

Gaming Control Amendment (Future Gaming Market) Bill 2021 Submission

Hon Meg Webb MLC

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Introduction

Stage two public consultation for the Future of Gaming in Tasmania states the government “is committed to providing opportunities for community involvement in Government policy” (July 2021). This continues from the stage one consultation, which invited the community to “provide feedback on the new regulatory model” (February 2020).

Non-industry submissions to the February-March 2020 consultation process consistently called for the inclusion of stronger consumer protection measures as part of the proposed legislative process. However, stage two shows that these concerns have not been incorporated in the draft Bill and their omission has not been explained in the associated information sheets that were publicly released in July 2021.

Neighbourhood Houses Tasmania (Submission 66) expressed concern that by proposing no new harm minimisation measures, the Government means “we are accepting of the current level of harm” (page 5). However, the Houses note that we “work with affected individuals, families and communities on a day-to-day basis” and see the effects that gambling problems have on our health system (page 5). This is particularly relevant for Houses as they, like poker machines, are located in lower socio-economic areas. The call by Neighbourhood Houses for harm minimisation to be embedded in the legislative process is a clear call for help for the communities in which they serve.

Glenorchy City Council (GCC) (Submission 67), which is in a low socio-economic area and poker machine hot spot, also called for the Government to do more to protect consumers. GCC debated the issue in Council recently and found support for the position it formed in 2016 about the harm caused by pokies remained. The Council wants consumers in its Local Government Area (LGA) to be better protected.

Anglicare Tasmania (Submission 11), which based its recommendations on its experience of providing counselling and other services for people harmed by gambling, also called for stronger consumer protection, including reducing the maximum bet limit, slowing the spin speed, reducing opening hours and enforcing shutdowns on machines, all of which had been raised by the Tasmanian Liquor and Gaming Commission (TLGC) in submissions and presentations to the Parliamentary Inquiry in 2016-17 (page 6). They also called for the functions of the TLGC to be extended “so that they are responsible for all consumer protection measures relating to gaming” (page 6).

TasCOSS, working with community groups around the state, pointed out in its submission the unique opportunity for the government to introduce measures to improve health and resilience of Tasmanians at this time of legislative change (Submission 68, page 3). The TasCOSS submission recommends all venues with poker machines pay the same level of Community Support Levy and have the same harm minimisation measures, including \$1 maximum bet limits and slower spin speeds (pages 5, 6).

Communities Tasmania (Submission 12) submitted its concern about the proposed fully-automated table games (FATG), simulated racing and the ongoing presence of keno in family areas (pages 1,2). Its submission pointed to the negative impact of normalising gambling when keno is permitted in family areas and suggested this would be exacerbated if simulated racing was also in family areas (pages 1,2). Its concerns about FATG relate to automated games allowing faster betting and with less opportunity for staff interventions (page 1).

Submission 3 by Peter Hoult, a former Chair of the Gaming Commission, raises regulatory concerns including the ability of the Gaming Commission to provide adequate oversight in the proposed model. He has observed the cutting of funding for the Liquor and Gaming Branch, forcing it “from an ‘inspection’ model to an ‘audit and complaint’ model” (page 3). Mr Hoult points out that this leaves the Gaming Commission in a position where it is very difficult for it to address concerns about harm.

Then-independent MP Madeleine Ogilvie said “social harm and problem gambling must be addressed in a more strategic way” (Submission 8). She argued for tighter bet limits, slower speed of the machines, and the use of technology for exclusion as well as “a reconsideration of the geographic distribution of electronic gaming machines including suburb saturation levels”. Stating that the future of the gaming market is of importance “across the state”, Ms Ogilvie suggested we “build a policy coalition” “to work together to achieve reform”.

Andrew Wilkie, MP, historian James Boyce and individual community members also called for consumer protection to be embedded in the legislative process (Submissions 2, 4, 20, 26, 59). One of these submissions included personal experience of harm caused by gambling (Submission 20).

In his submission to the March 2020 consultations, John Lawrence, economist and non-executive director of a tourism venture with Electronic Gaming Machines (EGMs), raises numerous concerns about the proposed economic and accounting measures (Submission 10). Lawrence says the proposed model will not provide a fair or appropriate share of gaming money amongst all stakeholders and will not create a sustainable industry. Hoult’s submission (Submission 3) also raises concerns about the effect the proposed model will have on smaller venues, pointing out the likelihood of smaller venues finding the costs brought in by venue licenses outweighing their small turnovers (page 5). This, he said, will contribute to the concentration of ownership (page 5). Lawrence agrees, providing a comparison of how small and large venues would fare (page 9). Lawrence also raises concerns that all current venues are being gifted with the licenses, with no tendering, no up-front fee and no opportunity for other businesses to compete (page 14). The 6-month rule for the Community Interest Test along with the 20-year license period will continue to provide advantage to existing gaming businesses over anyone wishing to enter the market.

In my submission to the March 2020 consultations, I raised concerns at the lack of modelling, data and research that had been used by Government to inform debate on the proposed model (Submission 27). I highlighted numerous areas that the Government needed to explain before the legislation was drafted, including:

- How will the proposed new model benefit consumers?
- What modelling and advice supports the proposed changes to licensing and taxation?
- Will appropriate regulatory capacity be established and funded under the proposed new model?
- How will the proposed model affect the ability of future parliaments to implement reform?

In the year and a half since these submissions were made, there is no evidence the Government has taken the many concerns and recommendations from the community into account. Indeed, many of the March 2020 submissions should be read again during the second consultations as the questions raised in them remain.

In a recent interview with ABC radio, Mr Hoult remained concerned about the ability of the Liquor and Gaming Branch to inspect rather than simply audit and he expressed disappointment that the draft Bill did not include simple harm minimisation measures such as slowing the spin speed and reducing the opening hours (ABC Mornings Show, ABC Radio 12 July 2021). “We have the most aggressive pokies in the world”, he said on radio, and “we’ve [Commission] told them [Government] many times” to bring in better protection for consumers.

This legislative process in relation to poker machine reform has two key responsibilities:

- **to minimise the risk of social and economic harm to the community through evidence-based, best-practice harm minimisation; and, once consumers are properly protected,**
- **to maximise public revenue so that any super profits go to the State not to private interests.**

There is no evidence that either of these responsibilities have been addressed by the draft exposure Bill.

The draft exposure Bill fails on four counts

Analysis of the draft exposure Bill, comparison to initiatives interstate and the call from the community sector for this legislative process to protect consumers exposes four areas in which the proposed legislation fails Tasmanians:

1. Consumer protection

The establishment of a more competitive market risks increasing harm from addiction, yet the Government has included no increase or improvement of consumer protection as part of this legislative process.

2. Licensing

The Government is proposing to hand 20-year licenses to current license holders for free, with future venue license renewals to be set at 20 years. The proposed process for renewal and on-selling will establish staggered end dates for licenses, removing any future moment-in-time opportunity for industry-wide reform.

This provides a gift to selected members of the hospitality industry, reduces the potential income for the State and will restrict the ability of future parliaments to implement reform.

3. Tax rates

The Government's proposed tax rates will not provide the State with the best economic returns and provides super-profit benefits to selected members of the hospitality industry.

4. Concentration of ownership

The Government is proposing to allow individual business entities to own up to 25%, or 587 machines, allow multi-venue businesses to move machines between venues around the State and allow the Licensed Monitoring Operator to own venues with poker machines.

This will change the shape of the gaming industry in Tasmania, leading to a concentration of ownership and further concentration of poker machines in some locations – no modelling has been provided to indicate the expected impact of these changes.

The draft exposure Bill does not provide the best option for Tasmania: not for Tasmanian consumers, Tasmanian industry, nor the Tasmanian State.

Recommendations to improve outcomes for all Tasmanians

There are a number of initiatives that should be incorporated in gaming reform at this moment in time, many of which were articulated during the March 2020 consultation process and remain current today.

Recommendations about consumer protection

1. The Gaming Control Amendment (Future Gaming Market) Bill 2021 should embed evidence-based consumer protection measures with the goal to directly reduce harm caused by gambling. These measures should include a maximum bet limit of \$1; spin speeds set at 6 seconds; reduction in maximum jackpot from \$25,000 to \$1,000; prohibition of losses-disguised-as-wins and false near-misses (more frequent than would randomly occur); increase the return-to-player to 95%; mandated regular machine shutdowns; and reduced opening hours for gaming rooms.
2. The remit and powers of the Tasmanian Liquor and Gaming Commission be legislated to ensure it is robustly independent in its operation and appropriately resourced to operate an investigative model of compliance rather than a limited audit and complaint model.

Rationale for recommendation

While the Government claims its policy aims to “continue to minimise harm caused by problem gambling” the draft Bill and associated documents propose no new measures or improvements to current approaches (see Stage 2 Consultation paper).

Poker machines are a legal product purported to be recreational in nature. Yet they are designed to be addictive, and research clearly demonstrates they cause addiction in at least one in six people that use them recreationally as intended.

The triggering of an addiction to poker machines typically leads to life-altering financial harm. Research shows that around half the losses to poker machines in Tasmania come from people who are addicted or in at-risk categories – indicating a clear need for proactive improvement of consumer protection and harm minimisation measures.

Tasmanian consumers are subject to poker machines promoted as entertainment but which can take \$600 from their pockets in an hour, 20 hours a day. This is not the global norm. Australia is also the only country which places high-intensity machines in local suburbs, typically low-income suburbs at that.

Straightforward consumer protection and harm minimisation measures are available, are standard in international jurisdictions and, as such, are proven to be effective.

In respect to every other form of diagnosable addiction we take a public health approach to harm minimisation, employing evidence-based strategies that reduce the likelihood, incidence and impact of addiction. An explicit and proactive public health approach should be taken to harm minimisation in relation to poker machine addiction in Tasmania.

We can readily make Tasmanian poker machines safer to use – by reducing the addictive features and reducing the severity of the financial harm that is possible to be inflicted. These readily available measures in no way detract from the use of poker machines as a recreational product; in fact, they would likely go unnoticed by recreational players.

It is clear that under the current model the Government is able to ignore TLGC advice on the most effective harm minimisation measures. With no change to the remit, powers or resourcing of the TLGC proposed in the draft Bill, this will remain the case.

The advice of the TLGC (past and present) as well as calls from community service groups as quoted below have all acknowledged the need for, and supported, this approach:

- “This [poker machines] is not just ‘any product’” (TLGC 2016, Submission 144 to the Joint Parliamentary Inquiry).
- We have “the most aggressive pokies in the world” (Peter Hoult, ABC Radio 12 July 2021).
- A \$1 maximum bet limit is “a simple, cheap and effective way to reduce the amount that can be lost and therefore reduce harm to problem gamblers” and, if combined with slower spin speeds, this would be “a very potent way” to reduce harm (TLGC 2016, Submission 144 to the Joint Parliamentary Inquiry).
- The Gaming Commission “told [the Government] many times” to introduce stronger consumer protection (Peter Hoult, ABC Radio 12 July 2021).
- Western Australian machines are slower and simpler than those in Tasmania and there is no consumer complaints in WA (Peter Hoult, ABC Radio 12 July 2021).
- Machine shutdowns would provide consumers with a “decision point” (TLGC 2016, Submission 144 to the Joint Parliamentary Inquiry).
- “Venues know who is in there in the final hours of opening” (Peter Hoult, ABC Radio 12 July 2021).

Recommendations about licenses

3. The maximum duration for licenses for general casinos, venues and keno established in the Gaming Control Amendment (Future Gaming Market) Bill 2021 should be a maximum of seven years.
4. The Gaming Control Amendment (Future Gaming Market) Bill 2021 should ensure future Parliaments can introduce new conditions or adjust existing conditions of licenses, including license duration and harm minimisation, at any time.
5. A consistent end date across all venue licenses should be established. This should include a purchaser of a venue purchasing into the existing license period.
6. The Community Interest Test should be amended so that it is a requirement for all venue licenses starting from 1 July 2023 as well as when venues change ownership.

Rationale for recommendations

The draft Bill proposes 20-year licenses for the general casinos, high-roller casinos, venue license, keno license and LMO license (Consultation Paper 3 page 4-6, Paper 4 page 4 and Paper 5 page 9).

It is proposed that the licenses for the general casinos, venue licenses and keno be given free of charge and with no need for a Community Interest Test to the current operators.

Rather than being an opportunity to reset the location of poker machines, away from low socio-economic areas, the draft Bill proposes no consultation with community and no regional or LGA caps.

There will also be no opportunity for other businesses to compete in the market.

Further, the draft Bill sets the duration for a venue license renewal at 20 years. There is no rationale provided for granting 20-year licenses. A long license period is not needed to make good or effective public policy. During the 2016-17 Parliamentary Inquiry process, the Gaming Commission recommended that 7-year licenses were appropriate (TLGC 2016, Submission 144 to the Joint Parliamentary Inquiry).

The draft Bill also allows each license holder to individually apply for its renewal at some point between 2 and 5 years prior to its license expiring and if a venue is sold that the new applicant's license application starts again at 20 years. The proposed legislation will see a staggering of end-dates for licenses across close to 100 venues. This will make it difficult for future parliaments to make changes uniformly across the State. The opportunity for Parliament to adjust licenses to suit the needs of good public policy must be integrated into the new gaming market.

Under the proposed legislation, existing venues will be gifted licenses without needing to have the Community Interest Test applied. Renewals for these venues would also not require the opinion of the local community. This is not in the spirit of acknowledging that the community does have an interest in the management and mitigation of harms from poker machines suffered locally. The lack of regional and LGA caps also denies local community contributions.

Recommendations about State gaming taxes

7. The Gaming Control Amendment (Future Gaming Market) Bill 2021 should set the same tax rates (tax on gross profits and Community Support Levy) for poker machines regardless of venue-type.
8. Tax on keno in casinos should be the set at the same rate as that proposed for keno in hotels and clubs.

Rationale for recommendations

The Government's proposed tax rates will not provide the State with the best economic returns from the gaming industry. This is an industry that receives super profits - economic returns much higher than the value of the service provided. Pokies in the casinos will only be taxed at 13.91% (including the CSL) while in pubs they will be taxed at 38.91% (including the CSL). There is no credible rationale provided for the lower tax rates for poker machines in casinos.

The proposed increase in keno tax in hotels and clubs (up from 5.88 to 20.31%) is welcome, but the same rate should be applied to keno in the casinos rather than the proposed 0.91% (Paper 4 page 8). There is no rationale for this discrepancy.

In the absence of any modelling or rationale from the Government to explain the settings for license fees and taxes, I sought a review of the Government's proposals for tax and license fees for pokies and keno in Tasmania from independent economics, policy and strategy advisory firm ACIL Allen (Read the report [here](#)). This report finds the Government's proposal is not the best deal that could be achieved for the State. A reasonable increase in license fees for pokies and setting tax rates in the casinos at the same rate as hotels for pokies and keno would see an additional \$367 million going into the State budget over the proposed 20-year license period:

- Setting EGM licenses at an average of \$4000 rather the proposed average of \$1643 would see additional income of \$5.4m annually = \$108.7m over 20 years.
- Setting tax on pokies in casinos at the same rate as those in hotels (i.e. 38.91% rather than proposed 13.91%) would see additional income of \$14.9m annually = \$248m over 20 years.
- Setting tax on keno in casinos at same rate as those in hotels (i.e. 20.31% rather than proposed 0.91%) would see additional income of \$0.52m annually = \$10.5m over 20 years.

Recommendations about venue ownership in the new gaming market

9. The Gaming Control Amendment (Future Gaming Market) Bill 2021 should not permit any entity to own more than 10 per cent of the State's poker machines outside of casinos.
10. The Licensed Monitoring Operator should not be permitted to own venues with poker machines.

Rationale for recommendations

Legislative processes provide us with the opportunity to reset public policy to suit current community views. In this instance, we have an opportunity to consider the location of poker machines and in particular the number of machines in low socio-economic areas.

However, the draft Bill is not proposing changes to the distribution of pokies based on good public policy. Rather, it is likely to change the shape of the industry to further favour large businesses. The draft Bill allows venues under common ownership to transfer poker machines between these venues provided venue caps are not exceeded (Paper 3 page 11). This transfer will not be subject to a Community Interest Test unless the receiving venue has not had machines in the previous 6 months.

This provides incentive to larger business entities to increase their stock of pokies pubs so that they can transfer machines amongst their sites. The only control placed on this in the draft legislation is that any one entity cannot own venues with more than 587 machines (approximately 25%) (Paper 3 page 12). The common ownership clauses also have potential for LGAs like Launceston, where many venues are currently below their machine venue cap, to become saturated in poker machines.

The draft Bill also proposes that the Licensed Monitoring Operator would be allowed to own venues with poker machines with the condition that it not use the information gained from monitoring (Paper 5 page 7). Given that Federal Group has been monitoring pokies for the current license and now owns 12 of the most lucrative and highest performing pubs in the State, I do not have confidence that the draft Bill's requirement for "ring fencing" will be sufficient.

Conclusion

The role of Parliament is two-fold: to protect its citizens and to ensure the best outcomes from public policy. The draft exposure Bill does not provide the best option for Tasmania and will not allow Parliament to deliver on either of these responsibilities.

There are significant failures in the proposed public policy outcomes to which this legislation gives effect. At no point has the Government engaged in a public consultation and examination of this policy. In fact, in the two consultation processes that have been undertaken (in early 2020 and on this exposure draft) instructions indicated that comments or input on the policy were not welcome from those making submissions. This failure to appropriately and comprehensively consult on the underlying policy, and the failure to respond to concerns and questions raised in relation to this policy, have resulted in a draft Bill that will be highly problematic for consideration by Parliament. Even more regrettably, it has resulted in a Bill that will cause greater division and ultimately drive higher levels of harm in the Tasmanian community.