTH - I have just raised some issues there in regard to the value of the deal. There has been an assessment done by Citicorp's director of equity research, Jenny Owen; I suppose you are familiar with that. She estimated that Federal Hotels would make \$157 million net, after tax, on this proposed deal. It is a bloody good deal for Federal. The people of Tasmania are handing over an enormous concession to anybody who gets the right to operate these things. I think morally, as parliamentarians, we have a very solemn duty to make sure that not only we do not compound the harm that is occurring in the community at the moment and that is why I need you to reject the deed and just go back to the old deed and let it run until 2009.

Mr WILKINSON - You are saying also there would have to be legislation capping any further rollout. Because if we did nothing there could be a further 1 500 rolled out. So, as I understand your evidence, you are saying that the only way to make sure there is no further roll out is to enter into further legislation to put a cap on it. Is that right?

Mr BOOTH - I read Brer Rabbit when I was a kid and you probably did too, you know, and we have had all these -

Mr WILKINSON - Not often.

Mr BOOTH - sorts of scaremongering by Federal and I think it is a very poor display of corporate citizenship. We have heard much about how good they are. I do not want besmirch their name but it is not a very good example of corporate citizenship to simply accept that a cap is appropriate because of social harm. The Treasurer has admitted that the sole purpose of this, he said so here today, is to put a cap on.

Mr WILKINSON - No problem with that.

Mr BOOTH - So we agree that there is social harm coming from the thing. For the company that is a beneficiary of this licence, I would question them if they say, 'Well, if you do not give us what we want, in other words an extension of this deal, we might roll out another 1 500 machines'. I do not think that is a legitimate threat because I do not think they would do it.

Mr WILKINSON - What I am saying is, that is the only way you could stop it, though, isn't it?

Mr BOOTH - If they chose to do that.

Mr WILKINSON - Yes, if they chose to do it, that is the only way you could stop it, by bringing in fresh legislation. Otherwise, if you did nothing and just rejected it as we have just stated, it would seem to me that there is that ability to role out the 1 500. And you do not want that. I do not think anyone around this table wants that.

Mr BOOTH - No, but I think that is a red herring that Federals have put up. I do not believe that they will do that and if they did I think it would be a sign of very poor taste on their part, if you like, or a breach of faith with the Government. I think it is within the Government's capacity to say we do not want any more machines rolled out. It is certainly legislatively possible and legally possible and I do not think it breaches any agreements that we have with them anyway. So I think that would not be an issue if you had to cap it. But I do not think you would have to cap it, because the evidence given so far has been that these rollouts are based on market research and need and it has been quite often anecdotally stated that the level is about right, that there is no more capacity to strip any more money out of the community. It is already happening. They have maximum take already with the amount of machines they have out there and that is why they have run into a cap. The additional 287 rollout in this new bill they have quite cunningly dressed up as though we have no choice: 'Accept our new bill to put a cap on a pokies or otherwise the sky is going to fall in'. It is simply nonsense because there is no evidence that there will be. Those 1 500 extra machines are nonsense. They do not have the venues. They do not have the demand for them. It would be financially not viable for them to do it.

Mr WILKINSON - We had evidence that there was the demand to roll out -

Mr HIDDING - From publicans.

Mr WILKINSON - from publicans.

Mr BOOTH - Yes, but what they are saying is that the viability to the industry is not there because the take of gambling dollars now is already so highly taken up. There is no capacity for people to gamble any more.

Mr WILKINSON - But there is still a demand there.

Mr BOOTH - Yes, but if the total gambling dollar did not increase I do not suppose it would matter. Individual venues might suffer ramping down in their profitability but it does not mean there is going to be an end to gambling.

Mr HIDDING - There is no end - user demand; middle-user demand.

Mr WILKINSON - That is right, that is what they are saying.

CHAIR - What I am concerned about here as Chairman is that we are just having a discussion about this issue without going anywhere in particular. We have Mr Booth's submission before us; we either have to ask questions to clarify some issues that are in that submission or else we bring this meeting to a close.

Mr BOOTH - There are a couple of other matters that I might raise if you can give me the time.

CHAIR - If they are different and new and additions to the evidence you have already given us. If it is in your evidence we will take note of that.

Mr BOOTH - I am happy to table this document by Ian Pinge from the Centre for Sustainable Regional Communities from La Trobe University. This is a document that measures the economic impact of electronic gaming machines in regional areas. In Bendigo they have done a case study. So it is very interesting in terms of the application of this deed and I will tell you why.

CHAIR - Your summary of that in your submission was, I thought, illuminating.

Mr BOOTH - Essentially, Bendigo has 80 000 people with 16 venues and 507 machines. Launceston has a population of 80 000 and has 19 venues with a total, including the casino, of 875 machines. So it has one and a half times as many machines with the same population. The conclusion was that for every dollar spent in a gaming machine there is \$2 lost and obviously you are pretty well informed on that. It is essentially draining the lifeblood out of these rural and regional economies. One of my concerns, particularly representing Bass, is that we do have one and half the times the machine of Bendigo up there already. The region has been declining. It has not been a happy story for Bass for the last number of years. I am not going to attempt to say that is because of pokies. But the amount of money coming out of the local economy due to losses in poker machines is quite alarming if you look at the total figures. If you read that Bendigo report and transpose that onto Launceston I think it would give you some really enlightening figures to look at, particularly given that this is a 20-year roll out. It is not like we are talking about a few machines. We are talking about the capacity to cap them in 2009 or the capacity to remove them or wind them back or do the studies, or lock it in now with one operator.

I think you have addressed concerns in regard to National Competition Policy. I have exactly the same concerns as that and I was going to raise that as a major issue. But you have dealt with that already.

I think the other thing, too, that was interesting listening to the Treasurer's evidence, and no doubt you will take it on board, is the fact that he has finally admitted, I think it is the first time I have heard the Government admit, that there is a problem with gaming addition in this State and that there is a need to put a cap on. The fact that he came out here today and admitted that the reason they wanted this deal to go ahead was to cap the pokies and no other reason, itself indicates that this is a pretty serious issue if the Treasurer is trying to negotiate this deal. You could have two conclusions. One, he is afraid that it will never be controlled and they need to put a cap on now, which I do not believe is the case. I think the reality is that they know that in 2009 an enlightened government and a more socially aware population suffering under the effects of these things is not going to allow these things to go ahead. I think if you look at it from a taxpayers' point of view, the information coming out of Treasurer Costello's office at the moment is that GST payments might have to be used to top up poky-addicted State Government revenue streams. That is somewhat alarming if you look at it from the point of view that it is still our money, whether it is federal or state. As Mr Wilkinson has pointed out, there is a sovereign risk issue here. Why would you grant a 20-year rollout to a company for something that has been likened to a shooting gallery throughout the community for people to go to these things. It is likely that the Federal Government will have to legislate to stop them and redistribute income through the federal taxation system, through GST, to compensate for your addiction. It just seems to me preposterous to even think of rolling them out under those circumstances given that you

are going lose the other way around. If the Federal Government decides to change its mind, it is your taxes that are going to compensate federal anyway.

CHAIR - The level of addiction, can you provide me with a source document for your conclusions?

Mr BOOTH - The only information that I have is the same as you would have from agency groups dealing with it. That is precisely why I think that the call by the Legislative Council to conduct a proper independent, social and economic impact assessment is an absolute priority, because without that information, how do you know? I do know, from personal reports of people coming up to me, of reports of family members suiciding, losing their businesses, being jailed for fraud; they are the sorts of things that I have had people talk personally to me about.

I could say that during the last election, walking around the electorate, it was probably one of the most often raised issues with people that poker machines were a major concern. I would say you need to talk to those agencies to get proper figures on that. But certainly the effect of the things is quite horrible.

Mr RATTRAY - I think it is something that we need to take on board, what Kim is putting forward, and in the overall sum up there the issues that will help determine what this committee decides to do.

CHAIR - We thank you for your presentation and for your submission on behalf of the Greens and for your extra papers that we have had in relation to the Stokes' opinion and the Bendigo research.

THE WITNESS WITHDREW.