

VICTORIA

Report

of

**BOARD OF INQUIRY
INTO POKER MACHINES**

November 1983

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BOARD OF INQUIRY INTO POKER MACHINES

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28 November 1983.

His Excellency,
Rear Admiral Sir Brian Murray, K.C.M.G., A.O., K.St.J.,
Governor of Victoria,
Government House,
MELBOURNE. Vic. 3000

Your Excellency,

By your Order in Council of 29 March 1983 you
constituted me a Board of Inquiry in relation to poker
machines. I now have the honour to present to you my report.

Yours sincerely,

(Murray Wilcox Q.C.)

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SUMMARY OF THE REPORT: MAJOR FINDINGS AND RECOMMENDATIONS

This report recommends that poker machines NOT be permitted in Victoria. There is no doubt that poker machines, if permitted, would be used by large numbers of Victorians and might generate significant funds for those persons or organisations allowed to operate them. The net employment effects would probably be positive but would be likely to be minimal." However, these beneficial factors are outweighed by three major objections:

- . the certainty of increased criminal activities in Victoria as a direct result of the introduction of poker machines. The extent of the likely increase depends directly upon two factors: the number of premises in which machines are permitted and the stringency of the controls imposed. Depending upon those factors crime will increase to a degree ranging from significant to serious. There not merely a risk of increased crime. Under any scenario crime will increase.
- . the adverse effects upon many existing businesses, especially hotels and some types of restaurant. If the model existing in New South Wales, where poker machines are permitted only in licensed clubs, were adopted for Victoria the effects upon individual existing businesses would range from significant to devastating. Whilst

these businesses make no claim to freedom from fair competition they make, and properly have, a claim not to be required to compete with businesses whose operations are subsidised by the proceeds of a lucrative State conferred gambling monopoly. The unfairness of such a situation would be worsened by the fact that clubs pay little or no income tax on their profits. If machines were permitted in other locations and under different arrangements the unfair effects might diminish but they cannot be eliminated.

- . the certainty that some Victorians will use the machines to gamble to an extent which is beyond their financial capacity and that many will gamble to an extent which causes them serious concern. Some of these persons may, in any event and by other means, gamble excessively but, for most, the critical factors would be the nature, and availability, of poker machines. The proportion of all Victorians who would gamble excessively upon poker machines would be extremely small but the effects upon some of those individuals and their families would be catastrophic.

Taken singly, each one of these objections represents a powerful argument against the legalisation of poker machines in Victoria. Considered together, the case is overwhelming.

Further, unless poker machines were permitted in both clubs and hotels, and were government owned and operated so as to allow only nominal profits to the site owner, the net benefits to government revenue would be minimal. This model, which could result in poker machines being installed in almost 2,000 separate premises in the State, is the worst possible solution in terms of the degree and control of criminal activities and the social problem of excessive gambling. To permit machines to operate in licensed clubs alone, as in New South Wales, may actually reduce government revenue. The reason, stated shortly, is that much poker machine expenditure would come from funds now spent on alternative forms of gambling in relation to which the taxation rate is much higher than would be practical in respect of poker machines. For instance, every dollar diverted from Tattslotto revenue to poker machine revenue, taxed at the rate suggested by the Licensed Clubs Association of Victoria ("the LCAV"), would cost the Victorian government 77.5 cents.

THE REPORT

The report is divided into four parts. Part I (Chapter 1) deals with the course of the Inquiry itself. In an effort to reduce both time and expense a number of unusual procedures were adopted, including early directions, pre-hearing written evidence, extensive site inspections at which unsworn evidence was taken and written final submissions. These procedures worked well. They may be a useful precedent for the future.

Part II is entitled "Setting the Scene". Chapter 2

looks at the history and nature of poker machines - the traditional single coin models, multi-coin machines, the modern microprocessor units and the likely future replacement: the video machine. The chapter ends with a suggested legal definition of a poker machine. Chapter 3 looks at poker machines in other jurisdictions. In that minority of jurisdictions in which poker machines are permitted at all the usual position is that they are permitted only in licensed casinos in which their operations are subject to skilled and continuous professional supervision. The position in New South Wales and the Australian Capital Territory, poker machines in licensed clubs, appears to be unique to those two jurisdictions. It is the product of a conflict between the hotel and club industries in New South Wales in 1956. The chapter deals with the circumstances in which legalisation occurred in each of those two jurisdictions and the development of such controls as now exist in those places. It is important to note that, outside of the licensed clubs of New South Wales and the Australian Capital Territory, the only lawful poker machines in Australia are in the two casinos in the Northern Territory. In other jurisdictions: Queensland, South Australia, Western Australia and Tasmania there are neither existing lawful machines nor any known government proposals for legalisation. Contrary to an apparent popular belief Victoria is not presently out of step with most other jurisdictions.

Chapter 4 discusses the manufacture and supply of poker machines. It deals with the history of manufacture in Australia, the effect in market terms of the development by one

manufacturer (Ainsworth) of a microprocessor unit and sets out what is known of the four existing suppliers to the Australian market. No final conclusions are reached as to which particular companies, if any, would be likely to survive an exhaustive licensing investigation if this were to be a feature of any Victorian legislation for the introduction of the machines. Upon the basis of evidence discussed in the Chapter, I conclude that there must be a serious question about the suitability for licensing of three of the existing suppliers, Ainsworth, Nutt and Muddle and Bally. The refusal of the fourth supplier, Pacific, to co-operate with the Inquiry has left me with insufficient information to express a view about this company. The chapter also deals with the cost of poker machines in New South Wales and the Australian Capital Territory. That cost is excessive, to the extent of at least \$2,000 per machine in New South Wales, largely because of the marketing arrangements which are adopted in those jurisdictions.

Chapter 5 looks at the clubs in New South Wales and in the Australian Capital Territory, the model which undoubtedly and inevitably - and despite protestations to the contrary from some Victorian clubmen - would be followed by Victorian licensed clubs if given poker machines. They vary immensely from the huge social clubs (football, workers, RSL), which have no real equivalent in Victoria, to the small golf and bowls clubs which are much like their Victorian counterparts. In New South Wales the larger clubs have become public houses aggressively marketing food, liquor and

entertainment at prices subsidised by poker machine revenue. The result is beneficial to those who avail themselves of these facilities but the benefits are obtained at the expense of those who play the machines and is unfair, and extremely damaging, to businesses without poker machine revenue who seek to compete in the same areas of trade. I do not accept the club industry argument that these inequities are outweighed by the clubs' contributions to community welfare. Whilst some clubs have provided significant community benefits, for most, including many of the most wealthy clubs, the record is poor when the enormous profit they derive from poker machines is taken into account.

Chapter 6 looks at the criminal activities associated with poker machines clubs: cheating from the machines by customers, theft from machines by mechanics and staff, theft of profits by club management and secret commissions. The record of the New South Wales club industry in this area is deplorable. Over more than two decades criminality has been rife. The precise extent of criminal activities has not been known because no effort has ever been made to find out. But the opportunities were obvious and it was well known that these opportunities were not neglected. It is likely that that situation has improved over the last four years, at least with respect to direct stealing from the machines, with the introduction of a system of mathematical analysis of poker machine receipts but as recently as this year the New South Wales Department of Finance has noted that "the revenue from clubs' poker machine operations is many millions of dollars

below the level that ought to be obtained". Estimates of the extent of the annual deficiency given to me range from \$14.6million upwards. Not all of this loss may be the result of defalcations but it is likely that dishonesty would account for a major proportion of it. There are 200 New South Wales clubs in relation to which there are known chronic and unexplained deficiencies. Officers of the Poker Machine Task Force, a specialist unit within the New South Wales Police, estimate that there is a recurring problem of dishonesty in half the clubs in that State. This is not, of course, to say that anything like half the individuals concerned in the club industry are dishonest; the guilty ones are probably a small proportion of the whole. However, the estimates do indicate the extent of the problem. This could be significantly reduced in a new environment such as Victoria by the imposition from the beginning of rigorous controls, industry licensing of all those associated with the conduct of poker machines and poker machine establishments and a system of computer monitoring of the operation of the machines, but the certainty of significant criminal activity remains.

Chapter 7 moves on to a consideration of the problems arising from excessive gambling. It deals with the psychological pressures induced by the nature of the poker machine, the extent of addiction and the effect of addiction on individuals and their families. There is a deplorable absence of information on these matters - no worthwhile study has ever been made of the problem. However, the available evidence indicates that almost one hundred and fifty thousand

Victorians would be likely to play the machines to a degree causing to them financial concern. About 40,000 would come to regard themselves as addicts. An indeterminate proportion of these people would be gambling addicts, in the full clinical sense, as a result only of the use of poker machines. Leaving aside addiction, poker machines probably provide a regressive means of raising revenue.

In Chapter 8 reference is made to the current Victorian position in relation to licensed clubs, unlicensed clubs and charitable groups. Particular reference is made to the dependence of many smaller clubs and charitable groups on the game of bingo; a source of income likely to be affected adversely by the introduction of poker machines.

Chapter 9 surveys the hotel industry in Victoria and New South Wales, with a brief note on South Australia. Victorian hotels, as a class, are markedly superior to those of New South Wales: in physical presentation, maintenance and cleanliness and in the standard and range of services - especially food and entertainment - which they offer. The policies and activities of the Liquor Control Commission have much to do with this but a key factor is the greater prosperity of Victorian hotels, enabling licensees to conform to the high standards of the Commission. This prosperity would, for most hotels, be affected adversely by the competition of poker machine licensed clubs.

Chapter 10 discusses the relationship between taxation and gambling and the extent to which it is possible

for poker machines to increase government gambling revenue. The conclusion is that poker machines in licensed clubs or in community clubs are unlikely to provide a net increase in tax; the cost of loss of revenue from more highly taxed forms of gambling (especially Tattsлото and TAB) is too great. The chapter refers to the racing industry and the likely adverse effect on employment in that industry if the introduction of poker machines diminished the extent of gambling on racing.

Part III is headed "The Choice for Victoria". It considers, in Chapter 11, the moral issues posed by the suggested introduction of a new form of gambling. Some have submitted that effect should be given to the view that gambling is wrong in itself but the major churches, Protestant and Catholic, base themselves largely upon the nature of poker machine gambling in arguing that the introduction of this particular form of gambling would be a morally irresponsible action.

Chapters 12 and 13 consider, at some length, the case made by the major proponent for poker machines in this State, the LCAV. An element of that case is said to be the demand for the machines within the club movement and the community generally; a demand extensive enough to cause the Government to establish this Inquiry. It is important to know how that demand came about and to what extent it is an informed demand. It is also important to look at the "campaign" for such insight as it may offer in relation to the character of persons commercially involved in the poker machine industry and the

astuteness of those involved in club management. The material set out in Chapter 12 demonstrates that the campaign which was undertaken by one E.P. Vibert, a poker machine analyst, on behalf of the LCAV but substantially at the expense of Ainsworth was characterised by deceptive "educational" material being distributed widely to politicians and to club members and by deliberate attempts to mislead key political figures. A widely publicised economic study, which predicted a revenue increase of \$81million per year and up to 30,000 new jobs, was based on dishonest methodology, unsupported assumptions and incorrect statistics. The executive of the LCAV is not shown knowingly to have participated in this deception but its naivety and apathy made possible the falsehoods published in its name. The story provides no ground for confidence in the ability of the Victorian club movement to control, more successfully than their New South Wales brethren, the pressures which poker machines would bring upon them.

Chapter 13 turns to the merit of the LCAV case itself. Reasons are advanced for the view that a realistic approach must assume a reproduction in Victoria of the "open door" practices which, despite legal provisions to the contrary, have been adopted in most New South Wales clubs, with consequential under-cutting of competitors. Social benefits are examined, with particular reference to the recreational facilities offered by New South Wales clubs. For some members, who use the facilities provided but who do not spend much money on poker machines, the benefits are significant. The contribution of clubs to the wider community welfare, as noted

already, is patchy and unimpressive. Economic factors are considered, with particular reference to employment opportunities and government revenue and to the "leakage" of expenditure from Victoria to the New South Wales border clubs. These economic factors all appear to be supportive of the LCAV case but they are difficult to quantify and minimal in extent. At predictable rates of transfer of expenditure from other forms of gambling to poker machine gambling it would be necessary to levy a tax at the rate of 30% (as compared with the LCAV proposal of 10%) in order to avoid a net loss of revenue. The chapter then turns to consider the effect of poker machines on clubs themselves. Most would change, not only physically but also in atmosphere and in "club life". Proper controls would require licensing of key club staff, computer monitoring of the poker machines and additional responsibilities for directors. Even then the level of criminal activity would increase. The essential problem is that the conduct of a large scale hard gaming operation is not suitable to be undertaken by part time unqualified persons. It is uncertain to what extent ordinary club members appreciate the likelihood of, or would desire, these consequences. From the community point of view, town planning issues arise in relation to clubs in premises on sites which may now be suitable but which will be unsuitable for major expansion either because of problems of residential amenity or because they are situated on public parklands. Finally, in Chapter 13, reference is made to the economic effects on other businesses of the introduction of poker machines into clubs. As already

indicated, these effects are likely to range from significant to devastating. The hotel industry would, particularly, be affected. I think that it is likely to lose up to 30% of its beer trade and up to one quarter of its total trade. Some restaurants and other businesses would also be adversely affected. The club case is unjustified in principle; it seeks to obtain for a section of the community a privilege at the expense of others. Such benefits as a poker machine club industry is likely to offer the community are heavily outweighed by the disadvantages.

Chapter 14 deals with a narrower proposition: poker machines in only selected community clubs, required to demonstrate an active programme for a wide range of community services and facilities. This variation has advantages over the LCAV proposition. It makes less likely that the proceeds of poker machines would simply be spent on providing entertainments and cheaper services for members and increases the likelihood that a major proportion of funds would go back to the whole community. It provides the opportunity of continuing liaison with local government so bringing a community perspective into decision making and it minimises the town planning problems by providing the prospect of fewer, but more carefully selected, poker machine club sites. The attractions are obvious but, in the end, the proposal has been rejected as impractical. The problems of controlling criminal activities and of economic unfairness would remain. There are difficulties in getting the community clubs started. Without substantial public funds those closely associated with local government could not provide the facilities necessary to

qualify for a poker machine licence. For clubs privately funded it would be difficult to maintain the original concept. Finally, there are a number of issues of principle in respect of the compatability between a club designed to satisfy the recreational needs of the whole community, and especially young people, and the operation of poker machines.

Chapter 15 looks at the proposition referred to above: poker machines in both licensed clubs and hotels. The proposal was put defensively. The hotels would be happy to see no machines. But, the argument runs, if the clubs succeed in their case it would be necessary to have poker machines in hotels as well if the consequence of unfair competition is to be avoided. The hotels acknowledge that it would be unacceptable to allow hoteliers to pocket the proceeds of the machines so they suggest that the total proceeds, less a site rental for each machine, go to the government. The difficulty is that, if unfair competition is to be avoided, the same rule has to apply to the clubs; which destroys the whole reason for the clubs to have them. Furthermore, the effect of this proposal being implemented would be to proliferate the number of outlets to Nevada-like proportions with massive problems of control and the inevitability of a serious increase in criminal activities. The proposition has nothing to commend it.

Chapter 16 looks at a possibility which arose out of a consideration of the Murray valley border clubs. They are really small casinos extracting considerable revenue from

visitors, many of whom are Victorians, who like to make an excursion to a poker machine establishment. The notion is of a limited number of casino-like establishments, say six to ten in number, located in positions sufficiently removed from centres of population to minimize impulse gambling and operated by licensees who would take an agreed return and would pay the rest to the government. It is likely that many people who now visit the border clubs would patronise these establishments instead." An immediate difficulty is the conflict between this proposal and the decision by the government to accept the recommendations of the Board of Inquiry into Casinos. It is likely that, within a short time, licensees would press for the addition of other attractions such as casino table games and that people in other other areas would press for "just one more" establishment - in their particular area. By this route Victoria could end up with a significant number of casinos offering a wide variety of games - up to the limit of what the market would, or could be stimulated to, bear. If, by contrast, strict controls were imposed and maintained, limiting activity to non-stimulated poker machine gambling there are real questions whether there would be a net gain in government revenue and whether such establishments would be economically viable.

In Chapter 17, "Making the Choice", reference is made to the fact that there is no evidence of strong community support for the introduction of poker machines into Victoria. This fact combined with the unsatisfactory nature of the four examined proposals, and the problems of criminal activity and

excessive gambling leads to my conclusion that poker machines ought not to be introduced.

Part IV is written to provide for the possibility that, notwithstanding that recommendation, poker machines are to be introduced. In Chapter 18 there is discussion about the desirable form of the necessary control authority. Chapter 19 deals with the supply of machines. Chapter 20 looks at the controls required for the machines themselves and upon the venues which would install them, the viable system of computer monitoring of machines and of the licensing of personnel.

PART I

PRELIMINARY

CHAPTER ONE
THE COURSE OF THE INQUIRY

APPOINTMENT AND TERMS OF REFERENCE

Appointment

1.01 On 29 March 1983 His Excellency the Governor of Victoria, by and with the advice of the Executive Council, appointed me to be a Board of Inquiry into Poker Machines. The text of the relevant Order in Council is set out in Appendix A.

Terms of Reference

1.02 The terms of reference require me to inquire into, report on and make recommendations upon whether poker machines should be permitted in Victoria and, in particular, the following five matters, namely:-

- i. The likely social effects of any such poker machines including the steps, if any, which should be taken to prevent or mitigate any likely adverse social effects;
- ii. the likely economic effect of any such poker machines including any such effect on the public finances of the State of Victoria;
- iii. the legal and administrative measures, if any, which should be adopted to control and supervise the operations of any poker machines which may be permitted in Victoria;
- iv. the measures, if any, which should be taken to prevent undesirable persons from having a financial or other connection with or being in a position to influence any aspect of the supply, installation, maintenance and operations of any poker machines which may be permitted in Victoria;
- v. whether the operations of any such poker machines should be limited to licensed clubs, hotels or any other particular types of establishments.

THE PROCEEDINGS

Procedure Adopted

1.03 Immediately upon my appointment I issued preliminary directions as to the procedures to be followed. A copy of those directions is set out in Appendix B. I had in mind the desirability, consistently with the fullest possible consideration of the terms of reference and an adequate opportunity for interested persons and organisations to put relevant material before the Board, of clarifying the emergent issues at an early stage and of minimising the length of oral testimony. This was important for two reasons: to ensure that the report would be available by the due date and to reduce the expense of the Inquiry both to the State and to persons granted leave to appear as parties. The situation was the familiar one of a government faced with a controversial matter involving conflicting elements of social policy wishing, on the one hand, to have the benefit of community participation in the decision making process but, on the other, unwilling to be held in thrall to a protracted, costly inquiry which would inhibit any decision for a considerable time. It seemed to me possible to introduce into the Inquiry some elements of the 'pre-trial' techniques now being developed in courts of law. With these matters in mind I stipulated that persons admitted as parties should file with the Secretary of the Board, for the information of the Board and for exchange with other parties, documents at three separate stages, sufficiently spaced to allow the collection of all available material before the commencement of oral evidence:-

- a) a preliminary statement setting out the matters within the Terms of Reference with which the party is concerned, the nature of the submission to be made by the party in respect of each of those matters and the nature of the evidence which the party wished to put before the Board in support of those submissions;
- b) the written evidence in chief of the party, specifying the matter within the Terms of Reference and the submission to which it was related and the person who took responsibility for, and who would be called to verify, each part of the written evidence; and
- c) evidence in reply to the evidence of other parties, specifying the person who takes responsibility for, and who would be called to verify, each part of that evidence.

For the purposes of the directions counsel assisting the Inquiry was treated as a party.

Preliminary Hearings

1.04 Three separate preliminary hearings were held. The first was intended primarily for the purpose of hearing applications by interested persons and organisations for leave to appear as parties and to settle any procedural matters. The second, which took place after the date appointed for filing of parties' preliminary statements, was primarily to deal with any question of the relevance of that material before parties became involved in the expense of the production of evidence. The third, which took place after the date appointed for filing of parties' evidence in chief, was to deal with any questions arising out of that evidence and before reply. The second and third preliminary sittings also provided an opportunity to deal with late applications to appear as a party and to monitor the compliance by the parties with the directions. In the event, with only minor exceptions, the parties adhered scrupulously to

the requirements of the directions. I have no doubt that the procedure adopted has achieved the result I had hoped; demonstrated perhaps by the fact that, notwithstanding the number of the parties and the complexity of the issues, the oral evidence has been able to be limited to thirty days and that it has been possible to complete the Inquiry and to report within a total period of eight months.

Appearances prior to commencement of oral evidence

1.05 Mr. Bernard Bongiorno of counsel appeared as counsel assisting the Board. At the first preliminary hearing, on 8 April 1983, 33 persons, organisations or groups of organisations were granted leave to appear as parties. At the second preliminary hearing on 6 May 1983 two other parties were allowed to be added, they having in anticipation complied with the requirement to file a preliminary statement. At the third preliminary hearing on 24 June 1983 a further party was admitted, it having already filed material setting out the case it sought to make. Some of the parties who were granted leave to appear fell by the wayside - either specifically withdrawing or simply not taking any further part in the Inquiry. Their material, of course, remained as evidence for consideration on its merit. In some other cases parties joined forces with others in the same interest so as to be represented by a single advocate. In the result the number of separate representations, out of the 36 previously granted leave to appear (who are listed in Appendix C), was reduced to 24 by the date of commencement of oral evidence, 1 August 1983. Five of those parties, the Licensed Clubs Association of Victoria,

("the LCAV"), the Australian Hotels Association ("the AHA") the Licensed Freeholders Association of Victoria ("the Licensed Freeholders"), "the Churches" (the Salvation Army, the Anglican Church of Australia (Dioceses of Melbourne, Bendigo, Wangaratta, Ballarat and Gippsland), the Churches of Christ Conference in Victoria and Tasmania, the Victorian Synod of the Uniting Church, the Baptist Union of Victoria, the Victorian Conference of the Seventh Day Adventists, the Presbyterian Church of Victoria and the Lutheran Church of Australia) and Melbourne City Council, wished to participate fully in oral evidence, cross-examining all witnesses. Two others, Mr. D.J. Corless, representing various unlicensed clubs and charitable bodies opposed to the introduction of poker machines, and the Brighton Union Cricket Club and Cape Country Club, unlicensed clubs favouring the introduction of poker machines, indicated that they wished to cross-examine some witnesses. The remainder were content to attend merely to verify and support their own evidence. Fortunately, the parties who elected to participate more fully in the oral evidence spanned the major interests involved. The combined efforts of counsel assisting and those parties ensured that the factual material was very thoroughly examined in the evidence.

Application by Eastern Gaming Operators Limited

1.06 On 1 August 1983 Mr. K.C. Duncan of the firm of Ellison Hewison and Whitehead, solicitor, appeared to foreshadow an application for leave to appear as a party on behalf of Eastern Gaming Operators Limited. I adjourned the application pending the submission by Mr. Duncan of written

material indicating the nature of the case that his client desired to make and the submission of reasons for admitting that material at such a late stage. Material was submitted (Ex.2.00) which included a proposal by the company to set up a 'low key casino and social activity centre' in Victoria. The primary activity in this establishment was to be bingo in various forms but it was proposed to include 500 poker machines, the bulk of the revenue of which would go directly to the Government. I took the view that the proposal necessarily involved the establishment of a casino and that, having regard to the decision of the Government, announced on 24 May 1983, to adopt the recommendation of the Board of Inquiry into Casinos (the Connor Inquiry) that no casino be permitted in Victoria, it was pointless for me to grant leave to the company to advance the merits of the proposal before me. Accordingly on 8 August 1983 I refused the application for leave to appear.

Application by Mr. E.P. Vibert

1.07 By letter dated 7 July 1983 Mr. Edward P. Vibert, the executive director of Australian Club Development Association ("ACDA"), sought leave to be admitted as a party to the Inquiry. He indicated that he had at all times been aware of the procedural directions under which the Inquiry was proceeding but argued that there were exceptional circumstances in that his activities had been commented upon in certain of the written material submitted to the Inquiry by some other people. Counsel assisting informed Mr. Vibert that he should make his application at the next sitting of the Board on 1 August and, in the meantime, that he should submit his written

evidence to the Secretary. Mr. Vibert did not do so, apparently by reason of receiving legal advice. He did, however, appear before the Board on 8 August to make an application for leave to appear. I deferred the application pending lodgment by him of the evidence which he proposed to place before the Board. This was done on 11 August. On 15 August, after affording to the other parties an opportunity to address on the question, I granted leave to Mr. Vibert to appear on a limited basis only, namely to enable him to deal with two matters: the relationship between himself and/or ACDA with the LCAV, including responsibility for the campaign to obtain poker machines in Victoria, and the relationship between Ainsworth Nominees (Ainsworth) and the LCAV either directly or indirectly through Mr. Vibert or the ACDA. I also permitted to be tendered that part of Mr. Vibert's evidence which dealt with his proposals for controls on poker machines and his qualifications to express expert views on those matters. The material placed before me by Mr. Vibert, much of which fell well outside any reading of the terms of reference, which did not go to any of the above matters, I excluded from evidence.

Racing Industry

1.08 The Terms of Reference of the Inquiry had been drawn to the attention of the leading racing clubs and the Totalizator Agency Board in a letter from counsel assisting dated 10 May 1983. However, despite follow up telephone contact by counsel assisting at that stage no application was made by any of those clubs or the TAB for leave to appear.

On 16 August 1983 counsel assisting called evidence from Mr. Peter Bennett, an economist advising the racing industry, as to the effect on racing gambling revenues of the introduction of poker machines. I asked Mr. Bennett for certain further information and, apparently as a result of that request, an application for leave to appear as a party was made on 12 September 1983 by Mr. J. Hedigan QC and Dr. P. Buchanan on behalf of the Victorian Racing Club, the Victorian Amateur Turf Club, the Moonee Valley Racing Club, the Totalizator Agency Board, the Harness Racing Board of Victoria and the Greyhound Racing Control Board ("the racing industry"). I granted leave, limited to allowing the industry to put before me evidence on the matters about which I had sought further information from Mr. Bennett, viz. the effect on the racing industry, and employment within that industry, of any reduction in racing gambling revenues and the effect upon State taxation receipts of any transfer of gambling expenditure from racing to poker machines. Mr. Hedigan did indicate that the TAB was "thinking about" the possibility of putting a case for poker machines in TAB agencies but I indicated that, in fairness to the other parties who had complied with the Board's directives, I would not be prepared to allow evidence in support of such a proposal to be put at that stage; the more especially because even then (nearly six months after the Inquiry had been announced) the proposal had not even been formulated.

INSPECTIONS AND EVIDENCE

Inspections

1.09 At the request, and with the active co-operation, of some of the parties (the LCAV, the hotel interests and the Hospitality Industry Association) the Board undertook a series of inspections of selected licensed clubs, hotels, restaurants and reception centres in Victoria, New South Wales and the Australian Capital Territory. The purpose was to compare the nature, standards and facilities of comparable premises in these various jurisdictions. An attempt was made to obtain comparability of locations. Thus in both Melbourne and Sydney the inspection tour included premises which ranged from near city to outer suburban centres. Geelong was compared to Wollongong (NSW), with which it shares many characteristics Bendigo was set against Dubbo (NSW), both being major rural centres. The tourist centres of Ballarat and Lakes Entrance were visited. An inspection was made of three clubs in Merimbula (NSW), said by some to be draining revenue from the Gippsland resorts. I toured the Murray Valley towns from Mildura in the west to Albury/Wodonga in the east in order to understand the vexed situation which has given rise to the 'corridor' proposal discussed at para.12.15 below. The board also spent some time in Canberra, visiting clubs which have installed poker machines since legalisation within the Australian Capital Territory in 1976. Those clubs operate under more restrictive conditions with respect to poker machines than do their NSW counterparts. The Sydney tour included a three hour inspection of the Ainsworth poker machine factory. This detailed inspection greatly assisted my

understanding of modern poker machines. Subsequently, at the request of counsel for the Melbourne City Council, I inspected various recreation and leisure centres in Melbourne and Victorian country towns. The proposition was that these centres already provided Victorians with most of the recreational facilities said to be provided by the New South Wales licensed clubs. For comparison purposes I visited six Sydney recreation centres. I also spent a day in Adelaide inspecting hotels. This was done to assist me in forming an opinion as to the relative importance of the two major dissimilarities between hotels in Victoria and in New South Wales - the existence of the Victorian Liquor Control Commission, which seems to have no real equivalent elsewhere, and the freedom of Victorian hotels from the competition of poker machine clubs, a freedom shared by South Australian hotels.

Interviews on inspections

1.10 I extended a general invitation to all parties to be represented on the inspections. Not all of them, of course, were able to do so but the more active parties were represented during most of the time. The LCAV and the hotel interests were present at almost all inspections, the Churches at many. The procedure usually adopted was for the inspection party to be shown through the premises by a person in authority and for members of the party to then address questions to that person. The questions and answers were recorded, transcribed and subsequently tendered as exhibits to the Inquiry. The interviews provided, in a quick and inexpensive manner, a wealth of information which has been of

great benefit to me in reaching my conclusions. I record my appreciation to the persons who consented to be interviewed during these inspections and to the parties, especially the LCAV and the AHA, for their assistance in arranging such a comprehensive and useful inspection programme. In all, 162 premises were visited. Full details are contained in Appendix D.

Oral evidence

1.11 The oral evidence commenced on 1 August 1983. It continued, with some breaks for inspections and other purposes, during four days each week until completion on 7 October 1983. The Board sat a six hour day - placing some burden on advocates and court reporters alike. Oral evidence was given by 82 witnesses. Some people gave evidence in the course of their business or employment but many were in the position of assisting the Board in their own time. Almost all the witnesses had gone to considerable trouble to prepare their material. Most gave their evidence carefully, thoughtfully and honestly. The community has cause to be grateful that so many people, having a wide diversity of interests and backgrounds, are prepared to come forward at personal inconvenience to assist the making by government of difficult decisions on important social issues such as those posed for this Inquiry. Both before and during oral evidence well over 1,000 documents were tendered as exhibits. In view of its length I have not appended a list of those exhibits but any person wishing to pursue further the matters discussed herein would be likely

to benefit from access to them.

Summonses

1.12 S.14 of the Evidence Act 1958 empowers a Board of Inquiry to summon witnesses and compel the production of documents. The operation of that section is confined to the State of Victoria with the result that I have had no power to compel the attendance of any person as a witness or the production of any document except in relation to persons able to be served with a summons within the State. For many inquiries under that Act, this limitation may not matter. In the present case, which has involved lengthy and detailed examination of events alleged to have occurred in New South Wales, the limitation has been significant. There are a number of areas in relation to which more precise findings would have been possible had it been possible to serve people outside Victoria with a summons to attend to give evidence or to produce documents. I understand that the Australian Law Reform Commission is currently reviewing the operation of the (Commonwealth) Service and Execution of Process 1903. I express the hope that some means will be formed to ensure that future inquiries constituted under a State Act may be enabled, in proper cases, compulsorily to procure evidence from other parts of Australia.

Submissions

1.13 Towards the end of the oral evidence I intimated to the parties that, in the interests of saving time and expense, I desired the lodgment of written submissions on the issues ultimately falling for decision. At the same

time I thought it necessary to allow some opportunity for the parties to speak to those submissions, so that they might elaborate their own submissions and reply to their opponents and so that I might crystallize my views by questions and discussion. In order to focus the submissions more sharply I decided to take the unusual course of indicating the preliminary views I had formed on some factual issues and as to the options, out of the many theoretical possibilities, which merited discussion in the report. Appendix E is a copy of my directions regarding submissions. In the event those parties which had been most heavily involved in the Inquiry did lodge written submissions dealing with the matters I mentioned. Those submissions, and the oral elaboration which occurred over the period 17-19 October, have been of great assistance to me in formulating my recommendations and in compiling this report.

THE INFORMATION AVAILABLE

Limits of the Inquiry

1.14 The questions raised by the Terms of Reference, and in the material submitted by the parties and by interested members of the public, are extremely diverse. The evidence has ranged from moral theology via ethical issues, the psychology of gambling, the effect on individuals and their families of excessive gambling, the nature and history of the club movement in two States, the recreational needs and opportunities of the community, town planning problems, the effects of poker machines on employment and tax revenues, the effect of poker machine

clubs on the fortunes of the hotel, restaurant, racing and other industries to the criminal activities associated with clubs and poker machines and the role of modern computer technology in minimising crime and safeguarding the revenue. In area after area I found that even the experts had no definitive answers; the requisite research had not been done. In some cases this was surprising. Despite the facts that poker machines have been legal in New South Wales for 27 years, that they now yield registered clubs over \$660 million each year and contribute over \$150 million a year to the coffers of the New South Wales government virtually no research has been undertaken into their social and economic effects. Although it was common ground amongst all parties that any Victorian poker machines should be on line to a central government controlled computer, there was no New South Wales model or proposal to which one could look for guidance on the cost or security of such a system. I found that for me to report in a completely comprehensive fashion upon all of the issues it would have been necessary specially to commission a series of research projects, in a number of separate disciplines, extending perhaps over a period of years. Desirable though it would be to have full information - and for reasons extending beyond this report - this was not a practical course. Faced with the need to make a decision, the Victorian government had not unreasonably directed a prompt report, plainly intending that I do the best I could on the information available. This I have done. There are findings which I have not been able to quantify with the precision I should have wished.

In a few cases, indeed, I have had to be content with impressionistic material, albeit from experts. However, it is not always necessary to cite numbers to be confident as to the accuracy of particular factual findings or as to the desirability of particular recommendations. Whilst I should have welcomed the extra precision which would have resulted from detailed research projects I doubt that such research would have affected the tenor of the views I have formed. The wood is clear enough, even though one cannot count all of the trees.

1.15 It will be apparent that most of the evidence I have considered has come from within Australia. An exhaustive study of slot (poker) machines in overseas countries might have turned up some matters of relevance but New South Wales has had an extensive poker machine industry for over 27 years. Each of the major parties to the Inquiry based their contentions to a major extent upon this model. In these circumstances, I did not consider it necessary to undertake any overseas investigations for the purpose of my inquiry and report.

ACKNOWLEDGEMENTS

Appreciation

1.16 The progress of the Inquiry was facilitated by many people. The Connor Inquiry had assembled much background material relating to gambling and its place in the Victorian economy. I have drawn heavily upon the perceptive comments and lucid analysis of that material in Mr. Connor's report. Counsel assisting that Inquiry, Mr. Leo Hart Q.C.

and Mr. Hartley Hansen, saved us a lot of time by guiding us through the original documents. The media gave considerable publicity to the establishment of the Inquiry into Poker Machines and (particularly "The Age") to the evidence. This had the desirable result of eliciting comment from many members of the public and community groups. A list of such persons and organisations, other than the parties, is contained in Appendix F. The persons who provided written and/or oral evidence are listed in Appendix G. Although presenting their cases with proper vigour and despite the pressure of a demanding timetable, the representatives of the parties co-operated magnificently with me and with counsel assisting. Without their active assistance the Inquiry could not have been completed in a satisfactory manner so soon. Mr. Bernard Bongiorno, counsel assisting, quickly achieved a mastery of the issues and of the evidence. His cross-examination of witnesses, advice to me and assistance in the preparation of this report have been of immense value. He was instructed at various times by Messrs. Victor Dyer, Peter O'Connell and Robert Bardsley of the office of the Crown Solicitor. The Secretary to the Inquiry, Mr. J.M. O'Shaughnessy, organised all participants, the written material and all logistical arrangements with efficiency and good humour. Mrs. Nancy Cashmere provided great service at the word processor. She has dealt with all correspondence, lists of exhibits, transcripts of inspection interviews, drafts of this report and much else. The presentation of this report only five weeks after the completion of the formal sittings is striking evidence of

her competence and dedication. Miss Denise Morten coped ably with the seemingly simultaneous demands of reception, the preparation of an index, the copying of documents and the supply of endless cups of tea. The Government court reporters provided an accurate and prompt daily transcript of the proceedings. Mr. David Vivash, a computer consultant, was good enough to consider the material placed before the Board on the feasibility of an on-line system linking all poker machines to a central computer and to guide me through that maze. The staff of the ANZ Banking Group Limited Data Processing Department at South Yarra kindly provided a demonstration of on-line computer technology and clarified many technical questions. Officers of the Victoria Police supplied much valuable information and promptly responded to many requests for assistance and, with the co-operation of members of the New South Wales and South Australian Police assisted with the inspection tours, including rescuing Mr. Bongiorno and myself when a minor accident threatened to disrupt the Murray Valley tour. The Chairman and staff of the Liquor Control Commission provided valuable information on the Victorian liquor industry. Although prevented by their instructions from attending the Inquiry as witnesses, officers of the New South Wales Department of Finance and the New South Wales Police Task Force on Poker Machines readily made themselves available for informal consultation and, personally, were extremely helpful. The staff of the Victorian Dairy Industry Authority, our neighbour at Hawthorn, generously made available to the Board their telex facilities and put

themselves to inconvenience in accommodating our needs.

I acknowledge my indebtedness to all of these people and thank them for their support and assistance. Finally, on a personal note, the Inquiry has meant that both Mr. Bongiorno and I have spent many nights away from home. We would each like to thank our families for their understanding and forbearance.

PART II

SETTING THE SCENE

CHAPTER TWO

WHAT IS A POKER MACHINE?

THE INVENTION AND SPREAD OF THE SLOT (POKER) MACHINE

Introduction

2.01 Many Victorians have seen and played poker machines in New South Wales or Australian Capital Territory clubs or elsewhere. For the benefit of those who have not, and for people who might be interested in the history of these machines, I shall say something about poker machines, how they operate, their development up to the present day and what I perceive to be their probable future. There is also much myth, folklore and public misconception about poker machines which ought to be corrected.

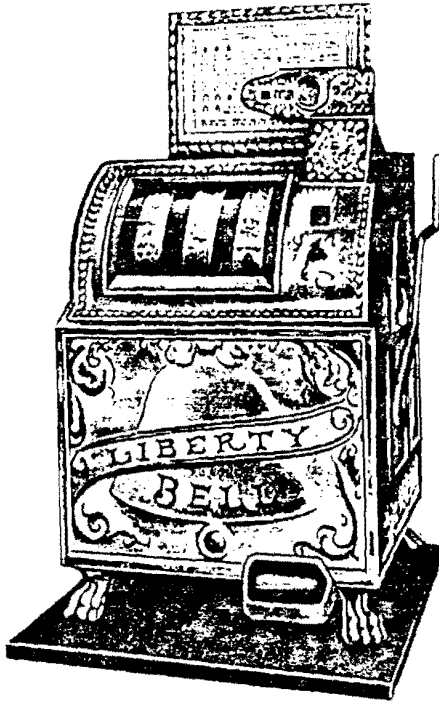
The traditional poker machine

2.02 The "poker" machine was invented by Charles Fey, a Californian mechanic, in 1887 according to Scarne [1] or 1895 according to Wykes [2] and Jones [3]. Called "The Liberty Bell" it consisted of three reels or drums each having ten symbols on its circumference (as opposed to twenty or more on a modern machine). It was operated by a 5 cent coin which, when placed in a slot in the machine, enabled the player to pull the handle thereby causing the reels to rotate. If a winning combination was showing in the window when the reels stopped the machine paid out a predetermined number of coins. Initially the symbols featured bells, horseshoes and playing cards. Later fruit and numbers became popular. Fey's invention was a totally mechanical machine. It operated by means of levers and gears activated by the pulling of its

handle. The "payout" was made automatically into a tray at the base of the machine. There was no "jackpot" as that term is currently understood.

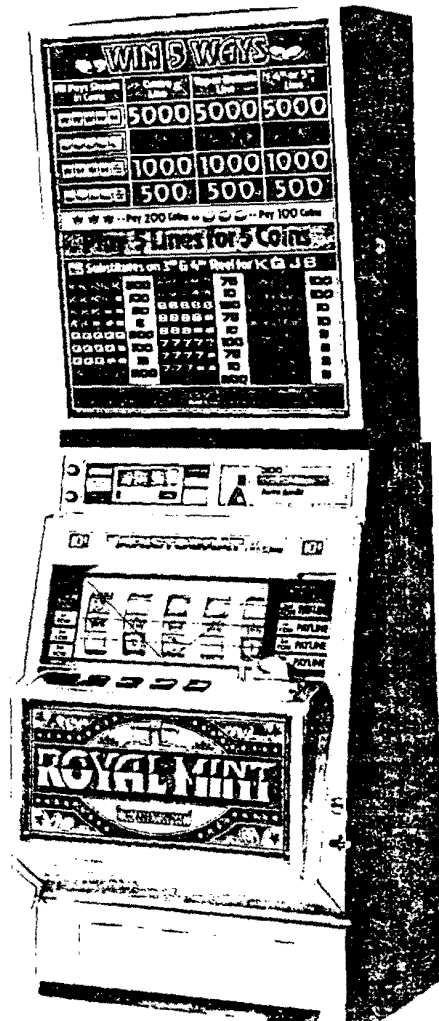
Names of the machines

2.03 As the use of Fey's slot machine became widespread it would appear that various versions of it became known under different names. Those machines featuring oranges and cherries and other fruit as symbols became known as "fruit machines", those offering large jackpots became "jackpot machines" and those which had playing card faces were called "poker machines". Today it seems that outside Australia such machines are almost universally called "slot machines" or simply "slots", although in the United Kingdom the terms "fruit machine" and "jackpot machine" are used. It appears that many of the early Australian machines were principally of the "fruit" variety. The odium which attached to these machines following a Royal Commission in 1932 (referred to in Chapter 3) led a New South Wales cabinet minister to make the absurd statement that whilst "fruit machines" were illegal in registered clubs, "poker machines" were not. It is probable that the now accepted term for slot machines in Australia, namely "poker machines", was first used at or about that time. The legalisation of such machines in 1956 in New South Wales under the name "poker machines" began to be applied to all slot machines about that time. When they were legalised in 1956 in New South Wales under the name "poker machines" the term became enshrined in legislation as the Australian name for slot machines. As will be seen below the term "poker machine", whilst being able to be applied with just a little stretching



(Left)
A totally mechanical
slot machine (c.1900)

(Right)
A modern five-line
multi-coin microprocessor
slot machine.



of the language to machines currently used in Australia, will probably be inappropriate for the new generation of video gaming machines to which I shall be referring.

The spread of the machines

2.04 Initially Fey produced his own machines and placed them in local gambling halls, bars and saloons on a rental basis whereby he retained ownership of them and divided the profit fifty-fifty with the site owner. They were immediately successful and by 1907 Fey was unable to meet the demand for his machines and they began to be copied. Scarne asserts that by 1910 slot machines could be found in every city and hamlet in the United States of America. It would seem that they (or some similar device) had reached Victoria by the same year as the Victorian Supreme Court that year declared three machines described as a "poker machine" a "flag machine" and a "star machine" to be illegal gambling devices [4] within the meaning of the then legislation in this State. In 1903 slot machines similar to poker machines had already been held to be illegal gambling devices in England [5] and in breach of the then English statute. The position was reaffirmed in 1916 [6] and the same view of similar machines was taken by the New South Wales Supreme Court in 1921. [7].

HOW DO POKER MACHINES WORK?

The rules

2.05 To explain the operation of a simple three-reel poker machine it is convenient to examine a machine called a "Gold Award" machine found in New South Wales. This machine has twenty symbols on each reel sequenced as follows:-

	<u>Reel 1</u>	<u>Reel 2</u>	<u>Reel 3</u>
1.	ACE	ACE	ACE
2.	QUEEN	KING	9
3.	10	10	QUEEN
4.	9	JACK	JACK
5.	JACK	10	KING
6.	10	QUEEN	9
7.	KING	JACK	JACK
8.	QUEEN	10	9
9.	10	KING	QUEEN
10.	GOLD AWARD	10	GOLD AWARD
11.	JACK	JACK	JACK
12.	10	10	9
13.	10	QUEEN	QUEEN
14.	KING	10	JACK
15.	10	GOLD AWARD	9
16.	9	KING	QUEEN
17.	JACK	JACK	9
18.	10	QUEEN	JACK
19.	10	JACK	QUEEN
20.	QUEEN	10	JACK

The sequence in which the symbols appear has no relevance to the operation of the machine. What does matter is the number of times a particular symbol appears on each reel. For the Gold Award this distribution is as follows:-

	<u>Reel 1</u>	<u>Reel 2</u>	<u>Reel 3</u>
GOLD AWARD (GA)	1	1	1
ACE (A)	1	1	1
KING (K)	2	3	1
QUEEN (Q)	3	3	5
JACK (J)	3	5	6
TEN (10)	8	7	0
NINE (9)	2	0	6
	<hr/>	<hr/>	<hr/>
	20	20	20

Players receive prizes for certain pre-defined combinations of symbols: the paying combinations and associated prizes (shown in coin number) of the Gold Award are:-

<u>Reel 1</u>	<u>Reel 2</u>	<u>Reel 3</u>	<u>Prize</u>
GA	GA	GA	220
A	A	A	100
K	K	K	18
K	K	A	18
Q	Q	Q	14
Q	Q	A	14
J	J	J	10
J	J	J	10
10	10	9	5
10	10	K	5
10	10	(Any)*	3

In addition to these there is a prize paid (20 coins) for what is termed "scattered Aces". This simply means that if Aces appear in any position visible to players on each of the three reels simultaneously then a prize is payable.

The House Edge

2.06 The machine has a total of 8,000 separate combinations (20 x 20 x 20) but some of these separate combinations will be similar because of the repetition of symbols on each reel. As the selection of any particular combination is truly random the calculation of the theoretical characteristics of the machine can be calculated using the symbol distribution and the prize schedule.

<u>Win Combination</u>	<u>Reels</u>	<u>Chance of</u>	<u>Average coins</u>
<u>1 2 3</u>	<u>appearing</u>	<u>Prize</u>	<u>Returned every</u>
			<u>8,000 plays</u>
GA.GA.GA	1 x 1 x 1 =	1 x 220 =	220
A.A.A	1 x 1 x 1 =	1 x 100 =	100
K.K.K.	2 x 3 x 1 =	6 x 18 =	108
K.K.A.	2 x 3 x 1 =	6 x 18 =	108
Q.Q.Q.	3 x 3 x 5 =	45 x 14 =	630
Q.Q.A.	3 x 3 x 1 =	9 x 14 =	126
J.J.J.	3 x 5 x 6 =	90 x 10 =	900
J.J.A.	3 x 5 x 1 =	15 x 10 =	150
10.10.9.	8 x 7 x 6 =	336 x 5 =	1680
10.10.K.	8 x 7 x 1 =	56 x 5 =	280
10.10.-*	8 x 7 x 13 =	728 x 3 =	2184
3xScattered	3 x 3 x 3 =	27 x 20 =	540
Aces **			
	<u>1320</u>		<u>7026</u>

NOTE:

- * This is calculated with 13 not 20 on the third reel position because if one gets a "K" or "9" symbol a different prize is paid.
- ** There is one "A" per reel but it is able to occur in three different visible positions on each reel.

The return to player is calculated as:-

$$\frac{7026}{8000} \times \frac{100}{1} = 87.825\%$$

All that this means is that as a matter of probability over an extended period this machine will retain just under 13 cents for every dollar inserted in it. It follows that anyone who played this machine (or indeed any other poker machine) over an extended period would inevitably lose to the machine. He or she is engaged in the exercise of recycling a stake with an average loss of 13% per cycle. This general proposition is true of all poker machines even where the return to the player, expressed as a percentage, is higher than the example I have used. It should be noted that the "house edge", as the 13% above referred to is called in casino parlance, is many times less favourable to the player than other casino games such as French Roulette (about 2 1/2%), Blackjack (about 6%), Baccarat (about 2%) or Craps (about 1 1/2%). Expressed another way a gambler will normally lose much more quickly playing poker machines than he would playing most other casino games.

Games of chance

2.07 It is important to realise that the poker machines which I have been discussing involve no element of skill whatsoever on the part of the player. They are games of pure chance. For a three-reel machine with 20 symbols on each reel

and having only one jackpot combination the chance of winning the jackpot on any particular occasion is 8,000 to 1 against. For a five-reel machine having 22 symbols per reel with one jackpot combination the chance of winning such jackpot on any particular occasion is 5,153,632 to 1 against (i.e. $22 \times 22 \times 22 \times 22 \times 22$ to 1 against). With two jackpot combinations the odds would be 2,576,816 to 1 against. The odds are identical on every pull of the handle. There is no more reason to expect a jackpot from a machine which has not paid one for some time than to expect one from a machine that paid a jackpot at its last pull. The common belief to the contrary, manifested by players "reserving" machines during short absences is part of the considerable myth and nonsense surrounding these machines.

The importance of carding

2.08 A close examination of the tables set out above will reveal that the percentage return to a player is a function of the "carding" of the machine - or the number of times a particular symbol appears on any reel. One of the most commonly held misconceptions about poker machines is that a club can alter the return to player percentage on a particular machine by making a simple adjustment to it. In fact to make such an alteration requires changing reel symbols - and changing them with a degree of accuracy and in ways beyond most club officials. On modern microprocessor machines such a change would require a re-programming of the machine's software. Further, because of the concept of "house hold" referred to below there is probably no real advantage to a

club in altering the playing characteristics of its machines, even if such alteration was easy to achieve or permitted by the regulatory authority.

TERMINOLOGY: "HOUSE HOLD", "TURNOVER" AND "EXPENDITURE"

The house hold

2.09 Another important characteristic of poker machines is their so-called "house hold" or "hold percentage" as against other casino games. Put simply the "house hold" or "hold percentage" of a game is the percentage of all the money wagered on that game the "house" expects to retain or win. Put another way if a player purchases \$100 worth of chips to play a particular casino game and ultimately cashes \$80 worth of those chips before leaving the casino the house is said to have held \$20 or 20%. In the case of poker machines where, in Australia at least, tokens or chips are not used, the percentage hold can be defined as that percentage of the amount a player begins to play with which is ultimately retained by the house (or machine). Whilst there is no mathematical formula for calculating the percentage hold for any particular game - it being dependent largely upon the propensity of players to continue playing after losing - Scarne has estimated that Blackjack has a percentage hold of about 26%, Roulette about 30% and Baccarat about 10%. Games where the house edge is 20% or more are said to have a percentage hold of close to 80%.

[8] No research has apparently been done in relation to poker-machines but Mr. Keiran Daley, the product research manager of the Ainsworth Organisation believes it would not be unreasonable to estimate the house hold for poker machines in New

South Wales clubs at something approaching 100%. (T.146). The reason is the extreme rapidity of the recycling of the stake. If this estimate is correct, and it is consistent with my own observation that very few poker machine players seem to exchange coin for notes at club change booths, it emphasises the inherent capacity of poker machines to take money from players more efficiently relative to stake than probably any other form of gambling.

"Turnover", "Expenditure"

2.10 Allied to the question of what return to a player a machine provides is the somewhat vexed question of whether the term "turnover" has any meaning when applied to poker machine gambling. In the course of this Inquiry it has become clear to me that many people misunderstand the concept of "turnover" when applied to slot machine operation. An example will illustrate the problem. A player begins playing a 10 cent "Gold Award" machine with \$10 (100 coins). After playing until he has no money left there is no doubt that he has lost \$10. However, in the course of playing the machine with his original \$10 he will have received, on average, sufficient winnings to enable him to play 721 games on top of the 100 games he would be able to play with his original \$10. It could be said that the "turnover" in the case of this particular player on this particular machine is \$82.10. Can it be said however that the player has lost \$82.10? I believe it is more realistic to avoid the use of a term such as "turnover" when dealing with gambling in general and poker machines in particular. It is more

satisfactory to speak in terms of what the machine or house "wins" and what the player "loses". This is the "nett expenditure". The total amount put through the machine can be called, as in casino parlance, the "handle". Arguments have been put, based upon what I consider to be a misuse of the "turnover" concept illustrated above, to suggest that the amounts lost by players on poker machines is far greater than it actually is. (e.g. by Retail Traders Association of Victoria - Ex.2G).

TECHNOLOGY IMPROVEMENTS

The early cheats

2.11 Not surprisingly, since shortly after the invention of slot machines people have attempted to increase their chances of winning by cheating. Many of the technological improvements to slot machines since their invention have been brought about by manufacturers attempting to stay one step ahead of the cheats. An early method (used with later adaptations almost up to the present day) involved "walking the reels". By deft manipulation of the handle it is said that the reels on some machines could be "walked" into winning combinations. Another system involved "reel timing". This method involved the cheat in determining the exact number of seconds that each reel would spin before coming to rest. Then, having memorised the sequence of all symbols on all the reels on the machine he would set the reels spinning at a particular second after insertion of the coin so that they came to rest at predetermined positions. Pamphlets describing the method were openly sold in the United States until a technological change eliminated this particular method of earning easy money. [9]

Electro-mechanical machines

2.12 It would appear that the mechanical poker machine was not superseded until well into the 1960's and its successor the electro-mechanical machine did not become general in New South Wales until well into the 1970's. Indeed there are still mechanical machines in use in some clubs in New South Wales with the lack of security which is a feature of such machines. Electro-mechanical machines provided some further protection against interference and were said to be able to be operated so as to perform accurately with respect to the amount to be returned to the player. In the electro-mechanical machine although the energy to spin the reels still came from the mechanical action of the player in pulling the handle, the coin payout mechanism operated electrically rather than totally mechanically as it did in the earlier machines. It is suggested that greater accuracy was thereby achieved. As will be seen these machines have now been superseded but large numbers of them can still be seen in clubs in New South Wales and the Australian Capital Territory.

Microprocessor machines

2.13 Despite the use of electric motors and solenoids in electro-mechanical machines Fey's basic concept of the slot machine did not change until, in the late 1970's, the microprocessor machine was developed. This machine used a modern microprocessor or mini-computer either to determine the outcome of any game played on the machine or to read the result of a game on the machine and make a payout accordingly. Different manufacturers use microprocessors in different ways. The

overall effect however, it is said, is to reduce further the opportunity for interference with the proper operation of the machine and to prevent theft and dishonesty.

The Pacific microprocessor

2.14 The Pacific Poker Machine Company, one of the suppliers to the Australian market, currently markets a series of slot machines which use a microprocessor as a random number generator to determine, upon the operation of the processor, the position in which the reels on the machine will stop. Electric motors, directed by the microprocessor, then cause the reels to spin and stop in the predetermined position. It is said that this system eliminates the dishonest benefit which might be gained from mechanical manipulation of the reels. Unless the microprocessor has selected a winning combination manual selection of a winning combination will not avail the player anything. The disadvantage, it is said, is that interference with the machine's programme in one way or another could effectively produce a non-detectible cheating system.

The Ainsworth microprocessor

2.15 The Ainsworth company, another Australian supplier, currently markets a range of microprocessor machines which work, to some extent, the reverse way to the Pacific machines. In these machines the reels determine their own stopping position at random. The microprocessor then reads the position of the reels by means of a photo-optic device to determine whether a paying combination has been obtained or not. If it has, the microprocessor directs the paying mechanism to pay or

credit the player appropriately. It is said that this system has security advantages in that, as the programme does no more than read the position of the reels, interference with it will not enable the player to obtain an unfair advantage. I understand that Jubilee and Bally machines, the other two principal brands on the Australian market, are similar in operation to the Ainsworth models.

The significance of the development of microprocessors

2.16 The use of microcomputers in poker machine technology means that it is currently possible to monitor machine operations far more carefully than they could be monitored in the past. Although it appears not to be done anywhere in New South Wales (and is not yet required by any regulatory body in Australia at all) it is quite possible with current technology totally to monitor the operation of slot machines using computers so as constantly to determine whether such machines are running as they ought to run, whether they are paying as they ought to pay and whether they are being interfered with in any way at all. This is not to say that the computerised monitoring of poker machines obviates the dishonesty problem. However, it would seem to require the cheat to be far more sophisticated and resourceful than he might have needed to be on an old mechanical or electro-mechanical unmonitored machine.

MULTI-COIN MACHINES

Multi line machines

2.17 Although the traditional poker machine operated upon the insertion of one coin of whatever denomination, for some

time machines have been available whereby a player could insert more than one coin and affect the result of his game in one of two ways. These machines are known as "multi-line" and "multiplier" machines respectively. In a "multi-line" machine if a player inserts one coin the machine operates as a single coin poker machine and the game is played on the centre line of the viewing window as usual. The insertion of a second coin before operating the machine enables the player to play two lines at once. The second coin enables him to double the chance of a win on that spin of the reels; it does not affect the amount of a payout. In Australia up to five coins can be inserted thus enabling the player to play five different lines on one push of the button. The lines are the three horizontal lines of the machine together with two lines, each of a V shape, running from the top left to the top right of the viewing window through the bottom of the centre reel and from the bottom left to the bottom right of the viewing window through the top of the centre reel. When a player plays a "multi-line" machine with five coins he is playing the equivalent of five machines at once or playing one machine five times. His stake is 50 cents or \$1 (depending upon whether he is playing a 10 cent or 20 cent machine) but he has five different ways of winning a prize or prizes on the machine which he is playing.

Multipliers

2.18 A "multiplier" machine enables a player to multiply his stake and thereby multiply his payout in the event of a win. The second and subsequent coins do not increase the

chance of a win. In Australia these machines take up to five coins so that up to \$1 can be wagered on any one game. The game itself is played, as usual, across the centre line of the viewing window. Both "multi-line" and "multiplier" machines are played by a player pressing buttons rather than operating a handle. Multiple coin machines are not permitted in the Australian Capital Territory.

A difference in kind

2.19 Multi-coin machines in general, and multiplier machines in particular, seem to me to add a new dimension to poker machine playing. They enable up to \$1 to be wagered on the pressing of a button. As modern poker machines, including multi-coin machines, display a player's winnings on a credit meter rather than pay out such winnings in cash after each game the person playing such a machine can "put through" a very large amount of money in a very short time. He need not physically handle his winnings. On the evening of 26 July 1983 in the course of the Board's inspections, Mr. Bongiorno and I played a "multi-line" and a "multiplier" machine at the Shellharbour Workers' Club. We lost \$10 on a 10 cent "multi-line" machine in just over ten minutes, and \$10 on a 20 cent "multiplier" machine in just over five minutes. We noted at the time (Ex.89J) that we were not playing either machine at "maximum speed" and that in the course of playing the machines we recorded some small wins. The potential for a person to lose very large sums of money in this type of machine is great. Dr. Caldwell agreed that an average pay packet could be lost in one evening on such a machine. (T.398) [10]. It might be said that this sort of poker machine differs not only in degree

but also in kind from a single play machine. Even if it can be argued that the playing of a single coin machine, particularly of low denomination, is not gambling but no more than inexpensive recreation (see for example Caldwell T.278) I have no doubt that multi-coin machines and especially multiplier machines are hard gambling machines designed to entice people to wager (and lose) large sums of money quickly. If one needed proof of this one need look no further than the advertisements of the poker machine manufacturers themselves for such machines which are promoted as being able to attract the "gambler's dollar" back into the club. [11] (Ex.77 and Clarebrough T.1494).

PLAYER OPTIONS AND VIDEO MACHINES

"Hold and draw" machines

2.20 As well as slot machines which operate in the way described there have been developed machines which enable a player to inject some element of decision into his playing. Commonly called "hold and draw" machines these machines enable a player to retain certain symbols on the pay line at the end of a game whilst he plays the following game. In this way it is supposed that he might be able to more easily obtain a winning combination. As Mr. Keiran Daley, to whom reference has already been made, says in his statement (Ex.C9, p.22) such machines do not have predictable playing characteristics as the "skill" of the player injects into the playing equation a variable which cannot be either monitored or controlled. This variability makes it extremely difficult, if not impossible, to be in any way confident, upon looking at the measurable results

of the machine, that the machine is playing "fairly" or in accordance with any objectively determined criteria. It is for this reason that, although such machines are permitted in New South Wales, they are not permitted in the Australian Capital Territory. It might be noted here that the so-called "draw poker" video machines discussed below have similar operating characteristics and similar difficulties of monitoring as the hold and draw machines referred to.

The future - video games

2.21 Notwithstanding the introduction of computer technology and more modern cabinet design and artwork the common characteristic between Fey's original slot machine and a modern poker machine as found in Australia is the existence of the spinning reels which decide or appear to decide the outcome of a game. There is some evidence to suggest that traditional machine players are losing interest in the traditional reel type poker machine. This may be because, as Mr. Vibert suggests, the stakes permitted in New South Wales and the ACT are too low (T.1613 et seq) or as the Chief Executive of the Gaming and Liquor Authority of the Australian Capital Territory, Mr. John Matthews, says (T.743 et seq.) increasing community familiarity with computers and games played with computers and video display units is leading people generally and young people in particular to a position where they might regard the relative unsophistication of spinning reels as being not worthy of leisure time and money. It is clear from a technological point of view that microprocessor technology is readily available to design a multiplicity of slot machine

games using video screens instead of spinning reels. Indeed there are, already available, "poker machines" which, instead of using spinning mechanical reels, display simulated spinning reels on a colour video screen. (see Ex.78A). They are common in the United States of America. It is a short step from there to machines which play various other games upon the insertion of a coin either with or without the subsequent manipulation of a handle. A perusal of the extensive material from overseas manufacturers collected in Exhibit 78 and of the copies of the US magazine "Public Gaming" collected in Exhibit 79 reveals that the United States slot machine market would appear to be moving towards video type machines of one kind or another. Many traditional casino games such as Keno, Blackjack, Poker and Roulette can be played on currently available video slot machines. The method of play, from the player's point of view, is not materially different to playing a poker machine; in some instances the return to the player is better than the average New South Wales poker machine and the game itself would appear to provide more variety. Such slot machines have not been permitted by the regulatory authorities to be introduced into clubs in either New South Wales or the ACT, but as will be seen hereunder, most if not all of them would fall within the statutory definition of a "poker machine" used in those jurisdictions.

In-line operation

2.22 Both the traditional poker machine described above and the video games also referred to are capable of what is known as "in-line" operation. This means that machines can be

linked one to another to enable a composite jackpot to be played for on any of the machines in the line. This system enables jackpots in some American casinos to exceed \$1 million, as the pool from which the jackpot is drawn consists of the total pools of a large number of slot machines. The in-line operation of slot machines is not permitted in Australia and limits have been placed, by administrative regulation, on the jackpots which can be paid from any one machine at any one time, although as will be seen there is an ever present pressure to allow such jackpots to become even larger.

LOTTERIES AND POKER MACHINES: IS THERE A DIFFERENCE?

Instant scratch lotteries

2.23 The most significant feature of poker machine gambling as I perceive it is that it provides the hope or expectation in the player of an instant reward. It differs from the traditional lottery in this respect and even from the now common Lotto type games (e.g. Tattslotto) even if, as in Victoria, the frequency of their operation is increasing. However when one turns to what are commonly referred to as "instant lotteries" such as are found in most Australian states, the distinction between slot machine gambling and this form of lottery gambling becomes somewhat blurred. The hope or expectation of instant reward is there: all that is missing is the casino like atmosphere in which the slot machine is traditionally played, whether it be in a New South Wales club or a traditional casino. Notwithstanding the similarities however, I believe that most people would accept that there is a difference, however difficult to define, between slot machine

and instant lottery gambling. Certainly I consider that in framing my Terms of Reference the Government did not intend that I should consider questions relating to the present generation of instant lotteries played, as they now are, with cardboard "scratch" cards or similar devices.

Instant video lotteies

2.24 A perusal of the current international gaming literature and in particular the American gaming magazines reveals that currently available technology presently being marketed in the United States enables instant lotteries to be played using video games. In such a game the player, upon inserting a coin into a slot machine, is presented with a game on a video screen which he "plays" by using "controls" on the machine. The game may take many forms. The player may himself affect the outcome by selecting say, numbers to be compared to numbers selected by the machine. Alternatively, the player may play a game which has no bearing on the question of whether he wins a prize or not; that having already been determined at random by the machine when he inserted his coin. Were such video lottery games to be sited in the places where lottery tickets and instant lottery tickets are presently sold and were they to be linked so as to provide a common lottery jackpot (an essential to the scheme) one could find that lottery prizes of the order of those presently offered by the Lotto type games of conventional lotteries could well be won on the spot by a player at his local newsagency or milk bar; even if (as I expect would be the case) payment of big prizes was postponed for some days. Whilst the operation of such machines would not

have associated with them some of the problems endemic to poker machines which pay out in cash, the similarities between this form of slot machine gaming and the playing of poker machines is such that I believe the same considerations should be applied to the regulation of such lottery machines as ought to be applied to the regulation of poker machines. The introduction of video lotteries of the type described would, in my view, constitute a significant progression in the lottery "line" beyond the now readily available cardboard instant lottery ticket. As I have already indicated, many if not all of the problems associated with poker machine gambling would be associated with such lotteries particularly if they were as accessible as lottery tickets and instant lotteries presently are. I should note that no formal representations were made to this Inquiry by Tattersalls, the present lottery licensee in Victoria. It was not represented at any hearings of the Board and did not seek to become involved in the Inquiry as a party. It informed the Board, by letter, that it was "...closely following the development of consumer activated terminals (CATS), also known as video games and PALMS". For most of the period during which the Inquiry ran Tattersalls was a candidate for renewal of the Victorian lottery concession. It may understandably have not wished to publicly discuss matters relating to lotteries and, in particular, to automated lotteries which, it informed the Board, it had discussed in its tender for licence renewal.

2.25 I considered it necessary to speak in some detail as to what I consider the future of slot machine gaming might be

as it would be futile to conduct an inquiry such as I have conducted, accumulating a large mass of information in relation to gambling in general and slot machines in particular only to have such inquiry rendered quickly redundant by the inevitable progress of technology. We are by now used to the proposition that today's science fiction is tomorrow's technology. There must be considerable doubt as to whether mechanically spinning reels on a traditional poker machine have any chance of successfully competing in the long term with the high technology gaming devices which are presently available and which will, presumably, become more readily available in the immediate future. Young people who presently play computer games are, in my view, unlikely candidates for traditional slot machine gambling when they get older.

THE LEGAL DEFINITION OF A POKER MACHINE

Victoria

2.26 The only reference to poker machines in the Victorian statutes is in s.68 (2) Lotteries Gaming and Betting Act 1966 (Ex.6D) which proscribes poker machines by deeming them to be machines, devices or contrivances for gaming. The term itself is not defined, it being a question of fact in each case as to whether a particular machine is or is not a poker machine. It is interesting to observe that the same subsection includes with poker machines other devices known as "crane machines, fruit machines....golf ball machines, race machines, flag machines, jumbo machines or multiple coin machines and any other machines of a similar nature or having a similar object and whether such machines are actually used for gaming or not".

New South Wales

2.27 In those jurisdictions where poker machines are legal

there are, not surprisingly, statutory definitions. The current New South Wales definition contained in Section 50A

Gaming and Betting Act 1912 (Ex.6B) is as follows:-

"Poker machine" means any machine instrument or device kept, used or operated, or intended or designed for use or operation, or capable of being used or operated for the purpose of gaming, and the use or operation of which depends upon the insertion in the machine, instrument or device of an Australian coin within the meaning of the Coinage Act 1909-1947 of the Parliament of the Commonwealth of Australia or a coin made and issued pursuant to the Currency Act 1965 of that Parliament or two or more of any such coins of the same or equivalent value."

When analysed this definition contains only two essential elements. Firstly, the machine must be a gaming machine (i.e. a machine upon which a player risks a stake in the hope of gaining more than his stake in return) and secondly, its operation must depend upon the insertion of an Australian coin. Were it not for the somewhat limiting factor of its dependance upon the Australian coinage the definition would be an extremely wide one. In its present form it would clearly apply to any of the machines which I have already described and would certainly apply to a video lottery machine of the type described in para. 2.24. The scheme of the New South Wales legislation is apparently to include within the definition anything which could be regarded as a poker machine and then, by the use of Ministerial discretion, to determine which particular machines will be permitted in New South Wales clubs: See s.50D. However the legislation itself specifically

prohibits multi-coin machines which take more than five coins and machines which take 50 cent coins. (s.50D (1A) (c) and (d).

2.28 The New South Wales legislation permits direct Ministerial control over the way in which slot machines can develop. If Government policy permitted it, the relevant New South Wales Minister could permit a slot machine which played simulated Blackjack, Roulette or Keno. He could permit a video lottery machine or a poker machine operated by the proposed \$1 coin.

Australian Capital Territory

2.29 Section 3 of the Poker Machine Control Ordinance 1975 (Ex. 6C) of the Australian Capital Territory contains the following definition:-

" 'Poker machine' includes any machine or device which is used for playing a game of chance by inserting in the machine or device a coin on the chance that this, either alone or in conjunction with the operation of some part of the machine, will result in the machine or device discharging similar coins".

This definition is not exclusive. The use of the word "includes" means that the definition is somewhat wider than the following words would indicate. In any event, once again such a definition would clearly encompass all of the devices I have spoken about above including the video lottery, even though it would probably not be usual for coins themselves to be discharged from such a machine.

2.30 This legislation (as subsequently amended) vests the control of poker machines in the Australian Capital Territory in the Gaming and Liquor Authority (GALA). The Ordinance does

not, by its terms, restrict the Authority in any way with respect to the type or description of machines it will permit clubs to purchase. There would appear to be no reason why the Gaming and Liquor Authority could not authorise, of its own motion, the introduction of machines which played Roulette, Keno, Blackjack, etc. if it so wished. By reason of the unique system for purchasing poker machines in the Territory (about which more will be said in Chapter 3) the Gaming and Liquor Authority is able itself to restrict machines to those which it considers appropriate for use in clubs, although the criteria upon which it makes an assessment are neither set out in the legislation nor to my knowledge have they been stated by the Authority.

United Kingdom

2.31 Section 26 of the Gaming Act 1968 of the United Kingdom applies Part III of that Act:-

".....to any machine which:-

- (a) is constructed or adapted for playing a game of chance by means of the machine, and
- (b) has a slot or other aperture for the insertion of money or money's worth in the form of cash or token.

(2) In the preceding sub-section the reference to playing a game of chance by means of a machine includes playing a game of chance partly by means of a machine and partly by other means if (but only if) the element of chance in the game is provided by means of the machine....."

Although relatively simple in form, this definition would appear to cover not only poker machines as that term is commonly understood but also all other gaming machines including video lottery machines.

New Jersey

2.32 The Casino Control Act of New Jersey (Ex.6H) provides in Article 1 Paragraph 45 a definition of a "slot machine" as follows:-

"Any mechanical electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash, whether the payoff is made automatically from the machine or in any other manner whatsoever."

This definition, which has, once again great breadth to it, is confined only by the proposition that the prize on the machine must be cash or tokens capable of being exchanged for cash. Otherwise this definition would encompass any conceivable form of gaming machine and certainly any of those which I have discussed above.

Nevada

2.32 The Gaming Control Act of the State of Nevada (Ex. 6E) in Section 463.0191 contains a definition of "slot machine" identical to that found in the New Jersey statute.

South Australia

2.33 Perhaps the inherent difficulty of defining a poker machine in anything other than the broadest terms has been recognised best by the South Australian Parliament in the Casino Act 1983 of that State. (Ex.6AA). In that Act:-

" 'Poker machine' means a device designed or adapted for the purpose of gambling, the operation of which depends on the insertion of a coin or other token

(but does not include a device of a kind excluded by regulation from the ambit of this definition)."

A statutory definition of the type passed by the South Australian Parliament is hardly a definition at all. Rather, it specifies a limited number of essential characteristics and permits the Minister administering the Act to determine from time to time what is or is not a poker machine.

Canada .

2.34 Section 180 of the Canadian Criminal Code (Ex.6U) defines a "slot machine" (a banned machine in Canada) as being:-

- "...any automatic machine or slot machine
- (a) that is used or intended to be used for any purpose other than vending merchandise or services; or
- (b) that is used or intended to be used for the the purpose of vending merchandise or services if
 - i. the result of one of any number of operations of the machine is a matter of chance or uncertainty to the operator,
 - ii. as a result of a given number of successive operations by the operator the machine produces different results, or
 - iii. on any operation of the machine it discharges or emits a slug or token."

I suspect that this definition, which appears to have first appeared in 1953 in the Criminal Code, was framed specifically to include slot machines described by Scarne as those which masqueraded as "candy vending machines". Candy mint rolls were contained in a tube at the side of machine. Purchase of the candy entitled the buyer to give the three wheels a spin. When he hit a winning combination he received slugs which

could either be played back into the machine or redeemed for cash. [12]

A POSSIBLE VICTORIAN DEFINITION

The need for width

2.35 A review of the above selection of statutory definitions reveals that short of defining a poker machine by reference to mechanically spinning reels (which would seem, in light of current technology, unrealistically restrictive) it is extremely difficult to frame any definition which does not include virtually all gaming machines. Looked at another way, there seems to me to be good reason why any selected definition should be as wide as possible. Accordingly I suggest that should it ever be necessary to frame definitions for the purpose of permitting the operation of poker machines in Victoria the primary definition should be as wide as possible leaving it to subordinate legislation, either by Ministerial direction or by order of the gaming control authority (about which more will be said later), to permit any particular machine to be used within the State. The words "poker machine" should be abandoned and replaced by the words "gaming machine". In this way modern technology can be catered for without resort to anachronistic names.

Suggested form of definition

2.36 It seems to me that it would be sufficient if a definition in somewhat the following terms were adopted:-

"'Gaming machine' means any machine device or contrivance, the operation of which determines or partly determines the outcome of a game of chance or skill and chance played for money or money's worth."

If it were thought necessary the legislation could, within the above definition, broadly set out the parameters within which gaming machines would be permitted in any particular location. For instance the legislation itself could prohibit gaming machines which were played for any particular level of stakes or in respect of which any particular level of prizes was paid. It could go further and restrict lawful gaming machines to machines incorporating one or more technical criteria, although I would suggest that such restrictions ought to be imposed by subordinate legislation of one kind or another. To enshrine them in a statute might restrictively entrench a level of technology which the effluxion of time might quickly be shown to be inefficient, insecure or in some other way undesirable.

The permitting of particular machines

2.37 The question remains as to how the control of machines by subordinate legislation within the ambit of the above definition might be handled. On one hand it could legitimately be said that the permitting of any particular form of gaming machine and the level at which gambling upon such machine might be undertaken (e.g. the permitting of a \$1 five-coin multiplier machine) should be clearly a matter upon which Government ought to have policy and be required to express that policy through a responsible Minister. On the other hand questions of whether, at a given gambling level (e.g. 10 cents or 20 cents per game), any particular form of gaming machine should be permitted might, more efficiently and properly, be left to the gaming control authority. It might then be free,

within guidelines laid down either legislatively or by Government direction, to permit one or other particular game as presented to it for licensing. The balance is a difficult one to strike and would require careful legislative drafting to ensure both that matters that ought to be Government policy remained Government policy administered by a responsible Minister, and that matters falling outside what might properly be said to be Government policy were clearly within the province of the gaming control authority which would, in licensing any particular machine, be required to have regard both to legislative and Government direction.

Notes to Chapter 2

- [1] Scarne J., "Complete Guide to Gambling", Rev. Edition, Constable, London (1975) p.430.
- [2] Wykes A., "Gambling", Aldus Books, London (1964) p.70.
- [3] Jones J.P., "Gambling Yesterday and Today - A Complete History", David & Charles: Newton Abbot (1973) p.55.
- [4] O'Farrell v. Dodd (1910) V.L.R. 482.
- [5] Fielding v. Turner (1903) 1 K.B. 867.
- [6] Peers v. Caldwell (1916) 1 K.B. 371.
- [7] ex parte O'Connor (1921) 21 S.R. 566.
- [8] Scarne op.cit. p.258.
- [9] Scarne op.cit. p.456
- [10] Indeed one club president told me he could lose \$100 in a couple of hours and his club had not even installed multiplier machines!
- [11] "Club Management in Australia" July 1983 Ed.
- [12] Scarne op.cit. p.439

CHAPTER THREEPOKER MACHINES IN OTHER JURISDICTIONS

THE WORLD SCENE

Restrictions on Use

3.01 Since its invention the slot machine has spread throughout the world. Contrary to what I perceive to be common public belief, however, in most countries slot machines are either illegal or their use is much more severely restricted than it is in New South Wales. Indeed it is probably true to say that nowhere in the world, with the exception of the State of Nevada in the United States, are slot machines as freely accessible to the general public as they are in New South Wales.

Nevada

3.02 In Nevada slot machines are found in casinos as well as in hotel lobbies, drugstores, gas stations, supermarkets, taverns, airports and other public places. There are said to be about 85,000 of them in the state. The total win (i.e. gross receipts) in Nevada casinos for the financial year ended 30 June 1982 was US\$2600million of which US\$1200million was derived from slot machines. (Ex.9K para.6.11).

New Jersey

3.03 In New Jersey slot machines have been a feature of the Atlantic City casinos since they were established in 1978. There are about 12,000 slot machines which generate about 48% of the gross revenue of those casinos. (Ex.9K para.6.30).

The Other U.S. States

3.04 Slot machines are permitted in restricted circumstances in four other states of the United States but are totally prohibited in the other forty four states. It is probably true to say that the average American would not associate slot machines with clubs of the New South Wales type but would more likely regard them as casino games like Roulette, Blackjack, Craps, etc.

United Kingdom

3.05 In the United Kingdom slot machines are permitted in limited numbers in gaming clubs and miners' welfare institutes. Similar machines, unlimited as to number but with severely restricted prizes ("amusement with prizes machines"), are permitted at bazaars, fetes and other entertainments of limited duration, and in public houses and similar places. The restrictions on the prizes permitted to be won on these machines are so severe as to make them hardly comparable to the machines which operate as poker machines in this country. It appears from the Report of the 1978 British Royal Commission on Gambling (The Rothschild Report - Ex.9D) and the annual reports of the Gaming Board for Great Britain (Ex.22) that slot machine gambling does not occupy a prominent place in the overall gambling scene in the United Kingdom. Although permitted there in gambling clubs (casinos) at the rate of two per club Mr. Hurley told the enquiry (T.2326) that many such clubs do not in fact install slot machines as two machines are more trouble to service etc. than they are worth.

France

3.06 Slot machines have been a feature of French cafes and bars for many years. However the domination of the slot machine industry by criminal elements with attendant standover and other undesirable behaviour led the French government, this year, to legislate to prohibit slot machines totally. An Act of the French Parliament prohibiting the importation, manufacturing or possession of slot machines was signed into law by President Mitterand on 12 July 1983. (Ex.P4)

Other Countries

3.07 Slot machines are totally prohibited in all the provinces of Canada, in New Zealand, Israel, Fiji and in white South Africa. They are found in casinos in some Caribbean countries, the black South African Homelands, Portugal, the Federal Republic of Germany, Yugoslavia, Italy and Monaco (Monte Carlo). In some at least of these locations (e.g. Yugoslavia) entry to such casinos is permitted only to foreigners. Slot machines are prohibited in India but permitted in the casinos of the Far East. (Ex.4).

Australian Casinos

3.08 Within Australia slot machines under the title "poker machines" are specifically excluded from the games which may be authorised to be played at casinos in Tasmania. (Ex.6M). They have been declared to be an authorised game however in the two casinos operating in the Northern Territory. (Ex.6BB,S.48). The legislation permitting the construction of a casino in

South Australia specifically prohibits such casino from operating poker machines (Ex.6AA,S.25) whilst the Queensland legislation would appear to permit the responsible Minister to authorise the contemplated casinos there to have poker machines without further legislation. (Ex.6E,S.63). Mr. Ronald J. Hurley, already referred to, a former associate director of Federal Hotels and manager of the Wrest Point Casino, expressed the opinion that economic considerations would dictate that any new casino opened in Australia would need slot machines to survive. (T.2348). If he is correct, and if all the contemplated casinos eventuate, there would be slot machines spread more widely in Australia than on any other continent on earth.

THE NEW SOUTH WALES EXPERIENCE

Early Machines

3.09 In his thesis for the Degree of Doctor of Philosophy at the Australian National University submitted in April 1972 (Ex.B25(g)) [1] Dr. Geoffrey Caldwell suggested that poker machines had been used illegally in clubs in New South Wales certainly from the 1930's and apparently as far back as the early 1900's. As already noted (para. 2.04) the New South Wales Supreme Court in 1921 declared a slot machine, known, in that instance, as "the Clown Gaming Machine" to be a machine the keeping of which contravened the New South Wales Gaming and Betting Act 1912. [2] This machine seems to have required some player skill but Mr. Justice Halse Rogers, a Judge of the same court who conducted a Royal Commission into "fruit machines" in

1932, saw no distinction between such a machine and a fruit machine for the purpose of his inquiry. Notwithstanding the Supreme Court decision it appears that slot machines of one kind or another were a common feature of New South Wales clubs in the 1920's.

The 1932 Royal Commission

3.10 In June 1932, following allegations of bribery of public officials extending as far as Ministers of the Crown, Mr. Justice P. Halse Rogers was appointed a Royal Commissioner to inquire into Greyhound Racing and Fruit Machines. The matters with respect to greyhound racing which the Royal Commissioner was required to investigate related to the alleged payment of bribes to ensure the issue of greyhound racing licences. His first nine terms of reference related to this topic. With respect to fruit machines his terms of reference were as follows:-

- "10. The circumstances under which machines known as Fruit Machines or Jackpot Machines came to be installed and operated on premises in New South Wales prior to and subsequent to 12th January 1931.
11. How many of such machines were in use in New South Wales, and who were the owners lessees or distributors of the machines so used. What companies or persons purported to be authorised to sell lease hire license or install or use such machines and who were the shareholders in such companies during 1931-1932.
12. Whether any improper or corrupt practices were used or attempted to be used in connection with the sale lease hire license installation and/or use of such machines and if so by whom.

13. Whether the stipulated proportion of the takings of such machines was accounted for and paid by the persons in possession of such machines to the authorised collectors.
14. Whether the revenue from such machines received by the authorised collectors has been properly accounted for and if not who is responsible therefor.
15. Whether any disks were improperly or fraudulently used in connection with any of the said machines and if so by whom were such disks made used and/or issued, and
16. Whether any improper or fraudulent acts were done in connection with any such machines or the operation thereof."

In his report delivered in October 1932 (Ex.9R) the Royal Commissioner adverted to the illegal situation which apparently existed in the following terms (p.65): -

"Fruit machines and jackpot machines are devices for gaming; and since 1921 (i.e. since the 1921 Supreme Court decision) at any rate, it has been recognised in this State that their operation is illegal. Up to 1930, the evidence shows that they had operated in clubs without interference by the police but that they were not allowed to be used in hotels. I cannot see any distinction between their use in clubs and their use in hotels, except as regards the evil results which may follow, which would undoubtedly be greater were they used in hotels. Where they are used on licensed premises, whether it be in a club or an hotel, I am of opinion that an offence is committed both under the Gaming and Betting Act and under the Liquor Act. The discrimination between clubs and hotels seemed to have been based on the fact that successive Ministers took the view that club members using these machines were in reality contributing to the support of their own clubs, and that there was no element of private profit for the occupier or owners of the premises.

Apart from the matter of illegality, there may be sound reasons for drawing a distinction; but if there is any sound reason for allowing their use in clubs, that is properly a matter for the Legislature and not for the administration."

The Royal Commissioner expressed great difficulty in reaching proper conclusions with respect to his terms of reference by reason of the fact that he considered that many of the witnesses who appeared before him lied and other important witnesses deliberately left New South Wales so as to be unable to be compelled to give evidence.

3.11 The Royal Commission was apparently provoked by the fact that shortly before Christmas 1930 gaming machines began to appear in Sydney city hotels. The Royal Commissioner found that certain slot machine manufacturers paid a well known hotel owner, one Trautwein, 3,000 pounds for the purpose of securing immunity from prosecution should they be able to place machines (in the same way as Fey is said to have done - see para. 2.04) in various hotels. Trautwein made representations to the relevant Minister, Mr. Gosling, the Chief Secretary, towards securing that immunity. Against the protests of the Chief Commissioner of Police the Minister subsequently gave a direction to the police to "stay their hands" with the result that the machines were allowed to operate in hotels for a period of five weeks. The Royal Commissioner was unable to make any specific finding as to what Trautwein did with the 3,000 pounds he collected nor did he make any finding as to what happened to 10% of the takings of the machines which he found was also paid to Trautwein for the purpose of providing "immunity". Suffice to say that the money was paid and the "immunity" followed. At the end of the five week period the "immunity" appears to have been removed and the police then moved in and removed machines from both hotels and clubs.

3.12 Subsequent to the removal of the gaming machines from hotels and clubs representations were made to Gosling in February 1931 to the effect that certain clubs would be unable to exist if they were deprived of the revenue obtained from their gaming machines. The Chief Secretary then (quite illegally) "permitted" the reintroduction of machines into clubs from about the first week of March 1931. The Royal Commissioner found that the man principally interested in the machines-in clubs, one Lachmund, withdrew 1,000 pounds from his bank account between 9 March and 11 March 1931. He gave three different accounts as to what he did with this money. The Royal Commissioner was not prepared to find on the evidence that there was any more than "grave suspicion that there was some improper dealing".

3.13 Not content with having achieved the illegal reintroduction of gaming machines into clubs, the manufacturers of such machines, through one Smith, approached the Chairman of the Hospitals Commission early in 1932 with a scheme that the machines should be allowed to operate in premises other than clubs on the basis of a certain percentage being handed over to hospitals. The scheme involved the Hospitals Commission in granting permits, initially for a two month trial period, to various people to install machines on the basis that 45% of the gross earnings would be retained by the Hospitals Commission and administered for the use of hospitals. The scheme is explained, in a remarkable letter from the then Chairman of the New South Wales Hospitals Commission to Smith

dated 15 March 1932, set out in full in the Royal Commissioner's report. The Royal Commissioner was unable to make any finding on the allegation that the Chairman of the Hospitals Commission had been bribed, although he did find that a public servant, close to the relevant Minister, a so-called "publicity officer", had "levied" 10% of the machine profits from the operators during the period the scheme was in operation. The destination of the levy was unknown. The Royal Commissioner further commented on the gross impropriety of Ministers of the Crown (in this case the Chief Secretary and the Minister for Health) being involved in a scheme which was, on any view of the law, illegal and which they clearly knew to be illegal.

3.14 The Royal Commissioner had difficulty in estimating the number of machines which might have been operating during the period he investigated but he did find that numerous irregularities of one kind or another with respect to the machines, the money from the machines, the discs or tokens used in the machines and the way in which the machines were placed in various premises had occurred; quite apart from the total illegality of the scheme itself.

3.15 I have set out perhaps at greater length than might have seemed necessary the findings of the 1932 Royal Commission for two reasons. Firstly, with the exception of the Moffitt Royal Commission in 1973-74 (to which reference will be made subsequently) this Royal Commission appears to have been the only previous investigation into the operation of slot

machines ever undertaken in Australia; and secondly, to draw attention to the fact that the account of the 1931-1932 New South Wales situation as set out in booklet "The Facts About Poker Machines in Licensed Clubs of NSW and the ACT" prepared by the ACDA and widely distributed by the LCAV to Victorian Club Members (see para 12.09), is quite incorrect and misleading. In that booklet (p.8) the hospitals scheme is reported as a "trial" without reference to its illegality or the corruption which the Royal Commissioner found surrounded it. Reference is merely made to the machines having been withdrawn from "hotels and other public places" because the Minister for Health in the incoming Stevens Government regarded them as "immoral". [3]

3.16 Notwithstanding the clearest possible statement from Mr. Justice Halse Rogers that fruit machines, wherever they were operated, were illegal, they appear to have persisted in clubs following the Royal Commission. Caldwell quotes the contemporary press as reporting, from time to time, police efforts to eliminate machines from clubs although in 1939 a senior police officer is reported as being uncertain whether or not clubs were breaking the law in operating machines. [4] In 1939 legalisation was apparently considered by State Cabinet but nothing eventuated.

3.17 Caldwell asserts that the subject of poker machines seems to have been of little concern to the newspapers during and after the second world war. In 1950 it was reported that

poker machines were operating in some cafes and in 1951 the proprietors of sixteen proprietary clubs were fined for having machines.

3.18 In late 1952 a police official stated that non-proprietary clubs would soon be notified that poker machines were illegal. The Premier, Mr. J. Cahill, said he was not aware that this police decision was based on a directive from the Government and the Chief Secretary, Mr. C.A. Kelly, reiterated that no action would be taken on machines in non-proprietary clubs. Clearly the trenchant criticisms of the 1932 Royal Commissioner of Ministers of the Crown who ignored the law had, by this time, been well and truly buried.

The Growth of Licensed Clubs

3.19 During and immediately after the second world war hotel drinking conditions deteriorated so badly that many began to look to the only real alternative, the registered club. By 1950 the number of clubs had expanded from 85 to 375, many of the new clubs being R.S.L. clubs. As Caldwell sees it [5] a number of factors accounted for the growing popularity of the clubs in the late 1940's. The electorate voted overwhelmingly for the retention of 6 p.m. closing of hotels in 1947. Not long afterwards the Supreme Court decided that clubs could legally serve drinks to their members and guests outside hotel hours. It is therefore not surprising that New South Wales residents became supporters and members of clubs. The clubs were illegally but openly operating poker machines and using the profits from these to provide members with various

amenities and to subsidise the provision of liquor food and entertainment. In 1954 a previously imposed limit on the number of club licences was lifted and the number of clubs doubled in the following year. In December 1954 there were 398 registered clubs, in 1955 there were 793, in 1956 there were 962 and in 1957 there were 1,050. [6]

3.20 The growth of clubs, fostered by the profits from poker machines, began seriously to affect the traditional liquor outlets in the early 1950's and in May 1956 the United Licensed Victuallers Association (ULVA) representing the State's hotelkeepers lodged an objection with the Licensing Court to the renewal of a club liquor licence on the ground that the club was engaged in illegal gambling in using poker machines. The Licensing Court upheld this objection and subsequent objections to the applications of another 47 clubs, also lodged by the ULVA. As a result the clubs were denied renewal of their liquor licences. Caldwell quotes the official journal of the ULVA, the "ULVA Review", as saying:-

"The action taken by the ULVA was determined by the need for preserving the economic structure of the hotel industry and combating unfair competition from the continually increasing number of registered and unregistered clubs.

The object of the objections to the renewal of registrations of a number of clubs is to eliminate unfair competition made possible by the use of illegal gambling devices in the clubs...". [7]

The ULVA's motive was understandable but the course taken was a grievous tactical error. The State Government was faced with a politically intolerable situation. The hotel industry was

hardly popular. Clubs deprived of liquor licences could not survive and their influence was, by that time, such that no government could allow their demise. The response of the Government was to announce, on 31 July 1956, that poker machines would be legalised for use in non-proprietary clubs subject to the payment of licence fees. These were expected to yield the Government between 500,000 pounds and 750,000 pounds a year. The fees ranged from 40 pounds to 500 pounds depending upon the type of machine installed. It is significant to note that 2 shilling machines were legalised at that time. Newspapers of the time (Ex.5) note the objections of the churches to the Government decision and the complaint of the Returned Services League that the fees imposed by the Government were "grossly excessive". (Sydney Morning Herald, 1 August 1956). The Sydney Morning Herald, in an editorial on the same day, whilst praising the fortitude of the Government in standing up to the ULVA and legitimising something which had existed de facto for many years, expressed the view that it was a pity that poker machines were ever introduced into New South Wales in the first place. (Ex.5).

The Growth of Concern

3.21 By April 1958 considerable opposition to poker machines had grown within the State of New South Wales led by the churches, business interests, the liquor trade and housewives' associations. State Cabinet debated the banning of large denomination (2 shilling) machines and restrictions on hours of operation. The New South Wales Country party adopted

a policy favouring abolition and went into the March 1959 election on a policy that 2 shilling machines should be banned after twelve months warning was given. (Daily Telegraph, 27 February 1959). The Country Party was not successful and it fell to the returned Labor Government to take the first step towards curbing (it hoped) the growth of poker machine gambling by doubling the licence fee on 2 shilling machines effective from 1 January 1960. For each of the first five 2 shilling machines a club would pay 500 pounds and 700 pounds for each additional machine. The additional income was hypothecated to the Housing Commission for the building of special low rental housing for aged persons. (Sydney Morning Herald, 17 September 1959). Although the Returned Services League described the Government's decision as "barefaced robbery" the increased fees appear to have had little if any effect on the, by then, accelerating growth of licensed clubs, particularly the larger ones.

3.22 Notwithstanding the Government's decision to double licence fees on 2 shilling machines it should be remembered that such licence fees were a fixed annual charge. Clubs did not, at this stage, pay any tax on the profits which they derived from poker machines. Such tax was not introduced, as will be seen later, until 1962.

The Growth of the Club Industry 1954-62

3.23 As Caldwell notes, [8] between 1954 and 1962 there was a 223% increase in the number of clubs - from 398 to 1,285. Poker machine numbers almost doubled from 5,598 to 10,804 and

licence fees collected by the State Government up to June 1962 amounted to just under 7.25 million pounds. During this period many of the larger leagues clubs were established, including North Sydney (1955), Cronulla-Sutherland (1956), Balmain and Manly-Warringah (1957), South Sydney Juniors and Parramatta (1959). Caldwell asserts that it was during this eight year period that the Government, the general public and competitive organisations became aware for the first time of the latent consequences of the legalisation of poker machines and club growth. It could reasonably be inferred from the history of the club movement and poker machines generally that at the time poker machines were legalised no one, including the Government, contemplated the extent to which they would ultimately affect the growth of clubs in New South Wales and the social habits of its citizens with them.

License Fees and Taxes

3.24 Between 1956 and 1962 poker machine profits were not taxed. Clubs paid a flat rate licence fee for each machine installed. In 1962 a so-called "Supplementary Poker Machine Tax" was introduced whereby clubs which derived more than \$10,000 p.a. profit from machines were required to pay tax on a sliding scale up to 12 1/2% for clubs earning more than \$20,000. The imposition of this tax entrenched further the position of poker machines in licensed clubs in New South Wales. The increasing dependence of the New South Wales Government from that time onwards on taxes derived from poker machines for budgetary purposes has virtually guaranteed the permanence of this form of gambling. In the first nine years

that the Supplementary Poker Machine Tax was imposed the Government collected almost twice as much from that tax as it did from licence fees. (\$127million as against \$68million).

3.25 Licence fees and rates of supplementary tax have been varied, mostly upwards [9], from time to time between 1962 and the present date. Presently the licence fees payable in respect of 10 cent machines are \$200 per annum for the first twenty machines in a club and \$300 per annum for each machine in excess of twenty. In respect of 20 cent machines, the first two attract a fee of \$1,000 each, the next three \$1,100 each, the next five \$1,600 each, the next ten \$2,100 each and all others \$2,500 each. Curiously, multi-coin machines attract licence fees at the same rate as single coin machines (i.e. a 5-coin 20 cent machine attracts the same licence fee as a single coin 20 cent machine). Clubs with annual net revenues of \$50,000 or less are presently exempt from Supplementary Poker Machine Tax. Revenue between \$50,000 and \$65,000 attracts a tax at the rate of 65 cents for every dollar over \$50,000, and revenue in excess of \$65,000 attracts tax at the rate of 15% on all net revenue. An additional supplementary tax applies where a club's net revenue is over \$100,000. A sliding scale up to an additional 7% of net revenue applies, the highest rates being paid by those clubs earning in excess of \$750,000 per year from poker machine operations. Certain deductions from gross revenue are permitted for the purpose of computing taxes and concessions are granted to new clubs and those with low poker machine income. (Ex.84A, p.14 et seq.)

3.26 Between the financial years 1978-79 and 1982-83 the number of clubs in New South Wales has increased marginally to the figure of 1588 at 30 June 1983. The number of machines and the revenue derived by the New South Wales Government from them those years was as follows:-

Financial Year	Number of Machines	Total Poker Machine Taxation Revenue (\$,000)
1978-79	47,182	107,975
1979-80	48,406	120,703
1980-81	49,208	138,989
1981-82	49,369	152,090
1982-83	48,285	151,700

(Source: NSW Department of Finance)

Controls over Poker Machine Operations in New South
Wales Clubs

3.27 It appears to me that notwithstanding the enormous growth in some New South Wales clubs, such that they can number their members in tens of thousands, when it comes to the control required or desirable in respect of a gambling operation the Government, the clubs themselves and, it would appear, the population generally regard the management and members of the club as being the only ones with a legitimate interest in ensuring that irregularities do not occur. Whether this attitude stems from a deliberate policy of successive New South Wales governments not to become involved in the control of clubs or whether it stems from the clubs own perception of poker machine playing as being mere "recreation" and not gambling I do not know but it appears certainly true that no one has ever contemplated imposing upon

the New South Wales clubs the sort of rigid external controls which are associated with the control of casinos, not only overseas but also in this country. My impression is that the involvement of government with poker machine operations in clubs has been limited to ensuring that taxes due are paid. When concern has been shown, from time to time, with respect to discrepancies occurring in club revenues such concern has usually been expressed in terms of urging the clubs to correct the situation which was costing both them and the government revenue. As the current New South Wales Minister for Finance, Mr. Terry Sheahan said, in the foreword to a recently published booklet issued to clubs by the Department of Finance entitled "Control and Review of Poker Machine Performance" (Ex.84B):

"...it is essential that club management exercise strict control over a major source of income - poker machines.

For some time the Department of Finance and its predecessor in administering the relevant legislation, the New South Wales Treasury, have encouraged clubs to improve supervision of all aspects of poker machine operations. In some case specific requirements have been imposed on clubs before machines can be licensed.

However as a general principle the State Government believes that mandatory controls on registered clubs should be limited since the management of a club is the prime responsibility of directors and the members who elect them..."

The view expressed by the Minister in the quotation above is, I believe, the view which has been taken by successive New South Wales Governments with respect to the operation of registered clubs, including their use of poker machines. No New South Wales Government since 1956 has ever come to an

effective understanding of what poker machine gambling is all about. Each has been content to allow a hard gambling operation, deriving profits of hundreds of millions of dollars a year, to develop in the hands of mostly unqualified, sometimes inexperienced and sometimes dishonest administrators. I simply note this situation at this point in my report and leave for consideration in Chapter 6 what I perceive to be some of the consequences.

Treasury 'Audits'

3.28 Early poker machines lacked any satisfactory metering devices. Up until 1979 in New South Wales this was not regarded as a matter of consequence to anyone other than the clubs themselves. It was not until then that the New South Wales Treasury began to require information with respect to the operation of poker machines as distinct from information as to the revenue which they were said to have produced. Prior to 1979 clubs had been required to forward returns setting out their poker machine revenue. The Treasury employed inspectors whose job was to "audit" the clubs' tax returns against their books. In 1974 the total establishment of the poker machine branch of the Treasury was about fifteen people of whom about six were inspectors. (EX.84E, p.4). Each inspector would have had two hundred or more clubs to supervise. As well as this a large part of the inspectors' job involved the issuing of licences and the processing of tax returns. An officer of the Department recalled that in 1974 little time was spent by inspectors in actually visiting clubs. (Ex.84E p.4)

Percentage Analysis Return

3.29 In 1979 the Treasury began to require clubs to submit monthly returns which enabled an analysis of the machines' performance to be undertaken. This analysis, termed "percentage analysis", involves a comparison between the actual revenue produced by a machine and the revenue which would be expected to be produced by that machine if it was operating in accordance with its designed playing characteristics. For example, if it is known that a particular machine is "carded" so as to return 87% of its "handle" to the player, a comparison between the amount earned by that machine over a given period against the number of coins inserted into the machine should enable an assessment of whether the machine is operating within what might be regarded as "acceptable limits". However, as I have noted in Chapter 2 the random operation of a poker machine means that when one speaks of its playing characteristics one is really speaking about "average" performances. It follows that percentage analysis, as a control mechanism for the operation of poker machines, is, used alone, somewhat limited; particularly when it is applied to machines which have a low usage or it is applied to a particular club over a short period of time. The greater the number of transactions which occur on a machine the more accurate will be the results obtained from percentage analysis. Accordingly if, over a large number of operations, a machine is not returning the expected revenue or something tolerably close to it further investigation is called for to determine whether there is some malfunction in the machine itself or some dishonesty on the part either of players

of the machine or those associated with its operation and clearance.

3.30 Officers of the Department of Finance who were involved with the introduction of percentage analysis in 1979 have told me that upon its introduction a "bad situation" was revealed. Clubs did not understand the system and appeared to be not very interested in making it work or co-operating generally with the Treasury. They regarded any problems which arose as being the Treasury's problems and not theirs. For some time the Treasury could not rely on the results obtained. (Ex.84E,p.6-7).

Data Analysis

3.31 At about the time percentage analysis became mandatory in New South Wales poker machine manufacturers and others began providing a service to clubs using computers to analyse data extracted from poker machines to prepare the returns required by the Treasury. These services still operate, the largest of them being Club Data Services Pty. Ltd., a subsidiary of the Ainsworth organisation. It currently performs data analysis in respect of 22,000 poker machines or about 45% of the total number of machines in New South Wales. This service is provided for a fixed fee per machine per month (currently about \$3) and relieves the club administration of the task of manually producing the returns required by the Government. Some larger clubs, which have their own in-house computers for general business purposes, produce their own analysis reports although no club, so far as

I am aware, has yet connected its poker machines directly to a computer to enable the information to be electronically extracted. Officers of the Department of Finance do not regard the reliance of club officials upon poker machine manufacturers as being a desirable situation. It tends to make club management hand its own problems to someone else to satisfy a Government inquiry. (Ex.84E p.8 et seq.)

Treasury Circulars

3.32 Subsequent to 1979 the Treasury began producing circulars which it sent to clubs containing advice as to various poker machine matters, particularly with respect to control and security of machines. A perusal of the twenty circulars issued to date (all of which are collected in Ex.84C) shows clearly the continuing policy of the New South Wales Government to urge and encourage appropriate management techniques with respect to poker machines without ever commanding compliance with any set standard. I doubt whether anywhere in the world is gaming carried out on the scale it is in New South Wales with such little effort on the part of government to ensure that such gaming is carried out fairly and honestly and that the profits of such gaming are applied in the way in which they are supposed to be applied.

Cash Flow Analysis

3.33 In September 1982 the New South Wales Treasury advised that from 1 March 1983 a further control mechanism would be applied to poker machines. Called "cash flow analysis", this control mechanism required clubs to

provide readings from various meters now included on modern poker machines and to analyse the results of those readings so as to trace, as far as possible, the flow of coins through a poker machine to determine whether the machine was performing satisfactorily or not. Without such cash flow analysis Mr. Daley, already referred to, is of the view that proper control and management of poker machines is not possible. (Ex.C9 p.14). Cash flow analysis proceeds on the assumption that a coin, once inserted into a poker machine, should only emerge if it is paid out directly to a player or if it is lawfully cleared from the cashbox. This approach to monitoring has a number of advantages in covering events not specifically addressed by percentage analysis above referred to. In its simplest form the cash flow formula is:

$$\text{Coins inserted} - \text{Coins Paid Out} = \text{Coins Retained.}$$

Allowances must be made of course for the fact that jackpots are not paid by the machine itself but are paid and recorded manually and in the case of machines with credit meters (all modern machines) a player may sometimes take his accumulated credit by manual payment rather than from the machine. Taking these variables into account cash flow analysis enables an accurate assessment of the way in which the machine is performing to be undertaken. It follows, if Mr. Daley's comment as to proper control or management of poker machines is correct, that there was no proper control or management of poker machines in New South Wales for the first twenty seven years of legalisation in that State. Further, cash flow

analysis is confined to those machines having the necessary meters recording the information necessary to put the control into effect. There are many thousands of machines still in operation in New South Wales in respect of which this control is not available. (Daley T.174 et seq.).

3.34 It should be noted that the use of percentage analysis on machines which have "player options" such as "hold and draw" poker machines is of very limited value. The expected playing characteristics of such a machine are altered by the fact that the player himself has some, albeit limited, control over the game. The New South Wales Department of Finance does purport to impose playing parameters in respect of these machines but it seems to be acknowledged that monitoring them by means of percentage analysis is not very satisfactory. (Ex.84E, p.13 et seq.).

Present Position

3.35 Just as percentage analysis, when it was introduced in 1979, highlighted discrepancies occurring in various clubs the recent addition of cash flow analysis has identified further clubs whose performances are regarded by the Department of Finance as unsatisfactory. There are 200 clubs whose actual stated income is so far below what it ought to be on a theoretical analysis that the Department intends sending inspectors to investigate. Larger clubs predominate among these 200, largely because it is these clubs, where the revenue lost to the Treasury is greatest, which cause the Department of Finance, as a revenue collecting body, to have the most

concern. It will be necessary for inspectors to review each investigated club's entire system - its accounting security, its internal control procedures, the maintenance of its machines, etc. (Ex.84E, p.20 et seq.).

The Future - Pressure for 50 cent, \$1 and Other Machines

3.36 As noted in para. 2.27 with the exception of multi-coin machines which take more than five coins and machines which are operated by a 50 cent coin (both of which are prohibited by statute) the permitting of any particular machine in the New South Wales environment is a matter of Ministerial discretion and Government policy. This proposition can be verified by an examination of the relevant legislation and is confirmed by the Department of Finance itself. (Ex.84E, p.13). To date the New South Wales Government has taken the view that only the traditional type poker machines and, since July 1983, multiplier machines would be permitted although "hold and draw" poker machines have been permitted in New South Wales for many years, as were three line 10 cent multi-line machines. Mr. David Horton, the Secretary of the Department of Finance, told me that he accepts that by some standards the Government may have been a bit restrictive in what clubs are allowed to do with poker machines. Limits on the amount of the stake and on player options for various machines have been imposed. It is current Government policy that machines playing casino type games such as Keno will not be permitted. As Mr. Horton says (Ex.84E, p.12):-

"We have limited how much money you can put in at a time on a machine, and I suppose in other ways we have been conservative. We don't necessarily

apologise for that; we'd be looking at those questions, but the conservatism is based on the fact that this is a gambling area, it can create problems for people who can't control the habit and it's an area that does attract unsavoury elements. So there are reasons to be a bit more restrictive in this area than if you were simply talking about television sets or gas cookers or something like that...".

My own overall impression from the inspections which we conducted and the evidence which I have heard about New South Wales clubs is that essentially, as organisations, they tend, themselves, to be conservative. Mr. Horton agrees and told me that the club industry itself is "not actually trying to bang the doors down" to introduce the new machines. Requests for innovation appear to come from a very small number of clubs and, more often, from suppliers of machines themselves.
(Ex.84E p.15).

3.37 Not all club managements are as conservative as those to whom Mr. Horton was referring. In a paper delivered at a recent conference of club administrators Mr. Paul McKay, the secretary-manager of the North Ryde R.S.L. Club, chided the industry for what he regarded as its lack of interest in developing the poker machine concession which it has. He urged clubs to "stop whinging" about taxation levels and asserted that it has been the erosion in the value of money caused by inflation that has led to a drop in club incomes in real terms. In speaking about the clubs' poker machine concession Mr. McKay says (Ex.82 p.6):-

"So the real tragedy is that the concession granted to the industry in 1956 is almost the same now, in 1983, and the only improvement we have had in that 26-27 year period is that technology has helped us with improved poker machines, the manufacturers have kept up with quicker machines, more reels, micro-processors, credit meters but it is still not

enough. This is what inflation has done. The industry average for a 20 cent poker machine is approximately \$14,000 per annum. In 1969 \$14,000 per annum could possibly pay the wages of six to eight permanent stewards but in 1983 the same money can only pay one and a half stewards' wages. So for equality, a machine in 1983 would have to earn \$70,512 per annum to pay six stewards, so conversely a 20 cent machine in comparison to 1969 to 1983 is that, in real terms, 20 cents is only worth 4 cents.

So our problem is clear. Most clubs live or die by poker machine earnings. That statement may be unpalatable but I think it is true in most cases and 75% of clubs' incomes comes from poker machines. The unfortunate part is the industry average for a 20 cent machine in 1969 was \$14,000 per annum and it is still \$14,000 per annum now. You may not believe that, as some machines in 1983 do earn \$30,000 per annum, but for equality, 1969 to 1983, then a machine would have to earn \$70,000. So we must be unshackled and we need the government's help. We need \$1 machines, we need 20 cent machines and 10 cent machines of a multiplier variety, we need video machines of Draw Poker and Blackjack, we need 20 cent multiple machines, we desperately need to delete the word 'amusement' out of poker machine playing and insert the word 'gambling'.

Whilst the apparent dynamism of Mr. McKay might not be common in the New South Wales club industry the recent failure of some clubs and the decrease in profits in real terms of others together with an increasing belief in the club movement that it is, in every sense, a competitive industry may well lead to increasing pressure to permit an expansion of the clubs' gambling base.

3.38 As Mr. Horton says, sometimes the request for innovations in the club gambling scene comes from machine suppliers. Mr. L.H. Ainsworth, managing director of the Ainsworth group of companies, Australia's largest poker machine manufacturer, has campaigned for higher denomination poker machines and the acceptance by the club industry of itself

as a gambling industry through a newspaper which his organisation publishes and distributes to club members called "Aristocrat News". In the June 1982 edition (Ex.C2(j)) Mr. Ainsworth urges clubs to press the Government for 50 cent and \$1 poker machines. This call is made, so it was asserted, because of research undertaken by the Ainsworth organisation which showed that poker machine players were demanding higher denomination machines. Mr. Peter J. Clarebrough, the Ainsworth organisation group general manager, was asked about that research during his evidence on 25th August 1983. He undertook to endeavour to locate a copy of the research programme upon which the newspaper article relied, and supply it to the Board (T1494). When on 7 October 1983 he returned to finish his evidence (see para. 4.12) he stated that he had not been able "to get the paperwork on that particular point. I have not located any and I feel it is oral type of research and not documented type of research" (T.2878).

3.39 In the edition of Aristocrat News above referred to Mr. Ainsworth, in an "editorial" column, further urges clubs to press the government to permit them to operate as casinos rather than to allow the establishment of separate casino operations. As Mr. Clarebrough said (T.1495) some clubs have already approached the Government for casino licences. He cited the case of the Queenbeyan Leagues Club which had approached the Government "probably five years ago" in this regard.

3.40 Whilst the other manufacturers presently supplying the New South Wales market, Pacific, Bally and Nutt and Muddle, appear not to have publicly encouraged clubs to diversify into other or more lucrative gambling areas I note that another gaming machine supplier which appears not to currently supply the Australian market, General Instrument (Australasia) Pty. Ltd., currently includes a range of video slot machine gaming tables upon which Blackjack, Poker or Keno can be played among its available products. (Ex.108).

3.41 I believe that the success of any pressure applied on the New South Wales Government to permit higher denomination poker machines in the future or gambling machines of other types in the future will depend largely upon whether the current downward trend in club poker machine profits in real terms continues or not. If clubs' revenues pick up they will probably be content to continue to operate traditional poker machines. If the present downturn gets worse or shows signs of becoming permanent I believe that pressure will be applied, and applied successfully in the long run, to the New South Wales Government to permit an expansion of the clubs' present gambling concession. If such pressure is applied it will be accompanied, in the time honoured tradition of gambling entrepreneurs, by rosy promises of increased employment and of greater Government revenue. How successful such pressure will be will depend upon the persistence of the clubs, and of the "sociologists, economists and Ph.D's" Mr. McKay urges them to employ, the degree of resistance which the Government is able

or prepared to display and not least to the marketing skills of the manufacturers of higher denomination and alternative game machines.

THE AUSTRALIAN CAPITAL TERRITORY

The Introduction of Poker Machines

3.42 Between 1956 and 1976 the Australian Capital Territory and its licensed clubs existed as an enclave without poker machines surrounded by increasingly affluent New South Wales clubs which operated the machines. In 1970, led by the Canberra Workers' Club, some club officials began to seek legalisation of poker machines in the Territory. However, it would appear that the club movement as a whole was, at least in the initial stages, lukewarm about the proposition. In 1971 a meeting of the then 36 licensed clubs was called. Only 24 attended of which 20 were in favour of legalisation. A submission to the ACT Advisory Council was countered by objections led largely by church groups. A referendum was mooted. It was supported by a lobby group known as the Poker Machine Referendum Working Group which opposed the introduction of poker machines to Canberra without a referendum on the ground that the introduction of such machines would alter the character of the Canberra community. The "Canberra Times" opposed legalisation right up until the Poker Machine Control Ordinance 1975 was actually promulgated. Two articles, collected in Exhibit 5, in that newspaper by Clarence Gaudry put the case against poker machines strongly.

3.42 Notwithstanding opposition, and a series of Ministers of the Interior who were themselves opposed to poker machines, in 1974 a draft Ordinance was prepared and eventually, in August 1975, the Poker Machine Control Ordinance 1975 was promulgated. It commenced on 12 February 1976 from which date poker machines in licensed clubs in the Territory were legal. The first machines were actually installed in November 1976 (Matthews T.759).

3.43 The initial controlling body set up by the Ordinance was the Poker Machine Control Board. Following administrative rationalisation involving the Totalizator Agency Board, the Poker Machine Control Board and the Liquor Licensing Board the control of poker machines, as well as of the TAB and of liquor, is now vested in the ACT Gaming and Liquor Authority by virtue of the Australian Capital Territory Gaming and Liquor Authority Act 1981 of the Commonwealth Parliament. Apart from these administrative changes, and the fact that, since December 1982, 20 cent machines have been permitted (the original legislation contemplated only machines of 10 cents and below), the present control of poker machines in the Australian Capital Territory is the same as it was in 1976.

The ACT Legislation

3.44 The essential features of the A.C.T. legislation might be summarised as follows:-

1. The control of poker machines is vested in an independent statutory authority, the Gaming and Liquor Authority of the ACT (GALA)

2. Only clubs which are already the holder of a liquor licence granted pursuant to the Liquor Ordinance 1929-1975 may apply for a licence to have poker machines. To obtain a liquor licence a club must have at least 200 members.
3. A licence to install poker machines will be granted to a club only after a ballot of members has been conducted in which ballot a majority of the members voting are in favour of such installation.
4. GALA may determine the number and type of poker machines in respect of which a licence will be granted to any specific club based on space, layout, security requirements, etc.
5. All poker machines must be purchased by clubs from manufacturers using GALA as their agent.
6. GALA purchases machines only from manufacturers who have "tendered" to supply machines at a particular price and to specifications put out by GALA for a specified period.
8. All poker machines in the ACT must return 87% plus or minus 1% to the player, which percentage payout must be displayed on the machine itself.
8. Annual licence fees are imposed on machines in accordance with the following scale:-

5 cent machines	-	\$100
10 cent machines	-	
	up to 10	- \$100
	11th to 20th	- \$200
	in excess of 20	- \$300
20 cent machines	-	
	up to 2	- \$400
	3rd to 5th	- \$600
	6th to 20th	- \$1600
	in excess of 20	- \$2500
9. A 10% tax is imposed upon the gross revenue derived by clubs from operating poker machines which revenue is paid to a Community Development Fund which is dispensed on the direction of the Minister from time to time for charitable and community purposes.
10. Persons who clear money from poker machines must be members of the club concerned and must be the holders of collection certificates issued by GALA for which no fee is charged.

11. Persons who repair or service poker machines must be the holders of repairmen's certificates issued by GALA for which a fee is charged.
12. Clubs must keep various records in statutory form relating to their poker machines and the operation of those poker machines.
13. Clubs must submit monthly returns to GALA providing readings of the various meters required to be installed in poker machines in the A.C.T. namely: A coins in meter (stroke meter), coins out meter, credit pays meter, coins to cashbox meter, jackpot meter, mechanical door opening meter and cashbox door opening meter.

The ACT Purchasing System

3.45 The unique purchasing arrangement operated by GALA for ACT clubs is worthy of further comment. Every six months GALA calls for tenders by advertisements in daily newspapers. The advertisements incorporate specifications written by GALA for the poker machines which it will purchase on behalf of clubs for the ensuing six months. These specifications are continuously updated to take account of technological improvements which might be expected in poker machines. They permit, by their terms, manufacturers themselves to proffer machines which exceed GALA's specified requirements. The current specifications are included in Exhibit 85.0. Before any particular "tender" is accepted GALA may negotiate further with the tenderer with respect to its price and in some instances it has chosen not to accept a tendered price. Once a manufacturer "tenders" at a particular figure for ACT specified machines he must supply machines at that price for the whole of the tender period. A club which wishes to purchase machines must do so by placing its order through GALA and paying GALA for the machine before it is

purchased. The club is permitted to specify the machine and the manufacturer from whom the machine is to be purchased.

3.46 Three reasons have been put forward as justifying this method of purchasing poker machines. Firstly, it is asserted that the system permits clubs to buy machines more cheaply than their New South Wales counterparts. Secondly, it is supposed to limit the opportunities for manufacturers or their agents to "kickback" to club management or directors with respect to the purchase of poker machines; and thirdly, it is said to permit GALA to keep control of how many poker machines go into clubs. (Mazengarb T.1173).

3.47 The current tender price for machines in the ACT from each of four manufacturers is just under \$6,000. (Matthews, T.723). This is about 15% less than the New South Wales "list" price. However, as will be seen in Chapter 4 the New South Wales "list" price is somewhat above the figure at which most New South Wales clubs buy machines, and further the New South Wales price includes an extremely generous component for agent's commission. A manufacturer selling into the Australian Capital Territory without paying agent's commission would appear to make more profit from the sale than he would on a sale to a New South Wales club through an agent. In the absence of GALA exercising a properly set up price control mechanism based upon allowing manufacturers a reasonable profit over and above a verified manufacturing cost I do not see the present ACT system as being of any great benefit so far as the cost of machines is concerned. Mr. Matthews regards machines

as being too expensive (T.1481) and given the appropriate powers, I have no doubt that he, and the Authority of which he is the chief executive, could effect substantial savings for ACT clubs. In the absence of such power he is bound by the Ordinance and practice as it presently is.

3.48 The second reason given as justifying the "tender" system is that it is supposed to prevent "kickbacks" from manufacturers or their agents to club management or directors. Despite Mr. Mazengarb's view that the tender system results in some control over this aspect of possible malpractice I find nothing in the system to justify such a view. Mr. Mathews agreed with this conclusion at T.1484. There is no restriction on poker machine salesmen approaching clubs to induce them to order particular brands of machines. One particular manufacturer recently sponsored a clubs' race day in Canberra to promote its product and to give the clubs publicity. (Mazengarb T.1173A). Unless it could be shown that there is less profit made in the Territory on the sale of a machine, thereby producing less surplus to "kickback", I can see no justification whatever for believing that the ACT system has any effect on any possible malpractice in this area. If I am correct in my conclusions stated above that a manufacturer normally makes more profit from a sale to the Territory than he does in New South Wales, it follows that there is a greater surplus available to be used in an illegal way in the Australian Capital Territory than there is in New South Wales.

3.49 The third reason proffered by Mr. Mazengarb as justifying the tender system is made out on the evidence. By having a hand in the purchase of machines and having those machines installed under its supervision GALA certainly is able to keep a very close check on the machines which are installed in clubs. However one can easily envisage many ways that such control could be exercised without going to the extent of introducing a tender scheme.

3.50 I have dissected the ACT tender scheme in some detail because the proponents of poker machines in this State have, from time to time, embraced the ACT system as being the appropriate model for Victoria. In some of its aspects it might be. It, at least, involves the certification of some of the people engaged in looking after poker machines. However, if, as I suspect, the tender proposals were initially introduced into the ACT legislation in an attempt to combat what was perceived to be a possible problem of corruption, then the legislators were either naive or merely attempting to placate those opposed to legislation.

The Ballot of Members

3.51 The other significant feature of the Australian Capital Territory legislation which bears comment is the ballot which is required before a club introduces poker machines and now before a club introduces 20 cent poker machines. The proponents of poker machines in Victoria and elsewhere have argued, from time to time, that the decision to introduce poker machines into any particular club is the concern of no one

other than the members of that club. The LCAV has adopted as one of its principles for legalisation in Victoria the institution of an Australian Capital Territory type ballot before poker machines are installed in any particular club. If anything became clear during the course of this Inquiry it was that where poker machines became general in a particular environment no club which did not have poker machines could possibly compete on equal terms with those that did. A club without poker machines in a general poker machine environment would soon find itself at an intolerable disadvantage. Once poker machines became general the holding of a ballot by any particular club to install them would be little more than a formality and could, in many cases, border on a sham. Those clubs, both in New South Wales and the Australian Capital Territory, which do not have poker machines are all exclusive clubs which do not need, or seek, to compete for members.

ACT Security

3.52 GALA, and Mr. Matthews as its chief executive, appears extremely conscious of security matters with respect to the operation of poker machines. The systems employed by GALA are designed, so far as possible, to minimise the risk of dishonesty either by external poker machine cheats or by club officials. All club records and documents relating to poker machines, known as the "common accounting system" (copies of which are collected in Exhibit 85), are obtainable only from GALA and are serially numbered. Every time a machine is opened that fact and the reason for opening the machine must be recorded. Should the analysis of poker machine results carried

out by GALA from the monthly returns submitted by the clubs (similar to the percentage analysis and cash flow analysis used in New South Wales) not show performance within very fine tolerances GALA institutes an investigation. Mr. Matthews is presently investigating a further refinement to be incorporated in poker machines, namely the installation of an automatic meter reader (or "AMR"), which could be read only by GALA and which could itself record, in computer readable form, every transaction which occurred in the machine. This might go some way towards reducing the possibility of either accidental or deliberate data corruption at the point at which the data is collected from the machine.

Growth of ACT Clubs

3.53 Upon the introduction of poker machines in 1976 there were 41 licensed clubs in the ACT. They initially installed 529 machines. There are presently 69 licensed clubs with 1,479 machines. The growth in the number of clubs has been brought about by the fact that poker machine profits have enabled clubs to expand physically and expand the range of services provided for their members. This has led, as in New South Wales, to the inevitable change in the concept of a club. Mr. Matthews says that ACT clubs effectively, for the most part, adopt an "open door" policy. (T.715). Whilst being required by law to admit only members and their "guests" by the simple expedient of having the doorman admit anybody who approaches the club as his guest the spirit of the law can be overcome. The influx of visitors raises a club's revenue and

with its members' and the general public's expectation of what the club ought to provide. To maintain a level of service provided, once reached, the club must continue to encourage visitors. Mr. Mazengarb, whilst being prepared only to concede that an open door policy exists in only a minority of smaller clubs (T.1147), asserted (T.1248) "that clubs are a part of tourism". The inevitable tension between the original concept of a club as being a group of members, usually known to each other, who associate for a particular purpose and the need for an ever-increasing amount of revenue to provide increasingly demanded services will be resolved, in my view, in favour of ACT clubs becoming, in due course, open public facilities as are already most of their New South Wales counterparts.

The Taxation of Poker Machine Profits

3.54 GALA finances itself from poker machine licence fees and the fees it charges for repairmen's certificates. As well as these fees, clubs pay 10% of the gross revenue derived from poker machines into a Community Development Fund. This is the only equivalent to the Supplementary Poker Machine Tax imposed in New South Wales. All the relevant statistics with respect to poker machine operations in the ACT since they commenced in 1956 are conveniently summarised in Exhibit 85M reproduced overleaf.

Draw Poker Machines

3.55 In the course of this Inquiry reference has been made by various witnesses as to what are commonly known as "draw poker machines". I have seen these machines on

TABLE 3.1
AUSTRALIAN CAPITAL TERRITORY
POKER MACHINE OPERATIONS
1976 - 1983

TURNOVER (i.e. HANDLE)

	\$	% <u>increase</u>
1976/1977	28,075,230	
1977/1978	52,898,385	+88.42%
1978/1979	64,251,615	+21.46%
1979/1980	74,909,154	+16.59%
1980/1981	92,322,385	+23.25%
1981/1982	106,476,846	+15.33%
1982/1983	127,965,769	+20.18%

FEES AND INCOME

	<u>Licence Fees</u>	<u>Certificate Fees</u>	<u>Revenue Income*</u>
	\$	\$	\$
1976/1977	60,355	3,090	368,420
1977/1978	125,483	3,460	687,679
1978/1979	190,243	4,230	835,271
1979/1980	225,325	4,580	973,819
1980/1981	264,501	4,550	1,200,191
1981/1982	299,103	4,600	1,384,199
1982/1983	378,097	4,860	1,663,555
Total	1,543,107	29,370	7,113,134

* Community Development Fund

DISTRIBUTION OF POKER MACHINES

	<u>No. of Clubs</u>	<u>No of Machines</u>
1976/1977	41	529
1977/1978	44	673
1978/1979	56	945
1979/1980	63	1,076
1980/1981	68	1,250
1981/1982	69	1,365
1982/1983	69	1,479

Note: The player loss, or club win, can readily be ascertained for any given year by multiplying by ten the Revenue Income for that year. The Revenue Income is 10% of the club win.

inspections in New South Wales hotels and ACT clubs. They are present in Victorian hotels and in numerous non-licensed premises in New South Wales and Victoria, such as pizza parlours, milk bars, etc. It is convenient to discuss these machines, insofar as they are relevant to this Inquiry, at this point, as it is in the ACT that some positive steps appear to have been taken to regulate the proliferation of them and to control some of their more insidious features.

3.56 A draw poker machine is a video game operated by the insertion of a coin (usually 20 cents) whereupon five playing card faces are "dealt" on a video screen. Sometimes the screen is horizontal; sometimes it is vertical. Upon being presented with those five cards the player may, by pressing appropriate buttons on the machine, hold two cards and discard up to three. The machine then deals further cards to make up a five card poker hand. At this point the game is scored by reference to the ordinary rules of poker scoring with each poker hand being allocated a score according to the table. Commonly the score is "paid" in free games so that, for example, a "straight" may be worth twenty free games whereas three tens may be worth four free games.

3.57 The question of whether a machine which "pays off" a winner in free games is a gaming machine or not will depend upon the construction of the relevant statutory provision in each jurisdiction. In Victoria there is no doubt that any such machine which is capable of awarding a prize of more than four free games is a "multiple coin machine" within the meaning

of the Lotteries Gaming and Betting Act 1966 and is deemed by virtue of S.68 of that Act to be an illegal gaming machine. However, whatever the potential for these machines to "pay off" in free games might be in any particular jurisdiction it has become clear to me during the course of this Inquiry that in many places, perhaps particularly the hotels of New South Wales, any "free games" which a person may win on a particular machine will be readily converted to cash or liquor by the proprietor of the establishment in which the machine is installed. This situation became so notorious in the ACT that at the end of 1982 the ACT House of Assembly Standing Committee on Finance and Legislation instituted an inquiry into these machines. They are, particularly when used for the purpose of gambling for money or liquor, clearly gaming machines and as such would fall within most if not all of the definitions of poker machines or slot machines set out in Chapter 2 of this report.

3.58 In a submission to the House of Assembly Inquiry (Ex.37) GALA estimated that at the end of the 1981-82 financial year there were approximately 300 draw poker machines in the Territory. It was estimated that in that financial year players of such machines lost about \$3million on them. GALA's concern was that such machines, whilst being effectively operated as poker machines in hotels, taverns and even in licensed clubs were not subject to any of the controls upon licensed poker machines, were not subject to licence fees and were not producing any revenue for the Community Development Fund. Further, insofar as they were being used as gambling machines

the financial arrangement between the owners of the machines and the proprietors of the premises in which they were installed (usually a 50/50 division of profit) enabled such machine owners to directly engage in illegal gambling operations. GALA submitted that if it were proposed to legalise draw poker machines then whether they be permitted in clubs and/or hotels they ought to be subject to the same stringent controls as legitimate poker machines. It further pointed out that as draw poker machines incorporated the same features as hold and draw poker machines (already permitted in New South Wales but not in the Territory and had some of the features of multi-coin machines, (also permitted in New South Wales but not in the Territory)), a standard policy would have to be developed in relation to these gaming devices as well.

3.59 The Registered Clubs Association of the ACT submitted to the Inquiry that draw poker machines ought to be banned. (Mazengarb T.1168). Notwithstanding that submission the Inquiry recommended that draw poker machines be approved for use in licensed clubs and be controlled as if they were 20 cent poker machines. They must have a set payout fixed at 87% and the maximum bet on each "draw" must be limited to 40 cents. (Ex.B23(c)). No amendments have yet been made to the law to give effect to the House of Assembly's Committee recommendations.

3.60 The implications of the draw poker machine controversy for Victoria are that presently such machines are operating totally uncontrolled in Victorian hotels and other

public places. Notwithstanding the provisions of the Lotteries Gaming and Betting Act 1966 above referred to, and the fact that any such machines which are capable of granting more than four free games are ipso facto illegal, I have no doubt that these machines are being used in Victoria presently for illegal gaming and that prizes are being redeemed in cash and/or kind. To some extent the stringent nature of the present law relating to these machines in Victoria may well mask the full extent of such activity as, presently, a successful prosecution requires only evidence that a machine is capable of granting more than four free games. The incentive to look for illegal gaming in cash and/or kind is not there. The totally uncontrolled nature of draw poker machines both as to the way in which they are constructed, the security (or lack of it) inherent in their construction, the lack of any control over the "fairness" of the games played and their propensity for use as illegal gambling machines makes a very strong case for their being banned in Victoria. When one adds to this the fact that criminal elements are alleged by the police to be involved either in the ownership or the distribution of draw poker machines (Ex.109) the case becomes even stronger. Present lack of control in this area may well be permitting very large sums by way of profits to be extracted from a gaming operation without any control being exercised or tax being paid.

NOTES TO CHAPTER THREE:

- [1] Caldwell, Dr. G., "Leisure Co-operatives: The Institutionalisation of Gambling and the Growth of Large Leisure Organisations in New South Wales" (1972) unpublished Thesis for Ph.D at Australian National University.
- [2] Ex parte O'Connor (1921) 21 S.R.566
- [3] The same misleading account of the 1931-32 New South Wales position appears in the submission of the ACDA to the Connor Inquiry a copy of which is annexed to evidence of Mr. T. Hornsby submitted by the LCAV to this Inquiry.
- [4] Caldwell, op cit., p.96.
- [5] Caldwell, op cit., p.93.
- [6] Caldwell, op cit., p.92 quoting Licences Reduction Board Report.
- [7] Caldwell, op cit., p.98.
- [8] Caldwell, op cit., p.114.
- [9] Supplementary tax was reduced in 1976 by the Wran Government in fulfillment of a pre-election pledge to give relief to the club industry.

CHAPTER FOUR
MANUFACTURE AND SUPPLY OF POKER MACHINES
IN AUSTRALIA

HISTORICAL

The early years

4.01 Poker machines were not legalised in New South Wales until 1956 but they had been operated in clubs and, from time to time, in other premises in that State for many years prior to that time. I have not undertaken any extensive research into the history of poker machine manufacture in Australia but it would appear that in early years there may have been a number of small manufacturers who, as well as manufacturing machines, retained ownership of them and shared in their profits. Some of them are referred to in the Report of the 1932 Royal Commission (Ex.94). A company known as Automatic Machines Limited and individuals Lachmund, Grose and Phillips as well as one L.L. Smith are mentioned by Mr. Justice Halse Rogers as being either manufacturers or owners of machines in New South Wales and Queensland at the time he was writing. According to the ACDA, in the late 1930's Roy Nutt and Sid Muddle began the company known today as Nutt and Muddle and Sons Pty. Ltd. by repairing pinball machines and operating (illegally) old imported poker machines. (Ex.53 p.35). The Ainsworth group of companies began manufacturing poker machines for the illegal club market in 1953. (Ex.C4(a)). My impression is that it was not until relatively recent times that the industry achieved its present size, with sales of over 7,000 machines per year.

4.02 Prior to the legalisation of poker machines there were no legislative controls whatsoever over their operation. Given the history of such machines generally, and in the United States in particular, I would be amazed if criminal activity was not associated with their placement in New South Wales clubs, the fixing of percentage payback settings on machines and other activities associated with them. Any system whereby a machine is owned by one person and operated by someone else (as with draw poker and other "amusement" machines in Victoria today), with profits being shared has been shown to be conducive to "standover and strong arm" tactics with respect to the placement of machines and the accounting for their proceeds. Dr. Alfred McCoy, in his book "Drug Traffic - Narcotics and Organised Crime in Australia" (Harper & Row Sydney 1980), recounts how in 1954 territorial rivalries between competing poker machine distributors produced two bombings and, in one, a car belonging to Raymond Smith was blown up. Out of concern for Smith's safety a police officer, Murray Stewart Riley, was assigned by New South Wales police to him as a bodyguard. Riley later achieved prominence in the Moffitt Royal Commission and is presently serving a gaol sentence for illegal importation of drugs.

THE CURRENT MANUFACTURERS

Market shares

4.03 Although on inspection of New South Wales clubs from time to time "foreign" machines, usually reconditioned second-hand machines of "rebuilt", may be seen, the only current

suppliers to the New South Wales and Australian Capital Territory clubs of any significance are the Ainsworth organisation, Nutt and Muddle and Sons Pty. Ltd., Bally Australia Pty. Ltd. and Pacific Poker Machines Pty. Ltd. Ainsworth claims 60-70% of the New South Wales market and up to 75% of that in the Australian Capital Territory (Ex.C4(a)) and Bally claims to have supplied about 15% of the current total number of machines presently operated in New South Wales. (Ex.J6(a), para.6). Nutt and Muddle and Pacific each have, for different reasons, very small shares of the present market.

Tentative comments

4.04 In Chapter 18 of this report I shall make recommendations with respect to the licensing procedures which ought to be adopted in the event that a Victorian Government decides to permit the legalisation of poker machines in Victoria, with machines being supplied by manufacturers. At this point, it is convenient to review such information as I was able to obtain with respect to each of the current manufacturers in the New South Wales market. That information is relevant for two reasons. First, the manufacturers are a major influence in the industry and in the clubs which operate poker machines. It is desirable to consider whatever information is available on the history and conduct of the manufacturers in relation to the initial question as to whether poker machines should be permitted in Victoria. Secondly, if poker machines are to be permitted, the question will arise as to the appropriate system for supply of the machines to operators. It would be

futile to establish an elaborate system for licensing private manufacturers only to find that no applicants survived investigation. It has, therefore, seemed to me desirable to look at the current suppliers, as best I could but necessarily in a cursory way, in order to form an opinion on the question whether it is likely that one, and preferably more than one, of the existing suppliers would prove satisfactory. The judgments I record in respect of each manufacturer necessarily reflect a personal view of how high the standard should be. My view is that it should not be sufficient for a licensee merely to show an absence of criminal convictions in its senior management or for the licensing authority to be unaware of any dishonesty, or association with criminals, by top management. Given the propensity of the poker machine to attract criminals (see Chapter 6 below) and the critical role of manufacturers in the industry, it is my view that Victoria, and a Victorian licensing authority, should settle for not less a standard than that manufacturers would only be entitled to a licence if they were able to demonstrate, by their record and their attitude, that they were likely to be active and willing partners of the poker machine regulatory authority in the setting and maintenance of rigorous controls. This would involve a readiness to deal promptly and firmly with persons under their control who have been involved in either dishonesty or failure to co-operate with the regulatory authority. The comments I have made upon the various manufacturers reflect this approach. In suggesting that standard, I adopt the principle applied by Mr. E.A. Lusher

Q.C., now Mr. Justice Lusher of the New South Wales Supreme Court, in relation to casino licenses. He recommended that applicants for licenses should be required to demonstrate, inter alia, "a high degree of honesty and integrity, a proven business and administrative capacity" (and) "an interest to be diligent in securing that the controls and direction will be complied with, that gaming will be conducted fairly and properly and in an orderly fashion". [1] This approach was adopted by Mr. Connor Q.C. in his report: para. 16.22.

I should stress that the constraints of time and the fact that I was unable to compel attendance of witnesses or production of documents from outside Victoria have made it impossible for my comments to be other than tentative. I did not have available the time, the personnel or the facilities to investigate comprehensively the affairs of the four suppliers or even to follow up a number of lines of inquiry, not referred to in this report, which were suggested to Mr. Bongiorno by various informants. To have done so would have taken months of intensive investigation, both in Australia and overseas. Subject to these qualifications I make the following comments on the current Australian market suppliers.

AINSWORTH

The organisation

4.05 The Ainsworth organisation, which consists of a large number of interlocked proprietary companies, is controlled by Mr. Leonard Hastings Ainsworth. The organisation asserts that it is wholly owned by members of the Ainsworth family and that it has never sought equity capital

from outside the family. (Ex.C4(a)). It was commenced in 1933 by Mr. Ainsworth's father and its activities have encompassed the manufacture of dental supplies and equipment, scientific and laboratory equipment, flexible drive machinery, sub-fractional horsepower motors, vending equipment, money handling and banking equipment and poker machines. Poker machines have been manufactured since 1953. It now operates a large plant, which I inspected in the course of this Inquiry, at Dunning Avenue, Rosebery, a Sydney industrial suburb. As well as a manufacturing operation the Ainsworth organisation services some 24,000 or almost 50% of the poker machines in New South Wales and provides an analysis service through Club Data Services Pty. Ltd. for some 22,000 machines. A total of almost 1,000 people is employed by the organisation.

The attainment of Ainsworth's present position

4.06 Prior to 1979 poker machines were either mechanical or electro-mechanical. The differences are discussed in Chapter 2. The Ainsworth organisation claims to have developed the first microprocessor poker machine in the world in 1979. (Ex.C4(a)). This undoubtedly had an enormous effect on the Ainsworth business although it had, already for some years prior to 1979, been dominating the New South Wales market. Nutt and Muddle, early market leaders, had been taken over in 1970 by a large English organisation, Cope Allman Limited, which operated its Australian subsidiary largely by controlling it from England. For reasons not made clear to me that course was less than successful. The market share of Nutt and Muddle declined seriously through the 1970's. Although

Bally had been in the New South Wales market since about 1970, it had never enjoyed a large market share and the effects upon it of the Moffitt Royal Commission (about which more will be said hereunder) did nothing to assist its business to improve. Pacific was not yet formed. Accordingly, throughout the 1970's the Ainsworth organisation gradually assumed market dominance in New South Wales; which market dominance was confirmed when it developed microprocessor machines. The almost total demise of Nutt and Muddle in 1982-83 must have further enhanced Ainsworth's position. Indeed, at the end of 1982 the Ainsworth organisation attempted to purchase Nutt and Muddle from Cope Allman Limited only to have the purchase blocked by an order of the Federal Court obtained on the application of the Trade Practices Commission on the ground that such a takeover would infringe the monopolies provisions of the Trade Practices Act.

Ainsworth and the Inquiry

4.07 The Ainsworth organisation sought and was given leave to appear as a party to this Inquiry on the first day of preliminary hearings. It was represented by solicitors and counsel during the whole of the public sittings and played a major part in those hearings. However, as will be seen hereunder, it hampered my task in carrying out an assessment of it as a potential supplier to the Victorian market by refusing to produce its effective owner, Mr. Ainsworth as a witness, by withdrawing its Group General Manager as a witness whilst he was being cross-examined, and by refusing me access to important documents. I have commented in Chapter 1 upon my

inability to subpoena witnesses or documents from outside Victoria. At no point in this Inquiry was the lack of such power more keenly felt than when I was attempting to deal with the Ainsworth organisation. Notwithstanding these limitations certain matters came to my attention during the course of this Inquiry which relate to the Ainsworth organisation. In respect of some of them, more questions were raised by the responses than were answered. I emphasise that there may be other matters which I have not had the opportunity to investigate or in respect of which I had no information whatsoever.

The pending charges

4.08 I must note, at the outset, the fact that Mr. Ainsworth is, with Mr. E.P. Vibert, presently under committal for trial to the District Court of New South Wales on a series of counts of conspiracy to defraud, relating to alleged activities of himself and Mr. Vibert in Queensland, Victoria and New South Wales. I mention three matters relating to the conspiracy charges. Firstly, Mr. Ainsworth himself has refused to give evidence before me, relying upon legal advice which he has apparently received for taking that course. Secondly, the charges upon which Mr. Ainsworth stands committed are, on their face, serious. They involve large amounts of money and allege the very sort of activity which anyone assessing the Ainsworth organisation as a possible contender for a place in the Victorian market would regard as particularly reprehensible. I know little of the substance of the charges and virtually nothing of the evidence supporting

them. Requests made to the New South Wales Government for access to the depositions relating to these charges taken before the committing magistrate have been refused. Despite being directly requested by Mr. Bongiorno to provide copies of those depositions both Mr. Ainsworth and Mr. Vibert have at all times refused to make such copies available. It was, of course, always within the power of either of the accused men to provide copies of the depositions to me.

4.09 I made it clear to counsel for the Ainsworth organisation that by being unable to take Mr. Ainsworth's direct evidence relating to many matters which arose throughout this Inquiry I would be placed in a position of being unable satisfactorily to resolve certain issues. Despite this and despite the fact that I made it clear (e.g. T.1395 and T.1398) that Mr. Ainsworth would be protected against self incrimination so far as those pending charges were concerned (as Mr. Vibert was), no change in attitude occurred. Further, by not having the depositions of the committal proceedings I was unable to determine whether or not matters which were raised with various witnesses from time to time by counsel were part of the pending criminal charges. The comments which I make on matters relating to the Ainsworth organisation and Mr. Ainsworth personally must be read subject to the serious qualification that I have not heard his evidence on those matters. I should add, finally, that a mere acquittal by a jury of Mr. Ainsworth of the charges upon which he presently stands committed would not be sufficient, in the context of legalised gambling, to give him or his company a

"clean bill of health". An effective licensing system would involve a very extensive investigation of numerous matters, including but not limited to those charges and the facts which gave rise to them. Regardless of whether or not a jury had been satisfied beyond reasonable doubt of guilt upon particular charges, the licensing authority would have to ask itself whether the Ainsworth organisation, it having the onus of proof, had demonstrated convincingly that it was an appropriate entity to be licensed for the manufacture and distribution of gaming equipment in this State.

The O'Brien connection

4.10 On 25 August 1983 in public sittings Mr. Bongiorno questioned Mr. P.J. Clarebrough, the Ainsworth Group General Manager, about the location of Ainsworth bank accounts. Mr. Clarebrough asserted (T.1488) that the only bank accounts which the organisation kept were in two named banks in Sydney, in the United Kingdom and in the United States. Mr. Clarebrough's evidence was still incomplete when I had to adjourn the public hearings until 5 September to undertake various inspection tours. It was arranged that Mr. Clarebrough would return to complete his evidence on that day.

4.11 As a result of certain information put before me by Mr. Bongiorno, I decided to issue two summonses under the Evidence Act 1958 for the production of documents by the ANZ Banking Group Limited and by one Kevin James O'Brien. I determined that, at least in the first instance, any material produced in response to the summons should be kept confidential and I therefore directed a special confidential

sitting on 29 August. The solicitors acting for the Ainsworth organisation were informed of the special sitting and invited to attend. None of the other parties was informed. In the event, documents were produced on that day which established that various Ainsworth companies operated trading accounts at a branch of the ANZ Bank in Melbourne, and that such bank accounts were opened on the advice of Mr. O'Brien, who said that he was a deregistered accountant employed by an accountancy company controlled by his wife and secretary and which operated from a flat occupied by Mr. O'Brien as a residence in East Ringwood. Mr. O'Brien told me that he had been deregistered following conviction on three fraud counts some six or seven years ago. (T.1C, 12C-13C). [In fact, he was convicted on 17 June 1975 on three counts of fraudulent conversion, one count of forgery and one count of fraudulently inducing an endorsement on a valuable security and again on 28 June 1976 on one count of fraudulent conversion, one count of forgery and one count of uttering.] Transactions involving several millions of dollars are recorded in the documents relating to these bank accounts. Mr. Clarebrough was not one of the persons that Mr. O'Brien named as a contact point at Ainsworth's but he was an authorised signatory to each of the bank accounts. The existence of those accounts was, of course, contrary to the evidence that Mr. Clarebrough had given on 25 August 1983.

4.12 When the Board resumed public hearings on 5 September I was informed by the Ainsworth organisation's then counsel, Mr. J.J. Spigelman, that Mr. Clarebrough would not be returning to complete his evidence as his client was fearful

that if he did so he might be publicly questioned on the costs of poker machine manufacture. Mr. Spigelman made clear to me that the decision not to return was not that of Mr. Clarebrough but of Mr. Ainsworth. (T.1505). I was surprised by the reason given as the subject of cost of manufacture had been raised by letter from Mr. Bongiorno to the Ainsworth organisation on 15 August 1983, before Mr. Clarebrough's earlier evidence and as I had previously indicated that I would be prepared to receive evidence on costing in camera. Discussion ensued between Mr. Spigelman and me during which I repeated my willingness to entertain an application for an in camera hearing (T.1512), but Mr. Spigelman's instructions were reaffirmed by his client. It would not allow Mr. Clarebrough to return to be further cross-examined because it was fearful of public disclosure of cost figures. Mr. Bongiorno suggested (T.1513) a more sinister reason, such as seeking to avoid cross-examination on the Melbourne bank accounts or wishing to avoid further cross-examination on certain documents relating to Mr. Ainsworth which, by the time Mr. Clarebrough left, it was clear Mr. Bongiorno had in his possession. Whatever the position, second thoughts prevailed. Ultimately, the Ainsworth organisation did produce certain costing figures, referred to hereunder, and Mr. Clarebrough did return to be further cross-examined on the last day of the public sittings.

4.13 On that occasion (7 October 1983) Mr. J. Pritchard, by then counsel for the Ainsworth organisation, asked Mr. Clarebrough about the Melbourne bank accounts. Mr. Clarebrough acknowledged their existence and that he was a signatory to them. He explained his earlier evidence

effectively denying the existence of those accounts by saying that, as he would have very rarely signed cheques on them he had forgotten that they existed. (T.2891). Having examined documents relating to those accounts and having reached some understanding of the purpose, and manner of operation, of the accounts I can understand Mr. Clarebrough's lapse of memory. I accept his explanation. I remain puzzled as to the reason why Mr. Ainsworth saw fit to instruct him not to return to the Inquiry on 5 September.

4.14 Mr. Clarebrough was further questioned about the relationship between Mr. Ainsworth and Mr. O'Brien. He said that Mr. O'Brien was introduced to Mr. Ainsworth through an insurance company, Greater Pacific Insurance. He estimated that the introduction would have occurred about three and a half years ago and that subsequent to that introduction Mr. O'Brien presented a scheme to Mr. Ainsworth, which was in fact adopted with Mr. O'Brien's active assistance, to restructure the organisation by the use of various trusts. Three trading companies act, apparently, as trustees for three family trusts; the beneficiaries all being members of the Ainsworth family. Mr. Clarebrough further said that if Mr. Ainsworth had known that Mr. O'Brien had been deregistered as an accountant following convictions for fraud he would never have dealt with him. However, according to a letter to the Board dated 12 October 1983 (Ex.C27) from Mr. J.N. Newnan, corporate attorney for the Ainsworth group, in June 1979, shortly after the retainer commenced, Mr. Ainsworth did become aware of Mr. O'Brien's convictions. He continued to deal with him. In June 1980 Mr. O'Brien implemented a scheme, described in that

letter as "an interest time differential", the purpose of which was to "defer or postpone taxation payments". The scheme involved the circulation of a series of long term loans, totalling several millions of dollars, between the Ainsworth companies and various companies controlled by Mr. O'Brien, the effect being to postpone for many years what would otherwise be current tax liabilities. The scheme appears to have been not illegal. As recently as 1982, the Ainsworth organisation entered into contractual arrangements involving large sums of money with an O'Brien company relative to a cotton growing venture in northern New South Wales. Invoices produced indicate that Mr. O'Brien's employer has claimed numerous significant sums of money for accountancy services rendered. Mr. O'Brien told me on 29 August 1983 that he still performed accounting work for Mr. Ainsworth. (T.2C).

4.15 On the face of the matter, it appears to me strange that a large Sydney-based organisation, having no significant commercial association with Victoria, should retain the services of an accountant operating out premises in an outer Melbourne suburb. It would be strange if the Ainsworth organisation was restructured, this involving a series of deeds to which Mr. O'Brien was a party, without Mr. Ainsworth ever seeing a letterhead, invoice or other document to alert him to the fact that Mr. O'Brien was not practising under his own name. If Mr. Ainsworth did become aware, I wonder whether he asked any questions as to the reasons and, if so, what replies he received. At a later stage he became aware of Mr. O'Brien's convictions. Mr. Newnan asserts, on Mr. Ainsworth's behalf, that Mr. Ainsworth asked for, and was given by Mr.

O'Brien, an account of the circumstances surrounding Mr. O'Brien's convictions which explanation he, Mr. Ainsworth, found satisfactory. The explanation offered, according to Mr. Newnan, was "that Mr. O'Brien advised that he had performed a favour for a friend in that following the death of a client he had altered a document for the benefit of the widow." This explanation would be difficult to reconcile with the actual list of convictions (see para.4.11 above), which list would have been known to Mr. Ainsworth if, as Mr. Newnan asserts, Mr. Ainsworth had first learned of the convictions by reading an article in "Chartac No.31" of June 1979. (Ex.C28). It is not asserted that Mr. Ainsworth made any independent inquiries before entering into the multi-million dollar "interest time differential arrangements". Had he done so he would have found that the true facts were very different to the story allegedly provided to him by Mr. O'Brien.

4.16 I have puzzled at some length as to what conclusions I should reach in relation to the Ainsworth-O'Brien connection. There is nothing known to me to suggest that any criminal or other illegal activities have occurred or that Mr. Ainsworth has used Mr. O'Brien to deceive anybody, but there might be activities of which I am not aware. It might well be argued that it is to Mr. Ainsworth's credit that, when he learned of Mr. O'Brien's convictions and obtained an explanation, he was prepared not to hold this against him and to continue his retainer. But one would have wished to explore all these matters with Mr. Ainsworth. Only he, not Mr. Clarebrough or Mr. Newnan, can provide a satisfactory explanation of the questions which arise. In the absence of Mr. Ainsworth I am

unable to make any finding; the matter remains a point of concern which would certainly need to be investigated further by any licensing authority.

The campaign for legalisation in Victoria and Queensland

4.17 In Chapter 12 I shall refer to the association between Mr. Vibert and Mr. Ainsworth with respect to the campaign for legalisation of poker machines in Victoria. I shall deal with the financial support provided by Mr. Ainsworth to the Australian Club Development Association and to the fact that I believe Mr. Ainsworth was aware of the activities of Mr. Vibert and the ACDA. There are, however, some important matters relating to the campaign for legalisation of poker machines outside New South Wales which relate directly to Mr. Ainsworth and the Ainsworth organisation and which ought to be mentioned here.

The Queensland ALP

4.18 In mid-1980 Mr. Vibert, in the course of his activities as Executive Director of the Australian Club Development Association, arranged for the Ainsworth organisation to make donations totalling \$30,000 to the leaders fund of the Queensland branch of the Australian Labor Party. Mr. Vibert said he wished to help the Labor Party in Queensland because it favoured the legalisation of poker machines and looked like doing badly in the forthcoming State elections. (T.1694). I find nothing remarkable in the fact of such a donation; under our system political parties depend upon donations to survive. Should anonymity in a donor be required (a situation which I would assume to be relatively

common) such anonymity can be provided without descending to dishonesty and the concoction of false documents.

4.19 On 2 May 1980 Mr. Vibert wrote a "private and confidential" letter to Mr. E. Casey, the then Leader of the ALP Opposition in the Queensland Parliament. The letter (Ex.MM13) was in the following terms:-

"Dear Ed,
Further to our discussions find enclosed drafts of how the invoices to Messrs. Ainsworth should read. As explained, the commitment is broken into three payments of \$10,000 - one now, one in June and one in August. These payments are to be split into two invoices covering the year's advertising and promotional costs. Please send them to me - care of P.O. Box 142, Beaconsfield, marked 'For the personal attention of Mr. T. Vibert'. Also, indicate exactly how the cheques should be made out - we don't want them going to the wrong party! Regards,
Yours sincerely,
Ted Vibert."

Attached to the letter were two draft invoices in the following terms:-

" DRAFT ONLY
To:
Ainsworth Consolidated Industries,
108 Dunning Avenue,
Rosebery. N.S.W. 2018.
January 1980.
To advertising in Labor Party newspapers pamphlets
and brochures for the months of January and
February 1980.
\$5,000"

And:-
" DRAFT ONLY
To:
Ainsworth Consolidated Industries,
108 Dunning Avenue,
Rosebery. N.S.W. 2018
March 1980
To advertising in Labor Party newspapers pamphlets
and brochures for the months of March and April
1980.
\$5,000"

The payments were to be made to a company called Caspalp Promotions, said by Mr. Vibert (T.1692) to be "the leaders fund". Mr. Vibert conceded that no advertising was ever undertaken for the Ainsworth organisation by any Labor Party publication in Queensland. He claimed that he had suggested the form of the draft invoices to Mr. Casey as that was the way ALP fund raisers in Queensland told him they wanted it done. He further claimed that he had discussed the matter with Mr. Ainsworth and that Ainsworth had approved the construction of the draft invoices. As Mr. Vibert put it "He does not really mind how the money gets paid". (T.1693). At T.1712 Mr. Vibert agreed that Mr. Ainsworth "knew that an invoice which referred to advertising and promotional activities was in fact being tinkered with for the purpose of it being paid as a political donation".

4.20 It seems to me to be immaterial for my present purposes whether Mr. Vibert is telling the truth when he said that the suggestion for the concoction of false invoices came from ALP fund raisers in Queensland or whether, in fact, he suggested it himself. The matter is relevant to this part of my report as it clearly implicates Mr. Ainsworth in the concoction of documents to disguise a payment to a political party. Mr. Ainsworth's motives are, to my mind, immaterial although it does not escape my attention that one benefit to him of making the donation in this way would be, in all probability, to provide a \$30,000 tax deduction for advertising expenses which would not be available in respect of political donation. The situation would be even better for

the Ainsworth organisation if in fact half the total donation was paid by Mr. Vibert himself, as it appears to have been. (T.1711). The Ainsworth organisation would retain possession of invoices totalling \$30,000 to support a tax deduction of that amount and thereby presumably save about \$14,000 in company tax. If this activity resulted in no more than the dishonest evasion of \$14,000 in Federal company tax I would regard the matter as serious. If, in fact, the Ainsworth organisation received other considerations not revealed by the evidence before me the matter may be even more serious still.

ANOP

4.21 Between January and March 1982 the Ainsworth organisation paid a total of \$40,000 to an organisation known as ANOP. The amounts were paid in respect of four invoices, each for \$10,000, which described ANOP as "National Opinion Researchers of Marketing, Advertising, Political and Social Attitudes". (Ex.MM16). The invoices which were dated 19 November 1981, 9 February 1982, 15 March 1982 and 7 April 1982 respectively were stated on their face to be:-

"For Preparatory Design and Preliminary Survey Work to Date"

"Interim Research and Advertising Direction"

"Advertising and Target Research"

and

"Strategy and Direction Research"

Mr. Vibert conceded that the Ainsworth organisation did not receive any of the work referred to or the benefit of any of that work but he claimed that work was done for ACDA. He described the work that was done as "market research".

(T.1717). He said: "There is a certain amount of correspondence. I was given a lot of information, at three or four meetings, relative to the results of the research". He said that he wanted to know the reaction of people in marginal seats to poker machines and to the stances taken by the political parties upon that issue. He sought out the ALP pollster and had him add some additional questions to surveys he was undertaking for the ALP. (T.1719). Mr. Vibert said that eight to ten questions relative to poker machines were added. (T.1720). He did not know how many people had been interviewed. The total reports from ANOP to ACDA would be "less than a dozen pages". (T.1721). There never was any advertising done but the mention of advertising on the invoice of 15 March did "not really" strike him as strange. (T.1722). Mr. Vibert claimed at one stage that "there were four separate surveys done" (T.1722) but this is inconsistent with his detailed account of what was done. Quite plainly these invoices were concocted, not only in falsely suggesting that work had been done on behalf of the Ainsworth organisation, but also in respect of the reason for the payment.

4.22 Mr. Vibert was asked whether he had ever heard the suggestion that payments made by the Ainsworth organisation to ANOP were disguised donations to the Victorian branch of the Australian Labor Party. Mr. Vibert said: "I think the original allegation was made by Mr. Morris Williams in Parliament" and added that "it is not true". (T.1717). In fact, according to a report in "The Herald" newspaper of 31 March at the committal proceedings against Messrs.

Ainsworth and Vibert in Sydney on 16 March 1983

Detective Sergeant Hanrahan of the New South Wales Police Machine Task Force gave evidence of a conversation with Mr. Ainsworth in the course of which Mr. Ainsworth allegedly stated that \$40,000 had been paid to ANOP on behalf of the Victorian branch of the Australian Labor Party. Not having the depositions of those hearings before me, for reasons I have already stated, nor the opportunity to question Mr. Ainsworth on this matter, I was left to the rather unsatisfactory course of asking counsel for the Ainsworth organisation, in the course of his final address, whether the report in "The Herald" newspaper was correct or not. Mr. Pritchard acknowledged the accuracy of "The Herald" report of the proceedings. In relation to the substance of the matter, Mr. Pritchard stated that his instructions were that Mr. Ainsworth agrees the \$40,000 was in fact paid to ANOP for the benefit of the Victorian Labor Party but that Mr. Ainsworth says that he did not at the time know that the money was being paid for that purpose. (T.2908). I do not believe that Mr. Ainsworth was at the time ignorant of the reason for the payment of such a sum by his organisation.

14.23 Having heard Mr. Vibert's description of the work which was allegedly performed by ANOP and having noted that even he concedes that in respect of one at least of the invoices the description on its face differed from the work which he says was done, I do not accept that the Ainsworth organisation paid ANOP \$40,000 solely for work done by that organisation for ACDA. It may be that this payment also was a political donation, at least in part, disguised as

advertising etc. to enable the company to claim the payment as a taxation deduction. I note Mr. Vibert's denial that this was so. I place little weight on that. But in the absence of direct evidence I am not prepared to make a finding as to the true purpose. What is clear is that, once again, for whatever purpose, Mr. Ainsworth was prepared to collude in the use of false invoices. I should in fairness add that, even if it be the fact that the purpose of the payments was to benefit the Victorian ALP, there is nothing to suggest that any member of the Party was involved in the way it was done. As I have said, there is nothing unusual or necessarily wrong in a political party receiving a donation from a commercial organisation. It would be quite possible for somebody in the Party to have known that the Ainsworth organisation, or ACDA, proposed to make a donation but to have had nothing to do with, or even to have learned of, the manner in which it was made.

Murray River Poker Machine Company

4.24 In 1976 one Murray McCooke was a poker machine agent operating in the Albury area. He sold and serviced various poker machines, including Ainsworth machines. It was decided to incorporate the business and, as Mr. Vibert was a close friend of Mr. McCooke, he was invited to take a financial interest. At some point it was suggested, possibly by Mr. Vibert, that Mr. Ainsworth might be interested. Consequently, an agreement was reached whereby upon the incorporation of a company to be known as the Murray River Poker Machine Company Pty. Ltd. Mr. McCooke would have 25% of the issued share

capital as beneficial owner, Mr. Vibert would have 25% and Mr. Ainsworth would have 50%. Apparently this division of the capital suited Mr. McCooke as it meant, so he believed, that he and Mr. Vibert would be able to maintain control of the company. It would not be dominated by Mr. Ainsworth. It was further agreed, apparently by all parties concerned, that Mr. Ainsworth's presence in the company should be "invisible" so that when the share capital was actually issued, so far as the books would disclose, Mr. McCooke and Mr. Vibert would each have 50%. The apparent reason for this subterfuge was that the company was to be, inter alia, a Bally agent. However, Mr. Vibert and Mr. Ainsworth went one better. They had a further agreement, kept secret from Mr. McCooke, that Mr. Vibert should not taken any shares beneficially but should hold his shares as a mere trustee for Mr. Ainsworth, thereby effectively giving 75% of the issued share capital to Mr. Ainsworth. The result was that Mr. McCooke thought that he and Mr. Vibert owned one half of the company, with Mr. Ainsworth owning the other half, whereas the true situation was that Mr. Ainsworth owned 75% of the company and Mr. McCooke the other 25%. Mr. Vibert was a mere trustee with no beneficial interest whatsoever in the company. (Ex.MM10 and T.1670 et seq.). Quite aside from Mr. Ainsworth's connivance in Mr. Vibert's deliberate deception of his "very close friend" Mr. McCooke, the case raises a serious general question.

Deception of Bally

4.25 By buying into the company in the way he did, Mr. Ainsworth was able secretly to control a poker machine agent

which, he knew, acted as agent not only for him but also for other manufacturers, including Bally. Bally was never told of Mr. Ainsworth's interest in the company it employed as its agent. It thought it was dealing with Mr. McCooke. It was entitled to have received from that agent faithful agency service unencumbered by the obvious conflict of interests which must have arisen for Mr. McCooke in the circumstances. Miss Jan Newell, the Managing Director of Bally, certainly knew nothing of the Murray River Poker Machine Company Ltd.'s true ownership. She said in evidence that she heard a rumour "quite a long while ago" that Mr. Vibert was involved in the company. She had a search made at the office of the Commission of Corporate Affairs but this disclosed reference only to Mr. McCooke and his wife. (T.2819). She spoke to Mr. McCooke but he "profusely denied" that either Mr. Ainsworth or Mr. Vibert had any interest in the company. (T.2820). Miss Newell knew that the Murray River company was not an exclusive agency. She assumed "they may sell other people's products" but not "that they are owned by the opposition". (T.2820). As Mr. Vibert agreed, the arrangement was "a way of having Bally in the market and totally under their (Ainsworth's) control". (T.1677/8).

Other companies

4.26 Whilst the Murray River Poker Machine Company Pty. Ltd. was the only agency in respect of which documentary evidence was produced before me to suggest an interest by Mr. Ainsworth, Mr. Vibert at T.1676 speaks of other agencies which "they" (Ainsworth) have purchased. He says that "the idea of

that is to run them down as Bally agents and sell their own equipment into those clubs". This course of conduct, if it has been repeated, may be one of the reasons for Ainsworth's current dominance of the New South Wales market.

More general implications

4.27 From the point of view of gaming control in a new jurisdiction, the more serious implication of the Murray River company story arises when one considers the difficulty, under present Australian law relating to companies, of ascertaining the identity of the beneficial owner of shares in a company. The use of trustee shareholders can effectively disguise the true beneficial ownership of any shareholding in any corporate entity. The problem has often been adverted to in gaming literature throughout the world and particularly in the United States, where significant criminal involvement in the ownership of casinos has been able to be effectively hidden for many years by the use of trusts to disguise the true beneficial ownership of various shareholdings. If it were contemplated for Victoria that proper enforcement of adequate standards involved the exclusion from the market of a particular manufacturer or distributor one could never be absolutely certain that such manufacturer or distributor was not there, in the market, through trustee shareholders and even "dummy" directors of a local company which apparently complied completely with local gaming laws. Mr. Ainsworth has demonstrated, by his conduct in respect of the Murray River company, a willingness to disguise his involvement in an enterprise if he regards such disguise as being beneficial.

If it were decided, for example, that the Ainsworth organisation ought not to be permitted to trade in Victoria it would be extremely difficult, one might even say impossible, to be absolutely certain that some apparently Victorian company, having obtained the requisite licence, was not effectively controlled in the same way as the Murray River Poker Machine Company Pty. Ltd.

Ainsworth and machine controls

4.28 There is no doubt that the Ainsworth organisation has been to the forefront of technical development in poker machines in Australia. The evidence of Mr. Keiran Daley and of Mr. Peter Clarebrough indicates that the organisation has taken an interest in co-operating with such regulatory authority as exists in New South Wales to impose more rigid controls on the industry, particularly in relation to the control of machines and the institution of statutory offences relating to cheating on machines. Since at least August 1980, proposed statutory amendments set out in Ex.C4(b) have been under consideration by the New South Wales Government. The Ainsworth organisation has provided constructive criticism of those proposals. (Ex. C4(c)). On the other hand, Mr. Clarebrough was compelled to concede in cross-examination that the company presently markets machines in the Australian Capital Territory which have a significant security factor absent from those which it markets in New South Wales. In the Australian Capital Territory it has been required, ever since legalisation in 1976, that the machine must be made to stop operation if any meter is disconnected. The same regulation

does not apply in New South Wales but Mr. Clarebrough agreed that there would be nothing to stop Ainsworth voluntarily adding this safeguard. He said that there were only slight differences between the machines destined for the Australian Capital Territory and those supplied to New South Wales. The additional item is "a hardware fix that is an additional item to the normal machine that we supply in the State of New South Wales". He said that the company had "overlooked" making it standard equipment in New South Wales. (T.1490). I find this evidence curious. One would have thought that it was conducive to production efficiency to eliminate, as far as possible, differences between the machines intended for the two domestic markets. It scarcely seems possible to overlook for seven years a component difference between the two sets of machines. I can only conclude that, for some reason, Ainsworths have chosen not to install the safeguard on the New South Wales machines.

Other matters

4.29 Many other criticisms could be levelled at the Ainsworth organisation, such as its threat to sue for defamation a member who complained to his club secretary about its service men being engaged in theft (T.1437 and Ex.C14 relating to the 729 Club); its failure to keep any record of complaints made about the honesty of its mechanics (T.1535); its acknowledgement "that back in 1967 we did pay some club officials, like everybody else, some spending money, with no great magnitude..." (T.2889); the Graham Hoare matter referred to in para.4.34 below and other matters mentioned

briefly in the course of the Inquiry. However, I believe that the matters which I have dealt with in some detail, together with those matters relating to the Ainsworth organisation referred to in other sections of this report (e.g. below with respect to the costing of machines, Chapter 12 with respect to the Victorian campaign, etc.) sufficiently indicate the nature of the Ainsworth organisation as revealed in this Inquiry.

4.30 In conclusion I must emphasise again that in looking at the Ainsworth organisation I was not conducting a licensing investigation. I would expect such investigation to be far deeper, far wider and carried out with far greater intensity than I have been able to carry out my inquiry. I would also expect it to be unhampered by the lack of relevant co-operation from the Ainsworth organisation to which I was subjected. Such an investigation may result in satisfactory explanations of the matters left unresolved before me. It is conceivable that the company may persuade a licensing authority that, whatever its past misdeeds, it should now be regarded as suitable to be licensed. It is not for me to make those decisions. Consistently with my role, as I see it (see para.4.04), I record simply that I am not confident, on what I have seen, that more intense scrutiny of Ainsworth's affairs would lead a licensing authority to be satisfied, to the necessary standard, of the probity of either the company itself or of its principal.

NUTT AND MUDDLE

Takeover offers

4.31 As noted above the company presently known as Nutt and Muddle and Sons Pty. Ltd. was commenced by its original owners long before legalisation of poker machines in New South Wales. The company was a major supplier to the New South Wales market up until 1970 when it was sold to the English organisation Cope Allman Limited. It was operated by Cope Allman Limited until it was put on the market for sale some time last year. (At one time the ubiquitous Mr. Vibert was a senior executive of the Australian company). At the time of its being offered for sale it would seem its business had declined to a small fraction of its earlier share of the New South Wales market. The reasons are unclear but Ainsworth's dominance of microprocessor technology probably had a lot to do with producing the situation.

4.32 After the Ainsworth bid for Nutt and Muddle was blocked in the Federal Court (see para.4.06) a bid was made for the company by a Mr. W.R. Ruffler, an Englishman. Mr. Clarebrough told me (T.2890) that Mr. Ainsworth had for many years known Mr. Ruffler's father, a distributor of amusement and slot machines in the United Kingdom. That may have been a coincidence. On the other hand it may not. The members of the New South Wales Police Task Force told me that not only had Mr. Ruffler stayed at Mr. Ainsworth's home in Sydney when he came to Australia to negotiate with Nutt and Muddle and the Foreign Investment Review Board but he used as his advisers in Australia Mr. K.J. O'Brien, referred to above, and a Melbourne

solicitor Mr. Peter C. Neville, who had acted for the Ainsworth interests in implementing the various schemes suggested by Mr. O'Brien. In any event the Ruffler bid failed. (Ex.109 p.40). The Foreign Investment Review Board refused its approval to the purchase of the shares. According to the Task Force, at one stage, one Mark Alfred Clarkson physically "moved into" the Nutt and Muddle premises. Mr. Clarkson was said to be attempting to arrange, through Mr. Dale O'Sullivan [2] the necessary finance to purchase the company but this "fell through". (Ex.109 pp.39-40). For some time, indeed throughout most of the duration of this Inquiry, it appeared that Nutt and Muddle was on the point of imminent closure.

The Stanlee takeover

4.33 Early in September 1983 Nutt and Muddle was acquired by an organisation known as the Stanlee Group, a group of proprietary companies owned by Stanley Macdougall and his three sons, Garry, Graeme and Stuart. The company's history is set out in Ex.110(d). It markets a wide range of products, from wine to industrial cleaning cloths. It has apparently been involved in supplying the club industry with many of its requisites over many years. It has never had any prior connection with the gaming industry.

Mr. Cragen

4.34 Upon its taking over Nutt and Muddle the Stanlee organisation acquired the services of Mr. George Cragen, formerly a divisional manager with the Ainsworth organisation, to become the General Manager of Nutt and Muddle and Sons.

Mr. Cragen gave evidence before me and evinced a great enthusiasm for the job ahead of him, namely of building up the Nutt and Muddle share of the New South Wales and Australian Capital Territory poker machine market. He painted a rosy picture of the club industry and although prepared to concede that he had heard of allegations of secret commissions and the like he saw: "...the club industry as being a fairly upright ongoing sort of industry" with which he was "very pleased to be associated". (T.2701) In his twelve years at Ainsworths he had been involved in only two incidents which involved dishonesty on the part of mechanics. It was a "very, very rare situation". (T.2702). (cf. the evidence of Mr. Clarebrough at T.2884 to the effect that 13 technicians had been dismissed by Ainsworth since 1980 for dishonesty and the comments of the Poker Machine Task Force contained in Ex.109). He conceded that there may have been secretaries/managers who had done the wrong thing and that some people had been sent to gaol, but he considered the industry to be generally honest. (T.2702-2703). He was not aware that Ainsworth current model machines could be disconnected from their meters and operated unchecked (T.2703) but was aware that there had been a design fault in one Ainsworth microprocessor model which had "been capitalised on by cheats and to the best of my knowlege they have been corrected as quickly as possible". (T.2703-2704).

The Hoare memorandum

4.35 The only specific matter put to Mr. Cragen by way of cross-examination, which went directly to his conduct as an executive in the gaming industry, related to Ex.C15 which was

a memorandum written by Mr. Cragen to Mr. Ainsworth when he worked for the Ainsworth organisation. The memorandum reads as follows:-

"7 April 1982

To: L.H. Ainsworth
From: G. Cragen.
Subject: Graham Hoare. c.c. P.J. Clarebrough
V.A. Facer

It is currently a point of speculation in the Manly area that the abovenamed employee, who has just announced his retirement due to ill health, will effect a miraculous recovery in the next few weeks (Sometime after the heat goes out of the Treasury inquiry).

The purpose of this memorandum is to advise that he is no longer welcome to return to the 'Diggers Club' under any circumstance.

No doubt the company will be able to find a meaningful role for him, but I feel it would not be appropriate to offer him a field position.

G. Cragen"

The thrust of the cross-examination was directed to the apparent willingness, on the part of Mr. Cragen, to defeat or hinder a "Treasury inquiry" into one of his employees. Mr. Cragen said that Mr. Hoare was the resident mechanic at the Diggers Club at Harbord, in the Manly district of Sydney. He was a long term employee whom Mr. Cragen believed:-

"...had not been doing a particularly good job at the Harbord Diggers Club. I believe the machines were not in particularly good condition and I felt that they were not giving a fair return in terms of the Treasury reports. I believed at the time he had put himself into a retirement situation because Treasury were investigating the performance of the machines in the club. It was myself dealing with the secretary/manager of the club and we decided that we would probably prefer not to have the same mechanic attending to the machines...I knew Mr. Ainsworth would not want a long term employee just

tipped out and I just suggested to him that we find him a meaningful role other than in the field, perhaps in the factory working on rebuilding machines:. (T.2706).

Mr. Cragen further explained that he knew that the result of the machines in the club were less than they should theoretically have been. (T.2706). He thought that this may have been a mechanical fault (T.2707) but he agreed that "he (Hoare) was certainly a person who could assist that (Treasury) inquiry particularly if there were mechanical faults". (T.2712). The evidence went on (T.2712-2713):-

"Q. He had been allowed to retire due to ill health - is that correct?

A. Yes, but this is prior to the Treasury being involved.

Q. And you were telling Mr. Ainsworth, 'Watch out; he will declare himself fit again'?

A. Yes.

Q. 'After the Treasury inquiry'?

A. Yes.

Q. 'And then if you take him back put him in a job that is not a field position', is that correct?

A. Yes.

Q. In other words, the man will be allowed to come back to work for Ainsworth after having had an illness that coincided with the Treasury inquiry?

A. Yes.

Q. Which had the result he did not have to submit to any investigation by the Treasury inquiry?

A. I believe you could say that, yes."

Despite being given every possible opportunity to explain his memorandum Mr. Cragen did not adequately do so. I am left

with the inescapable conclusion that he was prepared to thwart an investigation by the New South Wales authority of persistent cash deficiencies for the purpose of either protecting an employee of the Ainsworth organisation or protecting the reputation of the organisation itself. I thought that, perhaps, the general atmosphere at the Ainsworth organisation may have been such as to encourage this sort of behaviour but the most worrying feature of the incident is that, even when he gave evidence, 18 months after the incident and as an employee of Nutt and Muddle, Mr. Cragen persistently failed to concede that anything wrong had been done. (T.2708-2713). [3] Mr. Hoare is still employed by Ainsworth, in the field servicing machines in clubs. (Delaney T.1540).

Mr. Macdougall's position

4.36 I have no reason to believe that the Stanlee Group and its controlling directors, the Macdougall brothers, are anything other than honest businessmen. No investigation into their affairs has been undertaken and no material with respect to their companies other than that which they have produced and which is contained in Ex.110 has been examined. However, they are now engaged in the gaming industry. As Mr. Horton, the Secretary of the New South Wales Department of Finance, observed in the course of my discussion with him in a slightly different context:-

"...there are reasons to be a bit more restrictive in this area than if you were simply talking about television sets or gas cookers or something like (that)".

Mr. Garry Macdougall, in giving evidence, spoke of his high regard for Mr. Cragen whom he had known for about ten years.

(T.2747). He had heard Mr. Cragen's evidence on the Hoare memorandum. He was shown the memorandum and asked whether his attitude to Mr. Cragen was affected by the memorandum and Mr. Cragen's evidence in relation to it. He replied that they did not in any way reduce his esteem for Mr. Cragen but that he hoped that in the future Mr. Cragen would express himself more directly in any memorandum he wrote.

Conclusions

4.37 I find the evidence, of both Mr. Cragen and Mr. Macdougall, in relation to the Hoare incident to be disturbing. Mr. Cragen had been in the New South Wales industry for twelve years. He was aware of the chronic problem of cash deficiencies each year running into many millions of dollars. He conceded that this was "a serious situation". (T.2715). It must have been apparent to him that the situation would only improve as a result of a much more determined effort by everyone in the industry, not least the government officers whose job it is to find out the reasons for deficiencies. It was obvious to Mr. Cragen that the Treasury inquiry would, at the least, be impeded by the absence of the man who serviced the machines in relation to which the deficiency had occurred. Yet he was prepared to condone an absence from that inquiry by a man whom he believed to be about to make a "miraculous recovery". The fact that neither Mr. Cragen nor Mr. Macdougall felt that what had been done was wrong does not, in my view, auger well for their prospects of satisfying an investigatory authority that they have the high standards of responsibility appropriate to a licensee.

BALLY

Bally at the Inquiry

4.38 Bally Australia Pty. Ltd., a local distributor of poker machines on behalf of the Bally Manufacturing Corporation, a Delaware registered but Chicago based company, sought and was given leave to appear as a party to this Inquiry at the first preliminary sitting. Subsequently, by letter from its solicitor dated 6 May 1983 (Ex.J1), it informed Mr. Bongiorno that it did not wish to take any further part in the Inquiry but sought to reserve its right to adduce evidence in reply in the event that any allegation was made against it.

4.39 One of the first documents tendered by Mr. Bongiorno when this Inquiry commenced was the Report of the Royal Commission into Allegations of Organised Crime in Clubs by Mr. Justice A.R. Moffitt of the Supreme Court of New South Wales delivered in August 1974. (Ex.9B). This report ("the Moffitt Report"), which is dealt with hereunder, made some trenchant criticisms of the Australian Bally company and its United States parent. The Royal Commissioner made serious adverse findings against a number of Bally directors and recommended that the company be not permitted to trade further in Australia. Subsequently, in the course of this Inquiry, many documents were tendered, mainly in support of the LCAV case, which contained a submission to the effect that any poker machines permitted in Victoria ought to be Australian made. Often, one of the reasons given for this submission was that the principal overseas manufacturer of poker machines,

namely Bally, had been found by Mr. Justice Moffitt to be unfit to trade in Australia. In particular, this statement was a feature of material which emanated from the ACDA and/or Mr. E.P. Vibert, who claims a long standing antipathy to Bally. (T.1640). Notwithstanding these submissions and the Moffitt Report, Bally did not seek to place any material before me until Mr. Bongiorno wrote a letter to Bally's solicitors on 15 August 1983 (Ex.J3) suggesting that, if Bally did not put any material before the Board he would be disposed to make a submission that the Board should accept the findings of the Moffitt Royal Commission and recommend their adoption by the Victorian Government so as to exclude Bally from any possible poker machine market in this State. This letter provoked some action and on 7 September 1983 Mr. P.D. Cummins Q.C., with Mr. P.B. Murdoch, appeared before me on behalf of Bally. Initially Mr. Cummins submitted that my Terms of Reference did not extend to an examination of possible poker machine suppliers and in particular to an examination of Mr. Justice Moffitt's findings. In the alternative, if I held that they did so extend, then Bally wished to reopen the matters inquired into by the Royal Commissioner in 1974 to suggest that Mr. Justice Moffitt was wrong in his findings and ought not to have made the recommendations which he did.(T.1699 ff). I dealt with Mr. Cummins' submissions by ruling that, essentially for the reasons mentioned in para.4.04, some investigation of the possible sources of supply of poker machines was within my Terms of Reference. (T.1703). I further indicated that I did not propose to review the

findings of the Moffitt Royal Commission. Mr. Justice Moffitt reached his findings after sitting for almost a year and hearing a great deal of evidence. Bally was legally represented for the whole of that Royal Commission's sittings by senior counsel. It called evidence and cross-examined those who gave evidence against it. The findings were made by an experienced and highly esteemed judge. In the circumstances, I indicated, I did not propose to question the correctness of those findings as relevant to the date when they were made. However, I recognised that those findings were made nine years ago. I did accept the possibility that "there has been such a change in the meantime as to make them irrelevant. It seems to me there lies an onus on you to satisfy me there is something different that has occurred". Accordingly, I gave Bally leave to produce such evidence as it wished in that regard. (T.1706).

The Moffitt Report

4.40 Mr. Justice Moffitt was commissioned by the New South Wales Government in August 1973 to investigate allegations of organised crime in New South Wales licensed clubs. Some of these allegations involved the Bally Manufacturing Corporation or its Australian subsidiary, Bally Australia Pty. Ltd. Of the Royal Commissioner's three main terms of reference one required him to investigate whether there was evidence available to charge anyone in relation to organised crime in registered clubs, one related to whether there had been any Government "cover up" of organised crime in registered clubs and the third sought his views as to whether matters disclosed

to him provided sufficient reason to conclude that either the Bally Manufacturing Corporation or Bally Australia Pty. Ltd. presented a risk of organised crime in New South Wales registered clubs. The first of these Terms of Reference will be referred to elsewhere in this report. The second is now only of historical interest. I direct my attention to the third of them. Before doing so I again emphasise that, in examining the Moffitt Report findings and the evidence tendered before me by the Bally Manufacturing Corporation and Bally Australia, I am not engaging in an exercise to determine whether Bally ought to be licensed as a supplier of gaming equipment in Victoria. I am making what must, in the circumstances, be little more than a cursory examination of Bally, to determine whether it can be regarded as a potentially successful candidate for a licence in Victoria.

Bally Manufacturing

4.41 The Bally Manufacturing Corporation was originally founded as the Lion Manufacturing Corporation by one Maloney some time prior to World War Two. It manufactured and sold amusement equipment of various kinds including pinball machines. Its history, including its connection with the notorious gangster Jerry Catena (reputedly the one time boss of the Genovese family, the leading Mafia family in America) is set out in para. 236 of the Moffitt Report. In the light of what I have said in para.4.27, it is interesting to note that Catena's interest in Bally was allegedly secret for some years. In 1968 the company became a public company with 20% of its shares being publicly offered. Control of the company

however remained with its four original principal shareholders, Klein, O'Donnell, Kaye and Green. It was claimed before Mr. Justice Moffitt that Green's interest was bought out in 1971 to remove any possible detriment to the company's reputation, having regard to the fact that Green had apparently been an associate of Catena. One Wilms then became a principal shareholder and director so that at the time of the Moffitt Royal commission Klein, O'Donnell, Kaye and Wilms owned between them about 50% of the total shareholding. As Mr. Justice Moffitt observed, the success of the company between the time of its acquisition from the estate of its deceased founder Maloney in 1963 to the time he was examining it in 1973 was such that its shares had increased in value to about 1,000 times what they were originally worth. By that time Bally was manufacturing poker machines, pinball machines, amusement and gambling equipment in America, Ireland and Europe and selling it in America, various island resorts, the United Kingdom, Europe, the Middle East, Africa, the Far East and Australia.

Bally Australia

4.42 In about 1968 Electronic Amusements Pty. Ltd., a company owned and controlled by Mr. Jack Rooklyn and Messrs. R.L. and G.E. Davidson, entered into an agreement with Bally Manufacturing Corporation to import and sell poker machines manufactured by Bally to registered clubs in New South Wales through independent sales and service commission agents. In December 1971 Bally Australia Pty. Ltd., a wholly owned subsidiary of Bally Manufacturing Corporation, commenced

carrying on the business in Australia which had previously been carried on by Electronic Amusements Pty. Ltd. The original directors of Bally Australia Pty. Ltd. were a director of Bally Manufacturing Corporation, William T. O'Donnell (referred to above) and Mr. Jack Rooklyn. The original company secretary and public officer of Bally Australia Pty. Ltd. was the now Managing Director of that company, Miss Jeannette Carol Newell. (Ex.J6(a)).

The Moffitt findings

4.43 In the course of his report Mr. Justice Moffitt made adverse findings against various directors of the Bally Manufacturing Corporation and against Mr. Rooklyn. He found that Mr. O'Donnell and Mr. Wilms, then directors and substantial shareholders in Bally America, had both lied before him with respect to material matters he was investigating, and that Mr. Rooklyn had done likewise. He found that Mr. Wilms had, contrary to his evidence, associated with recognised criminals and that Mr. O'Donnell had displayed an attitude towards Bally's association with criminals which was not acceptable having regard to his position with the company. He expressed reservations about Mr. Klein. (Ex.9B para.307). He made findings against Mr. Rooklyn that he had had irregular business arrangements with serving policemen and had lied about those arrangements as well as about other matters relevant to the Royal Commissioner's investigations. I have selected these findings out of many made by the Royal Commissioner as a basis for testing the proposition, urged upon me by Mr. Cummins for Bally, that no matter what the

situation might have been in 1974 Bally has since put its house in order. Before examining whether this proposition is established on the evidence I should record the Royal Commissioner's findings with respect to Bally itself. In a much quoted paragraph (316) His Honour says:-

"...I have come to the conclusion there is a real and very material risk that the Bally operation, if continued here, will in time be a vehicle, in which and, alongside which, organised crime will infiltrate or further infiltrate club operations in New South Wales in some way...The view I have formed as to the risk, can best be expressed by saying that, as a result of my careful consideration of all the material before me, it appears that some clubs are so vulnerable and the history of Bally has been such and the removal of organised crime from casinos (Las Vegas) and clubs (England) once there has been so near to impossible, that any takeover by and any expansion of Bally would constitute a risk of the type referred to [i.e. in his Terms of Reference] which cannot afford to be taken and further without embarking upon practicalities and other possible problems that, as a mere statement of the risk, it is too great to have the Bally organisation trading here at all".

Moffitt Report: no reaction by Bally

4.44 It is clear on the evidence that the Bally organisation itself (both here and in the United States) cared little about Mr. Justice Moffitt's findings. No action was taken in respect of Bally Australia or against Mr. Rooklyn. No action was taken by Bally against any of the American directors criticised by Mr. Justice Moffitt. The only action that has ever been taken has been forced by gaming regulatory authorities in the United States, as a condition of Bally trading or continuing to trade in the Nevada and New Jersey markets. No investigation of them by the company could be pointed to by any witness. Mr. J.M. Rochford, a director of

Bally Manufacturing Corporation and vice-president (corporate affairs and governmental relations) of that company, conceded (T.4842/43) that Bally took no action either with respect to its United States directors or its Australian operation as a consequence of the Moffitt Report; although he asserts (and it was a considerable part of Bally's case) that the company now "...has a unique system of monitoring the integrity of its business relationships and employees". (Ex.J5(a)). It is Mr. Rochford's function, as a director of Bally and having had experience , inter alia, as the Superintendent (equivalent to chief commissioner) of the Chicago Police Department, to put the company's system of monitoring the integrity of its business relationships and employees into effect. In his statement (Ex.J5(a)) Mr. Rochford says:-

"Bally's internal reporting system has developed as the company has grown and the passage of time has seen the development of further and more stringent systems of control. The purpose of the system is to ensure that management has the capacity to identify and prevent the establishment or maintenance of questionable business associations or practices within the corporate structure, which practices may threaten the corporation's integrity. The system and my department function as a watchdog over the company and all its subsidiaries whether or not they do business in Nevada or are engaged in gaming activities. The department has an unrestricted budget.

It is my responsibility to report to the Companies Compliance Committee, which committee consists of certain of the corporation's senior executives and four outside legal counsel from the states of Nevada and New Jersey. To the Compliance Committee is assigned the task of ensuring that the company complies in every respect with directives issued by the gaming regulatory bodies of those states as well as with the internal reporting system".

Since Mr. Rochford's appointment action has been taken in respect of about ten customers or distributors pursuant to the system of monitoring referred to. (T.2839).

Nevada "separates" Wilms

4.45 Mr. Justice Moffitt's report was published on 15 August 1974. Early in 1975 Bally Manufacturing Corporation was an applicant in Nevada for registration pursuant to the relevant Nevada legislation as a publicly traded corporation and for a finding of suitability to acquire all the stock (shares) of a company known as Bally Distributing Company, a Nevada corporation which already acted as the Bally Manufacturing Corporation's distributor for that State. The application was heard by the State Gaming Control Board on 12 and 13 March 1975 and by the Gaming Commission on 20 and 21 March 1975. In its lengthy report to the Gaming Commission (which was not produced to me by Bally but which had already been tendered in evidence by Mr. Bongiorno - Ex.9.0) the Gaming Control Board, which had investigated Bally Manufacturing Corporation for about eighteen months at the time of its report, commented adversely on five of the then directors of the corporation, namely William T. O'Donnell, Irving Kaye, Sam Klein, Alexander Wilms and Jan Petterson. The Gaming Control Board quoted extensively from the Moffitt Report. It made findings about some of the Bally directors similar to those of Mr. Justice Moffitt although largely on different evidence. Notwithstanding the reservations expressed by the Gaming Control Board, the Nevada Gaming Commission granted Bally's application on certain conditions.

The most significant of those conditions for present purposes was:-

- "d. That there shall at no time be any direct or indirect business transactions of any nature whatsoever between Bally Manufacturing Corporation and Alexander Wilm after nine months from date, save and except only that said Alexander Wilms may continue as a stock holder of Bally Manufacturing Corporation...". (Ex.J5(b) para.6.d).

Thus, by March 1975, Mr. Justice Moffitt's opinion of Mr. Wilms had been supported by that of the Nevada Gaming Control Board and the ruling of the Nevada Gaming Commission. Only then, and as a condition of gaining a licence, was Mr. Wilms "separated" from the Bally organisation.

Non-implementation of Moffitt Report in Australia

4.46 Meanwhile, in Australia, Mr. Rooklyn continued to operate Bally Australia and to sell poker machines. No steps were taken to put Mr. Justice Moffitt's recommendations with respect to Bally into effect. Contemporary documents supplied to me by Mr. Bob Bottom, emanating from the New South Wales and Federal governments, indicate that although Ministers of both governments expressed concern at Mr. Justice Moffitt's findings, and apparently accepted their correctness, they took the view there was nothing either government could do. Considerable reliance seems to have been placed upon an opinion of the New South Wales Commissioner for Corporate Affairs dated 27 February 1975 which, viewing the matter as largely a problem in company law, proffered the advice that no effective action could be taken. I do not accept that position. It was not a matter of dealing with the continued

existence of the legal entity which was Bally Australia but rather of taking effective action by the exercise of licensing (State) or import (Federal) powers to prevent Bally machines entering New South Wales clubs. If governments are seriously to attack organised crime considerably more expertise, energy and imagination will have to be applied than is displayed in these documents.

Nevada "separates" Klein

4.47 In September 1976 Mr. Sam W. Klein, another Bally Manufacturing Corporation director in respect of whom the Nevada Gaming Control Board had adversely reported in 1975 (Ex.9.0 p.73) and in respect of whom Mr. Justice Moffitt had expressed reservations, was compelled by the Nevada Gaming Commission to resign from Bally Manufacturing Corporation, to sell his shares in the company and to pay a \$50,000 fine. These steps were taken pursuant to an agreement between Bally and the Nevada Gaming Commission following charges by the Commission that Mr.Klein was associated with notorious criminals.

Nevada "separates" Rooklyn

4.48 At the end of 1977 the Nevada Gaming Commission apparently became concerned at some activities of Mr. Rooklyn in Asia (T.2799) and required him, as a condition of remaining an officer of Bally Manufacturing's Australian subsidiary, to apply for a Nevada gaming licence. Mr. Rooklyn declined to apply for a licence and instead severed his connections with Bally. His long time secretary, Miss Jeannette Newell, took

over as Managing Director, a post which she still holds. I presume that had Mr. Rooklyn refused to resign from Bally and refused to seek a licence from the Nevada Gaming Commission adverse consequences would have flowed to Bally. An administrative action taken by a United States gaming authority at the end of 1977 thus achieved more than the combined "efforts" of the Australian and New South Wales governments and of Bally's own internal reporting system.

New Jersey "separates" O'Donnell

4.49 In February 1978 a 100% owned subsidiary of Bally Manufacturing Corporation, Bally's Park Place Inc., applied to the New Jersey Casino Control Commission for a casino licence. Extensive investigations were carried out and in due course a licence was granted subject, on this occasion, to Bally dispensing with its Chairman, Mr. William T. O'Donnell, who did not meet the burden of proving "his good character, honesty and integrity" so as to be eligible for a licence. Subsequently, he was ordered to divest himself of his shares in Bally and this is now apparently being done. (Ex.J5(a) p.7). Unlike Mr. Klein, however, Mr. O'Donnell did not give in easily and unsuccessfully appealed the decision of the Casino Control Commission to the New Jersey Court of Appeal.

Moffitt in retrospect

4.50 Bally has, in numerous places and on numerous occasions, most recently before me on 7 September 1983, contended that the findings of Mr. Justice Moffitt were seriously in error. It has contrasted his criticism of

Messrs. O'Donnell, Klein and Wilms with the decision of the Nevada Gaming Commission in 1975 to permit Bally Manufacturing to acquire Bally Distributing without making any requirement in respect of these men. But looking back it might be thought that Mr. Justice Moffitt got it right. The two directors against whom Mr. Justice Moffitt made serious adverse findings (O'Donnell and Wilms) and the one director (Klein) in respect of whom Mr. Justice Moffitt expressed reservations have each been compelled to leave the company by United States gaming authorities. According to Mr. Rochford, they are the only senior people in Bally who have ever been forced out. (T.2858). The only director of Bally Australia in respect of whom Mr. Justice Moffitt made adverse findings left the company rather than face a licence investigation.

"Cleansing"

4.51. Bally's principal case before me is that it is now a different company to that which was investigated by Mr. Justice Moffitt. It has been "cleansed". It is put that it was prepared to appear before me and openly submit itself to such examination as I wished to undertake. It has said it no longer has any connections with criminals or organised crime. It said the same thing to Mr. Justice Moffitt in 1973 and I infer from the fact that it applied to the Nevada Gaming Commission for licences on subsequent occasions that it said the same thing at hearings there. In each case subsequent events have shown that it would have been wrong for confidence to have been placed in such a submission. There is a question whether, except possibly as a result of a takeover with substitution of a new

team of directors and top executives, corporate cleansing is ever possible. The difficulty is that senior people tend to recruit the people who are eventually their successors. They train them. If those senior people are themselves corrupt, it is likely that they will also choose people who are, or who will be trained to be, corrupt. As Mr. Rochford agreed (T.2845-2846), when a person is removed by government edict his own recruit will often take his place. In this situation it seems to me not very useful to look to see whether the particular people who were, at an earlier inquiry, criticised are still in control. The question really is whether some event has occurred from which one may reasonably infer that there is a new attitude within the company.

The evidence of Bally

4.52 Bally placed before me a considerable volume of evidence to show that the nature of its business had changed significantly since 1974. This was material primarily in relation to activities outside Australia. Short of making extensive overseas investigations, I have no means of checking it but I have no reason to doubt its correctness. The evidence indicated that the revenue of the Bally group in 1974 was approximately \$158million of which \$75million or 47% came from sales of gaming machines. In 1982 revenue was \$1,285million of which the sales of gaming equipment, including lottery products, was approximately \$90million (of which \$26million was from the sale of lottery products). This figure represents only 7% of total revenue or 5% if lottery products are excluded. In 1974 foreign sales contributed 60% of total

revenue. In 1982 only 7% came from such sources. According to Mr. Donald B. Romans, the Executive Vice-President and Chief Financial Officer of Bally, the company's primary earning activity is in the area of video amusement equipment as well as in the operation of a national chain of "theme" amusement parks, more than 450 family amusement centres, about 250 health and fitness centres and a casino in Atlantic City, New Jersey. (Ex.J4(a)).

Bally in America

4.53 During his evidence to the Casino Inquiry Mr. G. Michael Brown, formerly the director of the Division of Gaming Enforcement for the State of New Jersey, was asked what was the standing of Bally in that State. He confirmed that the company had been licensed following a lengthy investigation and a hearing in November and December 1980. He described six "areas of concern". Two of these related to actions of Mr. O'Donnell himself. The others related to alleged violations of orders made by the Nevada Gaming Control Board for dissociation between Bally and particular individuals. Some of these events occurred before Mr. Rochford commenced employment with Bally in 1977, others were investigated by him and, he says, promptly rectified. I am in no position to evaluate the facts relative to these matters. It is, I think a reasonable inference that the New Jersey Casino Control Commission took the view that those incidents were not of themselves such as to make it proper to deny a casino licence to the Bally organisation if only it severed its relationship with Mr. O'Donnell, under whose chairmanship such events were

permitted to occur, as it has done. Mr. Brown explained the philosophy of the New Jersey Board in this way (Casino Inquiry T.4331):-

"New Jersey follows a theory, which I do not wholeheartedly agree with, about the capability of cleansing a corporation that a corporation's character and reputation is comprised of components, of individuals who presently own and operate the company and that if you eliminate from a corporation, subsidiary or parent companies an individual whose reputation is objectionable or whose associations are questionable, then the company is cleansed and its corporate integrity is based on the components of the corporation, and that has been an attitude followed by the New Jersey Casino Control Commission and by the New Jersey courts."

Is there a new attitude?

4.54 Early in his evidence Mr. Rochford made what I thought was a legitimate distinction when he was asked whether, in the attitude of the company, it would need a criminal conviction before disassociating itself from a person. He replied (T.2845):-

"At the customer level the standard is higher. At the officer or controlling person level, it is reputation, so it depends on where you are on the scale of people".

I later reminded him of this distinction, pointing out that Mr. Rooklyn was an officer of Bally Australia until 1977 and that Mr. O'Donnell and Mr. Klein (I could have added Mr. Wilms) were each officers of the American company until they were respectively forced out by gaming authorities. I pointed out that these people had not merely been the subject of imputations against their reputations but that they had been the subject of adverse findings by a Royal Commission

constituted by a Supreme Court judge at an inquiry at which Bally was represented. I asked Mr. Rochford whether Bally had ever undertaken even an investigation to see whether Mr. Justice Moffitt's criticisms were correct. (T.2857). Mr. Rochford replied, eventually (T. 2859)"-

"I feel that they did examine the relationships. I would be guessing, but they probably placed the responsibility for proving his (Rooklyn's) misconduct, whatever it would be, on the part of government..."

Mr. Rochford did not work for Bally prior to 1977 but he was asked to identify any file documents to indicate that consideration was ever given to the Moffitt Report by Bally. He could not. (T.2842-2844).

4.55 It is obvious enough why Bally never took any notice of the Moffitt findings. Mr. O'Donnell, who was severely criticised in the report, remained as President of Bally until 1980. Mr. Rooklyn remained Managing Director of Bally Australia until the end of 1977. Neither man was likely to engineer his own destruction so, despite the principle of acting, in relation to officers, even on adverse imputations, the findings of a Supreme Court judge were allowed to be ignored. They continued to be ignored, in relation to Mr. O'Donnell, for over two years after the date upon which Mr. Rochford joined the company and set up his internal reporting system, for over two years after the date when, as he put it himself (T.2842/3):-

"...when Rochford came in 1977 things changed".

There is no reason to doubt that, but for the New Jersey

authorities, Mr. O'Donnell would remain President today. He still has a substantial shareholding in the company. His son is a Vice-President (not a director) of the company.

4.56 In Australia, the story was the same. It was not in Mr. Rooklyn's interests to sever the association. He went reluctantly and even now the separation is not complete. Miss Newell frankly admits that she is still on friendly terms with Mr. Rooklyn and his family and Bally Australia leases its Sydney premises from Rooklyn Holdings Pty. Ltd., a company effectively owned by Mr. Rooklyn. The American parent company continues to deal with Mr. Rooklyn's South-East Asian companies for the supply of gaming equipment in that area. Miss Newell has never accepted the correctness of Mr. Justice Moffitt's findings in relation to Mr. Rooklyn or in relation to those poker machine agents employed by Bally who came under adverse criticism in the Royal Commission report, even though she readily conceded that what the Royal Commissioner said about corruption in New South Wales registered clubs was an accurate statement of the true situation. She considered he was right about the practices. His mistake was he accused the wrong people. (T.2826).

Conclusions

4.57 I have discussed the theoretical question whether it is possible for a corporation, short of a wholesale and simultaneous change of top management, ever to "cleanse" itself. I note the view of the New Jersey Commission which, essentially, looks to see whether there is available evidence

that any of the present top management is corrupt. If not, the corporation is treated as "clean". It was, no doubt, this approach which allowed Nevada to approve the 1975 application, despite the continuation in office of Messrs. O'Donnell and Klein and to approve a further application in 1977 despite the fact that Mr. O'Donnell was still President. For the reasons I have outlined, I share the scepticism of Mr. G. Michael Brown. It seems to me that, if once it be demonstrated that an organisation is corrupt at the top, nothing short of a wholesale purge will suffice to allay future doubts. This has never happened in Bally. Despite the trumpeted internal reporting system, Bally has only moved against top management when made to do so by a regulatory body. The change in the structure and interests of the company may have reduced the need to act corruptly but it has not been demonstrated to me that the leopard has changed his spots.

4.58 In Australia, the situation is even clearer. No suggestion has been made of misconduct by Miss Newell. Her fault, perhaps, is excessive loyalty; to her erstwhile superior and still friend, Mr. Rooklyn, and to the Bally agents criticised by Mr. Justice Moffitt. Mr. Rooklyn no longer has a formal connection with Bally Australia but he continues to see Miss Newell frequently. Miss Newell said that she and her husband would dine with him and his wife perhaps twice a month. (T.2813A). Mr. Rooklyn sees and entertains American Bally directors on their visits to Sydney. (T.2813). It is difficult to know what influence he exerts on the policies of Bally Australia.

4.59 The position in relation to agents causes even greater concern. By reason of the substantial commissions available to agents (see para.4.71 below) there is both the opportunity and the inducement for an agent to secure a sale by the payment of a secret commission to one or more club officials. Miss Newell knew that this in fact happened. At T.2826 she agreed that Mr. Justice Moffitt was "pretty right about the findings that he made in relation to those clubs, about the corruption and ripping off and milking and everything else that was said to have been going on". As it happened, Mr. Justice Moffitt had made particular criticism of Mr. Colin Sloane and Mr. "Bumper" Lambert; Mr. Sloane became the President of the Blacktown Workers Club. He then became secretly employed by Mr. Lambert's company, New South Wales Poker Machine Company, and used his position in the club to place a large number of Bally machines in the club. A sum of money paid to him contemporaneously was described as a "Christmas bonus". The Royal Commissioner considered this an unlikely explanation. Despite the Moffitt Report, New South Wales Poker Machine Company continued to trade and to be supplied by Bally. In 1982 it topped the list of agency sales. Miss Newell said that Mr. Lambert is now "virtually retired" but the business continues to be run by his children. (T.2816). Mr. Sloane established his own business at Blacktown, Consolidated Poker Machines, which he continues to run. (T.2818). He was fourth on the Bally sales list for 1982. (T.2816). I asked Miss Newell to comment upon the view that it was unacceptable for a company which seeks to display a

clean image to carry agents who have been found by a Royal Commission to have conducted themselves as did Mr. Sloane and Mr. Lambert. She replied that the findings were the Commissioner's "personal opinions" which she did not accept and that unless and until there was either a criminal conviction or a direction from either the Nevada or New Jersey Gaming Commission she would do nothing. (T.1861-1817). At T.2825 I asked Miss Newell:-

Q. Was there any single event that occurred either by anybody being dismissed or changing the operations of Bally Australia that was a result of the Moffitt recommendations?

A. No, not by Bally Australia because I, along with Mr. Rooklyn, believed it was an unjust finding."

4.60 The question for me, at this time, is whether Bally could be considered a realistic candidate for a licence to distribute poker machines in Victoria should they be legalised here. Nine years ago, Mr. Justice Moffitt identified three men whose conduct he thought to be reprehensible and one in respect of whose conduct he expressed reservations. His findings were, and have continued to be, attacked by Bally but, as it seems to me, history has shown Mr. Justice Moffitt to have been correct. Since that time there has been no purge, no cleansing; simply a reaction to pressure from time to time by the "separation" from the company of an individual. Bally Australia has done nothing to change its agents or its system of operations; it has apparently not even carried out an investigation to satisfy itself about the fairness of the Moffitt findings in relation to its agents. And Bally

Manufacturing has not required it to do so. I appreciate that since 1974 Bally has succeeded in obtaining licences in both Nevada and New Jersey but in an Australian context the conduct of Bally Australia looms large. I find it difficult to regard the company as a likely successful applicant for a licence to sell in any Victorian market.

PACIFIC POKER MACHINES

Pacific at the Inquiry

4.61 Pacific Poker machines appeared at the first preliminary hearing of this Inquiry and was given leave to appear as a party. It filed a preliminary statement on 28 April 1983 which revealed that it had operated as a poker machine distributor in New South Wales and the Australian Capital Territory for about nine months at that date. It is apparently incorporated, its shares being owned by David George Clarke, Richard Campbell Anderson, Terrance Keough and Peter Lyall Chick. These gentlemen have all been associated with the poker machine industry in New South Wales for many years in the area of servicing and sales. The machines distributed by Pacific are manufactured by the Universal Sales Company Ltd. of Tokyo, Japan and, as has been noted in para. 2.14, operate on a somewhat different principle to the Ainsworth, Nutt and Muddle and Bally machines.

4.62 After filing its preliminary statement Pacific took no further part in the Inquiry until, in July, it forwarded two poker machines for inspection by me and the parties generally.

4.63 In the course of the Inquiry various questions arose about the different brands of poker machines available in New South Wales and the Australian Capital Territory, particularly with respect to their technical operation and their cost. On 15 August 1983 Mr. Bongiorno wrote to Pacific Poker Machines (Ex.U7) pointing out that it was then the submission of the LCAV that any poker machines permitted in Victoria should be of Australian manufacture, but also pointing out that evidence given, to that date, had indicated that Australian manufactured machines were excessively priced. Mr. Bongiorno sought from Pacific detailed accounting information as to the cost of importing its machines from Japan, finishing them for the Australian market and selling them here.

4.64 Subsequent to Mr. Bongiorno's request arrangements were made between him and counsel for Pacific Poker Machines, Mr. M. Neil of the Sydney Bar, for the company to give evidence on 13 September. In his discussion with Mr. Neil (noted in Ex.U7) Mr. Bongiorno said that the three areas in which this Board was interested were in relation to the cost of Pacific Poker Machines, the company's attitude to the Victorian market and technical aspects of the machines. However, immediately following that conversation a letter was received from solicitors for Pacific Poker Machines noting Mr. Bongiorno's request to Mr. Neil and stating that their client took the attitude that it would be more appropriate to provide information such as this Inquiry was seeking to relevant authorities if poker machines were made legal in Victoria and if Pacific decided to enter the Victorian market. It withdrew

its earlier offer to give evidence. Despite further correspondence between Mr. Bongiorno and Pacific's solicitors no further information has been provided, other than information relating to the security of Pacific machines, to which reference will be made in Chapter 6.24 I do not know why Pacific Poker Machines had an apparent last minute change of mind with respect to co-operating with this Inquiry.

Comment on Pacific

4.65 I have not conducted any investigation of the Universal Sales Company Limited of Tokyo, Japan, the source of the poker machines distributed by Pacific and accordingly can say nothing as to the probity or otherwise of that company. I draw attention to the concern expressed by Dr. A.W. McCoy (T.2152-2154) in relation to the Japanese poker machine industry. If Pacific ever became an applicant for a licence in Victoria there would need to be careful investigation of the manufacturer. To cease the investigation at the point at which machines entered Australia could, under certain circumstances, permit undesirable control to be exercised over Australian distributors by external suppliers or manufacturers who would not, if properly investigated, meet the appropriate standard for licensing here.

4.66 In the circumstances I am unable to make any finding or comment upon the likelihood of Pacific Poker Machines being a successful candidate for licensing in Victoria should machines be legalised here.

CONCLUSIONS ON MANUFACTURERS

Need for alternatives

4.67 Such review of the suppliers of poker machines as I have been able to undertake within the confines of this Inquiry does not allow me to be confident at all that such suppliers would meet necessary standards should a strict licensing system be introduced. Whilst this alone does not of itself necessitate a negative finding with respect to the principal Term of Reference of my inquiry, it does mean that should poker machines ever be legalised some method of supplying the market other than by the current manufacturers should be investigated.

THE COST OF POKER MACHINES

Estimates

4.68 In the course of the public hearings of this Inquiry Mr. Frank Hart, a manufacturer of taxi meters who conducted his business in Melbourne, and Mr. John Matthews, already referred to, the chief executive of the Gaming and Liquor Authority of the Australian Capital Territory, each expressed the view that poker machines could be sold at prices much less than the current retail prices in Australia. Mr. Hart (T.1755) estimated that he could manufacture machines and sell them at somewhere between \$1,000 and \$2,000 if he were selling direct to the Victorian Government without sales tax and without agents or salesmen. Mr. Matthews described the pricing policy of the present manufacturers as being "a matter of what you can get away with". (T.1481).

The Ainsworth-IGT agreement

4.69 Exhibit C16(a) is a photocopy of an agreement dated 25 March 1981 between various companies of the Ainsworth organisation and IGT, a company domiciled in Nevada, U.S.A. This agreement provides for the Ainsworth organisation to sell not less than 10,000 slot machines to IGT over a period of five years. The price for those machines is specified as US\$2,150 for the first 5,000 machines and US\$2,350 for the second 5,000 machines, such prices to be firm until March 1983 and then adjusted in accordance with inflation. Freight, insurance and duty were all to be at Ainsworth's cost so that the prices quoted were net to IGT in Reno. At the date of the agreement US\$2,150 was equivalent to approximately A\$1,900. If even the conservative sum of \$200 is deducted for freight and insurance an equivalent Sydney selling price is about \$1,700. There is a considerable discrepancy between this figure and the current list price of most Australian machines, which is between about \$6,450 and \$6,950. That discrepancy is partly explained by items mentioned by Mr. Clarebrough but the exhibit is useful in indicating the order of magnitude of manufacturing costs.

Supply of information

4.70 All of the Australian suppliers were requested to provide, on a confidential basis, information which would enable me to examine the question as to whether excessive prices were being charged for poker machines. Nutt and Muddle and Bally Australia unhesitatingly provided such information. Initially the Ainsworth organisation refused to supply any

costing information but subsequently did provide figures with some explanation for them. The Pacific Poker Machine company has refused to supply any information with respect to the landed cost of its poker machines or its cost of selling them in Australia.

Conclusions on costs

4.71 Consistent with retaining the confidentiality of the material with which I have been provided, I do not propose to discuss the costing structures of the three poker machine manufacturers who have supplied information. In any event, to do so on a comparative basis would be difficult as the accounting conventions adopted by each of them are totally different. I believe, however, that as a general statement I am able to say that poker machines are more expensive in the Australian market than they ought to be. I am prepared to assume that the material and labour costs as asserted by the manufacturers are reasonable for the work involved, but I consider that the "on costs", particularly those costs variously referred to as administration expenses, marketing expenses and agents' commissions, represent an unreasonable impost upon clubs who purchase these machines. It must be remembered that the rationale of the club movement as it exists in New South Wales and the Australian Capital Territory is that no individual ought to be making a profit out of club activities. The payment of excessive commissions to poker machine agents represents, in my view, a departure from this principle. It may be that the commissions paid are what the agents demand but if this be so it only demonstrates to me the

wastefulness of the present marketing sytem. Further, the apparently widespread practice of "entertaining" club managers and directors, even if not falling within conduct which one would regard as improper (about which more will be said later), is an expense which clubs purchasing poker machines should not have to bear. Mr. Clarebrough spoke of this (T.42C-43C):-

" Many people believe in New South Wales that with 1,500 clubs you have 1,500 customers, but there are 15,000 buyers. Every club on average has 10 directors, they all want to buy, they all have their likes and dislikes, and marketing expenses are directly attributable to ensuring that we get the majority of the vote of the Board to buy our machine. Look at our entertainment expenses, for instance, they are high. We run a service, we bring people from the country who wish to buy machines, we pay for their air fares, we pay for their accommodation which is standard practice.

Q. Is it only a matter of bringing people down to Sydney.

A. Sydney, yes, that is all.

Q. What happens on the harbour?

A. They go for a cruise if the weather is good. We have a 50 foot cruiser and what we do with it is that it is on a booking by sales division on a rostered basis and they invite clubs, directors, sometimes wives, directors and management, out for a day and they spend six or seven hours on the harbour".

Mr. George Wintle, who has managed various New South Wales clubs for the last 26 years criticised "trips on boats or trips to the Gold Coast to play golf" which he said "certainly have" occurred over the years. (T.2380-2381). Miss Newell gave evidence that Bally donates the cost of fares to, and accommodation at, the annual conference of the Club Managers Association of the United States to clubs who purchase a given

number of machines - six or eight she thought. (T.2777).

Basing myself upon the figures I have studied it is my opinion that, with the elimination of the wastefulness of the current marketing system it should be possible to market machines in New South Wales at prices at least \$2,000 below current list prices. New South Wales clubs are paying a high price for their inheritance of a marketing system created in the days of illegal gambling. It should be possible to do better in a new jurisdiction. I will come back to this matter in Chapter 19 below.

Notes to Chapter 4

[1] Report on Casinos for New South Wales Government, 1977, para. 708.

[2] At the first preliminary sittings of this Inquiry, on 8 April 1983, Mr. Dale O'Sullivan was granted leave to appear at the Inquiry on behalf of "Poker Machine Distributors of Victoria who are agents of Jubilee Poker Machines". He told me that Jubilee Poker Machines carry on business in Sydney (Jubilee is the Nutt and Muddle brand name) and described them as "heir apparent to Victoria". (T.12). However, by letter dated 30 April 1983 (Ex.V1) Mr. O'Sullivan advised that he intended to withdraw from the Inquiry. On 6 May 1983 I therefore revoked his leave to appear. T.54).

[3] Mr. John Delaney, the service manager of the Ainsworth organisation, was also cross-examined about Ex.C15. He threw no light on it but agreed to provide a copy of the Ainsworth file which related to Mr. Hoare, the subject of the memorandum Ex.C15. In due course two files relating to Mr. Hoare were produced by the Ainsworth organisation. (Ex.C24). Neither of them contained any document which explained in any way Mr. Cragen's memorandum. I still do not know what "the Treasury inquiry" related to and what the result of it was.

CHAPTER FIVEPOKER MACHINE CLUBS IN NEW SOUTH WALES
AND THE AUSTRALIAN CAPITAL TERRITORY

OVERVIEW

Numbers of clubs

5.01 At 30 June 1983 there were 1,588 registered (licensed) clubs in New South Wales. Almost all of those clubs operate poker machines. I do not know the exact number of non-poker machine clubs but Dr. Geoffrey Caldwell, senior lecturer at the Centre for Continuing Education, Australian National University, a man who has over more than a decade studied clubs in New South Wales and the principal witness of the LCAV in this Inquiry in relation to the operation of poker machine clubs, said that all but a "small handful" of New South Wales registered clubs had both a liquor licence and poker machines. Various estimates, ranging from half a dozen to about a dozen, have been mentioned from the bar table during the course of the Inquiry. The clubs without machines are restricted to some exclusive social clubs, mainly in the commercial centre of Sydney, but including also at least a couple of clubs in provincial centres, and a very limited number of elite sporting clubs. These clubs are very much the traditional "gentlemen's clubs" from which the whole club movement has developed.

5.02 The position in the Australian Capital Territory is— much the same. Mr. John Matthews, chief executive of the Gaming and Liquor Authority of the Australian Capital Territory told me that there were currently 72 licensed clubs in the

Territory, of which 69 had poker machines. Those without machines are all exclusive clubs.

Broad types of clubs

5.03 The total number of poker machine clubs in New South Wales and the Australian Capital Territory (1,660) spans an extremely wide range: in size of membership, wealth and nature of activities. Generalisation is difficult and potentially misleading. However, it is possible, I believe, to break up the totality of the clubs into three main groups, the components of which tend to share some common characteristics. They are:

- a) Sporting clubs which provide for members an opportunity actively to participate in a particular sport and in which the majority, perhaps the overwhelming majority, of members do in fact participate. I am not able to quote figures but, as in Victoria, this type of club is numerically the greatest. In this category golf clubs and bowls clubs predominate. In function and appearance these clubs are much like their Victorian counterparts: see paras.13.18 - 13.20 below. Membership would generally be numbered in the hundreds, perhaps small hundreds. The major discernible difference between this type of poker machine club and its Victorian counterpart is that the membership subscriptions in the NSW/ACT clubs are lower. The difference in income from subscriptions is made up from poker machine income. These clubs, no doubt, enjoy some poker machine income from visiting sportsmen and, in some clubs, from trade days but the visitor contribution to poker machine revenue is generally much less significant than in the case of the remaining two categories of club.
- b) Sporting-social clubs which, generally, have begun as ordinary sporting clubs but have grown to have a significant social element. They continue to provide facilities for active participation in a sport but the numbers are such that it would be quite impossible for all members to participat. These clubs have a

large component of "social" members who are not entitled to use the sporting facilities. These clubs generally have some few thousand members. Two examples of clubs of this type were encountered by the Board on the visit to the Wollongong district:

The Illawarra Yacht Club (Ex.90B) owns premises on the foreshore of Lake Illawarra. Present membership is about 3,200 persons. There are three membership categories; full or aquatic member, \$6 per year, associate (social) member, \$3 per year and junior member \$2 per year. The club offers sailing facilities but Mr. Spiller, the secretary/manager, told us that only about 80 boats (50 senior, 30 junior) operated out of the club. He gave this information:

"Q. Even allowing for five crew on each boat, which is probably generous, that would account for about 400 members. The vast majority of your members would not sail, is that the situation?

A. That would be right to say that, yes."

In its commodious premises, the club puts on entertainment every day of the week except for Mondays. The entertainment and meals are subsidised by poker machine earnings. Visitors are encouraged. A visitors' book was kept but, upon inspection, it showed pages of names in respect of which few visitors had been signed in by a member. Mr. Spiller told us that if people came to the club and wanted lunch they would be allowed in provided that they were correctly attired and not inebriated. They would not need to be a member of another club. I noted that the visitors' book showed the names of over 70 visitors on the day before our inspection, a Tuesday, and over 150 visitors on each of the preceding Saturday and Sunday. The club pays no company (income) tax because it is classified as a sporting club.

The genesis of the Fraternity Bowling and Recreation Club at Wollongong (Ex.90G) was described to us by Mr. Arthur Allen, the secretary/manager:

- c) Large social clubs, with memberships usually numbered in the tens of thousands. There is no real counterpart of these clubs in Victoria. They are entirely a product of poker machine revenue. Variations in the presentation of financial statements of clubs make it impossible to state any figure with precision but it can be said that the poker machines usually contribute between 65% and 80% of the income of these clubs. There are a number of different geneses: RSL, Leagues clubs, workers clubs, various ethnic clubs, Catholic clubs. However, at a certain stage it no longer makes a difference. Anyone willing to pay a token subscription of a few dollars a year is able to join the club. This applies in New South Wales even to most RSL clubs and to the Catholic clubs. In all but a very few cases the original restrictions have been swept away. The clubs function as general community clubs.

OPERATION OF THE CLUBS

Directors

5.04 Section 10 of the Registered Clubs Act 1976 (NSW) requires that a registered club shall be incorporated or shall be a society under the Co-operation Act 1923. In either event the club is required to be managed by a board of directors. Most clubs are in fact incorporated as companies. The position is similar in the Australian Capital Territory. Mr. Clarebrough, group general manager of Ainsworths, told me (T.42C) that on average each club has ten directors. This figure seems to be generally accepted in the industry. Dr.Caldwell said that "by and large, the majority of larger club managements constitute people who are in their fifties or over. That is the impression I got from looking at the photographs in the front pages of the annual reports and club journals". (T.391) It is also the impression I have got (at least as applied to directors), both from photographs and from

meetings during our inspections. There is no evidence to indicate the proportion of female directors but women must constitute a very small proportion of all club directors. Few clubs have more than one or two women, many none at all. This sexual imbalance is not the product of any legal discrimination against women. It results either from a reluctance of women to stand for office or else a reluctance of the membership to elect women candidates. Dr. Caldwell criticised the leadership of clubs as "unimaginative", putting undue emphasis on "comfortable premises". (T.374).

Secretaries/managers

5.05 Most registered clubs in New South Wales and the Australian Capital Territory employ a person styled "secretary/manager" to be responsible for the dual functions of being the secretary of the club [1] and managing the affairs of the club. In some cases separate persons carry out each function. There is a national trade union, the Secretaries and Managers Association of Australia, which covers "Club Managers, Club Manager-Secretaries, Club Secretaries, Assistant Club Manager, Assistant Club Secretaries and all other persons (by whatever name known) performing managerial duties in clubs". The Association's head office is in Sydney. Secretaries/managers are not required to have any particular qualifications. The Ryde Catering College runs a part time course for secretaries/managers but attendance at this course is not compulsory. The members of the Police Poker Machine Task Force thought that "only about 2% of the club managers" in the State would have

attended the course and that, in any event, it was not "strong enough for the responsibility that will ultimately come to pass with respectable clubs". (Ex.109 p.58). However, the standard is improving. As Mr. George Wintle, who has been a secretary/manager in various clubs since 1957, put it (T.2386):-

"I came up the hard way, I think that the younger generation of club managers are more educated, more qualified to handle things. We do have some professional expertise. You do not have to be an accountant, but you do not have to be a rotten egg. You have to read the things and know what is going on. A lot of older fellows are going out and younger ones coming in who are smart and control things. I think that all managers should be bonded".

[At T.2395 Mr. Wintle elaborated the need for bonding by saying: "You are handling much money and are responsible for much money. In most well organised clubs which are profitable there is a huge temptation to do something by everybody because it happens everywhere. I assume the point" (of calculation of the amount of the bond) "would be on the basis of the income."]

The members

5.06 I have already indicated that almost all social clubs, and probably most sporting-social clubs, operate on a community basis. Anybody can join, subject only to nomination and approval by the board. There may be cases in which, under the Articles of Association of a particular club, there is a restriction upon the number of members but, effectively, there is no statutory restriction. Restrictions upon members were introduced in 1969 and s.11 of the current (1976) Act has a formula which is designed to curtail the growth of membership beyond 6,250. However, s.11(3) gives the Licensing Court a discretion to permit a greater membership and we were told

that in practice permissions are readily granted to clubs having sufficient accommodation for the desired increased membership.

The people who use clubs

5.07 No data exist, I was told, in relation to the age or sex distribution of members of registered clubs in New South Wales. (T.460). However, my impression upon the inspections is that the larger clubs are predominantly used by older members of the community. This impression is supported by the evidence. Dr. Caldwell, at T.371, said that "the clubs have not in many instances been particularly attractive to young people". At T.274 he agreed with the view "that the clientele of clubs was largely middle aged and" (members) "of working and lower middle classes". Miss Newell of Bally gave this evidence at T.2830:-

"Q. Do you think that the clubs are fairly heavily dominated by middle aged and elderly people?

A. Yes, I think the middle aged people certainly and, yes, elderly people. What I think they are finding today is that in fact the younger generation are not club-oriented. I believe that is because the clubs are not offering anything to that generation."

The secretary/manager of the Woonona-Bulli RSL Club, with nearly 10,000 members, was able to tell us that he had carried out an analysis twelve months earlier which showed that the average age of members was 54 years and that 37% were women. Membership was open to anyone for \$10 per year. (Ex.90H).

Children in clubs

5.08 The Registered Clubs Act 1976 (NSW) has specific

provisions relating to the use of club facilities by persons under 18 years of age. Section 22 provides for the Licensing Court to approve a part of a club's premises as a "dining area" or a "non-restricted area". Typically, auditoria are approved as non-restricted areas. Section 52 makes it an offence for a person under 18 years of age to be in a bar except when attending, as an invited guest, a reception in association with the wedding of a member of the club or of a child or parent of a member of the club. However, even on that happy occasion there must be no poker machine in the area where the reception is being held. Similarly, young people may enter an approved "dining area" or "non-restricted area" but there may be no poker machine in any such area or even in any part of the club's premises "through or by means of which a person under the age of 18 years is permitted or obliged to obtain entry to, or to depart from," a dining area, a non-restricted area or a bar where a wedding reception is being held.

5.09 The history of New South Wales clubs, together with the statutory restrictions, seem to have bred an attitude to children which is exemplified by this exchange at Corowa Golf Club. The speaker, the President of the club, had recently retired after 22 years at the local high school, finishing as principal (Ex.101(1)):-

"Q. Did you ever see any problems caused in families or problems apparently suffered by children in your school from too much money being put into the poker machines by mum and dad?

- A. I don't think that I noticed any real poverty or anything like that. I dare say some money goes into poker machines which could well go elsewhere, but I think if I were to criticize anything it would be that parents spend too much time, perhaps, away from the children.
- Q. That's one thing we've noticed about New South Wales clubs; the stringent licensing rules and also the way the club is laid out, very much excludes children from being with their parents when the parents are having a night out. Do you feel that's something that should be improved?
- A. No. The reason is that when they're having a night out and they're playing poker machines I think it would be a disaster to have children around while they're playing them. We provide juniors' rooms but we expect them to leave by 8p.m. We have a dining room also where we encourage families to come, but they cannot come through the poker machine area to go to the dining room. We have, therefore, another entrance around the side where families can come and have dinner.
- Q. Do you put any time limit on that?
- A. Again, 8p.m. or that could be extended slightly in that if they haven't completed their meal obviously we would permit them to finish their meal. We don't encourage children, however, to hang around the clubhouse.
- Q. That applies for children up to the age of 18 does it?
- A. Yes, at 18 years of age they can come in and play poker machines and have the full facilities of the club.
- Q. Until they're 18 they come in through the side entrance and out by 8 p.m. rule applies?
- A. That is completely correct."

It is perhaps no wonder that young people are not club-oriented. Some clubs do provide a pleasant general access to unrestricted areas but in many the side entrance is inferior; very much the "tradesmen's" entrance. Some clubs offer a

positive insult to young people, as in one opulent club where our inspection party was accompanied to dinner by two teenagers who were escorted to the dining area through the storeroom whilst the adults used the main entrance route, the poker machine room. A "finish up" at 8 p.m. rule may be satisfactory for the parents of young children. It is hardly likely to attract families with teenaged children.

Visitors in clubs

5.10 No figures are available to indicate the proportions in which members and visitors, respectively, use clubs. There does not appear even to be available a total membership figure. In an address to a seminar, attended by some 900 people in the club industry last March, Mr. Paul McKay, the secretary/manager of the North Ryde RSL Club mentioned some figures (Ex.82):-

"It has been alleged that there are 2.5 million people in New South Wales who are members of clubs and in that number, of course, there would be dual memberships. [2] It is also reasonable to assume that only 20% of these members are regulars, so that brings the patronage of 1,500 clubs down to about half a million people. If that is the case, where are the other 80% of the population of New South Wales. Of course, visitors play a large part in club patronage, but even so, there must be 70% of the population who don't frequent clubs."

These figures are merely estimates but Mr. McKay is an experienced, and highly competent, administrator of a large and prosperous social club. His estimate is likely to be as good as that of anyone else. There does appear to be some confusion in the figures between percentages of the total club membership, 2.5 million, and of the total population of New

South Wales but that can be put aside. What Mr. McKay is saying is, first, that only about 20% of nominal members regularly use the club facilities and, secondly, that visitor use by people not regular club members anywhere would average out at a level one half of member use. In order to estimate total visitor use one would need obviously to add the visits to one club by persons who are regular members in a different club.

5.11 Attempts were made to get from club secretaries/managers who gave evidence their estimates of the proportions of members who attended regularly. They were not very successful; there are no data. Mr. P.M. Imrie of the Campbelltown Catholic Club thought that perhaps 20-25% of his 6,500 members came in fairly regularly, but he could not say how frequently. (T.632). Mr. Frederick Chubb of the Rooty Hill RSL Club was prepared to agree with Mr. McKay's estimate. (T.686). Mr. Russell Crook, Chairman of the Paddington-Woollahra RSL Club was not able to make an estimate. (T.666).

Income from visitors

5.12 There may not be a direct relationship between member/visitor use of club facilities and member/visitor contributions to club revenue. In border and tourist areas it is clear that visitors provide an extremely high share of revenue. Visitor income is a sensitive issue in those clubs which pay company tax (more properly described as company tax). The Taxation Department assesses tax against that portion of profit supposed to be derived from visitors. At the Wentworth Services Club, a club in a town of perhaps 1,000 people which

grossed over \$2million from its poker machines in 1981-82, before its most recent extensions, the secretary/manager told us that he did know what proportion of the income of the club comes from visitors but he declined to say what it was. (Ex.99F). In the Tooleybuc Sporting and Recreation Club (Ex.100C), a border club, we were given an estimate that 70% of the club patrons are tourists. The Rich River Country Club, Moama near Echuca (Ex.100K) owns 300 acres of land containing an 18 hole golf course, six tennis courts, a motel and a substantial two storey building comprising a dining room to seat more than 200 people, a large bar and poker machine area, a "members only" lounge, an auditorium and a function room. There are 4,178 members of whom 500-600 are full, i.e. sporting members. The club imports poker machine players by the coach load. In 1981-82 the gross poker machine revenue was \$2.16million, net \$1.4million. On the evening of our visit, a Wednesday admittedly in the school holidays, we counted for that day 15 pages of visitors' names at 24 names per page. Three coach loads of people had attended that day. The assistant manager gave these comments:-

- "Q. Is the club concerned that the Taxation Department might come along and say '90% of your income comes from visitors and we'll tax you at whatever the appropriate rate is'?
- A. No, because it's a full sporting club and the majority of our profits go back into sporting facilities.
- Q. I understand that, but let's assume the Taxation Department said 'This isn't a sporting club and the greatest percentage of your revenue comes from people playing poker machines rather than playing golf', would you be very concerned about that?
- A. I'd say we wouldn't win the argument."

At Cobram-Barooga Golf Club (Ex.101F), with 500-600 golfing members out of a total of 6,328 members and a gross poker machine revenue in 1981-82 of \$1.11million, we were told that perhaps only 15% of machine income comes from members. More than 80% comes from visitors, no doubt especially the coach parties organised for the club by its agent in Melbourne. The coach loads are "one or two buses a day and on the weekend perhaps you would get up to two or three buses if you're lucky". The club provides a free lunch for the visitors and pays a capitation fee to the coach operator. The role of the visitors was explained to us (p.3):-

"The idea of the tours, and the only way we can make it function is basically if they play the machines. We don't encourage them to roll up and go out on the course and play golf. They're virtually here for a day on the pokies and a day to have a look around and relax in the clubhouse."

The club official agreed with an estimate of \$35-\$40 expenditure per bus passenger for "certain buses" but not all. The club does not pay company tax "because we are a golf club" (p.4). Barham Golf Club in a letter to the Board, (Ex.2Q) has claimed that no more than 10% of its revenue would come from members - the rest from visitors.

5.13 Visitor use was said to be high in Canberra. At the Canberra Workers Club it was estimated that, in terms of people entering the club, about half were visitors mostly from outside the Territory. (Ex.104D). At Ainslie Football Club (Ex.104E), membership 6,500, the estimate was 2,000-3,000 visitors per month. The President of the Canberra Southern Cross Club, membership 19,000, estimated 2,500 visitors per week. The

visitors "eat and play the poker machines". He explained:
 "Anyone with a driving licence will be admitted, providing the
 licence is bona fide. But local visitors may only be admitted
 in the company of a member and then only a maximum of twice
 per month." (Ex.104G p.6).

5.14 The only overall assessment of the contribution of
 visitors to the revenue of clubs with poker machines is that
 contained in a report of the proceedings of a conference of
 club officials on 7-9 September 1975. Fifteen New South Wales
 clubs were represented by a total of 29 participants including
 a number of senior officials of the Registered Clubs
 Association (the RCA). No Queensland or Victorian border
 clubs were involved. Dr. Caldwell was one of two rapporteurs
 of the proceedings. In their summary of the problems
 identified by the conference, the rapporteurs included this
 statement:-

"While visitors may contribute up to 70% of the
 finances of some clubs visitors have had no direct
 say in the nature of club activities."

The estimate is an old one but the paper was included in the
 documentary evidence put before me by the LCAV. (Ex.B25(e)).
 Dr. Caldwell was not able to bring the estimate up to date but
 he did say that he thought "clubs encourage visitors". (T.449)
 There is no reason to believe that the proportion of income
 derived from visitors has fallen over the last eight years.
 If the 70% estimate, or even the estimates of Mr. McKay and
 Mr. Chubb, have validity the position would seem to be that
 most clubs which do pay income tax are being assessed upon a

too charitable basis. Typically clubs seem to be assessed upon the basis that about 20% of their income is derived from visitors. The highest figure we were given at any club was 40%. Almost certainly the true figure is much higher than this for most social and sporting-social clubs.

Door controls

5.15 As will be explained in more detail below (para.13.06), the New South Wales legislation limits access to registered clubs to members and their invited guests. The same position applies under the Liquor Ordinance of the Australian Capital Territory. In both jurisdictions observance has become ritualistic in most clubs. At T.368 Dr. Caldwell said that he suspected "that there are many people who enter the clubs without challenge". Those who are challenged are required to sign a visitors' book. "...one can seek honorary membership for the period that one is on vacation. Certainly, there are daily arrangements made. Some people may simply wander in and out of the club at will." At T.269 he agreed that the situation "has reached the level of being a farce as far as visitors are concerned." He agreed that it would be better to abandon the present legal requirements and to allow clubs openly to trade as community centres if they so wished. [This suggestion has the merit of terminating the present disregard for the law which can only tend to bring it into contempt. It also has the advantage that, if clubs were openly recognised as public houses serving the whole community, it would quickly be realised that there was a need for public accountability in

relation to the conduct of operations - including policies of using poker machine profits to undercut rival traders - and in respect of the expenditure of the profits.] In relation to the Australian Capital Territory, Mr. Matthews gave similar evidence. Clubs are circumventing the ordinance by having a doorman-member member who signs in people as they arrive. He agreed that this had "the effect of allowing those clubs to in fact operate in a manner that is totally open to the public if they want to." (T.718). There is no doubt at all that almost all social clubs in New South Wales and the Australian Capital Territory make their facilities available to the public generally subject only to proper dress and behaviour. This was not only proved in the evidence. It was obvious on the inspections and, indeed, it is a fact notoriously known to people who live in New South Wales.

The notion of membership

5.16 The Registered Clubs Act 1976 prescribes a minimum \$2 membership fee for a registered club. When this is added to the fact that many New South Wales and Australian Capital Territory clubs have no qualification for membership other than adulthood it is very difficult to see the average New South Wales club, particularly the large social club, in terms of any traditional definition of a club. What is the the "common interest" which causes the member to join? Where no particular interest—in any activity commonly associated with a club is required to be demonstrated, or even expressed, and where the annual membership fee is often less than the price of a picture theatre ticket the only distinction between a member and a

visitor (legal or illegal) is compliance by the member with a statutorily enshrined ritual of nomination and election to the club - a procedure which must become more meaningless the larger the club becomes. At a certain point the question must arise as to why the ritual is persisted with. Such a club is, in essence, indistinguishable as a public open facility from a theatre which charges admission.

Policing excessive gambling

5.17 During the course of the inspections I made it a point to enquire of club officials of their experience in relation to persons using the machines to an excessive degree. Most officials said that this had been a problem some years ago but was no longer. Most could recall some instances of complaints by spouses that a member was gambling excessively. Some claimed that a word to the member had been effective in restraining play in the club. Reasonably, they pointed out that they had no knowledge whether he or she moved elsewhere to gamble. Sometimes the officials had told a member he was "barred from the machines". This was claimed to be an effective ploy although, as officials recognised, it was devoid of legal effect. But the general response was that complaints of excessive spending were very few. The level of complaint may increase with the new multiplier machines. It may be that members, their spouses and their friends would be slow to raise the matter with club officials, even in cases where a player is expressing concern at the level of his or her spending or believes that he or she has reached an addictive state (cf. the Wagga Wagga findings of the North Blackburn Baptist Church team discussed in Chapter 7 below).

THE CONTRIBUTIONS OF POKER MACHINE CLUBS TO THE COMMUNITY

Facilities for members

5.18 The precise nature of the facilities offered to members varies, of course, from club to club. In the sporting clubs, those facilities may be no more than the provision of an opportunity to partake in a particular sport with fairly basic clubroom accommodation: changing rooms, some meeting accommodation, some facilities for light refreshments. More frequently, the club will provide full meals, either on particular occasions or regularly. There may be occasional social gatherings and entertainments.

5.19 In the sporting-social clubs and large social clubs it is usual to find an emphasis upon entertainment. This is seen as the drawcard to attract people to the club. Without exception, we were told that entertainment was provided at little or no cost to members. The annual accounts show the loss on entertainment to be one of the major outgoings of most large clubs. The larger clubs invariably have an auditorium capable of seating many hundreds, if not thousands, of patrons. They generally provide both lunches and dinners seven days a week, usually to at least two standards - bistro and a la carte. In most clubs the food service operates at a loss to the club; either by the club itself conducting the dining room at a loss or else by the club subsidising a private operator. The financial statements generally show the bars operating profitably, though sometimes at a level below what might be expected in a normal retail operation. However, it is not possible to assess the extent to which all costs

normally associated with the sale of liquor - buildings costs, wages, electricity etc. - have been apportioned to the bar account as distinct from being included as items of general club expenditure. The only categorical statement that can accurately be made is that liquor prices are invariably below those in the local hotels. One or more bars is usually located conveniently to the poker machines. Dr. Caldwell gave this evidence at T.377:-

- "Q. Do you agree in some clubs in New South Wales the meals are subsidised?
- A. Yes.
- Q. And that the liquor prices are subsidised?
- A. Yes, they have been
- Q Entertainment is subsidised?
- A. Yes.
- Q. Do you agree that clubs bid in New South Wales for the people of that State to come into the premises?
- A. Yes.
- Q. They bid actively and vigorously for those people?
- A. Yes."

The larger clubs usually offer internal sporting facilities to members: snooker or billiards, darts, squash, sometimes a swimming pool, sauna, or gymnasium. Typically, they have function rooms available for club functions, hire by members, trade days etc. Dr. Caldwell said that he was certain that no figures existed to show the extent to which members used the facilities other than liquor, food and entertainment. (T.384).

Intra clubs

5.20 Most of the larger clubs visited by the Board had intra clubs; small groups of members who shared a common interest, usually of a sporting nature, and who pursued that interest under the auspices of the club. In some cases the club provided financial assistance; more often it merely provided a venue for meetings and some organisational support. The list of intra clubs within the Castle Hill RSL Club is indicative of the range of activities which are provided in some clubs in this way. (Ex.B13(a)): Fishing, table tennis, squash, tennis, swimming, karate, badminton, golf, darts, amateur radio, billiards and snooker, indoor bowls.

The clubs as "community leisure centres"

5.21 The doctoral thesis of Dr. Caldwell, written in 1972, was entitled "Leisure Co-operatives: The Institutionalisation of Gambling and Growth of Large Leisure Organisations in New South Wales". (Ex.B(25) (g)). He saw the New South Wales registered clubs as being community leisure centres, potentially offering great benefits to the community. [4]

"The large registered clubs in N.S.W. have emphasised the functions of recuperation, relaxation and entertainment by providing the opportunity for quiet drinking and talking in comfortable surroundings, moderately priced meals, entertainment and dancing. For a majority of club members even poker machine playing is a form of relaxation and amusement. Some people have criticised the large clubs precisely because they are large mass organisations. Without having spent much time in these clubs, the critics are ready to brand them as vulgar and common because they lack the intimacy of a small club or restaurant.

Yet the size of the large club premises and the presence of many members constitute some of their basic appeals. In the small restaurant, one is virtually anchored to one's table. But the large club is an organisation allowing freedom of movement and a choice of activities. One can commence an evening with drinks in one of the club's bars or lounges; move to a bistro bar or dining room for an evening meal; play poker machines; on certain evenings, dance, go to the games room for darts or snooker; watch entertainment or television. Thus there is freedom of movement, and a sense of space. Furthermore, one is free of people other than those in one's group. Nobody cares how a group behaves or what it talks about, as long as there is no infringement on others' freedom. No one interrupts conversation; the constraints of work, of status, of routine matters, dissipate in the club atmosphere. Unquestionably, the club is a place to relax in and to be entertained."

Yet there were criticisms. Dr. Caldwell saw the clubs as being too passive. He thought that intra clubs offered opportunities for self development but had been neglected by the larger clubs. The clubs had not emphasised cultural activities:-

"If large clubs are to become comprehensive leisure organisations they must cater not only for recuperation and entertainment needs but encourage conditions for self-development. As large consumer co-operatives, they are structurally heterogeneous with enough financial resources to broaden their activities. For instance, there is no reason why adult or continuing education classes might not be located within large clubs. While working class people would not consider attending classes at a school or university campus, they might have fewer reservations about attending a club...In addition the range of cultural entertainment might be broadened. Country and suburban areas in Australia have always had musical comedy societies presenting popular musical comedies, once or twice a year, usually at the local Town Hall. Such entertainment might be held at the superior auditoria of large clubs. Indeed at the RCA Annual Meeting at Dubbo in 1969, local music hall entertainment was conducted. Further, local dramatic groups, also a feature of Australian community life might also present their performances within the clubs. The type of entertainment at large clubs has consisted almost entirely of variety shows. Perhaps in the future clubs might vary the entertainment fare, with occasional ventures into light classical music, light

opera, such as Gilbert and Sullivan, and even chamber music."

Dr. Caldwell went on to write of the need for new

"institutional leaders" to emerge; people who would:-

"...decide the purposes for which these large clubs exist...My impression is that directors of large clubs are too often concerned with growth, efficiency, the difficulties of handling unions and making larger and larger profits, without giving sufficient weight to wider purposes. I see them as community leisure organisations and, while club directors and secretary/managers recognise this purpose, it is sometimes lost in the day-to-day affairs of the clubs."

5.22 These words were written in 1972. In 1983, Dr. Caldwell was asked about the progress that had since been made. He himself had been active in the club movement, participating in a number of seminars and workshops to discuss ways of improving the work of clubs in the community. He had been a director for three years of the large Queanbeyan Leagues Club. He admitted that little had changed in the intervening eleven years. He had had the feeling that he might be a voice crying in the wilderness." (T.372). He was "disappointed" at the failure of the clubs to develop in the way he had thought desirable. (T.388). There is nothing to indicate that the clubs in New South Wales and the Australian Capital Territory will broaden their activities in the manner advocated by Mr. Caldwell. There are, however, at least three areas in which the clubs do make some community contribution: amongst the aged, in relation to sport and in relation to community welfare. The extent of the contribution should be evaluated.

Assistance to the aged

5.23 There is evidence that older people use the clubs much more than do the young. Dr. Caldwell (T.366) said:-

"I think the large clubs serve a particular purpose for people who are retired or older. It seems to me it becomes a community centre for them to which I suspect they would not have access if those clubs were not available."

Mr. George Wintle told the Inquiry (T.2385):-

"In my little club I have got a lot of lovely people coming there and enjoying themselves, little old ladies who had nowhere to go."

Mr. Stan Duncan, Information and Development Officer for the New South Wales Council on the Ageing (Ex.B19) spoke of the opportunities afforded to older people to find social contacts in clubs, although like Dr. Caldwell he was critical of the fact "that our clubs are chiefly used to occupy free time rather than to develop the concept of leisure."

Contribution to sport in the community

5.24 The contribution made by the large clubs to community sport varied enormously. Some of the Leagues clubs, for example, spend more than \$100,000 per year on the promotion of sport. We were told that South Sydney Juniors spent \$150,000 per year on Rugby League football (Ex.88A), Dapto Leagues Club, \$140,000. Blacktown Workers Club provides for the community a complex of playing fields (two soccer fields, two rugby fields, two bowling greens, four tennis courts, a baseball diamond, netball courts, a marching girls training area and a cricket practice wicket). The Fairfield RSL Club donated \$200,000 towards the cost of the Fairfield City Leisure Centre, albeit on a basis that give to its intra clubs certain preferential use rights. The Board was told by Mr. David Martin, recreation officer of the Dubbo City Council (Ex.B24) of facilities provided to the Dubbo community by the various licensed clubs

in that city. He estimated their total contribution as being worth about \$200,000 per year. That figure included expenditure on facilities primarily intended for use by club members, although in most cases available to members of the public. (Ex.96F p.6). [For comparative purposes the expenditure by the Dubbo City Council on recreational facilities in the current year is budgeted to be \$761,000.]

5.25 I sought information as to the overall contribution of clubs to sport in the community. No figures are available but Mr. Garling, on behalf of the LCAV, tendered an analysis of the expenditure on football promotion of eight Leagues clubs in 1981-82. They include three clubs each of which sponsors a team in the Sydney first grade competition, namely St. George, Manly-Warringah Sea Eagles and Queanbeyan (sponsors of the Canberra Raiders), together with a major Newcastle club, and four clubs in local competitions. Total expenditure on football amounted to \$1.7million out of a total expenditure on all purposes of \$32.34million (5.25%). Expenditure on football promotion equalled 7.2% of net poker machine revenue. Six of the eight clubs spent more on entertainment of members than on football promotion, the combined total being \$2.86million or 8.88% of total expenditure. It is unlikely that any other type of club would approach the Leagues clubs in terms of proportion of income or of total expenditure spent on community sport. At T.452 Dr. Caldwell gave this evidence:-

"Q. You said...a moment ago that you thought that sometimes the directors were in what you describe as a bit of a bind because the members might complain about spending too much

money on a football team. I take it this is a reflection of the fact that sometimes when clubs grow the proportion of people who are fanatical about a particular purpose which brought them together, be it fishing, football or whatever gets diluted by members who come to enjoy the social facilities?

A. That is right."

Welfare work amongst the community

5.26 During our inspection tours information was sought as to the community welfare assistance provided by clubs. Some clubs allowed pensioners to have lunch at the club at nominal cost, some clubs gave practical assistance to local charitable organisations. But there was no distinct pattern of involvement in the wider welfare of the community. Mr. Matthews was asked about the position in the Australian Capital Territory (T.1437-1438):-

Q. ...Do you know whether...clubs in the ACT involve themselves in social welfare programmes?

A. I am aware of definitely one club. That is the only one of which I am personally aware.

Q. But as the chief executive of the Authority, you do not sense that there is a social welfare involvement of clubs?

A. No.

Q. Do you know of any clubs which have spent or donated money on research of one kind or another in the ACT?

A. I am not aware.

Q. Do you know of any clubs that employ social welfare officers?

A. I am not aware that any club employs a social welfare officer.

Q. Do you know whether any clubs conduct adult or continuing education?

A. To my knowledge, no.

- Q. Do you know of any that have fostered the arts?
- A. If anything, it would be in a minor way. There is one club that comes to mind where they are trying to do something for the community. This is distinct from the other one I was recalling, where they have in fact set up a bus with certain amusement machines and that bus, sorry it is a caravan, and that is available to charitable groups to tow out and use to raise revenue, maybe as part of a fair or something like that.
- Q. You see that as an isolated event?
- A. Yes.
- Q. It is not the general things that clubs do?
- A. No.
- Q. Do you have any clubs that employ professional entertainers from time to time?
- A. No, I do not.
- Q. Or recreation officers or advisers?
- A. No.
- Q. Youth welfare officers?
- A. No."

Mr. Peter Mazengarb, executive director of the Licensed Clubs Association of the Australian Capital Territory, gave evidence but he did not suggest that any of the Canberra clubs did do any of the things about which Mr. Matthews was asked. Indeed, at T.1152, he confirmed that no clubs had professional recreation officers, social welfare workers or artistic directors. He mentioned clubs being involved in social work. He was asked:-

- "Q. What sort of social work?
- A. One bowling club, which I would say is a struggling bowling club, provides facilities and bowls and picks up the blind bowlers in the ACT. Most of them have pension bowling days and most of the clubs have a particular

charity which they support, for instance War Service charities, Legacy, St. Vincent de Paul, Smith Family and so on."

There was no evidence put before the Inquiry to suggest that the New South Wales clubs were more welfare-minded than their ACT counterparts.

Donations to charities

5.27 I sought information as to the extent of donations to charities. Some of the clubs we visited were remarkable for their miserliness. For example, Brighton-le-Sands RSL Club in Sydney appears to be one of the few RSL clubs still restricted to ex-servicemen. It has only 450 members with an average age, according to the President, of 62-63 years. It has assets worth about \$4.5million, or \$10,000 per member, in 1982-83 a poker machine operating surplus of \$516,025 which provided to the club, after expenditure on members' entertainments, dinners and amenities of \$83,386, a net profit of \$367,270. Its donations to charities ran to the sum of \$15,001. This ex-servicemen's club found for Legacy the total sum of \$5,096. Up the road, the Brighton-le-Sands Amateur Fishermen's Association returned a poker machine trading surplus for the year ended 31 December 1982 of \$401,850. The club spent on members' catering, entertainments and functions a total sum of \$141,902. It returned an operating surplus of \$99,959 for the year. Donations totalled \$787. The club leases from the local council a prime waterfront site, the clubhouse building cutting off the water from a park behind. As the club is a "sporting club", no company tax is paid.

5.28 I realised that examples such as these may be quite deceptive. I therefore sought some more comprehensive picture. There are no figures to give an overall impression of the generosity of the poker machine clubs in New South Wales and the Australian Capital Territory but the solicitors of the LCAV kindly undertook an analysis of the financial statements tendered as Ex.B31. Their analysis is Ex.B38. The statements cover 71 clubs of varying sizes and type. They show total donations of \$576,000 being 0.7% of the \$81.27million expenditure of the clubs. Donations equal 4.82% of net profit, calculated after payment of the donations. No analysis has been made of the relationship of donations to poker machine income and, indeed, this is very difficult because many of the statements are not explicit in relation to the precise amount of net poker machine income. However, the figure is clearly less than 1%.

THE CLUBS TODAY

Political power

5.29 In his address, quoted in para.5.10, Mr. McKay referred to the "political advantage" of the club movement gained from the revenues exacted from clubs. There is, I believe, a perception amongst politicians in New South Wales that the clubs are in a position to exert political muscle. The best evidence of this was the inclusion in the policy of the Labor Party, prior to the 1976 elections which brought the present Government to power, of a promise to reduce the amount of the supplementary poker machine tax. The value of that

reduction was recently estimated by the present Minister for Finance, Mr. Terry Sheahan, as being worth \$40million per year. [5]

Image

5.30 Mr. Paul McKay of North Ryde RSL Club commenced his address last March by saying: "The club industry doesn't enjoy a very good reputation, for some reasons possibly best known to our critics rather than to our managers, members or directors". Later he spoke of an "image problem" and urged his colleagues to become more involved in promoting their clubs within the community. This perception appears to be widely shared in the industry. "Image" was discussed at a "think tank" organised by the RCA last August and involving 37 people associated with the industry in various capacities. About half were club executives. The findings of the conference included a note on image and management:-

"Club Image.

Some say that the image of clubs has improved. Others are depressed by the poor image that clubs have in the community.

Are the clubs deserving of a poor image? Is the reputation deserved? Or has the public relations and image moulding of clubs been ineffective?

Perhaps what clubs need is to retain the services of a professional lobby to help create a more positive view of the clubs. In addition, individual clubs should take steps to improve their community image.

Change in Management/Board Structure Relations.

Clearly one of the most persistent problems in the clubs industry is the structure of the Board/Management relations. The quality of both directors and management is a constant concern. The method of election and appointment of directors, length of

term in office, and the relationship between management and board need discussion and analysis.

In addition greater skill in cash and financial management would be a welcome development within the industry."

5.31 The Minister for Finance, Mr. Terry Sheahan, put his views fairly bluntly to the assembly:-

"The management, in its broadest sense, of the industry has left a lot to be desired. Too often we've had casual barmen appointed to managerial positions. Those appointments have not been satisfactorily backed up, in my experience, by management expertise then coming onto the Board.

In the six months that I have been Minister, I have seen nothing to dissuade me from that belief. Many of the decisions taken by individual clubs would never have been taken by normal corporate entities in the current economic climate...

It will no doubt emerge over the weekend that it is too facile to put the current economic difficulties of the Registered Clubs movement simply to RBT (random breath testing) or simply to economic downturn or the fact that Rugby League is waning in popularity.

These explanations miss out on so much of what needs to be addressed. A much wider base of discussion is needed and I can see that this will occur this weekend.

I would also make the point that if one is looking for assistance and support in the furtherance and management of clubs then perhaps the time has come to cease relying exclusively on those with vested interests in the continued operations of certain activities in the club, namely, poker machine companies, or anybody associated with the maintenance or whatever of those machines, to be the sole source of constructive advice. This is something which we have detected fairly heavily in recent times."

Mr. Sheahan also said something about the failure of clubs to report poker machine takings which were in accordance with carded percentages (see para.6.04 below) [6] and failure to enforce door controls.

"I am concerned and I want to make the point quite clearly so that those of you here who represent the club movement can go and tell the rest of the movement that the club industry is generally not abiding by the law.

I am taking a sympathetic point of view on the question of poker machine taxation and on the question of whether or not we can in particular cases grant relief, but that will only be on the basis of postponement of payment.

I will not hesitate to direct the withdrawal of licences from clubs which consistently fail to meet their obligations. It can be demonstrated in the management of a lot of those clubs that there has been a simple failure to grapple with the situation. To say, for instance, that "we've got a big overhead because we have to retain our bowling greens and not charge bowling green fees" would seem to me not to be a responsible way for management to respond to their financial difficulties.

I also feel that the time has come when someone has to do something within the club movement to protect the ethics of the movement from the advertising of open door policies at various clubs. 'Member and Guests Welcome' seemed to be an afterthought in one of the ads I saw recently for entertainment at a well known suburban club.

In appropriate cases, we will be taking strong action in that regard because the community generally expects everybody to have a fair go but NOT to have a mortgage on being able to bend the principles which define the divisions between the hotel industry, the bottle shop industry, the club industry, and the role which is to be played by each of those sectors in our society."

THE FUTURE

A shrinking market?

5.32 Mr. Sheahan's comment that the current difficulties of the club movement should not be simply put at the door of random breath testing, the economic recession or the decline of Rugby League raises the question whether there are fundamental factors at work which will, in the future, mean a shrinking market. Dr. Caldwell thinks so. In evidence to the

Inquiry he told of a prediction he had made that 10% to 20% of the clubs in New South Wales would close within five years.

He added (T.391):-

"I would say that the climate for clubs is certainly not the climate that existed ten years ago. As I said, the leisure market is much more extensive than it was. We have increasing technological developments which means the home has become more and more a leisure centre."

Dr. Caldwell said that he thought that the clubs were more popular in the sixties and seventies than they were now.

(T.366). Miss Newell, another participant in the "think tank" agreed. She said that she thought that the club industry would never get back to its peak position in the State. I asked her why. She replied (T.2830):-

"Basically, I think the club industry had a period of time where it was the most popular form of entertainment, you might say, for people. I think in recent times, you find that there are more people staying at home, with the advent of the video recorder. People can stay at home and watch movies and so forth. I think a lot of people have in fact not been attending the clubs. I think the clubs have to update if they want to attract the younger people."

5.33 It seems to me that there is much substance in these observations. The clubs will not vanish overnight but it is quite possible that there will be a gradual fading away of the large social clubs. Apart from the competition of home entertainment, there is more entertainment on offer in the community; much of it likely to have greater appeal to a more sophisticated younger generation than will traditional club fare. I add a reminder of my view (para.2.25) that the traditional poker machines, at least, may be thought unexciting to a generation bred on video computer games.

Implications for Victoria

5.34 These observations do not mean that there would be no future for poker machine clubs in Victoria. On the contrary, in the short term at least, there is every reason to believe that many Victorian clubs would use poker machines to travel the same road as did the New South Wales clubs in the sixties and the Australian Capital Territory in the late seventies. My comments, if they are valid, do mean two things: one, that in any expansion programme Victorian clubs should consciously set out to determine what style and activities are most likely to appeal to the younger generation; two, that the total eventual number of large social Victorian clubs, on a per capita basis, may be lower than in New South Wales at the present time. Victoria, going up the graph is likely to meet New South Wales coming down.

Notes to Chapter 5

[1] Section 32 of the New South Wales Act requires that a registered club shall at any one time have one, but not more than one, secretary. The secretary must be approved by the Licensing Court. Objection may be taken on the ground that the applicant is not a fit and proper person. (s.33).

[2] It was said at the "think tank" referred to below that the 2.5 million memberships represented about 1.5 million individuals.

[3] Mr. G. Rohrich, assistant manager of the Lavington Sports Club at Lavington, Albury told us that his club, also a "sporting club", imported 20 coach-loads of players each week but he did not think that they would spend as much as \$35-\$40 per head. (Ex.102F p.2).

"The club dates back some 30 years. It was originally started off by the old Italians. There was an orchard on the site and they had a bocce court built under the trees. They used to come down here and play bocce. They had an old tin shed and I think sometimes they just came down here to get away from their wives and play cards." Today, the club has about 6,000 members of whom about half are of Italian stock. It has sporting facilities - three bowls greens and four bocce courts - and is exempt from taxation because it is classified as a sporting club. But, obviously, only a small fraction of the members can actively use the sporting facilities. The club functions mainly as a social club. It has an auditorium capable of seating about 600 people at tables, 1200 without tables. It runs a very active programme of live entertainments at a cost of nearly \$20,000 per month. Mr. Allen gave us this information:

"Q. The club appears to be very much involved in the entertainment business?

A. I think all clubs have a strong tendency to the entertainment industry and catering for the younger people of the area.

Q. Your club engages bands and artists who cater for the younger people in this area?

A. As well as the older members.

Q. Would you regard the club as competing with the hotel 100 yards away in terms of entertainment?

A. Actually I think the hotel industry has put itself into the entertainment industry to compete with the clubs.

Q. Be that as it may, you're competing with it or it's competing with you, is that right?

A. True. I think we're both on an open market for patronage and we're using entertainment as a medium to attract."

[4] In his statement of evidence (Ex.B25(a)) Dr. Caldwell reproduced much of the final chapter of his thesis. The extract is quoted at p.14 of his statement Ex.B25(a).

[5] Proceedings of a conference "Thinking Back and Looking Forward", convened by the Registered Clubs Association of New South Wales, 13-14 August 1983, p.53.

[6] This was made clear by the Minister in answer to a question, immediately after his address: "In what ways is the industry not obeying the law?" The Minister said: "The financial takings of clubs are not in a large number of cases matching the estimates of those takings....".

CHAPTER SIX

CRIMINAL ACTIVITIES ASSOCIATED WITH POKER MACHINES AND CLUBS

OVERVIEW

The historical legacy

6.01 Since its earliest days, and wherever it has travelled, the slot machine has been associated with criminal activity. Indeed, as I have mentioned (para.2.11 above) the technological development of the machine owes much to the ingenuity of cheats, forever devising new ways of beating the latest model. The legacy of crime was, in New South Wales, added to the circumstance that, before 1956, the use of the machines was itself a criminal offence. Since that time, there has been a minimal attempt by the New South Wales authorities to identify, quantify and eliminate malpractice. However, notwithstanding this lack of vigor there has been a sufficient number of scandals to create a suspicion - which I believe to be widely held - that a high level of criminal activity has been associated, and remains associated, with licensed clubs in New South Wales, especially in relation to their poker machine operations. The purpose of this chapter is to discuss such information as is available to evaluate that suspicion and to consider its implications for Victoria. I do so bearing in mind that, if poker machines were permitted in Victoria, this State would have the advantages of starting with a clean slate and an opportunity to lay down firm controls in advance.

The opportunity for crime in New South Wales

6.02 The system surrounding the operation of poker machines in New South Wales licensed clubs is almost the perfect recipe for criminal activity. That system was analysed in evidence given to the Inquiry by Dr. Alfred McCoy, Senior Lecturer in History at the University of New South Wales and a man who has specialised in the study of organised crime in Australia and in South East Asia. Dr. McCoy pointed to these features (T.2162-2165):-

a) The absence of external market controls -

"External market controls would mean that, for example, if you were selling an item, any item of which you had a stock list and you sold that, you sold a certain number of bottles of beer, a certain number of kilogrammes of meat, so many meals, whatever, there is in fact a fixed item which can be determined, having gone out, and if you do not have an income coming back in, that simple market place mechanism provides a control on the quality of the enterprise.

In the case of poker machines, the activity of any given machine, or of all the machines in a club is variable, according to the business cycle, according to the pay packet cycle, according to a whole range of variables, so that there is no external market control on the activity of machines. There is no simple equation between numbers of goods and stock, number of goods sold and, therefore, an imbalance between that. That is lost. You do not have a market control and that is unlike any other enterprise in Australia except casino gambling."

b) The absence of any effective external enforcement controls -

"The second thing is that in New South Wales there has functionally been almost no external enforcement control. If you consider something in the area, broadly, of 50,000 machines in 1,500 clubs and 17 inspectors, working it out, that comes to, on a club

basis, something like - assume that they are working a five day week and out on the road every day, that would mean that they were visiting the club once every 18 weeks. If you figure they have to spend some time in their office I think that that really comes down to functionally visiting each club twice a year, so that in the past there has been even less control over that.

Admittedly, the requirements now for percentage and cash flow examination have been strengthened as a result of legal changes, but those have been muted by the fact that out of 50,000 machines only 17,000 have the technology which allows the cash flow supervision, so that the bulk of the machines are still uncontrolled in that respect."

c) The absence of personnel control -

"There is no control over personnel. There is no licensing or registration. It is more difficult to get a taxi licence in New South Wales (than) it is to become manager literally of a multi-million dollar enterprise. I know of no comparable institution generating such funds which allows the responsible financial officers to be men of criminal background or to have various allegations and charges made against their performance. In almost every other situation I would assume the State would require what they require in similar circumstances. The individual is deemed guilty until proved otherwise - you have to submit your credentials to a Board. You do not have a right to operate such an enterprise."

d) Management vested in elected part time directors who are not required to have any qualifications for their office or even to be persons of proven good character -

"Q. What about the election of directors?

A. That is the third area. The question of internal controls. That is terribly weak. I suppose to come up with a comparable enterprise you would have to look at a bank handling that much cash - a major branch bank or the West Point Casino that has \$10million to \$11million profit per annum - casino area and bar and gambling. The South Sydney Junior Leagues Club, the largest in New South Wales, has profits from poker machines of something

like \$5million per annum. That illustrates the point. One of these legal clubs, or take several of them together, turn over the equivalent of the profits of the Wrest Point Casino and they are really casinos unregulated having none of the regulations in terms of personnel, oversight and control which are required of casinos such as Wrest Point, those proposed in New South Wales, that proposed for Victoria and now proposed for Queensland. None of these requirements are being demanded of people operating enterprises as large and of a similar nature such as the clubs in New South Wales."

- e) Election from within a large constituency but with a low level of voter participation, leading to the possibility of ballot rigging and coercion -

"Q. If you have a system of election of directors from club personnel that itself I suppose opens the possibility of ballot rigging, stacking of meetings, getting people in who you want to have in?

- A. Sure. The large clubs in New South Wales have membership from 20,000 to 50,000. It is totally impersonal. They are large impersonal corporations and as a result the law's assumption that an intimate body of peers controlling its own affairs is going to be effective, as effective as an outside State regulatory body is inaccurate.

One has had the situation in South Sydney, recorded in the Moffitt Royal Commission, of threats of death, terrorism, fraud, used in the elections of the South Sydney Junior League Club. I talked to people who participated in those elections and they tell one that. Recent allegations as well but more limited of a similar development in Leagues Clubs of recent years.

One has a situation where the so-called democratically elected structure is in fact irrelevant because the law assumes this fraternal intimate knowledge but it does not exist in an organisation of that size and complexity. The enforcement mechanism of fraternalism is not appropriate. There is no criteria in terms of police vetting of any club personnel."

- f) The dependence of clubs, for their financial survival, upon annual renewal of a licence, which renewal is thought likely to be jeopardised by scandal within the club -

"The other factor is, as I stated earlier, the licensing arrangements in New South Wales I believe encourages the clubs to cover up incidents of corruption. I know from personal experience talking to people in the club industry in Sydney it is generally accurate to say when a club finds it has personnel that are stealing from the club they either ask them not to do it again or to leave quietly. No attempt is made to recover the money."

THE PREVALENCE OF CRIME

Task Force estimates

6.03 Dr. McCoy's analysis may leave the impression that all people in all clubs are dishonest. He made no such claim and rightly so. He was criticising the system. I have no doubt that the overwhelming majority of persons associated with the management of New South Wales clubs are honest people, many very dedicated to the welfare of their club. How prevalent then, is criminal activity in clubs? The answer is that nobody knows. However, two estimates from officers of the New South Wales government indicate the likelihood of criminal activities, of one sort or another, on a recurring basis in a great many clubs.

6.04 The Poker Machine Task Force is a special unit of the New South Wales Police established in 1979 following the discovery by detectives stationed at Blacktown, a western suburb of Sydney, of organised cheating by gangs of cheats of poker machines in clubs. The unit is located at Penrith, at the western edge of the Sydney metropolitan area, but operates

(to the extent of its resources) throughout the State. The current establishment is 13 officers. On 18 August 1983, Mr. Bongiorno and I visited Penrith and had a lengthy discussion with three members of the Task Force. An edited transcript of our conversation is Exhibit 109. [1] The Officers recounted to us the facts of a considerable variety of cases with which they had been concerned. I asked them to put those stories in context for me. I asked them to estimate the proportion of New South Wales licensed clubs in relation to which they believed - not necessarily were able to prove - that there was recurring dishonesty. I explained that I was referring to dishonesty within the club itself, that I was not referring to directors pulling a few free beers but to matters involving money. All three officers joined in an assessment that the proportion would be 50 per cent of all clubs within the State. I pressed them on this assessment (Ex.109 p.34):-

"Q. If it's just something incidental or petty you would tend to put that onto the local police; if it's to do with poker machines or indicating some persistent corruption in the club then you would handle it. That's what we're talking about when you say 50% or more?

A. Yes.

Q. Is that true across the board? There's a range of clubs obviously, from very large to very small; do you think it's that same rough percentage across the whole spectrum?

A. I would say so. A lot of our jobs in clubs are on complaints that are made to us; we haven't had the time to go out - I don't think we've ever done it, we haven't had the time to say, pick out four clubs, go into those clubs and do a general surveillance to see what's

going on, if there are hard dishonest matters going on. We haven't had the time to do anything like that."

It is important to make clear that the officers did not say that 50% of the people involved in New South Wales clubs were dishonest, as was apparently reported in the Press, but rather that there was dishonesty in 50% of clubs, a very different proposition. Even so, Mr. Clarebrough, the group general manager of the Ainsworth group, doubted the accuracy of the estimate. He described it (T.2886) as "a very serious accusation and...a very broad statement in my opinion." Nobody, of course, can know the real figure but I found it to be a disturbing estimate to come from three careful, experienced police officers each of whom has been with the Task Force for some years.

Department of Finance comments

6.05 At para. 3.29 above I referred to the introduction in 1979 of a requirement by the New South Wales Treasury (now the Department of Finance) for "percentage analysis" of poker machines. The purpose was to provide data to demonstrate whether or not machines were returning to players their "carded" percentages and whether or not the clubs were receiving into their accounts moneys equalling the predictable player loss. It was, no doubt, to be expected that in the early stages there would be discrepancies for which it was difficult to account but, even after four years, the discrepancies are major. Officers of the Department of Finance told Mr. Bongiorno and myself on 30 September 1983

that, concentrating mainly on the larger clubs because there the revenue loss is more significant, the Department knew 200 clubs in relation to which "their actual income is so far below what we would estimate it should be that we have drawn up a list, the inspectors will be going out to see them...". This situation exists despite a virtually continuous education campaign carried out by the Department by way of official circulars sent regularly to clubs since 1980. (Ex.84C).

6.06 - In its manual, published this year, "The Control and Review of Poker Machine Operations" (Ex.84B) the Department of Finance said:-

"1.01 While in no way wishing to question the dedication and honesty of many club employees, it is an irrefutable fact that inspections of registered clubs throughout New South Wales have revealed that controls over poker machine operations in many clubs are inadequate and, as a result, the clubs have lost substantial sums of money. These losses have occurred through theft and other malpractices committed by club officers and employees and by people not employed by or responsible for club operations. Inspections have also indicated that many clubs have lost revenue because of machine malfunctioning that has gone unnoticed...

1.03 From information extracted from the poker machine revenue analysis returns submitted by clubs it is apparent that revenue from clubs' poker machine operations is many millions of dollars below the level that ought to be obtained."

The Department has not, to the best of my knowledge, made an estimate of the number of the missing millions of dollars.

Mr. Daley's estimates

6.07 Mr. K. Daley of the Ainsworth organisation gave evidence of a survey taken of the data collected by the Ainsworth subsidiary, Club Data Services Pty. Ltd. This

company, which analyses the results of nearly 50% of all poker machines in New South Wales, provided figures from which Mr. Daley estimated that the total discrepancy between actual revenue and expected revenue was between about \$14.6million and \$14.8million per year for the whole State of New South Wales. (T.126). He asserted that this figure is a maximum and that it includes discrepancy from theoretical performance for all reasons, not just those associated with dishonesty. Machine malfunctions (e.g. overpaying of players) and incorrect data could certainly account for some portion of the discrepancy but I see no reason why these factors should necessarily increase the discrepancy. They might just as easily decrease it. It should be noted that the discrepancy calculated by Mr. Daley assumes that all games played have been metered. As will be seen (para. 6.27 below) it is possible to interfere with a modern microprocessor in such a manner as to operate the machine with the meters disconnected. If that were done, and the proceeds of the unmetered games stolen, the theft would not be included in Mr. Daley's discrepancy figure.

Mr. Vibert's estimate

6.08 Mr. E.P. Vibert has had considerable experience in the poker machine industry. For some years he made his living as a poker machine analyst. I have formed, and I express elsewhere in this report, some highly critical views as to his conduct in the campaign for legalisation of poker machines in Victoria. I disbelieve some of his evidence on that matter. But he does know the poker machine business. I do accept his evidence of such matter as turnover of machines,

usefully collected in his earnings table Ex.MM8. I also accept, and in fairness should say, that he has been one of the few people in the New South Wales industry who has been prepared to speak out in relation to crime in clubs. Mr. Vibert was, in his evidence, critical of what he understood to be a statement by a New South Wales police inspector that \$120million per annum is stolen from poker machines in the State. He added that "at the highest figure, it would be \$80million". (T.1656). He did not express a "lowest" figure but in 1977 he had himself estimated that clubs were losing about \$20million per year to poker machine cheats. In a 1977 newspaper article which he tendered (Ex.MM21) he had asserted that only 150 of the 1,500 clubs in New South Wales were run properly and that it was impossible to tell exactly how much was being taken by cheats "but the figure must be colossal". In his evidence he made clear his opinion that substantial criminal activities were continuing today (T.1656):-

- "Q. ...Organised crime is at work in the NSW clubs, it is getting away with a lot of money, the only question is how much money is it getting away with?
- A. I would challenge the use of the word 'crime', you lead us into a definition of organised crime. Criminals are at work, certainly.
- Q. And getting away with lots?
- A. Well, they are getting away with a lot, of course.
- Q. Do you know whether schools are still being run by syndicates in NSW?
- A. I am sure, yes, that is happening.
- Q. And when you use the word 'syndicates', you use that in the way that means organised groups of criminals, criminal syndicates?

- A. No. The information that we had in 1975/1976 from which that article sprang was that we found tools in a club that someone had rushed out of the club and left because someone had seen them cheating at a machine. We found a bag of equipment which included drills and it included wires bent into particular ways, and that was all handed over to the police section and it was then quite obvious that there were tools being manufactured to cheat certain types of machines.
- Q. If I could go back to the question I asked you. You agreed with me a few moments ago that your belief was that syndicates were still running schools for poker machine cheats; that is what I understood you to say?
- A. I must say I have not heard about it for a couple of years, but every now and then a newspaper article surfaces that says teams of cheats are about. It is often a beat-up of an old story, mind you.
- Q. You would be surprised if it was not the case?
- Q. I would be surprised if it was not happening, yes."

Deficiency unknown

6.04 Mr. Daley's estimate of a deficiency of about \$14.8million was based upon the percentage analysis returns of the clients of Club Data Services Pty. Ltd. I have already commented on one possible omission from his figure, unmetered plays. A more significant criticism is that percentage analysis only discloses the relationship between the number of reported plays and the number of reported pays. Cash flow analysis was made mandatory by the Department of Finance only last March, and then only for machines with the necessary meters. There are still many thousands of machines in use on which cash flow analysis cannot be undertaken. In relation to those machines it would appear possible for club officials to

steal the proceeds of machines without detection simply by mis-reporting the meter information required for the percentage analysis i.e. both plays and pays. Notwithstanding the fact that many machines are now of the microprocessor type and that many clubs have their returns analysed by computer, it appears to be almost a universal practice for the meter readings to be visually read and manually recorded.

6.10 It is a surprising situation that nobody can say, even to within several millions of dollars per year, how much money is dishonestly stolen from clubs. To my knowledge, no one has ever sought to estimate how much money is paid in secret commissions, which Miss Newell at least believes to be common: see para. 6.43 below. Perhaps the actual amount does not matter very much. On any view it is such an amount, representing such a number of separate criminal acts, as to cause considerable concern. It is not difficult to imagine the public reaction if the Commonwealth Treasury or a mutual life assurance society were to announce that it had compiled its accounts for the year and that it had discovered a deficiency, which might be \$80million or "only" \$14.8million but which could not be quantified, some substantial but unknown part of which was certainly due to criminal activities.

CHEATING BY PLAYERS

The unceasing battle

6.11 Player cheating is undoubtedly the most prevalent criminal activity associated with poker machines. It is

neither new nor unique to Australia. Ever since Fey invented the slot machine people have pitted their wits against slot machine manufacturers in a constant battle to make the machines pay out more generously than the manufacturers intended.

Examples of the early techniques used are set out in para.

2.11. An example of recent technique is set out in a story from the Los Angeles Times (Ex.111) which describes a \$1.7million fraud perpetrated on Harrahs Lake Tahoe casino in August of this year. Using a somewhat ingenuous "front man" to collect their winnings, a group of cheats had successfully "scammed" [2] a slot machine to make it pay out its large jackpot. Somebody had apparently interfered with the software of the (microprocessor) machine during a period when the casino's security camera was out of service - whether by design or accident is apparently not known.

Cheating in New South Wales

6.12 In New South Wales cheating by poker machine players has been a matter of common gossip for many years.

Prosecutions would occasionally highlight the practice but, on the whole, it appears not to have been an issue which aroused the interest either of club management or the public generally. It is almost as if the public has seen cheating as being an acceptable way of "getting square" with a robber machine - "the one arm bandit". Whatever the explanation, before me it was common ground amongst all the experts on the New South Wales industry that, historically, there had been a large amount of poker machine cheating in that State. The

only issue amongst them was the extent to which cheating had been reduced by the new microprocessor units. Thus, Mr. Vibert had written in 1976 of 500 professional poker machine cheats then operating in New South Wales clubs. (T.1653). He spoke of syndicates who sold tools for people to use in cheating machines and spoke of "highly organised gangs" who were "robbing clubs blind". (T.1654). Syndicates even organised schools for poker machine cheats. Mr. Vibert says that that might have gone on into 1979 and 1980. When questioned about the extent of cheating which might have been going on as late as 1980 he said:-

"Q. It is not unreasonable for people who oppose poker machines to have the impression, certainly into 1980, that organised crime was making quite a killing out of the New South Wales poker machine clubs?

A. Not unreasonable at all." (T.1654).

Mr. Vibert, however, considers that the institution of mandatory percentage analysis of poker machines and the formation of the Police Poker Machine Task Force have "made it a lot more difficult for poker machine cheating to take place". As to the first, as the Department of Finance made clear to me, all that percentage analysis did was to highlight that there were very large discrepancies between actual poker machine revenues and the revenue which ought, theoretically, to have been produced. Percentage analysis has been able to demonstrate, in a way that had not been possible before, that cheating was going on but it has not stamped it out. As to the second, the Task Force told me that, whilst they had had

some success, they had insufficient manpower to even ascertain the full extent of the problem let alone tackle it successfully. Mr. Vibert's evidence at T.1656, quoted in para. 6.08 above, indicates that he accepts that organised cheating is still going on.

Extent of cheating

6.13 The Poker Machine Task Force is no more able to estimate the total value of poker machine cheating in New South Wales than is anyone else. However, they consider that there are hundreds of cheats operating on a regular basis (Ex.109 p.7) and that some of them, by their lifestyles and by their admissions made to police after arrest, betray an income from poker machine cheating running into hundreds of thousands of dollars per year. (Ex.109 p.4). Some individuals have been found to be earning \$400,000 - \$500,000 per year by manipulating machines with wire. They could earn \$7,000 - \$8,000 per day in jackpots. One cheat told the police that he regularly hired an aeroplane to fly to Tweed Heads where he cheated on microprocessor machines for a fortnight, before taking two weeks holiday at an island resort and returning to Sydney. (Ex.109 p.7). The Task Force officers told me that they had found that there were gangs of cheats visiting clubs on regular "runs" to particular areas of the State. There were a number of teams operating. When arrests were made some common features were found to apply to many of the gangs. These features related not only to their modus operandi but also to common names found on documents in the cheats' possession. Further, it appeared that although two gangs

might operate in the same area at the same time they did not attack the same clubs. The members of the Task Force had formed the belief that at least some of the poker machine cheating which was occurring in New South Wales was of an organised nature. As is not unusual with organised crime, in its many forms, the ultimate organiser has yet to be identified. (Ex.109 pp.1 et seq.).

6.14 I am not aware of any estimate from within the club industry relating to the annual loss caused by external player cheating. There does not appear even to have been an attempt to nominate a figure; it is almost as if the industry does not want to know the answer. On my inspections of New South Wales clubs I found that secretaries/managers and directors generally accepted the proposition that significant poker machine cheating occurred, but not in their club! Much the same attitude has been found by the Poker Machine Task Force, who have sensed an attitude by club management that for it to admit that cheating has been going on involves a reflection on the security of the club. Accordingly it prefers to deny the existence of the problem. (Ex.109 pp.16 et seq.)

The modus operandi of the poker machine cheat

6.15 The manipulation of poker machines by cheats must generally take place during ordinary club trading hours. Accordingly, techniques have been evolved by competent cheats to ensure that they are able to carry out their work without being detected. Usually a gang will consist of three or more people. One will actually carry out the manipulation whilst

being shielded by one or more "smotherers" from the view of any club official who might be in the vicinity. Where the cheating process involves the setting up of a jackpot, which must be signed for, the cheating team requires the services of a "signer", someone who will sign the jackpot book and accept the prize. According to the officers in the Task Force, the signer will normally be someone without a criminal record, perhaps even a person resident in the area. (Ex.109 p.14).

Mechanical and electro-mechanical machines

6.16 The method of manipulation of machines depends upon the type of machine involved. On old mechanical and electro-mechanical machines the common cheating method was to insert a wire through one of the appertures of the machine and thereby manipulate the reels to simulate a jackpot. Some cheats went further and were able deftly to drill a hole in the side of a machine (using a miniature electric drill concealed in the palm of the hand) to enable a wire to be inserted parallel to the axis of the reels and thus enable the reels to be manipulated. Other techniques involve jamming open coin chutes and even, in some cases, opening the front door of a machine and removing money manually from unguarded hoppers. If there is collusion between someone who can lawfully open the front of the machine and a cheat who may subsequently visit a club the opportunity exists, according to the Task Force, for more sophisticated forms of cheating to occur, such as the insertion of a device inside the machine to cause it to respond to a bar in the payout chute or the insertion of a spring to assist in bringing

up paying combinations. (Ex.109 p.24).

Microprocessor machines

6.17 External cheating on modern microprocessor machines requires a somewhat different technique. It is often asserted by poker machine manufacturers, and those who support poker machines, that the advent of microprocessor machines has signalled the end of external cheating. The Task Force believes otherwise. They told me (Ex.109 p.7 et seq.) that they thought that cheating with microprocessor machines is sometimes easier than on the older models. One cheat, who had already been committed for trial at the date of my discussion with the Task Force, had made a regular income from cheating microprocessor machines by the so-called "yo-yo" method. This involves the jiggling of a coin attached to a thread such as a light fishing line through the coin acceptor to cause the machine to register credits on its credit meter. Such credits can be taken in cash by pressing the payout button at any stage. Yo-yoing requires manual dexterity: an attribute which poker machine cheats appear to have in great measure. All manufacturers claim to have incorporated effective anti yo-yo devices on their machines but it seems that the cheats constantly devise new means of overcoming these safeguards. This has been the history of slot machines. In time, every safeguard built into a machine by a manufacturer is overcome by someone intent on being dishonest. I was told about one instance in which the dishonest poker machine player was aided by a design fault in the software of an Ainsworth machine.

This machine would grant unearned credits if certain simultaneous actions were performed with a coin and the "collect" button. The design fault was present in Ainsworth microprocessor machines when they first went on the market in 1979 but was not discovered until early 1983. Some 12,000 machines were affected. Rectification of the fault required a change in the software of the machine and, at the date he gave evidence of the situation, Mr. Delaney, the service manager of the Ainsworth organisation, was not sure whether all machines subject to the fault had been corrected. (Ex.109 p.11 and T.1551-2). I mention this design fault as it demonstrates that, despite the best intentions of manufacturers and the application of the most up to date technology, situations do occur of which the dishonest player will take advantage when he can.

6.18 The development of microprocessor machines may have changed the weapons used in the war between slot machine manufacturers and those who would cheat the machines. It has not caused a cessation of hostilities. The Bally organisation, in a statement of Dr. Martin Keane tendered on its behalf (Ex.J9), acknowledged that security can never be perfect. All that can be hoped for is that with the ever increasing sophistication of concept, design and construction the degree of knowledge, time and money required to circumvent the correct operation of a machine will be proportionately increased. This, Bally asserts, is the ongoing deterrent against manipulation. The Ainsworth organisation, through its former engineering manager Mr. Edward Cully, who is now

employed by Nutt and Muddle, was forced to make virtually the same concession (T.1299). Mr. Cully asserted that Ainsworth's 1984 generation of machines would be more secure than those currently on the market (T.1304) but he added, somewhat despondently I thought, "Every time we make a machine there is new technology which is available to the person trying to beat it. As I said before it is an ongoing thing and I do not know where it is going." (T.1305). Dr. McCoy said something similar, though speaking more generally and from the opposite perspective (T.2168):-

"You might argue...that state-of-the-art machines make it much more difficult to engage in this kind of corruption. I think that is perhaps a naive perspective. In any criminal enterprise of that nature the edge is always towards the law breaker rather than the law enforcer. The cost of increased security for the legal provision of the services is always relatively greater than the cost of penetrating the security on the part of an illegal perpetrator.

Let me speak simply: the cost for banks to put high quality steel of incredible thickness in all their vaults is prohibitive. They generally would prefer to insure themselves against the loss. The cost for a thief of buying the latest state-of-the-art acetylene torch to cut through the steel is a basic cost of doing the business and one he will always meet. Any system you create is going to be less than the optimal system because of the cost factor and because for a bandit to prey upon the system that cost factor is a basic cost of doing his business so he will meet that cost and beat your system; in other words, he is always willing to go that one better, to go to that optimal state-of-the-art."

Prospects for the future

6.19 I have no doubt that the development of microprocessor units, together with the introduction of percentage analysis and cash flow analysis, are all positive steps in the reduction of player cheating. It was clear on the

evidence, and indeed ground common to all of the expert witnesses, that New South Wales would not even begin to control the player cheating problem until it eliminated from all clubs the old mechanical and electro-mechanical machines. If Victoria did decide to permit poker machines it should insist that only machines incorporating the latest technology were to be installed. But even so, as it seems to me, player cheating is likely to continue. Notwithstanding the high hopes of eliminating cheating on the present generation of microprocessors, it is clear that it does exist. It is not possible to make a judgment about the "new generation" machines of which, I was told, the Ainsworth 1984 models would be examples. I assume that these new machines will incorporate every known modern electronic and mechanical anti-cheating device. Notwithstanding that, history teaches us that those machines will be penetrated by external cheats in time. It is difficult to believe that, suddenly in 1984, a security situation will be reached which has eluded the manufacturers of slot machines since Fey invented them in 1887, that what could not be achieved in the first 96 years of their operation is about to be achieved in the 97th.

THEFT BY CLUB MANAGEMENT

The practice of self regulation

6.20 As noted in Chapter 3, the policy of the New South Wales Government and, to a lesser extent, the Australian Capital Territory Gaming and Liquor Authority has always been to permit clubs to control their own internal affairs. In New South Wales the standard conditions of a poker machine licence

(set out in Ex.84A at p.7) require that machines shall be cleared and refilled with coins by at least two persons. In the Australian Capital Territory machines may only be opened by persons holding the appropriate GALA certificate. (Ex.6C). Other than those controls, and the requirement in each jurisdiction to submit returns setting out various matters including cash collected from machines and meter readings, the operation of poker machines within any club is purely a matter for the club concerned. The strictness of accounting procedures varies enormously from club to club and with it the opportunity for internal theft to occur, either directly from poker machines themselves or from the cash cleared from the machines. Sometimes, because of the internal procedures of the club it is necessary for a number of people to be involved in a "skimming" operation. No doubt the necessity to involve others deters some dishonest administrators or employees but large conspiracies are not uncommon. During the progress of the Inquiry twelve employees of one large club were committed for trial on charges of conspiracy to steal poker machine proceeds.

Key security

6.21 In the course of my inspections of New South Wales clubs I saw clubs where security ranged from extremely strict to non-existent. In some instances the keys to poker machines were kept under security systems such that the identity of the person taking a key was automatically recorded, as was the length of time during which the key was in his possession. At the other extreme I saw a club where the keys were kept behind

the bar in case someone wanted to open a machine to clear a blockage. In between the extremes was what appears to have been the most common situation - that of keys being provided to designated staff and/or directors on a "sign in - sign out" basis. The use of sealed envelopes with signature over the seal was not uncommon. With the exception of the most sophisticated clubs, which used electronic key controls, very few, if any, precautions were taken against the manufacture of duplicate keys. Two of the manufacturers who responded to Mr. Bongiorno's letter as to manipulation of the Pacific machine, described in para. 6.21 below, each stressed the importance of key security. As one manufacturer put it: "It is very difficult to produce a poker machine which is uncheatable with the door open just as it is rather difficult to prevent stealing from a bank vault with an open door."

Direct stealing of cash

6.22 The simplest form of employee theft in relation to poker machines is the removal of cash directly from the machine by someone having access to a key. Of course, the removal of such cash in any quantity will be revealed by subsequent percentage analysis and cashflow analysis of the relevant machine. As I have noted, there are presently 200 clubs in New South Wales where variances from expected revenue are so great as to cause concern. Some of those variances may be due to outright theft from machines. Doubtless there are many other clubs where the variances are smaller and do not cause the Department any concern. We were told by the officers of

the Task Force that the Department allows a variation of 2%.

The officers commented (Ex.109 p.28):-

(Const. Clark) "That's right; now the club manager can go right up to that variation or even 1% over and the Treasury isn't going to query it. They might even pick out the odd machine randomly and make it 7%, 8%, 9%, 10% over; then the Treasury comes along and taps them on the knuckles and says 'that's no good'. They say 'gosh, sorry, we'll get it fixed'. But that's as far as it goes."

(Det.Sgt. Hanrahan) "But it has to be consistently over for the Treasury to worry about it."

It seems that, if an internal thief were to limit his activities to taking a relatively small amount from each of a large number of machines, the chances of his detection in many New South Wales clubs, notwithstanding the analyses required by the Department of Finance, would be minimal. If he became greedy his chances of being apprehended would increase, but then only if the club itself took some positive steps towards an investigation. Unless club management is vigilant and itself honest fraud can occur with little chance of detection. The Poker Machine Task Force told me of many instances of internal theft of poker machine money in New South Wales clubs. They have been involved themselves in a number of cases and other cases have been reported in the magazine "Club Management in Australia" (Ex.77), as well as in the daily press from time to time.

The chances of detection

6.23 The methods of internal theft of poker machine proceeds used by club employees are extremely diverse. The collection of false data from poker machines and the recording

of false amounts of cash cleared are techniques which, according to the Task Force, may be employed to disguise deficiencies created by theft from machines. (Ex.109.27). It may be very difficult to devise a totally detection proof system of directly stealing from poker machines but the experience of the Task Force (backed up, by inference, by the Department of Finance statements as to losses) is that relatively unsophisticated theft does go undetected in large numbers of clubs because of the unwillingness or inability of directors and/or senior management to institute appropriate controls over poker machines, their keys and the cash which is collected from them. Whilst such an attitude persists and whilst there are no adequate controls imposed externally by government regulatory authorities, the analysis systems presently required in New South Wales will do no more than demonstrate, after the event, that, for one reason or another, some clubs are not deriving the income they ought from poker machines. In other instances, where the internal thief is more sophisticated, the material supplied to the Department of Finance upon which the analysis is based may itself have been "adjusted" to ensure that the analyses appear to signify a normal situation. Given the staff resources of the Department it is unlikely that "adjusted" figures would ever be detected, still less sheeted home as being fraudulent. Moreover, at least as a general rule, clubs' own auditors seem not to audit poker machines as distinct from seeing that the cash which is reported as having been cleared is in fact banked or otherwise accounted for.

6.24 The Poker Machine Task Force told me that often the only way a club becomes aware that something untoward is occurring with poker machine operation is when poker machine takings dramatically increase during the absence of a staff member on leave. Instances were given to me of one case where revenue in a club increased by \$22,000 per month upon the removal of a corrupt secretary/manager. (T.109 p.18). Dr. McCoy in his evidence (Ex.H3(b) p.148) spoke of a Sydney club the poker machine takings of which doubled whilst the manager was absent for two weeks on account of illness.

6.25 Even where a club becomes aware of internal theft, and seeks police assistance in apprehending the offender, difficulties of detection arise from the very nature of a club. Those difficulties are illustrated by these two cases, mentioned by Detective Sergeant Stephens of the Task Force (Ex.109 p.32):-

"We heard from the Treasury about a large club, losing \$30,000 a month I think - anyway, it was a large sum of money. We then involved the secretary/manager or the president of the club in the complaint and they assured us they were the only persons who knew about the complaint. We then went in one night and we marked all the money in their float, something like \$20,000 or so; there was nobody else there, we went out of the club and the next day the machines were cleared. From the next day on - and Treasury kept going back there for a month - there was nothing. And it drew us to the conclusion that it was internal. We were told later it had to be the treasurer or secretary/manager. And that's what I'm trying to show you there - the problems you do have trying to investigate matters when you have the top bracket of the club involved. We're doing a job at the moment where the president has come and complained and said 'don't tell the secretary/manager because if you tell him he's going to tell the staff as well'. One of the supervisors there is taking out of the club a minimum of \$1,000

every fortnight in forced jackpots, and the president says 'don't tell the secretary/manager because he'll tell them'."

The attitude of club directors

6.26 The other matter of significance which ought to be noted with respect to theft by employees of licensed clubs is the unwillingness of club directors, even when an offender is detected, to take any resolute action. The Poker Machine Task Force confirmed the impression I had gained from conversations during the inspection tour that a club would normally prefer to settle a question of internal dishonesty privately than go to the police and risk publicity. They asserted that it was traditional in the club area that if a manager had been dishonest he would be permitted to resign, to avoid any reflection on the club, and to obtain a job elsewhere, usually with a reference provided by the defrauded club.(Ex.109 p.17).

Interference with machines

6.27 After the oral evidence at this Inquiry had concluded I was shown a demonstration of a possible computerised control system for microprocessor poker machines. The demonstration was performed upon a Pacific machine which the computer expert had obtained, without any official request or standing, in New South Wales and had brought to his workshop in Melbourne where he analysed its operation. In the course of the demonstration the computer expert conducting it showed me how, in a simple operation taking only seconds, the entire metering system on the machine could be rendered inoperative. He then demonstrated how someone who had access

to the machine could insert his own memory chip, allow the machine to run for a period of time and himself audit the result so as to be able to steal a precisely calculated amount from the machine. The machine's analyses would not record either the stolen cash or the plays which provided it. The significance of this demonstration, from a security point of view, is that dishonest club management would appear to be able to permit machines to operate unaudited for part of the time and "skim" the profit made by machines during that period. A somewhat similar demonstration had been given earlier in the Inquiry with respect to an Ainsworth machine. The computer expert who gave the demonstration alleged that he could perform a similar exercise on Bally and Nutt and Muddle machines. He also claimed that variations and refinements on this method of cheating could allow the whole process to be written into the programme on the machine so as to be able to manipulate the machine automatically.

6.28 Following the above demonstration I requested Mr. Bongiorno to write to each of the four New South Wales suppliers and to seek their comments. This he did. Their response has been to explain, in some detail, the particular security features of each of their machines. Some of them pointed out, quite correctly, that in order to perpetrate a fraud along the lines suggested by the above described demonstration collusion would be required between a number of club officials. The chance of detection would always be present. Key security would have to be overcome. Ingenuity would have to be applied to overcome other difficulties which

could betray the operation to an investigator. However, at least with respect to the machine upon which I saw the demonstration, I am not satisfied that such an operation could not be carried out successfully by a group of employees working in a club where supervision was lax. I have already mentioned a recent conspiracy involving twelve employees. It would not require this number to effect the fraud contemplated by the demonstration I saw. It is fair to say that each of the distributors also drew my attention to various steps which could be taken to improve security in this area, such as the application of seals to microprocessors by a monitoring authority, a general upgrading of security as is contemplated for the 1984 version of the Ainsworth machine, or the computerised monitoring of poker machine operations. As with the problem of player cheating, those new safeguards may be effective to meet the particular case but the demonstration, and the manufacturers' comments upon it, indicates yet again that security on poker machine operation is an ongoing, never ending problem.

Other internal theft

6.29 There are many other ways in which dishonest management and staff have, from time to time, either successfully or unsuccessfully, sought to derive private profit from poker machine operations. The alteration of the amount shown in the jackpot book as the size of a jackpot genuinely won by a player by adding a digit (e.g. from \$50 to \$500 so that the staff member can take \$450); the leaving of blank figures on data collection forms to be later filled in

after a theft has occurred; the setting up of false jackpots on machines; the recording of "refills" to machine hoppers that did not take place; the direct interference with machines after club closing time and the straight out theft of money between the time it is cleared from the machines and the time it is returned to the change booth are just some of the ways involving greater or less sophistication in which dishonesty can occur.

THEFT BY POKER MACHINE MECHANICS

Servicing arrangements

6.30 Most clubs in New South Wales employ poker machine service companies to service their machines. The Ainsworth organisation maintains its own service department which, as I have already noted, maintains almost 50% of all poker machines in New South Wales. The rest are maintained by independent operators who are often employed by poker machine agents who sell as well as service the machines. There are 231 poker machine mechanics employed by the Ainsworth organisation and probably another 200 or so independently employed (Delaney T.1544). Poker machine mechanics are advantageously placed to engage in dishonesty. If the Task Force is correct, most of them take the opportunity. Although, in many clubs, some precautions are taken to prevent theft by poker machine mechanics (such as forbidding the mechanic to bring in his own dustcoat, tool box etc.) it seems that the pilfering of cash from poker machines by mechanics is a widespread problem.

Modus operandi

6.31 It is usually easier for a mechanic to cover up his thefts from machines than it is for club employees. He is entitled to have the machine open, to remove coin from it for the purposes of clearing blockages or performing other service functions and to operate it for the purpose of testing it. If a mechanic is prepared to limit the amount of cash he takes from any one machine, and to take care not to have large quantities of coin on his person at any time, the chances of detection are small. The following quotation from a member of the Task Force with respect to one poker machine mechanic gives what is said to be a typical modus operandi (Ex.109 p.56):-

"For example, the other day we arrested this serviceman; we had carried out some surveillance work on him for a reasonable period of time - not long, bit over a week - and on the morning we arrested him we followed him. We saw him at the club, he came out and put some money in his car and then took it home and went to his next club. In that short period of time he had been in that club he had managed to take out \$83 in small coin, which he took home so if he was caught at the next club he would only have X amount of money, but we followed him so that overcame that problem. So there's an example - he had obviously been doing it for a long time because we spoke to various clubs and they said 'Yes, we've been down \$150 for weeks and we couldn't work out where it was going'."

As another member of the Task Force said, if a mechanic services ten clubs in a week and takes \$70 out of the machines in each club he would be taking \$700 over and above his wages, tax free. Provided he does not take much from any particular machine his depredations may not even throw out the analyses of the clubs' poker machines to such an extent as to signal a

problem. The Task Force has discovered mechanics with vests having secret pockets which will hold up to \$200 in coin and be undetectable to a cursory examination. They further assert that many poker machine mechanics enjoy a lifestyle far beyond that which could be financed on a poker machine mechanic's wages.

6.32 Mr. Delaney, the service manager of Ainsworth, was prepared to accept that provided a mechanic was not greedy he could take small amounts from poker machines without being detected (T.1546) and conceded that he had heard "in the past" that some poker machine mechanics had lived at a standard beyond what would be expected having regard to their salaries. Such stories, he said, were not current. (T.1547). Mr. Delaney further described a test which mechanics do on certain machines in the course of servicing them which is designed to test the photo-optics which record money coming out of the hopper. At the press of a button the machine will deliver money to the payout tray for the purpose of testing the payout mechanism. (T.1549). It would be usually a simple matter for a mechanic to abscond with some coins after such a test from each of a number of poker machines in a club. Mr. Delaney further agreed with the proposition that there is a very strongly held and common belief that poker machine mechanics steal from poker machines (T.1539) but said that more vigilance is now exercised, at least within the Ainsworth organisation, than was the case in the past. (T.1540). Mr. Clarebrough said that, since 1980, a total of 13 Ainsworth

mechanics had been dismissed for dishonesty, out of a service work force of about 250 people.

Australian Capital Territory

6.33 In the Australian Capital Territory no one may perform service on a poker machine unless he is the holder of the appropriate certificate granted by GALA after conducting various character checks. No such system is in effect in New South Wales. Members of the Task Force expressed the opinion that, if New South Wales mechanics had to prove fitness, possibly three quarters of those presently working in that State would be disqualified. (Ex.109 p.58).

OTHER CRIMINAL ACTIVITY IN CLUBS

The Moffitt Report

6.34 In Chapter 4 I discussed the findings of Mr. Justice Moffitt's 1974 Royal Commission as they affected the Bally organisation. It will be recalled that the Royal Commissioner's first term of reference related to organised crime in clubs. In the course of investigations into a number of New South Wales clubs, the Royal Commissioner uncovered evidence of criminal activity. The Royal Commissioner was concerned with "organised" crime. I am not. If the generation of large amounts of money by poker machines attracts individual criminals who carry out their criminal activities alone or tempts otherwise honest club directors, managers or employees to engage in criminal activity, I am not concerned as to whether such activity can properly be classified as "organised" crime or not.

Moffitt Report findings

6.35 Mr. Justice Moffitt's Report is long and thorough.

It deals with a number of matters not presently relevant.

However, the following findings are relevant to the present discussion:-

- (a) The president of South Sydney Juniors Leagues Club (SSJ) one Dean dishonestly "extracted" a payment of \$150 per week from the club's cleaning contractor. Dean was employed by the contractor as a "public relations" officer. The Royal Commissioner found that he performed no duties for the contractor and that the payments to him were a "kickback".
- (b) Dean received money from a construction company, allegedly for work done for it, shortly before that company received a very lucrative construction contract for SSJ without any other tenders having been called for.
- (c) Dean was a director of and received wages from a company which supplied fancy goods to SSJ.
- (d) Dean bought a boxing ring for \$1,500 from a contractor who had promoted boxing at SSJ. Dean hired the ring to SSJ directly for \$60 per week and, at the end of three years, sold it to SSJ for \$3,000.
- (e) A company owned by Dean sold goods to SSJ.
- (f) A club contractor was induced by Dean to hire Dean's taxi truck in supplying SSJ.
- (g) Design and decoration work was carried out for SSJ by a company known as Aesthetic Arts Pty. Ltd. at a time when Dean was a director of that company. The work was invoiced to SSJ in the name of another director, Green. There were numerous other dealings between SSJ and this company using various names to conceal identities.
- (h) Garson Enterprises received a contract to furnish a lounge at SSJ. This company was not in the furniture business. No other tender was obtained by SSJ before it was given the contract. Garson Enterprises was partly owned by Dean.

- (i) It is probable that a number of Dean's activities were reinforced by physical violence or the threat of physical violence.
- (j) Fictitious employees were paid salaries, at least at the Motor Club and possibly at other clubs.
- (k) Dean, one Murray Riley and other persons extracted money from the Motor Club by the use of sham consultancies.
- (l) Considerable "consulting fees" were paid by other clubs including the Associated Mariners Club to Dean.
- (m) Riley attempted to influence the affairs of a trade union associated with the club industry by seeking to bribe the secretary.

The above are only some of the Royal Commissioner's findings. He did not investigate all New South Wales clubs; indeed only a handful of them. He was essentially involved in investigating police reports which raised the prospect of there being organised crime in some Sydney clubs. However, the Royal Commissioner's conclusion with respect to the vulnerability of some registered clubs in New South Wales bears quoting in full (Ex.9B para. 310):-

"310. Some registered clubs are extremely vulnerable to being taken over wholly or partly by outsiders. Activities of local persons particularly Riley and Dean demonstrate this. This is so in the case of some city clubs, where membership dues are nominal and membership often itinerant. Members do not join some clubs in the traditional sense of combining or 'clubbing' with other persons in pursuit of some common interest. They go as they would to some public place. It has not been part of my inquiry to examine club structures, therefore, what I say is limited to the field of my inquiry. However, what happened in clubs such as the Motor Club, the Mariner's Club and SSJ gives a clear indication of what can happen. Directors come and go to fill casual vacancies. Persons outside the club decide who shall be directors and what shall be done. They arrange employments of some persons. Vital persons, such as security employees, have been so selected.

It would seem it is open for such persons, in effect, to be 'owners' of the club, just as there were concealed gangster owners of many of the licensed casinos of Las Vegas and just as American gangsters owned or at least had an interest in some English clubs, where membership was itinerant and, for a nominal sum, was procurable at the front door. Membership seems to have been so procurable, e.g. in the case of the Motor Club. I have made no inquiry whether this is widespread. It could well be. The Emprise Corporation, a foundation interest and original financier of Bally America, did just this in Las Vegas, at a time when it was claimed the Nevada Gambling Board had been so efficient as to stamp out the earlier abuses. There is little to prevent a board of directors being elected in a N.S.W. registered club and acting upon the direction of the 'owner'.

There is little to prevent a board, once there, remaining in office by rigged elections by rigged proxies or even by miscounting the votes. Who, in a club like the Motor Club, would argue about the result? If somebody did might he not be met by strong-arm tactics, of which there was some indication in SSJ?

To take the matter further, what is to happen to cash and profits from poker machines in these vulnerable clubs. They offer an ideal target for skimming, which could be facilitated by a controlled board and selected security employees. Those who 'skim' would have the motive and the money, organized crime-wise, to protect and possibly enlarge their 'piece of the action'. Poker machine control could be the key. I need not further enlarge on what I have referred to as the hazard for some clubs.

Obviously the position is otherwise in the great majority of clubs, which have a genuine community of interest, which are well and securely run and provide an important part of community life. Some clubs are vulnerable, where there is financial weakness. This is particularly so in the difficult stage of the formation of clubs. There is potential poker machine profit, but it is in the future, and machines are expensive and clubs expensive to set up and run in opposition to established well set up clubs. At this stage, persons who seek to start clubs are vulnerable to improper arrangements which give some control to outsiders. Some of the dangers in the financing stage are illustrated by the little investigated activities of Riley and Raymond Smith. Clubs at this stage could be vulnerable to arrangements on the financing and sale of expensive

poker machines designed to pass some profit to persons outside clubs.

Thus, the clubs are a lucrative skimming target, particularly the poker machines, where the total annual turnover and profits in this State run into many millions of dollars. Casinos and gambling, legal and illegal, throughout the world have attracted the operations of organized crime. Organized crime operates beneath the surface and, once there, is hard to detect and on American experience almost impossible to remove. On English experience the criminal influence in clubs was only diminished by the expulsion or refusal of entry, upon FBI intelligence reports, of persons suspected of being associates of American gangsters. Organized crime had a 'piece of the action', while the licensee and the board ran the operation.

Some registered clubs in my view are vulnerable to what happened in London, namely, that organized crime shares in their gambling profits. In the NSW clubs this would be principally the poker machine profits. As earlier shown, organized crime within a legitimate business often attracts the criminal element at the perimeter. This element serves the legitimate business, but gets something itself. Where a legitimate business, which deals here with clubs, has habitually taken the benefit of the business of criminals or their associates overseas, as has Bally, it is highly likely the same will happen here, when it is feasible and profitable. If it is feasible this could involve a percentage of the profit or return from machines or in association with somebody at the perimeter a share of cash or a skim. Upon the American pattern, if this occurred, these cash monies could in part be used in aid of legitimate expansion of the legitimate business, in aid of corruption to conceal what is occurring or in aid of expansion into other fields. It would be entirely a matter of speculation as to what these fields might be."

Moffitt Report: relevance today

6.36 The Moffitt Report is nine years old. However, the Poker Machine Task Force told me of more recent incidents in the New South Wales club industry which give cause for concern. In 1979 an attempt was made to rig the ballot of a large club in Sydney's western suburbs, a club which in 1981-82

enjoyed a poker machine gross income i.e. player loss of over \$6million. As the Task Force told the story (Ex.109 pp.46-47):-

"We were informed that on the counting of the annual ballot at the club some of the scrutineers had noticed that some of the ballotpapers were a different thickness to others in the same ballot box. The ballot was declared void and we were contacted. We made an examination both visual and also a later scientific examination of the ballot papers and they were found to be of a different quality and different thickness of paper used. As a result of that inquiry we found that one of the contenders for president at the club at the time had in excess of 1,000 ballot papers in his favour, all of the same thickness...Once the ballot had been declared null and void, a further ballot was arranged and the person who had gained the most advantage out of the previous ballot later received virtually a nil vote. So it indicated to us that the ballot had been rigged...that one is a very important one because (that club), at that stage and even more so now, is one of our very, very financially viable clubs and in fact a very powerful influence in the local community there. It has had a history right through from the Moffitt Inquiry, right through to today's date, of the employees being involved in unusual and illegal activities.

Q. Still?

A. Only on a minor basis now. In fact, whilst we were carrying out those inquiries, the person who was standing for presidency at the time was the owner of a poker machine (agency)..."

The person named to us by the Task Force was a man criticised by Mr. Justice Moffitt in relation to the abuse of his then office within the same club to influence purchase of poker machines in relation to which he earned secret commissions.

6.37 Another example involved a conspiracy between a club director and a secretary/manager to run a club into bankruptcy by direct theft from its poker machines with an ultimate view to arranging the sale of the club site, valued at over

\$4million, to a land development company at a price of \$1.5million. It was said that the secretary/manager was taking money directly from the machines, at the rate of \$900 per week. The secretary/manager and another person were ultimately charged with conspiracy to defraud. (Ex.109 p.18).

6.38 In a recent, much publicised case, a former secretary/manager of the Balmain Leagues Club was convicted of fraud in misusing club funds. The evidence disclosed that a system operated at the club whereby a large cash fund was kept on hand and used for a great variety of purposes (including his own purposes) by the secretary/manager. Presumably the members of the club did not know of the situation or, if they did, did not care.

6.39 The Task Force quoted a recent case of a known cheat being employed as a secretary/manager:-

"Q. Are there people who are serving on boards of directors at clubs who do have a police record?

A. (Clark) Yes.

(Hanrahan) Secretary/managers who have records.

Q. For fraud or dishonesty?

A. (Clark) Yes. To start with, to give an example we not long ago finished a trial in a country town called Glen Innes and the local police up there charged three poker machine cheats, one of whom had already served a prison term for conspiracy to cheat poker machines. They were arrested by him and the Task Force gave the follow up evidence relating to it. We gave evidence up there. During the follow up inquiries we found out that the leading cheat of the three, the one who had been previously convicted of conspiracy, was in fact employed as the assistant manager of (a) local bowling club near here, (in Sydney)...and they (the employer club) full well knew that he had been convicted and served

a prison sentence for poker machine cheating, and also that he was currently under remand.

Q. It's regarded as being the club's business and not the government's; that's the way it operates, isn't it?

A. (Clark) Yes, that's right.

Q. If the club's prepared to do it the Treasury has no say, has it?

A. (Clark) Treasury has no say at all; Treasury is only a paper tiger in relation to policing of the regulations.

(Hanrahan) They're there to get the money."

Evaluation

6.40 The conclusion which I draw from Mr. Justice Moffit's findings and the other evidence I have looked at in this Inquiry is that there are probably two factors which tend to encourage or facilitate criminal activity within a licensed club having poker machines. Firstly, where a club is very large in size the individual member may know little or nothing of the directors or senior club management. Elections for directors may produce a very low turnout of voters enabling the election of a particular director or even control of a club board to be obtained with very few votes. Provided the club appears to be running smoothly, the average member will take no more interest in its management than he would in that of the local hotel. Secondly, in some clubs the lack of expertise in financial and managerial matters of the directors means that senior management may be able to exercise undue influence over the way in which policy decisions are made. Whilst for the most part, inexpert directors will do no more than honestly misspend club resources, their inexpertise

does leave them open to manipulation for the purpose of incurring expenditure in more sinister circumstances. The full extent of criminal activity within New South Wales clubs is obviously unknown. Mr. Justice Moffitt's findings and in particular his assessment of particular vulnerability of large clubs render it likely, in my view, that there is considerably more criminal activity than the club industry would care to admit. The Poker Machine Task Force certainly believes this to be the case.

ILLEGAL ACTIVITIES OF POKER MACHINE MANUFACTURERS AND/OR THEIR AGENTS

Secret commissions:

6.41 Poker machine sales and service in New South Wales has traditionally been effected through a network of poker machine agents. In recent years, however, the Ainsworth organisation in particular and Bally to a lesser extent have engaged in direct selling of their products to licensed clubs. I presume that this step has been taken to eliminate the very large agent's commission which has been partly responsible for what I have already stated in Chapter 4 to be the excessive price charged for poker machines in New South Wales.

6.42 The principal aim of any poker machine manufacturer or agent is to get as many of his machines into as many clubs as possible. It would appear that over the years not all manufacturers and their agents have been content to use only legal tactics in this marketing exercise. The Moffitt Royal Commission found that Bally machines were introduced into the Blacktown Workers Club after the President of the club, one

Sloane, became employed by one "Bumper" Lambert, a Bally distributor. The Royal Commissioner considered it unlikely that a commission paid to Mr. Sloane was, as claimed, a "Christmas bonus". Indeed Lambert was criticised in the Moffitt Report for a number of other reasons as well. (Ex.9B para.312). Mr. Bob Bottom, a journalist and crime expert, told the Inquiry that he considered that the payment of secret commissions to club management in consideration of the installation of particular machines is a serious problem which is brought about largely by the large profit margin available to the agent. He estimated the agent's commission at about \$1,250 per machine rising, in some cases, to \$1,750. (T.2458). My own inquiries confirm the magnitude of the agent's commission as estimated by Mr. Bottom. Mr. Bottom further made the point that even if the manufacturer or distributor of the machine is, himself, honest secret commissions paid at the point of sale would usually be outside his knowledge and certainly outside his control.

6.43 Miss Jeannette Newell, the managing director of Bally Australia, considers that Bally's position in the Australian market is adversely affected "because of the corruption that goes on". (T.2833). She considers that no matter how competitive her prices became she would not be able to effect large scale sales because prospective purchasers have been corrupted by her competitors. (T.2834). She said that, over the years, oblique offers to accept secret commissions have been made to her but she has never either acknowledged such offers nor accepted them. (T.2836). She believes that there

is a large amount of corruption in the poker machine industry involving servicemen and others associated with it. She agreed that those agents who were employed by Bally for the sale of its machines were probably no better than those she was accusing of corruption. (T.2827). In this regard it is pertinent to recall that Bally has continued to employ and still employs Consolidated Poker Machines, the company owned by Mr. Sloane, and The New South Wales Poker Machine Company, the company owned by Mr. Lambert or his family, as its agents: see para. 4.59 above.

6.44 The Poker Machine Task Force told me that a senior officer of the Ainsworth organisation had conceded that, at one stage, that organisation paid secret commissions and that a book had been kept in which those commissions had been noted. (Ex.109 p.36). The allegation was denied by Mr. Clarebrough (T.2889) although he there conceded that the finance director of the Ainsworth organisation had in fact told an officer of the Task Force that in 1967 some club officials had been paid some spending money of no great magnitude and that the organisation had done this "like everybody else". When it was discovered that the payments were illegal they were stopped. No further investigation of this allegation has been made and I am unable to make any finding in relation to it, although I am somewhat surprised at there being any doubt in anyone's mind that the payment of any "spending money" to any club official in consideration of the purchase of a poker machine would be illegal.

6.45 I consider it likely that secret commissions are paid, at least by poker machine agents, to club management and possibly even directors. The extent of such payments I am unable to determine but I consider that the principal cause of them is the excessive amount allowed to a poker machine agent by the manufacturer on the sale of a machine. Whether manufacturers presently make such payments or not I am unable to say. The Bally company has recently offered overseas trips to clubs which purchase specified numbers of its machines. The trips can be taken by anyone nominated by the club. Miss Newell did not concede that the prospect of such benefit would tend to distract a club director from carrying out his duty properly. (T.2778). These marketing practices and those described by Mr. Clarebrough (quoted in para.4.73) border on being improper and may in some cases involve a breach of s.10(1)(i) of the Registered Clubs Act 1976 which prohibits any member of a club receiving any benefit not available to all members equally. I am of the view that only the elimination of sales by manufacturers to clubs, as discussed in Chapter 19, will eliminate the persistent problem of secret commissions. The mere elimination of agents, as has been done by the Australian Capital Territory legislation, will not remove the possibility of secret commissions being paid.

Other criminal activity

6.46 I have already dealt in Chapter 4 with some of the activities of the current poker machine manufacturers and distributors in Australia. The activity therein described is in some cases criminal; in other cases merely unsavoury.

There exists the possibility of criminal activity by poker machine manufacturers in the area of active co-operation between those manufacturers and corrupt club officials, or even outside cheats, for the purpose of rigging the operation of poker machines. No evidence of this activity has been put before me with respect to any current New South Wales manufacturer, but it would seem to be possible for someone within a poker machine manufacturing organisation to use knowledge of the microprocessor software incorporated in modern machines to set up a cheating system. Access to the software could enable a corrupt club official or external cheat to set up a hardly detectible but extremely profitable cheating system.

CONCLUSION

Context

6.47 In all areas of commercial life there is occasional dishonesty; customers steal, employees defraud their employers, companies deceive those with whom they have a commercial relationship. It would not be reasonable to condemn the poker machine industry simply because it shared those occasional dishonesties. The extent of the dishonesty within the industry would need to be ascertained in order to determine whether the industry was one particularly susceptible to criminal influence. That is why I sought the estimate of the members of the Poker Machine Task Force as to the proportion of clubs in which recurring dishonesty was occurring. I found their estimate of 50% to be highly disturbing. I bear in mind that this is impressionistic, not

empirical, material. The officers were not subject to cross-examination on their estimate. It is no doubt correct to say that they tend to see the clubs where there are problems and not those free of criminal activities. Notwithstanding all that, this was a carefully considered estimate by three men whom I thought to be reliable and who are as well placed as anyone to make an assessment. It is not lightly to be discounted. But even if the level of criminal activity is only one half of that, 25% of all clubs, it is at a level unmatched, so far as I am aware, by any other lawful industry in Australia. Leaving aside percentages, the evidence which I have been able to gather does support the view that criminality in the poker machine industry in New South Wales exists in a variety and extent different from that in other industries and to a degree which most people, knowing and considering the facts, would be likely to find unacceptable.

Implications for Victoria

6.48 If a decision was made to permit poker machines in Victoria, this State would have a number of advantages over New South Wales. It would not inherit a tradition of illegality. It could start with a clean slate and insist upon proper controls being established before any machines were licensed. It could decide to license only the most modern microprocessor units, so eliminating the problems of player cheating which particularly afflict the old mechanical and electro-mechanical machines. It could insist upon proper analyses and computer monitoring, so as to maximise the information available to the regulatory authority. It could

establish a regulatory authority whose primary interest was the prevention of dishonesty, rather than the collection of revenue. It could license key employees of poker machine establishments. It could deal with the problem of secret commissions by agents and manufacturers by preventing the sale of machines from private manufacturers to agents. All these things Victoria can, and should in my recommendation, do if poker machines are to be permitted.

6.49 What then remains? Assuming clubs operate machines:

- a) In the area of player cheating - the likelihood, that ways would be found to cheat even the 1984 generation of microprocessors, as they have been found for every generation before. The number of people capable of cheating such machines would almost certainly be fewer than the number capable of cheating the older models but these cheats would be more sophisticated, probably harder to detect and possibly more successful, in money terms.
- b) In the area of theft by club officials and mechanics - a position not significantly different from that in New South Wales. Computer monitoring and effective analyses would limit the amount of money which an official or mechanic could take at any one time without drawing attention to the theft but a poker machine operates variably in the short term. Some variance from carding must be permitted. Even 1% or 2% of throughput may be a significant sum. If, of course, the official or mechanic is able to circumvent the meters, or infiltrate the microprocessor unit, very large sums could be taken with little risk of detection.
- c) In the area of secret commissions (other than in relation to the purchase of machines) and other improper behaviour by club management - on balance, a situation little different from that in New South Wales. Victoria would have the advantage of insisting upon licensed secretaries/managers but it is not practical to license all club directors. It would have the disadvantage that poker machines would be operated by amateur, part time boards of

directors having no experience with the control of gaming. There is no reason to believe that Victorian club directors would be, as a group, any more (or any less) honest or astute than their New South Wales counterparts. But they would be less experienced.

6.50 The essential problem, as it seems to me, in relation to criminal activities in poker machine clubs is the nature of the operation. Traditionally, gaming has attracted, or created, criminals, especially where it involves the handling of large amounts of cash. Add to that the factors that in large clubs the gambling income becomes almost embarrassingly large, that the proceeds are communally owned and that the organisation is run by unqualified, part time directors. I believe that, in Victoria as in New South Wales, the combination would inevitably lead to an incidence of crime significantly exceeding that found in other industries.

6.51 Other models for poker machine introduction were raised at the Inquiry and will be discussed below. In relation to the option considered in Chapter 15, poker machines in both clubs and hotels, the worry over the extent of likely criminal activities must be even greater. In respect of the suggested casino-like establishments, referred to in Chapter 16, the problem is likely to be less. It ought to be possible to insist upon tighter, more professional management. But even there, cheating is likely to be attempted and to be at least occasionally successful. Other abuses may occur.

6.52 In summary, I believe that it must be said that the introduction of poker machines into Victoria will not merely

present a risk of increased criminal activity (whether or not organised) in the State. There will be an increase. The only question is the degree of increase, a matter which would depend upon the model adopted and the controls applied.

Notes to Chapter 6:

[1] During the conversation some information was given to us on an "intelligence" basis i.e. it was information received, believed to be correct but not yet able to be proved correct by evidence admissible in a court. Some of that information referred to identified people. I took the view that it was in principle undesirable to publish unfavourable allegations about named people which allegations were not susceptible of proof. Consequently, certain passages were deleted from the published transcript, with the concurrence of the officers concerned.

[2] "Scam" - an American term meaning to cheat especially of a casino game or gaming machine.

CHAPTER SEVEN

SOCIAL PROBLEMS ARISING FROM EXCESSIVE POKER MACHINE GAMBLING

THE RELATIONSHIP BETWEEN POKER MACHINES AND ADDICTION

The nature of poker machine gambling

7.01 Dr. Alan J. Carless is a Ballarat medical practitioner who has from time to time attempted to treat compulsive gamblers. His interest in that field led him to send to the Inquiry a submission relating to the association between poker machines and compulsive, or pathological, gambling. (Ex.2F). His proposition was that the nature of poker machine gambling was such that it was particularly likely to result in compulsive i.e. uncontrolled gambling. He pointed to the myths that surround poker machines, such as the belief (referred to in para.2.07 above) that there is a greater chance of winning a jackpot from a machine that has not paid out for some time and to the techniques adopted by manufacturers and operators for building up expectations: the use of names and symbols on the machines to suggest wealth or good fortune, the listing of jackpot size without any indication of the chance of winning that jackpot, the use of lights and sounds to signify wins and the announcement of jackpot winners over loudspeakers. But, Dr. Carless argued, the addictive propensity of poker machines was even more fundamental; it was inherent in the nature of the machine itself with its rapid succession of stake and play interspersed with relatively frequent small pays. He referred to research which had shown the importance, in behavioural terms, of the relationship between response and

reward, known as learning theory, and offered this comment:-

"In spite of the limitations of application, learning theory provides a useful basis for discussion of the relative potential for inducing personally detrimental responses of the different gambling systems. All other factors being equal, the systems which permit frequent responses, closely associate rewards with responses on a time basis, reward on a variable frequency schedule and reward on a high ratio" (of rewards to plays) "schedule are the most potent. Poker machines probably head the list. Lower down come instant lotteries (which are pretty private affairs whose participants do not get a great deal of feedback on what happens to others) bingo (hampered by a fairly low ratio) gambling on horses (races are run relatively infrequently) and lotteries (which are much more potent when draws are frequent and televised.)"

Continuous betting

7.02 So far as I am aware there is no empirical material to indicate, one way or the other, the significance of the various features noted by Dr. Carless. There is, however, material to suggest that the problem of compulsive gambling is more closely associated with "continuous" forms of gambling (off and on course betting, poker machines, casino games, bingo, pinball machines and keno) rather than with discontinuous forms such as lotteries, lotto, pools and raffles. [1] Dr. Mark Dickerson, a clinical psychologist and Lecturer in Criminal Psychology at the Australian National University, who has recently completed a study on compulsive gambling, gave evidence to the Inquiry. He said "it is the rapid turn-around of being able to stake and play in a form of gambling that is associated with people seeking help with problems". (T.2245-22476). There can be few, if any forms of gambling with a greater speed of stake and play than poker machine gambling.

Rewards

7.03 There is no doubt that machines are designed to capture and maintain, for as long a period as possible, player interest. As Mr. Keiran Daley, the product research manager of Ainworths, agreed at T.144 "from the point of view of the manufacturer and the point of view of the club the best machine is the machine that does keep the player playing it as long as possible". One of the techniques to maintain player interest is to provide frequent rewards. As Mr. Daley said (T.144):-

"I would think that unless players receive the satisfaction of occasional wins they would certainly not play the machines and certainly, from that point of view, it is quite deliberate that players' pays are to run at one in five to one in six intervals."

Interest, of course, is not compulsion but it seems reasonable to believe that the techniques which maximise interest in non-compulsive gamblers also play some part in attracting and holding those who are, or will thereby become, compulsive gamblers.

Addicts anyway?

7.04 In assessing the consequences, to individuals and to the community, of poker machine addiction, it is relevant to know whether those who are compulsive poker machine players would, in any event, be gambling addicts. Dr. Dickerson thought not. The published data indicates that some people will gamble compulsively on one specific form and not otherwise. (T.2235). He himself had worked with some such people. (T.2247). Dr. Clive Allcock, Deputy Medical Super-

intendent and Director of Medical Services of the Cumberland Hospital, a psychiatrist who has for five years studied and treated compulsive gambling has found that about 15% of patients have poker machine problems. Approximately two thirds of those patients are solely poker machine addicts (Ex.H3(b) p.115).

Access

7.05 Dr. Dickerson thought that access was important. In the context of a discussion as to whether compulsive gamblers would, in any event, travel to border clubs, he said (T.2242):-

"I think it is very clear, from a behavioural point of view, the environment plays a crucial part in the kind of behaviour that we now have in our day-to-day living. It seems a very different matter for an individual to put through some money, some dollars whilst they are having lunch in a club, to actually hop on to a coach and go across the border."

At T.2247 he gave this evidence:-

"Q. If there are clubs all over the State of Victoria with poker machines where there is then a ready availability of poker machines to the community, might one reasonably expect an increase in problems associated with poker machine gambling?

A. Yes, that is correct."

Dr. Allcock (Ex.H3(b) p.117) also expressed the view "that increasing gambling avenues in a community increases the number who gamble".

Conclusion

7.06 The evidence to which I have referred was unchallenged and uncontradicted. I am very conscious of the fact that little is known about the psychology of compulsive

gambling, and compulsive poker machine gambling in particular, but it appears to me reasonable to conclude that one consequence of the characteristics of poker machine gambling is compulsive gambling. I accept Dr. Dickerson's view that a consequence of permitting poker machines to be introduced into Victoria would be to make gambling addicts of some people who would not gamble addictively or perhaps at all.

THE EXTENT OF ADDICTION

Paucity of information

7.07 The New South Wales club industry, an industry founded on the ideal of co-operation and sharing, has for 27 years earned the majority of its income from poker machines. At the present time the net after tax benefit of the machines to the clubs is over \$500million per year. For 27 years the successive New South Wales governments have received revenue from the licensing or taxing of poker machines. That revenue now runs at over \$150million per year. At no time during those 27 years, so far as I am aware, has either the New South Wales club industry or the New South Wales government undertaken or commissioned any research to determine the extent of any addiction which the machines may be causing or the consequences of any such addiction for the affected individuals, their families or the community generally. Decisions as to higher denomination machines, including the decision to permit multi-coin machines allowing a stake of one dollar a game, appear to have been made in ignorance not only of the likely effects of those machines but even of the existing situation. [2]

7.08 I had thought it likely that the proponents of poker machines in Victoria would have undertaken some research, for the benefit of this Inquiry, into the problem of addiction; the more especially as the LCAV and its adviser the ACDA became aware during the campaign for legalisation that this was widely regarded as a major issue: see para.12.13 below. Apart from the tender of the answers of some ministers of religion in some border towns, ranking various social evils in importance, the LCAV offered no evidence of any such research. Presumably, his colleagues shared the position of Mr. M.J. Hornsby, secretary of the LCAV from 1970 until 1980, at T.271:-

"Q. Do you have any concern for people who become addicted to gambling?

A. I am not a very concerned person about these social problems, really, Mr. Henshall. I had to fight my own way up in the world and I think everybody else has got to do the same thing."

The North Blackburn Baptist study

7.09 It was left to a single congregation of a small church to provide to the Inquiry its only statistical information on the extent of poker machine addiction in New South Wales. I believe this to be the only such study that has ever been made. The study (Ex.2M) took the form of a survey within the City of Wagga Wagga, NSW. The survey was carried out on the weekend 1-3 July 1983 under the supervision of the pastor of the church, Rev. J.K. Simmonds, but in accordance with the design and directions of Dr. Howard Fearn-Wannan, a parishioner. Dr. Fearn-Wannan is a lecturer in biology at the Royal Melbourne Institute of Technology. He has had experience of survey and test design in the field of education, followed by experience in the development of

psychology test programmes and community survey programmes in connection with his doctoral thesis, which was in the field of educational psychology. Both Pastor Simmonds and Dr. Fearn-Wannan gave oral evidence in which they described how the survey was developed, carried out and analysed. I am satisfied that the survey was designed and carried out in an objective and professional manner and that care was taken to ensure that the results were not influenced by the circumstance that the interviews were conducted by members of the congregation most of whom, at least, would have had a view antipathetical to poker machines. Pastor Simmonds said (T.2083) that all of the interview team were "mature, well balanced" people. The team was instructed not to say where they were from with the result, according to Mr. Simmonds, "that there was a certain degree of assumption" (in the persons interviewed) "that we were there seeking to build a case for rather than against poker machines". (T.2083). I regard the results of the survey as being of significance to my Inquiry notwithstanding what I perceive to have been an error in extrapolation of them to the Melbourne population about which I shall comment below.

Why Wagga Wagga?

7.10 A major question in the evaluation of the survey is the validity of the extrapolation of the Wagga results to Melbourne, or Victoria. The reasons for the choice of Wagga as a survey site were set out in the study document. (C3/p.4):

"Wagga Wagga was chosen as the survey site for several reasons.

- (1) The city with a population of 38,000 is situated in central New South Wales on the Murrumbidgee River and is far enough from Victoria for clubs and poker machine playing

to be comparatively unaffected by people crossing the border to play poker machines.

- (2) The city is large enough to give a degree of anonymity to anyone who wanted to be critical of clubs or poker machines with impunity.
- (3) The city is neither a tourist nor vacation area and therefore comparatively unaffected by seasonal fluctuations of population.
- (4) The city was chosen in preference to Sydney because the clubs and poker machines affect the local population only. The large clubs in a city like Sydney attract people from distant suburbs as well as the local community.
- (5) While Wagga is a rural centre, it is large enough to have socio-economic similarities to Melbourne suburbia as well as country towns.
- (6) The city was small enough to enable a survey team to take a sample truly representative of all socio-economic groups without assistance from the Bureau of Statistics.
- (7) Poker machine gambling benefits or disadvantages should be apparent since this form of gambling was introduced into New South Wales more than twenty five years ago. Two generations of people have grown up with them."

I know the City of Wagga Wagga well. Each of these reasons is valid.

Methodology

7.11 Pastor Simmonds told me that the interviewing was spread over two days. The residential section of the city was divided into eight approximately equal sampling zones using major roads as boundaries. The names of all the streets in each zone were listed and numbered. Using a table of random numbers, sixteen streets were selected from each zone; the purpose being to ensure, as far as was practically possible, that each adult member of the population had an equal chance

of being interviewed. The twenty interviewers were instructed to interview adults over the age of 18 years in every second house on one side of the street only, using a prepared questionnaire sheet. Each was asked to survey at least 60 homes. In all 1,024 adults were interviewed. This sample represents 2.7% of the total population of Wagga Wagga.

Respondents' personal position

7.12 The survey provides a wealth of information about the incidence of poker machine playing in Wagga. It is too long to set out in full. I propose merely to mention some of the main findings. 42.7% of respondents indicated that they play the poker machines in the clubs, males slightly outnumbering females. In the age group 30-50 years a greater proportion of males than females stated that they played the machines but this was reversed in the over 50 age group. However, most played infrequently. In response to the question: "In the last three months, how frequently have you played the poker machines?" the answers of those admitting to be players were:

Under 5 times	78.5%
5 to 10 times	12.6%
10 to 30 times	8.0%
Over 30 times	0.5%

Most players claimed to be small bettors. Asked: "On average, how much money is involved each time you play the pokies?", responses were:

\$1 to \$4	67.4%
\$5 to \$10	23.1%
\$10 to \$20	6.8%
Over \$20	2.7%

Players were asked how they would rate their involvement with poker machines. They replied:

A harmless entertainment worth the money I spend	89.0%
A concern to me because I really can't afford it	8.7%
An addiction which worries me	2.3%

Statements of concern were particularly marked in the 30-50 year age group, being evenly distributed between the sexes. Admissions of addiction were higher in the category of females over 50. Consistently with this, claims of concern and addiction were highest, amongst occupational groups, for "home duties". The figure reached a striking 5.5% of all home duties players. The study comments (C4/p.2) that "the percentage of addicts is likely to be significantly underestimated because some of the interviewees appeared to be understating their responses to this issue, judging by the background comments of children and other people in the interviewees' homes which were overheard by the interviewer". A correlation of the information already summarised shows that out of all players 71.9% rated the activity a harmless entertainment and claimed to have played less than five times in the preceding three months. Out of all players 61.4% rated the activity a harmless entertainment and claimed to spend less than \$5 each time they played. The overwhelming majority of players seem to have no problem in handling the machines. However, of those who admitted to having played 10-30 times in the previous three months (8.0% of the whole) 17.5% said that playing was a concern to them and a further 11.25% found it an addiction. Of those who spent \$10-\$20 each time (6.8% of the whole) 25% were concerned at the amount they spent. Of those

spending more than \$20 (2.7% of the whole) 18.5% said that they were concerned and 26% that they were addicted.

Socio-economic characteristics

7.13 An attempt was made, by the analysis of two different sample zones, to determine whether there was any relationship between socio-economic characteristics and concern/addiction. The study reported (p.C4/16):-

"The first area was a poorer community in the western sector of the city, characterised by Housing Commission accommodation. The vocational structure of this area comprises:-

30% business and professional people,
42% home duties and
20% labourers and skilled labourers.

The area had 3.6% of the gamblers addicted to poker machines, while 9.5% of the interviewees classified themselves as being concerned because they could not afford the habit.

The second area was a relatively affluent community situated in the eastern sector around the lake. This region was characterized by having:-

52% in the business/professional group,
23% occupied with home duties, and
20% of skilled labourers.

The poker machine players of this area admitted to 1.2% addiction and 5.0% concern because of the expense.

It would appear, therefore, that the ill-effects of poker machine playing are hitting harder amongst the poorer members of the community than amongst the more affluent."

Mr. Garling, for the LCAV, has criticised (final submissions p.37) the conclusion because of the reliance of the authors of the study on occupational classifications and their failure to obtain levels of income and expenditure. It is not

possible, it is said, to base a claim that one area is poorer than another without considering at least the mean level of income, and of disposable income, of persons in the area. I agree that income information would have been helpful but I think that anyone knowing the two areas referred to would entertain little doubt that the mean level of income in the latter was likely to be significantly higher than that in the former.

Attitudes

7.14 Both players and non-players were asked questions designed to elicit their attitude to poker machines. The questions and responses were:-

Q. "If you had opportunity to vote in a referendum on the removal of poker machines from the Wagga community would you vote Yes/No?"

R.	<u>Players</u>	<u>Non-players</u>	<u>Total</u>
Yes -	18%	41%	31%
No -	82%	59%	69%

Q. "Do you believe that poker machines have been a benefit to Wagga community since their introduction Yes/No?"

R.	<u>Players</u>	<u>Non-players</u>	<u>Total</u>
Yes -	61%	37.5%	47.5%
No -	39%	62.5%	52.5%

There is an obvious relationship between respondents' perception of benefit and their own use of the machines. The study comments that the discrepancy between voting intention and perception of benefit may be interpreted in terms of

respondents not seeing benefit but nevertheless "not being prepared to impose this view on others by actually voting for abolition". (C4/p.5).

Extrapolation

7.15 Chapter 8 of the study contains conclusions which purport to extrapolate the results to Melbourne. However upon checking the results of the extrapolation as stated in the study I find that the figures obtained are higher than would appear to be justified. It appears that the researchers have mistakenly calculated the Melbourne figures by reference to the total population of Melbourne rather than by reference to that proportion which can be expected to play poker machines (i.e. 42.7% of the total population). The correct results would appear to be:-

- (a) 1.25 million people are likely to play the poker machines in Melbourne alone.
[This prediction assumes, of course, a development of the club industry to the same extent as in Wagga Wagga and also an equal degree of accessibility]
- (b) About 108,000 players would be experiencing some form of concern i.e. they would be concerned that they could not really afford the money they were spending on the habit.
- (c) About 29,000 players would admit to addiction. This figure is likely to be very conservative.
- (d) A majority of the Victorian community would ultimately come to regard poker machines as harmful to the community in general.
[There was debate at the Inquiry whether "harmful" was an accurate reflection of a denial of benefit. It was justified on the basis that almost all those who denied benefit recorded comments indicating a view that the machines were positively harmful. I do not think it matters if one substitutes "non-beneficial"]

The comment is made that the estimates may be very conservative "bearing in mind the natural tendency of respondents...to understate the extent of their involvement as well as the greater poverty that is likely to be found in larger cities like Melbourne". (C8/p.1). The validity of this comment is unaffected by the error which I have corrected. I asked Pastor Simmonds whether there was any reason why the figures were not extrapolated to the population of the whole of Victoria, rather than merely to that of Melbourne. He said that their concern had been mainly for Melbourne, as being "the community to which we belong as a church" but he thought that the results could be extrapolated at least to include provincial cities and towns of sufficient size to be likely to have poker machines. On my own extrapolation of the figures to the Victorian population it appears that of a poker machine playing population of about 1.71million, about 149,000 would experience some form of concern about their playing and about 40,000 would regard themselves as addicts.

Comment

7.16 The results of any door to door survey need to be treated with some caution, the more especially so where critical questions depend upon the subjective assessment of the respondents. Nevertheless, the survey does provide some insight into the effect, in both personal and community terms, of poker machines in clubs in a New South Wales provincial city. I share the view, expressed in the study, that the answers given in respect of the level of respondents' concern are likely to be understated. There must be some who would

not admit to a stranger at their front door either the full extent of their use of the machines or of their concern at what they spend upon them. I also regard the extrapolation to Melbourne as being valid, erring, once again, if at all on the side of conservatism. I say this for two reasons. First, there was evidence (T.2319) from Mrs. Betty Weule, Co-ordinator of Credit Line, Wesley Central Mission, Sydney, to suggest that the financial problems stemming from poker machine gambling are less severe in a provincial centre than in a major metropolitan area. There were more cheque cashing facilities in country areas, because people are known. In Sydney there was a tendency to use clubs for this purpose not "normally without a short spin on the poker machines". There is a greater isolation in city life; people move towards the clubs for companionship. And in a country town "if somebody did start to hit the poker machines a little hard the whole town knew about it". This aspect of Mrs. Weule's evidence was merely impressionistic but she was brought up in Albury, studied in Wagga Wagga and spent two years as a financial counsellor in Goulburn immediately prior to her three years in Sydney. Her impression is likely to be fairly reliable. Secondly, it must be remembered that most of the residents of Wagga Wagga are likely to have lived with poker machines for many years. Many will have learned to cope with them. If poker machines came to Victoria that would not be true, for many Melburnians, for some years. [3]

THE EFFECT OF ADDICTION

Effect on the individual

7.17 Dr. Dickerson made the comment (T.2227) that "even

small numbers in absolute terms represents for those individuals obviously a genuine large degree of distress". The evidence of other clinicians supports that description. Mr. C.M. Patchett, a psychologist and drug and alcohol counsellor with Lifeline, at Wesley Central Mission, has worked with people seeking assistance for additive gambling for nearly two years. He said that a "significant" proportion of the gambling addicts were "people who have problems with poker machine playing". No precise figures were available. He summarised the patient difficulties he had encountered (Ex.H3(b) p.130):-

- "(1) Financial because the gambling is a compulsion.
- (2) Life priorities are distorted, with much money being lost because of gambling, creating debts and the gambling continues in an effort to win money to repay the debts.
- (3) Stress, which is displayed in the usual bodily effects such as sleep disturbance, ulcers, muscle tension and physical disorders.
- (4) Damage to friendships because of borrowing money to gamble.
- (5) Stress on family relationships with the chronic gambler being obsessed with gambling and the family covering up the consequences of the problem because of the humiliation involved in admitting that a member of the family has a problem.
- (6) It is difficult to control the gambling because gambling is socially accepted behaviour."

Dr. Allcock gave this description of the problems faced by the compulsive gamblers he had treated (Ex.H3(b) p.116):-

"Most of the people who pass through the programme are heavily in debt and have problems at home. Some have been threatened with violence because they have been unable to pay their debts. Some have misappropriated money to sustain their gambling and

I have appeared in court on behalf of a number of such clients. Compulsive gambling is a greater problem for married people, because of the pressures and responsibilities of marriage.

The main difficulties in achieving rehabilitation relate to trying to repair the damage done due to the debts caused by gambling and the pressure this places people under. Our programme tries to help a client through referral to appropriate agents where necessary, to restructure his or her debts, re-establish trust within the family, regain self-respect and find a new job if the client has lost work due to the addiction. These features apply to all compulsive gamblers - poker machine addicts are no different here."

Mrs. Weule, of Credit Line, estimated that four out of every five new gambling cases presenting for her assistance as a financial counsellor have problems with poker machines - three quarters of those people having problems with poker machines only. She described their position in this way (Ex.H3(b) p.123):-

"Basically, gamblers turn to Credit Line when they have hit rock bottom and they realise they need help. The precipitating event varies with the individual. He may be facing bankruptcy, family break up, a Warrant of Apprehension or other legal action or the person may have committed criminal offences such as embezzling from an employer to obtain gambling money."

Particular cases

7.18 The evidence of the Salvation Army (Ex.H2) puts flesh upon the generalizations of the preceding paragraph. Captain Graeme McClimont is concerned with the Army's social and youth work in Melbourne. He contacted colleagues in other areas to obtain information on gambling case histories. The histories were prepared by officers personally involved with the cases. (T.2216). Poker machines dominated those New South Wales cases in which the form of gambling was identified. I have extracted half a dozen in order to illustrate the range

of circumstances the officers have encountered:-

- . Sydney - poker machines and instant lotteries. Inner city resident who is now unemployed consistently gambles most of his unemployment cheque and is constantly seeking help from The Salvation Army for accommodation and meals. He is in danger of becoming a permanent skid row resident. He requested food and accommodation.

- . Wentworth - poker machines. Single mother with three children. She constantly gambles social security cheque on poker machines and has liquidated some family assets to provide money for gambling. She was referred by the Mildura City Council. She requested financial assistance.

- . Wentworth - poker machines. Woman who gambled heavily on poker machines stole from her husband to support her habit. Eventually she and her husband separated. She was left with the children and is spending social security cheque on poker machines. She was referred by the local council to The Salvation Army. She requested financial assistance.

- . Canberra - poker machines. Lady who was a successful public servant but a compulsive user of poker machines. Her \$500 pay was lost on gambling every pay night. She had also run up substantial gambling debts on her bankcard. Her marriage was threatened and she came to The Salvation Army. She requested counselling (was referred to Gamblers Anonymous).

- . Sydney - poker machines. Lost home from constantly playing poker machines. Both husband and wife owe a great deal of money on bad debts, cannot afford to go to club now, but spends \$20 minimum per week on instant lottery cards. Three children in welfare home. They requested accommodation.

- . Sydney - poker machines. Woman separated from spouse, supporting teenager, visits clubs most afternoons to play poker machines. Has pawned or sold most of household effects. She requested furniture and counselling.

The Salvation Army commented (Ex.H2 p.21):-

"...these social consequences represent great trauma to individuals and families. We would point out that if poker machines are introduced here that it will not be the operators of these machines who will be responsible to help alleviate this trauma. It will be organisations such as our own who will have to face the added burden."

Effect on others

7.19 Dr. Dickerson was asked about the extent to which an individual's addiction affects others. He referred to the estimate of researchers at Johns Hopkins University, Maryland, USA that, on average, each addict immediately and adversely affects 10 to 12 people. He said that this was consistent with his own experience. (T.2229). The effects vary widely: the impact on employers, "the discomfort of not having a personal loan repaid", "the personal distress of lies" through to the "breakup of families". (T.2241). One American study, [4] published in 1981, showed a financial burden on the community of \$15,000 per individual per addict. (T.2229) (Ex.37)

Treatment of addicts

7.20 Dr. Allcock described his treatment programme (Ex.H3(b) pp.114-115):-

"In our treatment programme Professor McConaghy and I adopted the view that for many people compulsive (or pathological) gambling was a behaviour disorder - this view was based on literature review, and my studies of gambling at racetracks in three countries, league's club poker machines and casinos at Lucerne (Switzerland), Monte Carlo and Reno (Nevada). Hence our programme was aimed at enabling the individual to control the gambling urge. We initially compared electrical aversion, which used small electric shocks to the fingers when gambling cues were read, with relaxation therapy. In this therapy people were trained to relax while visualizing the cues that started the urge to gamble so they no longer would feel tense and driven to gamble as a temporary relief of the tension. All individuals were in hospital for one week for treatment. Aversion therapy had been used overseas, but we used relaxation therapy for this condition for the first time.

Over both groups at one year follow-up our results showed: approximately 25% abstinence; 25% gambling less than \$15 a week, a significant reduction; 25% gambling less than before treatment but the gambling still remained a problem, and 25% with no change.

This means 75% of this group stopped gambling or showed improvement. The relaxation approach was found to be significantly better than the aversion therapy, so we are still using it, with variations, and are now comparing it to an exposure approach where people are taken to gambling situations to experience all the excitement, but cannot gamble. Again, this is designed to disrupt the behaviour pattern. Results of the exposure approach are being analysed."

Dr. Allcock reported (p.116) that poker machine gamblers were "relatively easy to treat" in the sense that, as a class, their total abstinence rate after one year was better than the overall average of 25%. Dr. Dickerson had not found that people seeking his help with problems associated with playing poker machines resolved their difficulties "more readily or more easily" than those gambling on the TAB. (T.2239).

7.21 On two matters each of the clinicians agreed: the paucity of research in Australia into addictive gambling and the need for additional treatment programmes. In relation to the first matter, I need do no more than refer to what Mr. Connor said in paras.14.46 - 14.49 of his report. I add my name to the long list of those who have urged the responsibility of the governments of Australia to investigate the social consequences of the gambling which they promote. In relation to the second matter, I particularly draw attention to the evidence of Dr. Allcock that Victoria has no treatment programme such as the one with which he is involved and to his opinion that such programmes need to be introduced into this State.

Conclusions

7.22 How should one evaluate the evidence I have

reported? It is clear that the vast majority of players use poker machines without creating any problem either for themselves or for others. Dr. Dickerson referred to "the kind of bind I find myself in, dealing with problems that occur when the majority of people enjoy an activity of pleasure but a tiny minority have problems which are for them significant". (T.2227). This is indeed a dilemma. There are many practices in our society which we accept, knowing that they adversely affect a minority. But most of them have come upon us without a conscious, informed comparison of the benefits and detriments. When we do have the opportunity of an informed decision, the critical question must be the quality of the benefits to be gained. As a matter of principle, it seems to me, a decision that would visit upon even a tiny minority of people the type of problems I have outlined could only be justified by showing that it would also have the effect of conferring upon the wider community demonstrable, substantial advantages not otherwise available.

Notes to Chapter 7

[1] Dickerson, "Compulsive Gamblers", 1983, Longman, p.44

[2] In the Casino Report (para.14.46) reference is made to criticisms by prominent Tasmanians of the omission of their State to investigate the social effects of gambling, especially casino gambling. In 1980-81 Tasmanian casino expenditure was \$11.7million, an amount less than one quarter, in per capita terms, of the New South Wales poker machine expenditure.

[3] In para. 14.51 of the Casino Report reference is made to the finding by the Morin Commission in the United States that 0.77% of the adult population were addictive gamblers and 3.1% of the population were at risk of becoming so. Extrapolated to Victoria these proportions would mean that there were about 21,600 addictive gamblers and 86,800 vulnerable persons. The proportions are substantially lower than those obtained from the Wagga survey. Two possible reasons suggest themselves. First, the Wagga survey was a self-assessment. People may have classified themselves as "concerned" or "addicted" whom clinicians would not regard as being potentially or actually out of control. Secondly, it is possible that social differences between Wagga today and the United States at the time of the Morin Report (1976) particularly with respect to accessibility to gambling generally and poker machines in particular, means that Wagga now has a greater proportion of addicted and vulnerable persons than the United States did then. At the time of the Morin Commission, gambling in its various forms appears to have been considerably more restricted in the United States than it is in Wagga now. There are, apparently, no comprehensive Australian figures.

[4] Politzer, Morrow and Leavey "Report on the societal cost of pathological gambling and the cost benefit/ effectiveness of treatment", 1981, Fifth Annual Conference on Gambling and Risk Taking, Lake Tahoe, USA.

CHAPTER EIGHT

VICTORIAN CLUBS AND ASSOCIATIONS

LICENSED CLUBS

Historical

8.01 The Victorian Legislature appears to have first recognised the existence of clubs as providers of liquor in the Licensing Act 1885. This Act which set trading hours for hotels and imposed other obligations on hotelkeepers also set up the first Licensing Court. It provided, however, that its provisions should not apply to a club certified by the Licensing Court to be a bona fide club of not less than twenty persons united for the purpose of providing accommodation, privileges and advantages for the members thereof and not carried on for the purpose of profit for the individual members thereof. It is interesting to note that s.51 (3) of the Liquor Control Act 1968 (the current licensing legislation) grants exemptions from certain provisions of that Act to clubs which were bona fide clubs in 1885 and which still exist.

8.02 The Licensing Act 1906 was the first legislation which provided for the registration of clubs by the Licensing Court. It also made provision as to the content of their rules and specified grounds of objection to their registration. Apart from an amendment in 1953 which removed a hitherto existing ceiling on the number of clubs which might be registered the next legislative provision which specifically related to clubs was an amendment to the Licensing Act 1958, effected in 1960. This amendment provided that the Licensing

Court might, in respect of new club registrations, impose a condition that liquor should not be sold by the club for consumption elsewhere but on the club premises. The Act extended the grounds for objection to club registration, including one based on undue competition or economic waste. Sunday permits for clubs were introduced to allow trading from 12 noon to 2 p.m. and 4.30 p.m. to 6.30 p.m.

Liquor Control Act 1968

8.03 Prior to the passage of the Liquor Control Act 1968, clubs were required to be registered but did not possess a licence as such. This Act, which was enacted generally to implement the recommendations contained in the report of the 1964-65 Royal Commission into Liquor in Victoria by Mr. P.D. Phillips Q.C. (The Phillips Report, Ex.8A), provided for the grant by the Liquor Control Commission; the successor to the Licensing Court; of club licences for the first time. It also introduced a provision giving the Commission some control over club rules.

The Davies Board of Inquiry

8.04 In 1976 Mr. J.D. Davies Q.C. (now Mr. Justice Davies of the Federal Court) was appointed a Board of Inquiry to review the operation of the Liquor Control Act 1968. The Licensed Clubs Association of Victoria (discussed in more detail in Chapter 12) made submissions to that Inquiry to the effect that, within reasonable limits, competition between licensees (i.e. clubs and hotels) should be encouraged in order to provide better service to the public. It submitted

that competition between hotels and clubs was only a problem in smaller country towns and that in those cases hotels should be permitted to convert to taverns or subsidies should be made available to assist with the construction of new tavern premises rather than placing restrictions on clubs. It also submitted that the number of members in licensed clubs should not be controlled by the Liquor Control Commission and that objections to the grant or renewal of a licence on purely commercial grounds by other licensees should not be permitted. Mr. Davies took the view that the Liquor Control Commission should have the power to impose conditions upon club licences as upon other licences and that this power should be used to effect the objects of the Liquor Control Act. He considered that the problem of competition between hotels and clubs required a balance to be struck between the two types of facility. This balance could be struck by giving to the Liquor Control Commission wide powers to stipulate the extent to which any particular club may trade, thereby ensuring the stability of the licensing arrangements in any particular area.

8.05 Since the Davies Report (but not entirely because of it) various amendments have been made to the Liquor Control Act 1968 with respect to clubs. The present law may be summarised as follows:-

- a.) A club licence entitles a club to sell liquor at the club premises to its members and their guests on a virtually unrestricted basis as to hours other than on Good Friday, Anzac Day and Sundays. On those days club liquor sales are restricted to certain hours subject to a permit from the Liquor Control Commission. (s.38).

- b.) In order to obtain a club licence a club must meet certain criteria. It must have 50 members if in Melbourne or 30 members elsewhere or be a sub-branch of the Returned Services League of Australia. It must be formed for a lawful purpose; it must provide its facilities from its own joint funds; no one may derive any financial advantage from a club other than by way of honorarium approved by the Liquor Control Commission or salary or wages. The affairs of a club must be controlled by a properly elected committee which must hold meetings and record its proceedings. Members must be properly elected, records of members must be properly kept and a subscription of not less than \$10 per annum must be paid, unless a lesser amount is approved by the Liquor Control Commission.
- c.) Visitors may only be supplied with liquor in club premises whilst in the company of a member and the conditions upon which anyone may be permitted to become an honorary or temporary member of a club must be set out in the club rules.
- d.) Packaged liquor may only be sold by a club for consumption elsewhere than on the club premises if it is removed from the club premises by the member purchasing it.
- e.) Within one month of altering the rules of a club the altered rules must be lodged with the Liquor Control Commission which has the power to disallow them. However it has no power to disallow any rule specifying the number of members a club may have.
- f.) The Liquor Control Commission may grant special function permits to a club entitling it to supply liquor to members and visitors on particular occasions for particular functions (s.38 (8)).
- g.) It is to some extent the use of permits granted under s.38 (8) of the Liquor Control Act which have permitted some of the "aggressive" marketing by clubs in recent times to which I shall refer in Chapter 13.

8.06 There are presently 542 licensed clubs in Victoria. This number has grown from 275 in 1965. The numbers in each year from 1965 to the present were as follows:-

1965	275
1966	293
1967	301
1968	309
1969	325
1970	347
1971	367
1972	384
1973	390
1974	409
1975	423
1976	437
1977	452
1978	459
1979	469
1980	479
1981	496
1982	517
1983 (30 June)	534

8 Club licenses have been granted since 30 June this year. Details of the different types of clubs (at least those who are members of the LCAV) will be found in para.12.01.

Source: Liquor Control Commission.

UNLICENSED CLUBS

Historical situation

8.07 Mr. P.D. Phillips Q.C., in his 1964-65 Royal Commission Report acknowledged that the then legal situation with respect to liquor in unlicensed or unregistered clubs was "complex and not free from obscurity". (Ex.8A Part III p.69). A member of an unregistered club could, at that time, bring his own alcoholic liquor to the club and there consume it. He could not supply a drink to any other member or to any visitor who might be with him and the club itself could not in any way engage in either the possession, sale or supply of alcoholic

liquor to members, their guests or visitors. Mr. Phillips recommended that consideration should be given to a limited modification of the general prohibition upon the sale of liquor by an unregistered club. He considered that the absolute prohibition against the supply of liquor by unregistered clubs at the time of his report resulted in the certainty that the law would be disregarded. As a result of Mr. Phillips' recommendations provisions were incorporated in the Liquor Control Act 1968 with respect to the granting of certain permits relating to limited types of unlicensed premises including unlicensed clubs.

The Davies Report

8.08 At the time of Mr. J.D. Davies Q.C.'s Board of Inquiry unlicensed clubs were able to obtain a permit to enable liquor to be consumed during such times and on such days as the Liquor Control Commission saw fit (a BYO permit). The club had to be well conducted and managed for a period of two years before such permit could be obtained. Other conditions were attached to permits but Mr. Davies found that contravention of these conditions was widespread by sporting clubs, in particular football clubs. Football clubs claimed that the sale of liquor was necessary for the financial support of the club as well as being a facility expected by club members and members of visiting teams. Mr. Davies also found that the drinking conditions in unlicensed clubs varied from excellent to disgraceful. Mr. Davies' recommendation was to accept the submission of the Bellarine and District Football League and others who suggested the adoption of a system in use in South

Australia and Western Australia whereby an unlicensed club could be permitted to sell liquor during such times and on such days as its permit specified, having purchased such liquor from a retail liquor outlet. This recommendation was substantially accepted by the Government.

The present position

8.09 The law as it presently stands prohibits the consumption of liquor on the premises of an unlicensed club otherwise than in accordance with a permit granted under either s.45B or s.45D of the Liquor Control Act 1968. The permits are respectively referred to as "unlicensed club permits" and "restricted club permits". An unlicensed club permit permits the consumption on unlicensed club premises but does not permit its sale. It is essentially a "BYO" permit. A permit under s.45D of the Act permits a club to sell liquor (which it has purchased from a local hotel or retail bottle shop) during certain specified periods on a Saturday or Sunday. A s.45D permit can be granted only to a sporting club which has been in existence for at least two years before it applies for a permit. Many unlicensed clubs hold permits under both sections, thereby enabling members to bring their own liquor onto the club premises at any time and the club to sell liquor during the prescribed hours on Saturday and Sundays. The following table shows the number of permits granted under these sections since they were introduced into the Act in their present form in 1980:-

TABLE 8.01

<u>Year</u>	<u>s.45B Permits</u>	<u>s.45D Permits</u>
1981	1636	"no figures available" 239
1982	1710	
1983 (30 June)	1719	346

Source: Liquor Control Commission

8.10 The significance of unlicensed clubs with liquor permits to my Inquiry is that it can be anticipated that should poker machines be permitted in licensed clubs in Victoria many clubs which presently hold permits under s.45B or s.45D of the Liquor Control Act 1968 will apply for full club licences. Of course, applications might be expected for full club licences from clubs which have no permits under either of the sections mentioned or which may not even have yet been formed. However, when attempting to estimate the possible growth in licensed clubs I suggest that the present holders of permits under either of the two sections mentioned, and in particular holders of permits under s.45D, would be the most likely applicants for full club licences, at least in the short term.

CHARITABLE GROUPS

8.11 Quite aside from licensed and quasi-licensed clubs there exist in the community large numbers of groups of people who raise money in one way or another for charitable purposes ranging from the support of schools to hospitals, disabled persons' facilities, disadvantaged people's organisations and a large variety of other causes. Their relevance in the context of this report is that many of them rely upon raffles

and/or Bingo for financial support. In Chapter 13 I shall deal with what I perceive to be the effects of poker machines in clubs upon those organisations which rely for their income to some extent on Bingo. In this chapter I merely record the fact that Bingo and other gambling or quasi-gambling activities support many organisations. Such activities are regulated by the Lotteries Gaming and Betting Act 1966, which sets up a Raffles and Bingo Permits Board. The Board grants permits for the conduct of raffles and Bingo. The following table sets out some statistics for each of the financial years from 1977-78 to 1982-83:-

TABLE 8.02

	No. of raffle permits issued [1]	Gross Bingo receipts (\$'000)	Total revenue collected from bingo (\$'000)
1977-78	8,892	13,212	381
1978-79	11,274	29,452	815
1979-80	13,025	40,671	1,122
1980-81	13,940	52,549	1,452
1981-82	18,286	63,714	1,771
1982-83	1,744 (2)	72,388 [3]	2,003

Source: Raffles and Bingo Permits Board.

8.12 It can be seen from the above table that presently gross receipts from Bingo in Victoria are running at about \$1.4million per week. As the organiser retains about 25% of gross receipts as the house "win" in Bingo in Victoria about \$350,000 per week or \$18million per year is raised from this form of gambling. As the Lotteries Gaming and Betting Act 1966

requires the proceeds of raffles and Bingo to be applied for "community purposes" as defined in the Act considerable assistance is given to worthy causes through these forms of gambling or quasi-gambling.

Notes to Chapter 8

[1] As fees charged by the Board of Raffle Permits are not based upon gross receipts by the raffle organisers no figures are available as to the amount derived from raffles by Victorian organisations which conduct them. An officer of the Raffles and Bingo Board estimates that presently about \$10million is raised from raffles each year. This may be conservative.

[2] The abolition of the requirement of small raffles to have permits is the reason for the lower figure in this year.

[3] There are presently about 1,000 Bingo "sessions" per week in Victoria.

CHAPTER NINE

HOTELS

VICTORIAN HOTELS

Historical

9.01 The history of liquor control or licensing legislation in Victoria is set out at pp.15 to 26 of the 1978 Davies Report into the operation of the Liquor Control Act 1968. (Ex.8C). The development of hotels in Victoria is discussed at pp.49 et seq. of the same report. It is sufficient for my purposes to note that since at least 1830 in Australia the Legislature has imposed obligations on hotelkeepers with respect to provision of accommodation of one kind or another as a concomittant of the privilege of selling alcohol. Mr. Davies said that it was a New South Wales Act of that year which required that every licensed public house should provide accommodation of at least two sitting rooms and two sleeping rooms that determined the future character of the Australian hotel. There was a steady improvement in standards until, particularly in Victoria, the discovery of gold caused a proliferation of hotels, many of which were of a very low standard. By 1880 there were 4,300 licensed hotels in Victoria or one for every 200 persons. Statutory provisions inherited from New South Wales on separation consistently required licensed houses to do more than serve liquor. They were required to provide meals and accommodation, particularly for the travelling public. Acts of 1876, 1885 and 1906 all placed some restriction on the unlimited expansion of the hotel industry with the last of those legislative provisions

establishing a Licences Reduction Board for the specific purpose of reducing the number of licensed premises.

9.02 Between 1907 and 1937 the number of hotel licences fell from 3,507 to 1,725. During and after the second world war the continued efforts of the authorities to improve hotel standards were frustrated by shortages of building supplies and restrictions on the issue of building permits. Six o'clock closing, which created the "six o'clock swill", together with the rationing of beer during the war years led, according to Mr. Davies, "to an attitude on the part of licensees which has been described by writers in unfavourable terms". This comment is not dissimilar to those made by Caldwell with respect to the New South Wales hotel industry at the same time already discussed in Chapter 3. These conditions in New South Wales led to an explosion in the number of clubs. In Victoria the same swing to clubs did not result, partly because of Victoria's stricter legislation with respect to clubs but largely because poker machines were prohibited here. Whereas clubs in New South Wales began to provide those facilities the public required it fell to Victorian hotels to meet the same demand in this State. In 1956 a poll on the question of extended hotel trading hours was defeated but following the Phillips Report in 1965, (Ex. 8A) 10p.m. closing was introduced, effective from 1 February 1966. The Phillips Royal Commission concerned itself with the question of profits of hotels and aimed to set the hotel industry upon a footing that would render it sufficiently profitable to enable improvements in meal service and accommodation to be provided. In Part III

of his report, (Ex. 8a) p.26, the Royal Commissioner says:-

"I proceed then upon the principle that the community does generally desire the improvement of the amenity and facilities provided by its hotels, that these improvements should take place over the whole complex of the services provided in these hotels, and that the profits of trading, and returns from the ownership and operation of hotels, should be available not piecemeal but as a whole to make possible these improvements."

Just as the earlier part of the century saw a great deal of activity in the extending of bar space so, subsequent to the Phillips Report, there were many alterations to hotels to create larger lounges and recreational areas where people could eat and perhaps listen to entertainment. It was and is essential to the reforms proposed by Mr. Phillips that hotels be sufficiently profitable to enable the Liquor Control Commission, if necessary, to order expenditure (even of large magnitude) to bring hotels up to standard. Without profitability the Commission could not have accomplished the improvement which has undoubtedly occurred. Physical improvement to hotel premises and increased competence in hotel staff has caused a return to the concept of the hotel as an ordinary part of the social fabric of the community, a place of recreation, entertainment and functions, a place of respectability where men could freely bring their families, including their children.

The Liquor Control Act 1968

9.03 The Liquor Control Act 1968 was unusual in that it contained in s.3 a specific statement as to the objects of its enactment. The section, as it originally appeared in the Liquor Control Act 1968, bears quoting in full:-

"3. The object of this Act is to ensure in the interest of the public generally:-

- (a) that there is an orderly and continuous improvement in and development of facilities and arrangements for the supply of accommodation meals and liquor to the public;
- (b) that all persons concerned in the supply of accommodation meals and liquor shall be of good character and have the training skill and capacities necessary to provide an orderly and proper service;
- (c) that the provision for the orderly and economic development and improvement of that supply should also promote the interest of the businesses of all persons concerned in that supply and advance the security and stability of the same -

and this Act shall accordingly receive such fair large and liberal construction and interpretation as will best ensure the attainment of the objects of this Act and every power authority discretion jurisdiction and duty conferred or imposed by this Act shall be exercised and performed so as by design and intent actively to promote and achieve the objects aforesaid."

Although that section has been amended along the lines recommended by Mr. Davies in his subsequent report (Ex.8C p.143) the general thrust of the liquor control legislation remains the same.

9.04 From its inception the Liquor Control Commission has used the provisions of the Act to effect a continuous improvement in hotel standards. Mr.Davies quoted from the 1969 report of the Liquor Control Commission which set out certain standards which, at that time, it considered should be observed in hotel premises. Internal toilets for bar patrons, lounges for mixed drinking, carpeting of certain public areas and bedrooms, acoustic ceilings in drinking areas, power points for shaving facilities and for reading lamps in bedrooms, handbasins and heating for bedrooms and other matters were all

referred to. In subsequent annual reports the Commission noted a continued improvement in the provision of facilities for the supply of meals and lounge drinking which it said was the direct result of an increased patronage of hotels.

9.05 One of the features of the Liquor Control Act 1968 is the employment of supervisors of licensed premises as part of the staff of the Liquor Control Commission. There are at present 17 such supervisors operating throughout Victoria under the control of a chief supervisor. (T.2013). The function of these supervisors is to report on licensed premises and ensure that standards are maintained. They bring to the attention of the Commission deficiencies which might exist to enable it, if necessary, to use its powers to compel compliance with the standards it sets. The power of the Liquor Control Commission to act so as to improve the standard of hotels is one of the most important provisions in the 1968 Act, although it would appear that the mere existence of the power has been sufficient, in many cases, to encourage licensees and hotel owners to undertake their own renovations and improvements without the necessity of orders being made. The 1971 report of the Liquor Control Commission states that over 80% of the hotels in the State made applications for approval of structural alterations between 1968 and 1971. The estimated cost of alterations to all licensed premises over that period was approximately \$34.5million (1971 dollars) of which by far the greater proportion was spent by hotels. This amount did not take into account, of course, those improvements to

hotel premises such as painting, redecorating or refurnishing in respect of which application did not have to be made to the Commission. The Commission has also pursued a policy of inspecting hotels at the time of a sale and not approving a transfer until agreement has been reached between the owner, the outgoing licensee and the incoming licensee as to the responsibility of each of them for the undertaking of such work as is considered necessary. When agreement is reached the parties are required to sign a consent to an order for the execution of the work thereby enabling the Commission to ensure that it is undertaken.

Minimum price legislation

9.06 In about July 1975 a price war in packaged liquor, particularly beer, broke out in Melbourne, gradually spreading to many country areas. When the minimum price recommended by the Australian Hotels Association for a dozen bottles of beer was \$8.88 the price charged by many outlets ranged from \$6.90 to \$7.00 per dozen. The effect upon the financial stability of parts of the industry was considerable and as a result the Liquor (Orderly Marketing) Act 1976 was enacted enabling the Liquor Control Commission to fix the minimum price at which packaged beer might be sold. On 1 June 1977 the first determination was made, thereby restoring some measure of stability. At subsequent frequent intervals further determinations have been made increasing the minimum price from time to time, until this year when s.11A of the Liquor Control Act 1968, which contained the minimum price provision, was repealed by the present Government in accordance with a pre-

election promise to do so. That repeal has been in effect for only a few weeks as I write this report and, to date, there appears to have been no noticeable price cutting. Whether such will occur in the future or not I am unable to say. The relevance of this matter for my purposes is that if the price war which apparently occurred between 1975 and 1977 is repeated economic pressures on hotels will cause a decrease in their profitability so as to render them less able to withstand any increased competition which would arise were licensed clubs given a monopoly in the use of poker machines.

The present situation

9.07 In the course of this Inquiry I formally inspected 22 Victorian hotels and discussed their operation with their licensees. I have informally inspected many other Victorian hotels with Mr. Bongiorno for the purpose of assessing for myself the general standard of Victorian hotels, the services they offer and their physical surroundings, particularly when compared to New South Wales hotels. The hotels which I inspected on a formal basis were selected by the Licensed Freeholders Association and the AHA, but I accept that they were generally selected after the LCAV had selected those clubs which it was desired I should visit. The hotels were all in the vicinity of, or could be conveniently inspected with, licensed clubs.

9.08 My overall impression is that the standard of Victorian hotels is excellent. They appear, on an overall view, to provide facilities which cater for most sections of

the population. Many cater for young people and put on discotheques or live entertainment, sometimes of a fairly elaborate nature (e.g. the Dinosaur Hotel, Moolap, the Sundowner Hotel, Norlane, or the Caulfield Club Hotel, Caulfield). Others specialise in gourmet food (e.g. the Sawyers Arms Hotel, Chilwell and the Turf Club Hotel, Caulfield) whilst others still provide food of a "bistro" type on a large scale (e.g. Village Green Hotel, Glen Waverley, Great Western Hotel, Newtown or the Western Hotel and Parkview Hotels, Ballarat). Others still are predominantly residential hotels, offering the full range of services normally found in such hotels, including accommodation (e.g. Grand Hotel, Mildura). Not every hotel I have visited in Victoria, however, warrants unqualified praise. The Builders Arms Hotel and the Royal Hotel in Gertrude Street, Fitzroy were as bad as any hotels I have seen anywhere as to their general standard and in particular as to their cleanliness. The most striking feature of Victorian hotels which I noticed was the large number of meals they serve. This is particularly significant when one compares it with the meals situation in New South Wales hotels. The Great Western Hotel at Newtown serves about 700 meals a week (Ex.86F); the Sawyers Arms Hotel at Chilwell serves 400 (Ex.86G); the Village Green Hotel at Glen Waverley - a large hotel by any standards - serves about 2,500 meals per week (Ex.87F). Many hotels appear to have expended considerable money and effort in making their premises attractive and none that I saw on formal inspections, and few that I saw informally, could be described as appearing to exist solely for

the purpose of dispensing alcoholic liquor. Most, if not all the hotels I inspected had facilities which catered for families, particularly with respect to meals.

9.09 Overall, I am impressed with what I saw of the Victorian hotel industry. I make that comment mindful of the fact that my Inquiry was not an inquiry into the hotel industry or the liquor trade and that my aim in attempting to acquire a knowledge of the Victorian hotel industry was limited to considering the AHA and Licensed Freeholders' submissions with respect to the placing of poker machines in hotels and/or the effects on hotel businesses should licensed clubs be granted a monopoly of poker machines. I believe that in the inspections I undertook, both formal and informal, I acquired a sufficient knowledge of the Victorian hotel industry to enable me to make the comments I have made.

The financial situation of hotels

9.10 It follows from my comments made in para.9.09 that I did not undertake any in-depth financial analysis of the Victorian hotel industry. I was supplied, on a confidential basis, with financial statements relating to many of the hotels whose licensees or owners gave evidence before me. It is impossible to generalise about such financial statements and, in many cases, without extensive explanation which I did not seek it would be dangerous of me to make any specific findings. In any event, a consideration of the financial viability of hotels is relevant only to the matters I have to consider in relation to poker machines. In paras.13.52 et

seq. I consider the effect on hotels should licensed clubs be given a poker machine monopoly.

The numbers

9.11 The following table shows the number of hotels in Victoria between 1968 and 1983:-

<u>Year</u>	<u>No. of hotel licences as at 30 June</u>
1968	1541
1969	1517
1970	1494
1971	1464
1972	1453
1973	1448
1974	1444
1975	1441
1976	1443
1977	1441
1978	1435
1979	1432
1980	1431
1981	1431
1982	1431
1983	1430

Two hotel licences have been granted in Victoria since 30 June this year.

Source: Liquor Control Commission

9.12 During the course of this Inquiry there was considerable debate about the number of people employed in the hotel industry. Dr. Holsman relied upon figures supplied by the Australian Bureau of Statistics. I am satisfied that those figures are incorrect. In para.13.27(d) I shall consider the question of employment in the Victorian hotel industry in the context of Dr. Holsman's predictions should the Victorian club industry expand. It is sufficient to state for the purpose of recording statistics about the Victorian hotel industry that I regard a figure of about 38,000 as a more realistic estimate of the total employment in the Victorian hotel industry than

the figures relied upon by Dr. Holsman obtained from the Australian Bureau of Statistics.

NEW SOUTH WALES HOTELS

Their relevance to the Inquiry

9.13 It became apparent very early in this Inquiry that the licensed clubs in New South Wales played a very large part in the distribution of alcoholic liquor in that State, together with the provision of many of the services which, in Victoria, are normally provided by hotels. It was part of the case made by Victorian hotelkeepers that the club industry in New South Wales with its poker machine monopoly was largely responsible for what they regarded as the very poor standard of New South Wales hotels. Accordingly it became necessary for me to consider the validity of this assertion and to do so I had to make some examination of hotels in New South Wales. I am conscious of the fact that, just as with Victorian hotels, I have not undertaken any in-depth study of hotels in New South Wales, their control or their operation. However, I have been a resident of New South Wales all my life and have visited many - probably hundreds - of hotels in that State over many years. Further, in the course of this Inquiry, I formally inspected some 20 New South Wales hotels ranging from those in the inner Sydney area to hotels at Dubbo and along the Victorian border.

Historical

9.14 I have already noted in Chapter 3 the conclusions of Dr. Caldwell with respect to New South Wales hotels as they existed immediately prior to the legalisation of poker

machines in licensed clubs. It will be recalled that it was the hotels' professional association, the United Licensed Victuallers Association, which provoked the government into legalising poker machines in licensed clubs by its opposition to the renewal of club licences on the ground that those clubs were engaging in illegal gambling in 1956. It would seem that since that time the club industry has gradually gained the ascendancy with no prospect of it losing that position vis-a-vis hotels, even under its current trading difficulties.

The present position

9.15 It was only after examining Victorian hotels that I realised the deficiencies of their New South Wales counterparts by comparison. My inspections in New South Wales revealed hotels that were generally of a far lower standard than Victorian hotels. There were exceptions, of course, such as the Bondi Junction Hotel at Bondi Junction (Ex.88J) and the Bradbury Inn at Bradbury (Ex.89E). Many of the other hotels which I visited were in the vicinity of or, in some places, actually adjacent to licensed clubs. The Coomealla Club Hotel at Coomealla (Ex. 99J) is in the small settlement of Dareton on the northern side of the Murray River, a few kilometers from Mildura. It exists in close proximity to the Coomealla Memorial Club (Ex. 99H). The contrast is striking. The hotel, despite what I believe to be the best endeavours of its licensee, must operate at a distinct competitive disadvantage to the club. The disadvantage is reflected in the general amenities of the hotel, the standard of its bars and public

rooms and its overall appearance. The Royal Hotel at Wentworth (Ex.99G), in proximity to the Wentworth and District Services Club (Ex.99F), suffered from similar problems.

9.16 In many New South Wales hotels it seems that the provision of food is at best a secondary activity. The provision of accommodation seems to be even further down the list of priorities. With respect to food it is not uncommon to find that an hotelkeeper sublets the food side of his business to independent contractors (e.g. the Namitjira Hotel, Rooty Hill (Ex.89B) and the Dapto Hotel, Dapto (Ex.90c). This means that in those hotels which do not provide significant accommodation the hotelkeeper is purely a dispenser of alcoholic liquor. His interest in the provision of food by his sub-contractor is minimal. In some cases the hotelkeeper did not even know the prices his sub-contractor charged. It would appear that the general view of New South Wales hotelkeepers, or at least the ones I spoke to, was that the provision of food was not a profitable venture from their point of view and could only be maintained in a hotel if sub-contractors were prepared to undertake the work for less financial reward than the hotelkeeper would be forced to pay permanent staff. Not surprisingly, the number of meals provided by the average New South Wales hotel appears to be far below that of its Victorian counterpart.

9.17 There is no equivalent to the Liquor Control Commission in New South Wales. The New South Wales Licensing Court grants licences and exercises some control over licensed

premises but it does not, so far as I am aware, employ supervisory staff to anything like the degree that the Victorian Liquor Control Commission does. It relies instead on local members of the police force to enforce standards in their area of jurisdiction. This leads inevitably to differential standards throughout the State and to a natural reluctance, so it seems, on the part of local police to vigorously enforce appropriate standards. (See e.g. Ex.102A, the Railway Hotel, Albury). In many instances the patrons of New South Wales hotels reflected the rundown nature of the premises in which they were drinking. One hotelkeeper conceded that many of his patrons only frequented his hotel because they had been barred from the local club. I have no doubt that the present attraction of hotels for the working man on his way home from work, still dressed in his working clothes, would disappear if clubs installed areas where dress standards were relaxed to allow workmen in.

Draw poker machines

9.18 In the course of inspecting New South Wales hotels I noticed that a majority of them had video draw poker machines (already referred to in Chapter 3). At least one hotelkeeper conceded that he operated the machines in his hotel as gambling machines paying out winnings in cash or kind over the bar. He asserted that his hotel would not be economically viable without such activity. I have no reason to doubt his word on this account and I draw the inescapable inference that even in those hotels where I was solemnly told the draw poker machines were "for amusement only" the same illegal gambling takes place.

Conclusions

9.19 Notwithstanding the relatively few New South Wales hotels I formally inspected I can confidently state that overall New South Wales hotels suffer by comparison with their Victorian counterparts. They do not serve meals to anywhere near the same extent; their premises are generally shabbier or lack facilities; their licensees do not display the same degree of professionalism. I have no doubt that the financial returns in such hotels are lower.

SOUTH AUSTRALIAN HOTELS

Their relevance to this Inquiry

9.20 After I had inspected a number of Victorian hotels shortly after this Inquiry commenced I began tentatively to form the view that New South Wales hotels suffered badly by comparison. As the Inquiry progressed, it appeared to me that there could be three possible reasons for the disparity between hotels in the two States, namely the differing attitudes of the licensing authorities, the fact that, as noted above, hotels were protected in Victoria from competition to some extent by reason of minimum price legislation with respect to packaged beer, or thirdly, the fact that Victorian hotels did not have to compete with licensed clubs having poker machines. I discussed these possible reasons with Mr. Hayes, a former Liquor Control Commissioner, and asked him to rate those factors in order of importance with respect to the standards of Victorian hotels as against New South Wales hotels. He considered that the active policy of the Victorian Liquor Control Commission in continuously

requiring improvement in hotel standards was the most significant factor which differentiated hotel trading in the two States. The fact that he considered second in importance was that there were no poker machines in this State. He tended to regard the minimum price legislation as being third in importance. (T.1971).

9.21 Preliminary inquiries which I undertook revealed that there was no equivalent to the Liquor Control Commission in South Australia; the licensing system there being more akin to that of New South Wales than Victoria. South Australia has had no minimum price legislation and does not have poker machines and so was a jurisdiction in which hotels differed from those in New South Wales only insofar as they did not have competition from licensed poker machine clubs. Accordingly I decided to conduct a cursory examination of some South Australian hotels in the Adelaide area to see if comparisons could be made. Mr. Bongiorno and I went to Adelaide on 12 October 1983 and inspected some 19 hotels, selected for us by a South Australian police inspector and an executive of the South Australian branch of the Australian Hotels Association.

9.22 My impression of Adelaide hotels was that they were, on the whole, comparable to those in Melbourne. Perhaps most of them were not quite as big. It seems they also have a much greater share of the packaged liquor trade than do Victorian hotels, as there are comparatively few retail bottle shops. Also, they may serve less meals overall than Victorian hotels, although within the group I inspected there were

some (e.g. Belair Hotel at Belair and The Turf Tavern Hotel of Eastwood) who clearly had extensive meal businesses. I was told by Mr. Bill Spurr of the South Australian branch of the AHA that many hotels are expanding, mainly into the provision of a more extensive meals service. This was confirmed by Inspector Peter Mildren of the South Australian Police Department Licensing Branch (Ex. 113J). However, in terms of overall appearance Adelaide hotels did not suffer by comparison with those of Melbourne. Although I specifically requested that the worst hotels in Adelaide be included (and I believe they were) I saw no premises as bad (from a cursory inspection point of view) as the Builders Arms, Fitzroy already referred to, or some of the inner suburban hotels of Sydney, particularly in Redfern, Ultimo and even parts of the city.

CONCLUSION

9.23 I am satisfied that Victorian hotels cater for the Victorian public in terms of the provision of food, drink and, where appropriate, accommodation to a very high standard. I am also satisfied that this situation has been brought about by the active policy of the Liquor Control Commission operating under legislation giving it sufficient power to compel owners and licensees of hotels to use the profits they have undoubtedly made over the years continuously to improve their service to the public. Had Victorian hotels had to compete with licensed clubs with poker machines, as their New South Wales counterparts have had to do over the last 27 years, there would not have been the same capacity in hotel owners to

improve hotel premises as they have done. My Adelaide inspections confirmed me in these views. I regard the state of the New South Wales hotel industry as being directly attributable to its not being able effectively to compete with a club movement which operates at a trading advantage over hotels in several areas.

CHAPTER TEN
TAXATION AND GAMBLING

GAMBLING IN VICTORIA: THE STORY SO FAR

The Casino (Connor) Report

10.01 Chapter 9 of the Connor Report contains a survey of the development of gambling in Victoria in recent years. I will not repeat in full the information there set out but a summary of relevant parts of that information is a useful starting point for a consideration of the effects upon public revenue of the introduction of poker machines into the State:

- a) There are three forms of legal gambling in Victoria at the present time: racing (galloping, trotting and greyhound), lotteries (including lotto, sweepstakes, soccerpools, 6 from 36 pools and instant or rub-off games) and bingo. (Casino Report para. 9.03).
- b) Net expenditure (i.e. the net loss by bettors, not turnover: see para.2.10 above) in these three forms of gambling grew as follows:

TABLE 10.1

TOTAL NET EXPENDITURES

	<u>Total racing (on-course, licensed book- makers and TAB)</u>	<u>Total lotteries (Tattersalls, Tattslotto)</u>	<u>Total Bingo</u>	<u>Total Net Expenditure</u>
	<u>\$,000</u>	<u>\$,000</u>	<u>\$,000</u>	<u>\$,000</u>
1970-71	59,900	7,560	-	67,460
1971-72	70,410	7,520	-	77,930
1972-73	81,881	10,960	-	92,841
1973-74	92,896	19,720	-	112,616
1974-75	117,905	35,400	-	153,305
1975-76	148,988	53,440	-	202,428
1976-77	168,632	75,520	-	244,152
1977-78	178,281	89,720	6,606	274,607
1978-79	185,310	105,880	14,726	305,916
1979-80	193,723	117,440	20,335	331,498
1980-81	206,863	125,120	26,274	358,257
1981-82	218,848	155,520	31,857	406,225
1982-83	241,355	159,440	36,193	436,988

[Source: Casino Report para.9.09 supplemented for 1982-83 by information from Department of Budget and Management]

- c) The figures in Table 10.2 below are expressed in actual dollars. Unless allowance is made for the decrease in the purchasing power of money over the period covered by the Table an exaggerated impression of the increase in gambling expenditure will be gained. Additionally, it is desirable to take into account changing levels of real income and taxation and increases in population. The most effective method of taking into account these matters is by resort to the concept of disposable income, a term used to describe the amount of money which a person has at his or her disposal after payment of income tax. The Table below was compiled by Messrs. Coopers and Lybrand, Chartered Accountants, on behalf of the Casino Inquiry and was reproduced in the Casino Report as "Coopers Appendix B.3". Unfortunately, the 1982-83 figures are not yet available. An important column in Table 10.2 is that headed "Proportion of Disposable Income Spent on Gambling". It shows a steep increase from 1.04% in 1970-71 to 1.54% in 1976-77 and since then a very steady figure falling each year within the range 1.52% to 1.57%. That steady percentage is a function of the facts that both "Disposable Income per Adult" and "Gambling Expenditure per Adult", expressed in constant dollar terms, have remained steady.
- d) The figures for total proportion of disposable income spent on gambling give no information as to any changes which may have occurred in relation to the destination of gambling expenditure. Table 10.3 below (Table 2.2 in the Casino Report) shows that, in this regard there have been significant changes during the five "steady state" years. The proportion of household disposable income spent on racing has declined from 1.06% in 1976-77 to 0.85% in 1981-82. [1] Tattersalls' proportion has increased, during the same period, from 0.48% to 0.60% and Bingo has come from nothing to 0.12%. This Table may be thought to give some support to the theory of a constant gambling dollar, new forms of gambling being at the expense of those already existing. However, that comment must be kept in context. The total "steady state" situation has applied during only five years.

APPENDIX B.1

Disposable Income and Gambling Expenditure Statistics 1971-1982, Victoria

Year	Total Disposable Income \$'000 000	Total Net Gambling Expenditure \$'000	Proportion of Disposable Income Spent on Gambling %	Adult Population (18 yrs. & over)	Consumer Price Index	Money Terms		Constant Dollar Terms	
						Disposable Income Per Adult \$	Gambling Expenditure Per Adult \$	Disposable Income Per Adult (1981 \$)	Gambling Expenditure Per Adult (1981 \$)
1970/71	6,469	61,460	1.04	2,379,163	37.3	2,619.02	28.38	7,339.01	36.92
1971/72	7,267	77,839	1.08	2,424,139	39.4	2,973.01	32.15	7,565.72	31.59
1972/73	8,268	82,861	1.12	2,466,765	42.8	3,356.48	27.67	7,637.57	68.91
1973/74	9,596	92,616	1.14	2,509,168	49.1	3,823.56	34.58	8,032.46	91.41
1974/75	12,071	122,165	1.27	2,544,975	57.2	4,766.60	60.39	8,798.60	105.40
1975/76	15,065	152,028	1.43	2,573,977	66.2	5,766.30	78.53	8,512.15	122.50
1976/77	15,690	166,152	1.56	2,611,253	73.4	6,085.11	93.56	8,290.34	127.28
1977/78	17,606	175,609	1.55	2,648,013	79.3	6,648.76	103.70	8,384.21	130.37
1978/79	19,619	185,910	1.55	2,632,594	85.8	7,313.10	113.04	8,523.43	132.31
1979/80	21,142	197,698	1.55	2,718,559	94.9	7,887.27	121.94	8,311.14	128.44
1980/81	23,586 (1)	258,757	1.52	2,765,980	103.3	8,529.95	139.56	8,237.43	126.42
1981/82	25,945 (1)	306,115	1.57	2,801,326 (2)	114.3	9,262.54	145.02	8,103.83	126.28

SOURCE: Australian Bureau of Statistics.

NOTES: (1) Estimated assuming 10% compound growth over 1979/80.
 (2) Estimated assuming 1.3% population growth over 1980/81.

TABLE 10.2

Those five years were a period of high inflation and high unemployment. It does not follow that saturation point has been reached i.e. that the total proportion of disposable income spent on gambling would remain steady under better economic conditions. Moreover, it should be noted that the introduction of Tattsлото in 1973, the inclusion of Bingo in 1977 and the introduction of Instant Tatts in 1981 did each cause some immediate (although not necessarily permanent) increase in the proportion of personal disposable income spent on all gambling.

TABLE 10.3

Proportion of personal disposable income spent
on forms of gambling available in Victoria

	<u>Racing</u>	<u>Tattersalls</u>	<u>Bingo</u>	<u>All gambling</u>
1970-71	0.93	0.11	-	1.04
1971-72	0.98	0.10	-	1.08
1972-73	0.99	0.13	-	1.12
1973-74	0.94	0.20	-	1.14
1974-75	0.98	0.29	-	1.27
1975-76	1.06	0.38	-	1.44
1976-77	1.06	0.48	-	1.54
1977-78	1.01	0.51	0.04	1.56
1978-79	0.94	0.54	0.08	1.56
1979-80	0.90	0.55	0.10	1.55
1980-81	0.88	0.53	0.11	1.52
1981-82	0.85	0.60	0.12	1.57

Source: ABS, Victorian Yearbook, Coopers & Lybrand calculations based on figures in [Coopers] Appendix B.

Note: It has been assumed that all expenditure in Victoria on racing, Bingo and Tattersalls is made by Victorians although in practice it would be expected that a small percentage would derive from visitors especially in the case of racing.

- e) The contribution made by each of the legal forms of gambling to the revenues of the State Government during the period 1970-71 to 1979-80 was set out in Coopers Appendix D in the Casino Report. [2]

APPENDIX D

Analysis of Victorian State Government Taxation Revenue Derived from Gambling

Year	Racing Taxation				Percentage of Total Gambling Tax %	Tattersall's Duty \$'000	Percentage of Total Gambling Tax %	Bingo \$'000	Percentage of Total Gambling Tax %	Total Gambling Taxation \$'000	Percentage of Total State Taxation %
	Totalizator \$'000	Bookmakers' Turnover \$'000	Other \$'000	Total \$'000							
1970/71	16,793	3,532	896	21,222	77.06	6,436	22.94	-	-	27,658	9.81
1971/72	20,156	3,964	944	25,062	78.67	6,790	21.33	-	-	31,852	7.99
1972/73	26,131	4,872	962	31,916	77.52	9,255	22.48	-	-	41,171	8.21
1973/74	31,469	5,303	690	37,662	70.77	15,558	29.23	-	-	53,220	8.14
1974/75	40,625	7,076	386	48,087	62.54	28,808	37.46	-	-	76,895	9.18
1975/76	47,905	8,376	295	56,576	57.34	42,089	42.66	-	-	98,665	9.46
1976/77	53,102	9,403	389	62,894	59.83	60,843	49.17	-	-	123,737	10.30
1977/78	55,706	9,977	387	66,070	46.31	76,198	53.61	402	0.28	142,670	10.76
1978/79	56,564	10,386	375	67,325	43.44	86,915	56.02	843	0.54	154,983	11.10
1979/80	60,210	10,590	355	70,955	39.67	106,986	59.74	1,151	0.64	179,092	11.21

TABLE 10.4

SOURCE:

ABS Victorian Yearbook
Annual Report of the Raffles and Bingo Board

Real racing receipts

10.02 Table 10.3 standing alone might give the impression that, in real terms, racing gambling expenditure had risen marginally during the period 1970-71 to 1981-82 and had then subsided to finish, at the end of the period, below where it started. That reaction would leave out of account the fact that, during the period, there was a rise in the level, in real terms, of personal disposable income. The total "cake" increased in size so that a given percentage of that cake also increased in real value. It is possible to extract from Tables 10.2 and 10.3 above the annual variation of racing expenditure in constant dollar terms. The calculation of total net gambling expenditure (constant dollar terms) is obtained by using the consumer price index figures to convert actual dollars to 1981 constant dollars. The racing expenditure in constant dollars may then be obtained by multiplying the net gambling figure, constant dollars, for each year by the proportion which, according to Table 10.3, racing expenditure bore to all gambling in that year. The result, as appears from the fourth column in Table 10.5 below is that there was a steady rise in real racing expenditure up to the year 1975-76, with gradual decline since that date to a level in 1981-82 almost back to that nine years earlier.

TABLE 10.5
RACING NET EXPENDITURE IN CONSTANT DOLLARS

<u>RACING GAMBLING/EXPENDITURE</u>				
	Total net gambling expenditure (money terms) \$,000	Consumer Price Index	Total net gambling expenditure (constant dollar terms) \$,000	Racing expenditure in constant dollar terms \$,000
1970-71	67,460	37.3	180,857	161,727
1971-72	77,930	39.4	197,791	179,477
1972-73	92,841	42.8	216,918	191,740
1973-74	112,616	49.1	229,360	189,121
1974-75	153,305	57.2	268,015	206,814
1975-76	202,428	64.2	315,308	232,101
1976-77	244,152	73.4	332,632	228,954
1977-78	274,607	79.3	346,288	224,199
1978-79	305,916	85.8	356,545	214,841
1979-80	331,498	94.9	349,312	202,826
1980-81	358,257	103.3	347,822	201,370
1981-82	406,225	114.3	355,402	192,415

Taxation rates

10.03 There exists considerable variation in the rates of taxation imposed by the Victorian government upon the various forms of gambling permitted in the State. Comparison is made difficult by the fact that taxation is levied upon turnover and the proportion of net expenditure to turnover varies significantly from one form to another. However, Mr. Peter Bennett, a consultant economist to the racing industry, calculated the figures for each of the existing forms of gambling (Ex.NN6), to which I have added figures for poker machines upon the assumption of a tax of 10% of net expenditure as proposed by the LCAV.

TABLE 10.6

TAXATION RATES

	Average rate of taxation on turnover <u>%</u>	Average rate of taxation on net expenditure <u>%</u>
TAB	7.25	45.31
On course tote	6.40	40.00
Licensed bookmakers	1.34	24.36
Tattersalls, Tattslotto	35.00 (from Jan. 1984)	87.50 (from Jan. 1984)
Pools	30.00	47.62
Bingo -	2.80	5.60
Poker machines	1.30	10.00

Mr. Bennett explained (Ex.NN6):-

"The above figures should be interpreted as follows: Tattslotto and Tattersalls, for example, pay back 60% of subscriptions to gamblers in prize money. Therefore 40% is assumed to be spent or 'lost'. Thus, every \$1 spent or lost is equivalent to $\$1 \times 0.40 = \2.50 of Tattslotto turnover. Government taxation now averages 35% of turnover, therefore 87.5 cents ($= \$2.50 \times 0.35$) is collected by the Government for every \$1 spent. Similar interpretations apply to the other forms of gambling, using their appropriate 'retention' rates and rates of Government taxation. The conversion of the taxation benefits into an expenditure base allows direct comparability of the effects of 'switching' say \$100 of spending from one form of gambling to another".

THE VOLUME OF POKER MACHINE EXPENDITURE

The Holsman "estimates"

10.04 Dr. Andrew Holsman, an economic geographer of whom more in Chapters 12 and 13 below, offered an estimate of the revenue-earning potential of poker machines in licensed clubs in his study "The Economic Impact of the Licensed Club Industry in Victoria - the Present and the Potential". (Ex.55). He assumed the development of a club industry earning income from poker machines comparable, on a per capita basis, to that

in New South Wales. In Appendix 4.2 of his report he dealt with gambling taxation revenue and set out the figures (Ex.55 Table A4.7) which showed that 1980-81 gambling revenue per head was lower in Victoria (\$43.40) than in New South Wales (\$63.90). Dr. Holsman then came to this conclusion (p.85):-

"If poker machines were to be legalised in Victoria it is anticipated that there would be a real rise in government taxation revenue. A hypothetical situation can be proposed. If Victorian gambling taxation revenues per head of population were to rise to the same level as that of New South Wales, i.e. from 83 cents per week to \$1.23 per week because of the introduction of poker machines then the Victorian Government would benefit to the tune of \$81.12million per annum in respect of taxation revenue". (Dr. Holsman's emphasis).

The assumption was heroic. If poker machines were to close the gap between New South Wales revenue per head and Victorian revenue per head an amount of \$20.50 (\$63.90 - \$43.40) would have had to be collected in poker machine revenue. Assuming the rate of 10% (which had been adopted by the LCAV at the instigation of Dr. Holsman's employer, Mr. Vibert: see para. 12.08 below) Victorians would have had to lose an average at the machines of \$205 per year. This should be compared with the figure of \$87.83 per year then being lost by New South Welshmen, as disclosed by Dr. Holsman's own Table 4.8 on p.40. [3]. However, Dr. Holsman transposed this result, without further elaboration, to the main body of his report (para. 5.4) and included in his Summary (para. 4(vi)) at the beginning of the report, as one of the results obtained from his study, this statement: "Increased revenue of at least \$81million per year is forecast". This was, of course, pure charlatanism. The result had firstly been assumed and then

produced as a conclusion. No attempt had been made to verify the validity of the critical assumption. No attempt had been made to determine whether an increase in total gambling by reason of poker machine gambling would bring with it transfers from more highly taxed existing forms of gambling.

10.05 Dr. Holsman seems to have realised the lack of foundation for the "forecast" in his study because he did not seek to maintain that figure in his evidence to this Inquiry. Rather, he stated (Ex.B26(a) and see T.887) that "an expanded club industry would lead to taxation and licence fees to the Victorian Government in the order of \$60million plus payroll tax". He did not explain how he reached the figure of \$60million. Rather he adopted a table prepared by his colleague in the original study, Mr. P.J. Phibbs (Ex.B(n)), which predicted that, at the end of year 10 after legalisation, club winnings on poker machines would amount to \$525million per year yielding, at 10% tax on net expenditure, revenue of \$52.5. The whole of this money was assumed to come from savings, so no question of transfer would arise. That assumption is rejected at para. 13.27 below. Further the figure of \$525million is predicated on the assumption that, by the end of 10 years, Victorian poker machine gambling would be almost as great, per capita, as in New South Wales. For this to happen it would be necessary for Victorians, on average, almost to double their present gambling losses from \$2.85 to \$5.08 per adult per week. (T.927). As Dr. Holsman agreed, "there remains a question mark as to whether they will or not". (T.933). As explained below (para. 13.25) neither Dr.

Holsman, Mr. Phibbs nor any other witness gave evidence to support the estimate that New South Wales style development would be complete within 10 years; this figure was an assumption made at the request of counsel for the LCAV. In all of these circumstances it is necessary to discard as worthless each of the "estimates" made or supported by Dr. Holsman.

The Bennett calculations

10.06 Mr. Bennett prepared a report "An Assessment of the Impact of Poker Machine Gambling on the Victorian Gambling Market" on behalf of the racing industry. (Ex.NN(3)). Amongst other things, the report attempted to assess the potential expenditure on poker machine gambling in Victorian licensed clubs. Mr. Bennett noted that almost all New South Wales clubs had poker machines and made the assumption that the same thing would happen in Victoria. He, therefore, assumed 500 clubs installing an average of 12 machines in the first year, yielding a total of 6,000 machines in Victoria. He then took the 1981-82 New South Wales average expenditure of \$13,427 per machine, reduced it to \$10,118 to allow for Victoria's smaller population, and multiplied that figure by 6,000 to get a potential expenditure of \$60.7 in the first year. He observed that if this expenditure were a net addition to gambling expenditure, as is the LCAV case (see para. 13.27 below), the result would be to increase the gambling market in the State in a single year by 17% or an extra 0.23% of disposable income.

10.07 Mr. Bennett moved on to consider an "upper limit" to

poker machine expenditure. He assumed an ultimate 700 clubs. He then took the New South Wales average of 32.1 machines per club, discounted it on a population basis to 25.9 machines per club and multiplied 700 by 25.9 to yield 18,130 machines. Again adopting a figure of \$10,115 per machine, he obtained a net expenditure of \$183.4million per year.

Comment on Mr. Bennett's figures

10.08 - I have no doubt that Mr. Bennett's calculations represent a careful and honest attempt to predict likely poker machine expenditure. By quantifying his assumptions so precisely, he has made it possible for me to make such adjustments as might appear, on the whole of the evidence, to be desirable. In respect of the year one estimate, which is not very important for present purposes, I have no great difficulty. Given that there are presently 533 licensed clubs in the State (see para. 12.01 below), and that many more clubs could be expected promptly to seek licences once it was known that poker machines would be permitted, I think it reasonable to assume that within the first year some 500 clubs would install machines. The assumed average of 12 machines per club compares with the actual average in the Australian Capital Territory of 12.9 machines at the end of June 1977, some seven months after the first machines were installed. As I shall explain, I question Mr. Bennett's method of taking the New South Wales figure for expenditure per machine and discounting it for the lesser population of Victoria but I do not quarrel with his figure of \$10,118 per machine during the first year. The first year will be a broken one and to take a figure equal

to about three quarters of the average full year earnings of a New South Wales machine, for that broken year, is not unreasonable. Finally, I note that expenditure in the Australian Capital Territory for the broken first year was \$3.65million. The Victorian population is about 20 times that of the Australian Capital Territory in 1976-77, which would suggest \$73million but some allowance must be made for the large number of visitors to Canberra and for the higher per capita income of residents of the Australian Capital Territory. On the whole, \$60million seems as good a guess as any.

10.09 When I turn to Mr. Bennett's estimate of ultimate expenditure I have much greater difficulty. It seems to me that his approach involves a triple discount for population. First, he assumes an ultimate 700 poker machine clubs. This figure is less than half the number of New South Wales licensed clubs, 1,588 at 30 June 1983. One reason for the difference is the lesser Victorian population, about 74% of that of New South Wales. It seems that the club tradition in Victoria is less strong than in New South Wales. The number of licensed clubs in Victoria today is only 55% of the 962 registered clubs in New South Wales already existing immediately prior to the legalisation of poker machines in 1956. Therefore, it is reasonable to assume a lesser number of clubs per head in Victoria than in New South Wales. Real prediction is impossible but an assumption of 700 poker machine clubs is not obviously too low. However, at the next step Mr. Bennett again adjusts for the population difference;

he reduces the New South Wales average of 32.1 machines per club to only 25.9 machines. This I do not accept. The assumption of a lesser number of clubs already involves that there will be fewer machines per head of population. I would take in the full New South Wales figure of 32.1 machines. At the third stage, average earnings per machine, Mr. Bennett makes a third adjustment for population difference; but that must be erroneous if allowance has already been made. It is relevant to note that the New South Wales average earnings per machine is affected by the continuing existence of low earning 5 cent machines (1,559 of them as at January 1982, averaging \$5,145 per machine, according to Mr. Vibert - Ex.MM8) and a larger ratio of 10 cents to 20 cents machines (57-43 on Mr. Vibert's figures) than would be likely in respect of totally new machines in Victoria. I think that a figure of \$13, 437 per machine is conservative. Upon this approach the correct calculation would be:

$$\begin{array}{l} 700 \text{ clubs} \times 32.1 \text{ machines per club} \times \$13,437 \\ \text{per machine} = \$301.92 \text{million.} \end{array}$$

Say \$300million in 1982 dollars.

The multiplier complication

10.10 The calculation just made is based upon the average earnings per New South Wales machine in 1981-82, i.e. before the legalisation of multiplier machines last July: see para. 3.36 above. It is still too early to have worthwhile earnings figures for the multiplier machines but they will significantly increase the earning rate per machine and, I believe, total poker machine earnings. The club managers with whom we spoke on the inspection tours reported their early

results as being very satisfactory, easily exceeding normal 20 cent machines. Mr. Vibert's analysis (Ex.MM8) dated January 1982 shows that 20 cent (i.e. non-multiplier) machines were then averaging \$18,300 per machine per year and in the large clubs, i.e. clubs with a net take of more than \$1million per year, they averaged even more: \$23,485 for the 104 clubs in the \$1million to \$2million range, progressing up to \$27,949 in the 12 clubs whose take exceed \$5million per year. Well located multipliers will, it seems, be beating those figures.

10.11 The LCAV guidelines exclude multipliers but, inconsistently, the revenue and job creation predictions prepared by Mr. Phibbs and adopted by Dr. Holsman (Ex.B26(m)) assume their existence in suggesting that, at full expansion, there would be 25,000 machines averaging \$21,000 for a total revenue of \$525million. The figure of 25,000 machines compares with 22,470 derived by multiplying 700 clubs by 32.1 machines per club. I think that it is high; the very existence of multi-coin machines is likely to steady the demand for additional numbers of machines. If, as I believe would inevitably occur, multipliers were allowed into Victoria it would be necessary to assume a higher average earning capacity. One can only hazard an approximation but \$20,000 (an increase of 50% on the pre-multiplier average) seems a reasonable guess. On that basis total poker machine gambling expenditure in Victoria would be \$449.4million, say \$450million, after full expansion of the licensed clubs along New South Wales lines.

THE TAXATION RATE

The LCAV submission

10.12 The LCAV case is that taxation at the rate of 10% of net machine earnings i.e. net player expenditure should be levied upon clubs. No attempt was made to justify this figure by evidence or by argument. It was simply the figure which had been included in the LCAV guidelines when they were first prepared in 1979: see para.12.08 below. The figure was probably then chosen because it was the figure adopted in the Australian Capital Territory in 1976 and it had the merit, from the clubs' point of view, of being low. Assuming, as the LCAV suggests, a carding to return 87% to the player (see para. 2.08 above) the "house edge" would be 13% of turnover. It follows that taxation revenue would be 1.3% of turnover; a figure less than that for any existing form of gambling in Victoria, even Bingo: see para. 10.03 above. Moreover, taxation as a percentage of net expenditure (10%) would be higher only than Bingo, a relatively low key operation intended primarily to be used by charities and similar organisations to raise funds for their community work. As the Table in para. 10.03 shows, the taxation percentage would be less than half that on revenue of licensed bookmakers, one quarter or less of the rate on the on-course Totalizator, the TAB and the pools and less than one eighth that imposed on lottery revenues. This has important implications for any transfer of expenditure from some other form of gambling to poker machines. Unless that other form was Bingo, the transfer would mean a reduction of taxation revenue. I

reproduce as Table 10.6 a matrix, prepared at my request by Mr. Bennett (Ex.NN6), which shows the effect of any transfer of expenditure. The plus or minus figures simply represent the differential, in percentage terms, between the various tax rates in para. 10.03. For example, TAB expenditure is taxed at 45.31%, the Totalizator at 40.00%. It follows that a shift of \$100 spending from the tote to the TAB increases tax revenue on that \$100 by \$5.31. A shift the other way decreases net revenue by the same amount.

The New South Wales tax

10.13 As explained above (paras. 3.24, 3.25) the New South Wales levy is not a flat tax rate. There is a sliding machine licence fee together with a supplementary tax levied upon net expenditure. The total tax is, however, generally regarded as representing about 20% of net expenditure. There is no reason to believe that it is excessive. The continuing ability of clubs to offer to their members lavish benefits and/or to erect new, or extend existing, premises is evidence enough of that. As Mr. Paul McKay of North Ryde RSL acknowledged in his address last March (see para. 3.37 above) 20% is a small price to pay "for the concession of being allowed to operate poker machines". And, as he mentioned, the clubs have most significant income (company) tax privileges.

A Victorian rate

10.14 Four possible models for the introduction of poker machines into Victoria are discussed below, in Chapters 13 to

TABLE 10.6
CHANGE IN GOVERNMENT TAXATION REVENUE
DUE TO A SHIFT OF \$100 SPENDING
FROM ONE FORM OF GAMBLING TO ANOTHER

\$

TO: FROM:	TAB	Totalisator	Bookmakers	Tattersalls & Tattslotto	Pools	Bingo	Poker Machines
TAB	0	- 5.31	-20.95	+42.19	+ 2.31	-39.71	-35.31
Totalisator	+ 5.31	0	-15.64	+47.50	+ 7.62	-34.40	-30.00
Bookmakers	+20.95	+15.64	0	+63.14	+23.36	-18.76	-14.36
Tattersalls	-42.19	-47.50	-63.14	0	-39.88	-81.90	-77.50
Pools	- 2.31	- 7.62	-23.36	+39.88	0	-42.02	-37.62
Bingo	+39.71	+34.40	+18.76	+81.90	+42.02	0	+ 4.40
Poker Machines	+35.31	+30.00	+14.36	+77.50	+37.62	- 4.40	0

[The figures for on-course totalizator and bookmaker operations do not take account of the additional revenue gained from fractions, unclaimed dividends and from betting ticket stamp duty respectively]

16 inclusive. Only the first two involve the taxation of the earnings of a non-government operator; in the remaining two cases the government would be involved as entrepreneur taking all net earnings. As between the first two models, traditional licensed clubs and community clubs, there may be room for a legitimate distinction as to the appropriate rate. The community club concept involves significant controls to ensure that the profits of the machines are used for the welfare of the whole community, or at least such people as wish to take advantage of the club. It may be felt appropriate that such a club should be taxed more lightly than a club whose members have, and assert, the right to spend their revenue as they please.

10.15 The selection of an appropriate rate of tax is entirely a matter of policy and judgment for government. Any figure is arbitrary, in the sense that it cannot be demonstrated by logic to be correct. If the figure be pitched too high, there may be little interest in carrying out the taxed activity so that little revenue would accrue. If it be pitched too low, revenue earning potential will be lost. Indeed, the transfer effect which I have already noted may lead to a net loss of revenue. I believe that, if the Victorian government did decide to allow licensed clubs to install machines, it should consider a tax on player expenditure at a rate of about 30%. The market almost certainly can and will bear that figure, in the sense that clubs would still be keen to proceed. Once the machines are

in place, it may be difficult politically to increase the rate: see para. 5.28 above. I have considered a higher rate, such as 40%, but I believe that a rate of that order may operate as a disincentive to clubs to install machines. It is not merely that they would have to undertake the trouble and expense of installing machines for a diminished return. There may well be a feeling that their members and visitors would be being "fleeced" by the government. My guess is that, for practical purposes, 30% is about the limit.

10.16 If the decision were made to grant poker machines to community clubs, this rate may be too high; it may unduly limit the ability of the clubs to carry out the type of active community programme which would be their justification. From that point of view a figure of 10% or 20% would be appropriate although, as will be seen, such percentages have very serious revenue implications.

EFFECTS OF VARIOUS ASSUMPTIONS ON NET REVENUE

Gross revenue

10.17 The determination of the net effect on government revenue of the introduction of poker machines depends directly upon three assumptions: net poker machine expenditure, rate of taxation on net expenditure and the extent of any transfer of expenditure from other forms of gambling. I have already expressed views about the first two matters. I need only add that it seems reasonable to take a lower estimate of net expenditure for the community club model than for the licensed club model: there would be considerably fewer clubs, although I would expect the average number of machines per club to be

substantially greater. For the sake of the exercise I assume a proportion of two thirds. Further, one set of calculations should be made upon the assumption of multiplier machines. It follows that, to obtain gross taxation revenue and ignore any transfer losses, the "poker machine tax" potential, on the various assumptions, would be:

- a) Licensed club, multiplier machines permitted
 Expenditure \$450m. p.a. @ 30% = \$135m.
 Expenditure \$450m. p.a. @ 20% = \$ 90m.
- b) Licensed club, single coin machines only
 Expenditure \$300m. p.a. @ 30% = \$ 90m.
 Expenditure \$300m. p.a. @ 20% = \$ 60m.
 Expenditure \$300m. p.a. @ 10% = \$ 30m. (LCAV
 proposal)
- c) Community club, multiplier machines permitted
 Expenditure \$300m. p.a. @ 20% = \$60m.
 Expenditure \$300m. p.a. @ 10% = \$30m.
- d) Community club, single coin machines only
 Expenditure \$200m. p.a. @ 20% = \$40m.
 Expenditure \$200m. p.a. @ 10% = \$20m.

The extent of the transfer

10.18 The various figures set out in the preceding paragraph show what could be received, upon the various factual assumptions, by the government as "poker machine tax". They say nothing about the net increase in taxation revenues as a result of introducing and taxing poker machines. The net increase would, of course, equal the poker machine tax only if the whole expenditure by bettors on poker machines was "new" gambling money, i.e. that there was no transfer of expenditure from any existing form of gambling to poker machines. Dr. Holsman has assumed that all poker machine expenditure would be released from savings: see para. 13.27 below. If that assumption were valid then the whole of that expenditure would

be "new" gambling money, so that the poker machine tax would equal the net increase in government expenditure. However, as explained in para. 13.27, that assumption is unsupported by empirical evidence and is contrary to accepted economic theory. It must be rejected.

Mr. Bennett's view

10.19 Mr. Bennett has expressed the opinion that the Victorian gambling market is now at saturation point, so that any new form of gambling can only be financed by the transfer of expenditure from one or more existing forms of gambling.

(Ex.NN3). In support of that proposition he puts the following:

- a) the proportion of disposable income now spent by Victorians upon gambling (1.57%) is much higher than the proportion spent by New South Wales residents (0.85%) when poker machines were legalised in that State in 1956. Notwithstanding that fact, expenditure upon the then existing forms of racing gambling (on-course tote and licensed bookmakers) declined steadily, in 1949 constant dollar terms, from \$2.66 per head in that year to \$2.06 in 1963-64. Racing gambling expenditure was only revived by the introduction of the TAB in 1964-65.
- b) Racing gambling expenditure in the Australian Capital Territory peaked, in real terms, in the financial year 1974-75. In that year total expenditure, expressed in 1965 constant dollars, was \$20.5million. In 1975-76 it declined slightly to \$20.2million before commencing to plunge steeply to \$18million in 1980-81. Thanks to increased bookmaker takings, it recovered partially to \$19million in 1981-82. The TAB has continued downwards each year since 1974-75. In real terms it is now about 23% below its 1974-75 peak. Poker machines were introduced in the first year of the sharp decline, 1976-77.
- c) The Victorian figures already demonstrate some transfer of expenditure. As Table 10.3 above

shows there has, during the last five years, been a steady reduction in racing's proportion of personal disposable income, offset by an almost equivalent increase in the proportion enjoyed by Tattersalls and Bingo to maintain the "all gambling" proportion remarkably steady at ± 0.03 percentage points of 1.55. The public, says Mr. Bennett, have responded to the introduction of new forms of lotteries and the legalisation of Bingo by switching their expenditure away from racing.

- d) Leaving racing aside, there are what appear to be examples of transfer expenditure during recent years both in New South Wales and Victoria: see Ex.NN4 pp.2-4. In 1979 Lotto was introduced into New South Wales. Expenditure on that game steadily increased to \$80.5million in 1981-82. However, during that same period, expenditure on the State lottery and on Soccerpools fell by a total of \$10.32million in actual money terms. But this understates the loss as it ignores inflation. The difference between the actual lottery and pools expenditure in 1981-82 and the figures they would have reached had they maintained their 1978-79 ratios of gambling expenditure to personal disposable income is \$38million. A respectable argument can be made for the view that about half the Lotto expenditure has been by way of transfer from the State lottery and the pools. Similarly, in Victoria Instant Tatts was introduced in December 1981. It was a huge success, taking \$24.66million in the financial year to the end of June. But Tatts-lotto rose, in actual money terms, only \$5.84million for the year rather than the \$11.84million it would have risen had it retained its ratio of expenditure to disposable income. Soccerpools expenditure fell from \$4.16million to \$2.58million, a figure about \$2million less than it would have been if it had retained its ratio of expenditure to disposable income. The total "losses" of \$8million might be thought to have partly financed the \$24.66million spent on Instant Tatts. [Of course, in both these cases, the new form of gambling was closely akin to the forms apparently displaced, appealing to a very similar market.]

10.20 There is force in each of the matters to which Mr. Bennett points. However, some comments must be made. In

regard to his first point: the New South Wales position immediately after 1956, it should be noted that real per capita racing expenditure had been in decline for at least eight years before legalisation of poker machines. Mr. Bennett's Table I to Ex.NN3 shows a steady reduction from \$3.27, in 1949 constant dollar terms, in 1948-49 to \$2.66 in 1955-56. There was an increase in one year, 1951-52, but otherwise the figure for each year is lower than for its predecessor. Bearing in mind that the figures picked up only on-course betting (whether tote or bookmakers) the decline is probably largely attributable to the steady drop in attendances at race meetings. Secondly, it must be remembered that these figures are seriously incomplete in that they omit any reference to the considerable expenditure, throughout the whole period, with illegal starting price bookmakers and expenditure on poker machines before legalisation in 1956. In any event, the expenditure on poker machine gambling has always exceeded the figure which would have been required to maintain racing gambling at its previous proportion of personal disposable expenditure. For example, three years after legalisation, in the year 1958-59, poker machine expenditure was \$22.11million whereas a total of only an additional \$3.7million would have been required, over actual expenditure, to keep up racing's proportion of personal disposable income to its 1955-56 level: see Ex.NN3 p.6 and Table D.

10.21 In relation to the Australian Capital Territory, Mr. Matthews gave this evidence of the problems of the TAB (T.1480-

1481):-

" One other very material factor has been that there was a virtual cessation of race broadcasting some five years ago. One of the things that assists people into deciding to bet, of course, is to be able to hear a direct broadcast of the actual event. We only have now on a Saturday on the ABC, that is Saturday afternoon broadcasts, and we have broadcasts introduced into all of the ACT TAB outlets, but there is unfortunately very little live information and that has had its effect. The TAB has had very indifferent trading since about 1975-76 when the turnover was of the order of \$26million to \$27million.

Q. Can that be related to the introduction of poker machines or to the other causes?

A. Certainly in that year I would say directly attributable to (a) poker machines and (b) the introduction of Tattsлото into the Territory".

At T.770 Mr. Matthews expressed the opinion "that any new form of gambling has to affect other forms of gambling" and added that "the receipts of horseracing and bookmakers declined" in the Australian Capital Territory when poker machines were introduced.

10.22 Finally, in relation to the Victorian situation it is pertinent to recall Mr. Connor's assessment of the similar argument put before him by Mr. Bennett in relation to the impact of casino gambling:-

"15.12 ...It was common ground between Mr. Bennett and Messrs. Coopers & Lybrand that hitherto the introduction of a new form of gambling had both increased total net gambling expenditure and caused a decline in some existing forms of gambling. Mr. Bennett, however, sought to take the argument a stage further and argued that there were now distinct signs that the Victorian gambling market was approaching or had even reached saturation point. The significance of this argument, if it be correct, is that the introduction of casinos in Victoria will succeed financially only at the expense of existing forms of gambling; and that racing is likely to be the principal casualty.

15.13 I am unable to accept that the Victorian gambling market is either saturated or approaching saturation. In 1980-81 the total net expenditure on gambling was \$358million. In 1981-82 it was \$406million, a rise of \$48million or 13.4% in money terms. In the same period the C.P.I. rise was 10.6%; so that in real terms net expenditure on gambling rose by 2.8%. This rise was almost certainly referable to the introduction of Instant Tatts. By way of contrast, in the same period, net expenditure on racing rose 5.8% in money terms and therefore dropped by 4.8% in real terms.

15.14 I cannot help thinking that there is some psychological element about gambling expenditure which almost defies predictions made by projecting economic analyses of past events into the future. If a new form of gambling is introduced which attracts the public they may transfer funds to support it which they have up until then used on other forms of gambling. It may be just as likely that they will transfer funds from other forms of luxury spending too numerous to mention or even from savings. Where there's a will there's a way; and where there's a sufficient attraction there's a dollar. It seems for most people to be a matter of priority; and if the priority is urgent enough the dollar will be found and it will not necessarily be a dollar which has hitherto been spent on another form of gambling.

15.15 I do not think it is necessary for me to resolve the detailed differences in methodology and calculation between Mr. Bennett and Messrs. Coopers & Lybrand because I accept Mr. Bennett's principal submission which, in any event, is largely conceded by Messrs. Coopers & Lybrand, that is, that racing is likely to be a casualty if casinos are introduced. I do not say that simply because casino gambling has taken a substantial share of racing expenditure in Tasmania. It is clear enough in Victoria, where there are no casinos at all, that in recent years racing, although receiving the largest segment of gambling expenditure, is ailing. Its situation in comparison to the C.P.I. and to the other forms of gambling may be seen from the table of figures immediately below:-

Annual Percentage Increases in Consumer Price
Index, Net Gambling Expenditure and Disposable
Income in Victoria 1978-79 to 1981-82

	C.P.I. %	Racing %	Lotteries %	Bingo %	Total Gambling %	Disposable Income %
1978-79	8.2	3.9	18.0		11.4	11.4
1979-80	10.6	4.5	10.9	38.1	8.4	9.3
1980-81	8.9	6.8	6.5	29.2	8.1	10.0 estimated
* 1981-82	10.6	5.8	24.3	21.3	13.4	10.0 estimated

Calculated by the Board
of Inquiry from figures
in Coopers appendix B1 and
B3 reproduced in chapter 9.

*In 1981-81 in terms of net
net expenditure Racing
constituted 54% of all
gambling, Lotteries 38%
and Bingo 8% - see Coopers
appendix B1, reproduced in
chapter 9.

To introduce a **further competitor** in the form of a
lusty casino industry **will** both aggravate and
accelerate the **decline of racing**. It is difficult
to say to what **extent** but I think it clear that the
damage to racing **would be substantial**."

The likelihood of transfer

10.23 I agree with Mr. Connor in rejecting the argument
that poker machine gambling **would be** financed entirely from
the transfer of expenditure **from other** forms of gambling.
Although that view may **be thought to** have some support from
the figures in Table 10.3 **relative to** the period from 1976-77
until 1981-82 it is **inconsistent with** the evidence I have, from
New South Wales, Victoria (Ex.NN3) and Tasmania (Ex.NN9), that
in the long term the **proportion of** personal disposable income
expended upon gambling **tends to increase** to take advantage of
a new form of gambling. **There is no reason to believe that**

the Victorian proportion will stay fixed forever at its level of 1.57% in 1981-82, especially having regard to the fact that such level was below the levels in both New South Wales (2.90%, see Ex.NN3 Table 2) and Tasmania (1.68%, see Ex.NN9) in that same year. At the same time, I am not persuaded that there is no likelihood of transfer at all, especially in the short term. It is true, as pointed out by Mr. Connor, in para. 15.13 of his report, that from 1980-81 to 1981-82 there was a rise of \$48million in total gambling expenditure, equal to a rise of 2.8% in real money terms. Mr. Connor, no doubt correctly, attributes this to the introduction of Instant Tatts. However, the effect of that rise was merely to take the proportion of personal disposable income spent on gambling up to a level a bare 0.01 percentage points above where it was in the years 1977-78 and 1978-79. This is marginal indeed. Making full allowance for the similarity of the gambling forms referred to in Mr. Bennett's fourth point ((d) above), the examples do illustrate that gambling expenditure is extremely tight. If, as Mr. Matthews has said, there was transfer from the TAB to poker machines and to Tattslotto in the Australian Capital Territory, it is reasonable to conclude that in the current Victorian situation there would be a significant transfer from other forms of gambling - I think particularly Tattersalls, Tattslotto and the TAB because of their general accessibility by the public - to poker machines. I suspect that Tattersalls and Tattslotto, which are used every day of the week by a very wide range of people, would together suffer about twice as much as the TAB, which has more restricted

availability and which is probably used by a more limited range of people. There would be some transfer from Bingo, the extent of which depends upon whether any, and if so what, protective measures are taken: see para. 13.57 below. Bingo is the one form of gambling in relation to which a transfer of expenditure means a revenue gain. To the extent of that transfer the figures for net revenues set out in the Tables below are under-stated. However, Bingo expenditure is so small that even a total transfer would not significantly change the picture. For convenience of calculation I have left it out of separate account.

The degree of transfer

10.24 The critical question is: what proportion of total poker machine expenditure would be transferred? Transferred expenditure not merely fails to earn the government new revenue. At any feasible poker machine tax rate it will actually cost revenue. There is no material which enables a figure to be stated with any degree of confidence. My best estimate is that at least half, but not more than two thirds, of poker machine expenditure would be new gambling money and that the transfer element would come as to two parts from Tattersalls, Tattslotto and one part from the TAB. Set out below are three tables showing the result in revenue terms of applying these assumptions to the various poker machine tax options listed in para. 10.17. The two columns showing tax lost in transfer are calculated by multiplying the transfer amount by the rate of tax on the transferor form (TAB 45.3%, Tattersalls, Tattslotto 87.5%, see para. 10.12) less the

TABLE 10.7

CALCULATION OF TAX EFFECTS OF 50% NEW MONEY

<u>\$ 000,000</u>						
Poker machine expenditure in fully expanded industry	Increase in net expenditure on total gambling ie "new money"	New proportion of total gambling to disposable income	Tax earned on "new money" component of poker machine expenditure	Tax effect of transfer from TAB to poker machine expenditure (16.66% of the whole)	Tax effect of transfer from Tattersalls, Tattslotto to poker machine expenditure (33.3% of the whole)	Net revenue effect
450	225	2.43%	@ 30% - 67.50	- 11.48	- 86.24	- 30.22
			@ 20% - 45.00	- 18.97	- 101.25	- 75.22
300	150	2.15%	@ 30% - 45.00	- 7.65	- 57.50	- 20.15
			@ 20% - 30.00	- 12.60	- 67.50	- 50.10
			@ 10% - 15.00	- 17.64	- 77.50	- 80.14
200	100	1.09%	@ 20% - 20.00	- 8.42	- 45.00	- 33.42
			@ 10% - 10.00	- 11.76	- 51.66	- 53.42

TABLE 10.8

CALCULATION OF TAX EFFECTS OF 60% NEW MONEY\$ 000,000

Poker machine expenditure in fully expanded industry	Increase in net expenditure on total gambling ie "new money"	New proportion of total gambling to disposable income	Tax earned on "new money" component of poker machine expenditure	Tax effect of transfer from TAB to poker machine expenditure (13.33% of the whole)	Tax effect of transfer from Tattersalls, Tattslotto to poker machine expenditure (26.66% of the whole)	Net revenue effect
450	270	2.61%	@ 30% + 81.00	- 9.18	- 69.00	2.82
			@ 20% + 54.00	- 15.18	- 81.00	- 42.18
300	180	2.26%	@ 30% + 54.00	- 6.12	- 46.00	1.88
			@ 20% + 36.00	- 10.12	- 54.00	- 28.12
			@ 10% + 18.00	- 14.12	- 62.00	- 58.12
200	120	2.03%	@ 20% + 24.00	- 6.75	- 36.00	- 18.75
			@ 10% + 12.00	- 9.41	- 41.32	- 38.73

TABLE 10.9

CALCULATION OF TAX EFFECTS OF 66.66% NEW MONEY\$ 000,000

Poker machine expenditure in fully expanded industry	Increase in net expenditure on total gambling ie "new money"	New proportion of total gambling to disposable income	Tax earned on "new money" component of poker machine expenditure	Tax effect of transfer from TAB to poker machine expenditure (11.11% of the whole)	Tax effect of transfer from Tattersalls, Tattslo to poker machine expenditure (22.22% of the whole)	Net revenue effect
450	300.00	2.72%	@ 30% + 90.00	- 7.57	- 57.50	+ 24.93
			@ 20% + 60.00	- 12.65	- 67.50	- 20.15
300	200.00	2.34%	@ 30% + 60.00	- 5.10	- 38.32	+ 16.58
			@ 20% + 40.00	- 8.43	- 43.66	- 12.09
			@ 30% + 20.00	- 11.76	- 50.32	- 42.08
200	133.33	2.08%	@ 20% + 26.66	- 5.62	- 29.10	- 8.10
			@ 20% + 13.33	- 7.84	- 33.55	- 28.06

assumed poker machine tax rate. It will be seen that it is not until "new money" reaches two thirds of the whole poker machine expenditure that a significant positive result is achieved; and then only at the 30% tax level. It should be noted that the proportion of total gambling to disposable income required to achieve the increase of revenue of \$24.93million would be 2.72%, an increase of 73% upon the current level of 1.57%. To put this in context, the increase in real gambling expenditure required for this result would be 130% of the increase which has occurred in Victoria in the period 1965-66 to 1981-82; a period which has seen the introduction of Instant Tatts, Tattslotto, Soccerpools and legalised Bingo.

A 75% comparison

10.25 For comparative purposes, I have calculated the effect on revenue on the assumption that 75% of the expenditure was "new money": Table 10.10. I wish to make plain that I would regard that assumption as unrealistic to the point of being fanciful. A yield of \$52.42million net additional revenue would require a proportion of total gambling to disposable income of 2.87%, a figure almost exactly that obtaining in New South Wales: 2.90%. In this connection it is interesting to note (Ex.NN3 Table 2) that New South Wales reached 2.93% in 1974-75 and that since that date, despite the introduction of Lotto and Soccerpools, the percentage has fluctuated each subsequent year in the area 2.80% - 2.90%. If the New South Wales proportion of total gambling to disposable income, which even before poker machines was significantly higher than that of Victoria, is sticking at a figure of 2.90%

then it would be a rash assumption that Victoria would within the foreseeable future reach 2.87%. It is worth noting that, even on the assumption of 75% "new money", a tax rate of 10% (the LCAV proposition) results in a significant loss to revenue. The "new money" proportion would have to approach 90% before there is any gain in net tax revenue, as demonstrated by comparing a calculation of the consequence of a 10% tax at transfer rates of 80% and 90% respectively. (See Table 10.11)

MENDICANTS

Local government

10.26 I should add a further qualification upon the various figures for "net revenue effect" revealed by the Tables. Submissions have been put to the Board, from a number of quarters, that in the event of poker machines being introduced a proportion of the "poker machine tax" should be paid out for particular purposes. Local government has put the strong submission that it should receive a substantial share of the proceeds of any "poker machine tax". The argument was put succinctly to this Inquiry by the Municipal Association of Victoria (Ex.2QQ):-

"If poker machines were to be introduced the State Government would obviously receive a considerable financial benefit as the result of their introduction. It is considered that these funds should not simply be paid into consolidated revenue but should be expended in a positive way, firstly, by mitigating the social consequences which will occur and secondly by upgrading community facilities.

Without debating the merits of poker machines it is inarguable that there will be negative social consequences caused by their introduction. The responsibility for dealing with the social

TABLE 10.10

CALCULATION OF TAX EFFECTS OF 75% NEW MONEY\$ 000,000

Poker machine expenditure in fully expanded industry	Increase in net expenditure on total gambling ie "new money"	New proportion of total gambling to disposable income	Tax earned on "new money" component of poker machine expenditure	Tax effect of transfer from TAB to poker machine expenditure (8.33% of the whole)	Tax effect of transfer from Tattersalls, Tattsлото to poker machine expenditure (16.66% of the whole)	Net revenue effect
450	337.50	2.87%	@ 30% + 101.21	- 5.73	- 43.10	+ 52.42
			@ 20% + 67.05	- 9.48	- 50.60	+ 7.42
300	225.00	2.43%	@ 30% + 67.05	- 3.82	- 28.73	+ 34.95
			@ 20% + 45.00	- 6.32	- 33.73	+ 4.95
			@ 10% + 22.05	- 8.82	- 38.73	- 25.05
200	150.00	2.14%	@ 20% + 30.00	- 4.21	- 22.05	+ 3.29
			@ 10% + 15.00	- 5.88	- 25.82	- 16.70

TABLE 10.11

CALCULATION OF NET REVENUE EFFECT OF 10% TAX RATE\$ 000,000

Poker machine expenditure in fully expanded industry variable "new money" percentages	Tax earned on "new money" component at 10%	Tax effect of transfer from TAB to poker machine expenditure (33.33% of total transfer)	Tax effect of transfer from Tattersalls Tattslo to poker machine expenditure (66.66% of total transfer)	Net revenue effect
450 @ 80% new money = 360	+ 36.00	- 10.60	- 45.03	- 19.90
450 @ 90% new money = 405	+ 40.50	- 5.30	- 22.65	+ 12.55
300 @ 80% new money = 240	+ 24.00	- 7.06	- 30.20	- 13.26
300 @ 90% new money = 270	+ 27.00	- 3.53	- 15.10	+ 8.37

consequences of gambling related problems and resultant welfare needs will to a large degree befall local government. It should therefore be borne in mind that if poker machines are introduced councils will need State Government assistance to provide the necessary welfare and counselling resources.

It is considered that the revenue received by the Government should also be used to establish and upgrade sporting and recreational facilities. Local councils would be only too willing to advise the Government, based on their first hand knowledge of the local area, as to the areas needs in the sporting and recreational fields."

The City of Warrnambool put a similar view (Ex.2A):-

"In the event of the State Government deciding to introduce poker machines, the Council believes a set fixed percentage of turnover from such machines should be allocated direct to Local Government.

All funds raised for Local Government from this source could be used for:-

- (a) provision of community amenities, including facilities for leisure and recreation
- (b) provision of adequate welfare and counselling services, to provide support for those families who may suffer as the result of some people becoming addicted to the use of poker machines and the consequent adverse effects which are likely to occur in their private households."

Many other councils have submitted to the Board that any poker machine legislation should provide for payment of at least portion of the proceeds of State taxation to local government: see Ex.107. The argument is that the introduction of poker machines will impose further demands upon council services, especially in the community welfare area, which can only be met by increased funding. The Shire of Morwell has suggested that tax receipts should be split equally between the State and local government. Other councils ask for a fixed proportion

of poker machine expenditure, most commonly 10%, but in one case, the Shire of Narracan, 15%. The Shire of Dimboola favoured a rather different approach, suggesting a State tax and the splitting equally between the club and the local council of the net profits after that tax. The point is that there is a strong and widespread feeling in local government circles that it would be appropriate for the State government to share with councils, in some manner, the proceeds of any State tax. Given the social problems which councils are likely to encounter, as discussed in Chapter 7 above, that claim appears to me justified. If there is a poker machine tax, then the government will be under strong pressure to share the amount collected on that account. Councils, and the public, may not understand, or be persuaded by, any argument that the government's net revenue position has not improved to the extent of the poker machine tax. Any respectable share of the "poker machine tax" would cause a negative net effect on each one of the assumptions set out in Tables 10.7, 10.8 and 10.9. The best result on those Tables is that in the first line of Table 10.9 but this would virtually be eliminated if the government decided to pay to councils, say, 5% (not 10% or 15% as asked) of the net expenditure (\$450million) or one quarter (not one half as suggested) of the poker machine tax receipts (\$90million).

Community organisations

10.27 The Victorian Association of Performing Arts Centres opposes poker machines because of concern at the effect of the

machines on the activities of the Association: Ex.2PP, see para. 13.65 below. The Association, however, puts an alternative argument for funds to allow it to compete with poker machine clubs:-

"If poker machines are to be introduced, the State Government is requested to ensure that a fixed percentage of the returns from poker machines shall be directed through the Ministry for the Arts, to enable additional funds to be available for regional P.A.C.'s to effectively compete with licensed clubs.

Perhaps the price of poker machines coming to Victoria may have to be greatly increased subsidies to all existing regional performing arts centres."

10.28 The Mildura and District Sports Assembly and the Eastern Mallee Sports Assembly Steering Committee made a submission (Ex.2SS) that Sports Assemblies be given access to poker machine funds. Their actual proposal was that the Assemblies be given a monopoly of poker machine operation in their area, a proposition which would cause considerable practical difficulties. But the thrust of their submission is access to finance:-

"At present there are only a very few functioning Sports Assemblies, and not all of these operate over an entire Region.

The main limitation on their development at the regional level is lack of financial assistance. Indeed, the only assemblies to accomplish this mandate have been those who have received substantial Government grants - in the order of \$10,000-\$30,000.

In the present financial climate the ability of the State Government to provide on-going funding to other assemblies is extremely curtailed.

In the Western half of the Mallee Region the Mildura and District Sports Assembly has been developing a limited community role for about 2 1/2 years. In the Eastern half the Eastern Mallee Sports Assembly Steering Committee has commenced operation. Both

groups recognise the great need to service and co-ordinate the development of the sporting community throughout the region but lack the financial support to employ the necessary support staff.

If these two sub-regional assemblies were jointly given the licence to operate poker machines in the Region it would enable them to fully develop their role in the community and to assist the progress of all sport and related recreation throughout the Region. It would also allow for the implementation of the previously described white paper policy to establish a Mallee Regional Sports Assembly."

It should, I think, be expected that, if poker machines were permitted in licensed clubs, organisations such as VAPAC and Sports Assemblies would press for access to some of the revenue proceeds.

Racing industry

10.29 Mr. Connor Q.C. expressed the opinion, in a passage I have quoted above, that the effect of the introduction "of a lusty casino industry" would be both to "aggravate and accelerate the decline of racing". I make the same comment about the effect of a lusty poker machine industry. The figures set out in Tables 10.7, 10.8 and 10.9 indicate a possible tax effect of the transfer of TAB expenditure ranging up to \$19million. But these figures, of course, differ from the actual losses of TAB revenue. The assumed losses of TAB gambling expenditure, on the various assumptions embodied in those three Tables range from \$22.22million to \$75million. Mr. Bennett has calculated, from an analysis of the 1982-83 figures, that a five per cent decline in TAB earnings would put "at risk" the jobs of 733 participants in the industry. (Ex.NN6). By the term "at risk" he meant that the jobs would be lost unless there was an alternative source of funding

provided. (T.2648-2649). The TAB net expenditure for 1982-83 was \$825.2million, so five per cent is \$41.26million, a figure lying about the middle of the range of likely TAB net expenditure losses in Tables 10.7, 10.8 and 10.9. The evidence of Mr. William M. Cox, Secretary of the Victoria Racing Club (Ex.NN5,) satisfies me that the financial position of the racing industry is such that it would be hard pressed to avoid making a large number of dismissals if a loss of this order was sustained. Mr. Hedigan Q.C. informed me that, if racing revenue was reduced as a result of poker machine gambling, racing clubs would certainly ask the government to provide to them adequate compensation. Having regard to the alternative, numerous dismissals and a rapid acceleration of the decline in the industry, it is likely that any government would feel bound to accede to such an application. A loss of \$41.26million in TAB expenditure is a loss to the industry, at the guaranteed subsidy rate of 3.525% of expenditure, of \$1.45million. At the top of the range of loss, \$75million on Table 10.7, the guaranteed figure would be \$2.64million, at the bottom, \$22.22 on Table 10.9, it would be \$0.78million.

CONCLUSIONS

Revenue benefits

10.30 The calculations I have made depend directly upon a series of assumptions. I have set out each of my assumptions in order that they may be considered by others and the final figures modified, if necessary, accordingly. However, unless my assumptions are wildly astray, it is clear that the taxation of poker machines does not represent an attractive prospect for

the gaining of additional revenue. Upon the most optimistic assumptions, and assuming that the government resisted pressure to share the proceeds of a poker machine tax, the gain is very small. Upon assumptions which might well prove correct, e.g. Table 10.8, the result is a nominal or negative figure. The problem, of course, is that it is likely, almost to the point of certainty, that there will be substantial transfer from a form of gambling, Tattersalls Tattsлото, in relation to which the government takes 87.5% of player expenditure. In para. 15.31 of his report Mr. Connor commented that "if revenue be the principal consideration... the further promotion of lotteries and the restoration of the racing industry make far more sense than the introduction of casino gambling". That this same statement is true of poker machines is demonstrated by the fact that whereas the Victorian per capita proportion of gambling expenditure to personal disposable income is only 54.13% of that in New South Wales, the per capita gaming taxation revenue of Victoria (\$54.60 in 1981-82) is 78.92% of that in New South Wales (\$69.18 in 1981-82). [4]

Notes to Chapter 10

[1] The figure for the 1982-83 proportion of gambling expenditure to personal disposable income for Victoria is not yet available. I have proceeded upon the assumption that it will not depart significantly from the range of recent years. Should it do so, then some of my comments may need to be reviewed in the light of that fact. The Table should be read subject to the reservation that it leaves out of account illegal gambling e.g. SP betting, which has existed throughout the whole period. It may also tend to overstate the increase

in gambling expenditure by including Bingo, a game which has long been played, only following its subjection to control and taxing in 1977.

[2] According to the Department of Budget and Management, figures more recent than 1979-80 are not yet available!

[3] Even if Victorian clubs were taxed at the same rate as New South Wales (app. 20%) clubs the loss per head would still have needed to be \$102.50 i.e. 16.7% more than in New South Wales.

[4] ABS. The figures are itemised in Ex.S2 p.35.

PART III

THE CHOICE FOR VICTORIA

CHAPTER ELEVEN

MORAL AND ETHICAL ISSUES

WHETHER GAMBLING IS EVIL IN ITSELF

The Connor Report

11.01 In his report on Casinos Mr. F.X. Connor Q.C., reviewed the evidence placed before him upon the morality of gambling (Connor Report Chap.4). It is, I believe, useful to refer to this review at the outset of a discussion upon the moral questions raised by the possible introduction of poker machines into Victoria. This is a recent local consideration of the moral issues raised by the prospective legalisation of a new form of gambling, made in the light of comprehensive evidence upon the question from those persons and organisations in the Victorian community, principally the churches, concerned to argue those issues. Although according respect to views to the contrary, Mr. Connor indicated that he did not consider that gambling is evil in itself (para. 4.22):-

"Covetousness, which is at the core of the argument, must consist, when it is applied to gambling, of wagering to win money with a desire that is inordinate or wrongful or pursued without due regard to the rights of others. It is my firm conviction that vast numbers of Victorians gamble as a form of recreation and do so within their means. I do not think that such people can be fairly described as covetous. A minority plainly gamble beyond their means; but where a form of activity may be licitly pursued by the majority it will not generally be regarded as appropriate for the State to prohibit it simply because a minority abuse it."

Mr. Connor went on to point out that even if the better view were that gambling is evil in itself it would be necessary to consider two further questions, namely, to what extent that

view prevailed in Victoria and what would be the consequences of enforcing such a view by means of legislation. He pointed out the extent of the forms of existing legalised gambling in Victoria, all under government control, and concluded (para. 4.26):-

"Even if the better view were that gambling is in itself immoral it seems clear that such a view is not shared by thousands of Victorians and that to impose it upon them would be to deprive them of an activity they enjoy and which they can presently pursue licitly. Moreover, persons who disapprove of gambling are not forced to gamble and are perfectly free not only to desist from it themselves but also to attempt to persuade others to desist. On the practical plane I believe that legislation inspired solely by religious or moral objections to gambling would lack public support in Victoria."

The stimulation of gambling

11.02 Notwithstanding that conclusion Mr. Connor expressed a strong antipathy to the stimulation of gambling (para. 9.23):-

"Toleration of gambling, however, is one thing. Stimulation of it is something else. I firmly believe that a person's decision to gamble or not ought to be a very private and very personal decision. Despite my toleration and practice of gambling I would feel extremely unhappy if I personally caused a fellow citizen to change from being a non-gambler into being a gambler. I would never know in advance whether or not that person would be able to handle gambling. I do not think that the State should do en masse what I am not prepared to do in a single instance."

Submissions to this Inquiry

11.03 There were two submissions made to me that gambling was intrinsically evil. The submission of the Religious Society of Friends in Victoria - the Quakers - (Ex.2B) expressed the view of the Society that it is morally wrong for one to become

wealthier at the expense of another by chance alone, that gambling already has a strong and harmful hold on Australian society and should not be further encouraged and that "revenue should not be raised by means which a large number of the community regard as morally undesirable." The end, the Society argued, did not justify the means. Gambling was often the product of boredom and hopelessness. Governments should be looking at ways of improving the wellbeing of communities rather than encouraging undesirable palliatives. The Inter-Church Council of Men's Societies of Victoria expressed a similar view, arguing that gambling is immoral as being contrary to the Word of God and that poker machines divert people from the basic purpose of life, which is to live in harmony with God. (Ex.M2)

IMMORALITY OF POKER MACHINE GAMBLING

The Protestant Submission

11.04 The submission of the major Protestant churches recognised the traditional Protestant view that gambling is itself immoral but the evidence of those churches on the moral question, given (in a striking demonstration of ecumenism) by Father Noel Ryan S.J. (Ex.H2), did not depend upon that proposition. Rather it directed attention to particular features of gambling on poker machines. Father Ryan compared the stricter Protestant view with the more liberal Catholic position condemning gambling only when excessive or unfair. He detected some merging of their respective approaches during recent years so that a form of

gambling might arise in relation to which they "would share the same concern for the loss of the Catholic requirement of fair play and the confirmation in this instance of the Protestant expectation of all the dire accompaniments of gambling against which they had long warned their people. This is the type of gambling associated with casinos and poker machines." Father Ryan went on to consider the relevant moral considerations:-

- "For the purpose of this discussion, it may help to distinguish between traditional gambling, such as lotteries, betting, card games, and horse-racing and pressure gambling, that adds to the traditional gambling a highly contrived set of environmental stimulants as in the new casinos, or psychological stimulants through the conditioning effect of the mechanism for gambling as in the new poker machines. In both these instances there is also a much more rapid turnover of money. All these provide much stronger incentives for the players to gamble irrationally, to gamble joylessly, and to gamble beyond their means; with the caricature of efficiency and generosity in the claim of painless extraction for the sake of raising taxes and contributing to a good cause; and the inflated financial opportunities for the entrepreneurs and their camp followers.

In a word, every circumstance that could favour the more liberal Catholic view of conventional gambling has disappeared and the most conservative Protestant forebodings are here verified. There is the further injustice of destroying the positive elements in the Catholic exaltation of play, of liberation from the insidious enthrallment of rational calculation and money, of joyful transcendence of the limits of reason alone, with the catharsis from a controlled imitation of the stress of everyday personal and social events. Nor is there the same assurance however specious that even what is lost to the player is being diverted to a good cause when so much of the money is being syphoned off into dubious channels. The Protestant contention that gambling violates rationality is more than confirmed in this type of gambling by the use of means contrived to encourage playing

beyond the gamblers means so that rationality is certainly no longer being exercised in decision making in a major field of life; that it uses deliberately contrived environmental pressures in the case of the casino and psychological pressures in the case of poker machines to reduce the players' freedom so that their actions become confused and compulsive rather than free and deliberate; and that these inevitably lead to failure in justice to pay their debts or failure in charity to their family or the ever widening circle that appeals to them for help out of their superfluity. And it is no sop to the conscience to attempt to justify this assault on personal and social values by pointing to the fact that it pays back some of the takings in the form of taxation or contributions to good causes. The end could not justify the means."

The Catholic Submission

11.05 The submission made to the Inquiry by three Catholic bishops, Archbishop Little of Melbourne, Bishop Mulkearns of Ballarat and Bishop Daly of Sandhurst (Ex.2MM) echoed the Protestant view. The submission was directed at "pressure gambling", said to include poker machine gambling, which it was argued should be judged differently from activities such as lotteries, betting, card games and horse racing.

"It is a different type of gambling.

It destroys the very nature of play. The essence of play is freedom, diversion, leisure; for these, traditional gamblers are prepared to pay within due limits.

The pressure gambling substitutes for freedom a highly contrived set of environmental stimulants (as in casinos or even clubs) and psychological stimulants (as in poker machines). They mesmerise the gambler into a strange ritual in which money is quickly consumed at the continual spin of the wheel without time to revise or control decisions. There is the compulsive tug of the handle with the bait of tinkling coins, the intermittent reinforcement of rewards just sufficient to sustain the drive, and the rapid supersession of free processes by those of the conditioned brute.

There follows a natural consequence. Instead of seeking diversion through gambling, pressure gambling narrows the vision to the pursuit of amassing money for its own sake, the gambler is straightjacketed within a single activity, any broader social interest swiftly degenerates into self-centred avarice, and good fellowship, associated with traditional gambling, is not possible.

Pressure gambling increases the quantity of gambling beyond acceptable limits.

Poker machines are different from traditional gambling because of the quantity of money invested in them.

The Catholic toleration of gambling supposes that no more money is spent on it than would be spent on other forms of diversion, while making due allowance for the spender's obligations in justice and charity to his dependents, or to others to whom he or she owes money, or to those who have a claim on his or her bounty.

The present traditional facilities for gambling are amply sufficient to absorb whatever amount of money may be available for diversion. To increase these facilities in a form that would notably pressurise people to increase their expenditure on gambling could take it beyond the limits that the Catholic position could tolerate.

Extra expenditure on gambling must make its effects felt elsewhere. It will take an increasing toll on household budgets, family stability, and care of children.

Such conspicuous waste would mock the unemployed. For those with low incomes, gambling with their own meagre resources will further demoralize them.

This extravagance implies a heartless neglect of the needs of our Third World neighbours, the refugees at our door, and the newcomers attempting to establish themselves in their new land.

Pressure gambling also threatens to destroy the creative potential of the growing leisure time available to society. Economists tell us that modern technology is enabling this affluent society to gain more leisure. The challenge to use it creatively is a major one for our age.

The mindless routine of the conveyor belt, the monotonous tasks of the clerical desk, and the ulcers of the executive, were abuses of the human person in the industrial society. We must not allow a new type of gambling, with its mindless repetition and cumulative anxiety, to replace those abuses.

The new entrepreneur in the pressure gambling area is motivated by the same pursuit of money profit that animated his predecessor. A fetish for monetary profit is a destruction of our quality of life; we vigorously and rightly protest against the destruction of the environment; we cannot remain silent before the destruction that would be caused by the unleashing of pressure gambling."

The Bishops' position was endorsed by the Senate of Priests, the main consultative body to the Archbishop, by the Conference of Major Religious Superiors of Women in Victoria and in the results of a survey of the attitude of Catholic laity which indicated approval of poker machines by 20% of respondents and opposition by 75%. [1]

THE TWO LEVELS OF MORAL DECISION

The decision of the individual player

11.06 In his oral evidence Father Ryan developed the ideas contained both in his written evidence for the (Protestant) churches and in the Catholic bishops' statement. He pointed out that there are two separate moral issues - arising at different levels. The individual makes a moral decision in determining whether, in his particular circumstances, he should gamble a particular sum of money. If he knows that he is betting more than he can afford to lose "he is putting himself at risk and I believe that he would be doing wrong." (T.2062) But in the absence of a risk that he will lose more than he can afford there

is, for the individual, no problem. The particular form of gambling will not matter.

The decision of the legislator

11.07 The second level of morality, or responsibility, has the wider importance, and is more relevant to this report. At that level the particular form of gambling matters greatly. This level is the responsibility borne by those who shape public opinion and those who enact laws in relation to a new form of gambling. [2] That responsibility is two-fold. First, it is a responsibility for the financial and physical welfare of individuals:-

"We have to raise the question when we increase the amount of gambling in the community beyond a certain level whether it is going to encourage more people to go through their pay packet, or, if we are bringing in another kind of gambling which is compulsive, is this likely to get through the pay packet more rapidly and more dangerously and in a more insinuating way than the other type?.....The ordinary law-abiding citizen is not aware of the implications of a legal structure that persons like yourself are responsible for building so that he can use his intuitive judgments in a working context, part of which is supplied by the ready made formulas of commonsense that goes into the law itself."
(T.2062-2063).

The second point related to the "level of mental activity" involved in poker machine play. Father Ryan argued that this was a matter of conscience "because the justification for gambling, from the Catholic point of view, is that it is a play, it is fun." (T.2074).

"It seems to us that play is a very important part in the whole of life, art and culture - whatever you like to call it - and everybody who has written on this feels this and talks about this extraordinary capacity that human beings

have for dealing with things of great intensity at some distance. I think this is what the whole theory of play comes to. You are running a little risk, you are playing in that sense, you are coping with it, it is within your means and in doing so you are creating what one calls a certain catharsis.....It also gives you a capacity for coping more realistically with the real life when it occurs.....If we are unhappy about a sort of machine that is doing this just to make money and there is none of that element that comes into it - the larger game of life - that is somehow associated with the other forms of gambling, I think that is a real threat and that generally bothers us. In other words, anything which reduces the level of culture in the community is a matter of concern for the community." (T.2074-2074A).

I put to Father Ryan the view that this might be regarded as an elitist or patriarchal attitude, the legislators going outside their function in imposing a cultural attitude with which others might not agree. In reply, Father Ryan referred me to the process followed by the three bishops in formulating their views on the poker machine issue, one in which they consciously set out to read, sum up and express the view of the Christian community. They had rigorously avoided a personal pronouncement of 'right' or 'wrong'. I asked:-

"If one applies that to the political arena where you have a constituency that is mixed in terms of religious affiliations, not all religious people, that really means that the duty of the legislator, you would argue, would be to investigate the attitudes of the informed members of the community trying to reflect the more thoughtful view that there is in the community?"

Father Ryan replied:-

"Yes, and I think it is very important not to make the slightest suggestion that one section of the community is imposing its views on the whole community. I think what you have simply said is an obligation of conscience for any large group

in the community such as the churches to give this very serious thought which it deserves as citizens in the community, and then if there is a dialectic interchange of views coming out of this Inquiry, good." (T.2080).

Mr. J.L. Bishop for the Inter-Church Council of Men's Societies, expressed the same notion when he referred to "the responsibility of the government to pass laws which it knows will be to the good of the people and to the restraint of things which ultimately will prove to be to people's detriment." (T.2015).

Other submissions

11.08 Three personal submissions were similar in effect to that of the official Church statements. [3] A group of Catholic laity associated with the Parish of Saint Thomas More, Mt. Eliza, put the argument succinctly (Ex.2CC):-

"A social need. If a need to add to the already vast gambling industry is perceived, then we suggest this is symptomatic of a mood in society that seems to us to be based on greed and envy. Greed for easy money at the expense of basic human relationships and to the detriment of those who have little chance or opportunity to gain a reasonable standard of living. Envy for those who appear to have material riches, and a desire to obtain these by almost any means, not necessarily by hard and honest work.

Economic welfare. We have no doubt that poker machines would generate employment, but we cannot see that the numbers of new jobs would be substantial. Nor do we believe the creation of a relatively small number of jobs could justify the risk of upsetting the social equilibrium in general; and the distinct chance of just one individual ruining his life through addiction to this form of gambling in particular. Equally we have no doubt that the income generated from poker machines would enable clubs to enlarge and extend their facilities. But if people feel they need these facilities surely the way to raise the

finance required is by some means that does not place at risk accepted human standards and values. The end does not justify the means. Finally, additional revenue would be available to government, which we assume would put this to good use. If however this is the only reason for introducing poker machines then we feel strongly that it is a thoroughly immoral reason. We have reached a sad and sorry state if the only way we can pay for goods and services is by introducing a game of chance."

Rev. Dr. A.H. Wood, a retired minister in the Uniting Church and a former President of the Methodist Church of Australia, emphasised the caring responsibility of government (Ex.2H):-

"Because lower income groups are most affected by their losses on poker machines which they cannot afford (whereas a casino caters for the comparatively affluent) the government's responsibility is to safeguard working people including migrants and young people.

The government should not encourage wastefulness, greed, indolence, through the easy and continuous operation of poker machines which prove compulsive to unsophisticated people.

Though it is said that 'people cannot be made good by Acts of Parliament', no government should encourage harmful social effects by providing more gambling facilities."

The Catholic Women's League of Victoria and Wagga Wagga - Social Questions Committee also argued the responsibility of government to safeguard the interests of poorer people - Ex.2R.

CONCLUSIONS

The need for the facts

11.09 The evidence I have cited raises for consideration two separate questions. The first is whether gambling is, in itself, evil. Only two submissions

asserted that proposition. It is, I believe, significant that the submissions both of the major Protestant churches and of the three Catholic bishops did not go so far. The contrary view of the Quakers and the Inter-Church Council of Men's Societies must be accorded respect but the evidence does not support a finding that this is the position even of most Christians. In common with Mr. Connor, I do not believe that such a view would be widely shared in the Victorian community. Accordingly, it would be wrong to determine the issue by adoption of that approach. The second question is directly raised by the submission of the major churches: given that gambling is not, in itself, immoral does poker machine gambling have such characteristics that it should be regarded as immoral and rejected on that ground? As Father Ryan explained, this is not really a question for the individual player. Rather it is a matter for the legislator confronted with the question whether it is a responsible action to permit the introduction into the State of this new form of gambling. But, as the statement of the issue itself indicates, it is not possible to decide the question without reference to the characteristics of this particular form of gambling. If it be correct that poker machine gambling offers a lower level of mental activity, or is less socially stimulating, than other forms of recreation so as to reduce the level of culture in the community some people will share the Ryan view that on this ground it should be rejected. If it be correct, as I think, that this form of gambling is "pressure gambling"

indulged in disproportionately and to their disadvantage by lower income groups, many people, certainly those who see government as having a responsibility actively to safeguard the interests of the less advantaged members of the community, would take the view that this should be the end of the matter; poker machines should not be permitted. What proportion of the community, or of the legislative, would take that view I do not know. Many, I believe, would wish to consider the benefits which poker machines offer before making up their minds. They would feel that the issue does not present a moral absolute but rather a moral responsibility. They would argue that when all the facts are in a judgment must be made bringing to bear one's individual perceptions of the role of government and the responsibility reposed in government and in the Parliament; the "obligation of conscience" arises. But first the facts - so I turn to the case for poker machines.

Notes to Chapter 11

[1] The remainder had no opinion. The survey was carried out at the initiative of Father Kevin Mogg, the Episcopal Vicar for Social Welfare in Victoria. Father Ryan, who is qualified statistician, assisted in the framing of the question and the instructions for the conduct of the survey. After a pilot poll validated the technique ballot papers were distributed to 20% of the parishes within the Archdiocese of Melbourne. No Church statement had been made on the issue at that time and priests were asked not to preach on the subject. After morning Mass the ballot papers were handed to adult parishioners. They were asked to answer 'Yes' or 'No' to the question: "Are you in favour of the introduction of poker machines into Victoria?". Upon the basis of Father Ryan's evidence (T.2048A-2057, 2076) I am satisfied that the survey can be regarded as an accurate expression of the opinion of church-going Catholics at the time (August 1983) when it was taken.

[2] The responsibility can, according to Father Ryan, extend also to those who extend an existing form of gambling, e.g. the adoption of multi-coin poker machines in an existing poker machine club, raising the potential stake per play from 20c. to \$1. "I think there is a very definite moral responsibility for the club to decide whether they have gone beyond the bounds. I think quantity becomes quality, if you like, here." (T.2077-2078). Father Ryan distinguished the decision to expose the community to a new or intensified form of gambling and the continuance (e.g. poker machines gambling in Catholic clubs in New South Wales) of existing forms of gambling: see T.2070.

[3] A fourth submission, from Mr. and Mrs. Frank Ford (Ex.EE2) argued the responsibility of government in terms of ethics rather than morals, arguing that the government would not be justified in making a decision to introduce poker machines into Victoria unless and until there was agreement as to the ethical imperatives within the community.

CHAPTER TWELVEPOKER MACHINES IN LICENSED CLUBS: (1) THE LCAV CAMPAIGN

EARLY DAYS

The LCAV

12.01 The Licensed Clubs Association of Victoria ("the LCAV") is an unincorporated body established in 1916 to represent the interests of Victorian licensed clubs. I was told that, at least since 1965, it has numbered as members about 80% of all licensed clubs in the State. The present membership is 470 clubs, out of a total of 542 licensed clubs in Victoria. This membersip is broken up as follows:-

Golf clubs	139
Bowling clubs	104
R.S.L. clubs	76
Social clubs	69
Football and cricket clubs	35
Sports clubs	16
Yachting and boating clubs	10
Ethnic group clubs	9
Tennis clubs	4
University clubs	3
Motoring clubs	2
Racing and trotting clubs	2
Aero clubs	1
	<hr/>
	470

The LCAV is the only recognised administrative and employers body for Victorian licensed clubs. It is registered under the Industrial Relations Act and is a respondent to various industrial awards. It is a member of the Victorian Employers Federation and a member of the Liquor Industry Consultative Council. It provides a member to the Liquor Industry Advisory Panel. The Association is a member of the Club Advisory Committee operating under the auspices of the Department of

Youth, Sport and Recreation and is represented on the Victorian Tourism Industry Training Committee and other training bodies. It joined with equivalent bodies in other States in forming the Registered and Licensed Clubs Association of Australia. Clearly, it is the organisation best placed to put before the Inquiry the case on behalf of licensed clubs. No one has challenged its right so to do, although questions have arisen as to the extent of consultation between members of the LCAV executive and member clubs and the extent to which the LCAV submissions accord with the wishes of individual clubs. The LCAV is managed by an annually elected executive of seventeen persons (nine members elected by and from member clubs located in the metropolitan area, one member elected by and from each of seven country districts together with a Secretary elected by and from the whole electorate). Three members of the current executive, Messrs. M.J. Hornsby (who was Secretary from 1970 until October 1980), P.W. Pannam and K.T. Curtis gave evidence before me. Neither Mr. Carl Stenning, who has held the office of President since August 1977 or Mr. Max Sturcke, who was Secretary from October 1980 until December 1982, both of whom have been intimately involved in the campaign for legalisation, were called to give evidence. In the case of Mr. Sturcke this was not surprising. He had retired as Secretary because of ill-health and was said still to be not well. But Mr. Stenning remains active. He frequently attended the public sittings of the Board and even joined some inspection tours. I make no criticism of the fact that counsel for the LCAV did not call Mr. Stenning. I did not request that he do so because there

was no matter of importance which only Mr. Stenning could clear up. The significance of the decision not to call the longstanding President of the Association is, to my mind, simply reinforcement of Mr. Hornsby's role as principal LCAV spokesman. He could have been, but was not, corrected or contradicted by his President.

Early moves for legalisation of poker machines in Victoria

12.02 Prior to the annual general meeting of the Association held on 5 December 1972 Mr. Hornsby, the then Secretary, circulated to member clubs a draft submission to be presented, if approved by the meeting, to the then Victorian government. (Ex.B3(b)). The draft proposed that machines be limited to denominations of 2 cents, 5 cents and 10 cents and be installed only in clubs which so decided in general meeting. The LCAV annual general meeting, by majority vote, approved the submission and this was forwarded to the then Chief Secretary on 24 January 1973. (Ex.B3(c)). The then government declined to accede to the submission. Between that date and 1978, according to Mr. Hornsby, the subject was raised at various annual general meetings with resolutions urging the executive to continue to press for machines but little was done to prosecute the matter. At the annual general meeting of 30 August 1978 Mr. K.T. Curtis of the Mildura Working Man's Club spoke of the disadvantage being suffered by Victorian border clubs and successfully moved for the formation of a Poker Machine Sub-committee to formulate a submission to the Victorian government but the minutes do not indicate that any sub-committee was in fact formed until

October 1980, and then for a different purpose. The Association wrote to the Victorian Football League ("the VFL") on 6 November 1978 requesting it to "spearhead" a campaign because of its "great weight" in this State (Ex.B3(e)) but the VFL rejected the request, saying that the "matter would be best handled at club level" and that the VFL clubs "do not desire the League to be officially associated with the proposal". (Ex.B3(f)). In January 1979 Mr. Stenning wrote to the then Minister for Youth, Sport and Recreation suggesting that the introduction of poker machines into Victoria would provide new sources of revenue to help finance the 1988 Olympic Games, then mooted for Melbourne. The Minister replied noncommittally in February. The matter does not appear to have been pressed. (Exs. B(g)-(k)). Also, in February, the matter was discussed at a Sports Administrator's Conference held at the Melbourne Hilton Hotel; again without positive result.

The LCAV seeks help

12.03 In May 1979 the LCAV decided to seek outside assistance. This decision is not difficult to understand. Six and a half years after adopting a policy favouring the introduction of poker machines into licensed clubs in Victoria it had made no progress whatever. The campaign, if it may be so called, had been intermittent and half-hearted. Whatever the position of delegates to annual general meetings of the Association there appears to have been little awareness of, or support for, the issue at club level. [1] The issue had no political impact; it was "talked about very little". (T.1617) As Mr. Hornsby said in evidence the LCAV was "not getting

very far with the campaign". (T.510A). In these circumstances Mr. Hornsby wrote to the Ainsworth organisation on 16 May 1979 seeking information on certain specific matters and "all the support we can obtain" (Ex.B3(m)). He stated in evidence that similar letters were sent to the other two companies then supplying the New South Wales market, Nutt and Muddle and Bally, but without result. (Ex.B3(a)).

ENTER VIBERT

The role of Mr. Vibert

12.04 Mr. Hornsby's letter to Ainsworths fell on fertile ground. The letter had mentioned Mr. E.P. Vibert a poker machine analyst, referred to in Chapters 1, 4 and 6. The letter sought the co-operation of Ainsworth "in having Mr. Vibert assist us". Mr. Vibert had a discussion with Mr. Ainsworth in which it was decided that Ainsworths would underwrite, "to the tune of at least \$150,000 a year for five years", a campaign for the legalisation of poker machines in Victoria, Queensland and South Australia. According to Mr. Vibert, he and Mr. Ainsworth agreed that he, Vibert, was "the only person in Australia who could successfully head up such a programme". It required a person "who knew and understood the whole poker machine industry, had a love and commitment for the New South Wales and Australian Capital Territory models and was able to articulate the case". (Ex.MM(2)). Mr. Vibert then came to Melbourne and saw Mr. Stenning and Mr. Hornsby. He proposed to them that he set up an organisation to be called the Australian Club Development Association ("ACDA") to promote poker machine legislation in Victoria, Queensland and South

Australia. At its meeting on 19 June 1979 the LCAV endorsed this proposal. From that moment until late 1982, at the earliest, the LCAV was locked into a campaign inspired, planned, prosecuted and controlled by Mr. Vibert. I do not mean that the LCAV was in any way opposed to the direction which Mr. Vibert took; on the contrary, the Association was the thankful recipient of the results he achieved, rejecting him only when his "high pressure activity", as Mr. Hornsby called it, became embarrassing. (T.223). I believe that the LCAV acted in good faith but it understood little and questioned less. In the result and despite occasional disquiet from some executive members [2] the LCAV has been swept along by a plausible rogue intent on earning a multi-million dollar commission and ready to use anybody and any material, however false or misleading, to achieve his goal. The disadvantage, from the LCAV's point of view, has not merely been its recent embarrassment. More profoundly, the LCAV reliance upon Mr. Vibert has meant that it has not adequately informed itself, or discussed with its member clubs, the implications for its own members of being granted what it asks. At a series of meetings (15 April 1980, 13 May 1980, 15 July 1980, 23 September 1980) the need for a poker machine policy -as distinct from a campaigning strategy - was mentioned, but discussion deferred. Eventually on 28 October 1980 Messrs. Stenning, Pannam and Sturcke were appointed a sub-committee to consider policy. The sub-committee did formulate some campaign guidelines but it has never made recommendations as to policy. Until after this Inquiry commenced major policy issues were left unresolved. For example:-

- a) Should the clubs be allowed to expand to the size - in membership and physical terms - of New South Wales clubs? The LCAV written material, as submitted to this Inquiry, was substantially produced by Mr. Vibert. (T.285, 286, 1737). That material assumed the New South Wales scene. It contained no proposals to limit club size. However, in his oral evidence Mr. Hornsby was clear that he did not want to see a repetition of New South Wales conditions. He referred critically to the "Taj Mahals" in New South Wales. He believed that all members of the LCAV executive would support his view. (T.256). He personally had reassured clubs that any expansion would be "gradual and sensible". (T.246). His concept of a club was that of "a group of people with like interests". (T.225). He thought that the New South Wales clubs "have lost the concept of club life". (T.352). At one stage he expressed the view that "the government can easily stop us from blowing out in any way at all" (T.243) and said that "we have got to find a formula for limiting the number of machines". (T.352). I asked him to consider, at his leisure, how this might be achieved. The following week, after a meeting of the LCAV executive, I was informed that the executive took the view that the growth of the industry will be governed by demand and that legislation restricting growth was undesirable. (T.498). The LCAV policy, formulated at that late stage, thus leaves open the very prospect which Mr. Hornsby had assured the clubs would not occur.

- b) Consistently with his concept of club life, Mr. Hornsby placed some emphasis on the enforcement of the door rules restricting access by visitors, as did other LCAV witnesses. He thought that such restrictions should also apply to access to the poker machines. (T.265). He agreed that it was common experience in New South Wales for people to walk in off the street without signing the book or without being properly signed in by members ("the open door") (T.305), that the desire of non-members to get access to clubs would be likely to increase if they had poker machines with subsidised meals etc. (T.304), and that even now there were problems of enforcement of door controls by both the police (T.304) and the LCAV (T.350). Yet no suggestion was made to me at any stage how the aggravated problem would be met, so as to retain the club concept. More relevantly, in the present context, it does not appear that this issue, with its ramifications for club life, has ever been addressed by the LCAV either in its own deliberations or in discussions with the clubs. For example, the meeting of Sunraysia clubs to discuss the poker machine issue, which was attended by Mr. Stenning as President of the LCAV, discussed only "the advantages there would be to us if we supported the move to introduce poker machines". (Curtis T.550).
- c) Shortly before the State elections in April 1982 the ACDA published a study commissioned by it from Dr. Andrew Holsman predicting that the legalisation of poker

machines in Victorian clubs would create 30,000 new jobs. Dr. Holsman's projections assume a reproduction, on a per capita basis, in Victoria of the New South Wales conditions - Taj Mahals, open door and all. These assumptions were, of course, in direct conflict with the wishes of the club movement as perceived by the LCAV and, indeed, of the members of the executive itself. The study assumed 25,000 machines in Victorian clubs, including multi-coin machines. The figure of 25,000 was about twice Mr. Hornsby's estimate of the likely number within ten years. (T.510). No witness predicted a higher figure than did Mr. Hornsby. Moreover, LCAV policy did not extend to multi-coin machines, which had not been discussed. (T.330). Yet, without discussion of the figures, the LCAV executive published the Holsman study for the information of its member clubs, politicians and the general public as a guide to the employment generating potential of legalisation. The suggestion was made to Mr. Hornsby that, in the circumstances, the publication of the Holsman document was 'totally deceptive'. I agree that it was but I doubt that there was deliberate deception by the LCAV. Rather I believe that the explanation is that the LCAV executive, sharing Mr. Hornsby's concept of "a little fund raising operation in our clubs that will keep them viable" (T.243) involving "four or five machines" per club, except for perhaps ten large clubs who would have more (T.262), simply abdicated its responsibility to obtain accurate information, to test assumptions and to apply judgment; even carefully to read the material it was distributing. It surrendered everything to Mr. Vibert, a man acting under the incentive of a commission of \$100 for every

Ainsworth machine sold into Victoria during his lifetime (T.1741-1742), a pot of gold potentially worth millions of dollars. Mr. Vibert was in turn supported and financed by the Ainsworth group, which stood to gain sales in Victoria (based on the Holsman forecast and its present market share) of perhaps \$200million within a decade of legalisation.

- d) At the second preliminary hearing on 6 May 1983 Mr. Bongiorno addressed the Board on issues likely to arise. He mentioned criminal activities in clubs and the need for controls. Specifically, he referred to the need to consider the licensing of persons having charge of, or access to, machines. (T.33). It was the view of every expert witness in relation to administrative controls, including Mr. K. Daley who was called to give evidence on behalf of the LCAV (T.147-148), that club directors and secretaries should be required to be licensed, that the machines should be subject to percentage and cash flow analysis, as they now are in both New South Wales and the Australian Capital Territory, and that they should be computer monitored. Yet none of these matters, or indeed the subject of criminal activity in poker machine clubs in general, were ever discussed by the LCAV with the clubs. These matters were not even considered by the LCAV executive until the special meeting called to consider questions put by me to Mr. Hornsby. (T.529,612-613). Mr. Hornsby had expressed the personal view that there should be "rigorous controls of people who operate

poker machines" involving investigation of club directors (T.266) (though, curiously I thought, not club managers) minimum educational qualifications for directors (T.313-314), and scrutiny of club contracts to guard against kickback arrangements. (T.269). These were, of course, matters of profound importance to individual clubs but Mr. Hornsby said that the clubs would not know about these projected controls. (T.270). It was LCAV policy, Mr. Hornsby said, that all clubs having poker machines should be required to be incorporated, though this had not been disclosed prior to his evidence. (T.316). Notwithstanding his view, I was told that the special executive meeting had decided that only clubs with ten machines or more (on Mr. Hornsby's prediction a mere handful) should be required to be incorporated and that there should be "no scrutiny of club directors or key employees other than currently required by existing statutory provisions", in effect no scrutiny. (T.494).

- e) LCAV policy is, and always has been, that the installation of poker machines in particular clubs should depend upon an affirmative decision by secret ballot of members. Some of the material filed by the LCAV with the Board complained of the "devastating" effect on two Victorian border clubs caused by the establishment of a club across the Murray (T.355) and Mr. K.T. Curtis, a trustee and past president of the Mildura Working Man's Club and a member of the LCAV executive, complained that his club could not compete with the clubs at Wentworth

and Dareton (NSW) "on an equal basis" and that was "unfair". (T.559). Yet the LCAV executive did not address itself in any way to the pressures which would arise for a club whose members preferred not to install poker machines but who were competing with clubs who had elected to take this facility. Once again this issue does not appear to have been raised with member clubs.

- f) Extensions of the problem of unfair competition arise where, in a sporting competition, one or more teams is supported by a poker machine club whilst others are not or where, for example in the VFL competition, it is probable that poker machine wealth will simply increase the payments made to players. These results, said to be undesirable by Mr. Peter Pannam, general manager of the Carlton Cricket and Football Social Club and a member of the LCAV executive, (T.617,623-625) were apparently never considered by the LCAV executive or the poker machine sub-committee of which Mr. Pannam was a member, or ever raised with constituent clubs.

I have made these comments because I regard these matters as having considerable significance in the overall picture. The LCAV represents 470 clubs, having a total membership of about 300,000 persons. Prima facie, one would regard a claim by such an organisation for the licensing of a new form of gambling within its member clubs as being a considered claim, based upon an assessment of the benefits and detriments of such a concession to, at least, its members. One would assume that the club industry has done its homework, consulted widely and

is the best judge of its own interests. That assumption, unfortunately, cannot here be made. On the contrary, it is clear that there was no real or informed discussion about the merits, for the club industry itself, of the introduction of poker machines. The members of the LCAV executive, and many club managements, simply saw poker machines as an easy way of financing the gleams in their various eyes. The LCAV stumbled upon a master propagandist and left the rest to him. Because he took the load so completely from their shoulders they never thought to ask themselves, and their member clubs, the hard questions even about their own interests.

The formation of ACDA

12.05 On 25 June 1979 a meeting was held at the Twin Towns Services Club, Tweed Heads, NSW. The purpose was to evaluate a submission prepared by Mr. Vibert for the formation of the ACDA. In attendance were two representatives of the Queensland Registered and Licensed Clubs Association, two representatives of the South Australian Licensed Clubs Association, Mr. Carl Stenning in his capacity as President of the LCAV, Mr. Vibert and Mr. Graeme Fullerton, an Ainsworth executive. The meeting decided that ACDA should be formed, under the Presidency of Mr. Stenning. Mr. Vibert was appointed to the honorary position of Executive Director. The minutes, prepared by Mr. Fullerton (Ex.B3(n)) record that Mr. Vibert "clearly spelt out the research would be prepared as a common source of interpretation of various political answers" to ensure "that all people spoke with a common 'fact base' with central interpretation, thereby alleviating the potential for a 'split of the ranks' by being

cross quoted at a later stage". ACDA would prepare material but "it was up to the Executive of the individual States as to who the author is purported to be".

Funding of ACDA

12.06 The minutes of the inaugural meeting of ACDA make no reference to finance. But, according to Mr. Hornsby, the LCAV was told by Mr. Vibert at an early stage that the Ainsworth group had agreed to underwrite the cost of a five year campaign. (T.222). Mr. Vibert also said that he believed that funds should be canvassed from all sources that would directly benefit from the legalisation of poker machines. But any such contributions have been minimal. Victorian clubs contributed \$29,000 at the time of the last State election and one seminar produced a profit which was used in the campaign. But the largest proportion of the cost was borne by Ainsworth. The evidence does not establish the total Ainsworth expenditure but it amounted to \$260,000 in the period January-September 1981 alone. (T.1639). This was the period of peak expenditure in Victoria but the figure does not include the value of Mr. Vibert's time. He was then being paid \$110,000 per annum by Ainsworth. Mr. Hornsby did not feel that any problem arose about the desirability of a manufacturer financing the campaign. He said that LCAV policy was not to recommend any particular manufacturer, although the LCAV did recommend that Victorian poker machines be restricted to those of Australian manufacture. He said that Ainsworth "has always come out as the leading manufacturer" and he agreed that Ainsworth would be likely to get most of the business. (T.342).

Vibert-Ainsworth relationship

12.07 Mr. Hornsby described Mr. Vibert as a "lobbyist".
 (T.222). I asked him what he understood to be the
 relationship between Mr. Vibert and the Ainsworth organisation
 at the time of the formation of ACDA. He replied (T.354-355):-

"A. At that time I understood Mr. Vibert ran a
 poker machine analysis bureau. I have never
 been told anything different. He had
 connections with the Ainsworth group, some
 internal connections in that he probably got
 business from clubs because they had a number
 of Ainsworth machines in them, or something
 like that.

Q. You did not understand him to have any formal
 relationship with Ainsworth?

A. I did not understand him to be working for
 Ainsworth."

In fact Mr. Vibert was working for Ainsworth. In 1976 Mr.
 Vibert had left the employment of Nutt and Muddle and
 established a poker machine analysis service. In 1977 he
 became a consultant to the Ainsworth group being involved, at
 first, with promotions and public relations and, later, with
 sales and personnel training. At that stage he retained his
 analysis service. However, in mid-1979 it was decided that Mr.
 Vibert should devote himself full time to the campaign for
 legalisation in Victoria, Queensland and South Australia.
 Terms were negotiated. According to Mr. Vibert, the agreement
 was that he, Vibert, would work full-time for Ainsworth for a
 period of five years at a salary of \$100,000 per annum together
 with office, entertainment and travelling expenses, a weekly
 car allowance and a commission of "not less than" \$100 for each
 Ainsworth machine introduced into Victoria. (T.1611). The

salary was to be indexed to the Consumer Price Index and is now running at \$135,000 per annum. At least one draft agreement (Ex.MM9) has been prepared. That draft makes the \$100 commission applicable to all of Australia other than New South Wales and applies to all machines sold or leased by Ainsworth during the lifetime of Mr. Vibert. He was aged 41 years in late 1979. Mr. Vibert said in evidence that in fact no agreement has been signed. The reason, according to him, is that in 1980 Mr. Ainsworth disagreed with the provision for the \$100 commission. According to Mr. Vibert, "his view is we will decide on the matters once machines are legalised". (T.1665). I expressed surprise that Mr. Vibert should have proceeded with the campaign without bringing the matter to a head. He replied (T.1742):-

"It is an unusual situation. I think you have to know the two people involved and also the dilemma I found myself in when the disagreement really arose. I had launched the operation. I had run down my analysis bureau and I had committed myself to the campaign...When you say that I should have brought it to a head I am on the horns of a dilemma. If he says, 'No', I have committed myself and I am up and running. I am in the fortunate position, however, of knowing him over a number of years and he has never ever let me down on a shake hand of a deal.

Q. But he has put you on notice now, when he denies the deal?

A. Yes, but I believe when it happens he will honour the deal. I hope it is so - if it is not people will say, 'What a fool you were'.

Q. From your point of view there are millions of dollars swinging on it?

A. Yes."

Whatever the justification for Mr. Vibert's optimism it is clear that throughout the whole Victorian campaign he has held

the belief that he would receive a direct commission on Ainsworth sales into this State. I asked him whether he ever told anyone in the LCAV about his arrangement with Mr. Ainsworth. He claimed to have told Mr. Stenning and Mr. Sturcke and said that he thought this was documented (T.1743). Later it was conceded by his counsel that there was no documentation. (T.2755). He thought that he may have told Mr. Stenning and Mr. Sturcke "in mid-1981 maybe or 1982". (T.1743). This was, of course, long after the campaign began. In the absence of evidence from Mr. Stenning and Mr. Sturcke I am not prepared to reject Mr. Vibert's claim that he told those gentlemen. What is clear, indeed conceded (T.1743), is that he did not inform the executive of the LCAV, let alone members of the constituent clubs, that he had a direct pecuniary interest in getting Ainsworth machines into Victoria. He told me that "it never crossed my mind" to make such a disclosure. He did not think that disclosure would have been a proper business principle to follow. (T.1743). That is a view I do not share. It seems to me that the recipients of Mr. Vibert's "educational" material, Victorian clubs, Victorian politicians and the Victorian public, were entitled to know his capacity for objectivity.

LCAV guidelines

12.08 On 29 August 1979 Mr. Vibert and Dr. Geoffrey Caldwell, whose evidence to this Inquiry is discussed at para. 5.21 above, addressed the annual general meeting of the LCAV. Their addresses were recorded and tendered to the Inquiry. (Ex.B3(o)). Mr. Vibert told the meeting that "poker

machines are very simple to administer and to control from a legal point of view." They are not: see Chapters 6 and 20. He spoke of the time taken to lose a week's wages in a machine on the basis of a maximum of 20 cents per game. He ignored the multi-line machines already in existence in New South Wales clubs (T.207). He said that poker machines were "entertainment devices" and added "Now, it changes the whole attitude to poker machines when it becomes entertainment, as opposed to gambling". No one, I believe, could honestly so describe modern multi-coin machines: see para.2.17-2.19 above. Mr. Vibert predicted 18,000 machines in Victoria immediately after legalisation and quoted income, taxation revenue and employment figures based on that figure. (Ex.B3(o)). Mr. Vibert produced guidelines for legalisation which were adopted by the Association. (Ex.B (p)). Stated shortly, they were:

1. Poker machines to be confined to licensed clubs.
2. Ballot of members before machines introduced into any club.
3. Poker machines to be administered by a special statutory authority.
4. Poker machines to be manufactured in Australia with not less than 80% Australian components. Manufacturers to set up assembly, warehousing, service and sales divisions within Victoria.
5. All machines must be electronic.
6. Machines to be carded to return 87%. Denominations 5 cents, 10 cents, 20cents with maximum jackpot of \$200. No multi-coin or progressive jackpot machines to be permitted.
7. Monthly accounting in the "now standard format in the A.C.T. and N.S.W., which enables a full monitoring of machine performance to take place". (see paras.3.27-3.31 above).

8. Government tax at 10% of net machine revenue for a period of five years and then to be reviewed.
9. Licence fee per machine, regardless of denomination, of \$200.
10. 10% of the Government tax from poker machines to be paid to a Victorian Sports Foundation.

These guidelines were consistently stated as LCAV policy until, during this Inquiry, counsel for the LCAV announced that his client no longer adhered to item 4 - Australian manufacture. It is important to note that in 1979, or even today, the Ainsworth organisation would have been in the best position to be able to comply with item 4.

THE ACDA "EDUCATIONAL" MATERIAL

The campaign begins

12.09 Once the guidelines were adopted the campaign got under way. Mr. Vibert put an action plan to the LCAV executive on 11 December 1979. The seminar programme began early in 1980. Overall probably a score of seminars was held. Mr. Vibert was the main speaker, usually backed by Dr. Caldwell, sometimes by Mr. Lamont. By February 1980 Mr. Vibert was able to distribute to members of the LCAV executive an 84 page booklet prepared by him and entitled "The Facts about Poker Machines in NSW and the ACT". This booklet went out to the clubs under cover of a letter (Ex.B3(s)) signed by the President, Mr. Stenning, in which he referred to Mr. Vibert and said:-

"Mr. Vibert receives no remuneration for this work, on the understanding that, when machines are legalised in this State, he will become this Association's poker machine adviser and his computerised poker machine analysis system will have our official support".

Mr. Stenning said nothing about Mr. Vibert's arrangement with the Ainsworth organisation. Even on Mr. Vibert's evidence, he would not then have known about it. Moreover, according to Mr. Hornsby the information given to the clubs was not only inadequate but wrong; there was no arrangement with Mr. Vibert that he should become the Association's adviser or that the Association would officially support his analysis system. (T.249). Mr. Vibert agreed that this was so. (T.1618).

"The Facts About Poker Machines in NSW and the ACT"

12.10 The booklet itself (Ex.B3(t)), which was distributed to all clubs and to over 1,200 club committeemen, predicted that five years after legalisation there would be 646 poker machine clubs containing 12,000 machines returning \$216million profit to the clubs and \$84.9million revenue to the government. An asterisk indicates that these predictions assumed "inflation and change in denominations" (p.40) but the significance of the assumption was not spelt out. It could only have meant an assumption of 50 cent machines, not available anywhere in Australia, or, which was more likely, the multi-coin machines then on the New South Wales market. But both these assumptions were contrary to the LCAV guidelines listed in the booklet itself, which limited licensing to machines of denominations 5 cents, 10 cents and 20 cents and which stated specifically "no multi-coin or progressive jackpot machines to be permitted" (p.52). To allay fears of excessive gambling the booklet set out a table (p.33) showing the time required by a player "to dispose of a week's wages in a poker machine". The exercise assumed six

coins per minute, an extremely low figure, and a return to player of 85%, the theoretical return including all jackpots. Further, it assumed not only single coin plays but that the player was content to play only the 10 cent machine. On these assumptions the table asserted that it would take a player 40.13 hours to lose an average pay packet of \$220. The picture would, of course, have been markedly different if the player loss table had made the same assumptions as the profit/revenue table.

Contact with the Labor Party: the Geelong connection

12.11 From time to time bulletins were issued to the Victorian licensed clubs in the name of the LCAV and over the signature of Mr. Stenning. Mr. Hornsby said that he did not think that Mr. Stenning wrote them. (T.282). I accept that he did not. The literary style is vintage Vibert even down to the repeated use of a favourite cliché about providing "light not heat". The bulletin of April 1981 is important for its reference to Mr. Neil Trezise, Member for Geelong West and Chairman of the Labor Sport and Recreation Committee (now Minister for Youth, Sport and Recreation), as being the contact point within the Labor Party. In November 1979 Mr. Vibert had commissioned a survey of the attitudes of Members of the Legislative Assembly. The question was:-

"Would you favour the introduction of poker machines in Victoria?"

The survey recorded only one member in favour, 25 against and the remainder either uncommitted, no comment or unavailable. Individual reactions were recorded. That for Mr. Trezise was:-

"Attitude - uncommitted"

"Comments - there has been no party decision so there's nothing I can say about it."

By early 1981, with the seminar programme well under way and an election coming up, Mr. Vibert was ready to seek to change political attitudes. On 16 February 1981 he wrote to Mr. Frank Wilkes M.P., then the Leader of the Opposition (now Minister for Local Government), to ask him to look more closely at the issue. He enclosed various documents. Mr. Wilkes replied on 24 February 1981 stating that "the Victorian ALP is opposed to the introduction of poker machines into Victoria following a series of studies of the situation in other States." (T.2902). However, late in February 1981 Mr. Vibert had a meeting with Mr. Trezise apparently at Mr. Trezise's Geelong office and in the company of Mr. Don Cole of the Victorian Country Football League. During the conversation, according to Mr. Vibert, "I started to talk about the employment potential" of poker machines. Mr. Trezise "suggested to me Geelong could be a very good place for a factory to be built" and "asked me to see the Geelong Regional Development people, which I did." (T.1746). Mr. Vibert denied that he ever told Mr. Ainsworth of Mr. Trezise's interest in a factory being located in Geelong but he discussed location with Mr. Ainsworth "at great length" (T.1635) and, in the presence of Mr. Ainsworth, he told Dr. Andrew Holsman, who was then engaged in the preparation of his economic study, that the assembly plant was to be in Geelong. (T.1634,1747). In the result Dr. Holsman's study (Ex.55) stated (at p.47):-

"Because of the current uncertainty regarding the outcome of the poker machine issue Ainsworths have not undertaken any exhaustive search of location possibilities for a Victorian assembly plant.

However, because of its ideal location in relation to the metropolitan market and the ready availability of both land and female labour, the company is known to be particularly attracted to the Geelong region. An infusion of 300-400 jobs in that area would represent a significant boost to a flagging local economy."

The written evidence to this Inquiry of Mr. Derek Hagger, the manufacturing manager of the Ainsworth group, (Ex.C7(a)) states that the proposed Ainsworth factory "would be part of a central base in the Melbourne area...and at present North Melbourne would appear to be a feasible situation". Mr. Hagger listed selection criteria including proximity to the airport and to the largest part of the market. Mr. Hagger was unavailable to give oral evidence but Mr. Peter Clarebrough, the group general manager, spoke to his material. He agreed that Geelong did not meet Mr. Hagger's selection criteria (T.1356) and said that he "did not consider (Geelong) would be a likely position for a manufacturing plant". (T.1359). He knew nothing about any proposal to locate in Geelong except what he had read in the Holsman study. (T.1358). He agreed that the study was, on this question, "misleading". (T.1358-1359). It clearly was. I do not accept Mr. Vibert's denial that he had informed Mr. Ainsworth of Mr. Trezise's interest in having any assembly plant located in Geelong. I think that it is clear that Mr. Vibert and Mr. Ainsworth realised that Mr. Trezise, by reason of his shadow portfolio and likely portfolio in government, was a key man to be persuaded to their view. They understood his interest in attracting a new industry to his electorate and set out to deceive him.

Whether or not he was deceived does not matter. The attempt is consistent with the tactics of the whole campaign. I would emphasise that I offer no criticism of Mr. Trezise. His desire to provide employment opportunities in a depressed area can only be described as laudable. It is unfortunate indeed that an attempt was made to take improper advantage of it.

"News from the LCAV": Contact with the Liberal Party

12.12 The May 1981 bulletin (E.B3(v)) reported a meeting with the then Premier, Mr. Hamer on 12 May. The LCAV executive initially decided that only Mr. Stenning and Mr. Sturcke should see Mr. Hamer but the delegation was expanded to include Mr. Vibert, Dr. Caldwell, Dr. Holsman, Mr. Colin Lamont and Mr. Don Oberin, the Mayor of Echuca. [3] Mr. Lamont was described in the bulletin as "Vice President of the Queensland Registered Clubs Association and a former Liberal Member of the Queensland Parliament". So he was. According to Mr. Vibert, Mr. Lamont had been persuaded by him to stand for election to the executive of the Queensland Association, along with other pro-poker machine candidates, in August 1980. (T.1727-1728). Shortly afterwards, in December 1980 or January 1981, Mr. Lamont, through Mr. Vibert, successfully solicited a public relations retainer of \$10,000 per annum from Ainsworths. (This retainer has continued ever since, being increased last April to \$30,000 per annum. (T.1201)). [4]. Mr. Lamont subsequently joined the seminar circuit, addressing at least four meetings of club officials on the virtues of poker machines, but it was never revealed to the audience that he was being paid a retainer. (T.1254). This omission was particularly unfortunate because the burden of his message was that he had,

by a personal investigation of the facts made on behalf of the Queensland Liberal Party, been converted from an opponent to a supporter of poker machines. His personal position and integrity were very relevant to his role. And, of course, Mr. Vibert, who knew the whole position, connived at the deception. Consistently with this practice Mr. Lamont was presented to Mr. Hamer as a Member of the Queensland executive of the Liberal Party. He gave this evidence (T.1254):

"Q. Did you not consider it inappropriate to approach the State Premier in the guise of being a member of a political party State executive and not tell him that you were being paid by the people whose interests you were representing?

A. No, I was still a loyal Liberal and I would think he would be more interested in the facts than who it was who was presenting them. I still hold that view."

The Hamer booklet: The "20 cents" omission

12.13 Perhaps Mr. Hamer was more interested in the facts. If so, he was not given them. At about the date of the meeting, 12 May 1981, a booklet was prepared. It was entitled "The Case for the Introduction of Poker Machines into Victoria's Licensed Clubs - Put to the Hon. R.J. Hamer E.D., M.P. by the Licensed Clubs Association of Victoria, Tuesday 12 May 1981". (Ex.57 - "The Hamer Booklet"). At first Mr. Vibert said that the booklet was written before the deputation met Mr. Hamer. (T.1620). Later he said that Mr. Hamer did not get the whole document at the time of the deputation (T.1748) the reason being that the last two pages are described as 'additional points made to Mr. Hamer by Dr. Andrew Holsman', apparently at the time of the deputation. It seems to me

that it makes no difference whether the whole document was handed to the Premier at the time or whether it was sent afterwards as a record of the proposition discussed. Perhaps, as Mr. Vibert says, he was also given other material but Mr. Vibert agreed that the Hamer booklet was "a sort of short paper that you might expect the Premier to read rather than plough his way through all this other material". (T.1749). He also envisaged "that the Premier would hand the document down the line to be studied by other people". (T.1660). A further purpose of the document was to be sent to clubs, as indeed it was (T.1749). Mr. Vibert himself wrote the booklet. (T.1750). Mr. Vibert knew that for many people in the clubs a "major fear" was excessive use of the machines (T.1618); people were saying, in Mr. Vibert's words (T.1619):-

"We know that they make a lot of money, but what about the trail of devastation they leave?"

The publications sent to the clubs were designed to "allay the fear of some clubs that there might be excessive gambling on poker machines". (T.1621). The Liberal Party was known to be opposed to poker machines because of their likely adverse social effects. [5] Mr. Hamer had personally expressed concern on that score only three months previously. The guidelines adopted by the LCAV twenty months earlier had called for machines of denominations 5 cents, 10 cents and 20 cents. The "Facts About Poker Machines" booklet so stated. The Hamer booklet (p.2) purported to quote the guidelines. It did so substantially accurately except in relation to item 4 which said: "Machines would be limited to 5 cents and 10 cents with

a pay-back ratio of 87% to the player." During cross-examination by Mr. McPhee Mr. Vibert was asked about the omission of any reference to 20 cents machines. He replied (T.1621):-

"It is a typographical error, I am afraid, it should have had 20 cents in there. I've never noticed that before." [6]

Later I drew Mr. Vibert's attention to a sentence at p.15 of the document, in the section dealing with social problems caused by poker machines. This sentence read: "Under the proposals for Victoria, the maximum denomination allowed would be ten cents and the payback ratio would be fixed at 87%." I asked Mr. Vibert whether this was also a typographical error. He said it was not. I asked him whether he could explain how this statement was put in the document. He said he could not. His evidence then went on:-

- "Q. I want you to be quite clear about this. The inference I draw in looking at that document is that your answer to Mr. McPhee that 20 cents has always been intended, but that through some unfortunate omission there was a typographical error and it was excluded in the guidelines, is a deliberate lie to this Inquiry?
- A. Well, it is not a deliberate lie.
- Q. It is totally inconsistent with what is said at page 15, is it not?
- A. I agree with that.
- Q. Once more, it looks as if there is a conscious attempt being made in talking to a Premier who is known to be cautious on this issue to under sell the effect of poker machines in Victoria?
- A. Yes, it could look that way.
- Q. There is simply no other interpretation open is there?
- A. No, there is not."

Mr. Vibert denied that the document was designed to mislead the Premier but neither he nor his counsel was able to advance any alternative explanation of the presence of a statement so much at odds with LCAV guidelines. There is no other explanation.

The Hamer booklet: Future higher denominations

12.14 That is not the whole of the story. The Hamer booklet contained a table (p.4) setting out the predicted growth pattern of the Victorian club industry. The figures were selected by Mr. Vibert (T.1649) being his "best attempt of what is likely to happen in this State". (T.1650) The table showed a healthy growth of profits and tax revenues but these predictions assumed both inflation and higher denomination machines. In other words, as in the "Facts About Poker Machines" booklet, one assumption is made for social effects and another for profits and tax revenues. None of this was pointed out to Mr. Hamer. Mr. Vibert believed at the time that within ten years there would be multiplier machines in Victoria, if poker machines were introduced (T.1623) but this was not discussed with Mr. Hamer. Nor was he told that multi-line machines were already operating in New South Wales and that the industry had attempted in 1980 to persuade the New South Wales Government to license 50 cent machines. (T.1623). The delegation attempted to sell him a '10 cent amusement machine' package. (T.1749-1751).

The Border Council Submission

12.15 The next major document produced by ACDA was one entitled "Submission for the legalisation of poker machines in

licensed clubs along a 'corridor' within Victoria adjacent to the Murray". (Ex.B6(b)). The document was published under the names of the City of Echuca, the City of Wodonga, the City of Swan Hill and the Shire of Mildura in about July 1981. The moving spirit amongst the councils was apparently Mr. D.K. Oberin, a motel proprietor in Echuca and a former mayor of that city. Mr. Oberin had become concerned at the disadvantage suffered by border municipalities from competition by poker machine clubs across the Murray. He conceived the notion of poker machines on a paddle boat in the river and, with the support of members of the four councils, he wrote to the New South Wales Attorney-General to put that proposal; but without success. But apparently Mr. Vibert heard of the suggestion. As Mr. Oberin told it (T.472): "Mr. Vibert came down and actually walked into my motel foyer and said, 'Who are the people that are trying to get poker machines on a river boat here?' ". That was Mr. Oberin's first contact with either ACDA or the LCAV. Mr. Vibert offered to provide information. (T.475). The draft booklet was delivered to the councils by either Mr. Vibert or officers of the LCAV (T.476). Some amendments may have been made by the councils but Mr. Vibert said that he "put most of it together". (T.1624). The document was printed without cost to the councils (T.476) obviously by Ainsworth through ACDA. The document is remarkable for a number of reasons. First, it also suffered a "mistake" in coin denominations. At p.12 the statement is made: "5 cent and 10 cent machines to be licensed, but the maximum jackpot on a poker machine to be \$200. No multi-coin or progressive jackpot machines to be permitted". Mr. Vibert said that the "border

was adamant up there, that they wanted five cent, ten cent and twenty cent machines". (T.1751). [7]. It was a coincidence, he said, that the same mistake had occurred in two documents (T.1752) and agreed that the statement was "a misleading statement in an area where fears had to be allayed". (T.1751). Secondly, although Mr. Vibert gave evidence that he disagreed with the corridor concept and said so at the time (T.1738) and although it conflicted expressly with the LCAV policy for poker machines throughout Victoria, it was printed by Ainsworth/ ACDA and distributed by the LCAV to all licensed clubs, all politicians and all councils in Victoria. At T.1751 Mr. Vibert said:-

- "Q. That material, the corridor proposal, there were thousands printed of that, were there not?
- A. Yes.
- Q. They were sent all over Victoria?
- A. Yes.
- Q. To every politician?
- A. Yes.
- Q. Thousands of them were sent to club committees and members?
- A. Yes."

Thirdly, the document is notable for its ambiguity as to what was the "corridor". This is nowhere clearly stated. Opposite p.18 there is a map, not to scale and inaccurate in its location of towns, (T.477) showing named centres well away from the river, some of them two local government areas removed from the river. A reader could be forgiven for concluding that they were proposed to be in the "corridor" but

Mr. Oberin disclaimed this interpretation. He said that the only areas to be within the "corridor" were the areas of the proponent councils - the Cities of Echuca, Swan Hill and Wodonga, and the Shire of Mildura. (T.478). But on this basis there would not be a "corridor"; rather three cookies, the three cities, and a doughnut, the Shire of Mildura, with a hole in the middle - the non-poker machine City of Mildura. [8]. The reason, I believe, why Mr. Oberin was driven to this proposition was that the remaining fourteen border councils have so far failed to support the proposal. (T.480). This was sensible of them. The proposal is notable for its silliness, even conceived as a connected corridor. The notion springs from a feeling of disadvantage at competition from across the river but fails to take account of the implications for areas immediately south of the corridor - especially at the eastern end. Wodonga is in the corridor; Wangaratta is not. Echuca is in, Shepparton is not. I pointed this out to Mr. Oberin and asked, at T.481:-

- "Q. Is it not inevitable that within a relatively few years there would be other councils wishing to join the happy band that had been given the poker machines?
- A. I think that is the proof of the whole thing. If they see an advantage, it is for them to make application.
- Q. Yes, but in trying to give some advice to the government for a system that is going to be put in place and stand for some time, do you recognise a problem with that in the sense that all you would be doing would be exposing the government to representations from one council after another; until in a few years the forces...
- A. I appreciate that, and this is why the boundary is where it is. I said earlier our boundary touches Rochester. It is a small

section and the impact is at our front door. It is like the soldiers up at the front, they are the ones copping the bullets and our council is copping the flak from over the river. I think the government of the day can be fair and equitable in the assessment of the situation."

It is obvious, I think, that Mr. Vibert decided to exploit for his own purposes the naive proposal of the four councils. He was actively assisted by Mr. Stenning and Mr. Sturcke, with both of whom Mr. Oberin had contact, and by the apathy of their colleagues on the LCAV executive.

THE ELECTION

The run-up to the election

12.16 The period August 1981 to April 1982, when the State election was held, was a busy one for the campaigners. Numerous seminars were held. A number of minor publications were put out, aimed at specialist targets such as the VFL clubs (Ex.B3(z)) and the RSL (Ex.B3(cc)). The new party leaders, Mr. Thompson and Mr. Cain, and Mr. Ross-Edwards, were lobbied. The September "News from the LCAV" (Ex.B3(ee)) reported speeches by Mr. Brian Dixon, the then Minister, and Mr. Trezise at a seminar at North Melbourne Football Club. It was said that Mr. Trezise had indicated support for "a full inquiry into the poker machine issue" whilst Mr. Dixon continued to oppose. The Liberal Party was given until the end of November "to assess its position to us before deciding on our course of action". Nine marginal Liberal seats were listed, with information as to the percentage swing required to unseat the sitting Member. The bulletin ended with some advice for club members:-

"If the assessment of Liberal planners is that they will lose these seats if club members in each of these areas are so upset with their attitude to clubs that they will vote them out, the Liberal Government will change its views. Put losing government against giving clubs poker machines and their opposition will simply melt away. Politicians value government above all else.

Keep up the pressure on your local politicians whenever you meet them, by telephone and send your letters off. The campaign is only just beginning!"

The November issue was even more political, attacking the Liberal government not only in respect of poker machines but also on its proposed bingo tax. The story is instructive as to control of the campaign. The bulletin had gone out over Mr. Stenning's name but he had not seen it before distribution. The LCAV executive, at its 24 November meeting, carried resolutions:-

- 1) "that the secretary reiterate to Mr. Vibert that the ACDA adhere to the ruling that before publishing matters under the name of the LCAV the ACDA submit such matters to the LCAV for approval", and
- 2) "that the LCAV executive dissociated itself entirely from comments printed in the November Newsletter with respect to the Liberal Party, and unauthorised by the President, and directed that expressions of Liberal Party opposition be confined to poker machines only".

The 17 December 1981 Poker Machine Sub-Committee meeting discussed the campaign programme for the period to April 1982. It had the benefit of papers from Mr. Vibert, from Mr. Lamont and from Mr. John Royce, a public relations consultant. [9] These indicated that Dr. Holsman's study was to be launched in February, with maximum publicity, so as to focus attention in the immediate pre-election period on the jobs issue. In the event, it was launched on 23 March 1982, only weeks before the election, at a seminar attended by 350 people at the North

Melbourne Football Club. The study predicted that the legalisation of poker machines would lead to an expansion of the club industry resulting in "a net growth of employment in Victoria of 24,427 full time equivalent jobs or 30,862 full and part time jobs". According to Mr. Hornsby, the study was distributed by the LCAV to "all politicians and senior public servants, all licensed clubs and all local councillors". (Ex.B3(a)). The employment prediction was widely reported in the media: newspapers, radio and television. The prediction was the result of dishonest methodology, incorrect statistics and false assumptions: see paras.10.4 above and 13.25, 13.27 below. It was a climactic and suitable end to a deceptive campaign.

EXIT VIBERT

Vibert and the LCAV: The parting of the ways

12.17 On 6 March 1982, about two weeks before the Holsman study launch, Mr. Vibert was arrested by the New South Wales police and charged with obtaining a financial advantage from Ettalong Beach War Memorial Club in May 1980 to the value of \$117,000. (He protested his innocence at the time. That particular charge has since been dropped but he has been committed for trial on other charges arising out of the same matter: see para. 4.08 above). The charges received wide publicity in Victoria. The LCAV executive discussed the matter with Mr. Vibert as a result of which, on 15 March 1982, he wrote to Mr. Stenning to say that he felt that "it will be in the best interests of the LCAV campaign if I remove myself from the battle until this matter is resolved". On the same day Mr.

Stenning put out a notice to clubs that the LCAV had acceded to Mr. Vibert's wishes. The LCAV executive endorsed that action at its meeting on 23 March 1982. However, the break was not complete. Mr. Vibert attended a meeting of the executive on 20 April 1982, 17 days after the election of the Labor government, with a set of proposals styled "Plan of Action for the Victorian Club Industry". The proposals included the establishment of a Club Advisory Committee to which "a representative of the ACDA could be nominated by the LCAV if it was felt useful". The executive did support the notion of a Club Advisory Committee on 1 June 1982 but did not suggest an ACDA representative. On 13 July the executive discussed the Casino Inquiry, then under way. It resolved "that the ACDA be given no mandate to act on behalf of the LCAV at the Casino Inquiry until such time as the submission of Mr. Vibert be submitted and approved by the full executive". On the same date it decided that subject to legal advice Messrs. Stenning and Sturcke should resign as directors of ACDA. The meeting then adjourned until the next day, when it was expected to have for consideration Mr. Vibert's submission to the Casino Inquiry. But, on 14 July, it was not ready so the executive instructed Mr. Vibert that it not go to the Inquiry in the name of the LCAV. The written submission in fact bore the name of ACDA but Mr. Vibert informed Mr. Connor (Casino Inquiry T.955) that he was "appearing for the ACDA and speaking on behalf of the LCAV". I note that, according to Mr. Hornsby (T.520), there was no LCAV "link with Mr. Vibert or his submissions" to the Casino Inquiry. A few days later Mr. Connor adjourned his Inquiry in order to allow the Government to consider whether it

wished him to consider poker machines. The Government decided to exclude poker machines from the ambit of that Inquiry so that, although ACDA remained a party to that Inquiry, it took no further active role. On 7 September it was announced that Mr. Stenning and Mr. Sturcke had signed instruments of resignation as directors of ACDA. There was in fact considerable delay in the registration of the resignations, that not being accomplished until March 1983 (Ex. B3 (nn)), but I am satisfied that this was not in any way the fault of the LCAV or its officers. The LCAV representatives continue to remain shareholders in ACDA, because the Articles provide that the initial subscribers must remain members for a period of five years from incorporation, but they appear to have had no active role in the affairs of ACDA since August 1982. [10]

THE IMPORTANCE OF EVIDENCE UPON THE CAMPAIGN

Relevance of the campaign

12.18 I have dwelt at some length on the evidence relating to the campaign because it seems to me to have relevance to at least three issues: the quality of club management, the type of people involved in the poker machine trade and the demand in Victoria for poker machines. It is accepted by all parties to this Inquiry that high quality club management would be critical to the avoidance in Victorian clubs of the problems experienced in New South Wales: see Chapters 3,6 above. It is, I believe, not unfair to look at the LCAV executive in considering the likelihood of such management being available. The executive is elected by the Victorian club movement. Its

members are all experienced club directors; they may reasonably be regarded as representing the cream of club talent. Yet, over a number of years and with some changes each year in executive membership, the executive has been "led by the nose" (to use the expression put to Mr. Hornsby at T.511) by a confidence man prepared to say or do anything conducive to his end. It has, wittingly or unwittingly, distributed to member clubs and politicians material which is subtly but significantly misleading. Its members have stood by whilst attempts have been made to mislead the Premier of the day. The record inspires little confidence in the ability of the club movement to resist, year after year, the tricks and seductions of the rogues who would chance their arm in Victorian poker machine clubs. Secondly, the sorry tale says much about the people associated with the promotion of poker machines. Mr. Vibert was the active party but behind him was Mr. Ainsworth, his friend, confidante and financier. The various memoranda from Mr. Vibert to Mr. Ainsworth which were tendered in evidence - and to which I need not make specific reference - bear ample testimony of the extent to which Mr. Ainsworth was kept informed. I find it impossible to believe that Mr. Ainsworth was ignorant of the content of the booklets printed in his own premises at his own expense. He was certainly aware of Mr. Vibert's use of the technique of secret commissions.

[11] Questions must arise whether these techniques, and the people who employ them, should be kept out of Victoria and, if so, how. Thirdly, the story of the campaign is relevant to the issue of demand. In his final submissions to me Mr. Garling, counsel for the LCAV, suggested that the evidence indicated

a public demand for poker machines in Victoria. He relied upon three indications of demand. One was the extent of travel to border clubs. That is a separate matter which is dealt with at paras. 17.02-17.05 below. The other two indicia were the fact that the government has seen fit to institute this Inquiry and the support of member clubs for the policy of the LCAV. In relation to those two matters the nature of the campaign is very relevant. On the evidence there has been a substantial change in attitude during the period of the campaign. In the absence of any other possible explanation, it is reasonable to attribute that change to the campaign itself and to the information published both to politicians and to clubs during the course of the campaign. It follows that present attitudes are, or may well be, infected by the false and misleading statements which have emanated from Mr. Vibert and been endorsed by the LCAV. In such circumstances one has heavily to discount the weight which would ordinarily be given to the perceived political and club support. One cannot be confident that, in the absence of the false information, the support would remain.

Limitations on relevance

12.19 In order to avoid any misunderstanding I should emphasize the limitations on the relevance of the material relating to the campaign. A false campaign may be waged in support of a just cause. My finding on the campaign does not mean that the LCAV has no case or that poker machines should not be legalised. It remains necessary to consider the intrinsic merit of the LCAV case and this I now proceed to do.

NOTES TO CHAPTER 12

[1] For example, at the LCAV executive meeting of 17 July 1979 it was reported that the recent State RSL conference had voted against poker machines. That position was reversed at the 1980 conference.

[2] For example, the minutes of the executive meeting of 8 March 1980 record one member as arguing that it is "now imperative that this Association formulate a clear policy with regard to the poker machine campaign". Two other members expressed concern at "statements and actions" of Mr. Vibert. The executive, at that meeting, formulated and communicated to Mr. Vibert an "instruction" viz. "that comparison and emphasis of NSW club affluence with Victorian clubs be played down and used only when necessary, that no mention of any money available for the campaign and that revenue obtained from poker machine operations be channelled to charitable or research organisations such as the Anti-Cancer Institute, National Heart Foundation or such charitable or research organisation selected by the Government". The first and third elements of the instruction appear to have been ignored completely. Further problems relating to publicity surfaced on November 1980 but the executive accepted assurances as to the future given by Mr. Vibert. On 15 September 1981 the executive carried unanimously a resolution that the Secretary remind Mr. Vibert of the November 1980 agreement "and that his present conduct of the campaign was not acceptable to the Executive". But it added a rider that "in discussions with Mr. Vibert...the President and the Secretary seek a cooling off period, avoiding as far as possible a peremptory position". The executive was not prepared to assert itself.

[3] Mr. Oberin was an odd bed-fellow. His position was, and still is, that poker machines should be legalised only within a strip of land along the New South Wales border. (T.465). He was positively opposed to having poker machines generally in Victoria, seeing "a lot of disadvantages" in that course, particularly "a rapid demise of the hotel industry if the clubs get the special privileges as the clubs over the river have". (T.480). Yet the purpose of the delegation was to advance the LCAV case for legalisation generally.

[4] Although Mr. Lamont remained a member of the State Executive of the Queensland Liberal Party he did not disclose his Ainsworth retainer until early 1982 (T.1203), an omission which gave rise to some complaint within the party. (Ex.B28(q)). His role, he said, was "to keep a watching brief" on the press and for political developments. (T.1201).

[5] On 18 March 1980 Mr. Vibert had reported to the executive of the LCAV, according to the minutes of that meeting, "The government feared trouble from poker machines in two areas - one that poverty was going to be increased and two that the criminal element would become involved. Even clubs have these fears". In Ex.B3(dd), written March 1981, he quotes Mr. Hamer, speaking at Echuca in February 1981, as saying: "Our objection is not moral - it's social. The damage they cause society is just not worth it. Our minds will not be changed".

[6] Mr. Vibert said that "as a professional" he thought the mistake "unfortunate" but he maintained that it did not matter as there was a "verbal presentation" at the time. (T.1622). However, he later said that Mr. Hamer was told that conditions would be different in Victoria to New South Wales in that machines would be limited to five cents and ten cents. (T.1751).

[7] In a letter dated 4 November 1983 to the Board Mr. Oberin confirmed that "it had always been the intention of the four councils concerned that they would support the licensing of 5 cent, 10 cent and 20 cent machines in 'the corridor'." (Ex.B.(6)(P)).

[8] Counsel for Mr. Vibert, Mr. Ward QC, in written submissions forwarded 4 November 1983 suggested that the relevant area was discoverable from the list of 10 areas on p.89. That is one interpretation but it conflicts with Mr. Oberin's evidence (T.478) that it was the six (different) areas on p.6. and, finally, that it was limited to the areas of the four proponent councils. Even the list of 10 areas on p.89 would not provide the continuous strip implied in the title "corridor".

[9] International Public Relations Pty. Limited was originally retained as public relations consultant, on a "watching brief" basis at \$1,000 per month. At the time of that appointment Mr. Vibert and Mr. Ainsworth, according to Mr. Vibert (T.1662-1664), understood that IPR were advising the Liberal Party on policy. They understood from Mr. Kerr of IPR that "he would not be telling the Liberal Party that he was now retained by ACDA to advance the cause of poker machines". He "saw nothing wrong with that" (T.1664) even though he anticipated that there would be discussions in the Liberal Party on the subject. (T.1662). I should state that, by letter to the Board, Mr. Kerr has denied that IPR had a retainer from the Liberal Party at the relevant time and this denial is supported by some evidence of Sir Rupert Hamer, as he now is, at the Casino Inquiry - Casino T.815. For my purposes it does not matter whether there was in truth a conflict of interests for IPR. The matter is only relevant in relation to the

conduct of Messrs. Vibert and Ainsworth. The important point is that Mr. Vibert and, according to him, Mr. Ainsworth believed that IPR was in a position covertly to influence the Liberal Party and that neither saw anything objectionable in arranging a secret commission.

[10] The severance of the formal link between the LCAV and ACDA did not mean a total loss of contact. On 27 October 1982 Mr. Vibert sent Mr. Sturcke a memo setting out draft Terms of Reference for an Inquiry into Poker Machines, a draft letter to be sent to the Premier and his views on the evidence to be called at such an Inquiry. The advice was appreciatively received and the evidence tendered by the LCAV bears some resemblance to Mr. Vibert's advice but I believe that, during the progress of this Inquiry, the LCAV has followed its own course, and its own legal advice.

[11] The documents show that Mr. Ainsworth was aware of the arrangements with both Mr. Lamont (Ex.B28(r)) and IPR. (Ex.MM12). He was also aware of a proposal by Mr. Vibert to offer a retainer to Mr. Geoff Hayes, then a Liberal Member of the Victorian Parliament (Ex.MM18). Mr. Vibert said that the retainer was not to be offered until after the 1982 elections, when he expected Mr. Hayes to be out of Parliament and the Liberal Party out of government (T.1729), a statement not easy to accept, but it does not appear that the matter was ever followed up. There is nothing to indicate that Mr. Hayes was guilty of any improper conduct.

CHAPTER THIRTEENPOKER MACHINES IN LICENSED CLUBS: (2) MERIT OF THE LCAV CASE

THE NATURE OF A CLUB

A Key Question

13.01 In Part II of this report I have looked at the position in other jurisdictions. I have noted that New South Wales is probably unique in the world in the widespread use of poker machines in non-proprietary establishments: permitted, but confined to licensed clubs: see Chapter 3. The usual position, in that minority of jurisdictions which permit the machines at all, is that they are confined to licensed casinos operated for private profit by professional gambling operators. I have also pointed out that poker machines became legalised within New South Wales not as a result of any inquiry or other deliberative process but as a quick reaction to a political problem presented to the government of that State in mid-1956: see para.3.20. It cannot therefore be said that the proposition advanced by the LCAV to this Inquiry - poker machines in licensed clubs - is the norm or is an answer already found, by any independent investigation, to be apt for Australian conditions and attitudes. The LCAV claim is for the grant to the licensed club movement, either exclusively or shared with the hotels, of a privilege to conduct, primarily for its own benefit, a form of gaming new to this State. It is, I believe, desirable to consider the theoretical basis of such a claim.

Rationale

13.02 The principal witness for the LCAV, Mr. Hornsby, was asked (T.265):-

"Is there any particular reason you can suggest why club members more than any other member of this community might be entitled to whatever benefits might flow from the introduction of poker machines into this State?"

He replied:

"Only that the club is a co-operative and it is not the money from the poker machines which will benefit any one person but it will go to the members of that club".

This answer succinctly expresses the underlying rationale of the L.C.A.V. case - both of the material used in its campaign and of its evidence to this Inquiry. Poker machines in clubs are justified on the basis that their income-generating potential will be used for the common benefit of a number of people rather than to enrich a few individuals. As Mr. Garling, for the L.C.A.V., put it in his final written submissions (p.75):-

"...a club is in essence a group of people be it 500 in number or be it 10,000 in number which represents a section of society who whilst they join together and earn profit do not utilise that profit for the benefit of any one private individual. The profit is used for the benefit of the membership. To that extent clubs are a co-operative or in some ways almost a socialist society".

Relationship between the rationale and the nature of the club

13.03 If one accepts Mr. Hornsby's concept of a club, "a group of people with like interests" (T.225), and if one assumes, with him, strict enforcement of the door controls the rationale would have instant appeal. One might easily argue that, leaving aside for the moment any problems caused by excessive gambling or criminal activities, it was purely a matter for the members of a small group whether they gambled

or not and, if so, how they as a group expended their net loss as individuals. This, indeed, is Mr. Hornsby's position; what individual clubs choose to do about poker machines is their own individual business. He did not think that the decision of a club to install machines "will have any effect on the rest of the community" (T.265A). If, on the other hand, one makes different assumptions about poker machine clubs the position changes. It appeared from the evidence, and it was obvious on the inspections, that the door controls governing New South Wales and Australian Capital Territory clubs were not strictly enforced. Many, probably most, clubs in those jurisdictions operate effectively as public houses; readily accessible to the community at large. This statement is almost certainly true of all the larger New South Wales clubs. To the extent that such a situation occurs one no longer has a small group of like-minded people spending their own money as they see fit - one has a co-operatively owned commercial enterprise offering to the public, perhaps marketing aggressively to the public (see para 5.18 above), a range of services including food, liquor and entertainment. That will necessarily be in competition over some or all of its range and to a greater or lesser degree with other enterprises, owned by individuals, companies or government. Under those conditions, as it seems to me, one can no longer argue that the decision to install machines will have no effect upon the rest of the community. Clearly it will, as businesses on the Victorian side of the Murray River have already discovered.

Co-operative Ownership

13.04 One cannot, I believe, dismiss that effect by saying that clubs are a co-operative so that no one individual gains. It is true that no dividends are paid but individuals do gain, taking material benefits in the form of cheap (even free) meals, liquor, sporting facilities and entertainment, at the expense of those who have lost at the machines. Some individuals receive emoluments such as directors' honoraria. As Mr. McPhee reminded me in his final address it is much too simplistic to treat the profit of a co-operative as necessarily differing in kind from the profit of an overtly commercial organisation. He took as his example Carlton and United Breweries, the owner of 169 Victorian hotels facing the possibility of competition with poker machine clubs. This company has some 24,000 shareholders. The top 10 shareholders, who together own 34% of the company, include five insurance companies, who would no doubt represent many thousands of share and policy holders, three bank nominee companies and an instrumentality in which all Victorians have a stake: the State Electricity Commission. Mr. McPhee suggested that, even leaving aside the SEC, the beneficial ownership of this one company is spread over some hundreds of thousands of people. The example selected is a dramatic one - the company is the largest company likely to be affected by the introduction of poker machines into clubs - but it does I think make the point that the dichotomy assumed by Mr. Hornsby is false. The fact is that the prosperity of co-operatively owned commercial clubs is likely, unless this is prevented by rigid controls, to

give rise to gains (large and small) to numerous individuals and to cause losses (large and small) to numerous other individuals. In this situation one must go beyond the bald proposition that a club is a co-operative. The rationale must depend upon the further proposition that it is such a co-operative as will, in truth as distinct from theory, have no effect upon the rest of the community; that it will in truth be simply a group of people (and their own invited guests) throwing their own money into the ring and deciding what to do with the proceeds. In other words, can one be satisfied that Victorian clubs with poker machines will remain true clubs, strictly door controlled, and not follow the example of their northern counterparts? An alternative argument is that, accepting that Victorian clubs will become "open door" clubs, the overall beneficial effects of that result outweigh any detrimental effects sustained by others. The LCAV puts both those propositions, which I will separately address.

"OPEN DOOR"

The Victorian Law

13.05 Mr. Garling's final submission (p.63) refers to the position in New South Wales and the Australian Capital Territory. It does not in terms concede that the "open door" practice applies in those jurisdictions but, upon the assumption that it does, asserts that this "is rejected as being likely to occur in Victoria". In support Mr. Garling referred to the evidence of Mr. W. Hayes, a member of the Liquor Control Commission from October 1968 to November 1982,

relating to the policy of the Commission. Under s.51 of the Liquor Control Act, 1968 the Commission is empowered to impose conditions on the grant or renewal of a club licence. Mr. Hayes said that, over many years, an invariable practice had developed of applicants for a club licence "volunteering" rules which limit the number of persons that may be introduced into the club at one time by one member and which limit the number of times the same person may be introduced into the club. Additionally, of course, s.51 itself requires the rules to provide that:-

"(vii) a visitor shall not be supplied with liquor in the club premises unless in the company of a member; and

(xii a) no more than a specified number of persons, being such number as the licensed premises can adequately accommodate, will be permitted on the licensed premises at any one time".

It is undoubtedly correct to argue, as Mr. Garling does, that these provisions, properly observed, would cumulatively have the effect of restricting clubs to their traditional role, and of preventing the development of an "open door" public house.

The New South Wales law

13.06 It is one thing to have a set of legal restrictions; it is another to have them consistently observed. The New South Wales legislation also includes provisions which, properly observed, would confine clubs to their traditional role and prevent the development of "open door" public houses. The New South Wales Parliament has never accepted the practices described in para. 5.15 above. The position still is that s.31 (1) (c) of the Registered Clubs Act 1976 (NSW)

Mr. Hayes' evidence

13.07 Perhaps the Victorian experience will be different. Perhaps there is a different attitude within the Victorian club movement, one which will insist upon strict enforcement of the restrictions so that only members and a limited number of genuine guests use the club facilities. During his 14 years on the Liquor Control Commission Mr. Hayes had considerable experience with all types of licensed premises including clubs. He was undoubtedly the witness best placed to give to the Inquiry an independent and informed perspective of the Victorian liquor industry. At T.1950 he referred to the legal provisions governing Victorian clubs and added:-

"Let me say this. In all my years of experience at the Liquor Control Commission, I have rarely if ever seen a visitors' book which is properly maintained, and rarely if ever have I seen any indication at the point at which the visitors' book is located, instructions to the members as to the number of visitors they may introduce into the club".

Mr. Hayes went on to refer to the Yarraville club whose visitors' book had revealed visits from such notables as Richard Nixon, Mickey Mouse, Pontius Pilate, Bob Hawke, Bob Menzies, "you name them". He also referred to the Mount Beauty club. Both had their licences temporarily suspended. At T.1951 he made a more general comment:-

"I would say that if the clubs were properly policed, and following the example of Mount Beauty and Yarraville clubs mentioned this morning, clubs in Victoria would get a holiday every year".

Mr. Hayes also commented about enforcement of the rule restricting the number of persons on premises at one time. He pointed out that the Commission did not have the staff

requires that the "register of persons of or above the age of 18 years who enter the premises of the club as guests of members" shall have entered "on each occasion on any day" on which such a person "enters the premises of the club as a guest of a member the name in full or the surname and initials of the given names, and the address, of that guest, the date of that day and the signature of that member". Section 45 makes it an offence for persons other than members and their guests to use club facilities. Section 30(2) (d) is similar in effect to s.51 (1) (f) (vii) of the Victorian Act. It provides:

"(d) Liquor shall not be sold, supplied or disposed of on the premises of the club to any person, other than a member, except on the invitation and in the company of a member".

In most clubs in New South Wales those three restrictions are broken every trading day. Even where strangers are asked to sign the visitors' book it is unusual for the requirements of s.31 (1) (c) to be strictly complied with and no attempt whatever is made to observe s.30 (2) (d). To deny liquor to visitors not in the company of a member would be directly to sacrifice a major source of income and quickly to make the clubs unattractive as public houses. And for the larger clubs attraction of the public is now essential to survival: see the address of Mr. Paul McKay referred to in para. 5.10 above. The New South Wales experience offers little ground for optimism that legal restrictions will confine poker machine clubs to what Mr. Hornsby would call their true role.

properly to police the restriction and that the police "are loath to go out and count numbers in a room". (T.1944). "The police, for very good reasons, are loath to take a very active part. They say that there are more pressing things to which they should turn their attention". (T.1945). Nor, according to Mr. Hayes, was the problem merely one of priorities in the use of manpower. There are human factors involved, especially in small communities. He exemplified the problem by reference to complaints about sporting clubs selling liquor without a licence or permit. The Commission would refer the matter to the police but:-

"Frequently nothing more was heard despite pressure upon our resident inspector. Part of the reason, of course, was that, for instance, in a small country town with one hotel and one football club, very often it had a young policeman and he was part and parcel of the football club. He may in many cases be the coach, a player or on the committee or have a son playing in the team and he could not wear two hats, he could not pinch the local club and expect to survive. The licensee was reluctant to do anything about it because as soon as he did the club would blackball him and it was a dog chasing his tail". (T.1947).

Mr. Hayes' view was that the only possibility of securing compliance with rules governing clubs, whether in relation to liquor or poker machines, was for the relevant regulating body or bodies to have its own staff of inspectors, sufficient in number to supervise clubs throughout the whole State. (T.1945)

Newspaper advertisements

13.08 There was a deal of other evidence to support Mr. Hayes' observations as to the present Victorian practice in relation to enforcement of the door rules. The AHA

tendered a bundle of recent newspaper advertisements (Ex.A16) relating to Victorian licensed clubs, large and small, city and country, advertising bingo and other entertainments. Most merely implied that the general public were welcome - otherwise why advertise in a public newspaper? Some were explicit. Thus the "Colac Herald" of 18 May 1983 contained an advertisement whereby a private caterer "in conjunction with the Colac R.S.L. Club proudly announces that counter meals will be available at the club rooms, 21 Murray St., Colac" between certain hours, Wednesdays to Saturdays inclusive. The advertisement ended: "These facilities will be available to all persons over the age of 18 years". The Sebastopol Lawn Bowls Club, advertising in the "Ballarat Courier", offered a "Chiko Roll Rock'n' Roll Night" with \$5 drinks available "prizes for best dressed rockers" and supper. It rubbed salt in the AHA wound by a subscription "Why go to the pub?". It is, of course, possible, even likely, that the members of the public who responded to these advertisements would be met at the club door by one or more members who would sign them in as visitors, in bulk. It does not matter whether or not that ritual satisfies the club rules: the club is offering entertainment to the general public. And even if the door ritual is satisfied a breach of rules must occur when the visitor goes inside unaccompanied by a member and buys himself or herself a drink.

North Melbourne discos

13.09 Mr. R.J. Smith, the secretary/manager of the North Melbourne Football Club Social Club was called as a witness on

behalf of the LCAV. His club currently has 2,100 ordinary members, being smaller than several of the other VFL social clubs but it has the sixth highest licence fee in the State. Mr. Smith referred to the practice of the club in obtaining special permits for functions that "would be available to the public generally" (T.1400) as being one major reason for the club's "sizeable profits from its catering and liquor sales". (Ex.B11(a)). Other reasons are that the club "consistently bring down entertainment from Sydney and because of that we are well patronised by our members". (T.1401). But not only members, as the evidence revealed. Mr. Smith's evidence was that the club ran discos on each Thursday and Friday night and on Saturday nights after home football games. He said that the visitor rules were policed "to the best of our ability". (T.1436). This was done by having three doormen, two employees and one member, on the door on disco nights. The function of the member is to query those not signed in. He signs in those people he knows and they then go into the bar where they can buy liquor, whilst he remains at the entrance. (T.1437). If they do buy liquor unaccompanied by a member there is a breach of the club rules required by the Act. (T.1439). Mr. Smith suggested that visitors may be in the company of some other member when they buy liquor but there appears to be no system to ensure that this requirement is followed. (T.1439A). A person who is not known to the member on the door is introduced to some other member who then signs him in for the evening. (T.1442). Non-members are encouraged to become "restricted" members of the club - cost

\$10 - so that they will not need to be signed in on future occasions. It takes two or three weeks to become a restricted member. In the meantime the applicant may attend as a visitor. The club charges a disco entrance fee of \$5 per head, levied on members and visitors alike. Bar takings average \$8 per head per night. (T.1438). The club therefore has a direct interest in maximising attendance. Mr. Smith said that he was aware of the door rules (T.1402) and I see no reason to doubt his assertion that he does his best to ensure that there is compliance with them. (T.1403). But, at best, it is a token compliance with the rules; the club is really running a successful public entertainment pulling in 500-600 people each night. Mr. Smith readily agreed with the suggestion that "it would be much better from the club's point of view if you could just open the thing as a disco and have people come through the door, pay their \$5 and go into the dance". (T.1439A). And, despite Mr. Smith's endeavours, cases do occur where non-members walk in off the street, knowing no one, not being signed in, pay their money and join the dance. He thought that this did not often happen but said that he would not know how often; "if I knew that I would be on top of the problem or the doormen would be on top of the problem, but I would not be sure". (T.1439A).

Carlton discos

13.10 The only other witness from a VFL social club, Mr. P.W. Pannam of Carlton, also spoke of discos. His club, like North Melbourne, conducted discos for some years pursuant to special function permits issued under s.38 (8) of the

Liquor Control Act. The Liquor Control Commission decided that this provision was inappropriate for discos on a regular basis and, in order to accommodate the problem, Carlton created a new category of membership - a "social membership" costing \$20 per year and entitling members to go to the discos. They have no voting or other rights. Non-members may attend discos as guests of members. There is an entrance fee of \$4 per head. Mr. Pannam said that the operation of the discos was "a source of trading and in my view it is a fund raising effort". (T.597).

The Board's inspections

13.11 The inspections carried out by the Board confirmed Mr. Hayes' view that there is considerable laxity in the enforcement by Victorian clubs of the door rules. In many clubs I found a list of names, occasionally whole pages, counter-signed by a single person. Sometimes there was no counter-signature at all. At the City & Overseas Club the attention of the licensee, Mr. V.J. Geisler, was drawn to the book by Mr. Joyce, solicitor for the AHA (Ex.87A p.3):-

"Q. If I was to direct your attention to a number of pages in the book where visitors aren't signed in would that surprise you?

Q. No, It does happen.

Q. Regularly?

A. On and off".

This is a major Melbourne club, of which the President of the LCAV, Mr. Stenning, is a past President and still serving committeeman.

Functions

13.12 Mr. G.D. Kratzer, the President of the Hospitality Industry Association of Australia (Victoria) and the managing director of the company operating "Chaucer's Reception and Convention Centre" at Canterbury, was particularly concerned about the prospect of poker machine clubs running functions for non-members in opposition to restaurants and reception centres. He produced an advertisement published in a local newspaper, the "Camberwell Free Press", on 6 July 1983 advertising the "Hawthorn Social Club Function Centre". He said that he telephoned the stated number and found that it was that of the Hawthorn Football Club and he was told that it was not necessary for him to be a member to arrange a function. As he said in his evidence, the case is one where a club is actively inviting business from the public, being the type of business in which his company specialises. (T.2435-2436). It may well be the position that, if a booking is made, there will be a formal compliance with the law by the issue of a special function permit under s.38 (8) but this does not detract from Mr. Kratzer's proposition. Nor, I believe, is the Hawthorn Football Club in any way unusual in actively soliciting from the public function business. Questions were asked, during the Board's inspections of many of the Victorian licensed clubs, as to the use of the club premises for functions - whether booked through a member or otherwise. [1] On each occasion that the question was asked the club spokesperson replied that functions were actively encouraged. In most cases the rider was added that payment was always made through a member. Many clubs also

ran bingo and discos pursuant to s.38 (8) permits. In some cases, especially in relation to the smaller clubs, care seems to be taken to ensure that there is a real link between the function and a member; although, even there, of course, the club is competing with commercial function centres and allowing the use of its premises by substantial numbers of non-members. In other cases no such link is required. Generally, the club asks a member to hand over the cheque for the payment but this is often a token compliance. An example of this approach is furnished by the information given by Mr. Geisler, of the City & Overseas Club, Windsor. (Ex.87A p.4):

"Q. There's a room set up, we saw this morning, which is for a luncheon meeting of some organisation?

A. Yes, that's the case, provided it's booked in by a member.

Q. Is the member paying for the cost of that function?

A. The payment comes from the member, yes.

Q. Are you sure about that?

A. In this particular one you are talking about today it may come in a cheque that is not the member's cheque but it comes from the member.

Q. Are you absolutely positive the financial books would show that in these situations the member pays for the cost of the functions?

A. I couldn't say that the member pays out of his own pocket or his own cheque account, but the member will take the account and have a cheque sent.

Q. Does the club obtain a permit for these functions?

A. No."

The future

13.13 In the face of the above facts it is difficult indeed to accept Mr. Hornsby's view, or the official LCAV position, that, during the indefinite future, Victorian clubs will continue only to be meeting places for members and their genuine guests. In many clubs the Hornsby concept has already been abandoned; those clubs are actively marketing their facilities to the public with varying degrees of obeisance to legal technicalities. With poker machines the chance of retaining the old concept becomes even more remote. At T.1950 Mr. Hayes made the comment "if the visitors are absolutely controlled as they ought to be, then the ambitions of most clubs in Victoria will not be achieved as to the income from the poker machines". The same assessment, although from the opposite viewpoint as to desirability, is reflected in this exchange with Mr. I.S. Watson, the Treasurer of the Royal Geelong Yacht Club (Ex.86D p.3) during the Board's inspection of that club:

- "Q. Does that concern you, that there's a restriction on members; would you prefer it to be more open than it is?
- A. This is a personal opinion only, but one of the questions I'd like to ask is, is it contemplated, if poker machines come in, that the liquor control regulations concerning visitors would be altered or do we have to try to continue under the existing ones?
- Q. You tell us what you think it should be?
- A. I'm not stressing club policy, but I would believe that it wouldn't work under the system of trying to keep it to four visitors limited to each person. It just wouldn't work, in my opinion, under that system.

Q. Why do you think it wouldn't work?

A. Well, it's not feasible. When you go to New South Wales you are almost as though you are living in a different country in the world, where they have a big sign up 'visitors welcome'. You can't do that under the existing conditions here. [2]

Q. If I understand you correctly, you mean that you think poker machines aren't feasible as an investment for a club unless there's a substantial number of visitors?

A. No, I wouldn't say that at all, but I don't believe that the existing regulations concerning visitors are appropriate to the introduction of poker machines.

Q. I'd like to take that a little further with you because I don't quite follow. If you have got poker machines and they are confined to members and their visitors as presently allowed, what do you see as being the advantage of being able to let a whole lot more people in except that you have more people playing the poker machines?

A. Well, what's going to be the advantage anyhow? What are the advantages of poker machines?"

This is I believe the critical question. If clubs are to be strictly confined to use by members and a limited number of their genuine guests what are the advantages of poker machines? It would be much more simple for a club committee to obtain the revenue required for additional facilities by raising the membership subscription or the bar prices. The money would be raised equitably as between members at no administrative cost and without the disturbances to club administration and club amenity that poker machines must bring. The only rationale of poker machines, from the clubs' point of view, is the visitor revenue they earn for the clubs. The New South Wales estimates are that 70-90% of poker machine

revenue comes from visitors: see para. 5.12 above. If Victorian clubs install poker machines they will quickly find themselves under the same pressure to relax door controls as have been the New South Wales clubs. If they are to justify their investment in the machines they must succumb. It is, I believe, significant that not one witness sought to argue the viability of poker machines being installed in clubs under strict door control conditions. On the contrary, viability was continually argued on the basis of the New South Wales model; Dr. Holsman, Dr. Caldwell and the representatives of the manufacturers assumed the same conditions in Victoria as in New South Wales. Mr. Vibert, Mr. Lamont and Dr. Caldwell had sold, or attempted to sell, the concept of poker machines to Victorian clubs and to the Victorian public by reference to the benefits experienced in New South Wales. All the forecasts of profits and tax revenues were extrapolated from New South Wales statistics. Several of the witnesses favouring poker machines, Mr. Curtis, Mr. Bendle, Mr. Crampton and Mr. McKay, emphasised the contribution of poker machines to the tourist industry and the profits to be made from tourists; matters only significant on the basis of a wider access to clubs than by members and by a limited number of guests personally known to the member. Mr. I.W. Bendle of the Rosebud Country Club put the matter quite bluntly (T.796-797):

"Q. I am saying that you see the erection of those facilities from the losses of people who play on poker machines, either members or visitors, as a more appropriate way of providing those additional facilities for the members than the way in which the facilities have been provided in the last 20 years, is that right?

- A. That is the way to do it.
- Q. One of the sources of income on which you have your eye is the income from visitors whom you think will flock to the Peninsula over the summer period?
- A. Exactly.
- Q. And what you have your eye on is their gambling losses to build up your club, is that right?
- A. Yes.
- Q. You do not see anything odd about that, do you?
- A. No, I do not. These same people will gamble on other facilities as well.
- Q. Have you been in any of the big clubs in Sydney where you can get a cheap schooner of beer, a cheap meal and watch any entertainment for nothing?
- A. I have been in South Sydney (Juniors).
- Q. We could not get a better example, could we?
- A. No..."

Mr. Curtis, coming from the tourist city of Mildura, recognised the need to relax the rules, if clubs were significantly to cater for tourists. (T.536):

- "Q. You would favour the situation where you could open the premises to tourists and others visiting Mildura?
- A. To a degree.
- Q. To what degree?
- A. We have tourists, at the present moment, which are signed in as honorary members. They must be known to members of that club to sign in and they are in a sense true tourists. Nobody can just come along off the street, and make themselves available to the club.
- Q. Do you see that as contrary to the position in New South Wales?

- A. Yes.
- Q. What would you see as the desirable situation in Victoria?
- A. I think a happy medium.
- Q. Could you explain?
- A. I do not think it should be open slather. I think once it becomes an open slather, a club then no longer becomes a club.
- Q. What number of tourists would you say would be desirable to be allowed entry into a club and under what conditions?
- A. I would suggest, from my personal opinion, it would be two to one, two members to one visitor.
- Q. What conditions would you envisage as being desirable, to achieve that?
- A. I think you would have to have some type of record so that they would find in the door as they arrive at the club so that we would know exactly who was in the premises at any one time".

Mr. Curtis' proposal creates obvious difficulties and much potential for embarrassment. How does the doorkeeper know how many members are in the club? [3] What happens if a group of tourists arrive whose total number will take the aggregate number of visitors over a figure equal to one half the number of members then in the club? Anyway where is the sense in turning away tourists at times of light member use, but perhaps heavy tourist demand, as for example during working hours in school holidays, simply because there are few members about? On one view they should be encouraged at those times but discouraged when there is heavy member use. The details of the proposal, and its difficulties, do not matter. What is significant is the recognition, from a man in the front line

of the border warfare, that the introduction of poker machines necessarily requires a relaxation of the present door restrictions. As Mr. Curtis said at T.540, the Sunraysia district clubs would seek facilities "equal to" those at Wentworth and Dareton, in New South Wales; they would hope to obtain "a fair share of the market". It is natural for Mr. Curtis to want to have it both ways - club atmosphere and "fair share of the market" but it is very doubtful that this is possible. At least over time, "open slather" must be met with "open slather".

Conclusions

13.14 It is inevitable that, if poker machines are allowed into Victorian clubs, the majority of those clubs - including all of the larger clubs - will become "open door" public houses, actively seeking patronage in competition with existing establishments in the food, liquor, entertainment and recreational fields. Any consideration of the introduction of poker machines which does not acknowledge that consequence is unrealistic and naive. It follows that the first proposition of the LCAV, that the decision to place poker machines in a club is the business of no one but the members of that club, must be rejected. There remains for consideration the alternative argument i.e. that, accepting the "open door" model, the benefits outweigh the detriments.

BENEFICIAL SOCIAL EFFECTS

Entertainment of Playing

Amusement machines

13.15 The first beneficial effect argued by Mr. Garling

(final submissions p.15) is that "poker machines...would provide enjoyment, entertainment and pleasure to a large number of Victorians". In support of this head of benefit Mr. Garling referred to the research of Dr. Caldwell, referred to at para. 5.20 above. In research for his Thesis about ten years ago Dr. Caldwell asked players why they played the machines. About 65% replied that "they played for amusement". (T.378). He added: "I am inclined to think that many people would say that the majority of club members recognise that they are going to lose on the machines if they play them and what people do is set in their own mind a limit which they play. They expect to lose that. They hope that they will win but in most cases they are disappointed". The view of club managers is the converse: "Clearly they see poker machines as a way of making money which subsidises the activities of the club". (T.379). The only other evidence as to the attitude of players is from Mr. Vibert. In 1978 or 1980 (different dates were quoted) he made a survey in some Sydney clubs of people who had given up playing the machines to find out why. Over 1,000 people were interviewed. At T.1614 Mr. Vibert said about 80% of the respondents stated that they had stopped playing "because they were bored by them because they could not win any real sums of money on them". At T.1744 he expanded:

"Q. The answer you got indicated people were interested in playing machines for gambling rather than for entertainment or amusement, did it?

A. I think gambling, entertainment and amusement all fit into the same area. In other words, if the gamble to somebody is not high enough

he is not amused or entertained but that was the general crux of the thing, that people were not getting amusement or entertainment from it because they did not think much of winning \$20.

Q. They wanted big lollies?

A. One of the strange things is they wanted to lose their money quicker.

Q. Really?

A. There was a view expressed by some club members and it is expressed by groups I play with that things are damn boring; it takes too long to get rid of your money".

The boredom factor may have decreased with the new multicoins machines, on which it takes very little time indeed to get rid of one's money: see para. 2.19 above. But Mr. Vibert's findings no doubt remain valid for some - they are not interested in the stakes and prizes pitched at the levels offered by poker machines. Others are interested. Whether individuals call poker machine playing amusement or gambling does not, I think, matter. It is clear that many New South Welshmen, and many Victorians who visit New South Wales, find diversion on poker machines. A number of witnesses have condemned the pastime as mindless and boring but even if that be a fair criticism not everyone would accept Father Ryan's view (see para 11.07 above) that on this ground the machines should be rejected. It is no doubt a proper objective to encourage in the community the pursuit of activities which will stimulate mental development and social interaction. It is another thing to ban pursuits which do not have those characteristics. If we were to apply that approach then many popular pastimes would become illegal. In our society it must

be accepted that the fact that a significant proportion of the population, given the opportunity, is likely to use poker machines for entertainment is a valid argument in favour of that opportunity being afforded to them.

Better facilities for club members

13.16 The second benefit argued by Mr. Garling (final submissions p.17) is that "poker machines being operated in licensed clubs in Victoria would provide better physical facilities and environment together with enhanced leisure activities". The evaluation of this argument has been a major aspect of the Inquiry. There has never been any doubt that poker machines would provide funds to enable clubs to improve their physical environments, nor that this would be likely to occur. The inspections showed that there were some Victorian social clubs whose premises were small or shabby or poorly maintained. Any improvement of those premises would be a boon to members. But questions arise as to how those improvements should be financed.

The NSW and ACT social clubs

13.17 In Chapter 5 above I have discussed at some length the characteristics of clubs in New South Wales and in the Australian Capital Territory. I will not repeat those comments. In relation to social clubs i.e. clubs in which the primary focus is not the active participation by members in a common sport it is common to find a substantial building housing the following recreational and sporting facilities:-

- a) an auditorium usually capable of seating many hundreds, even thousands, of persons which is regularly used for live entertainments. Admission is either free or at a charge less than cost - the policy being to use the entertainment to attract people to the club;
- b) bars, lounges and dining facilities, usually comfortable to luxurious, furnishing liquor and food near to or below cost price; and
- c) some internal sporting facilities - usually squash courts, darts, carpet bowls, often a swimming pool.

Some clubs provide other facilities for members and visitors e.g. other active sporting facilities such as a bowling green or sporting oval. Some make available to members privileges such as low cost holiday units. As Mr. Garling submits, for Victoria but basing himself on the New South Wales experience: "Poker machine revenue would provide cheaper priced food, drink and entertainment" (final submissions p.20). He acknowledges that the benefit to individual members of these facilities is very variable. Some members visit the club regularly, most do not. Some play poker machines heavily, some moderately, some rarely, some never. As between individuals one can only say that there are winners and losers. Non players who regularly take advantage of the subsidised facilities are the big winners; enjoying benefits at the expense of the losers, their fellow members, and the visitors, who spend at the machines more than the value of the benefits they enjoy. The aggregate loss must, of course, exceed the aggregate win. Allowance has to be made for the capital and operating costs of the machines themselves. In social terms, it is difficult to see the result as desirable. The cost of benefits enjoyed by individuals is borne neither according to capacity to pay nor degree of use.

The NSW and ACT sporting clubs: Golf clubs

13.18 Contrary to my expectations, I found during the inspections that there was no significant difference between the two States in the standard of the facilities available to members of active sporting clubs. I exclude from that comment the New South Wales border golf clubs, which operate as de facto casinos reaping large profits which they expend on lavish facilities and some of the Victorian sporting clubs which appear to be adversely affected by the competition from over the river. [4] I exclude, also, the so-called sporting clubs, such as the Illawarra Yacht Club, which accept members well in excess of their capacity to provide active sporting opportunities. [5] Predominantly, they are social clubs. I refer to the true active sporting clubs in locations remote from the State border i.e. the overwhelming majority of golf and bowls clubs in New South Wales. Some were visited on the inspection tours. The town of Dubbo was selected by the LCAV as representing a typical prosperous provincial centre proper to be compared with, say, Bendigo or Ballarat. In each of these three cities the Board inspected a golf club, selected by the LCAV. In terms of both clubhouse and course the best of the three was at Bendigo, the next best the Midlands club at Ballarat. Dubbo had the benefit of poker machines; the others, of course, did not. At Dubbo there was major concern at the effects on bar and poker machine revenues of random breath testing. At Bendigo and Ballarat there was an air of quiet confidence about the future. The major difference was in relation to membership subscriptions. At Dubbo the

subscription was \$140 per year for members, \$110 for associates. At Bendigo the comparable figures were \$187 and \$120, at Ballarat \$165 and \$84. Similarly, the Board was asked to compare the Geelong golf club with the Port Kembla golf club, near Wollongong. Both clubs have fine courses, both have attractive and commodious premises. To my eye the Geelong premises were the more attractive but there was little in the choice. The Geelong club has about 1,000 members; annual subscription \$315. The Port Kembla club has about 1,300 members; annual subscription \$120 but about to increase to \$150 because of falling takings from the bar (down 26% on last year) and poker machines (down 44% on last year). Finally, the Board inspected the Lakes Entrance golf club. The club has only about 240 members, who pay a subscription of \$95 per year, associates \$55. The club premises are comparatively small but about to be extended, using funds already available without the necessity of borrowing, so as to achieve a very spacious building. Course development is still proceeding but we were informed by the Vice-President of the club that it had already been described by one champion golfer as one of the best courses in Victoria. The club, of course, has heavy visitor use and achieved \$36,000 in green fees this year.

The NSW and ACT sporting clubs: Bowls clubs

13.19 The Board inspected bowls clubs in each State. There were individual differences between clubs but, leaving aside the large social clubs with a bowling component, such as the Fraternity Bowling and Recreation Club at Wollongong, (para. 5.03) there was no discernible difference on a State basis.

The Railway Institute Bowling Club at Dubbo is constructed on railway land, initially to provide an amenity for railway workers. It is one of four bowling clubs in Dubbo but the best endowed. The club has three well kept greens and a substantial clubhouse in which it provides meals. Visitor use is heavy, partly because of the continuing railway association, and there are regular dances. The membership subscription is \$15 per year. The Railways Institute Bowling Club at Albury, is also on railway land. It enjoys high visitor use by railway employees, including use of its poker machines, and charges a subscription of \$15 per year. The club consists of only a single large room without dining facilities and two greens. In Canberra, the Woden Valley Bowling Club, with 15 poker machines, has a games room, a bar and two greens. The membership subscription is \$50 per year for bowling members. The Board visited a number of Victorian clubs which had incidental bowling clubs. The specialist bowling clubs selected for visitation were the Corio Club (600 members, subscription \$100 per year, two greens plus comfortable club rooms with two squash courts, snooker, billiards and bar); the Kew Bowling Club (288 members, subscription \$100 per year for bowling members, three greens with pleasant club rooms); the Ballarat City Bowling Club (166 members, bowlers subscription \$30 per year, two greens plus croquet lawn, substantial recently extended club premises, no debts, cash reserves \$25,000 - \$30,000); the Ballarat East Bowling Club (343 members, bowlers subscription \$45 per year, two greens, substantial clubhouse with bar, billiard room, locker room,

large function room, reserves of \$50,000 cash plus four nearby unencumbered residential properties), and the Lakes Entrance Bowling Club (96 full members, \$35 per year and 90 associates, \$20 per year, two greens with a club room in the course of extension at the time of our inspection so as to make a substantial room with full licensed facilities).

The NSW and ACT sporting clubs: Conclusions

13.20 The number of golf and bowls clubs which could be included in the official inspection tour was small but I am satisfied that the inspections do give a fair impression of the situation in those jurisdictions. For one reason or another I have visited many New South Wales clubs over the years. Additionally, it must be noted that the selection was made by the legal representatives of the LCAV. There is no reason to believe that the sample selected was other than fair. It is not likely to have been weighted to show New South Wales clubs of below average standard. I cannot claim previous personal familiarity with Victorian sporting clubs but Mr. Bongiorno felt that the examples we were shown were a fair indication of the general standard. Once again, of course, the selection was made by the LCAV and it is not to be supposed that they offered a list of unusually superior clubs which would distort one's impression to the disadvantage of their case. As would be expected, some clubs in each State are better endowed and more attractive than others in that State but it is quite impossible to support the proposition that the New South Wales sporting clubs are, as a class, superior to those in Victoria. Clubs in both States could, no doubt, usefully use additional

income but in no case did I gain an impression of need. The major difference between the States, of course, is in the method of defraying the costs of maintaining the club. Victorian membership subscriptions are usually higher than those in New South Wales. The burden is spread evenly amongst the members. In New South Wales a major proportion of the cost of the club is borne according to resort to poker machines. I cannot see that the New South Wales approach is more closely related to the club concept than is that of Victoria. I add a further comment. It may be that the task of extracting funds directly from members' pockets through subscriptions imposes a greater discipline upon management than is the case where the poker machine stands between the member and the club management. Mr. Curtis gave much helpful information upon the clubs in the Sunraysia district, during which occurred this exchange (T544-545):

"Q. They all seem to be well managed in Mildura?

A. We have to be.

Q. Because you do not have poker machines?

A. Yes.

Q. It forces you to be good managers?

A. That is correct."

Community recreation facilities

13.21 Many New South Wales clubs make some contribution to the welfare needs of the wider community. The most common form of this contribution is through the intra-clubs, discussed in para. 5.19 above. Nominally the members of

intra-clubs are members of the licensed club itself but it is commonplace for people to join the licensed club, at a low subscription fee, so that they may qualify for membership of the intra-club. The intra-clubs provide a wide range of activities which in total must be of value to many thousands of people. They are highly cost effective; a few thousand dollars per year is all that is needed for the supportive finance necessary for a full range of a licensed club's intra-clubs. Some clubs provide physical facilities for community use; the Blacktown Workers Club and Dubbo RSL are examples noted above. But they are a very small minority and the total contribution made in this way to the community is miniscule compared with either total profits or total expenditure. Probably the greatest contribution, in percentage terms, is that made by clubs which provide finance to promote a particular sport. In New South Wales the leaders are the Rugby League football clubs but the analysis prepared by the LCAV (Ex.B38, see para. 5.24 above) shows that the selected sample of eight League clubs spent on football promotion an amount equal to only 5.25% of total expenditure. My calculation is that the expenditure on football promotion was equal to 7.25% of net poker machine receipts, after tax and all other expenses: \$1.785million out of \$23.52million. I do not wish to understate the value of such contributions to community recreation as have been made by the New South Wales clubs. Those contributions have been of real value to the community. There is no reason to assume that the Victorian clubs would do any less, given the opportunity of poker machine revenue.

Nor, however, in the absence of any compulsion is there any reason to believe that they would do more. So a question arises as to the importance of this contribution in relation to the recreational opportunities offered already in Victoria. This is discussed at para. 14.15 below.

Community Welfare Contributions

13.22 The small sporting clubs in New South Wales and in the Australian Capital Territory make little contribution to the wider welfare of the community. Nor is this reasonably to be expected. However, the position of the major social clubs is very different. A club which has a membership of many thousands of people, which enjoys the legal right to operate for its benefit a form of gambling denied its competitors and which is able, whatever the legal rules, to trade as a public house may properly be regarded as being under a duty to make a substantial contribution to community welfare. Otherwise, why should it be accorded such a privilege? Almost without exception, the New South Wales club officers who gave evidence at the public sittings of the Board or who were interviewed during the inspection tours acknowledged the reasonableness of the view that they should put back into the community a significant proportion of what they gained from it in poker machine revenue. Generally, their attitude was that their particular club fulfilled this expectation. Acknowledging some exceptions, I can only say that I disagree. The facts summarised in paras. 5.26-5.27 above speak for themselves

for themselves. Whether one looks only at the clubs we visited (para. 5.26) or at an analysis from a State wide sample (para. 5.27) the picture does not inspire pride. Perhaps understandably, having regard to the pressures of club democracy, the tendency is at all stages of a club's development to direct the overwhelming proportion of funds to the satisfaction of the demands of members, leaving only token amounts for the wider community. This has been the position in New South Wales. Despite the sincere desire of some individual club men, such as Mr. B.C. Ruxton of the Returned Services League (T.823), to the contrary there is no reason to believe that it would be otherwise in Victoria. [6] At T.231 Mr. Hornsby was asked whether he disagreed with the philosophy of those New South Wales clubs "that retain all the profits from poker machines for the club itself". He replied that they "should spend it":

"Q. How would you say they ought to spend it?

A. Have everything they want for their members - 90 per cent before members requirements are fulfilled and they can look to community interests as a donation.

Q. Is it not based on the view that you look after yourself first and when you have more than ample you then consider what you might do for others?

A. I think that is the way we all take. When we have an extra bit of money we are quite content to donate it to some worthy cause but if we have not any we just walk away from it".

Earlier at T.226-227 he had pointed out the realities of club life:-

"Once the members know they are in a wealthy club they tend to ask for this and they say 'Why cannot

we have this?'. Club members are quite adamant if they think there is a pound in the till".

The approved expenditure concept

13.23 The poker machine guidelines adopted for its campaign by the LCAV contained no requirement for contributions to community facilities. When, at my request, the LCAV addressed itself to the desirable conditions for the operation of poker machine clubs it specifically rejected the notion of any restriction upon the use of poker machine profits. It took the view that a 10% tax should be payable to the State government and the whole of the balance should be available for disposal by the relevant club as it saw fit. (T.495). However, by the end of the Inquiry the New South Wales figures had become available. Sensing that the "crumbs from the rich man's table" approach might lack appeal, Mr. Garling put the suggestion, as an alternative to the LCAV primary position of "no restriction on use", of a concept of "approved usage". The notion was that net income from the machines would have to be spent on "approved usages" or go to the government. He defined "approved usages" as "donations to charity and welfare, expenditure on sporting facilities such as improvement to or upkeep of golf courses and bowling greens, improvements to public facilities, development of sport, improvements to the quality of club facilities, provision of benefits for disadvantaged community members and so on" (final submissions p.76). In his oral address Mr. Garling made it clear that he envisaged that building extensions, the most voracious devourer of funds in New South

Wales, would be an "approved usage" but indicated that his client would be interested in having poker machines even if they were not. Mr. Garling's proposal was for a statutory authority to consider and approve proposed expenditures, giving the opportunity as he put it (p.77) "to exclude the use of profits for purposes thought not to be desirable such as increases in transfer fees for premium VFL players, extravagant building programmes and so on". Even conceding the possibility of the statutory authority giving blanket approvals for the expenditure of funds on objects which meet obviously acceptable criteria, it is clear that the administrative burden of such a scheme is considerable. In effect, the authority would be asked to supervise a major management function of every poker machine club in the State. If it were to investigate expenditure proposals adequately it would require a large and expensive staff. It would probably find itself in constant conflict with clubs who resented bureaucratic interference in their spending of "our" money. If it did not subject expenditure proposals to rigorous scrutiny it would be useless, a mere rubber stamp. It is a safe prediction that in either event it would be but a short time before a government yielded to pressure for the abolition of the authority so as to allow clubs to spend their profits as they saw fit. The only realistic assumption is that, sooner or later, the clubs would be granted free rein to spend in accordance with the wishes of their members. As mentioned above, the analysis prepared by the LCAV solicitors of the latest annual reports of 71 New South Wales clubs, which they

reasonably suggest is a fair sample of the whole, shows that the donations made to charitable and welfare bodies equals 4.82% of the total net profits of those clubs for the year under survey, calculated after deducting from poker machine profits the cost of subsidised activities. The donations equal 0.7% of the total expenditure of the clubs for the relevant year. There is no reason to believe that Victorian clubs would be any more generous; the "look after yourself first" imperative, acknowledged by Mr. Hornsby, is likely to prevail.

ECONOMIC EFFECTS: THE GENERATION OF EMPLOYMENT OPPORTUNITIES

The Holsman study: The authors

13.24 The LCAV puts at the heart of its economic case the proposition that poker machines in licensed clubs will generate a substantial number of new jobs. This proposition is based upon the study, referred to at para. 12.16 above prepared for Mr. Vibert of A.C.D.A. by a team led by Dr. Andrew Holsman. (Ex.55). Dr. Holsman is now research manager to the Port of Melbourne Authority. At the time he prepared his study he was a senior lecturer in economic geography in the School of Applied Geography, University of New South Wales. His background is geography, his doctoral Thesis being on the subject of area transport, but he has written on economic geography, which he described as "the spatial aspects of economic activities, the location of economic activity, regional economics - economics as it applies to regional areas". (T.941). Dr. Holsman is the author of a number of reports on the economic impact of various resource projects in

New South Wales, especially in the Hunter valley. In his work on the Victorian study, as in the other studies carried out by him on behalf of ACDA, Dr. Holsman was assisted, inter alia, by Mr. Peter Phibbs, an economist carrying on a private practice from his home at Springwood, New South Wales. Mr. Phibbs' experience was also heavily oriented to the study of the economic effects of particular resource projects.

Holsman study: The basic assumptions

13.25 The Holsman study was an input/output analysis of the effect in employment terms of a Victorian licensed clubs industry which was developed to the same extent as that in New South Wales. Dr. Holsman agreed that the study involved the following assumptions:

- a) That poker machines would cause Victorians to increase their rate of gambling to achieve the same level per capita as in New South Wales. In 1980-81 Victorians spent \$2.53 per week per adult on gambling, New South Welshmen \$5.09 (of which \$2.88 was poker machine gambling and \$2.21 all other gambling). The assumption was that, after expansion of the Victorian club industry, poker machine expenditure per adult per week would be \$2.56 in 1980-81 money terms. (T.927). The reason that the team did not assume that poker machine expenditure in Victoria would match that in New South Wales, according to Mr. Phibbs (T.1092) was that to do so would mean "we would be saying that Victorians would end up spending more than New South Wales people on gambling" and "people have perhaps come to appreciate gambling in New South Wales is getting fairly close to saturation level".
- b) That the money spent on poker machine gambling "will be spent without any effect on any other forms of gambling". (T.926).
- c) That the money "will be spent on gambling without any effect on other spending on disposable household items such as food, cigarettes, and so on". (T.926).

- d) That an expanded Victorian club industry will be similar to that now existing in New South Wales including a reproduction in Victoria of existing New South Wales door practices (T.963) and the use in Victoria during the first ten years after legalisation of multiplier poker machines. (T.1105).
- e) That there will be no increase in alcohol consumption during the study period. The increased consumption of alcohol in the clubs will be, as to one half, a transfer of business from hotels and, as to the other half, from a decline in home consumption. (Ex.B26(a)).

When the Holsman study was published in March 1982 no time projection was included, that is to say no attempt was made to say when the Victorian club industry would be likely to achieve parity with the New South Wales industry. The study team had "decided that it was impossible to place a time on the expansion period". (Ex.B26(a), p.5). However, the material put before the Inquiry included a Table (Ex.B26(n)) which showed this position occurring ten years after legalisation. This Table was adopted for the purpose of their evidence by both Dr. Holsman and Mr. Phibbs although neither of these persons, nor any other witness, was prepared to depose to a belief that it was realistic. Mr. Hornsby thought that it ~~was~~ wrong; that the average number of machines per club in ten years time would be only half that assumed by this exhibit i.e. about 12,000, not 25,000 machines. (T.510). It emerged that the selection of a ten year period was made by Mr. Garling, counsel for the LCAV. He was, of course, entitled to ask his expert witnesses to make any assumption he liked, for the purpose of the exercise, but it must immediately be said that the time prediction rests on no basis of evidence.

Holsman study: Methodology

13.26 A full description of the methodology used in the input/output analysis included in his study was set out by Dr. Holsman in Exs.B26(d) and (e). The methodology is very complex. As it was not itself the subject of criticism there is no need to set it out at length. However, an outline may assist the reader. The study team collected data from two main sources: as to club expenditure from clubs' income and expenditure accounts for 1979-80, as to employment from the Australian Bureau of Statistics (ABS) publication - Census of Retail Establishments and Selected Service Establishments. Clubs were surveyed by mail to ascertain where they purchased goods and services. The information gained from the surveys allowed the team to construct a table of trade co-efficients listing the major inputs (goods and services) of the existing industry. Existing employment was known so that it was possible to calculate the likely direct employment in an industry expanded to the size, on a per capita basis, of that in New South Wales. However, it was accepted that there would be some transfer expenditure from other businesses, predominantly hotels, so it was necessary to deduct the direct jobs lost. Information as to hotel employment was obtained from ABS census data and a calculation was made as to the ratio between hotel output and employment so as to obtain a figure of direct jobs assumed to be lost to that industry as a result of the club expansion. The resultant figure was taken as the figure for net increased direct employment. To it was added an employment multiplier, representing jobs in

associated industries such as retailing, wholesaling, finance and personal services. The actual figures quoted in the Holsman study were:

- a) An expanded club industry would directly employ 28,346 persons, compared with 5,100 persons in 1979-80. However, many of these persons would be part time employees. In terms of full time equivalents (f.t.e's) the number would rise from 5,100 to 14,754.
- b) After allowing for a decline in the hotel, retail liquor and movie theatre sections the net gain in employment would be 17,629 jobs or 11,194 f.t.e's.
- c) The total indirect employment impact of the expansion would yield 11,852 jobs. To this should be added 801 jobs arising out of increased construction activity and 400 jobs arising out of the manufacturing and servicing of poker machines in Victoria.
- d) In total, the expansion of the club industry would lead to a net growth of employment in Victoria equivalent to 30,862 full and part time jobs, being 24,427 f.t.e's.

Holsman study: Criticisms made

13.27 There were a number of major criticisms directed at the study:

- a) The study assumes that money will be available for poker machine gambling without any reduction in expenditure on either other forms of gambling or household expenditure. This assumption is critical to the result; without it the team would have had to deduct from their figure the jobs (direct and indirect) lost in other industries by reason of transferred expenditure. The ratio of jobs to expenditure in those other industries may have been higher than in the club industry. Dr. Holsman and Mr. Phibbs justified the assumption they made upon the basis that the

level of savings of Victorians (\$3,478 per head) is higher than that of New South Welshmen (\$2,637 per head) so that Victorians would have the capacity to spend extra money in an expanded club section "without necessarily inducing an automatic transfer of expenditure from other sectors of the State economy". (Ex.B26(a)). It is reasonable to expect that some theoretical or factual basis would have been advanced for this fundamental assumption. This was not done. The study (Ex.55 p.24) said: "A number of commentators have suggested that expenditure in clubs will be totally comprised of transfer expenditure, since people only have a fixed amount to spend on entertainment. While the study team appreciates that this logic is appealing, it is not supported by economic theory. Households, through changes in their savings ratio, have discretion as far as their amount of consumption spending. Moreover, an important feature of the economic history of the Australian economy in the 1970's was a large increase in the household savings ratio. (Williams, 1979)". The implication clearly was that economy theory, and perhaps Mr. Williams in particular, supported the belief that poker machine expenditure would be sustained by the drawing down of household savings. Both Dr. Holsman (T.946A) and Mr. Phibbs (T.1095) conceded in cross-examination that they were unaware of any professional support for the theory that such expenditure would come out of savings. Both accepted tht the article by Mr. Williams to which they had made reference furnished no basis for such an assumption. (T.929, 1096). When the study was prepared Mr. Phibbs knew that the contrary view was held by some economists

(T.1096) and he conceded that the study should have said so. (T.1100). That contrary view is spelt out in the evidence given to the Inquiry by three economists, Dr. N.R. Norman, a senior lecturer in economics at Melbourne University who was called to give evidence on behalf of the Licensed Freeholders, Professor J.O. Perkins, Professor of Economics, and Mr. J.E. Sullivan, senior lecturer in economics, also both at Melbourne University. Their view is succinctly expressed in this passage from Dr. Norman's written evidence (Ex.S3 p.27): "Neither the theoretical literature nor the evidence support the view that consumption ratio is sensitive to the availability of a specific new form of consumption. In short, economists tend normally to postulate that the saving ratio or consumption ratio is unaffected by the availability of a specific avenue of consumption that was not previously present". In his oral evidence (T.991-992) Dr. Norman elaborated his view, saying that the "data say that Victorians on the average desire to save more and spend less" this perhaps being explained "by saying Victorians are perhaps more conservative in their spending habits". It appears to me that the evidence is all one way, that I should conclude that there is no proper basis for the proposition that poker machine expenditure will be at the expense of savings and that in consequence the Holsman study is seriously deficient in failing to identify the sources of transfer expenditure and to quantify the effect of that transfer in job terms.

b) Even on its own postulates, there is an obvious failure to deduct the employment cost of diversion of money to

poker machine expenditure. Money held as savings is not money left idle. As Dr. Holsman agreed (T.952) much of it is invested in "a labour intensive industry, the housing industry which uses almost entirely local materials". He agreed that it was not possible to say what would be the net job effect without knowing how that money would as savings be invested and what jobs it would produce: "I can say there will be a creation of a large number of jobs. I cannot say whether that money if invested somewhere else would create more jobs or less jobs". (T.949). Dr. Holsman emphasised the difficulty of establishing the job effects of investment of savings. (T.952-953). At T.953 he gave this evidence:

- Q. To summarise that aspect, I read you a passage from a statement which has been placed before this Inquiry by Professor James Perkins, Professor of Economics at the University of Melbourne and Mr. John Sullivan, Chairman of the Department of the Department of Economics at page 10: 'No conclusions can be drawn about the total effect on employment in Victoria without all indirect repercussions on other Victorian industries being taken into account'. You would have to accept that, would you not?
- A. To accept that argument is really challenging much of the economics research work that many people are taking on the basis of the impact of one industry, whether it be this or any other industry.
- Q. You disagree with those two gentlemen?
- A. I am not disagreeing with those gentlemen because they have experience in economics which I do not pretend to possess. They are suggesting certain things in there, which I would not disagree with...".

At T.961 I put to Dr. Holsman a criticism sometimes made of economic studies of particular resource projects, that they

ignore the jobs that might have been created had the capital been invested elsewhere. He agreed that this was a problem, that often more jobs would be created elsewhere but mentioned "some very practical problems". Of course, a resource project is generally focussed in a small geographical area and financed by funds from outside that area. From a regional point of view it may be legitimate to ignore the jobs that would have been created elsewhere. The same cannot be said of expenditure on poker machines throughout Victoria of money which would have been likely to have been available for expenditure on alternative investments throughout Victoria. As Professor Perkins, Mr. Sullivan and Dr. Norman pointed out it is impossible to ignore the loss of this potential. The problem, I believe, is that Dr. Holsman and Mr. Phibbs' experience is mainly in the assessment of particular projects; regional economics. They improperly extrapolated a technique arguably appropriate for a regional economic study into a macro-economic study. Dr. Holsman, who is not an economist, was probably unaware of the error. It is difficult to be so charitable about Mr. Phibbs. He knew that there was at least a view amongst economists that macro-economic considerations should be applied even to a regional study but, in a State study, he not only thought it proper to ignore the macro-economic considerations but also to omit any reference to the fact that the contrary view was held. (T1102-1104).

c) The study assumed that consumption of alcohol in clubs would increase by transfer, as to one half, from the hotel trade and, as to the other half, from home drinking.

This assumption was also of critical importance - upon it depended the deduction to be made for lost hotel jobs. A responsible team would have taken some trouble to establish the validity of the assumption. This team did not. At T.936-937 Dr. Holsman gave this evidence:

- "Q. You made the assumption that it would come half from home consumption and half from hotels?
- A. That is correct.
- Q. Are you aware that there is a very sharp difference between Victoria and N.S.W. as to the percentage of packaged as against draught beer sold?
- A. Not really.
- Q. Draught beer has been sold less and less in Victoria in recent years, until now the ratios are 32 per cent bulk and 68 per cent packaged...Do you believe that clubs can reverse that tendency in such a strong way as you suggest?
- A. We had to make an assumption about the likely transfer effect of alcohol consumption. In the light of no other information, we assumed that that transfer would come in equal shares from home consumption and hotels. That is the assumption that we made. Again that may or may not be correct.
- Q. It is a very critical part of the reasons, though, that assumption?
- A. In that, if we say all the - yes, in that if we say that all the consumption comes from home rather than hotels then the decline in the hotel sector is obviously going to be much less, or if we say it is all going to come from hotels then the decline in hotel employment is going to be much more.
- Q. Did you have any material upon which you based that assumption?
- A. No.
- Q. If I can say so, is it just the best guess of those...?

A. Yes, it is the best guess of people who were working at that time on the subject".

Not only was the assumption a "best guess", it was a best guess from a person who, by his own admission, was content to be ill-informed. Dr. Holsman said, T.896, that he had not investigated the future market of the beer industry or liquor industry. At T.961 he said: "The whole question of the beer market and the way in which the beer market operates in Victoria is really an area which I am, to be honest, very ignorant about...".

d) There is some excuse for the study team in relation to the next matter - the hotel employment figure assumed for the purposes of calculation. At p.75 of the study appears a Table showing, inter alia, employment in the Victorian hotel industry as being 19,308. The cited source is the ABS Retail Establishments Census: January 1982. The figure does correctly reflect the ABS material but I am satisfied that it is wrong; that the true figure is about twice that stated by ABS. The evidence indicated that the question of how many people are actually employed in the Victorian hotel industry has been a matter of debate for some years. The Board of Inquiry into Packaged Beer, Mr. L.S. Brokenshire, in 1977 accepted that employment in the industry was then about 40,000. Mr. Brokenshire's Inquiry involved an examination of the liquor industry, undertaken by a member of the Liquor Control Commission. There may have been some cut-back in employment since that date but it is not suggested by anyone that there has been a significant decline in employment.

The Institute of Applied Economic and Social Research within the University of Melbourne, in a 1982 report prepared for the Victorian Tourism Industry Training Committee entitled "A Survey on Manpower Needs of the Tourism and Hospitality Industry", put the figure at 45,000. But this included motels. In a letter to the Licensed Freeholders of 19 July 1983 (Ex.53) the hotel component was estimated by the Institute to be 38,550 persons. Early this year, and in connection with discussions over the repeal of s.11A of the Liquor Control Act, the hotel industry commissioned research into the subject by Technisearch Limited, of the Royal Melbourne Institute of Technology. Questionnaires were sent to all hotels in Victoria seeking information as to the number of full time and the number of part time employees in various job classifications. 630 valid replies were received, being 44% of the total. The responses were analysed by reference to categories of hotel, obtaining averages for each job classification in each category. These results were then extrapolated to obtain the total figures for each category of hotel and a grand total of 37,000 employees was reached. The conclusions of the report (Ex.A25) are worth quoting:

- "(i) It is estimated that there were 37,000 people employed in Victorian hotels at the time of the survey. There is only one chance in twenty that the actual number lies outside the range 34,000 to 40,000, except as explained in point (v) below.
- (ii) The number of full time employees were 13,500 and only one chance in twenty of being outside the range of 11,300 to 15,700.
- (iii) The number of casual employees were 23,500 and one chance in twenty of being outside the range of 22,500 to 24,500. These figures may also include permanent part time employees.

- (iv) On the basis that full time employees work aa 40 hour week, casual employees worked an average 12 1/2 hours per week with a 5% chance of being outside the range of 11 to 14 hours.
- (v) It is probable that the total people employed in the industry is greater than the figure of 37,000 derived from the statistical analysis of the questionnaires. The questionnaires asked for 'persons EMPLOYED' and many respondents failed to list proprietors and/or family who worked, but were not employed in the generally accepted sense. The questionnaires did not ask for contract employees which have therefore been shown only rarely. Contract employees are prevalent in the areas of security, entertainment and cleaning".

The Federated Liquor and Allied Industries Union of Australia (Victorian Branch) ("the LTU") suggested to this Inquiry (Ex.N2) that the correct figure for employment in hotels was 45,030. This figure was not the product of any independent research, being based on the various reports on the matter to which I have referred. However, it is likely that the union, which has 12,000 members employed in hotels, would have an "order of magnitude" perception of the numbers. The fact that it sees the ABS figures as seriously under-stating the true figures is not without significance. It appears to me reasonable to adopt the RMIT estimate as furnishing the most reliable guide to the numbers. This was a recent, professionally undertaken analysis based on a survey achieving a relatively high response rate. It is consistent with Mr. Brokenshire's estimate and the perception of magnitude of the union. It is not clear why the ABS figures are so far out. The LTU submission made the comment in respect of ABS hotel employment figures generally that they "tend to underestimate

the casuals working, as 'moonlighting' is quite common in the industry" and Dr. Holsman agreed that this was so. (T.911). However, he made the reasonable point that whilst this might affect the accuracy of statistics based on employee returns it should not affect the accuracy of the Census of Retail Establishments statistics which are based on information supplied by the hotelkeepers. Neither Mr. T. Payne, the President of the Victorian AHA, nor Mr. J. Griffin the Preesident of the Licensed Freeholds, would concede that hotelkeepers would be less than punctilious in supplying accurate information (T.1855, 2044) but it is not hard to see circumstances in which, whether by accident or design, returns would be inaccurate. Whatever the explanation it seems to be clear that the ABS figures on which Dr. Holsman relied understate by about one half the total Victorian hotel employment. It follows that, with everything else unchanged, the deduction for jobs lost in hotels is under-stated by half or 3,180 f.t.e's. However, even this seems to be an under-statement of the error. If one works directly from market share statistics, as measured by licence fees or beer sales figures, the loss of employment in hotels is even greater: being 8,482 (-22%) based on licence fees and 10,716 (-27.8%) based on beer sales: see the Licensed Freeholders calculation in Ex.S3 pp.10-15.

e) A further criticism of the Holsman study was that incorrect consumption figures had been used. The criticism is put succinctly in this passage from the Licensed Freeholders written evidence (Ex.S3 pp.15-16):

"2.9 Consumption Differences

The calculations are further complicated by the differences in alcohol consumption between Victoria and New South Wales.

Dr. Holsman asserts (Statement p.8) that the difference in consumption between Victoria and New South Wales is 8.6% although he does not appear to take this into account in his predictions of club employment. According to LCC and LRB data for 1979-80 Victorian licence fees per head were \$10.65 while the New South Wales figure was \$14.43.

An alternative measure of consumption by volume, discloses per capita figures for Victoria of 110.44 litres and New South Wales 157.33 litres. This suggests that Victorian consumption per capita is 73.8% of New South Wales consumption as measured by licence fees and 70.2% as measured by volume. Thus, his estimates for the consumption differences are understated by 28% of the total consumption.

Dr. Holsman measures the potential increase in direct employment in clubs in Victoria by using the New South Wales club employment per head of population figure and applying that figure directly to the Victorian population. Recalculating his predictions for such growth and taking into account lower Victorian liquor consumption levels produces the following more realistic result:

TABLE 11

CLUB EMPLOYMENT - VICTORIA - BEFORE AND AFTER INTRODUCTION OF POKER MACHINES - BASED ON 1979-80

	<u>Before Poker Machines</u>		<u>After Poker Machines</u>	
	<u>No.</u>	<u>Employed</u>	<u>No.</u>	<u>Employed</u>
Clubs	424	5024	1200	16730

Therefore, using this it would appear that Dr. Holsman has over-estimated the potential club employment growth by 6506."

At T.906-907 Mr. McPhee directed Dr. Holsman's attention to this passage. The doctor accepted the Licensed Freeholders figures and their criticism of his own but commented that this "would increase our net loss figures from 3,200, by 28 per cent". (T.907). But I do not think that this is correct. The

error does not affect the extent of hotel job loss but rather the extent of club job creation. It seems to me that the Licensed Freeholders are correct in saying that it involves an error of about 6,500 jobs, not 1,000.

f) The evidence revealed other quantitative errors in the study. The figures for retail bottle liquor licences used by the team was clearly incorrect (T.888) and it ignored sales through, and employment in, licensed supermarkets. (T.892). The restaurant figures are highly questionable. (T.909). Here again, the study team appears to have been the victim of incorrect or inadequate ABS statistics but a quick check with the Liquor Control Commission would have revealed that the ABS figures were not reliable.

g) No attempt was made to think in qualitative terms. All jobs were assumed to be equal. No attention was paid to the effect on individuals of the transfer of expenditure which the study was advocating. But, as the LTU pointed out in its evidence, there are marked differences in the employment patterns of the club and the hotel industries. In both Victoria and New South Wales the ratio of male to female employees in clubs, according to the ABS Census of Retail Establishments and Selected Service Establishments for 1979-80 (the only statistics available), is 60-40. In New South Wales hotels the ratio is 41-59, in Victorian hotels 47-53. A transfer of expenditure probably means a loss of female jobs but a gain in male jobs. Moreover, according to the same statistics the proportion of casual employees in clubs is

higher than in hotels. Similarly, no attempt was made to go behind the bare figures in relation to the loss of business of hotels, restaurants etc. Dr. Holsman agreed that the "impact on some hotels might be much greater than on others, depending on their location and size and that sort of thing". He had no information on individual hotel turnovers, so as to know, for example, how many hotels did less than 10 kilderkins per week. (T.921). He could not estimate the number of hotels which were now so marginal that they might be forced to close completely by a transfer of the assumed proportion of trade to a poker machine club.[7]

Holsman study: Conclusions

13.28 I regard the criticisms made of the Holsman study as justified. The study team is entitled to some sympathy in relation to the difficulty in obtaining reliable statistical information on many of the matters which they needed to consider. That difficulty was, however, a reason why greater caution should have been adopted in the framing of the conclusions, especially as the team knew that if the results were favourable - as given the assumptions they had to be - the document would be used for lobbying purposes. (T.1100). Dr. Holsman had been on the campaign trail with Mr. Vibert, joining the delegation to Mr. Hamer in April 1981 and addressing at least one seminar, in August 1981. He must have known that his study would be used for all it was worth. I do not think it unfair to comment that, in such circumstances, special care is required of professional men. But I let Mr. Phibbs have the last word (T.1100A):

"Q. Do you regard it" (the study) "as an objective document dealing with the pros and cons of the introduction of poker machines into Victoria?"

A. No".

Holsman study: Adjustments?

13.29 If the Holsman study be rejected as a reliable guide to the employment generating potential of poker machines, the problem still remains to quantify what (if any) potential there is. At one stage I thought that it might be possible to make an estimate by making a series of major adjustments to the Holsman figure. The difficulty about that course is that the whole approach of Dr. Holsman rests, as it seems to me, upon two fallacies: that there is no loss of employment potential in the substitution of poker machine expenditure for whatever would be the alternative, whether savings as the study team assume or other forms of expenditure as the other economists believe, and that one half of the liquor sold by an expanded club industry will be by transfer from home consumption. Over the past decade there has in both Victoria and New South Wales been a seemingly inexorable movement away from bar sales and towards sales of packaged beer for home consumption. [8] There are obvious reasons for the trend, including a greater tendency to drink with meals and the effects of random breath testing. I do not think it safe to assume a major reversal of this trend in Victoria simply because clubs get poker machines. In the end, therefore, I have decided that it would be unsound to attempt to estimate an employment figure by adjustments to a calculation founded on incorrect assumptions. To do so would merely be to convey a false impression of precision.

Other estimates: Dr. Norman

13.30 Towards the end of his evidence Dr. Norman indicated to Mr. Bongiorno that, whilst he criticised the methods used by Dr. Holsman, he was not saying that there would be no jobs created by an expansion of the club industry, that he had not done the work to determine the number of jobs that might be created, that there would certainly be increased employment in the club industry itself and that he "would not be surprised" if there was an overall net increase in employment. He assented to the suggestion that his intuitive reaction was that "the legalisation of poker machines would produce some net increase in jobs. (T.1015-1016). I asked him whether his intuition extended to numbers and he said that his "hunch" would be 5,000-8,000 jobs (i.e. 3,750-6,000 f.t.e's) "but it is possible it could be negative. It is more likely to be positive than negative, but I think that it is almost impossible to generate a figure anywhere near the figure of 30,000 that has been used". (T.1017). He was speaking, of course, of an ultimate figure of 5,000-8,000 jobs when full expansion had occurred. Later he commented that his "hunch" figure "would have to be treated with a great deal of scepticism like all the Holsman figures - it is a highly speculative exercise in which we are engaged". (T.1022).

Mr. Sullivan

13.31 Mr. Sullivan was asked (T.1024) to comment on Dr. Norman's hunch. He replied:

"I do not think I would be willing to make the same hunch. One can express hunches but I do not know my hunch would be any better or any worse than anybody

else's, except that I would certainly believe that if there was any net increase in the number of jobs in Victoria that it would be substantially less than the figure of any excess of 30,000. I believe that if there is going to be an increase - I do not necessarily say that there will be - on the basis of the evidence I have had a look at there is no real reason for believing it will go one way or the other, other than those I have already mentioned, and certainly if there were to be an increase it would be closer to Dr. Norman's hunch than it would be to Dr. Holsman's".

Employment generation: conclusions

13.32 In the result I am left without any firm figure which I can report as being the likely net number of jobs which would be generated by an expanded club industry. For the reasons I have indicated no reliance can be placed on Dr. Holsman's figure and neither Dr. Norman nor Mr. Sullivan pretended to a firm estimate. In these circumstances, it is possibly incautious of me to offer any opinion at all but, for what it may be worth, I suspect that there would be a minimal increase in employment caused by the introduction of poker machines into licensed clubs. One effect of that event would be to cause a physical expansion of clubs and club premises and this is likely to generate a demand for services; especially in the building and furnishing trades, which will not (at least for a very long time) be offset elsewhere. Dr. Holsman put that element into his calculation at 801 jobs, direct and indirect. In economic theory, I realise, those jobs may be at the cost of jobs elsewhere but at a time of under-employment of the building industry it is possible that a new source of work and finance would create construction jobs which would be a net addition. Beyond that the position

has not supported. The union's evidence is that between its conferences of April 1976 and April 1982 there was a substantial decrease in the membership of its Melbourne branch, from 2,932 to 2,026, whereas Sydney branch had a slight increase from 2,172 to 2294, but assuming that financial membership of the union is indicative of the comparative numbers of musicians, as the submission does, it is difficult to relate this to the work opportunities engendered by poker machines. First, the 1976 figures represented the position nearly twenty years after poker machines were legalised in New South Wales yet the Melbourne membership was well above that of Sydney, and almost equal to Sydney and Newcastle combined. Secondly, the branch memberships in the various States in April 1982 were fairly closely proportional to State populations. The submission of Actors Equity draws attention to the prevalence of live entertainment in New South Wales clubs, stating that about two-thirds of them provide live entertainment "at little or no direct cost"; half of them at least weekly. I have no doubt that the people represented by the three unions referred to in this paragraph would be amongst the winners in any rearrangement of trade within the Victorian liquor industry but it is difficult to see that they have a greater claim to be advantaged by the grant of a privilege to one trader over a competitor than have the clubs themselves. Perhaps, it would be advantageous to themselves and to entertainers for some of the clubs to be able to trade overtly "open door", as Mr. Smith of North Melbourne would wish. But if that is done it would seem equitable that the

is merely speculative. Having regard to the impressive evidence of Dr. Norman, Professor Perkins and Mr. Sullivan and the weight of professional opinion on the matter, it would seem unsafe to assume that there will be any expenditure by way of reduction of savings. I hazard the view that the expenditure will be by way of transfer from other businesses, notably hotels and restaurants, and other forms of gambling. I have no material from which to judge whether the club expenditure will be more labour-intensive than the alternatives from which the transfer has been made.

Particular jobs

13.33 It is, of course, inherent in any assumption of transferred expenditure that there is likely to be job substitution, a person in one job classification finding a job in the transferee industry at the expense of someone in the transferor industry. The LTU may have had such considerations in mind in deciding not to take a position one way or the other on the primary question as to whether poker machines should be legalised. It numbers both hotel and club employees in its membership. Other small, more specialised unions naturally enough put a view related to the perceived interests of their members. The Secretaries and Managers Association (Ex.DD2), the Musicians Union (Ex.L2), and Equity (Ex.FF1) all supported the introduction of poker machines, into licensed clubs, rightly seeing in that change work opportunities for their members. The Musicians Union contended that it ought to be compulsory for poker machine clubs to engage live entertainment - a condition the LCAV

open door "clubs" trade on equal terms with the hotels, many of whom also offer live entertainment.

ECONOMIC EFFECTS: REVENUE AND EXPENDITURE

Government revenue

13.34 The LCAV argues that a significant advantage of the introduction of poker machines into licensed clubs is the revenue which would be available to the State government. Chapter 10 above attempts to define the order of magnitude of the revenue likely to be available to the government in respect of the taxation of poker machines. The figures demonstrate, I believe, that net government revenue would actually be decreased if poker machines were taxed at the rate of 10%, as suggested by the LCAV, or even 20%, as in New South Wales. There is obviously a point at which a net benefit does accrue to government but, because of the likelihood of some transfer of expenditure from Tattslotto and, to a lesser extent, the TAB that is likely to be at a tax rate of not less than 30%: see para. 10.24 above. Above that figure questions arise whether clubs will be bothered to instal machines, giving themselves so much capital outlay and effort, for what they would be likely to see as an inadequate return. There is also the question discussed in para. 15.23 below as to whether operators, frustrated by an inability legally to extract a "fair" share of the takings will resort to unlawful means. My view is that, at least in clubs, poker machines are unlikely to make a significant net addition to tax revenue.

Border leakage

13.35 An economic argument much pressed in the campaign

material distributed by the LCAV was the "leakage" of funds across the Murray River to New South Wales. Tables were compiled showing the profits earned by New South Wales border clubs and the amount of tax paid by them to the New South Wales Government. Thus in the "Facts" booklet (Ex.53) at p.48 there is set out a table relating to 52 border clubs categorised as "16 bowling, 3 business, 2 country, 16 golf, 13 services and 2 sports" clubs. They were said to have assets totalling \$23,735,688 and, in an unspecified year (presumably 1978-79), poker machine takings of \$14,980,853, machine tax of \$3,918,659 and payroll tax of \$264,863. Other items such as cost of goods, entertainment, sports expenses and wages were also set out; presumably on the basis that they represented expenditure lost to Victoria. In the "corridor" book (Ex.B6(b)) published in 1981 similar information was given in respect of individual clubs along the border. The Board does not have complete information as to the finances of the New South Wales border clubs. The financial statements available (part of Ex.B32) relate to only 23 of them but these include most, if not all, of the larger clubs. In many cases the financial statements do not disclose the amount paid by way of licence fees and taxes but it is possible to make a rough calculation by adding the amounts shown for poker machine profits, after licence fees and taxes, but (in most cases) before other expenses, and treating that as 20% of the whole. The total poker machine profit after tax appears to be about \$18.92 million, implying licence and tax payments of about \$4.73 million. Allowing for the clubs not listed, it is reasonable

to estimate total licence fees in the Murray region as being about \$6 million in 1981-82. Not all of this sum can properly be regarded as "escape" taxation from Victoria. The figures not only include the Albury clubs but also towns as far from the river as Balranald, Deniliquin and Finley. Furthermore it is clear that at the western end, much of the expenditure is by South Australians. However, whatever the true figure may be, it is clear that there is a leakage of taxation revenue from Victoria to New South Wales, involving some millions of dollars each year. That leakage is one of the reasons for the proposal discussed in Chapter 16 below.

The extent of flow back

13.36 At each of the Murray Valley clubs visited by the Board questions were asked as to the source of goods purchased. On each occasion we were told that all goods were purchased from Victoria, with the exception of the machines themselves. We were also told that many, often most, of the employees lived on the Victorian side of the river. In some New South Wales border clubs there was an obvious wish to see a recommendation from this Inquiry against the introduction of poker machines into Victoria. I have, therefore, treated with some scepticism what we were told in those clubs. However, I do accept the accuracy of the information on expenditure. With the exception of the clubs in or near Albury, the New South Wales clubs are in the economic orbit of major Victorian towns; they are part of the Victorian economy. This means that the volume of the leakage is much less than it might at first glance appear. It remains undesirable but it is not a

major element in the total picture. Certainly one would not sensibly distort competition within the Victorian economy, or introduce social problems into Victoria, just to stem the border leak.

THE EFFECTS ON CLUBS THEMSELVES

The effect on club atmosphere

3.37 I have expressed the view that one inevitable result of the introduction of poker machines into Victorian licensed clubs would be that the social clubs, at least, would become "open door" public houses generally available to the public. They will be very different from the Victorian social clubs visited by the Board on its inspection tours, many of which had relatively small, intimate premises where the members generally know the other people at the bar, their fellow members and personal friends of members. Those clubs were different in both scale and atmosphere to the New South Wales social clubs we visited. I do not speak of attractiveness because that is very much a matter of personal taste and, in any event, it was not all one way - we visited both attractive and unattractive (to my eye) large clubs and attractive and unattractive small clubs. The objective point is that intimacy is inevitably lost once a social club "goes public". Members may easily find themselves at a bar lined by strangers. They certainly will find themselves in rooms dominated by the noises and flashing lights of poker machines; factors which some people regard as intrusive upon their relaxation. Many will resent these changes. We saw some evidence of this. In more than one large club we found a

separate lounge, without poker machines, marked "members only"; an inner sanctum, a club within a club where the members could escape the herd.

The effect on club management

13.38 Many witnesses offered the view that, if poker machines were to be introduced into clubs, it should be mandatory that directors be subject to licensing including disclosure to the licensing authority of their assets, and perhaps also the assets of their spouses. In principle, there is much to be said for such a requirement. It is a normal rule of the casino world, designed to limit the possibility of secret commissions being offered or accepted, and large poker machine clubs are, in effect, small casinos. However, in a state the size of Victoria the proposal would require the investigation of thousands of directors each year. Unless very substantial resources were provided to the licensing authority, at considerable cost, the procedure would quickly become perfunctory - a check as to the existence of a police record and nothing else. The proposition in Chapter 20 is, therefore, limited to the scrutiny of club managers and key employees i.e. all those who might have access to the machines or to the in-house computer. Even so, a new element would be introduced into Victorian club life. Directors would need to be involved in the clearing of the machines, as they usually are in New South Wales. Directors would need to learn about the machine and computer operations. They should be able to read and understand the computer printout. Notwithstanding these precautions, the directors almost certainly from time to

time will have to deal with problems of criminal conduct stemming from the machines. Not all people who would now be willing to be nominated for election as a director would be prepared to undertake these additional burdens. Some people, who might make perfectly acceptable directors at the present time, might be regarded by themselves or their club-mates as inadequate to discharge these responsibilities. Clubs would adjust to the change but at cost to some individuals.

TOWN PLANNING QUESTIONS

The concern of the councils

13.39 The Board canvassed the attitude of representatives of local government to the permitting of poker machines. All of the 134 shires, town and boroughs in Victoria and 55 out of the 64 cities in the State replied. One of the issues raised with the councils was the town planning question. The responses showed a widely held belief that town planning problems would arise by reason of the expansion of clubs. See Ex.107. The nature of the concern is succinctly expressed in the submission to the Board of the Municipal Association of Victoria (Ex.2QQ):

"The introduction of poker machines without town planning controls should not be entertained. Briefly, the town planning issues would be -

- (a) the nature of the area, i.e. industrial, commercial or residential and the undesirability of the location of poker machines in establishments in areas zoned residential;
- (b) the effect on the amenity of the area such as noise late at night when patrons are leaving;
- (c) the operating hours;

- (d) the number of machines and hence the size of the operation and the proportional noise problems, etc;
- (e) the nuisance caused by patrons when leaving the establishment particularly late at night after consuming alcohol;
- (f) provision for car parking;
- (g) compliance with the Uniform Building Regulations and the Health Act; and
- (h) potential for an existing satisfactory situation to become unsatisfactory".

The position in New South Wales and the Australian Capital Territory

13.40 The nature of the problems in New South Wales and the Australian Capital Territory were spelt out for the Inquiry in the evidence of Mr. M.J. Collie, a qualified town planner practising in Melbourne and Canberra. Mr. Collie accepted the accuracy (T.2585) of Mr. Vibert's comment in the section of his evidence entitled "Learning from the Mistakes of the Past." (Ex.MM7):-

"Because of the grow like topsy development that took place in New South Wales, many councils have found themselves in a dilemma in dealing with continual expansion by clubs in some areas".

That statement accords with my own understanding, acquired over some twenty years of practice at the New South Wales Bar, inter alia, in the town planning area. It is significant that there are problems even in the Australian Capital Territory, where the National Capital Development Commission chooses sites to be leased to clubs. The expansion of some clubs has caused problems in relation to traffic, car parking and residential amenity. An example was the Ainslie Football Club, visited by the Board. Mr. A.R. Ray, the President of the club, spoke of the parking problems the club experienced because of expansion.

He said (Ex.104E) that the Department of Capital Territory:-

" didn't envisage that we would grow to the size we are now.

Q. Nor did you, apparently?

A. That's true; we may have hoped, but really we were a much smaller organisation at that stage.

Q. These problems of space, carparking, difficulties with the planning authority are fairly common in Canberra among the clubs, aren't they?

A. I understand they are, yes".

The community problem

13.41 The concern of the Victorian councils is readily understandable. An illustration will suffice. A club is located on a site which it has occupied for many years. It has sufficient parking or, at least, the neighbours have learned to cope with any inadequacy of parking and with any noises associated with people entering and leaving the club and moving and starting their vehicles. The club prospers and decides to extend its building. There may be insufficient parking to cope with the likely increased attendances or intervening buildings may be demolished for the extensions or for car parking, so exposing the club to residential properties from which it was previously screened. Perhaps the new building will approach closer to neighbouring houses, causing problems of noise, lights or over-looking. And, in any event there will now be more activity in and about the club. People may stay later, or be late more often. There may be more of them. The noise nuisance, especially late at night as people, in relaxed mood, call out their good-byes,

slam doors and drive off, may be quite disturbing to neighbours seeking to sleep. The problem is not peculiar to clubs. It can arise equally in relation to a restaurant or a hotel. Indeed, Mrs. P. Rayson, who spoke to the submission of the Toorak South Yarra Group (Ex.2HH) illustrated her concerns by reference to problems which had been experienced in her area by reason of the extension of the physical size, and hours of trading, of hotels.

Present legal position

13.42 It has never, to my knowledge, been suggested in New South Wales that a town planning consent is required to be obtained by a club before installing, or before increasing the number of, poker machines. The installation and operation of poker machines is regarded as incidental to the conduct of a club. No new or changed use is involved. No other permission is necessary, not even of the Licensing Court. The machines are required to be reported to the Department of Finance for revenue purposes but that is all. If, by reason of the profits of poker machines or otherwise, a club seeks to expand its physical premises then it must obtain the approval of both the local council (or the Land and Environment Court on appeal from the council) and the Licensing Court. The situation, in Victoria, in relation to physical extensions of clubs, hotels or other licensed premises is identical: the consent of both the local council (or the Planning Appeals Board on appeal) and of the Liquor Control Commission must be obtained. In the absence of special legislation to the contrary it would not be necessary to obtain a planning consent merely to install, or to increase the number of, poker machines.

A SPECIAL PLANNING PERMIT

The proposal

13.43 The Municipal Association of Victoria has urged that planning permission be required for the installation of poker machines. A number of councils have also pressed that view, including the Melbourne City Council and Prahran City Council. (Ex.2T). These councils acknowledge that they do have the power, subject to an appeal to the Planning Appeals Board, to deny a building extension but they see a dilemma, described by Mr. S. Daley, counsel for the Melbourne City Council in his final written submissions (p.14) in this way:

"Given that at least insofar as inner city Melbourne is concerned the stock of buildings suitable for poker machine premises is often as old and in some cases older than the surrounding buildings it would be unrealistic to consider that once these clubs have reached a given size allowed under the relevant planning control they will immediately be able to move to other areas where they can then expand unimpeded, if other areas can indeed be found near to the original location of the club. Regular patrons of the club may feel that such a requirement is unfair in terms of their established use of the club in their area and indeed it may be very difficult for some councils to refuse large and influential clubs within their area, the planning permission required for further and further expansion if those clubs would then be in a position to merely move house to another municipality thereby detracting from perhaps rate revenue or some of the other advantages that the council may perceive that club as bringing to that particular area".

Therefore, argues Mr. Daley, the problem must be met at source by requiring a planning permit before any machines are installed.

The LCAV position

13.44 Mr. Garling, for the LCAV, did not accept the desirability of a requirement of a planning permit for the

mere installation of machines. He argued that the mere installation of machines changed nothing, in terms of club size or club use. The change occurred when a club physically expanded and councils already had planning powers in relation to extensions. If, in a particular case, it was thought that the expansion would be contrary to the public interest then a council should refuse to consent to the expansion.

Consideration

13.45 The response by Mr. Garling underestimates the dilemma, in relation to an extension application, to which Mr. Daley referred. There is no doubt that it would be competent for a council, persuaded that there was a valid planning objection to a proposed extension, to refuse consent. If it could show that its judgment was correct it could, presumably, look forward to its decision being upheld at any appeal by the club to the Planning Appeals Board. But the dilemma remains. The club may have existed for many years. It may be a local institution. It may number amongst its members some of the local councillors. Armed with poker machine profits, it seeks to make a comparatively modest extension. The proposal would be rejected out of hand if it were a proposal for a new club to go onto that site and to erect a new building in the locality, and having the dimensions, of the old building as extended. But, the club argues, there is already a substantial investment in a building which is not easily saleable for, or adaptable to, another use; besides there would be difficulty in obtaining another site in the area and the club provides a service to the local community. So the council

is persuaded to agree "just this once". A few years later, coffers replenished, the club seeks approval for a further extension. It offers to buy up, and demolish, a few houses to provide additional car parking spaces. It concedes that the site, in the middle of a residential area, is not ideal and that, if it were starting afresh, it would look at a site in a commercial or industrial area but it points to the capital it already has invested, increased by the previously permitted extension. The council feels concerned about the effect of demolishing houses to facilitate the expansion of a significant commercial activity and the "urban blight", as Mr. Collie called it, of extensive carpark areas but it is difficult to refuse. So it goes on. During the New South Wales inspections it was commonplace to find that a social club had, since legalisation of poker machines, been extended on four separate occasions, the total effect being to transform what had once been a small building not incompatible with surrounding residential development into a bulky building with hundreds of car spaces which dominated the neighbourhood. If there is a problem in the Australian Capital Territory, where site selection and the discretion to approve extensions is vested in departmental officers who are relatively insulated from local political pressures, then assuredly there would be a problem in Victoria, as there has been in New South Wales.

Conclusions

13.46 It will be obvious, from the preceding paragraph, that I have considerable sympathy for the reasoning which underlies the submission of the councils. I am not, however,

persuaded of the utility of the solution they proffer. What would happen in practice? Assume a State government decision that poker machines should be permitted in Victoria subject to approval in the particular case by the local council. Legislation is enacted to implement that decision. The "in principle" decision has been taken. The X club, occupying premises in a residential area, applies to the local council to install 20 machines. There is nothing to indicate that the mere installation of these machines will increase the number of people resorting to the club or the duration of their visit. The club, perhaps quite sincerely, says to the council that it will strictly abide by the door restrictions contained in the Liquor Control Act and in its rules. On what town planning basis may the council refuse the application? It has to say: "Oh yes. The installation of these machines will not cause a problem but we are fearful of the future. We believe that inevitably the club will turn into an 'open door' public house, the number of machines will increase, the number of people resorting to the club will increase and in the fullness of time the club will seek to extend the premises to the detriment of the neighbourhood". What chance would there be that the council could sustain that case on appeal? The club would respond that the Board should decide the matter on the basis of present facts rather than future possibilities, that the apprehended events may never occur and that, if they do, the council has it in its own power then to refuse to consent to any extensions. It is, in my view, inevitable that such an argument by the club would succeed. The special planning permit requirement would be

useless. There is no easy way out. The problems outlined in the preceding paragraph must be accepted as a fact of life under poker machines. They are relevant to be taken into account in weighing the case for the introduction of machines in the first place. As Mr. Daley put it at p.17 of his submission:-

"The planning argument has some" (relevance) "to the question of whether on balance the New South Wales licensed clubs model should be introduced into Victoria...The question to be asked is whether clubs which do grow substantially in residential and other areas where the amenity of the area is affected by their growth, perform such a valued function in the community that such amenity should be allowed to diminish...".

PUBLIC PARKLANDS

The use of parklands and other public open space

13.47 A feature of the Victorian club scene is the extent to which licensed clubs are located in premises erected on land owned by the Crown or the local council and which would otherwise be available for enjoyment as parkland or other public open space. This is the position, for example, in relation to each of the four VFL clubs which the Board inspected or in relation to which it heard evidence: Geelong (Ex.86H), Collingwood (Ex.86H), Carlton (T.600) and North Melbourne (T.1425). [9] It was true of some of the bowling clubs we inspected such as Kew (Ex.87G) and Lakes Entrance (Ex.103D). Some golf clubs lease Crown or council land for part of their course - Mildura (Ex.99E) and Bendigo (Ex.97D) furnishing examples. The Royal Geelong Yacht Club leases its site from the Crown (Ex86D). I was told that there were numerous yacht clubs and some other sporting clubs on publicly

owned foreshore land in the Mornington Peninsula.(T.791, 810). Those clubs are mostly unlicensed at the present time but they have premises and may choose to seek a liquor licence, and thus poker machines, if the chance offered. I have no doubt that, if comprehensive information were available, it would show that a large proportion, perhaps a majority, of the sporting clubs in Victoria which are presently, or presently could be, licensed occupy premises on publicly owned land which might otherwise be used for public recreation.

Submissions re open space

13.48 A number of submissions to the Inquiry have called in question the propriety of permitting the physical expansion of clubs occupying public open space. Nobody has objected to the current position under which clubs provide modest, but adequate, sporting facilities for members and their guests. But concern has been voiced at the prospect of these clubs developing as commercial entertainment venues at the expense of open space use. The argument was well expressed in the submission of the Prahran Residents Association (Ex.2KK):-

"Inner suburbs, particularly Prahran, are desperately short of open space. If sporting clubs sited in public parkland were to acquire poker machines, extensions of premises or meeting parking requirements would be at the expense of open space, or adjoining housing. Many inner suburban neighbourhoods are already under severe pressure at weekends due to use of sporting facilities with inadequate off street parking".

The Toorak South Yarra Group made a similar point in relation to their area. (T.2534).

The Carlton example

13.49 The evidence of Mr. Pannam indicates that the

concern has substance. There is already insufficient off-street parking at the Carlton ground to accommodate vehicles during Thursday night football training. Vehicles are parked in the surrounding streets and on an asphalt area in parkland opposite. (T.599). The club is currently attempting to build up its numbers by recruiting members who live within a five kilometre radius. Mr. Pannam agreed that this would lead to increased pressure on car parking resources (T.599) and that it would be necessary to find more off-street parking in the long term (T.600) but, as he said, "we happen to be in parkland which makes it difficult to build carparking facilities". (T.598). The club already has 4,503 members. (T.563). It trades six days a week but, as Mr. Pannam said, the facilities are "unused" perhaps five out of the six days. His hope is to encourage more people to come on other days, possibly largely by car. (T.598). The club has plans to install poker machines as soon as they are available (T.563) and to extend the club premises. (ExB10(b)). Already the club operates discos available to "house members" and their guests: see para 13.10 above. No crystal ball is required to see that Carlton would be one of the first "open door" poker machine clubs in Melbourne, with a rapidly increasing membership and attendance. The parking position would speedily become intolerable, leading to pressure to extend the asphaltting of the parkland to accommodate more vehicles.

Other cases

13.50 I have referred specifically to the Carlton Football Club because the evidence on that club is available in some

detail. I do not mean to suggest that it is unique. On the contrary, I would expect that each of the VFL clubs would seek to maximise poker machine revenue by maximising attendance; even if only to avoid being placed at a competitive disadvantage in relation to the other VFL clubs. Problems of encroachment upon open space are likely to occur in respect of most of them. Nor is the problem only at that end of the scale. Mr. I.W. Bendle, of the Rosebud Country Club, gave evidence about the position of small clubs in the Mornington Peninsula. He is an enthusiast for poker machines and thought that even the unlicensed clubs on the foreshore ought to be allowed poker machines, if they want them. (T.791). But he did "believe it would be undesirable for them to become massive clubs". (T.810).

The problem of control

13.51 One answer to the concern of groups such as the Prahran Residents Association is to rely upon planning controls. This, indeed, was Mr. Bendle's response. However, reliance on planning controls raises all of the questions discussed in relation to amenity; with the additional comment that the larger the club membership the more difficult it will be for an elected local council to resist its demands. At T.625 Mr. Pannam gave this evidence:

"Q. If your hopes were realised and you found you could maintain a very considerable number of machines bringing in much revenue, and there was interest in members having the sort of facilities you outlined for us on the plan in front of you, do you think there is any possibility you would reach the stage where you said, 'Look, the premises we have here are just inadequate for our club and we will need to go elsewhere'?"

- A. I think there could be the possibility that would arise. I think it depends on expansion. But if we get to extremes realistically we are on parkland and on Crown land and to a certain extent we are not masters of our own destiny. That would not be an unrealistic suggestion.
- Q. Has the fact you have been on parkland been any inhibition in the past on the extension of buildings?
- A. We have had a few problems but we have progressed.
- Q. What do you mean by that?
- A. We have had a few objections which, I suppose, is the normal procedure.
- Q. Do you mean from local people or from the council?
- A. Mainly from local people.
- Q. But the council has nonetheless given you permission?
- A. Yes, eventually".

EFFECTS ON OTHER BUSINESSES AND ACTIVITIES

Hotels

13.52 There is no doubt that the granting of poker machines to licensed clubs alone would have an adverse effect upon hotels. The Holsman study concedes as much and no witness has suggested otherwise. The only questions are the degree and incidence of affectation. Dr. Holsman's assessment is that hotels would drop about 16% of their employees. The Licensed Freeholders, adopting the Holsman assumptions, calculate the figure as 22% if based on licence fees and 27% if based on beer trade. Of course, if, as I believe, Dr. Holsman is wrong in assuming that one half of the club trade will come from a decline in home consumption and if therefore

the hotels would bear more than one half of the loss then all of these figures under-state the reduction in hotel employment. Those are employment, not trading, figures. It is possible to do some calculations regarding trade. The licence fees and beer sales (1979-1980) are conveniently set out in the Licensed Freeholders evidence in reply. (Ex.S3).

TABLE 13.1

TOTAL BEER SALES (1979-80)

	<u>Victoria</u>		<u>New South Wales</u>	
	million litres	%	million litres	%
Hotels	228.9	67.1	380.3	47.1
RBL's	105.5	24.5	165.1	20.4
Clubs	30.2	7.1	243.4	30.1
Other	5.7	1.3	18.8	2.4
Total	430.3	100.00	807.6	100.0

Assume that the Victorian clubs capture the same proportion of the market as have the New South Wales clubs i.e. 30.1%, and taking a "worst case" scenario, that this is entirely at the expense of hotels a figure equal to 23% of total sales moves from hotels to clubs, reducing the hotel share of the market from 67.1% to 44.1%, i.e. the hotels have lost 34.2% of their beer trade. Similarly in relation to licence fees - also set out in Ex.S3:

TABLE 13.2

LICENCE FEES PAID

	<u>Victoria</u>		<u>New South Wales</u>	
	\$ 000	%	\$ 000	%
Hotels	23,319	56.0	28,755	38.7
RBL's	13,992	33.6	25,042	33.7
Clubs	2,256	5.4	16,305	21.9
Other	2,067	5.0	4,211	5.7
Total	41,634	100.0	74,313	100.0

Assume that the Victorian clubs pay the same proportion of total licence fees as do the New South Wales clubs, again wholly at the cost of the hotels. A figure equal to 16.5% of total licence fees is transferred from hotels to clubs, reducing the hotel proportion of all licence fees from 56.0% to 39.5%, i.e. a loss of 29.4% of the hotel liquor trade.

Extent of the loss: conclusions

13.53 It would be wrong to pretend that it is possible to calculate with any degree of precision the total transfer loss which would be suffered by the hotel industry in favour of an expanded club industry. It is reasonable to assume that some of the loss would be borne by retail bottle shops, but I suspect very little. I regard it as conservative to say that hotels are likely to lose not less than one quarter of their total trade, and perhaps up to 30% of their beer trade, to a club industry expanded to New South Wales dimensions. [10]

Incidence of the loss

13.54 An estimate of total loss tells us nothing about the effect of that loss upon individual hotels, their owners and their employees. No doubt some hotels will notice little change, if any. I have in mind city residential hotels and hotels in resorts without clubs. There may be some small country towns outside the influence of a licensed club, although probably not many. For the rest there will be a significant effect. The degree will depend upon a number of factors: proximity of the hotel to the club, the size and

attractiveness of the club and of the hotel, the personality of the hotelier and his capacity to generate and retain customer loyalty and the marketing policies of the club. Some hotels will survive the loss, with reduced profits but offering undiminished standards of service; some will survive but with reduced standards and some will be unable to carry on. The evidence of Mr. Hayes, the former Liquor Control Commissioner, is that many Victorian hotels are "marginal operations". (T.1956). Professor Geoff Meredith of the Financial management Research Centre, University of New England, has confirmed and quantified that statement. The Centre collected and analysed the annual accounts of 67 randomly selected Victorian hotels. Turnover of these hotels ranged from \$3million down to \$100,000 for the year. Net profit per hotel, after allowing for owners' salaries, averaged \$13,300. This represented less than 1% on total sales. 30 of the 67 hotels produced no profit for the year. Gross profit averaged \$362,000 so that, on average, a fall of less than 4% in gross profit would eliminate the reported net profit. Professor Meredith commented (Ex.A18):-

"In summary, profitability of the 67 hotels was low, margin of safety unacceptably low, and annual costs relatively high. As investment potential, the hotels represented high risk and low return".

According to Mr. Hayes, part of the reason for this position is the growth of the club industry. In 1957 there were 1,640 hotels and 165 licensed clubs, in a State with a population of 2.6 million. In 1982 there were 1,431 hotels and 517 licensed clubs, the population having risen by 50% to 3.9 million. The

explanation, said Mr. Hayes, is a simple one: "It has become less economic to run a hotel. Changes in the legislation have made it easier to get club licences". (T.1954.) If hotels are having difficulty matching the unsubsidised competition of the licensed clubs their position will become grim indeed when faced with the undercutting to be expected from poker machine clubs. I am reminded of the mordant comment of the licensee of the Royal Hotel, a poorly maintained and, we were told, unprofitable old hotel in an excellent position in the main street of Dubbo (N.S.W.) (Ex.96G): "I think it's inevitable that the hotels will be phased out eventually". That may be an exaggeration; some will survive. But Victorian does have to decide whether or not it wishes to maintain its present comprehensive and attractive hotel industry. Once destroy its prosperity and not "all the King's men" of the Liquor Control Commission can put it together again.

The trading disadvantage of clubs without poker machines

13.55 What is true of hotels is equally true of those clubs who, for one reason or another, do not install poker machines. They will be at a major trading disadvantage, as the Victorian Murray Valley clubs have already found. Both Mr. Oberin from Echuca (T.466) and Mr. Curtis from Mildura (T.559) spoke of the unfair competition of the New South Wales border clubs. The point requires no elaboration. Sooner or later those who are legally able to do so will acquire machines themselves.

The effect on clubs in sporting competitions

13.56 Mr. N.F. Pullen, secretary of the Brighton Union Cricket Club, gave evidence in support of a submission from his club and from the Cape Country Club that poker machines should be permitted in unlicensed clubs. He envisaged his club purchasing a few old mechanical machines which the cricketers could play whilst attending the ground for cricket practice or Saturday games. I have not regarded that proposal as one worthy of prolonged discussion; the problems of control are obvious. But the motivation for the proposal is, in the present context, relevant. In their submission (Ex.KK2) the clubs had stated:-

"If poker machines are only permitted in licensed clubs and as the bingo market is saturated and only available to organisations with access to large premises, clubs such as Victorian Football Association and South East Suburban Football Clubs together with thousands of other sporting and cultural organisations without access to machines will be wiped out".

Asked to justify this statement, Mr. Pullen referred to the position in the VFA where some teams had the support of licensed clubs and some did not. He asserted that numbers of players "go to the almighty dollar" and that the departure of such players from the team of one unlicensed club, the East Brighton Football Club, had nearly led to the relegation of the team from the second division of the South East Suburban League. (T.1282-1283). Mr. D.A. Cole, an experienced football administrator and the current Corio District director on the board of the Victorian Country Football League was less sure of the link between financial and competitive advantage. He

cited the Lavington Sports Club, a New South Wales poker machine club which sponsors a team in the Murray-Ovens League (T.862):

"Q. One of the worst things to happen to country football is in each league one team becomes very strong because of poker machines - that would not be good at all?

A. I would have said that several years ago but I am not as confident now because of the experience with Lavington, although it has still not been successful [11] and it is the only one with poker machines. It does not mean to say because you have money you will win the league. You have to have good players".

I doubt that one example proves the point either way. However, commonsense would seem to indicate that, if players in local teams are now generally paid on an incentive basis, as Mr. Cole indicated, in the course of time a more wealthy club is likely to gain a competitive advantage. Certainly they will "have to have good players" but they would have the opportunity to outbid the opposition for those players. I note that this was the view of Mr. L.J. Martyn, a very experienced sporting administrator who is the current chairman of the Federal Sports Advisory Council and president of the Australian Commonwealth Games Association. At T.1935 he welcomes the idea of government funds flowing evenly into sporting clubs and added:-

"...but to have them individually into areas of clubs where you have disadvantage to an enormous degree by privilege and non privilege, where the funds would flow in that way would be terribly damaging and in my judgment would be enormously detrimental to the grass roots sport in this State".

This theme was echoed by the president of the Royal Victorian Bowls Association. His Association had submitted that, if poker machines were introduced, there ought to be financial assistance to bowling clubs which could not, or chose not, to install machines. He thought that some clubs would become wealthy (T.690):-

- " We would find the best greenkeepers going to the clubs which could pay the most money. We are essentially tied up with the quality of our greens. If we lost those and we lost the best greenkeepers we could be in strife.
- A. Would it follow the clubs which would be immediately at a loss would be the ones nearest to the clubs where the best greenkeepers have gone and it is in that area that you have your...concern?
- A. Members would leave the weaker club and go to the stronger club."

Mr. C.J. Lamb of the Eltham Basketball Club added an additional comment on this matter. The Eltham club field about 1,000 players, at various levels. Most compete in the eastern district competition but at senior level the club competes in the South-Eastern League. Mr. Lamb did not believe that any basketball clubs in Victoria were supported by licensed clubs but he said that some were in New South Wales. At T.2579 he gave this evidence:

- "Q. Do I understand your club's submission by summarising it in this way, that poker machines would introduce an element of unfavourable advantage to those clubs which got them thereby unbalancing what is essentially a balanced and fair competition now?...
- A. It is not so much it unbalances the top level of the competition but that it will also push up for everybody the cost of competing in it.

Those who wish to compete must somehow or other push up the money they have available so that they do not get relegated..."

The effect on bingo revenue

13.57 Mr. D.J. Corless, proprietor of the Northern Bingo Centre at Brunswick, appeared at the Inquiry to put the case for protection of bingo revenue. He had a commercial motive to do so. He runs a bingo centre in which 14 unlicensed clubs and charities conduct bingo games, paying Mr. Corless a percentage fee for the privilege. The average return per club or charity is \$20,000 - \$25,000 per year. The centre operates six days a week - from 12 noon to 3 p.m. and from 6.45 p.m. to 10.00 p.m., Mondays to Fridays, and from 11.30 a.m. to 10.40 p.m. each Saturday. His centre is only one of about ten centres in Melbourne in which bingo games are played during most days. Mr. Corless tendered in evidence authorities from 117 clubs and organisations to represent them in opposing poker machines in clubs on the ground that poker machines would be likely adversely to affect bingo income received by those clubs and organisations. (Ex.G8) Many of the authorities refer to the dependence on bingo revenue of the particular club or organisation for a continuation of its work. Illustrative evidence was called by Mr. Corless from Mr. G.M. Swan, a former deputy chief commander of the Lord Somers Camp and Power House and current chairman of the bingo committee of that organisation. The Victorian Association for Deserted Children has also supplied information as to its reliance upon bingo for funds to continue its work. (Ex.HH2). There

is no doubt that bingo is widely used by Victorian clubs and charitable organisations for the raising of finance, to an extent and degree which I believe to be unknown in New South Wales: see paras. 8.11-8.12. It is also clear that this finance is important, perhaps critical, to the continued operation of many of those clubs and organisations. In his written evidence Mr. Corless explained the threat to this finance presented by poker machines in licensed clubs (Ex.G3):

"Bingo is very competitive in itself, and the introduction of a new game in the near vicinity of an existing game, can affect the attendances of the existing game.

Bingo attendances are also affected by extremes of weather, and also major events, sporting and otherwise, which are covered by television.

The difficulty encountered by clubs conducting bingo is that the people attending expect to be paid their 'usual' prizes, even if the ticket sales are down. In order to ensure their survival the club usually will pay the prizes and take far less profit, and in some cases make no profit at all.

The introduction of poker machines would obviously affect bingo attendances and receipts, and even if it was only to a small extent, for example 10% of the normal receipts, there would be a marked effect on the profit margins of the club.

If Bingo attendances suffered and the clubs were unable to pay the 'usual' prizes, the situation would rapidly worsen.

If licensed clubs or any other establishment were permitted to have poker machines and bingo, they could use high prizes or 'all money back' bingo to attract the bingo players to the premises, in the same manner that entertainment is used to lure people to places of gambling. There is no factual evidence that this will occur, and no comparison available from New South Wales, perhaps because bingo is played on a smaller scale and has always had the presence of poker machines to contend with"

In his oral evidence his position was summarised in this way (T.2687):

Q. One of your concerns is that licensed clubs with poker machines could engage in what is commercially called 'loss leadering' by running bingo games at a loss and then getting in the poker machines?

A. As they have things such as cut price meals, it would be cut price bingo".

Bingo: Mr. Hurley's evidence

13.58 There are two items of evidence which give substance to Mr. Corless' apprehension. Mr. R.H. Hurley, an expert on gaming, studied the bingo industry in the United Kingdom in some detail shortly before he came to Australia in 1972 to set up the Wrest Point Casino, Hobart, for Federal Hotels Limited. Since then he has supervised the establishment of the company's casinos at Darwin, Alice Springs and Launceston. He was called to give evidence by Mr. Bongiorno and was undoubtedly the witness before me with the most comprehensive knowledge of gaming. He graded gaming into three levels of "hardness" or commitment by the players, adding "I guess it gets into a socio-economic situation as well to a certain extent"; casino gambling, poker machines and bingo in that order. He added (T.2324):-

"I think probably I associate, and maybe wrongly, bingo with more of a social and group situation. Even though the individuals playing bingo can get fairly fierce about their individual cards etc. they tend to be of a more social group. Having watched people play poker machines I think even though they might say they are going there for a social situation it basically becomes a very selfish and individualistic pastime".

Mr. Hurley agreed with a suggestion from Mr. Corless that bingo should be kept quite separate from poker machine play. He also agreed "that if poker machines were introduced into

Victoria that any premises which might be permitted to have poker machines should not be permitted to conduct bingo". (T.2323). The reason, he said later, was that "charities will suffer. That is a problem about bingo". (T.2352).

Bingo: Mr. Wintle's evidence

13.59 Mr. George Wintle, now the secretary/manager of the Southern Cross Sporting and Social Club Limited at Randwick, in Sydney, has been employed in various New South Wales registered clubs since 1957. He was able to give to the Inquiry a lot of background information on a number of matters. Mr. Corless asked him about bingo (T.2405-2406):

"Q. Your club conducts Bingo and a similar game called Alfie?

A. Yes, twice a week.

Q. You use those games as a draw card?

A. No, as an amenity.

Q. Would it be right to say that you recoup the losses of the Bingo through the poker machines?

A. We hope to.

Q. There is legislation in New South Wales which protects Bingo being conducted outside club premises; is that right?

A. The legislation is that clubs can only do certain things in relation to Bingo and they cannot compete against charitable organisations. To qualify, clubs are only allowed to provide Bingo at no cost to the player. Clubs are only allowed to provide an amount of a maximum of \$10, not \$10 in cash, an amount. Clubs are not allowed to provide liquor or cigarettes, or any other inducement. Normally speaking, there are two games of Bingo a week. You alternate them at a maximum \$200 if you so desire.

- Q. In the case of what we might call clubs conducting Bingo outside of licensed clubs, they have a much wider scope?
- A. They are classified as charities. They have to be registered as charities and, in the main, the Catholic Church is the biggest one. In every district they would conduct Bingo at a price and they give cash prize money.
- Q. It is a much more attractive game?
- A. It is a much more attractive game.
- Q. That legislation came about as a protection from the unlicensed clubs and churches?
- A. Some considerable time ago Bingo started to move into clubs and an approach was made to Government that if that happened - which was quite true - these charities would lose a lot of money. You had to get a licence from the Government now. I think you can get a licence for \$5 for a certain period and you then guarantee that the prize money is not more than, say, \$10. That is the thing, generally speaking.
- Q. The New South Wales licensed clubs did not object to this new legislation, did they?
- A. No, I do not think so.
- Q. If there was no such protective legislation, do you agree the licensed clubs with poker machines could promote Bingo from their poker machine profits and probably eradicate many of the Bingo games which are conducted by unlicensed clubs?
- A. That is rather a barbed question, because you are assuming the licensed clubs would conduct Bingo. I do not think Bingo is synonymous with poker machines. They lived without Bingo before. It was only brought in as an added attraction, an amenity to the entertainment.
- Q. If poker machines were introduced into a new area, such as Victoria, do you believe some protective legislation should be built in, in the initial stages?
- A. I agree entirely with that".

The effect on restaurants

13.60 The Hospitality Industry Association of Australia (Victoria) appeared as a party to put the case that licensed clubs with poker machines would offer unfair competition to restaurants. The Association tendered documents signed by 39 members in which they gave some information about their businesses and in which they expressed their concern about the effects of poker machines. Financial details in respect of some businesses were tendered on a confidential basis. Despite a forecast that evidence as to the actual experience of restaurateurs in Canberra would be forthcoming no evidence was adduced as to the actual experience of any restaurateur in competition with poker machine clubs. Perhaps the Association was unable to obtain support for its argument from the Canberra situation. Mr. Matthews, the chief executive of the Australian Capital Territory Gaming and Liquor Authority, was unable to assist with statistics of liquor sales through restaurants in the Territory but he did tell us that there had been a threefold growth, from 51 to 166, in the number of "on licences" in the Territory between June 1976 and June 1983. (T.1479). Poker machines came into the Territory in November 1976. This is not, however, a measure of the growth of licensed restaurants. Taverns have "on licences" and they have increased significantly during that period. Additionally, there would be now licensed restaurants which previously traded as B.Y.O. restaurants. However, he offered a comment based on local knowledge (T.1480):-

"As a resident I have observed a far greater range of restaurants becoming available with practically the full spectrum now of the ethnic cuisine. Certainly a considerable number of clubs have restaurants in their own right and I believe we are very happy with the expansion. We certainly have a very wide range of choice and one would have to conclude looking at the individual figures, that the restaurants do not appear to have been affected by the clubs".

Restaurant inspections

13.61 At the request of the Hospitality Institute I inspected a number of restaurants and had the opportunity of conversation with their proprietors. I also had the opportunity of observing the restaurant facilities offered by licensed clubs in New South Wales and in the Australian Capital Territory. All the social clubs in those jurisdictions inspected by the Board served meals, both at lunchtime and in the evening, seven days a week. All had a bistro style meal, good quality and cheap. Most offered a more expensive a-la-carte meal. The menus offered a good range of food at very reasonable prices. Some clubs had specialist cuisine notably Chinese food. If those clubs were reproduced in Victoria most would, over their full range, compete with a large proportion of sit-down restaurants. Some restaurants would be particularly vulnerable. They are those which specialise in receptions and functions, an area in which most poker machine clubs actively solicit business, and those which rely upon volume patronage to cover the high overheads of a large establishment. Restaurants which serve hundreds of people middle of the range food to live entertainment would be most at risk - they would be seeking to do exactly what the

clubs do best, but against a competitor able to undercut them at will. Two such restaurants inspected by the Board were the Swagman Restuarant, Ferntree Gully (Ex.112A) and Rembrandt's Restaurant, Wantirna South (Ex.112B). Both now compete with the Knox Club. Neither could survive an aggressive "open door" policy by a poker machine club subsidising food prices. I do not believe it to be coincidental that I am not aware of any restaurants in New South Wales like them.

Restaurants: conclusions

13.62 The paucity of evidence makes it difficult to predict what would be the total effect on Victorian restaurants if licensed clubs were allowed poker machines. It is no good going back to pre-1956 New South Wales; eating habits have been transformed since that date. The Australian Capital Territory information is sparse but it does not indicate a general problem or loss within the industry. However, it may be unwise to extrapolate from Canberra, in relation to which there are a number of relevant differences from Victoria, considered as a whole: a high population growth rate, heavy and constant tourist traffic, an above national average per capita income, being a few. Even in Canberra the general situation does not deny the possibility of loss by individual restaurateurs. And logic would seem to suggest that if the clubs are able to feed many thousands of people each week this must affect the availability of business to restaurants. What can be said about Victoria, I believe, is that some small, top quality and/or specialist restaurants would be quite unaffected by poker machines, many other

restaurants would suffer varying degrees of loss but survive and some restaurants would be forced out of business. It is not possible to put percentages against those three categories.

Effect on other private businesses

13.63 The range of businesses which may be adversely affected by undercutting from poker machine clubs is as great as the range of clubs' activities. [12] Retail bottle shops are likely to be affected to some extent, even if not as much as Dr. Holsman assumes: see para 13.27 above. The Retail Liquor Merchants' Association of Victoria has pointed out (Ex.AA3) that the sale by clubs of packaged beer would adversely affect its members, especially if sales were at subsidised prices. It appears that Victorian clubs sell very little packaged beer at present. Some of the large New South Wales clubs are moving into this area, offering direct loading into vehicles. The Association claims that beer sales provide 50% of members' income.

13.64 The North West Squash League, Melbourne has indicated to the Board (Ex.2GG) its concern at the possible under-cutting of squash court fees by poker machine clubs. Squash courts are a feature of the larger clubs we inspected in New South Wales. Some clubs allowed free use of the court, some charged a fee which was below the normal commercial rate. The North West Squash League claims that in Victoria there are 170 squash centres ranging in size from two to fifteen courts and representing a capital investment between \$12million and \$15million. Inevitably some, at least, would be seriously

disadvantaged by a reproduction in Victoria of the New South Wales position.

Effect on tourist features

13.65 An argument put by some proponents of poker machines is that they will have a beneficial effect on tourism: see para. 13.13. Ballarat Chamber of Commerce argues that some tourist activities will be disadvantaged (Ex.2GG). Particularly, it is concerned about the effect on Sovereign Hill, which the Board inspected, and Kryall Castle, the major drawcards for Ballarat. The Chamber compares the attendances at Sovereign Hill with those at Old Sydney Town, a similar venture near Gosford, NSW. The attendance at Sovereign Hill has during each of the last five years been roughly 50% higher than that at Old Sydney Town. Mr. B.E. Whykes, chairman of the public relations committee of the Chamber, was manager of Old Sydney Town for about nine months in about 1975. Prior to that date he managed Sovereign Hill for four years, in its initial stages, and more recently he has managed Kryall Castle for several years. He had no doubt that poker machines were the handicap of Old Sydney Town. (Ex.98K):-

"It was apparent to me that the social life of that area and certain other areas I visited while I was there did revolve around the licensed leagues clubs, and I can't prove the point other than to know from observation that many people set foot there on a Sunday at 9 or 10 o'clock and didn't venture out all day. Their massive carparks are always filled, and it is my contention that they have a tremendous influence on the leisure time activities of the population of NSW, which we don't have here; and that a similar situation in Victoria would indeed be disastrous for projects such as Sovereign Hill and Kryall Castle".

Mr. Whykes may be correct in ascribing all of the difference to poker machines. I have my doubts, for two reasons. I am sure that many people would regard Sovereign Hill as a more interesting place to visit than Old Sydney Town, which has no mine shaft or on-site history. Secondly, visitation of places such as Sovereign Hill and Old Sydney Town is for most people an activity done with children. A licensed club is not a place for children: see para. 5.09 above. Nonetheless, there may be some effect, even if less than Mr. Whykes believes.

Effect on community activities

13.66 The likely effect of poker machines in licensed clubs is not restricted to commercial competitors. Submissions have been made that the clubs will inhibit non-commercial community activities. The Prahran Residents Association (Ex.2KK) refers to "the large number of community groups and self help activities offering low cost leisure and community development programmes" which will be "faced with competing for financial viability with poker machines". The Victorian Association of Performing Arts Centres (Ex.2PP) is concerned about the future of regional performing arts centres. Eleven currently exist, four more are currently being planned. All are in country centres. Their argument is persuasive:-

"It is the opinion of the Association that licensed clubs with poker machines will be placed in a privileged position to provide low cost entertainment which can be subsidised from poker machines profits. The licensed clubs need to provide entertainment in order to attract members

and approved groups to their facilities in order that poker machines revenue will then be increased.

If licensed clubs will be able to engage top class Australian or international performers and entertainers in competition with the joint Local Government/State Government operated regional performing arts centres, people will decide on the basis of the admission prices charged as to which venue they may wish to enjoy such entertainment.

Obviously if licensed clubs are able to heavily subsidise the cost of such entertainment (as has been the experience in New South Wales) audiences at regional performing arts centre will be depleted to the extent that it will not be viable to promote shows. As a consequence, the new regional centres will not be used for the purposes for which State and Local Government funds were provided to enable functional buildings to be constructed.

Regretfully, the whole concept of developing soundly based community programmes around the performing arts and entertainment principles will be seriously threatened if poker machines are to be introduced".

The VAPAC supports its submission with an account of its meeting at Warrnambool last August when it was reported that June Bronhill was booked to sing at Mildura Arts Centre, admission charges \$12.50 and \$9. Two weeks later she was scheduled to appear at a poker machine club over the river, cover charge \$7.

CONCLUSIONS

The principle of fair competition

13.67 The fundamental problem about the LCAV proposal is that it offends a basic tenet of our society: fair competition. The grant of a poker machine licence to an organisation which will be actively competing against others, subsidising that one organisation so that it may undercut its competitors is wrong in principle. Imagine the outcry if a

government went to one of several businesses competing in a given locality and offered a subsidy of a million dollars a year on the condition that the money was left in the business, and not paid out as dividends to the owners. Once it be accepted that licensed clubs would be competing against other businesses in the public market place, this is exactly the proposition the LCAV seeks. In a sense it does not matter whether the result will be to close 50 hotels or 500, 200 restaurants or two. The proposition amounts to a request to expropriate without compensation the trade of one section of business and to deliver it without cost to another. Only the most extraordinary public benefit could justify such discriminatory action by a government.

Have the clubs made out a case?

13.68 I have set out in this chapter the whole of the arguments advanced by the LCAV for the grant to them of a poker machine monopoly. There are some positive aspects to it: the amusement which the machines afford, a likelihood of the creation of a minimal number of new jobs, the possibility of some additional government revenue. These benefits are neither peculiar to the licensed clubs model nor of compelling magnitude. The more pivotal proposition for the clubs is that the grant of poker machines to them would enable them to provide worthwhile benefits for the community. They have to say that these benefits are so great in magnitude, and so certain to occur, as to justify a government decision to introduce unfair trading conditions knowing that it will thereby damage many hundreds, perhaps thousands, of people in

their business or employment. I have some doubt whether any community benefits would justify that course, at least without payment of compensation. But that question does not arise. The New South Wales record in relation to community service is poor. There is nothing in either the evidence or attitude of the LCAV, or the comments made by Victorian club officials during the inspections, to cause belief that the Victorian club movement will be any less self-centred than that of New South Wales. Mr. Henshall, for the churches, has put the view that, before one would contemplate expropriating one person's property to provide funds for expenditure by another, the proposed expenditure should at least meet the criteria the government would be likely to impose upon itself. I agree with this passage in his final submissions (pp.2-3):

"Organisations from the State's hospitals to the Boy Scouts Association, and from the Freedom from Hunger Campaign to local welfare agencies could all make strong, indeed compelling cases for additional funding. Implicit in the Clubs' case is the assumption that there is something especially deserving about what they do and that their leisure type activities are of particular importance and deserve additional if not massive funds.

This underlying assumption is challenged. Suppose for instance that the whole of the funds generated by poker machines in this State were placed in the hands of the Government. Can one imagine that the government spending would reflect the same priorities as those seen in the Licensed Clubs of New South Wales or the Australian Capital Territory...the Government is concerned to spend its funds for the good of the whole community and in the way most beneficial to that community. It...is highly improbable that any government...would spend the funds in the way that clubs are likely to do...this demonstrates that the clubs' expenditure is not likely to be for the benefit of the whole community. The expenditure would be predominantly for the sectional benefit of the members of the clubs. No case has been made out showing that those

people above all others in this community deserve the extra funding which it is apparently thought that poker machines might produce."

I add, especially when that extra funding comes at the expense of others. Leaving aside, for the moment, all other issues considerations of economic fairness make impossible to accept the poker machine model offered by the LCAV. Add in the problems peculiar to that model, the effect on clubs themselves, and the amenity and open space losses likely to be caused by club building expansion and the case against becomes overwhelming.

Notes to Chapter 13

- [1] The relevant inspection transcripts are Ex.86C, 86D, 86H, 86K, 86M, 86O, 87A, 87D, 87E, 87G, 98A, 98J, 99A, 99D.

- [2] In fact one of the exhibits tendered by the AHA (Ex.A16) was a photograph of the Cranbourne RSL Club with two signs saying "Visitors Welcome".

- [3] It is possible that Mr. Curtis intended that the number of visitors able to be admitted should not exceed one half of the total number of people who were at the time club members. But, given that his club - the Mildura Working Men's Club - has 14,000 members, this would be no restriction at all.

- [4] This comment is probably true of Swan Hill golf club, which has a fine course but rather small premises. It is not true of the Mildura golf club which has facilities to bear comparison with most. However, Mildura does have the advantage of heavy visitor use of the course and rental income from a motel constructed on the course.

- [5] See para. 5.03 above.

- [6] After completing his oral evidence Mr. Ruxton had discussions with his colleagues on the executive of the RSL. On 4 October 1983 he submitted a letter (Ex.B9(c)) in which he proposed that 5% of the earnings of each machine, presumably only in RSL clubs, should be earmarked for spending on welfare by the RSL. This course would be open to the RSL without the need for legislation - but the percentage is small. If it was intended that 5% of the revenue of all machines in all clubs go to the RSL welfare fund the question must be asked whether this is appropriate. Why should not the government, or other charities, direct the expenditure of funds earned by non-RSL clubs?

- [7] The same unqualitative approach was apparent in a document prepared by Dr. Holsman and tendered to this Inquiry (Ex.B26(g)) in which he stated, accurately, that there was one hotel in New South Wales for every 2,644 people as against one hotel in Victoria for every 2,706 people. He uses this comparison to support the statement that "on a per capita basis New South Wales residents are better provided for hotels...". However, the comparison left out of account two elements: the difference in

per capita alcohol consumption, and particularly draught beer consumption, between the two States and the geographical spread of the hotels. New South Wales country areas have a higher number of hotels per capita than do Victorian country areas but in the metropolitan area the position is reversed, being one hotel for every 5,179 people in Sydney and one hotel for every 4,366 in Melbourne (Ex.53). And, of course, these figures say nothing about the quality of the individual hotels.

- [8] A comparison of draught and packaged beer sales in Victoria and New South Wales since 1977-78 is as follows.

Year (to 30 June)	NSW		Victoria	
	Bulk %	Packaged %	Bulk %	Packaged %
1977-78	55.2	44.8	32.3	67.7
1978-79	52.5	47.5	31.4	68.6
1979-80	51.4	48.6	31.2	68.6
1980-81	51.7	48.3	31.9	68.1
1981-82	51.5	48.5	29.1	70.9
1982-83	Not available		28.35	71.65

(Source: Licences Reduction Board (NSW)
Liquor Control Commission (Vic.)

- [9] The rentals vary considerably. Collingwood Football Club pays only \$1,000 per year for the ground and all buildings, including the premises occupied by the social clubs. Carlton pays \$5,400 per year. Geelong pays \$10,000 and North Melbourne now pays \$17,000.

- [10] Is is interesting to note the evidence of two Canberra hotel managers as to the dramatic decline in bulk beer trade in their hotels. Mr. Byron Speldewinde of the Lakeside International Hotel states that the bulk beer trade of that hotel in 1975-76 before poker machines were permitted in licensed clubs was an average of 101 kilderkins per week. Over successive years the averages were 57, 41, 23, 11, 9.2, 8.4 and 8.5 respectively. One of his bars has closed through lack of patronage. (Ex.A32). Mr. K.G. Kearns of the Ambassador Hotel Motel at Mawson ACT (Ex.A33) says that his bar trade has dropped from 160 kilderkins a week in the early 1970's to 40 today. Packaged liquor has declined over the same period from \$24,000 per week to \$10,000 per week. Profit has declined from \$500,000 per annum to \$160,000. The hotel adjoins three licensed clubs and is near the 19,000 member Southern Cross Club (Ex.104G). The clubs undercut the hotel by 5

cents on a 10 oz. glass of beer and up to 35 cents during the "happy hours" which each club has once a week. It is important to note that not all of the drop in trade in Canberra hotels can be ascribed to poker machines. Due to a change in licensing policy many more licences are now available: see Matthews T.1477-1479.

- [11] In the 1983 competition, decided after Mr. Cole gave evidence, Lavington were premiers, defeating Albury by 33 points.
- [12] The Retail Traders Association of Victoria submitted (Ex.2G) that poker machines had a general adverse effect on the retailing industry. Mr. K.E. MacDonald, Executive Director of the Association, and Mr. R.W. Rehe, National Accounts Manager of Patersons Pty. Ltd., gave oral evidence in elaboration. Unfortunately, the Association's submission was marred by several serious factual and statistical errors. The Association's proposition may be correct but it is not established by the information before me.

CHAPTER FOURTEEN

POKER MACHINES IN COMMUNITY CLUBS

THE CONCEPT OF COMMUNITY CLUBS

The Institute of Recreation

14.01 The Institute of Recreation is a voluntary organisation formed three years ago to promote community recreation and leisure development. The President of the Institute, Mr. Keith Hollinshead, told me that there were currently 74 members who need have no particular qualification but who were mostly persons professionally engaged in recreation matters. Some are employed by academic institutions, some by Victorian government agencies, many by local authorities and a few by the private sector. Many of the members have been professionally involved with the community recreation centres which have been developed in Victoria during the last few years. However, there is a feeling that progress in developing these centres is too slow and that, in any event, some change in direction is needed, a change described by Mr. Hollinshead in this comment on the need to provide a restaurant or a cafeteria in community leisure centres (T.2115):-

"If you are just providing an activity as far as basketball or class activities are concerned, you are only catering for the people who make the predetermined acknowledgement to go along to the centre. If you are also providing for catering and social space you are encouraging the rest of the population to go there and they can relax and observe and chat, do all of the things that currently they might do in an hotel or another establishment. Having gone to the centre, and whilst they are there, they observe other activities and then perhaps they can have a go at judo, perhaps have a

go at archery, perhaps participate in the elder persons bowling and the problem is that the social provision is divorced from the activity in many of those centres at the moment".

The Institute's position on poker machines

14.02 Opinion is divided amongst members of the Institute as to whether or not it is desirable to introduce poker machines into Victoria. Mr. Hollinshead was not opposed to poker machines "being produced in a controlled environment to a limited number" as in the United Kingdom. He was opposed to "rows and rows of poker machines, as occurs in certain States of the United States and in New South Wales". (T.2117) Some members, previously in favour, "were turned off by some of the facts that they had read about". (T.2117). In the end the Institute adopted an official stance that it neither supported nor opposed the introduction of poker machines into Victoria.

The Institute's proposal

14.03 However, if the Institute was neutral on the fundamental question it did have a view upon the best use of any profits earned by poker machines, if they did come to Victoria. It submitted that poker machine licences should be granted only to organisations that could meet the following criteria (Ex.R2):

"(i) Competent Management Principle

The Club should provide a service recognized and approved by the municipality in which it is located, and shall have its constitution, financial records and office elections monitored and approved by that municipality.

(ii) Open Membership Principle

The Club shall be open to members in its immediate geographic area without dis-

crimination. Where an existing club requests a licence it is recommended that that decision to apply for a poker machine licence be passed by a majority of all existing registered members.

(iii) Utility Principle

The Club should cater for a demonstrable need in the community at its location(s), provided and approved by the municipality.

(iv) Creativity Principle

The Club should consistently aim to provide both beneficial community services and an innovative range of leisure/recreation programmes for its members. Where an existing club applies for a licence it should have a proven record in this respect for at least a twelve month provisional period.

(v) Community Development Principle

The organisation or facility shall be managed in accordance with a constitution or other set of objectives which embrace or are otherwise consonant with the underlying aims of the Community Development Fund.

(vi) Panorama ('Diversity') Principle

The Club will not be restricted in focus to any single special activity, but shall provide a wide, reasonable and effective mix of services and programmes in all of the areas below:

- community activities
- art courses and pursuits
- social and passive recreations
- special interest courses or leisure education pursuits

(vii) Accountability Principle

The organisation or facility should be managed in accordance with a sound and adequate budget, and the annual financial return shall be submitted to, and appropriately approved by, an overseeing local authority or authorised public body.

(viii) Commitment Principle

The Club shall be managed and developed by a management committee body or other agency committed and devoted to the aims and objectives of Community Development.

(ix) Specific Targets Principle

The organisation or facility should be administered by a management body, committee, or other agency able and willing to offer programmes and services to Juniors (under 18) in the community and to other disadvantaged 'populations' within the community as recognised by the municipality such as

- 'women'
- 'the disabled'
- 'ethnic groups/individuals'
- 'other' (as specified)

(x) Social Amenities Principle

The Club should be administered by a management body, committee, or other agency, able and willing to offer a diverse and alternative range of social, entertainment and cultural pursuits for its immediate local community.

(xi) Evaluation Principle

The organisation or facility should be administered by a management body, committee or agency which has established and maintained adequate records to demonstrate performance 'success' of all of its community development projects. (This internal evaluation will of course be complemented by an external evaluation carried out by the Development Officers of the Poker Machine Board).

(xii) Public Foundation Principle

The Club should have a vested link in terms of its management or funding with a local authority or other authorised public body."

Community clubs, the Institute argued, "would help to revitalise life at the local level and play a part in reducing the social isolation and personal alienation which are so

prevalent in our society". (Ex.R2). As principle (xii) of the criteria indicates, the Institute had in mind that there would be a formal link between a community club and the local council, with criteria as to activities and operations being established at State level. (T.2108). The Institute's evidence set out its concept as to the operation of the clubs (R2):-

"Operating costs would need to be covered through the efficient and effective management of restaurant, bar, coffee shop and low space recreation activities, and could be supplemented through traditional and new recreation activities/funding mechanisms such as festivals, fetes, raffles and bingo. Clubs and societies, adult education and arts and crafts ought to be encouraged. The establishment of a comprehensive pricing policy would enable any profits generated to be 'ploughed back' and utilised in the development of new programs and services. During off-peak times operating costs could be offset by a more intensive and better integrated use of such Community Clubs by existing council recreation, welfare, social work and education personnel. An increased degree of accessibility in this fashion for such professional officers and practitioners can significantly add to the effectiveness and 'reach' of their service as well as enhancing the overall potential of the club itself.

The facility would need to provide day and night access on a seven day a week basis, thus catering for the needs of working people, housebound parents, the unemployed and retired people. There ought to be sufficient space to allow young and old to satisfy their social needs without conflict, in a diverse recreation environment, and under a responsive 'market conscious' (or user-oriented) management system. Such operations should also be encouraged to reflect the multi-cultural areas in which they are located, a fact which the Institute of Recreation believes rarely to be the case amongst existing recreation centres and leisure complexes in Victoria...

A Community Club must be:

- (a) local in its orientation, i.e., it must serve the needs of the people from the surrounding neighbourhood and not be designed as a large regional facility;

- (b) small enough to be friendly and to provide a person with a sense of identity;
- (c) planned and managed by the local people to reflect local needs;
- (d) developed under the auspices of the relevant Municipal Council, in order to ensure that broad community development goals are achieved rather than being dominated by a particular interest group;
- (e) the provider of a range of facilities and services with the potential for covering the whole range of community services including health, welfare and further education, in addition to recreation;
- (f) the provider of a core of social space which will attract people and facilitate the development of interpersonal relationships;
- (g) professionally managed, with local government having the ultimate responsibility."

The City of Preston submission

14.04 The City of Preston has supported the proposal of the Institute of Recreation. Its evidence (Ex.JJ2) develops the argument for community clubs:-

"A potential problem with the introduction of registered clubs is that they may attract members away from involvement with a range of traditional voluntary groups. As the financial and human resources of many voluntary groups is often precarious, such a move could be disastrous for them. The community club concept envisages such groups being affiliated with the club and probably conducting many of their activities from the club. In addition, a community development fund could be used to support the activities of these community groups.

The establishment of community clubs could ease the pressure on local government finances to provide a range of community facilities. Many community facilities could be contained in the community club and with the income from poker machines, possibly be financially self-supporting.

At an individual level, a person should be able to use the facilities of a private or community club

without being in direct contact with gambling or the consumption of alcohol. Thus, facilities should have licensed and unlicensed areas. This is particularly important as families should be encouraged to visit these clubs.

Within the depersonalised context of large clubs, the individual at risk is not discouraged until his money is gone and can be seen to be standing on his own in a socially 'hostile' environment. If he fritters away his family's bread and butter, no one is any the wiser.

In the community club concept, such scenes should not occur. With staff chosen from the philosophical standpoint of community development, those who go to excess will be quickly identified and staff will be able to intervene on behalf of 'victim' and his or her family. The caring attitude of staff, the intervention of family and friends would help to minimise the negative potentials of gambling.

If there is support for the community club concept, it is essential for local government to play a key role in the introduction of poker machines to a particular community. A council should be able to decide how many clubs will be registered to have poker machines and the maximum number of machines a particular club may have. One potential difficulty, however, is that adjoining municipalities may adopt vastly different policies.

These local government controls would work hand in hand with authority councils currently have under health and town planning legislation."

Plainly, one advantage of this concept over the placement of machines in all licensed clubs is a reduction in town planning problems. Only a limited number of carefully chosen locations would be needed.

Possible models

14.05 Mr. Hollinshead saw four possible models for a community club meeting his criteria. (T.2100-2101). First, a new community type facility established by local government to meet the twelve defined criteria - "a totally new concept, a

facility built for community benefit which has income potential which may be derived from poker machines, but working to encourage the provision of social space". The second would be an adaptation of an existing local government recreation centre, "which at the moment just caters for hard physical recreation". Thirdly, there could be a new centre owned by a local association which any citizen would have the right to join at a small annual subscription, of the order of \$5-\$10. Finally, private clubs which were prepared to adapt to meet the twelve criteria, thereby earning the right to have poker machines.

The Cole concept

14.06 Mr. D.A. Cole also had a vision of community clubs. His thinking had developed from his long association with the financing of country football. He saw poker machines as an answer to the problem of money but he recognised that not all of the 787 country football clubs in Victoria would wish, or be able, to have licensed premises. So he advocated grouping together (Ex.B7(a)):-

"What is a realistic scenario is that each of the 85 leagues will develop one licensed club in each of their areas.

As an example, there are three leagues in my own Corio district with 10, 10 & 13 clubs per league. Each club has approximately 302 members, so in each league there are 3,300 members. By each league having its own licensed club and by encouraging other sporting and community associations to share the experience, it is possible for each of our 85 leagues to have a financially viable central point for community leisure. Such a concept will be made possible by the legalisation of poker machines.

This development can be achieved without Government help or financial assistance."

Mr. Cole envisaged that, although the club would be formed by football supporters, it would be a true community club - the football club getting together with the bowling clubs, golf clubs, etc. (T.851).

The Crampton variation

14.07 Mr. E.V. Crampton of Bairnsdale had a similar notion but derived from different considerations. He is a caravan park manager, formerly the executive director of the Victorian Regional Development Association and one-time chairman of the Wimmera Regional Tourist Authority. Not surprisingly, he had turned his mind to the possibility of using poker machines to promote tourism, especially in East Gippsland. He was critical of the possibility of a proliferation of poker machine clubs, particularly in small communities. He proposed a mechanism to avoid it (Ex.K2):-

"Before the issuing of licences to operate poker machines, applications should be called from all clubs wishing to be licensed.

All applications should include details of the facilities which will be provided for community use, both immediate and planned facilities over the ensuing five years.

Consideration could be then given to the applications to ascertain the clubs which will give the most appropriate facilities to service the communities needs.

Any licensing board should seek the assistance of local government in establishing the needs of the community to ensure the facilities to be provided best meet the needs of the community, and to prevent unnecessary duplication of facilities.

By restricting the issuing of licences and encouraging the formation of clubs to serve more than one sporting or social interest unnecessary capital outlay on buildings will be avoided, allowing a greater injection of funds into facilities."

Mr. Crampton added: in order "to maintain a civilised atmosphere the number of machines per club should be restricted in relation to audited membership with an additional quota allocated to clubs in designated tourist areas". It was fundamental to his approach that the clubs should be available to tourists. (T.1132):-

" We would see that the poker machines in themselves are not the be all and end all, that they produce facilities that are attractive to tourists, and with that come all the ancillary benefits of tourism. As we point out further, all areas of the community benefit from tourism.

Q. Are you saying that the holiday makers will be contributing substantially to that poker machine revenue, or would that largely be from local sources?

A. It would be from both sources".

Mr. Crampton went on to say that in East Gippsland he would expect a much greater contribution from tourists than from local people because of the greater number of tourists than locals. Mr. Crampton recognised that his proposal would involve some adjustment. He cited Bairnsdale (T.1132) "where at the moment there exists in a town block a swimming pool, a croquet club, a bowling club and tennis club, and for a town to have a swimming club, bowling club, tennis club and croquet club would be the height of lunacy, when you could have in fact a community development". He saw one set of poker machines funding them all. He was asked about the football club, RSL and golf club but took the view that it was for the licensing body to call applications and decide what is best for the community on the basis of local knowledge - "humans being what they are, everybody will want their own

club, but I do not see that this is a good thing". (T.1133).

THE NEED FOR COMMUNITY CLUBS

The recreation centres

14.08 Mr. Hollinshead said that there were in Victoria more than 43 community recreation centres, some 300 sport type related facilities, perhaps up to a total of "500 sport community leisure recreation facilities". (T.2097). Partly as a result of the submission of his Institute, the Board inspected some of them. We went to 16 community recreation or community leisure centres, in Victorian country towns and in the Melbourne metropolitan area. We also inspected a private centre, the "Golden Bowl" at Camberwell. All of the community recreation and leisure centres we visited were of recent construction; I think none being older than five years. It is true, as the Institute claims, that the main emphasis in these centres is on hard physical activities. Most centres contained an indoor stadium capable of use for a variety of games: basketball, netball, volleyball, badminton and tennis. Many had squash courts and/or a gymnasium, some had swimming pools, some saunas. As sports centres they were impressive. In each case the centre had been developed as a result of co-operation between State and local authorities. Most centres were in the immediate vicinity of schools and, we were told, were used during school hours by the pupils. Some were on Education Department land, others on council owned land but built with financial support from the Education Department. My immediate reaction was that there were not any equivalent facilities in New South Wales but I sought information from counsel so that

I might check this. Mr. Garling did supply a list of New South Wales centres (Ex.B25) and with Mr. Bongiorno I visited most of them. With the exception of two centres, at Fairfield and at Liverpool, in Sydney, they were not even to be compared with the Victorian centres we visited. Mr. Hollinshead said (T.2097) that Victoria and Western Australia lead the nation in the provision of such centres. Clearly, Victoria leads New South Wales, at least.

"Social -spaces"

14.09 Not all of the centres we inspected were suitable merely for physical activities. Several had an auditorium, capable of being used for meetings, concerts, film nights and other functions. Several had separate function rooms. Most centres had rooms for aerobics or jazzercise. Some had child-minding facilities. The Bairnsdale centre not only had admirable sporting facilities and a most attractive auditorium but also three music rooms for tuition or rehearsals. However, only one centre, the Melbourne City Baths, had what Mr. Hollinshead called "social spaces" - places for people simply to eat or sit or wait. This need is well satisfied at the baths. I agree with Mr. Hollinshead's comment (T.2097) about the baths having "a wonderful piece of chemistry". This precedent is an indication that, as the Institute says, such areas will come to be included in future schemes. Already, the Ascot Vale Leisure Centre has perceived the need. It has active plans for extensions to include a lounge and bar facilities.

Finance

14.10 The financial arrangements at the various centres were variable. Most, however, provided a club membership for a significant fee. Ascot Vale, for example, charged \$200 for twelve months, \$135 for six months and \$90 for three months. Non-members could use the facilities on a casual basis. School parties were admitted either free of charge or at a nominal charge. In some centres we were told that the manager has a discretion to waive or reduce charges to unemployed or other financially disadvantaged persons. It was not always possible to get precise information but most centres budget to break even, that is on an income-expenditure basis and without allowing for depreciation, or better. Usage was reported as being heavy, e.g. 1,000-1,500 people a day at Ascot Vale (Ex.106G), over 2,000 people a week at Bairnsdale, district population 17,000. (Ex.103A).

Arts centres

14.11 Reference has already been made to the concern of the Victorian Association of Performing Arts Centres about the under-cutting by poker machine clubs of their programmes: see Chapter 13.66. During the Murray Valley tour the Board inspected one of the 14 such centres: the Paramount Arts Centre, Echuca. The centre was in a converted commercial cinema. It was predominantly used by community groups. The building comprised a large foyer at street level, used for exhibitions and various functions, a large rear room used for ballet lessons, arts classes etc., a 270-seat theatre at first floor level and, behind it, a concert recital room. The

centre opened in 1979, having been funded by the State government and local council. See Ex.101A.

COMMUNITY RECREATION CENTRES: NEEDS

Funding

14.12 Dr. J.G. Cushman is the head of the Department of Leisure Studies at the Phillip Institute of Technology, Bundoora campus. He is the author of a discussion paper on recreation policy for Victoria prepared at the request of the previous State government and recently released for public comment by the present Minister. He is in a position of advantage in summarising the position through the State. He estimated that in half to three quarters of the 211 local government areas in the State there is a council controlled recreation centre or a sports centre. (T.2562). It is not easy to reconcile this estimate with that of Mr. Hollinshead but both witnesses emphasised the problem of definition. I suppose that all councils have some sporting facilities available for public use. Whatever the numbers, it was common ground between both witnesses that there were still some local government areas where facilities were inadequate but that great progress has been made in recent years and is continuing since the change of government last year. Indeed, Dr. Cushman said that co-operation between the various government agencies "is increasing further with the change of government in the last eighteen months". (T.2557). He did not see funding as the most important problem (T.2564) but funding was, of course, the only reason for Mr. Hollinshead's proposed use of poker machines. (T.2123).

Qualitative changes

14.13 Dr. Cushman shared Mr. Hollinshead's criticism of the limited range of pursuits available in most community recreation centres. However, his evidence indicates that changes are on the way. Mr. Hollinshead had mentioned the Sunbury Leisure Centre with approval, as encouraging craft and small scale informal activities. (T.2113). Dr. Cushman took this further, saying (T.2557-2558):-

"The community in my view in terms of the development of those sorts of facilities expect it is more appropriate to develop medium range multi-purpose facilities rather than large range singular purpose facilities. What is increasing is the development of local neighbourhood self-help groups, developing small neighbourhood houses in respect of developing social spaces and learning areas which are relevant to them and which they have a considerable say in terms of management and control of those facilities. That is a very strong trend occurring in Victoria today".

Dr. Cushman gave as examples the Diamond Valley Learning Centre and the Eltham Learning Centre, each of which provides coffee and social facilities and an extensive range of learning and leisure programmes. (T.2559).

COMBINED SPORTING CLUBS

The motivations

14.14. Mr. Cole and Mr. Crampton each have a concept of a community club controlled directly by the membership; fitting within the third or fourth category mentioned by Mr. Hollinshead (para. 14.05). The underlying motivation of each gentleman was different. Mr. Cole was influenced by a desire to harness poker machine revenue for the benefit of football promotion, whilst avoiding the waste and other disadvantages

inherent in the New South Wales licensed club system. Mr. Crampton wishes to harness poker machine revenue for the provision of facilities attractive to tourists, also whilst avoiding costly duplication. Does the evidence establish a need for community clubs to satisfy these goals?

Sports promotion: the evidence

14.15 Out of all the LCAV witnesses only two, Mr. Cole and Mr. Ruxton, articulated a proposal for the spending of poker machine revenue otherwise than on facilities for club members. Mr. Ruxton was anxious to increase the funds available for social welfare; Mr. Cole to provide funds for the promotion of football. Mr. Cole is a very experienced football administrator with a sincere desire to help the game. It is, important, therefore, to consider his evidence on the question of need. In his written evidence Mr. Cole gave a description of the country football network. (Ex.B7(a)). He went on to speak of becoming aware in 1976 "that the major problem facing the organisation of country football was cash. I felt that our country football clubs had a huge opportunity, not only to develop the game, but to raise community standards". Mr. Cole envisaged that the 85 poker machine league clubs, referred to in para. 14.06 above, would each have 10 machines each yielding \$10,000 per year. 5% of the annual yield of \$8.5million, i.e. \$425,000 would be paid to the VCFL "to promote and develop the VCFL with full time officers. A further 5% would be paid to each league for its own administration - \$5,000 to each of the 85 leagues". In oral evidence Mr. Cole said that the VFL had a promotional fund of

about \$1.5million for junior development each year (T.835A) "to see young players realise their full potential". (T.836). About \$1million of this is spent in Victoria. (T.845). In addition, according to Mr. Cole, each VFL club individually spends money in its own zone looking for potential League footballers tied to that club. Each VFL club has a development officer paid by it. (T.845). Mr. Cole stated that Geelong club's expenditure within its zone was \$110,000 per year. (T.846). This promotion has been very successful in recent years. There are now more people playing football in Victoria than ever, 100,000 per week in country districts alone. (T.848). Mr. Cole agreed that where he lived he did not know any boys "who want a game of football on the weekend but cannot get one". (T.848). Mr. Cole was asked to specify the purposes for which he saw the poker machine revenue being spent. He mentioned the payment of coaches (T.841) and the substitution of paid staff for voluntary administrators. (T.849). He was asked whether this would improve the quality of the football in his town. He replied "I think it would be a fairer situation". (T.850). Mr. Cole had reservations about the payment of players (T.865) but said that it was common practice in the country leagues now to pay players. (T.833). He said (T.842)-843):

"Q. Football clubs in Victoria and the VFL really have a great desire to get their hands on money?

A. They have a great desire to establish their business and run it as they want.

Q. They want to get as much revenue as they can?

A. Yes, private enterprise.

Q. Each club acts on the view that the more money they get hold of the better chance they have of winning the premiership?

A. Yes.

Q. Because it can then pay for the best players?

A. Right."

I put to Mr. Cole that in the light of this evidence the reality would be that, with poker machine revenue, there would be a tendency to increase payments to players, that even if it were decreed that the poker machine funds were not to be so used the effect of their availability would be to allow payments to players out of moneys now used for other purposes. He agreed. (T.865).

Sports promotion: conclusion

14.16 The evidence given by Mr. Cole was extremely important. He was one of the persons in Victoria best placed to demonstrate to the Board the need for substantial new funds for the assistance of junior sport. He was concerned with the game which he understood to be "the biggest participant sport in Australia". (T.848). If there was a case to be made for poker machine revenue to go to sport he was in a position to make it. Yet, when asked about need he mentioned only the payment of coaches and administrators; that people now working in honorary positions should be paid for their trouble. This would be "fairer". There was no argument put that payment would lead to better football. I wonder whether it would. Mr. Martyn, whose wide involvement in amateur sport well

qualifies him to comment, made this remark in reference to the danger of unequal distribution of money in sport (T.1937):-

"...I believe that sport in Victoria has a tremendous volunteer system where people work hard. I think this is one of the great things about sport that we have these volunteers. There is an army of volunteer people. I think that we should make sure that we do not do anything to break the spirit in this area".

Dr. Cushman also mentioned the importance of voluntary service, from the volunteers' point of view. He referred to a study undertaken by consultants on behalf of the Department of Youth, Sport and Recreation which showed a high volunteer rate in the leisure field. The volunteers, he said, "regarded volunteerism as a form of leisure in itself". (T.2561):

"Q. You yourself would regard volunteerism as an important form of self development?

A. I would". [1]

Tourist promotion

14.17 Mr. Crampton's proposition is that poker machine revenue would enable communities to provide facilities which would be attractive to tourists, causing them to visit, or extend their stay in, a particular locality. In particular he directs the argument to East Gippsland, having in mind the undoubted fact that some Victorians do choose to travel up the Princes Highway to play poker machines in towns on the south coast of New South Wales. [2] The argument is necessarily a "border hopping" one. If there were no poker machines in New SouthWales Eden and Merimbula would obtain no unfair advantage. The argument is, therefore, of very limited application. It can only apply to a place with tourist

potential, without poker machines, which is in competition for visitors with a tourist centre with poker machines. The argument is just one more example of the unfair competition effects discussed in the previous chapter. As the issue has such limited geographical application it is difficult to see that it furnishes an argument for poker machines in community clubs throughout Victoria.

DIFFICULTIES WITH THE COMMUNITY CLUB CONCEPT

The issues of principle

14.18 There are at least four issues of principle which require to be considered in relation to the proposal to place poker machines in licensed clubs. The first is raised by Mr. Tony O'Donnell, who was involved in the development of the proposal of the Institute of Recreation and who was to have presented it to the Inquiry. However, Mr. O'Donnell decided that he could not support the installation of poker machines in community clubs and lodged a personal submission to that effect. (Ex.2Y). His reasoning was that community club membership must be the right of any individual living within the relevant local area but that, as he had come to realise, many people, who regard poker machines with abhorrence, would feel excluded from such a club. The second question goes to actual exclusion. The City of Preston emphasises the necessity to exclude some participants, presumably children, from contact with gambling and the consumption of alcohol. Assuming that this is practical, how desirable is it that a facility specifically designed for the whole community, which young people are encouraged regularly to visit and without the

necessity of being accompanied by adults should present to them "roped-off" areas? Indeed, and this is the third point, is it consistent with the desire of the Institute to promote a relaxed, humanised environment governed by the local community that there be introduced machines which will need to have applied to their operations stringent controls imposed and policed by a central authority? The final question is raised by Dr.Cushman. It goes to the compatibility in function between poker machine gambling and the constructive development of leisure pursuits (T.2563):-

"I think the form of recreation developed by poker machines has very little to do with the sort of developments and the sort of perspectives that recreationists like to espouse in relation to personal satisfaction, personal development, personal exploration and creativity".

The problem of starting: council clubs

14.19 The Institute's four models break into two different categories: community clubs sponsored by local government and community clubs formed by individuals or existing clubs. Difficulties arise in respect of each category. If a local council has the funds to provide the necessary community recreational facilities for its area it does not need poker machines; they are only a means to an end. If it does not, how does it establish the club which will then qualify to obtain the machines? I raised this with Mr. Hollinshead. He suggested that if a proposed club would, upon completion, meet the criteria, then government finance might be made available to build the club, the loan being repaid out of the poker machine profits. I pointed out that there was evidence that

the burden of poker machine playing was uneven and asked

(T.2129):-

"...if you are going that far why should not the taxpayer pick up the burden as a taxpayer rather than to allow it to fall unevenly according to the extent to which people choose or are compelled to play poker machines?"

He replied:-

"That phenomena might be a lesser evil than just not having the community facilities at all".

The problem of stopping: private clubs

14.20 The practical difficulties involved in Mr. Cole's proposal were explored with him at some length. They were of two kinds. The first related to his concept of a single licensed club to serve all the teams in a single country football league. He agreed that, in the more remote areas of the State, the distance between towns in a league was such that it was impossible to envisage people throughout the league regularly using a single club, wherever situate. Inevitably pressure would build up from the people more remote from the selected site to have their own club. Again, in relation to the proposal that a variety of interests be congregated under the one umbrella, a difficulty arises. How long will it be before the members who are not especially interested in country football come to resent the payment of 10% of their poker machine revenue to country football? Will they not seek to divert some of that expenditure to their own special interests or to better facilities or services in the club? This is the story of the Sydney Leagues clubs. They were established to promote Rugby League but now show little

readiness to put money into the game: see para 13.21. There is insufficient commitment by the enlarged membership.

Effect on other clubs and businesses

14.21 The community club concept involves the grant of a poker machine monopoly to one club in a local area. However worthy the club, the result must be to disadvantage others. By definition, the club would operate on an "open house" basis. It would present a source of competition to all those local businesses who trade in a field in which it is active. Unless there is scrupulous care to prevent subsidisation of trading there would arise the same problem of unfair trade as in the case of poker machines in licensed clubs. There is no reason to believe that this control could be maintained in the long term. An active board or manager will always try to maximise trade. Furthermore, the community club would necessarily compete for membership with all existing clubs in the area; the community club is open to all. It would be well endowed and offer excellent sports facilities. It must prove attractive to many members of existing clubs. They will amalgamate with the community club, whether or not they wish to do so, or wither away. Monopoly always has dangers. Not all clubs will be managed with the sensitivity to individual differences and the interests of sub-groups that distinguishes the submission of the Institute of Recreation. If it happened that all interests became dependent upon a single board of directors there is a real danger that the result would be the very reverse of that desired by the Institute: a constriction

of freedom to pursue an interest, a loss of independence and initiative.

CONCLUSIONS

Is the poker machine community club model desirable?

14.22 The suggestion that community clubs, and only community clubs, be given the right to install poker machines is superficially most attractive. The imagination and thoughtfulness of the Institute's submission stands in marked contrast to the bland approach of the LCAV. It is the only proposal put before the Inquiry which makes any attempt to ensure that poker machines will benefit the community. Notwithstanding the progress which Victoria has made, and continues to make, in the field of community recreation and leisure, more needs to be done. Even if funding is not a critical limitation, extra finance would hasten the development of a comprehensive system of centres which meet the highest criteria. Some fringe benefits, in relation to local employment, especially in the building industry, must accrue; though this would be even less than in relation to the licensed clubs model: see para 13.32. But, in the end, I have reached the conclusion that the proposal cannot be recommended. The practical problems I have mentioned are serious. It is very hard to see the scheme developing, or remaining, as its authors intend. But even if one could be optimistic on that matter the problems of-principle referred to in para. 14.18 remain. The path of poker machine finance, attractive in the short term, would very likely lead to the distortion of an important community development.

Notes to Chapter 14

- [1] A submission from the Meredith branch of the Victorian Farmers and Graziers Association emphasized the importance of active participation by people in building a sense of community. Meredith is close to both Geelong and Ballarat but, according to the submission, has developed coherence because of the number of do-it-yourself groups in the community.
- [2] There was hot debate at the public hearings as to the importance of poker machines in drawing tourists across the border. Mr. Crampton pointed to the attractions of the East Gippsland region and asserted that they were more than the equal of those at Merimbula. Mr. Henshall produced a study by a geographer, Mr. D.L. Hill, which suggested that the weather at Merimbula was better. Meteorological records show that Lakes Entrance has 19 more rainfall days than Merimbula each year and has greater cloud cover in all seasons. Merimbula is on average slightly warmer. Fully acknowledging the outstanding beauty of East Gippsland, I think that Mr. Crampton may be over-estimating the importance of poker machine clubs in people's choice of their holiday spot.
- [3] Tax revenue would be minimal or even negative. Consistently with the concept, the government could hardly tax at more than a normal rate.

CHAPTER FIFTEENPOKER MACHINES IN LICENSED CLUBS AND HOTELS

THE HOTELS PROPOSITION

The Licensed Freeholders submission

15.01 The written evidence for the Licensed Freeholders Association of Victoria argued, in some detail, the inequity of allowing licensed clubs, who are in competition with hotels, a monopoly of the right to install and operate poker machines. The submission was that, if poker machines were to be introduced, then "their introduction to hotels as well as clubs would prevent inequities and avoid an inefficient allocation of resources". (Ex.S2 p.45). The physical attributes of hotels, it was said, made them suitable for operating poker machines. Moreover,

"...hotels operate in a closely monitored regulatory environment and require sound, professional management on a paid full-time basis. The experience of operating in such a regulatory environment and the opportunity for close supervision and control of staff under professional management practices make the industry readily adaptable to any supervisory mechanisms considered necessary in the event of poker machines being introduced."

15.02 The submission recognised that a proposal that hoteliers be allowed to operate the machines for their personal benefit was unlikely to prove attractive. It made the suggestion that the profits go to the benefit of the community: Ex.52 pp.47-48:

"Furthermore, as the (Licensed Freeholders Association) is basically concerned with the maintenance of equity, market conditions and social utility, it submits that any premises operating poker machines should retain out of gross poker

machine revenue only sufficient funds to cover overall running cost of such machines. The retained poker machine revenue could be defined as a percentage of poker machine turnover. This would avoid the circumstances of abnormal profits accruing to individual operators and would render such profits available for distribution to the general community by the Government.

One option for distribution of these profits is a system whereby all profits (after deduction of operating and overhead expenses) from poker machines would be directed to a Government-controlled community chest which would disperse the funds to registered charities or for other legitimate community needs.

Another option would be to include as objects of the distribution of profits registered charities operating in the geographic area or community from which the profits were derived.

Profits from poker machines should be allocated throughout the community according to the needs perceived by the community and not according to needs perceived by individual poker machine operators.

This would provide the community with the ultimate say over the distribution of potential community benefits and ensure that poker machine revenue accruing to the Government was a voluntary tax in reality as well as theory".

The Australian Hotels Association position

15.03 The attitude expressed by the AHA was, in the end, indistinguishable from that of the Licensed Freeholders. The Association at all stages maintained the argument that it would be inequitable to permit poker machines in clubs but not in hotels, as is shown by this extract from its preliminary statement (Ex.A1) filed with the Board in early May:

"13.1 If poker machines are permitted this should be done primarily in order to satisfy the need for Victorians to have this facility and entertainment. The permission would recognise that persons desire to resort to congenial surroundings inter alia to 'play the pokies'. Because of the New South Wales experience it

may be assumed that such surroundings should or will be found in licensed clubs rather than in hotels. Such an assumption would be false.

- 13.2 There is no difference between a club member playing a poker machine and an hotel patron playing a poker machine. The person who plays pool in the lounge/bar of an hotel is no different to the person who plays pool in the lounge/bar of a club. Hotels have progressively provided facilities such as pool tables, TV games and so on which their patrons utilise and enjoy. If it is adjudged that Victorians are to be permitted poker machines it would be grossly unfair and discriminatory to deny them to patrons of hotels."

It was not clear in the early stages what was the precise proposition of the AHA in respect of the use of the proceeds of any machines admitted to hotels. However, on 28 June 1983, the Executive Committee of the Association adopted a "formula for dispersal of machine takings" (Ex.A30) which read:

"...hotelkeepers costs covering purchase of machines, maintenance, power, depreciation, service and return of capital investment be established. Such cost to be retained by the hotelkeeper and the remainder to be allocated to the player, the Government, and a community purpose or charitable trust".

This proposal was adopted by the AHA State Council on 12 July.

Ownership of the machines

15.04 Two theoretical possibilities arise in relation to machines returning to hotels and clubs mere compensation for time, trouble and expense. One possibility would be a system whereby the machines were owned by, say, a government agency and installed in premises upon the basis of a fixed rental or site fee. The hotelkeeper would have no financial interest in the success of the machines. His interest would be merely to

provide an amenity for his patrons, and thereby avoid damage to his competitive position. By way only of compensation for the use of electricity, some staff time in organising installation, servicing etc. and the use of bar space he would be allowed a small fixed annual amount; perhaps \$500 per machine. The government agency would purchase, install, service and empty the machine and would be entitled to all profits.

15.05 - The alternative possibility would be to license hotelkeepers to install machines (perhaps subject to some limitation on numbers, either absolutely or relatively to floor area) at their own expense but to tax the proceeds at such a rate as to limit the hotelkeeper merely to a fair return on his capital and recovery of his expenses. As the reference to "depreciation" in the formula quoted in the preceding paragraph makes clear, it is this concept which the AHA executive committee had in mind. The Licensed Freeholders also thought along these line. In their final written submissions (p.40) counsel for the Licensed Freeholders urge that "machines in both hotels and clubs should be fully taxed, save for reimbursement of fixed and overhead costs". However, if I understand them correctly, both parties would be interested in the alternative, government owned machines, if this were the only method of avoiding unfair competition from the clubs.

Attitude of hoteliers

15.06 It is important to note that the suggestion that poker machines be permitted in hotels does not arise from any

perception by the hotel industry of a demand by its customers for this facility. It does not spring from any feeling by hotelkeepers that their hotels would be more attractive or more interesting places if only poker machines could be installed. On the contrary. I asked most, if not all, the hotelkeepers who either gave evidence or escorted us on an inspection of their hotel whether, given the choice, they would prefer to have poker machines in both hotels and clubs or the current position: no machines at all. Without exception, they said that they would prefer the status quo. Mr. James Griffin, the President of the Licensed Freeholders Association and the general manager of the Ballarat Brewing Company which itself owns 65 hotels (Ex.S5), stated his "personal opinion of what I think the Association would prefer would be the status quo". (T.2030). The members of the Association between them own 283 hotels worth some \$230-\$240million and employing over 8,000 people. (Ex.S5). Mr. Thomas Payne, President of the AHA and the managing director of a company which conducts three hotels in Melbourne, said that "my personal choice would be that I would not want to see them" (poker machines) "in Victoria". (T.1853). Mr. Payne said that the choice had not been debated at any AHA meeting so he was unable to express an Association view. However, I make the observation that there was never any campaign by the hotel interests to have poker machines permitted in this State. In that regard the LCAV, and their recruited campaigners, have made all the running. As Mr. Darryl M. Cox, chief executive officer of the AHA, said in his evidence the

AHA "did not need to worry about" the poker machine question until late 1981 or early 1982 when there was "intense lobbying" by the ACDA. (T.2000). I add also a further reference to the evidence of Mr. Darryl Cox, who appears in his twelve years as chief executive officer of the AHA to have acquired an encyclopedic knowledge of Victorian hotels and a close relationship with most hotel licensees. At T.1986 Mr. Cox was asked if his judgment "as a man who knows the industry and has had a long time to look at it and to think about it" whether it would be better for the hotel industry to maintain the status quo or to have poker machines in both hotels and clubs. He replied (T.1987) that the "industry would best prefer" the status quo:

- "Q. In stating that you are not necessarily expressing a personal view. What is your personal view?
- A. That is my personal view as well.
- Q. What you are saying to us is, regardless of whether you members feel that way, that is the way you feel?
- A. Yes.
- Q. You are also saying that you believe that that is the way your members, as a whole, would feel?
- A. The members would be quite happy if they were not introduced into the State of Victoria".

A defensive proposal

15.07 The reason why the hotel interests have put their proposals for poker machines in hotels can be stated very shortly: fear of unfair competition by poker machine clubs. Mr. Payne put it succinctly (T.1848):

"Q. Does it not amount to this: you are saying if the poker machines are to come you want them to come only on the basis which would give the clubs absolutely no advantage over you at all?

A. That is correct. What we want if poker machines are to be introduced in Victoria is fair and equal competition. We do not want to be discriminated against and we do not want our patrons to be discriminated against".

THE IMPLICATIONS OF THE PROPOSAL FOR THE CLUBS

Reasons for hotels foregoing claim to profits

15.08 The hotels accepted that no government would ever allow hotelkeepers, individuals and companies, to pocket the substantial profits which would be generated by poker machines placed in hotels. At T.1990 Mr. Cox agreed that the "no profit" proposition was likely to be that "most likely to persuade a government to allow you to have the poker machines in hotels". But there was also, I believe, a genuine recognition of the fact that it would be wrong to allow any individual to retain the profits. As Mr. Payne said (T.1850):-

"...if poker machines are to be introduced into this State there should be a community benefit. We did feel the profits should go to the community, not to individuals and not to clubs".

Implications for the clubs

15.09 It seemed to me that only belatedly, during the course of the oral evidence, did the LCAV think about the implications of the hotels' position in relation to its own case. The initial LCAV position in respect of machines in hotels was described in these words by its counsel, Mr. Garling, following a special meeting of the executive called

to discuss various matters raised by me with Mr. Hornsby
(T.498):-

"It is the LCAV's case that if any other party can convince this Board of Inquiry that they ought to be entitled to operate poker machines, that is a matter for the party concerned".

The assumption continued to be made by the LCAV that clubs would be entitled to retain the whole of their poker machine profits, less a tax of say 10%, whereas hotels would not. Such a solution would satisfy one element of the argument of unfairness - that one group is able to offer an amenity which the other group cannot - but it would ignore the other, and much more significant, element: that one group is able to earn substantial profits from its monopoly, which profits can be used to undercut the competitor group in a significant way over a wide range of its activities. That argument cannot be met by any solution which leaves profits in the hands of one group which are denied to the other.

15.10 In his final submissions, Mr. Garling for the LCAV did recognise the implications for the clubs of the hotels' proposal. For the first time there was a suggestion that there might need to be some restriction placed upon the entitlement of clubs to spend poker machine profits as they wished:- see final submission p.80:

"It is clear that the AHA and the LFAV see a problem with the profits of poker machines going into the pockets of the hoteliers. Accordingly they have both concluded that all profits should go to the government. This is impracticable so it is submitted. If for reasons of economic necessity it is thought that hotels ought to have poker machines then it is submitted that the only way in which profits can be properly and equitably dealt with is

for the approved use system outlined above to be brought into existence. The categories for approved use in a hotel might be substantially different depending upon either

- (a) Any need disclosed in the hotel industry for improvement therein; or
- (b) The views of the government at the time.

It is submitted that the maximum and minimum taxation rate for hotels and clubs can be the same but that careful scrutiny ought be had over the question of approved usages".

The "approved usage" concept was discussed at para 13.23 above. Put shortly, the notion was that a government authority would determine the use of poker machine profits. Mr. Garling did envisage that approved uses would include such things as "donations to charity and welfare, expenditure on sporting facilities such as improvement to or upkeep of golf courses and bowling greens, improvements to public facilities, development of sport, improvements to the quality of club facilities, provision of benefits for disadvantaged community members and so on". He mentioned the possibility of a holiday facility for club members being approved upon the condition that it be available to members of the public "when not fully utilised by club members". (Final submission of LCAV pp.76-77).

15.11 I have commented above upon the impracticality of the "approved usage" proposal. For present purposes, it is enough to note that unless, contrary to the LCAV submission, capital and maintenance expenditure on club premises, furnishings etc. was excluded from "approved usage" an element of significant unfairness would remain. Hotels have to bear out of profits the substantial costs of maintenance,

refurnishing and depreciation of buildings. It would be unfair to expect them to compete against clubs who are relieved of such expenses and thus able to use the released funds for their trading advantage. If that view be accepted, the "approved usage" list shrinks to the provision of purely recreational amenities for members and contributions to the wider community - sport, charities and the like. At that point Mr. Henshall's question (para. 13.68) arises. Why allow clubs to select the most appropriate recipients of the benefits of poker machine expenditure; especially bearing in mind that one consequence of this expenditure will have been significantly to reduce the revenue available to government from other forms of gambling, as discussed in Chapter 10 above? If money is to be distributed to worthy recipients would it not be preferable to allow government, which is responsible to the whole community and has the opportunity to obtain the most comprehensive information upon community needs, to determine for itself the destination of what may properly be regarded as public moneys. There may be higher priorities than, say, the provision of holiday accommodation for club members. The question gathers even more force when applied to hotels. Presumably a hotel "approved usage" list would be restricted to charitable or general community benefactions. Would it not be odd to have a system which allowed a hotelkeeper, purely because he was a hotelkeeper, to determine or to influence the destination of substantial community funds never owned by him? It seems to me that there is no available half-way position, as the LCAV would wish,

that the logical corollary of the hotels' argument is that the profits of machines in both hotels and clubs must be received by the government.

THE BENEFITS OF "PROFITLESS" MACHINES

Benefits to hotels and clubs

15.12 If it be accepted that the whole of the profits of poker machines in hotels and clubs should go to the government the question arises whether any hotel or club would wish to have them in its premises. It is difficult to see that the existence of poker machines will significantly lift the volume of trade in the liquor industry. Some of those who now journey to the New South Wales border may decide to stay at home and "play the pokies" in the local club or hotel but in relation to the overall context their number is small. Perhaps some people will decide to eat out more often so that, after dinner, they may enjoy a session with the machines. Their numbers will probably be counter balanced by those who do not wish to drink in a poker machine environment; whether for reasons of aesthetics or because of lack of confidence in their self restraint. New South Wales hoteliers frequently told us that many of their "regulars" were people who, for one or other of these reasons, chose deliberately to avoid the clubs. I find it difficult to believe that there will be such an increase in the overall market as to warrant the introduction of profitless machines being regarded as an overall benefit to those in the trade.

Benefits to the public

15.13 The introduction of poker machines into hotels and clubs would, no doubt, be welcomed by those who would wish to play them. Many people do gain amusement from the machines. Others may come to do so. The entertainment the machines provide is one benefit provided by this model. The difficulty is to evaluate its weight alongside other subjective factors such as the disappointment, or even distress, of those who may be denied the opportunity of having a drink in an environment free of poker machines and the effect of the machines upon what may be called "pub atmosphere". Mr. Payne thought that the effect would depend upon the part or parts of the hotel where machines were placed, that there may be an adverse effect in some areas such as the lounge or dining room area but that there will be found in every hotel "at least one place where they could be put without destroying the pleasant atmosphere". (T.1900). I accept that this judgment is correct in relation to many hotels, with a variety of relatively large bars and a level of noisy patronage to mask the sound of the machines in a public or even club bar. But I would not have thought it to be valid in relation to a number of the hotels the Board inspected, the bars of which were smallish and quiet with a comfortable intimate atmosphere. I have in mind cases such as the Lord Nelson Hotel, Geelong (Ex.86A), the Sawyers Arms, Chilwell (Ex.86G), the Turf Club Hotel, Caulfield (Ex.87C), the Botanical Gardens Hotel, White Hills, Bendigo (Ex.97C), the Belmont Hotel, Bendigo (Ex.97E), the Shamrock Hotel, Bendigo (Ex.97J), the North City Hotel,

North Ballarat (Ex.98B), the Parkview Hotel, Ballarat (Ex.98F) and the Shamrock Hotel, Echuca (Ex.101M). There is a large number of hotels of this kind in Victoria, probably several hundred. I express the view, which I realise to be highly subjective, that much of the charm of these hotels would be lost if poker machines were allowed to operate in their public areas.

REVENUE FROM "PROFITLESS MACHINES"

Possible gross receipts

15.14 The major potential beneficiary, as it seems to me, of the "profitless" poker machine option would be the State government. The degree of benefit depends, first, upon the level of overall expenditure and, secondly, upon the proportion of that expenditure which can be got into government funds. If one were to assume, for the moment, the level of activity postulated in relation to licensed clubs the figures discussed in Chapter 10 above would be relevant. It will be recalled that I there suggested the possibility of an eventual industry, using multiplier machines, involving expenditure of \$20,000 per machine per annum; a total of \$450million per year throughout Victoria. (paras. 10.10 - 10.11). Without multipliers, I thought that expenditure would be more like \$300million per annum. If there were sufficient interest for the first hoteliers or clubs to install machines there would be a rapid build-up of numbers. The others would not wish to be left behind. There would be many more outlets (i.e. premises) than in the "clubs only" option - Victorian hotels and licensed clubs total almost 2,000. However, the

average number of machines per establishment would be much lower, for two reasons. First, there would be little point in a particular establishment having a large number of machines; the only purpose is to have a facility for those who wish to avail themselves. In New South Wales clubs the level of use is boosted by a variety of promotions, providing to players valuable prizes such as motor cars, expensive items of furniture, cutlery and household goods, "lucky food stockings" etc. The owner of an establishment housing a "profitless" machine would not be in a position to provide such prizes from the proceeds of the machines and it is most unlikely that he would be in a position, or minded, to provide them out of normal trading profits. So the overall level of use is likely to be substantially lower than I have postulated in respect of a New South Wales style club industry. It really is guesswork to say what number of machines might be installed but a figure of 15,000, about two thirds the number estimated for the licensed clubs option (para. 10.9), averaging 7.5 machines per establishment seems to me as good as any. This would provide an industry, on usage rates per machine equal to those in New South Wales, yielding two thirds of the figures used in Chapter 10, i.e. \$300million total net expenditure with multi-coin machines, \$200million without. As it happens, calculations based both on \$300million and \$200million using variable assumptions as to the proportion of "new money" were set out in Tables 10.7, 10.8 and 10.9. It is possible to adjust the figures in those Tables, for present purposes, by treating the government's share of net expenditure upon

"profitless" machines as being the equivalent to a tax at that same percentage. For each additional 10% the figure for net revenue effect should be increased by \$30million or \$20million, according to whether or not one is adopting the multi-coin assumption. Table 15.1 sets out the various net revenue effects which would be achieved, on these various assumptions, according to whether the government succeeded in retaining 50%, 60% or 70% of the net expenditure, i.e. player loss in the machines.

TABLE 15.1

CALCULATION OF NET REVENUE EFFECTS
OF 'PROFITLESS' POKER MACHINES
IN HOTELS AND LICENSED CLUBS

On the assumption of poker machine expenditure in fully expanded hotels and clubs industry at \$300million:

\$ 000,000

<u>Proportion retained by Government</u>	<u>Assumption 50% "new money" cf.Table 10.7</u>	<u>Assumption 60% "new money" cf.Table 10.8</u>	<u>Assumption 66.66% "new money" cf.Table 10.9</u>
50%	39.85	61.88	76.58
60%	69.85	91.88	106.58
70%	99.85	121.88	136.58

On the assumption of poker machine expenditure in fully expanded hotels and clubs industry at \$200million:

\$ 000,000

<u>Porportion retained by Government</u>	<u>Assumption 50% "new money" cf.Table 10.7</u>	<u>Assumption 60% "new money" cf.Table 10.8</u>	<u>Assumption 66.66% "new money" cf.Table 10.9</u>
50%	6.58	21.25	31.09
60%	26.58	41.25	51.09
70%	46.58	61.25	71.09

It may be appropriate to make an assumption that the proportion of "new money" in the hotels plus clubs model would be somewhat lower than in the case of a highly developed licensed clubs industry. There are two reasons for this view. The first is that the poker machines in hotels will be readily accessible; in most shopping areas, just along the road from the newsagent's shop and the TAB agency. The second is that a strongly developed licensed clubs industry may attract into contact with poker machines more interstate and international visitors than would the clubs/hotel model.

15.15 It is extraordinarily difficult to predict what proportion of poker machine expenditure, on this model, might ultimately be available to government. There is no experience elsewhere on which to draw. Examination of the financial statements of a sample of New South Wales clubs reveals that they seem to spend up to about 10% of their gross machine income upon repairs, depreciation and analysis. But they have other costs referable to the machines, including salaries, interest, building costs and electricity which are absorbed into their general expenses for these items. Moreover, the clubs have the advantage of congregating a large number of machines in a single building, making for significant economies of scale. There is no material to enable one to quantify that benefit. It would be wrong for me even to hazard a guess as to the proportion of net expenditure which could be received net by government. If, despite the recommendation I make in this chapter, the Government is seriously interested in the hotel/club option it would be

desirable for it to establish a detailed feasibility study to determine the likely percentage and, therefore, net revenue effect.

A regressive tax?

15.16 If consideration were given to the introduction of "profitless" poker machines into clubs and hotels for revenue reasons a policy question would arise as to whether this was a desirable form of taxation. It certainly would be inequitable, in the sense that there would be no necessary relationship between the contributions made by individual "taxpayers" and either their capacity to pay or their use of government services. One private submission to the Inquiry said (Ex.2AA):-

"If any government were to devise a normal tax on such a selective basis, they would be thrown out of office, and for any government to introduce poker machines purely for revenue purposes would be an act of irresponsibility. Taxes should be fair and equitable for all, not based on chance. The problem also is that a government could find itself in a position of promoting such an industry to the detriment of many of its citizens..."

The validity of these views is very much a matter for determination by elected politicians but the submission reflects the sentiments expressed by many individuals and groups to this Inquiry.

15.17 I have already mentioned the paucity of information on the subject of who plays poker machines but the evidence indicates that, in New South Wales clubs, the main users are middle aged and elderly persons of the lower middle or working class (para. 5.07). The Wagga Wagga survey conducted by the North Blackburn Baptist Church indicated that levels of

"concern" and "addiction" were higher in a poorer (Housing Commission) section of the city than in the more affluent area around Lake Albert. (para. 7.13). It does not necessarily follow that people from the first area were spending more than people from the second; perhaps the losses merely meant more to the former group. However, it is possible that this is so. Anecdotal evidence, and observation in New South Wales clubs, does tend to suggest that poker machines are used disproportionately heavily by groups in the community (pensioners, manual workers) less able to bear additional taxation burdens. Insufficient information is available for a definite statement but it is at least likely that, upon a full analysis, revenue exacted by means of "profitless" poker machines in hotels and clubs would be shown to be a highly regressive tax.

OWNERSHIP

Private ownership

15.18 In para. 15.04 I referred to the alternative possibilities in relation to ownership. The hotels' submissions assumed that it would be for hoteliers and clubs to purchase, install and service machines. The compensation to be allowed them would have to take into account these costs. I find many difficulties with this notion. It is accepted that the premises owner should receive no part of the profits, as such. Consequently, the fee should not be related to machine turnover or net expenditure. It must apply irrespective of the degree of use or profitability. If a blanket approach were adopted i.e. a fixed figure per machine to cover variable expenses regardless of the actual figure it is inevitable that

individual premises owners would be either profiting or losing depending upon how their actual costs compared with the fixed fee. Moreover, a position of conflict and negotiation is introduced. There would be continuing pressure on the government authority, seen to be making massive profits out of machines played by "our" members or customers in "our" premises, to increase the fee. The pressure would be supported by material relating to cases in which the actual costs could be shown to be more than the fixed fee. It is likely that, before long, the allowance would be such as to ensure that in no case was the owner of the premises at a loss. Necessarily, this would mean that in many other cases, perhaps most, there was in fact a sharing arrangement.

15.19 If a blanket approach was not adopted i.e. if the fee varied according to the costs said to have been incurred by the owner of the premises, the administrative burden would be immense. It is enough to refer to para 15.21 of the Connor Report, discussing the same issue, although in reverse, in relation to casinos and to recall the advice of Mr. Carl Dodge, Chairman of the Nevada Gaming Commission, there quoted:-

"Don't ever get involved in a deal where your (revenue) is going to be based on a percentage of the net, because they'll kill you on running the costs to reduce the net; so stay with the gross. That was one of the best judgments that Nevada ever made".

15.20 I see other disadvantages in the suggestion that the owners of the premises own the machines. This course would require the owners to become familiar with the market for machines and to become knowledgeable about installation and

service. They will reasonably ask that this call on their staff time be taken into account when the fee is fixed. If there be supply by private manufacturers there immediately arise all the inefficiencies of many people negotiating a large number of separate purchases. A purchaser who has no financial interest in the performance of a machine may well prefer to deal with that manufacturer who is prepared to "kickback" the most, especially if an inflated cost can some-how be passed on to the government authority.

Government ownership

15.21 It appears to me that the only sensible course to take, if the hotel plus club option were adopted, would be for a government authority to retain ownership of all machines at all times. The authority could purchase (or manufacture) in bulk to its own specifications and thereby achieve substantive savings in unit cost (see paras. 19.10-19.17 below). The authority would train and direct installation and service staff who would be employed by it. By efficient management it may recover some of the economies of scale otherwise lost through the dispersal of the available machines over so many locations. Machines would be cleared by the authority's own selected employees, thus obviating any detailed accounting as between the authority and the premises owner. The authority would prescribe a fixed rental or site fee payable to the owner of any premises in which machines are located, which fee would be adjusted only for inflation. The authority would arrange its own computer monitoring of every machine as a check on performance and as some protection against theft by its

employees.

EVALUATION OF THE PROPOSAL

Reasons for discussion

15.22 I have discussed the "hotels plus clubs" option at some length for only two reasons. The first of these is that it was an option solemnly and persistently pressed upon me by two of the parties most active in the Inquiry. Considerable evidence was addressed to it. The other reason is that it is an option, probably the only one, which offers to the Government the possibility of obtaining a significant net revenue gain out of a decision to introduce poker machines into Victoria. I find it quite impossible to predict what proportion of the net expenditure the government might achieve after payment of all expenses but, as Table 15.1 indicates, a percentage as low as 50% would provide a significant sum especially if the Government decided to maximise its profit by promoting multi-coin machines. Having said this, I have to add my opinion that the proposal is a thoroughly unsatisfactory one, having nothing but the possibility of government revenue to commend it and maximising all of the problems which occur with poker machines in greater or lesser degree according to the circumstances. I have total sympathy with the concerns which called forth the proposal, as will be obvious from what I have written at paras.13.52 - 13.54 and 13.67 above but I totally reject this answer to that problem.

Feasibility

15.23 The first problem which arises is whether the

proposal is, in any event, feasible of implementation. Upon these terms, who really wants poker machines? There was no evidence to indicate that the licensed clubs would want them. No witness indicated any interest in having the machines for their own sake, for the amusement of club members. The emphasis from first to last was upon the capacity of the machines to generate revenue for club use. How many clubs would be interested to have placed in their premises machines designed to extract government revenue from their members? And here I am talking primarily about members. Without the ability to obtain for themselves poker machine revenue, the clubs will have neither the same need nor inducement to operate an "open door". It seems to me that clubs would have two main objections to operating what would be, in effect, a tax collection system for the government. First, that they are not prepared to help the government "fleece" their members - the position being seen as quite different to that which would obtain if the bulk of the profits were to go to the club - and, second, that the effect of encouraging members to play the machine would be, in all probability, to reduce club bar takings and other income, especially from Bingo, raffles and other minor gambling. In relation to hotels, similar reasons are likely to apply. This option is like the international arms race. Nobody really wants the hardware; no one is prepared to be left out.

Control of premises

15.24 The option runs directly counter to the basic principle of proper gaming control: the concentration of

activities in a single place under constant visual supervision. Mr. Hurley, a most experienced supervisor of gaming activities, was particularly critical of the problem which occurs in New South Wales "where in some of the small clubs the barman jumps over the bar and pays out the winning jackpot and then goes back and serves the drinks".(T.2285-86). He was asked whether there should be different levels of control depending upon the number of machines in an establishment. He replied (T.2886):-

"If a club had less than 20 machines I do not think there is the demand to have them there in the first place".

He went on to explain that answer:

" There is always the danger that it becomes a Mickey Mouse or a tuppence-halfpenny establishment where they will be cutting costs and once they do that the security is the first thing to go out of the window...

Q. It really means that it is a dis-economy of scale because the scale is such that one cannot afford the appropriate security measures?

A. Yes."

Later, Mr. Hurley was specifically taken to hotels (T.2289):

"Q. If you are going to have them in hotels and the profits go to the Government so that the hotelkeeper has no financial incentive to maintain security against cheating of the machines, whatever, you might have a security problem there with a few of them?

A. My word you would because the private enterprise area has to have a monetary situation to be involved in the security aspect of it.

Q. You would see a problem arising from someone operating poker machines at no profit?

- A. Yes, because if they cannot make a profit out of it legitimately they will certainly make a profit out of it illegitimately - there is no doubt about that".

At T.2307 Mr. Hurley confirmed that his recommendation for Victoria would be against poker machines in clubs or in hotels. He would have the machines only "in a casino type of environment", where trained management and proper controls could be made available. At T.2310 he was pressed further:

- "Q. If the controls were heavy controls of the kind you have mentioned and envisaged with the sanction, of course, of delicensing the hotel-

keeper if he skimmed the machines, and having regard to the importance of the machines to the hotelkeeper because it is in clubs, do you consider that the incentive for the hotelkeeper to skim the poker machine would be very minimal indeed?

- A. No, I am just not thinking of skimming. I am thinking of the general sort of incompetence and lack of interest and various other things. I think that a basic hotel manager has enough things to do in his hotel not to have to worry about machines.

- Q. So that you are worried about the security angle?

- A. Yes".

It seems to me that what Mr. Hurley says is simple commonsense. The evidence has made abundantly clear that there has been, and continues to be, a significant security problem in New South Wales clubs because of the number of poker machine establishments and the lack of interest and expertise of many of the people charged with their supervision. Yet New South Wales has the advantages of 27 years experience with legalised poker machine gambling, a body of secretaries/managers some of

whom have undertaken special academic studies to fit them for their role and a gambling milieu in which the profits are distributed for the benefit of a group of people with whom the directors and secretary/manager are in daily contact. If problems can occur in that situation, how much more in relation to small numbers of poker machines scattered around many hundreds of hotels, large and small, run by people with neither experience nor training in the supervision of gambling, without financial interest in the integrity or success of the machines or the safety of their takings and whose main concern is to run successfully their own businesses. The submission was put to me by both Mr. McPhee, on behalf of the Licensed Freeholders, and Mr. Joyce, on behalf of the AHA, that hotel licensees are by definition persons of proven good character subject to the supervision of the Liquor Control Commission who would be extremely conscious of the effect upon their licence, their livelihood and, possibly, their capital investment if they breached any relevant control provisions. I accept the general proposition that, as a group, Victorian hotelkeepers are persons of integrity and experience but I think that it would be naive to believe that none would yield to the temptation to divert some of the earnings of a government machine in their hotel. More importantly, there are numerous other people, persons of good character and bad, persons known to the licensee and strangers, who legitimately enter hotels at various hours of the day and night - as customers, employees, delivery men, workmen and so on. The scale and pressures of a typical hotel operation and the

necessity for the licensee to be absent from the hotel inevitably will lead to frequent situations where there is inadequate supervision of the machines. I add that the control problem will be exacerbated for many hotels by the layout of a building designed to maximise privacy and a feeling of intimacy by L-shaped bars and a series of small rooms not overlooked from a central observation place. For very good reasons New South Wales clubs are now being designed on the principle of congregating all the poker machines together in a central area which is to be overlooked by staff at all times. The Shellharbor Workers Club, which was completed last March and visited by the Board in July, follows that principle. It could hardly be less like a typical Victorian hotel.

Illegal gambling

15.25 Reference has already been made to the prevalence of draw poker machines in various types of licensed premises, especially hotels: see para. 3.55 above. There is no question that these machines are used, frequently if not invariably, in New South Wales for illegal gaming: prizes in cash or in kind being given to persons successful in accumulating a given number of "free games". I have no doubt that the New South Wales Licensing Court would take a serious view of any proved involvement of a licensee in the use of the machines for gaming but the fact remains that this does occur in New South Wales hotels. Draw poker machines are also to be found in Victorian hotels. There is no evidence before the Board of illegal use but it would be strange if that practice does not

occur on occasions. The glitter of immediate gold will often outweigh the risk of punishment in the uncertain and delayed event of detection. Assume that poker machines are installed in hotels, the licensee having no financial interest in their performance. Is it not likely that, in some hotels at least, illegal games will develop around the machines? A very simple example is one in which, upon receipt of a payment from the player, the licensee matches out of his own funds any machine payout. In the course of time more subtle arrangements would evolve. The challenges to beat the odds and to beat the government have traditionally called forth the highest of Australian ingenuity. The combination of both challenges in a single machine would for many be irresistible.

Proliferation of outlets

15.26 At 30 June 1983 there were 534 licensed clubs and 1430 licensed hotels in Victoria. Their total easily exceeds the 1588 licensed clubs in New South Wales at the same date. If the hotels' proposition were accepted and if licensees generally decided to install machines, the probability is that, within a few years, Victoria would have more poker machine outlets than New South Wales. In per capita terms Victorian outlets could become almost twice as numerous as those in New South Wales. Moreover, unlike New South Wales, there would be a confrontation of drinkers with poker machines in most public bars. In terms of the association between liquor and gaming, and the degree of proliferation of hard gaming outlets, so far as I am aware, Victoria would rank second only to Nevada. There is no evidence before me to indicate that such a

situation, with its propensity to maximise the social problems associated with excessive gambling and the opportunities for criminal activity, would be acceptable to the Victorian public. There is evidence to indicate considerable hesitation at the proposition that poker machines should be permitted in licensed clubs: see paras. 17.06, 17.11 below, but many people, for example many of the councillors who responded to the Board's survey to councils and councillors (Ex.107), draw a sharp distinction between clubs and hotels. I suspect that even many of the people who are prepared to accept poker machines in clubs would be horrified at the prospect of finding them widely distributed also in hotels.

Conclusion

15.27 In his final written submission (p.56) Mr. Henshall, on behalf of the churches, described the suggestion of poker machines in hotels and clubs as being "the worst possible option if there is any concern about minimising social problems". I agree. The problems to which I have referred, together with the availability of the machines to persons relaxed by alcohol and the likelihood of impulse gambling combine to make this option one which, in my opinion, should not be countenanced.

CHAPTER SIXTEENPOKER MACHINES IN A LIMITED NUMBER OF
CASINO LIKE ESTABLISHMENTS

THE ISSUES WHICH ARISE

The proposal

16.01 In para. 1.13 I mentioned the directions regarding submissions issued to the parties towards the end of the oral evidence. I indicated a view, with which nobody has quarrelled, that out of all the theoretically possible models for the introduction of poker machines only four models, which I specified, warranted serious discussion in the report. The first three were models urged by one or more parties. They have been discussed in Chapters 13, 14 and 15 above. The fourth model came not from a party but from my own reflections about the obvious facts that many Victorians do like to make an excursion to play poker machines in New South Wales and that, as a result, tax revenues are being lost to Victoria. In the directions (App.E) I described the proposal in this way:

- "d) the establishment of a limited number (say 6-10 in total) of casino like poker machine establishments designed to:
 - i. provide an alternative to the border clubs for those who like to make an excursion to a poker machine establishment, being more accessible than the border clubs but sufficiently distant to require the player to make a deliberate decision to seek out the machines, i.e. eliminating the impulse bet;
 - ii. gain revenue for the State of Victoria especially at the expense of the border clubs and the New South Wales Treasury.

The concept is that these establishments would be conducted directly by a Victorian Government agency

or by a licensee of the Victorian Government. There would be a poker machine room and restaurant and bar facilities but the government control would be such as to ensure no under-cutting of local hotels and restaurants in terms of food and liquor prices. The security problem would be reduced by the fact that the number of establishments is small and that each is under professional management."

I emphasise that it was, and is, central to the concept discussed in this chapter that the establishments would not be allowed actively to promote business by putting on entertainments or by offering food or liquor at less than prices current in the district at the time. Any departure from those restrictions immediately raises the problems of unfair competition which I discussed in Chapter 13. The idea is simply to satisfy the demand of those who wish to play poker machines, rather than to stimulate people to do so by offering to them other benefits. The bars and restaurants are seen as ancillary amenities only.

Questions

16.02 A number of questions immediately arise in relation to the proposal. What are its benefits? It would, obviously, provide an amenity to those who desire to play poker machines and are prepared to make whatever journey is involved in travelling from their homes to one of the poker machine establishments. What revenue would the government in fact earn? There would be no point in stemming some of the border flow unless the net revenue of the government would thereby be increased. What would be the consequences for other businesses of the creation of such establishments; in other words is it realistic to expect that there would be such

government control as to ensure "no under-cutting of local hotels and restaurants in terms of food and liquor prices"? Finally, issues arising out of the Casino Inquiry and the adoption by the government of the recommendations of that Inquiry: how compatible with those recommendations is this proposal? Is it possible to ensure, over the long term, that the number of establishments will remain restricted and that gambling activities will be confined to poker machines? In other words, can one be confident that the poker machine casinos will not simply proliferate in number and/or become full casinos?

Reaction to the proposal

16.03 In their final submissions each of the major parties commented upon this proposal. Each one offered criticisms, the grounds substantially coinciding. Having considered these criticisms and having made some revenue estimates, I have decided that I should not recommend this option to the Government. I have been pressed by the Licensed Freeholders (final submissions pp.49-50) with the view that the report should not even canvass the proposal, on the ground that it has not been sufficiently explored by evidence. The submission was forthrightly expressed and has much force:-

"It must be observed at the outset that this proposal was not the subject of any serious or detailed consideration during the course of the public hearings of the Inquiry. The only suggestion resembling this proposal came from Mr. Hurley, who said he was 'not advocating anything' (T.2307). In consequence his evidence was given in the most general of terms. He made no concrete proposals, and in consequence there were no proposals that could be tested by others. He was conscious, however, that his suggestion involved establishing a

situation which existed nowhere else in the world (T.2281). Likewise, the proposal in the 'Directions re Submissions' is in the most general terms. It has been raised for the first time almost at the conclusion of the hearings. The author of the proposal is anonymous. There is no written submission to support the proposal, as was required of other proponents. No verbal evidence has been given in support of the proposal. In consequence, the substance of the proposal in detailed form has not been presented to the Board, nor laid bare for public scrutiny, nor for cross examination by the parties to the Inquiry. The (Licensed Freeholders) respectfully submits that it would be intolerable for the Board to make a positive recommendation to the Government in favour of this proposal. Such a recommendation would not just be unfair to the parties who have appeared before the Board. It would be unfair to the Government and to the public to have foisted upon them a proposal which has been the subject of no proper exposition or testing before the Board. The proposal should be treated as a 'pie in the sky'. If the Board accepts, as is submitted, that it would be quite inappropriate for the Board to make a favourable recommendation in terms of this proposal, then the Board ought not to consider the proposal at all."

I would not regard the fact that the proposal did not emanate from one of the parties as a reason for rejecting its consideration. The ambit of an Inquiry cannot be allowed to be restricted by the course taken by the persons given leave to appear as parties. I would regard the fact that the proposal has not been the subject of specific evidence, which could be tested by opponents, as being a reason for the most extreme caution. There may well be difficulties which would have been exposed if the proposal had been examined more closely. If I had reached a view favourable to this model I would have had to consider some method of ensuring a "proper exposition (and) testing" before making any recommendation to the Government. In the event, however, I have reached a firm view against my

own tentative proposition. However, I have decided that, notwithstanding the Licensed Freeholders' submission, I should discuss the model in the report. The model is one which would naturally occur to anyone who studies the position in Victoria, especially if the "bussing" to the border should increase in the future. It has been the subject of some, albeit limited, consideration at this Inquiry and it seems to me that the Government and the public may as well have the benefit of whatever information I have relevant to the model. This is more particularly the case because some of that information does relate to the effect on government revenue. I would emphasise, however, that if, contrary to my recommendation, the Government saw some attraction in the notion of setting up a limited number of poker machine establishments it would be highly desirable for the practicalities and the possible revenue benefits to be the subject of a separate and rigorous investigation. They have not received any detailed consideration in this Inquiry.

THE CASE IN FAVOUR OF CASINO LIKE ESTABLISHMENTS

Public entertainment

16.04 The argument in favour of having a limited number of casino like establishments starts with the proposition that a considerable number of Victorians enjoy, or are likely to come to enjoy, a session on "the pokies". If there is a desire in the community for this type of entertainment then, so the argument runs, it should only be denied for good reason. If the models advanced by the parties - licensed clubs either alone or with hotels, community clubs - create unacceptable

difficulties then an attempt should be made to find a model which satisfies the need yet does not involve these problems. If, at the same time, it is possible to increase net government revenue this is a further advantage.

Advantages over other models

16.05 There is no doubt in my mind that the casino like establishment model offers some advantages over the three models already examined. First, it is likely to be much less disruptive to other businesses and activities. The proposal is that the establishments be conducted by licensees who would be under tight control, including in relation to bar and restaurant charges. There is a question whether that control could ever be sufficiently effective, to which I shall return, but there is no doubt that this model offers a better prospect of preventing under-cutting than do any of the others. Secondly, the management and security problems are reduced. It would only be necessary to find a few suitable managers. For six to ten establishments it should be possible to provide honest, experienced people who would run the establishments in a professional manner. Their task would be facilitated by the fact that they would be operating in new, purpose-designed, premises in which the machines were so arranged as to tend to minimize player cheating and were so overlooked as to increase the chances of detection of such cheating as nevertheless occurred. The operation in each establishment would be large enough to provide economies of scale in relation to the purchase and servicing of machines, computer monitoring, analysis of results and so on. Thirdly, new establishments in

specially selected locations should avoid the problems of loss of residential amenity and alienation of open space which are discussed in Chapter 13. The concept involves the selection of a substantial site, perhaps five to ten hectares, in open country providing ample parking space combined with generous landscaping. [The Shellharbour Workers Club (Ex.89J) is constructed upon a six hectare site outside the town, formerly farm land. It has extensive carparking but the visual effect of both building and parking areas should soon be reduced as a result of heavy tree planting.] Finally, it is likely that the restriction of poker machines to a relatively few special establishments would minimise the degree of impulse gambling. People would set out with the intention of gambling rather than deciding suddenly to do so after having had a few drinks at their club or hotel.

Revenue effects

16.06 I have made an attempt to gauge the net effect on government revenue of adoption of this model. I have assumed that, for the reasons spelt out in para. 17.10 of the Connor Report, the establishments would be operated by licensees rather than directly by a government body. For present purposes it probably makes no difference whether one assumes that the Government purchases the land and erects and furnishes the building, or whether one assumes that this is done by the licensee. In either event allowances must be made. For the purpose of the exercise I make the assumption that each establishment would install 200 machines, including multi-coin machines. South Sydney Junior Leagues Club in

Sydney, with over 50,000 members, has about 500 machines. (Ex.88A). So far as I am aware this is easily the highest number in any New South Wales club. The earning rate per machine may be relatively low. It is not really possible to say because, with a coyness not uncommon in the accounts of New South Wales clubs, the 1981-82 profit and loss account states simply "Net Bar Profit and Poker Machine Revenue \$4,235,450". By contrast, Eastern Suburbs Leagues Club, the social club formed to support a first grade Rugby League team and with 48,000 members, has only 204 machines (Ex.88H) but in 1982-83 grossed \$5,634,139 from the machines, reduced to \$3,322,805 after deduction of licence fees and taxes, salaries and wages, depreciation, repairs and maintenance. The Eastern Suburbs approach, to keep down the number of machines but to maximise play per machine, is that adopted by most of the larger New South Wales clubs. Mr. Vibert's analysis of January 1982 (Ex.MM8) shows that, at that time, there was a total of 11,308 machines in those 65 clubs grossing more than \$2million in poker machine revenue per year: an average of 174 per club. Since that date multiplier machines have come onto the market, multi-line machines have increased in number. The average of 174 per club includes a substantial number of 5 cent machines which would not be likely to be used in the type of premises under discussion. Additionally, the clubs consciously stimulate demand by providing free or cut-price entertainments. Given these facts I think that it would be unsafe to assume more than 200 machines per establishment. I make the assumption, consistently with Chapter 10, of an

average gross yield of \$20,000 per machine per year. We were told that the new Shellharbour Workers Club cost almost \$7million to build. Allowing for land cost, increased building costs and furnishings I assume a capital cost of \$10million, upon which any owner whether the Government or a licensee would look for a return of 11% i.e. \$1.1million per year. Items must also be allowed for depreciation of the building, and maintenance of the building and its furnishings. The New South Wales clubs' ratio of direct costs - depreciation, servicing, data analysis - to gross receipts, ranges upto 10%. It is necessary to make allowance for the additional cost of the computer controls discussed in Chapter 20 below but - perhaps optimistically - I make the assumption that the economies of scale of this type of establishment would enable them to be absorbed in the 10% allowance. I add salaries and wages at 10% of gross revenue. This figure is consistent with the information in the financial statements of some of the larger New South Wales clubs, although there is a problem in interpreting those statements because of variation in the distribution of salary costs as between the poker machine side of the club's operations and its general activities. I may be under-estimating the likely cost but I deliberately take the most optimistic view of the revenue potential of this type of establishment. Then some allowance has to be made for return to the licensee, whether it be by way of a fixed sum or a percentage of gross or net income. Arbitrarily, I have taken a sum of \$300,000 per year. These assumptions lead to the following calculations:

TABLE 16.1

CALCULATION OF LIKELY MAXIMUM GOVERNMENT REVENUE
PER CASINO LIKE ESTABLISHMENT

<u>Income</u>		
200 machines @ \$20,000 per machine		\$4m.
<u>Expenditure</u>		
Return on cost of land, buildings, furnishings - say \$10million at 11%	\$1.1m.	
Depreciation on buildings (\$7million), furnishings (\$1million)	\$0.5m.	
Maintenance of buildings, furnishings, say	\$0.3m.	
Direct costs of machines - depreciation, servicing, analysis, computer monitoring - say 10% of gross	\$0.4m.	
Salaries, wages etc. - say 10% of gross	\$0.4m.	
Licensee's fee	<u>\$0.3m.</u>	<u>\$3m.</u>
Net Government revenue		\$1m.

The figure of \$1million should, of course, be multiplied by whatever number of establishments is to be assumed. I have suggested a range of six to ten, having in mind that if this model is desired it would be appropriate to provide a sufficient number of outlets to allow reasonable access to all Victorians but to keep down the total numbers to a level permitting a high level of control. Assuming, as I think reasonable, that gross revenue could be maintained at \$4million per casino over any number in this range, the resultant income to government on the poker machine account would be within the range of \$6million to \$10million. However, as in relation to a poker machine tax it is necessary to bear in mind the effect of transfer of expenditure from

other forms of gambling. The calculation I have made puts in the pocket of government only 25% of the players' net expenditure on the machines. For calculation purposes, it may be likened to a tax of 25% on net poker machine expenditure. The calculations I have set out in Chapter 10 demonstrate the extent to which, at that tax rate, there has to be offset against the money from the poker machine account the loss of revenue from other gambling expenditure. Take the most optimistic set of assumptions: 75% new money (cf. para. 15.32 of the Connor Report referring to the estimate by Mr. Neil Price, an accountant with Messrs. Coopers & Lybrand of only 60% new money in a casino and paras 10.24-25 above) and apportioning only half the transfer loss to Tattersalls, Tattsлото on the basis that on this model poker machine gambling is less accessible and less susceptible to impulse betting. The result is as follows:

Poker machine earnings =		\$10.00m.
<u>Less</u>		
TAB transfer \$5m. $(12\frac{1}{2}\%) \times \frac{20.31}{100}$ =	\$1.01m.	
Tatts transfer \$5m. $\times \frac{62.15}{100}$ =	\$3.12m.	<u>\$4.13m.</u>
Net revenue advantage		\$5.87m.

Clearly enough, the revenue benefit is minimal. At 60% new money, the transfer being evenly split between TAB and Tattersalls, Tattsлото, the net figure reduces to \$3.38million.

THE CASE AGAINST CASINO LIKE ESTABLISHMENTS

Effect on other businesses

16.07 The revenue calculations I have made assume a low key poker machine establishment serving the "bus" market and the needs of those who do not presently travel to the New South Wales border but who would wish to go out to play the machines if they were available within a reasonable distance. Specifically, the calculations assume no attempt to increase business by providing free or cheap entertainment or other benefits. I think it clear that the revenue figures could be increased, perhaps considerably, if poker machine establishments were allowed to compete in this way. The fear that they would, at least over time, be allowed to do so is at the heart of submissions put by a number of the major parties. Essentially, the point is the same as that made in relation to licensed clubs and which I have already found to be valid - unfair competition: see para. 13.66. I think that the point is equally valid in the present context. The model assumes two separate government roles: arbiter of what is a fair price for liquor and for food in the poker machine establishments and beneficiary of any increased revenue which results from increased turnover. The two roles conflict. It is likely, almost to the point of certainty, that in time the desire for increased revenue would prevail. The licensees will have a financial interest to increase turnover. The officers of the supervisory State authority will have a professional interest to expand the activity. Their joint representations are likely to fall upon the receptive ears of

some government looking to increase revenue. The controls on unfair competition will be relaxed.

Holding the line

16.08 The other major objection of the parties to the proposal is its suggested incompatibility with the decision of the Government to adopt the recommendations of the Connor Inquiry that no casino be established in Victoria. A problem of definition arises. Is the type of establishment I have discussed a casino? In one sense, clearly yes. It is a place answering the Connor description of "premises in which certain games of chance are played for stakes". (Casino Report para. 3.02). However, I have been conscious of the fact that Mr. Connor's Terms of Reference were amended so as specifically to limit the meaning of the word "casino" in those Terms to premises where it would not be permissible to install a poker machine: see Casino Report Chapter 5. I took the view that the adoption by the Government of the Connor recommendations necessarily excluded from my consideration a proposal to set up an establishment in which Bingo was the primary activity but with ancillary poker machines (see para. 1.06) but I have not thought it to follow that the decision excluded consideration of a place devoted entirely to poker machine gambling. Although such a place would be a "casino" in the usual meaning of that word, it was not a casino of the type committed to the consideration of Mr. Connor.

16.09 The adoption by the Government of the Connor Report is, however, important in another respect. That decision

represents a clear statement of Government policy against the creation of the type of establishment in relation to which Mr. Connor was reporting. If, whatever its original nature and definition, the type of establishment I have been discussing is likely to turn into a place in which other games will be played then its establishment would be contrary to the rationale of the casino policy announced by the Premier. I have reached the view that it would be unrealistic to believe otherwise. The history of poker machine gambling in this country is one of pressure to break down existing restraints. In the Australian Capital Territory poker machines were introduced on the clear understanding that only 10 cent machines were to be permitted. Twenty cent machines are now legal and being operated. In New South Wales, there has been successful pressure for multi-coin machines. The New South Wales Government has been pressed to allow clubs higher denomination machines and instant lotteries. Pressure now exists for other games: Draw Poker, Blackjack, Keno. [1] Mr. Albert W. Merck, a former Commissioner of the New Jersey Casino Control Commission described to the Connor Inquiry the pressures within the American casino industry (Casino Inquiry Ex.518):-

"...this will give you an idea of something which is very interesting; one of the things we notice with casinos is they will accept any conditions to get in and they will testify in front of anyone that is what satisfies them and go along with your rules. And as soon as they get in they will seek every advantage both in rule changes, odds changes and in bringing in games. If you do not have a pretty strong constituency they're going to get them."

It could not fairly be said that the pressures exerted by the New South Wales and Australian Capital Territory club industries have been either as urgent or demanding as those described by Mr. Merck. But that is, perhaps, because clubs are co-operative ventures whose profits are used for the benefit of members. There is not the spur of individual gain. The licensee of a poker machine establishment would be in a very different position, having the incentive to expand the activities for his private profit. His pressure is likely to blend with the wish of government for additional revenue and lead inexorably to an expansion of the permissible games. Then indeed there would be a series of casinos, in every sense of the word. The result would be in direct conflict with the wishes of the Government in adopting Mr. Connor's rejection of resort style casinos. (Casino Report para. 18.04). As Mr. Connor pointed out (Casino Report para. 18.06) the history of Victorian gambling is of exactly this process. The model I am now considering may fairly be regarded as the counterpart of the "unobtrusive casino" model considered by Mr. Connor. I adopt as my own his reason for deciding not to recommend that option: (Casino Report para 18.07):-

"In view of Victoria's track record in this field, 'you would have to be carved out of chocolate', to borrow Mr. Ollington's colourful expression, to take the view that an unobtrusive casino would for long retain its original characteristics; or would be anything but a springboard for further agitation by the casino lobby for more casinos; or that all the restrictions, which would make a casino safe and which would be the indispensable conditions of its introduction in the first place, would not be abandoned one by one over the next 20 years."

16.10 I add one further comment, on numbers. I have suggested six to ten establishments. The task of determining the chosen locations would not be easy. It would be highly political. In the interests of tourist trade local business interests and local authorities may be expected to press for their areas to be selected. Those initially passed over will be likely to keep up the pressure. There is no particular magic in any selected number so that the way will be open to government to extend the number, again with the prospect of additional revenue. It would be ironic if Victoria, having in 1983 decided against the establishment of any casino in the State, were now to take a course which would permit, by the side door, a proliferation of full casinos within a decade or two.

Notes to Chapter 16:

[1] McKay, address to club seminar March 1983 (Ex.82); see also the comment of Horton Ex.84E p.15.

CHAPTER SEVENTEENMAKING THE CHOICE

DEMAND AND PUBLIC OPINION

The relevant demand

17.01 In his report on casinos Mr. Connor Q.C. dealt with the nature of the demand relevant to be considered in determining whether there is such a level of demand as to indicate - though not to determine - that one or more casinos should be established in the State. That analysis is equally applicable to the question as to the type of demand appropriate to be considered in relation to poker machines: see Casino Report paras.10.01 - 10.02:-

"10.01 In considering the question whether to recommend casinos for Victoria demand is an important but not a decisive factor. It would be possible to conclude that there was an appreciable demand but that it was wrongly based and did not, of itself, justify a recommendation in favour of casinos. It would similarly be possible to conclude that casinos were in little demand but, despite this, they should be recommended. "Demand" is a general word and it is important to state what is meant by it in the context of this report. A person might say that if there was a casino in Victoria he or she would go to it. If such an attitude can properly be said to constitute demand, I merely say that it is not the kind of demand which is being contemplated in this context. It seems clear, from experience of other gambling forms in Victoria and from experience of casinos elsewhere, that demand can be created after a casino has been established. That, however, is a potential demand dependent upon stimulation and is not the kind of demand being considered for present purposes. Yet again a person, who has given little attention or consideration to the subject of casinos, may be approached by a pollster and asked whether he or she is in favour of casinos. An answer in favour of casinos from such a person, which may display nothing more than passive acquiescence, is not the kind of demand I am considering.

10.02 I believe that the kind of demand for casinos which is of interest to Government is an insistent irrepressible demand which expresses itself either by patronage of illegal casino gambling in Victoria or by travel outside Victoria for the purpose of casino gambling. If it can be shown that there is an irrepressible demand for illegal casino gambling in Victoria, that is a legitimate concern of Government, because it raises sharply the question whether legalisation is a lesser evil. The attitude that it is a lesser evil, and therefore desirable, to substitute a legal activity, strictly controlled in the public interest, for an uncontrolled illegal activity infiltrated by criminals is both understandable and defensible. It also becomes a legitimate interest of Government to know whether there is a demand for casino gambling demonstrated by journeys of Victorian citizens beyond the State for the purpose of spending money in legal casinos. Such a situation raises the question whether Government should provide a legal facility to enable such money to be spent in Victoria."

The border coach trips

17.02 The two indicia of relevant demand adopted by Mr. Connor were any existing unlawful participation in the activity and any journeying by Victorians to other places to participate lawfully in the activity. The first of those matters does not, for me, arise. There is no evidence of any existing unlawful poker machine playing in Victoria. There is some evidence in relation to the second matter. Undoubtedly, many Victorians journey to border clubs on organised coach tours for the express purpose of playing the poker machines on arrival. I gathered from the discussions at some of the border clubs which we visited that it is commonplace for there to be more than one bus load on a single day. There are several border clubs which have significant bus patronage. It would be conservative to assume a total figure of 50-60 coach loads, say 2,000-2,500 passengers, per week travel to the

border clubs to play the machines. In addition many Victorians, the number of which cannot even be guessed, make the journey in motor cars. No doubt some customers make multiple journeys but, even allowing for that, it is likely that the number of Victorians who deliberately seek out the poker machines north of the border is well over 100,000 per year.

17.03 There may be some people who make the coach trip for reasons not primarily related to playing poker machines: an opportunity for a very cheap outing, a chance to be with friends and to see the countryside. But we were told, and observation confirmed, that the overwhelming majority of bus passengers went to the machines immediately upon arrival at the club and, with a short meal break, remained there until the money ran out or until it was time to depart. The evidence would indicate that, for most coach passengers, the primary reason for the outing was to play the machines.

17.04 One difficulty in interpreting the significance of the bus traffic is to determine whether it is legitimate to assume that those people who journey to the border would wish to have poker machines closer to home. There may be individuals who enjoy a session on the machines, as a deliberate act with a specified stake allocated in advance, who would be quite unhappy about the prospect of confronting machines in their local environment where they would be at the mercy of their impulses and lack of self control. The President of one border club (Ex.101(1)) offered an "impression that people who want poker machines aren't the

ones who play them. It's the people who gain from poker machines who want the poker machines. As a poker machine machine player I have spoken to hundreds of Victorians who come up here and play the machines, and they don't want them in Victoria. They are quite happy to come across the border with a certain amount of money, play them and go back." The speaker was a person who perceived it not to be in the interests of his club for poker machines to be introduced into Victoria. I bear that in mind but, notwithstanding, I think that it is reasonable to assume that there are players who are in the position he claimed. It is impossible to estimate what proportion of the total number of visitors to border clubs they represent.

17.05 The true test of this type of demand is whether the border club visitors, having had the experience of playing the machines, would wish to do so again. No doubt, some would. No doubt, others would not. There is no material before me to enable me even to guess at the proportions of border club visitors who fall into these respective categories. Mr. Garling asks me to treat the fact that large numbers of Victorians visit border clubs as being evidence of demand for the introduction of poker machines into Victoria. Even in the present unsatisfactory state of the evidence, I think that it is proper to infer that some, at least, of the bus loads of trippers would welcome poker machines nearer to home. However, it is impossible to say how many people fall into that category. Relative to the population of Victoria, the number of people in this category would in any case be few.

Public opinion polls

17.06 Evidence was placed before me of two general public opinion polls - as distinct from polls of selected groups or limited numbers of people. The results are difficult to reconcile. On 30 March 1983, the day after this Inquiry was established, Channel Seven, Melbourne, conducted a TV News Poll on the subject of poker machines in Victoria. The poll was announced at 5 p.m., again at 6 p.m. and again in the 6.30 p.m. news. The poll remained open until 6.30 p.m. on the following day. Details were reported in a letter to Mr. Bongiorno from Mr. John Maher, Director of News at Channel Seven dated 15 June 1983 (Ex.2H):-

"On the 30th of March this year, we conducted a News Poll on the subject of Poker Machines in Victoria.

The question asked was "Are you in favor of poker machines in Victoria?". Those in favor of poker machines had to phone 11557, those against poker machines had to telephone 11554.

We use an automatic recording device under licence from Telecom which has multiple line access and can cope with an enormous number of phone calls within a short period.

The result of the poll was, In Favor of Poker Machines 24,420; Against 45,670.

The result was something of a surprise.

I would like to point out that, at times, a vote could be imbalanced by an organised group dialling one or other of the numbers.

However, this particular Poll resulted in over 70,000 phone calls and the vote against poker machines was very strong indeed.

My experience in running News Polls leads me to believe this particular result could not have been subject to the sort of manipulation that could have had a major effect on the outcome".

Unfortunately, Mr. Maher was not available at a suitable time to give oral evidence about this poll. An examination of the surrounding circumstances may have thrown more light on the significance of the result.

17.07 Mr. Vibert submitted to the Inquiry a report by Australian Public Opinion Polls of the results of an Australia wide survey as to approval or disapproval of casinos and poker machines. (Ex.MM2(d)). The poll was conducted over two weekends in April 1983, 2,038 people being interviewed. Presumably, they were selected on a population basis so that approximately 500 respondents would have been Victorians. For present purposes the relevant question was:-

"Do you approve or disapprove of having poker machines in licensed clubs in this State?"

The Australia wide result was:-

Approve	61%
Disapprove	37%
Don't know	2%

In Victoria the figures were closer, being:-

Approve	53%
Disapprove	45%
Don't know	2%

17.08 I find great difficulty in reconciling these two poll results. It is possible, despite Mr. Maher's view, that the people who telephoned to vote in his News Poll were not a representative sample of public opinion. It is possible that the number of people polled in Victoria by APOP was too small to obtain a true sample of Victorian opinion. It is more likely, I believe, that the results were influenced by the

form of the respective questions. The APOP poll specifically limited the question to licensed clubs, the Channel Seven question was more general. Moreover, the APOP poll required persons who did not favour the introduction of poker machines to go so far as to say that they disapproved; the Channel Seven poll allowed them simply to deny that they were in favour. The difference may seem pedantic until one remembers the results of the Wagga Wagga survey conducted by the North Blackburn Baptist Church, from which it appears that although a total of 52.5% of respondents thought that the machines had not been beneficial to the local community, or had even been positively harmful, only 31% would be prepared to vote in a referendum for their removal from Wagga. (Ex.2M and see para.7.14 above).

17.09 One interpretation of the poll results is that a bare majority of people would be prepared to endorse poker machines in licensed clubs but that there is overwhelming opposition to poker machines in a more accessible environment. If that is the correct interpretation, then it lends weight to the view expressed in Chapter 15 regarding the undesirability of poker machines in hotels. It would leave open the question as to what sort of licensed clubs the respondents had in mind - clubs restricted to members and genuine invited guests, as is still the general pattern in Victoria, or open door clubs as in New South Wales and the Australian Capital Territory. As I have endeavoured to point out (para.13.03 above), this is a critical question. Moreover, it is not possible to know the level of information of the respondents when the polls were taken. For

what it is worth, I note that the comments recorded by the APOP interviewers do not include any reference to some of the matters (criminal activities, unfair competition) which have been major issues in this Inquiry. Unless one can feel satisfied that a public opinion poll represents an informed view it would be dangerous to treat it as probative of demand. The supposed "demand" might disappear as more facts became known.

Local government opinion

17.10 Reference has already been made to the letters sent by the Board to local authorities throughout Victoria, seeking comment on the issues before the Inquiry. (See para.10.26). Not all councils indicated a view on the principal question. In many cases, the council had not formally considered the issue of poker machines so there was no collective opinion available to be reported. However, 81 councils did report a collective opinion. (Ex.107). Six councils indicated, with varying degrees of enthusiasm, support for the introduction of poker machines throughout Victoria. In two cases support was specifically limited to machines in licensed clubs (Shire of Rosedale and Shire of Werribee), in one case it was specifically limited to machines in community clubs (City of Preston). The remaining three councils, the Shires of Eaglehawk and Morwell and the City of Bendigo indicated simply that they had no objection to poker machines. I do not know what context they had in mind. Two of the four "corridor councils" (see para 12.15 above), the Shire of Mildura and the City of Echuca indicated continuing support for that concept. The remaining 73 councils (54 shires, 19 cities) who expressed

a view were in opposition to poker machines. Many expressed their opposition in strong terms e.g. "strongly opposed", "total opposition". The councils opposed to poker machines included ten border councils.

17.11 816 individual councillors completed the personal questionnaire asking for information as to their own attitude and the perceived attitude of their constituents. Not all councillors responded so that it would be quite unsafe to use the results as representative of overall opinion. However, for what the results are worth I record that, by a preponderance of almost exactly two to one, councillors expressed opposition to the introduction of poker machines into the State. (T.2144). I further note that a large proportion of the minority, who were prepared to accept poker machines, expressly indicated opposition to the machines being located in hotels. The extent to which these responses may be said to reflect a wider public opinion, I leave others to judge. I merely record that they furnish no support for a view that there is a widespread demand, in any sense of that word, for the introduction into the State of poker machines.

Citizen groups

17.12 Eight citizen groups have written to the Board opposing poker machines. They are the North and West Melbourne Community Planning Group (Ex.2DD), the Flemington Association (Ex.2EE), the Parkville Association (Ex.2FF), the Toorak South Yarra Group (Ex.2HH), the Carlton Association (Ex.2JJ), the Prahran Residents Association (Ex.2KK), the

Victoria Park Action Group (Ex.2LL) and a group of St. Kilda residents (Ex.2NN). I have referred in Chapter 11 to the official views expressed by the churches and by groups of citizens associated with both Protestant and Catholic churches. No submissions from citizen or resident groups favouring the introduction of poker machines have been received by the Board.

Clubs

17.13 There is no doubt that the predominant opinion amongst those active in the licensed club movement is favourable to poker machines in licensed clubs. But two comments must be made. First, it is not clear to what extent boards of directors have consulted with their members. Few clubs have taken polls in order to obtain the opinion of the full membership. Secondly, one significant section of the club movement - bowls clubs - is deeply divided on the issue. Mr. David E. Parker, President of the Royal Victorian Bowls Association, gave evidence that his organisation conducted a poll of its 543 member clubs to ascertain opinion on the issue. 246 clubs responded as follows:-

Country clubs:	In favour of poker machines	39
	Opposed	88
	Open mind	18
	Total respondents	<u>145</u>
Metropolitan clubs:	In favour of poker machines	24
	Opposed	63
	Open mind	14
	Total respondents	<u>101</u>
Total in favour:		63 clubs
Total opposed:		151 clubs

Even those clubs, amongst the 246 respondents, which are licensed clubs were closely divided on the issue. The figures were:-

In favour	41
Opposed	38
Open mind	<u>13</u>
Total licensed club respondents	92

Summary of demand and opinion

17.14 The evidence for the existence of demand, in the sense identified by Mr. Connor, comes down to the fact that a substantial number of people (but representing a very small proportion of the population of Victoria) use New South Wales clubs for poker machine gambling; an unknown proportion of whom may be assumed to wish to patronise machines made available in Victoria.

17.15 The evidence as to public opinion on the issue of permitting poker machines is equivocal. One interpretation is that a bare majority of Victorians would approve the introduction of machines into licensed clubs. The evidence tends to indicate that there would be overwhelming active disapproval of any wider availability of machines. Opinion within the licensed club movement is also equivocal but it is likely that a majority of those more active in the movement would wish to have the machines.

BRINGING THE THREADS TOGETHER

The relevance of demand/opinion

17.16 I have set out in this chapter the evidence, such as it is, relating to demand in the strict sense and public

opinion because it has seemed to me relevant for this to be borne in mind in making an ultimate decision on the primary issue. If the position were that there was a strong demand for the legalisation of poker machines, demonstrated perhaps by widespread illegal poker machine playing, one may have to accept a model which was less than satisfactory. If public opinion, falling short of demand in the strict sense, overwhelmingly favoured poker machines then it might be argued that, in a democracy, that opinion should be heeded even at a price in relation to other matters. Neither of these situations exist. There is no reason to believe that a decision to reject poker machines would be an abrogation of the responsibility of elected politicians to be sensitive to opinion within, and the values of, the community. If it be desirable, as Father Ryan suggested (para.11.07), to determine and then to reflect "the attitudes of the informed members of the community", then it may be thought clear that poker machines should be rejected. Leaving aside those organisations hoping themselves to profit from poker machines, the opinion of groups who have evinced sufficient interest to put before the Inquiry a considered position has been overwhelmingly opposed.

The accumulation of findings

17.17 In Chapters 13, 14, 15 and 16 I have separately discussed each of four separate models for poker machine operation within Victoria. I deliberately looked at those models without reference to the problem of excessive gambling, discussed in Chapter 7, and with only incidental reference to the problem of criminal activities, discussed in Chapter 6.

Even on that basis, I found each model unacceptable. I now add in the further factors:

- . that there is no evidence of strong demand for, or overwhelming opinion in favour of, the introduction of poker machines (see this chapter);
- . that, except on a model ("profitless" machines in hotels and clubs) which may not be feasible in practice, which is likely to be unacceptable to public opinion and which inevitably would result in a considerable increase in criminal activities, there is little prospect of any significant increase in government revenues as a result of the introduction of poker machines (see Chapter 10);
- . that the net employment effects of the introduction of poker machines, though probably positive, will be minimal (see Chapter 12);
- . that the introduction of poker machines into the State will inevitably cause an increase in criminal activity in the State, the degree of which would depend directly upon the number of poker machine outlets and the stringency of the controls adopted but which, even at best, would be likely to be significant (see Chapters 6 and 20);
- . that, upon any model, several hundreds of thousands of Victorians would be likely to play the machines to a degree causing them financial concern. Up to about 40,000 Victorians would be likely to come to regard themselves as addicted and of these an indeterminate proportion would be people who had become addicts in the full clinical sense as a result only of the use of poker machines. The consequences of their addiction, for these people and their families, would range from disastrous to catastrophic.

I add these factors together and conclude that my recommendation must be that poker machines should not be permitted in Victoria.

17.18 I would like to add that the conclusion I have reached causes me some disappointment. I have long been aware of the capacity of poker machines to marshal considerable

sums of money. When I commenced the Inquiry, I hoped and believed that it would prove possible to overcome the problems that traditionally had been associated with poker machines and to devise a way to ensure that the funds they produced were made available for the benefit of the community. I was particularly attracted to the community club concept. However, as the Inquiry proceeded it became increasingly obvious that there was no satisfactory model and that the problems were more formidable than I had believed.

PART IV

NECESSARY CONTROLS AND SAFEGUARDS

IF MACHINES INTRODUCED

CHAPTER EIGHTEEN
A CONTROL AUTHORITY

SEPARATION OF REGULATORY AND REVENUE FUNCTIONS

Introduction

18.01 In Chapter 17 I have recommended that poker machines not be permitted to be introduced into Victoria. I recognise, however, as did my Terms of Reference, that the Government may take a different view. In that event it would, presumably, legislate to permit machines subject to appropriate controls. The purpose of Part IV of this report is to record my views as to the controls desirable to be introduced and the policies which ought to be adopted in relation to supply of the Victorian market. I shall do so briefly, having in mind that I have already discussed most of the factual matters which give rise to my recommendations.

18.02 Two relevant matters were common ground amongst all the parties to the Inquiry: the need for a State government control authority and the desirability of that authority being divorced from the collection of revenue. No witness argued to the contrary. The propositions became basic to our discussions. The reasons may be self-evident but I shall state them briefly. As to the first: it is necessary that there be some control over the type of machines to be introduced so as to ensure an acceptable return to the player and to minimise the occurrence of cheating; it is necessary that there be some control over access to, and the operation of, the machines themselves, over the recording of results,

the accounting for proceeds and the types of people involved in the industry, all so as to minimise the extent of theft by mechanics, staff and management; it is necessary that there be some control over the purchase and installation of machines so as to minimise the risk of secret commissions. It may be desirable to do other things as well; some other matters will be discussed in Chapter 20. But by common consent at the Inquiry, and in my firm opinion, these things at least are essential. I note in passing that not all of these controls are in existence in New South Wales at this time but that does not affect my view. Once again, it was common ground amongst all witnesses, not least those who are actively involved in the New South Wales industry, that the New South Wales standards are totally inadequate. I will refer only to two witnesses, both being members of the Poker Machine Technical Committee advising the New South Wales Department of Finance. Mr. Keiran Daley in his written evidence (Ex.B27(a)) detailed numerous inadequacies in the New South Wales system and concluded:-

"In sum, it would have to be proposed that from a control point of view, New South Wales does not provide an ideal model."

In his oral evidence he affirmed his belief in the necessity for a number of controls not found in New South Wales, e.g. T.147 ff. Miss Newell, being asked about malpractices in New South Wales clubs agreed and added (T.2828):-

"May I just say something? I would love nothing more than for a board of authority to be established in New South Wales that licensed everybody within the whole industry. I hope that that is what is in fact coming in New South Wales. I would like the industry to be cleaned up..."

The New South Wales position

18.03 In New South Wales the only control authority in relation to poker machines is the Department of Finance, formerly the Treasury, whose main interest is in the collection of reveue. Mr. Daley, who was an inspector and then administrator in the then department's poker machine division from 1974 to 1977 had not found "tension" in the New South Wales regulating authority being also a revenue authority (T.137-138) but the record of the Department, and its predecessors, is hardly a good advertisement for that structure. For example, it has had before it for over three years a proposal made by industry representatives for the enactment of legislation to create specific offences in relation to poker machine cheating (Ex.B27(1)); an obviously desirable move given that the current alternative is to charge with conspiracy to defraud (cf. the comments of the New South Wales Police Task Force, Ex.109 p.2). Again, Miss Newell referred to the suggestion of licensing put by the non-government members of the Poker Machine Technical Committee (T.2828):-

"...We in fact have all been requesting that a licensing system be created. I think it started off at the request of saying 'Let us have servicemen licensed' and then it got further, 'Why not club managers, manufacturers, everybody?' That has probably been asked of Treasury now for something like twelve months. The Treasury keeps saying that they do not believe it is in their area to establish that, that it is not in their jurisdiction to establish this licensing...".

Presumably the Department of Finance (Treasury) has taken the view that the reform of the criminal law relative to poker

machines and the reduction of malpractice are matters outside its jurisdiction because they are not seen, directly and substantially, to affect revenue. This same emphasis emerged in the discussion I had with officers of the Department. We were told by officers of the Poker Machine Branch that the Department had experienced great difficulty in having clubs accept the importance of cash flow analysis and that the Department had prepared a list of "200 clubs which are the worst as far as the variances are concerned" (Ex.84E p.19) and to whom inspectors would be sent. I asked whether the 200 clubs spanned the spectrum in size and was told that the large clubs would predominate. I asked (p.20):-

"So the larger ones are giving you more trouble than the smaller ones?"

Mr. McCann, Chief Inspector of the Poker Machine Branch, replied:-

"The smattering is more, yes; but we weigh up the amount of revenue involved as well. One can't generalise that the larger are worse than the smaller, money is relative; but we take into account the percentage variation. In other words with a smaller club there might only be \$10,000 difference in the year but the percentage is out 5%, whereas with a larger club the variance might be \$100,000 and might only be 2% variance. Activities are centred on where the money is, the greater loss of revenue, and in the main that would be the larger clubs. However, we will still attempt to correct problems with smaller clubs".

18.04 I quote this response of Mr. McCann not to criticise it but simply because it neatly illustrates the problem which inevitably occurs when a regulatory body is also the tax gatherer. From the viewpoint of enforcement of the criminal law, a discrepancy of \$10,000 in a small club may well be a matter of serious concern; but while the emphasis is on

revenue getting the regulatory body will, very naturally, centre its activities "on where the money is". The danger is that there may grow up in the industry a belief that, provided only that you are not too greedy and do not imperil revenue in any significant way, dishonesty will succeed.

Disciplinary dilemma

18.05 The other problem created by the combination, in a single authority, of regulation and revenue is the dilemma posed when it is established that there has been some breach of statutory requirements. One obvious sanction, which is available in New South Wales to the Minister of Finance, is to suspend the club's poker machine licence. But that immediately poses a dilemma for a Minister and a Department having the responsibility of ensuring, if they can, that the Government's budget projections, inter alia, for poker machine taxation are realised. In punishing the club they punish themselves. It may not be coincidental that, despite the failure of so many New South Wales clubs to comply adequately with the 1979 requirements for percentage analysis, no club has yet had its licence suspended. (Ex.84E p.10).

Conclusion: separation of functions

18.06 For these reasons it appears to me to be clear that, if poker machines be permitted in Victoria, there ought to be a regulatory body, being a body not concerned with revenue collection.

AN INDEPENDENT STATUTORY AUTHORITY

The ACT position

18.07 The Australian Capital Territory Gaming and Liquor Authority is a statutory corporation constituted under Commonwealth legislation, the Australian Capital Territory Gaming and Liquor Authority Act, 1981. The Authority controls the ACT TAB (and through it, lotteries and pool sales) poker machines and the liquor industry. The Authority is constituted by five members one of whom, the chairman, may be, but presently is not, a full time member. The Authority employs its own administrative and inspectorial staff. In the Territory, poker machines are confined to licensed clubs and the inspectors carry out duties in relation to both poker machines and liquor within the clubs. Mr. John Matthews, chief executive of the Authority, saw "enormous advantages" in the inspectors having a dual role because the issues often overlap. (T.1448). The combination of function prevents a club "playing off one authority against the other". (T.1476). Poker machines are licensed by the Authority, the licence fees being used firstly to defray the Authority's administration costs and the surplus being paid into consolidated revenue. (T.740). [The tax of 10% on poker machine expenditure goes to the ACT Community Development Fund administered by the Department of Territories and Local Government.] Mr. Matthews strongly urged the view that any controlling body should not only be a statutory authority but that it should also be free of public service restrictions (T.1451):-

...I think that it is very important that there should not be restrictions placed upon the administration of that controlling body, as to the staff, and that is why I made the point...that it should be an independent statutory authority, that it employ the right people across the board in technology, in inspectorial matters and they are appropriately remunerated. I think that it is a very fundamental principle.

Q. I suppose, in terms of the growth and size, that you would be optimistic that the policies would not deteriorate because of the sheer size of the operation?

A. That gets down to a matter of administration and the people whom you are talking about...it is a people thing. If you get the wrong person, that person must go, and that is why I am making the recommendation that it be a statutory authority rather than, say, the public service. It certainly has applied, in my Authority, that if the wrong person was recruited, that person would have to go. It is just too fundamental. In other words, you must have the right to hire and fire."

At p.1458 Mr. Matthews confirmed that he was speaking of all employees of the Authority - both administrators and inspectors - in arguing that they should be outside the public service.

18.08 I appreciate that considerations of policy arise in relation to the question whether a function of government should be discharged by a department directly responsible to a Minister and subject to full public service controls or whether it should be committed to a statutory corporation created for the purpose and having some measure of independent action, within the framework of overall government policy. I believe that I understand the general arguments both for and against each solution. I do not propose to canvass them here.

However, in the event that the Government does decide that Victoria should have poker machines I would strongly urge it to give very close consideration to Mr. Matthews' advice. He is an experienced, and highly competent, gaming administrator. His Authority, admittedly in a much smaller geographical area, has succeeded in imposing upon the poker machine industry in the Australian Capital Territory a measure of control unknown in New South Wales. The reason, I have no doubt, is that he has been able to run a "lean and hungry administration", as he called it, with hand-picked people performing properly, or getting out. As he pointed out, that involves two fundamental ingredients: the ability to remunerate at levels attractive to the right people and the right to "fire". (T.1451-1452.) If senior administrators having responsibility for poker machines in Victoria are to have these two entitlements, it would seem to be necessary not only to put control in the hands of a statutory authority, as distinct from a government department, but also to ensure that the authority is freed of any public service constraints upon its ability adequately to remunerate or to dismiss those whose performance is less than satisfactory.

18.09 There is a further matter worthy of consideration in relation to the question whether the control authority should be an independent statutory authority: the removal by one step of the Minister exercising ultimate control from the decision to take action in the particular case. The argument is exactly the same as that which has been adopted in Victoria in relation to establishing an independent Director of Public

Prosecutions. The decision of a control authority to cancel, or even to suspend, the licence of, say, a licensed club having twenty, thirty or forty thousand members (as do many New South Wales clubs) is likely to be an unpopular decision; however well deserved the penalty. It will be a brave Minister who is prepared to take such a decision, especially if the club is situated in a politically sensitive electorate. Even where a Minister in fact puts political considerations out of his mind he may not be seen to have done so. The better solution, it is suggested, is for disciplinary decisions to be made by an independent statutory body, perhaps subject to review by a court.

Functions of authority

18.10 The control authority should have considerable powers. If it is to do its job effectively it will need to have a right of access at any time to any premises containing poker machines, a right to inspect the machines and any equipment monitoring their performance, the right to inspect, and to take away for examination, any records of the establishment. The authority should have the power to grant, refuse, cancel and suspend licences, possibly also to impose a fine for minor breaches (cf. Matthews T.1465-1466). It should have control of the machines to be installed in premises and the power to order the removal of any machine which fails to meet or to maintain satisfactory standards of performance. Mr. Matthews referred to cases where clubs had got into trouble with major expenditure decisions and suggested the need for an authority to check that clubs "really have done their

homework". (T.1475). He suggested that flexibility of controls, to meet emerging technological and management changes, would be important and that the principle should even be enshrined in the legislation that "other controls could be brought in overnight. That is part of the consequences if they choose to take on that type of licence that the rules of the game can be changed very swiftly". (T.1476).

Status of authority

18.11 The functions I have listed in the preceding paragraph are numerous and significant. Their exercise may have serious, even devastating, consequences for a licensee, whether a club, a commercial organisation or an individual. It is of the utmost importance, therefore, that the powers be exercised by persons of standing and obvious independence. This can best be achieved, I suggest, by providing in the legislation for the appointment of board members on terms analagous to that of judges and for the obligation to make an annual report directly to the Parliament.

Funding

18.12 Adequate finance is essential. The A.C.T. model is a desirable one: finance being provided out of licence fees, which may be adjusted as necessary to meet increasing costs. The "user pays" principle ought to apply. Victoria should avoid the intolerable situation current in New South Wales under which the Police Poker Machine Task Force is having to cancel operations because of a general cut-back in government expenditure. [In New South Wales no part of the poker machine

tax, of over \$150million per year, is earmarked for the Task Force. The Task Force, with 13 members, has a current allocation of \$600 per fortnight for operations, including overtime; an amount I was told would be exhausted in one or two days' operations: Ex.109 p.6.]

Staffing

18.13 The functions committed to a regulatory authority will, of course, require the recruitment of people with a variety of expertise. The details of staffing would have to be determined in the light of whatever decisions are made for the introduction of a poker machine industry into Victoria. However, I draw attention to two matters, referred to by witnesses which, I feel, ought to be kept in mind in the determination of a staff structure. First, Mr. Matthews emphasised the need for the regulatory authority to have the technical expertise to set standards for the industry rather than, as in New South Wales, having simply to react to proposals by manufacturers. (T.1465). This will involve the recruitment of a limited number of highly qualified people who will need to be remunerated accordingly. Secondly, there was strong support from both the witnesses who have had experience in administration in the liquor industry, Mr. Hayes and Mr. Matthews, for the proposition that the regulatory authority should have its own team of inspectors. I have already referred to Mr. Hayes' comments about the difficulties experienced by the Liquor Control Commission in having efficient enforcement action taken by police officers carrying out general duties (see para 13.07). At T.1943 Mr. Hayes

argued that there should be "a permanent resident staff of police" attached, and responsible directly to any poker machine regulatory body. He had in mind the necessity for prompt, effective action. Mr. Matthews commented upon the constructive, advisory role able to be played by inspectors employed by the control authority and familiar with its policies. (T.1447). It seems to me that these comments are simple good sense. Perhaps one of the reasons for the effectiveness of the Victorian Liquor Control Commission, by comparison with some of its counterparts elsewhere, is that it has had a small team of employed supervisors subject to its direct control.

Staff interchange with the industry

18.14 One issue raised with some of the witnesses was whether there ought to be any statutory restriction on the entitlement of licensees to employ people who were currently working, or had in the recent past worked, for the regulatory authority. Mr. J.M. Rochford, who had left the Chicago Police to take employment with Bally Manufacturing, thought that it was desirable to prohibit cross employment for a period of something like five years. (T.2850-2851). Although there is presently no such restriction in the Australian Capital Territory, Mr. Matthews agreed. (T.1452-1453). Once again, it seems to me that this is commonsense. There are at least two objections to the not uncommon practice of industry recruiting staff from the ranks of the regulatory body. One is that it will thereby acquire inside information as to the thinking, practices and plans of the regulatory authority. Even those

staff who endeavour scrupulously to preserve the confidentiality of particular information are likely, in one way or another, to give to their new employer some advantage which is denied to competitors or which is prejudicial to the future activities of the regulatory authority. Others will be less scrupulous, yielding to the temptation to tell what they know in return for a sufficiently attractive position and salary. Secondly, the practice presents dangers to the work of a regulatory authority even before any transfer has occurred. Salaries in the private sector tend to be higher than salaries in comparable positions in government. If "poaching" is permitted, there will always remain the temptation to an officer of the regulatory authority to "go easy" upon a licensee in return for the promise of a future job or even in the hope that his consideration will be repaid by a job offer in the future. I would recommend that there be included in any licensing legislation a prohibition upon any licensee employing any person who has been employed during the previous five years by the regulatory authority.

JURISDICTION OF THE AUTHORITY

The case for a single gaming authority: evidence

18.15 The submission has been put to me by Mr. Henshall, on behalf of the churches, that if a decision is taken to permit poker machines in Victoria the opportunity should be taken to constitute a single authority to control all legal gaming in the State. Mr. R.H. Hurley, formerly associate director of Federal Hotels with responsibility for that company's casino operations, agreed with this view (T.2302):-

"...As a very keen racing man I believe all forms of gambling must come under the same administration because there are only so many dollars in the community for gambling and that money has to be balanced correctly. The only person to do that is the person in charge of the racing and gaming division because he knows where the money is going and he can put the figures together and lay it on the line. The racing industry is a very viable industry in Victoria and you would have to make sure that that industry was not disadvantaged".

Mr. Matthews shared that view, at least in the context of the Australian Capital Territory (T.772):-

"It probably leads to a more adequate form of control if it is all vested in the one body".

The Casino Report

18.16 Mr. Henshall draws attention to the findings of the Casino Inquiry and especially to what was said by Mr. Connor in para. 9.15 of his report:-

"9.15 In recent years the very introduction of a new form of gambling appears of itself to initiate a chain of seemingly inevitable events which have the effect of stimulating gambling. The new form of gambling, faced with the necessity of pushing its way into the existing gambling network, will generally be aggressively marketed and promoted. This results in creating an appetite on the part of the public for the new form of gambling, of which it has hitherto had little experience. Faced with this development, each of the other forms of gambling understandably reacts defensively and seeks by aggressive promotion to present its own form of gambling more attractively in order to prevent the threatened or existing flow of gamblers away from it. Faced in turn with this, those responsible for the new form of gambling are in a position to exert well nigh irresistible pressure on Government to relax, one after another, the various safeguards which accompanied its introduction, claiming that such relaxation is necessary in order to enable it to survive against the recent marketing aggression of its elder competitors. The Government submits ultimately to this pressure claiming, as it now can, that in doing so it is responding to public demand, albeit that the demand is the product of the increased appetite which has been stimulated for the

most recent arrival on the gambling scene. And so Government and the community appear inevitably to become locked into a circuit in which the intense pressure of the action and reaction of its component parts inevitably causes the whole circuit to expand."

Finally, Mr. Henshall points out that the Casino Inquiry recommended against three of the options considered, maximum revenue casinos, a single entertainment/convention casino and resort casinos on the ground, amongst others, that each would be "likely to stimulate casino gambling to an unacceptable degree". (Casino Report paras. 18.02, 18.03, 18.04). He goes on (final submissions p.23):-

"Implicit in this is the value judgment that there is a level of gambling which is undesirable in a community and that gambling should not be stimulated so as to reach that level. It is submitted that these underlying assumptions should be accepted. If poker machines are introduced therefore there should be one body charged with ensuring, inter alia, that such undesirable stimulation to gamble does not occur."

The case against a single gaming authority

18.17 I suppose that few people would deny the desirability of the development of some means to keep under review the total level of gambling in the community and to guard against the type of circular reaction described by Mr. Connor. It does not, however, follow that this function is best committed to a statutory authority. Indeed, my opinion is to the contrary. A statutory authority is a useful vehicle for the carrying out, in the particular case, of policies previously determined by government and made explicit in legislation. As I have already argued in para. 18.09, it is

particularly valuable in cases involving the visitation of penalties upon individual clubs, commercial organisations or people. In such cases it acts as an independent body able to make decisions without being, or being thought to be, susceptible to political pressures. But its very strength in such cases, divorcement from the body politic and from public opinion, is its weakness in undertaking the tasks which Mr. Henshall argues should be undertaken: the determination of what is a proper level of gambling to be permitted to occur and the taking of appropriate measures to avoid its excess. The first of these tasks involves the making of value judgments, for which the members of a statutory authority have no particular qualification. That judgment, in my view, ought to be made by one or more persons elected by, and answerable to, the electorate: a Minister or the Government as a whole. Elected politicians are more likely than are non-elected officials to be sensitive to changing public values. They need to be. If they do lose contact with community attitudes, then the electorate can directly dispose of them.

18.18 I do agree with that part of Mr. Henshall's submission which calls for some mechanism systematically to review the total level of gambling in the community and to monitor the marketing methods adopted by the various promoters of gambling. It may be advisable for the Minister to have the benefit of a wider range of advice than would normally be available to him through his department. Perhaps, a suitable mechanism would be: first, to commit responsibility for all legal gambling to a single Minister - desirably not being a

Minister responsible for the raising of revenue; secondly, to establish within the department of the responsible Minister a small section to collect and collate information on the volume of gambling in the community and to commission research into the social effects of the total volume, and various types, of gambling (cf. Casino Report para. 9.14) and thirdly, to constitute a broadly based advisory committee with access to this information whose function it would be to assist the Minister in the development of future policy.

18.19 The other main objection to the proposal for a single gaming authority is a practical one. In a jurisdiction of the size of the Australian Capital Territory no problem arises in maintaining a single statutory authority with responsibility for the supervision of all gaming and all liquor licensees. In Victoria, an authority with like powers would be far removed from Mr. Matthews' "lean and hungry" model. Its multiplicity of functions would necessitate the employment of large numbers of staff, many of whose activities had little in common. There would be difficulties in relation to appointments to the governing body of the authority. A member experienced in the ways of Victorian hotelkeepers, like Mr. Hayes, may know little about running a profitable TAB; and vice versa. Some authority functions would be purely administrative; others, such as applications for a licence or disciplinary proceedings against a licensee, quasi-judicial. No doubt ways could be found to overcome these problems, as by sitting in divisions, but then much of the advantage of having a single authority is lost.

A composite liquor-poker machine authority

18.20 Mr. Hayes expressed the view that, if poker machines were introduced into licensed premises in Victoria, it would be appropriate to vest control in an expanded Liquor Control Commission (T.1944):-

"My own view is that the Liquor Control Commission would be ideally placed to have the care and management of poker machines if they were introduced...I can see some conflict of interest between the provisions of the Liquor Control Act as you find in section 3 and whatever the ambitions of...the poker machine department, for want of a better term...you may well have them running at cross-purposes."

Mr. Mathews, with his practical experience in the dual functions, agreed, pointing out practical advantages such as the avoidance of duplication of visits and the ability of inspectors to deal fully with all aspects of problems in licensed premises. (T.772, 1446-1448, 1476).

18.21 If there are practical advantages in single authority control of both liquor and poker machines in Canberra then they must be even greater in a jurisdiction as extensive as Victoria. It would border on the absurd if inspectors from each of two separate supervisory authorities were to travel on the same day from Melbourne, or even from Bendigo, to inspect different aspects of the Mildura Working Man's Club. Fusion of functions would offer the opportunity to reduce total staff demands in two ways. First, it should eliminate duplication of travelling. Secondly, the greater width of responsibility for a single authority, within a particular district, would increase the opportunities for

locating staff in regional offices with consequential further savings. The addition to the Commission's functions of duties in respect of poker machines would involve a re-structuring of the Commission, augmentation of its staff, and probably an amended name, but there is no reason why it could not be adapted to do the job.

Timing

18.22 Finally, in relation to the construction of the system for control I draw attention to passages from the evidence of Mr. Matthews in relation to the necessity to ensure that all controls are in place from the beginning. At T.743 he said:-

"I hold the view that if, say, the decision were made by the Government...to introduce poker machines into Victoria, I would go right in and impose all disciplines right from day one, because it would be cheaper to do it and because the potential market would make the cost immaterial, literally, of imposing all controls."

He elaborated at T.759, agreeing with the importance, in the early stages, of not cutting corners to get things done quickly, of having all regulatory mechanisms in place before any gambling starts and of completing all the processes of scrutiny of directors and key staff before machines are purchased.

CHAPTER NINETEEN
SUPPLY OPTIONS FOR VICTORIA

OBJECTIVES

Desirable criteria

19.01 In considering what policy ought to be adopted in respect of the supply of poker machines to any Victorian market, it is useful to ask what are the objectives sought to be obtained. Criteria are implicit in any judgment as to the most desirable system and it is desirable that I make explicit those which I apply. First, of course, the machines must be efficient, attractive machines complying with whatever control specifications a regulatory body may require: see Chapter 18. Secondly, it is important to minimise the risk of criminal activities associated directly with the machines by investigation of suppliers to ensure that the people responsible, for example, for the microprocessor programmes are honest and competent and that programme security is maintained. In the future, the most effective way of cheating a poker machine may be through the microprocessor programme. Thirdly, it is highly desirable to eliminate the secret commissions, and even the more innocent but expensive sales promotions, which have disfigured the New South Wales industry. This can only be done by the elimination from the system of agents and the elimination, or minimisation, of contact between manufacturers and ultimate purchasers. Finally, of course, the machines should be made available at the lowest cost compatible with the above objectives; at a cost which reflects only the labour and materials involved in

the manufacture and distribution of the machines together with a usual manufacturer's profit margin. I will now consider various supply models, existing and proposed, in the light of those criteria.

EXISTING SUPPLY MODELS

New South Wales

19.02 In New South Wales the supply of poker machines to clubs is quite unregulated. Clubs buy directly from suppliers or their agents with the consequences which have been referred to in Chapters 4 and 6 above. The New South Wales system fails to meet any of the last three of the criteria I have listed. It provides no model for Victoria.

Australian Capital Territory

19.03 The distinctive feature of the system in operation in the Australian Capital Territory is the requirement of the legislation that all machines be purchased by clubs from manufacturers through the agency of the Gaming and Liquor Authority (GALA). Clubs remain free to nominate the particular machines that they wish to purchase and manufacturers are free to solicit the business of the clubs. The merit of this rule was discussed at paras.3.45 to 3.50 above. It will be recalled that I expressed the view that the ACT system does nothing to provide cheaper machines for clubs or to eliminate the possibility of secret commissions. That system does not meet the criteria listed in para.19.01.

A LICENSING SYSTEM

Need for licensing

19.04 Reference has previously been made to the possibility of a licensing system for manufacturers along lines familiar in the United States of America. In New Jersey, for example, a company wishing to supply poker machines to the casinos in Atlantic City must satisfy the New Jersey Gaming Control Commission at its own expense "by clear and convincing evidence" of its good character, integrity and honesty. [1] At this Inquiry there was general agreement, even amongst the manufacturers who were represented, that a licensing system should be a condition precedent to the supply by private manufacturers of machines to any Victorian market. I have already referred to the cri de coeur of Miss Newell, of Bally, for introduction of such a system into New South Wales (see para. 18.02 above). There is no doubt in my mind that if the Government decides to permit poker machines in Victoria and if it decides that machines should be supplied to operators by private manufacturers then a licensing system should be introduced. I envisage that the regulatory authority would act also as a licensing board. Applicants for licences should be required, at their own expense, to supply such information and to submit to such interrogation, examination of records and inspection of machines as the regulatory authority may require.

The procedure of the authority

19.05 It is recognised, at least in those jurisdictions where gaming is seriously controlled, that a licensing body

must be able to act on material the quality of which may fall short of that required for admissible evidence before a court. The authority should have the power to act, from time to time, on such material if it considers it necessary to do so. An applicant for a licence may never have been convicted and yet be the subject of reliable intelligence that he is, for any of many possible reasons, unfit to hold a gaming licence. In some cases it may not be in the public interest that even the existence of such intelligence be made public. Ongoing police investigations could be jeopardised. Nevertheless, in the interests of proper control the authority must be able to act upon such information. I note in passing the power of the Bookmakers and Bookmakers Clerks Registration Committee of this State to grant or refuse a certificate of registration as a bookmaker "in its absolute discretion...without cause shown..." (s.86(2), Racing Act, 1958 - Ex.64). Allied to the problem of the authority acting on intelligence as well as evidence is the question of whether there ought to be any right of appeal from a refusal to grant a licence. As a general proposition I would adopt the principle, now increasingly recognised in administrative law, [2] that a decision of an administrative body which adversely affects the interests of some individual ought to be reviewable on its merits by a superior court. Administrative bodies sometimes reach perverse findings of fact. They sometimes adopt practices which fail to accord with the dictates of natural justice. Either of these situations may result in an incorrect decision which is seriously prejudicial to the interests of an individual. There is,

however, one special feature about the present position. I have proposed, in paras. 18.20 and 18.21 above, that, if poker machines are permitted in Victoria, the regulatory authority should be an adaptation of the Liquor Control Commission. That Commission is led by a Chairman and an Additional Chairman each of whom is required to be an experienced lawyer qualified to be appointed a Judge of the County Court. It is the practice of the Commission that contested matters are heard by a Full Commission presided over by either the Chairman or Additional Chairman. In recognition of the status of the primary decision makers, and their experience in the liquor industry, the legislation does not give a disappointed litigant a right to have review of the facts found by the Full Commission. He is limited to an appeal to the Supreme Court by way of stated case in relation to any determination of law by the Full Commission. The proposition for full review on the facts, in relation to poker machine applications, is rendered less appropriate when the matters I have just raised are taken into account. Given the necessary qualification of the presiding officer at any Full Commission hearing, and the special expertise which Commissioners will bring to their task, I consider that their decision on the merits of an application should be final. I envisage that applications for suppliers' licences, and other proceedings in relation to those and other licences, would follow quite closely the procedures already used by the Liquor Control Commission. The Commission already has power to determine matters informally and without regard to the usual rules of evidence or procedure (s.10(c) Liquor Control Act).

This would appear to accommodate the point made by Mr. Connor in para. 16.21 of the Casino Report, with which I agree. No doubt some modifications of the Commission's procedures and practice would be necessary to accommodate an additional jurisdiction in relation to poker machines but I see no inherent difficulty in that being done. I also suggest that the procedures used by the Gaming Board for Great Britain be referred to for further assistance in this area.

Quality of candidates

19.06 The major question about a system of supply by licensed private manufacturers is not the design of the system but its desirability. First, are there likely to be candidates for licensing in such numbers, and of such quality, as to justify the setting up of a licensing system? If a decision were made to adopt this mode of supply and a licensing system was established accordingly there would be likely to be considerable pressure on the members of the regulatory authority to avoid an embarrassing situation by approving, at least, one or two of the "least bad" applicants. It is for that reason that I have set out in Chapter 4 above what I know of the four existing suppliers to the Australian market, the foreseeable contenders for licences. In para. 4.04 I set out the standard that I thought it appropriate for a regulatory body to set; a standard that demands more than an absence of proved criminal acts or associations and requires satisfaction, on the basis of the applicant's previous conduct and attitude, that he will be likely to co-operate actively with the regulatory authority. Judged by that standard, as it seems to me, there is little ground for confidence in the

prospects of success of those three manufacturers about whom I have any real information: Ainsworth, Nutt and Muddle and Bally. As to the fourth, Pacific, I know little. See Chapter 4.

Cost of machines

19.07 The second question which arises in relation to a system dependent upon private licensed suppliers relates to cost. In para. 4.04 I expressed the opinion that the system current in New South Wales involves heavy administrative and marketing costs which ought not to be imposed upon clubs. Those costs are a consequence of the system. If private suppliers are in competition with each other to sell machines to ultimate users, whether directly or through an intermediary such as GALA, they will actively promote their machines to the end purchasers. Leaving aside the possibility of criminal inducements, such as secret commissions, there will be a perpetuation of the expenditure upon high pressure marketing, entertainments, overseas trips and the like which currently costs New South Wales clubs, according to my estimate, about \$2,000 per machine. And, of course, the circumstances which permit secret commissions will remain. The licensed supplier model may be useful in meeting the second of the criteria listed by me in para. 19.01, minimisation of criminal activities linked directly with the manufacture and security of the machines, but it does not meet the third requirement - the elimination of agents, secret commissions and expensive sales promotions; or the fourth, the supply of machines to the user at a price reflecting only cost together with a usual manufacturer's profit.

BULK PURCHASE FROM EXISTING SUPPLIERS

A tender system

19.08 A possible method of combining the use of existing model machines with a reduction of the problems inherent in the existing systems or a licensing system is the periodical bulk purchase of a large quantity of machines, on a tender basis, by the regulatory authority and the retailing of those machines by the authority to the ultimate users. This would differ from the system in the Australian Capital Territory in that the regulatory authority would buy as principal and the end users would have to take whatever model the regulatory authority had available. I see two advantages in such a system. The first is a possible reduction in cost in that there may be real price competition between suppliers if it was known, for example, that the current tender would be the only opportunity of selling to Victoria for, say, the next two years. There should, at least, be savings in marketing costs. Secondly, tender conditions could require that tenderers deliver to the regulatory authority for inspection and testing a model of the machine in relation to which they are tendering. The regulatory authority would have a full opportunity to check its operation and microprocessor programme before accepting any tender. In other words, no machine would enter the State except after a decision by the regulatory authority that it was the most suitable machine being offered at that time at that price. On this system, it may not be necessary to license manufacturers; the regulatory authority has a much greater opportunity of standing between the product and the end user than in the case of direct sales.

I assume, of course, that the authority would not be prepared to deal with a supplier known to be engaged in criminal or other activities inappropriate to a person contracting with the State.

19.09 I have two major reservations about the system I have just described. The first is a doubt as to whether there would in fact be real price competition between manufacturers. Mr. Matthews was sceptical about there being price competition in the Australian Capital Territory market. (T.1481). [3] That is a different situation. In the Australian Capital Territory all manufacturers can expect to be in the market, at their price. Their volume of sales will depend upon their success in persuading the clubs to order their models. Nonetheless, the possibility arises of collusive tendering, manufacturers sharing the market amongst themselves on a rotational basis. The other reservation assumes the contrary approach by manufacturers, active competition for the Victorian order. As costs, at least for the Australian manufacturers, [4] are much the same the prices quoted are likely to be close to each other. From the authority's point of view, little may turn on price. Assuming that each of the models meets the required technical criteria, the issue would become one of subjective choice by members of the authority: It is not difficult to foresee pressure being put upon members of the purchasing authority by the potential end users, perhaps at the instigation of a manufacturer, to choose one model rather than another. There exists the possibility of political pressure, e.g. to retain employment in a particular location or for other reasons. I concede that, to some

extent, these same problems could arise in other areas of bulk government purchases, whether for motor cars, stationery or shovels. Apparently, they rarely arise in practice. However, there is this major difference: in the case of other government purchases the government itself is the end user. Nobody else, on the government side of the transaction, is concerned with the choice to be made. In the case of the bulk purchase of poker machines the government would, in reality, be purchasing on behalf of others; persons who have a considerable stake in the choice to be made, who would be organised and, perhaps, numerous. There is a real risk that they would seek actively to influence the authority's choice.

GOVERNMENT SUPPLY

The possibility of local manufacture

19.10 The matters I have discussed above lead naturally to the question whether there is a more radical alternative to the present system; one which gets away from the reliance upon existing suppliers. The view that the Government should consider local manufacture was put to the Inquiry by three witnesses. Mr. Matthews agreed at T.771 that the system in the Australian Capital Territory left open the possibility of a secret commission and added:-

"If I understand the drift of your questioning may I make a suggestion for overcoming it. My personal view is it would be very unhealthy to have only one manufacturer of poker machines for people to purchase from. My alternative suggestion for that would be that the regulating body manufacture the machines themselves or have them manufactured under licence for themselves."

Later, at T.1482, he added:-

"I believe it is well...within the capability of even my organisation, if you like, to manufacture a poker machine. We have, in fact, manufactured terminals for use in the ACT. TAB outlets, and some 60 of those units are also installed in Victorian TAB outlets, so it is possible to do it."

Mr. Hurley, who had supervised poker machines in the Northern Territory casinos, referred to the desirability of local manufacture (T.2306):-

"I think it is easier for your legislative people to be able to go to the local factory...Also because you do not have a manufacturer here you are starting off from scratch which again means you are starting off without any preconceived problems...".

19.11 Mr. F.J. Hart, principal of Martins Meters, a firm located at Fitzroy and currently engaged in the manufacture of taxi meters for the Australian and some overseas markets, wrote to the Board on 29 April 1983 to indicate the interest of his firm in manufacturing poker machines for any Victorian market (Ex.2V). He later supplied information about a possible coinless machine and he elaborated his submission in oral evidence. Mr. Hart explained that his company could manufacture either a coin operated or a coinless machine. He said that to manufacture in competition with existing manufacturers would involve a large mark-up for commissions, maintenance etc. but "if we were marketing solely to the Victorian Government the cost of those machines without sales tax would be between \$1,000 and \$2,000". (T.1755). His firm would look for a "reasonable commercial profit" of about 50% on cost. He added "we would be prepared to itemise every transistor and every resistor to a client such as the Victorian Government". The machine would be entirely manufactured in

Victoria but some electronic components would have to be imported. (T.1756). Mr. Hart explained that the type of machine he had in mind would be quite different to existing machines in that it would have no spinning reels but rather a dedicated digital display in each of three, four or six windows. The machine could be attractively finished in much the same style as existing poker machines but, if coinless, without the base cabinet provided in existing machines for coin collection. (T.1772). Mr. Hart thought that coinless machines had two advantages over coin operated machines: greater security and a cost saving of between \$600 and \$1,000 per machine. The suggestion was put to Mr. Hart that coinless machines may lack player appeal, that people like to hear the tinkle of coins in the tray. He said that he could not evaluate that factor "except to say that we can duplicate joyful sounds of cash dropping." (T.1776).

19.12 Over a period of some months, Martins Meters has been developing prototypes of both coinless and coin operated machines. I was able to inspect them whilst writing this report. I see no reason to doubt that machines applying Mr. Hart's concept and meeting the control requirements recommended in Chapter 18, could be developed for any Victorian market. It would, of course be necessary to have the specifications of the machines stipulated by appropriately qualified officers of the regulatory authority. No attempt has been made in this Inquiry to go into the technical detail.

Coinless machines

19.13 In my opinion there is much to be said for the view

that any machines permitted in Victoria should be coinless machines. As Mr. Hart explained, there is now no need to use coins to activate the machines. He pointed to the move away from coin operated machines in other areas, such as parking stations and petrol pumps, and suggested that coin operated machines are only a legacy of the past. In his written submission (Ex.2V) he asked:-

"Why not eliminate the high costs associated with traditional coin operated machines and install coinless machines which cannot be manipulated by the poker machine cheat?"

Mr. Hart went on to explain the operation:-

"NEW CONCEPT COINLESS MACHINES could operate in the following manner:-

The player would:-

- (1) Press the RESERVED button on selected vacant machine.
- (2) Pay an amount of money to the club cashier.
- (3) Inform the cashier of the "number" of the machine.
- (4) The cashier would then credit amount to the selected machine by a simple keyboard entry into a computer terminal.
- (5) The player can then proceed to play until termination of credit or pressing a button on the machine marked FINISH (and collecting credit balance from cashier)."

Mr. Matthews thought that coinless machines would be feasible. He saw no inconvenience or problem for management and considerable advantages in relation to control of criminal activities. (T.744). The only doubt which has been voiced about coinless machines is the suggestion that they may lack "player appeal". This is a subtle quality but I cannot see any difficulty in devising a physically attractive machine which maintains player interest by emitting "joyful sounds" or other signals of success. I point out that the modern

microprocessor machines, in the interests of speed of play, no longer drop coins into the tray after small wins but post credits on a digital credit meter. Players have already learned to look up rather than down.

Manufacture by government

19.14 An obvious possibility is for government itself to manufacture machines - either through the poker machine regulatory agency or some other instrumentality. There are a number of economic and feasibility questions which would need to be considered: the desirability of committing government capital to the establishment of a poker machine factory, the availability of the necessary specialist expertise successfully to run such a factory, the cost of the machines having regard to the fact that the factory would have short production runs and that it may not operate as efficiently as would a factory operated by private enterprise.

19.15 Mr. Henshall, on behalf of the churches, draws attention to what was said in the Casino Report (paras.9.21, 16.03) about the desirability of a bipartisan approach in relation to gaming (final submissions pp.62-62). He makes the comment, which appears to be accurate, that "there is no bipartisan approval to poker machines in this State" and goes on to argue that a "government of the Right" would be ideologically opposed to a government owned and operated poker machine factory and may decide to sell it off to private enterprise; effectively giving a monopoly to a company which may be, or may become, undesirable.

19.16 Finally, in relation to this option I draw attention to the comments made by Mr. Connor Q.C. in respect of the analogous question whether the Government should operate casinos. He recommended against this course because of the desirability of retaining an independent protector of the gambler against any dishonesty by the casino operator. He also commented upon the potential of a scandal in a state run casino to damage public trust in government. (See Casino Report paras. 17.10 - 17.11). I think that these observations equally apply to a government poker machine factory.

Manufacture by licensees to government specification

19.17 A further option would be for the regulatory authority, either itself or with the assistance of retained consultants, to develop a design for a poker machine suitable for Victoria and for it then to call tenders for the manufacture of a specified number of machines. The authority would write the specifications and could build in all the requirements it thought to be desirable. According to Mr. Hart's letter of 17 May 1983 (Ex.2V) there are some fifty competent manufacturers in Victoria who would be capable of being involved in the manufacture of machines in accordance with his concept. Those manufacturers may not be willing to set up production on a speculative basis to market machines in competition with the existing manufacturers but it seems likely that some, at least, would be prepared to contract with a government agency to manufacture, in accordance with agreed specifications, a given number of machines at an agreed price. This option has the advantage that the regulatory authority

does not itself have to get involved in the process of manufacture but it would have the ability to supervise closely the manufacturing operation. This solution is probably the least costly of all. The authority would pay only a manufacturer's costs plus profit as determined by competitive tender. The manufacturer would be a contractor, not an entrepreneur; he would have no interest in soliciting the goodwill of the ultimate users. So long as the tender system was handled fairly and honestly - as with any other government tender - the opportunities for criminal conduct would be small. In my view this supply model best meets the desirable criteria. If poker machines are to be permitted in Victoria it is the solution that I would recommend.

Notes to Chapter 19

[1] Casino Control Act (New Jersey) 1977, s.5:12-92

[2] See the (Commonwealth) Administrative Appeals Tribunal Act 1975-1977.

[3] I am sure he is right. There is no more reason for price competition in the Australian Capital Territory, where each club determines what machines it wants, than there is in New South Wales. As Mr. Vibert pointed out (T.1642) price is not likely to be a major criterion in the decision to purchase a machine which can earn several times its cost within the first year. The manufacturers obviously compete in other areas - legitimately, by comparing the takings of their machine with those of others (T.1642), or by offering inducements and benefits to club managements.

[4] The figures I have seen suggest that, in a really competitive market, overseas manufacturers would be at a significant disadvantage. They have to bear not only freight costs to Australia but also an import duty calculated at 25% on the FOB cost.

CHAPTER TWENTYMINIMUM STANDARDS FOR POKER MACHINE OPERATION

THE MACHINES THEMSELVES

New South Wales and the A.C.T.

20.01 There is not now and has never been any legislation in New South Wales setting minimum technical standards for poker machines. Such standards as have been insisted upon by the Treasury, from time to time, have been officially applied by incorporating them into the licence permitting a club to operate a particular machine. In fact, for some years, manufacturers of machines have been obtaining Treasury approval for their machines before selling them to clubs. By being able to provide the club with a set of machine specifications which had been given approval by the Treasury in advance machine manufacturers have been able to obviate the theoretical possibility of a club being refused a licence for any particular machine. The largely passive role taken by the government has meant that the manufacturers of machines have made the pace so far as technological innovation is concerned. At least until recent times, the Treasury has done no more than approve or not approve a particular poker machine. Whether that machine had any particular security device such as particular meters or not to record any of its various functions was not regarded as being of any concern to the government. It seems that the provision of even the most basic metering devices (to record the number of games played on the machine - the stroke meter) was not made a condition of licensing until 1979. The requirement for a machine to have sufficient meters

to undertake cash flow analysis was not incorporated into licences until March 1983. Even when technical advances in poker machine production have been recognised by the Treasury it has never, in the past, imposed any obligation on clubs to update their machines to take account of such advances nor has it ever, so far as I am aware, decreed that any particular machine already in existence in clubs should be phased out. This means that there are still, in New South Wales, mechanical and electro-mechanical poker machines incapable of being properly monitored. The government attitude appears to have always been that to compel a club to take any particular step with respect to its poker machine operations should only be done if it can be done without causing the club too much inconvenience or expense. Circulars sent by the Treasury to licensed clubs since 1980 contain ample evidence of this attitude. (Ex.84C). The Treasury has never acted in any sense like a gaming control authority (cf. Gaming Board for Great Britain or New Jersey Gaming Commission).

20.02 In the Australian Capital Territory some attempt was made to impose statutory standards at the time poker machines were legalised. The Poker Machine Control Ordinance 1975 provides that poker machines must "have a sealed device which may only be opened by an inspector, and which automatically records all actions of the machine, including the number of coins passing in and out of the machine, and any adjustments made to the machine". The provision is difficult to interpret in the light of modern poker machine manufacture. However, at the time poker machines were introduced to the Territory the

then Poker Machine Control Board wrote the initial specifications for its tendering process (see para.3.46) so as to require manufacturers to produce machines which had a number of meters on them, thus enabling basic accounting controls to be instituted. In operating its tendering system the Gaming and Liquor Authority of the Australian Capital Territory continuously revises its specifications to recognise technological advances in the industry. Oddly enough, even its current specifications (Ex.85.0) would appear to permit a manufacturer to sell a mechanical machine into the Territory provided it could meet other security requirements of the specifications and, most importantly, provided it had the metering required by s.2 of the specifications. In practice, of course, the machines submitted by manufacturers when tendering to GALA are their current market models - now all microprocessor machines.

20.03 Whilst it is clear that all new machines sold in New South Wales and the Australian Capital Territory at the present time are microprocessor machines, it is clear that manufacturers have not incorporated all those security features of which they are aware and which are required in some foreign jurisdictions. For example, when the demonstration described in para.6.20 was drawn to the attention of manufacturers two of them, (Bally and Ainsworth) in reply, referred to the fact that the New Jersey Gaming Commission requires seals to be affixed to microprocessor boards, which would considerably improve their security. Despite the fact that those two manufacturers were aware of this security requirement in New Jersey (and both

supplied that market) it would appear that neither of them has ever suggested that such devices be introduced into any Australian jurisdiction, or, for that matter, has ever attempted to market machines with such devices to clubs in the Australian market. Closer to home I have already commented on the failure of the Ainsworth organisation to incorporate on machines it sold in New South Wales a basic control mechanism which it has been required to incorporate into A.C.T. machines for some years. (para.4.27).

Victorian machines

20.04 Mr. Keiran Daley, already referred to, set out in his statement to the Inquiry (Ex.C9) certain recommendations with respect to the specifications for poker machines if they were to be introduced to a new territory. They were:-

1. Every result of a game played upon a machine should be equiprobable with every other possible result. In other words machines which allow a player to exercise any "skill", such as hold and draw machines, should not be permitted. Mr. Daley considers such machines to be "unfair" to the player as they are extremely difficult to play at maximum advantage.
2. The return to the player from a machine ought to be set at 87% + or - .05%. In the ACT machines must all return 87% + or - 1%. Since April 1983 in New South Wales all new machines licensed must return 85% + or - 1%.
3. Prizes should be limited in value.
4. Machines ought to be microprocessor controlled. All new machines sold in Australia currently are microprocessor machines. I have already referred to the different operating principles of the Pacific machines as opposed to the rest in Chapter 2.
5. Machine audit data should be extractable both in computer readable format and by visual display.
6. Machine audit data must be able to be retained in a machine regardless of power failure or attempts to interfere with meters.

7. There must be comprehensive security functions built into the machine governed by microprocessor control.

The first three of Mr. Daley's suggestions raise policy questions. If, as he himself has agreed, the "house hold" for poker machines is 100% the "fairness" of any particular machine or its return to player percentage affects only the length of time it takes for a player to lose a given amount of money. Whether prizes ought to be limited depends upon whether machines are to be designed as maximum revenue earners or merely for amusement. Mr. Vibert would argue that it is a limitation on prizes paid by machines (and, concomitantly a limitation in the stake which might be wagered) which is causing some people in New South Wales to stop playing machines. (T.1614). The rest of Mr. Daley's suggestions are, in fact, machine specifications based upon currently produced spinning reel type poker machines. Technology may quickly render such specifications obsolete or inapplicable to the type of machine permitted. In Chapter 19 I have mentioned the possibility of developing machines of a radically different nature so that, at this stage, I do no more than draw attention to Mr. Daley's suggestions. His specifications are obviously desirable in relation to machines of the present kind. The important principle is that, if poker machines are permitted into Victoria care must be taken to ensure, from the outset, that only machines incorporating the most advanced technology are permitted. They should be capable of being monitored by computer, as recommended hereunder, and should incorporate all the latest security devices including, if appropriate, those

suggested by Mr. Daley. In this regard the control authority would have to make itself familiar with and continuously keep itself informed as to the latest advances in the technology used by reputable casino operators in the United States and Europe. Specifications for a Victorian poker machine should only be written after the control authority is satisfied that it has investigated every security feature currently incorporated into slot machines anywhere in the world. As I have stated elsewhere I believe that, notwithstanding such specifications, ultimately such machines will be penetrated by external cheats. No to write the specifications at the highest possible level would simply be ensuring that my prediction came true sooner rather than later. If, after poker machines were introduced into Victoria, technological advances made those machines obsolescent, particularly from a security point of view, the control authority should have the necessary power to require operators of machines to replace them with more secure models. The sensible exercise of this power could ensure that machines were kept as safe as they could be for the longest possible time.

Creation of specific poker machine offences

20.05 It would be essential, if poker machines were legalised to create, by appropriate legislation, a series of offences covering malpractice in all aspects of poker machine operation. Such legislation has been under consideration in New South Wales since at least August 1980, but has not yet been enacted. In the Australian Capital Territory there is a section of the Poker Machine Control Ordinance 1975 which

creates some criminal offences of a limited type. The proposed New South Wales legislation, set out in Ex.C4(b), is more comprehensive in its application and would be a more appropriate starting point for the drafting of Victorian legislation if it was required.

COMPUTER MONITORING

The Martin proposal

20.06 From very early in this Inquiry the question of the monitoring of poker machine performance and function using computers was a live issue. Messrs. R.L. Martin, P. Calder and I. Lovejoy of Ballarat sought leave, through Mr. Martin, to appear and present a security proposal with respect to poker machines using a computer network. They subsequently provided the Board with a plan for a computerised poker machine security system. (Ex.Y2). It proceeded upon the assumption that there could be, in Victoria, some 1,500 clubs or other venues each having about 30 poker machines. They suggested that a central authority would devise and run a security system through a set of 10 to 20 regional branches, each being responsible for a proportion of the poker machine venues. They envisaged an ongoing government commission with powers similar to those which I have suggested in Chapter 17 the Liquor Control Commission might have, were it called upon to administer poker machines. The overall security proposal relied upon each and every poker machine within the State being connected via data transmission lines to a centralised computer system, the central processing unit or CPU. They would not be directly connected to the CPU however, but rather to a

mini computer at the venue itself (CCPU) to a regional processing unit or RPU, which would itself be connected to the CPU. RPU's might be located in the principal provincial cities of the State whilst the CPU would presumably be in Melbourne. The CCPU would report, automatically to the RPU, various functions of the poker machines which it was monitoring. It would automatically report any abnormal condition (i.e. abnormal door opening, etc.) and would be capable of recording all the functions of poker machines which are now recorded by electro-mechanical or electronic meters within the machines themselves. It would also provide information to the venue management on the operation of its machines. The RPU would monitor poker machines and the CCPU's on a semi-continuous basis. It would be able to read the CCPU's information and could also, if desired, maintain control over poker machines directly by retaining the ability to open and close their internal mechanisms. The CPU would act as the data storage device for all poker machines and poker machine venues within the State and as the accounting system for the imposition of poker machine taxation. The CPU would be capable of "polling" each RPU sequentially and continuously throughout an operating day to receive and store data from each RPU's region. The submission went further into the technicalities of computer control and dealt with matters such as data transmission, data security and the programming necessary to put the whole scheme into effect. It also dealt with the question of security at each level and with costs. In this regard the submission estimated the control

commission's initial cost for the computers and their software at just over \$11million.

20.07 It was virtually common ground between all parties to this Inquiry - certainly by the time it concluded - that if poker machines were to be introduced some system of computerised monitoring of them should be employed. Even the LCAV had no objection, subject to "cost effectiveness". (Ex.B30). Mr. Daley discussed the matter of computerised controls on the first day of oral evidence (T.150 et seq. and T.187 et seq.) He said that he was not a computer expert but, in commenting upon Mr. Martin's submission, considered that it would be a "feasible way of close control". Transmission of data to the controlling authority could be by hard wire or even by the posting of magnetic tape cassettes or floppy disks. Mr. Clarebrough reminded me (T.2882) that the Ainsworth organisation had in fact demonstrated a form of computerised control over banks of poker machines to the Inquiry when we inspected its factory on 25 July. This system did not go beyond the site at which the machines were installed and was particularly suitable for a casino operation. Estimated cost was about \$20,000 for the software and hardware to monitor 100 machines at one site. He did not comment upon the possibility of monitoring all poker machines in the State using a computer or series of computers. Mr. Matthews of the Australian Capital Territory Gaming and Liquor Authority is already contemplating a technological advance for poker machines in the Territory which, whilst not presently contemplating their being "on line" to a central computer,

would involve the installation in poker machines of an automatic meter reading device (AMR) which could itself be directly accessed by a central computer using a "dial up modem" via the ordinary telephone line. Mr. Matthews likened the system to that presently used by grocers and chemists to order stock from wholesalers using an acoustic coupler over an ordinary telephone line. (T.734/735). GALA is also considering a system whereby the clubs themselves would, using their own computers, monitor their poker machines and automatically produce the data presently required by GALA for analysis purposes. (T.736). Mr. Matthews considered that the ultimate control of poker machines involved an "on line" system whereby the machines were, either directly or indirectly, monitored by a control authority's computer - similar in concept at least to the Martin proposal.

20.08 The practicality of the Martin proposal, and for that matter any "on line" computerised monitoring system, was attacked by witnesses called on behalf of the churches. Mr. Mark Ross, a lecturer in the Department of Computing at the Royal Melbourne Institute of Technology, criticised the proposal on a number of grounds, not the least of which was that the cost estimates provided by Mr. Martin were extremely optimistic. Mr. Ross also made the point that the system proposed, or indeed any system involving the "on line" monitoring of as many poker machines in as many diverse locations as have been suggested in this Inquiry, has never been effected anywhere in the world. No comparable "on line" monitoring system or anything of similar magnitude exists. The

system has never been designed and it is not really known whether it could be designed with the degree of security necessary to ensure a properly supervised gaming operation. Mr. Ross further suggested that in order to ensure that a system such as that which Mr. Martin suggested had some chance of success the system would have to be effectively duplicated to provide backup in the event that any component broke down at any time. (T.2357). Even Mr. Martin himself conceded that the design of the system would not be easy. He referred to the abandonment by the Australian Public Service of its MANDATA system after \$17million was spent trying to develop it. He went on:-

"The dispersed nature of such a system and the numerous legitimate problems of many naive users would provide perfect cover for devious operators to manipulate the system to suit themselves for many years. The most precise estimate of hard cost would be 'huge' and managerial problems 'vast'. The system could only be installed with much trial and more error." (Ex.Y2 p.2).

20.09 In the course of the Inquiry I was fortunate to be able to inspect the ANZ Banking Group Limited's data processing unit in South Yarra and to discuss with officers of the Bank the question of monitoring poker machines by computer. That inspection and discussion were extremely helpful. The data processing unit, inter alia, monitors the operations of the automatic teller machines, becoming common on the street frontages of banks throughout the country. Somewhat similar problems are involved in the proper monitoring of these machines as are involved in the monitoring of poker machines. As a result of hearing the evidence and as a result of my

discussions with the ANZ Banking Group officers, I am satisfied that a system of monitoring poker machines using computers could be designed. The costs of the system would probably be far in excess of that suggested by Mr. Martin and, even after it was designed, any security deficiencies might not become apparent until someone perpetrated a fraud. If someone with the necessary expertise was able to "get into" the system it would be possible for highly sophisticated and probably extremely profitable fraud to be effected. It seems that no system would be perfect, no matter how much it cost and no matter how much thought was put into designing it. The ANZ Bank officers to whom I spoke told me that, given motivation, time and expertise, the security of any computerised system is capable of being broken.

Why have a computer system?

20.10 Notwithstanding the pessimism of Mr. Ross and the ANZ bank officers referred to above, I consider that in the event poker machines are legalised in this State some form of computerised control should be employed to monitor their operation. I emphasise the word "monitor". It would be important, in the interests of security, not to allow the computer to control the results of individual plays on the poker machine itself. Unless poker machines were to be confined to so few venues as to make possible continuous government surveillance of an in house computer at each such venue I regard an "on-line" system as being essential to the achievement of some control over the operation of poker machines. Such computer system should be designed, in place

and operating prior to the operation of any poker machine in the State. It should provide, as a minimum, for information as to the operation of machines to be constantly available to the control authority. Its design should be undertaken upon the principle that security is paramount. The rewards for successfully interfering with a poker machine computer system are so great that there will always be someone trying to achieve that result. Some may regard such an elaborate system as being a waste of resources. If so, that should be treated as an argument against having poker machines. To introduce machines without the computer monitoring I have suggested is to accept a level of criminal activity significantly above that which would otherwise occur.

PERSONNEL

New South Wales and the A.C.T.

20.11 In New South Wales no control whatsoever is exercised over persons who are involved in the poker machine gaming industry. As clubs are required to be incorporated directors must not be disqualified under the provisions of the Companies Code from being company directors. These provisions merely prohibit persons who are insolvent or who have been convicted of various offences from holding office as company directors. There is no requirement that a director prove his fitness to hold the position. No active vetting of directors takes place. There is no requirement on any person who wishes to become a director of a club conducting poker machine gaming to undergo any form of scrutiny. They need know nothing of poker machines or gaming. With respect to club employees such as

secretaries/managers and their staff no qualification whatsoever is required. I have already noted elsewhere that it is not unknown for persons with criminal convictions to be employed in New South Wales clubs, even employed directly in the operation of their poker machines. Likewise, no qualifications either as to fitness or knowledge are imposed upon poker machine mechanics or servicemen, poker machine agents or indeed anyone else in the poker machine industry.

20.12 In the Australian Capital Territory, the situation is the same as New South Wales with respect to club directors. However, the Poker Machine Control Ordinance 1975 provides a limited licensing system for persons who "open" poker machines. GALA issues two forms of certificate. The first is to a member of a club authorising the member himself to open poker machines for the purpose of checking money or removing money (a Collection Certificate). The second authorises a person to repair and adjust poker machines (a Repairman's Certificate). GALA may refuse to issue such certificate or cancel an issued certificate if the holder of the certificate is convicted of an offence against the Poker Machine Control Ordinance 1975 or if it forms the opinion that the holder is not a fit and proper person to continue to hold the certificate.

United States jurisdiction

20.13 It is the policy of the gaming legislation of both Nevada and New Jersey that gaming control is effected largely by controlling the persons who engage in it. In Chapter 4 I

referred in passing to the practice of the Nevada Gaming Commission to investigate persons, even outside the jurisdiction, in connection with licensing applications made to it. Licensing extends to those persons who provide goods or services or do any business whatsoever which relates directly to casino or gaming activity. It is necessary in New Jersey to be licensed to collect casino garbage. A licence is required to supply linen or to operate any shop located within a casino hotel. Similar provisions apply in Nevada and both States employ large investigation divisions. American legislation is contained in Ex.6E (Nevada) and Ex.6H (New Jersey). A detailed and interesting study of casino personnel licensing is contained in Professor Jerome Skolnick's book "House of Cards": Little, Brown & Co. (Canada) Ltd., 1978. In chapter 16 of the Casino Report, Mr. Connor dealt with the necessity for an adequate licensing procedure not only for the applicants for casino licences themselves but also for applicants for licences as casino employees, suppliers of gaming equipment, service industries and unions. Much of what he said there is apposite with respect to poker machine operation although there are major practical difficulties in adequate investigation and licensing of all personnel involved with licensed clubs. This is unfortunate because, in one sense, the need is greater in relation to clubs than in relation to professionally controlled casinos.

Victoria - the licensing of personnel

20.14 The difficulty of deciding upon an adequate investigation and licensing system for personnel should

licensed clubs be the venue of any legal poker machines is caused by two factors. Firstly, the clubs themselves are non-profit organisations which rely upon part time unqualified voluntary directors. Secondly, the question of whether the personnel involved in them ought to be subjected to the same controls as would be imposed upon casinos is a vexed one. Mr. Hurley would argue that their functions are indistinguishable from that of casino employees and the controls imposed upon them should be likewise. (Ex.2K). Mr. Matthews, of GALA, in his evidence agreed with the propositions put to him which suggested a strict licensing procedure for poker machine clubs and their employees. Many New South Wales clubs are indistinguishable in their operation from casinos. The Shellharbour Workers Club, Wollongong (Ex.89J), the Blacktown Workers Club, Blacktown (Ex.89C) and South Sydney Junior Leagues Club (Ex.88A) exhibit many of the features which one would normally associate with casinos. Those clubs along the Victorian border which I inspected, such as the Cobram-Barooga Golf Club (Ex.101F) and the Rich River Golf Club, Moama (Ex.100K), resemble casinos to an even greater degree. They "bus" in customers who would otherwise be unlikely ever to go near their premises; a practice commonly associated with United States casinos, particularly those of New Jersey. Of course, I would not describe many of the small clubs I visited as casinos. The Port Kembla Golf Club, (Ex.90A) and the Dubbo Golf Club were two which could only be described as clubs with a gambling facility. Many clubs fall somewhere between the two extremes.

20.15 At various times during the Inquiry, it was suggested that more rigorous controls should be imposed upon those clubs which by reason of their size or the size of their gambling operation resembled casinos than would be required on smaller clubs or those with fewer poker machines. Tempting as it is to accept the proposition that a club with very few machines is sufficiently different to one with many machines to require different treatment, I have rejected the suggestion that they be treated differently. The organisation of a small club is such that, in many instances, its own control mechanisms are not such as to preclude irregular activity. Such clubs often have less qualified staff or even rely upon voluntary labour. In such circumstances the opportunity for malpractice is possibly greater than in a big club employing professional staff. Fewer patrons in a small club, particularly late at night, create an opportunity for poker machine fraud which might not be present in a larger operation.

The problem of directors

20.16 There is no present requirement in Victoria for licensed clubs to be incorporated. Many of them are not. It would probably be advantageous, from a control point of view, to require clubs which wished to operate poker machines to become incorporated, although I do not accept the proposition that incorporation and the consequent application of the Companies Code provides any real control on the operation of clubs from a gaming point of view. Whether incorporated or not, however, the membership of the governing bodies of clubs

generally changes fairly frequently. Whether they be called committeemen or directors, most Victorian clubs presently have about ten on their governing body. If there were 500 clubs involved in poker machine operations one could easily envisage a regular turnover of some thousands of directors. The numbers with which any licensing authority would have to deal would make it impossible, from a practical point of view, to impose a licensing system on directors. Quite aside from this consideration, the honorary nature of directorships renders it likely that some candidates for election as a director would be disinclined to stand if it meant that their private affairs might be examined by a government control body. Many Victorian clubs made this point in their replies to a question directed to them on this topic by Mr. Bongiorno in a questionnaire he sent to clubs during the Inquiry. (Ex.94). The situation is unsatisfactory. On the one hand it is contrary to what I regard as proper gaming control to allow poker machines to be operated by an organisation the directors of which are not required to meet any particular standard of fitness. On the other hand, sheer numbers make it impossible for any licensing authority realistically to investigate every director for the purpose of granting him a licence. A compromise, which I suggest without any great enthusiasm, is that the control authority should have the power to require any director of any club at any time to apply to it for a licence and to prove his fitness to continue in office. In this way the control authority would at least be able to exercise some control in cases where, for one reason or another, it was brought to its

notice that particular directors of particular clubs might not be fit and proper persons to control a gaming operation. Refinement of the proposal would be necessary if it were going to be implemented but it would be essential, in my view, that once the authority decided to require any particular director to prove his fitness the onus of such proof should be squarely on the director concerned.

Other personnel

20.17 Any control authority over poker machine gaming should accept as one of its basic tenets that such gaming should only be permitted to be conducted by persons who have proved their fitness to engage in this activity. Accordingly, licensing should be introduced for all personnel who have a direct involvement in gaming activities. Licences of varying kinds should be required by a club's secretary/manager, any person who, at any period during gaming operations, deputises for the secretary/manager, all supervisors of gaming, all persons who open poker machines for the purpose of clearing coin and all poker machine mechanics. It should be the aim of the controlling authority to place as much responsibility for the gaming operation in a club directly on the employed officers of the club rather than on the elected directors. Whilst the obligation to obey the gaming laws should be joint and several, as between the directors of a club and a club's employed officers, legislation should provide that in the case of conflict between an employed officer and his board of directors in relation to the implementation of the requirements

of the authority the decision of the employed officer should prevail.

20.18 Applications for licences of one kind or another should be made to the control authority publicly. Investigation of the applicants should be undertaken by employed investigatory staff of the gaming authority. The cost of such investigation should be borne by the applicant or his employer. Licences should, of course, be personal to the applicant and should be granted for a limited period. The control authority should have power to suspend or cancel licences which it has issued, or impose substantial fines for breach of statutorily imposed gaming standards.

THE CLUBS

New South Wales and the A.C.T.

20.19 In New South Wales, provided a club is registered, it can obtain a licence to install poker machines.

Registration is effected under the Registered Clubs Act 1976 or, in some cases, under the Gaming and Betting Act 1912.

Clubs must be incorporated and although there is no necessity to hold a liquor licence to install poker machines all but a very few clubs in New South Wales have such licence. There is no test applied to a club before granting a poker machine licence to determine whether it is a proper body to conduct a gambling operation, whether it has proper facilities to do so or whether it has any staff who know anything about poker machines.

20.20 In the Australian Capital Territory any incorporated club which obtains a liquor licence will normally be granted permission to install poker machines. The club premises must conform to certain physical requirements but, apart from the issue of Collection Certificates to members of the club for the purpose of clearing poker machines, no investigation is carried out into the club, its directors or its members for the purpose of determining its fitness to engage in a gaming operation.

Victoria

20.21 Should poker machines be legalised for use in licensed clubs in Victoria I consider that the mere obtaining of a liquor licence by a club should not, ipso facto, grant a right to have poker machines. A club wishing to install poker machines should be required to apply to the control authority for a licence. Such licence should only be granted when the club demonstrates that it meets at least the following criteria:-

- (a) that it is incorporated;
- (b) that its secretary/manager and any other employee it is proposed should work in the gaming area is the holder of an appropriate gaming licence;
- (c) that the board of directors displays a knowledge and understanding of the responsibilities of conducting a gaming operation;
- (d) that the club have such physical facilities as render the proper surveillance of a gaming operation possible;
- (e) that the club will install such surveillance apparatus as the gaming authority considers appropriate in the circumstances, having regard to the size of the club and the size of its proposed gaming operation.

- (f) that the club will install only such number of gaming machines as the control authority considers appropriate; and
- (g) that the club, by its directors undertake to abide by any other conditions imposed upon its gaming licence by the control authority.

I do not consider it necessary that a club should go through the formality of holding a ballot of its members before installing poker machines. However, provision should exist for notice of its intention to install poker machines to be brought to all its members, to the local government authority in whose area the clubrooms are, and to any other person the control authority considers ought to receive such notice. In this way, on the hearing of the club's application for a gaming licence, such interested parties as may wish to be heard on the matter will be able to appear and be heard.

20.22 The control authority's supervision of clubs with gaming licences should extend to being able, at any time, by its inspectors, to enter any club or any other place where any documents relating to any club might be found and to inspect such documents. This power should extend to every part of a club's premises and operations, not merely those related to poker machines, otherwise criminal activity, perhaps financed by gaming, could occur in some other part of the club's operations or premises. As Mr. George Wintle, a long time club secretary/manager and devotee of the club movement, aptly put it (T.2383):

"The government should control this thing from the needle to the haystack. They should control everything, the buying and the selling, the secret commissions..."

Club accounts

20.23 Clubs should be required to keep their accounts in a common form laid down by the control authority, thus enabling the authority to monitor a club's income and expenditure. If such accounts are kept and provided to the control authority on at least a quarterly basis (but preferably monthly) the control authority would be able, by comparing one club's performance with that of another, to determine whether there was any need for a more substantial investigation of any particular club or its activities. The use of a computer to compare club performances across the State would soon enable the authority to build up a club profile. If any club began to operate substantially outside that profile in any particular area, the control authority would be able to institute an investigation. For instance, if it were seen that a particular club was paying significantly more for a particular service (e.g. cleaning) than other clubs in the State, the control authority could institute an investigation into the club's cleaning arrangements to determine whether there was any sinister reason (e.g. payment of secret commission to club directors or staff) for such discrepancy. In this regard the control authority would need power to require club directors and licence holders to answer questions relative to club operations and would need the power to subpoena witnesses and/or documents to assist in such inquiry.

CONCLUSION

Is it worth the trouble?

20.24 In this chapter I have discussed what I regard as

the minimum standards which ought to be applied should poker machines be legalised. I have used the licensed club as the probable venue for such legalisation. I have done this for convenience: it would have been repetitive to have described each control mechanism by reference to all the possible venues in which poker machines could be established. However, should my principal recommendation against the legalisation of poker machines not be accepted and should it be decided to permit poker machines in premises other than licensed clubs then this chapter should be read with such amendments as are necessary to make it apply to such other venues.

20.25 A persual of the controls which I have suggested will soon reveal that their imposition will irrevocably change the present nature of a licensed club. Any aspiration such an organisation might have to remain a club in the traditional sense of that word will undoubtedly be frustrated. Some people may say that if poker machines can only be legalised under such controls it would be better if they were not legalised at all. That is a value judgment. Poker machine playing must be recognised for what it is, namely gambling. I believe that is has been the persistent refusal of the New South Wales Government over many years to recognise poker machine playing as being gambling and to control it as such which has led to the problems I have outlined in Chapter 6 above. I regard increased criminal activity as being an inevitable consequence of poker machine legalisation. The control mechanisms which I have discussed in this chapter are

necessary to minimise, as far as possible, the level of that criminal activity. As Mr. Daley, the product development manager of the Ainsworth organisation, put it at T.161:-

"I think a government which does not have the spittle for control should not touch poker machines at all."

28 November 1983

(MURRAY WILCOX Q.C.)

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APPENDIX A

TEXT OF ORDER IN COUNCIL
CONSTITUTING BOARD OF INQUIRY INTO POKER MACHINES
IN VICTORIA

BOARD OF INQUIRY INTO POKER MACHINES

At the Executive Council Chamber, Melbourne, the
twenty ninth day of March 1983

PRESENT:

His Excellency the Governor of Victoria

WHEREAS it is deemed expedient that a Board of Inquiry be appointed for the purpose of inquiring into and reporting upon matters contained in the undermentioned terms of reference concerning whether poker machines should be permitted in Victoria.

NOW THEREFORE, His Excellency the Governor of the State of Victoria, in the Commonwealth of Australia, by and with the advice of the Executive Council of the said State, doth by this Order constitute and appoint Murray Rutledge Wilcox, Q.C., to be a Board for the purpose of inquiring into reporting on and making recommendations upon whether poker machines should be permitted in Victoria and in particular, but without limiting the generality of the foregoing, to inquire into and report upon:-

1. the likely social effects of any such poker machines including the steps, if any, which should be taken to prevent or mitigate any likely adverse social effects;
2. the likely economic effect of any such poker machines including any such effect on the public finances of the State of Victoria;
3. the legal and administrative measures, if any, which should be adopted to control and supervise the operations of any poker machines which may be permitted in Victoria;
4. the measures, if any, which should be taken to prevent undesirable persons from having a financial or other connection with or being in a position to influence any aspect of the supply, installation, maintenance and operations of any poker machines which may be permitted in Victoria;
5. whether the operations of any such poker machines should be limited to licensed clubs, hotels or any other particular types of establishments.

2.

AND it is hereby directed that the said Murray Rutledge Wilcox shall, with as little delay as possible and by 31st October, 1983 at the latest, report under his hand his opinion resulting from this Inquiry.

WHEREOF the said Murray Rutledge Wilcox and all other persons whom it may concern are to take notice and govern themselves accordingly.

AND the Honourable JOHN CAIN, Her Majesty's Attorney-General for the State of Victoria, shall give the necessary directions herein accordingly.

CLERK OF THE EXECUTIVE COUNCIL

[NOTE: By a further Order in Council dated 11 October 1983 the due date for report was extended until 30 November 1983]

APPENDIX BPRELIMINARY DIRECTIONS

PRELIMINARY DIRECTIONS

The Board held its first preliminary hearing on Friday 8 April 1983 where persons and organisations desiring to participate as parties in the Inquiry made application for leave to appear. Parties granted leave to appear were advised that a preliminary statement should be prepared and lodged with the Secretary no later than Monday 2 May 1983. In the preliminary statement the following matters were to be set out:-

- i. Matters within the terms of reference with which the parties were concerned;
- ii. the nature of the submission made by the party in respect of each of those matters;
- iii. the nature of the evidence which the party wished to place before the Board in support of those submissions.

On Tuesday 3 May 1983, copies of the preliminary statements of each party were made available to all other parties to the Inquiry.

On Friday 6 May, a second preliminary hearing of the Board was held. At this hearing the parties to the Inquiry were each given an identifying letter of the alphabet. It was also confirmed that each party was to prepare and lodge with the Secretary on or before Thursday 16 June 1983, thirty five copies of its written evidence. It was pointed out that this evidence should be so arranged so as to clearly indicate:-

2.

- i. The matter within the terms of reference and the preliminary statement to which it is related;
- ii. the person who takes responsibility for, and who will be called to verify, each part of the written evidence

On Friday 17 June 1983, copies of the written evidence were made available to each of the parties.

On 24 June 1983, a third preliminary hearing of the Board was held. At this hearing a large volume of material collected by the Board was tendered and given exhibit numbers running serially from one onwards, using sub-classifications for material which could be conveniently dealt with together. It was confirmed that on or before 22 July 1983, each party was to lodge with the Secretary of the Board thirty five copies of its written evidence in reply. It was provided that this evidence in reply should be so arranged as to clearly indicate:-

- i. The evidence in relation to which it replies;
- ii. the person who takes responsibility for, and who will be called to verify, each part of the evidence in reply.

On Monday 25 July 1983, there was made available to each party a copy of the written evidence in reply of each other party.

On Monday 1 August 1983, the Board commenced the hearing of oral evidence. It was decided that, subject to special circumstances, the Board would

3.

sit between the hours of 9 a.m. to 1 p.m. and 2 p.m. to 4 p.m., Monday to Thursday inclusive. It was confirmed that, except with leave of the Board to be given only in exceptional circumstances, the evidence of witnesses would be received in the following manner:-

- i. Oral evidence in chief would be confined to verification, explanation and elaboration of material contained in the written evidence lodged by the party on whose behalf the witnesses are called;
 - ii. witnesses would be expected to deal with all matters of evidence to be adduced from them, whether in their case in chief or in reply;
 - iii. except in the case of surprise, witnesses would not be called in reply;
 - iv. witnesses would be subject to cross-examination caused by the usual rules of evidence.
-

APPENDIX C

LIST OF PARTIES GRANTED LEAVE TO APPEAR

APPENDIX CPARTIES AND PERSONS REPRESENTED

	Representative	Solicitors (if any)
Assisting the Board	Bernard D. Bongiorno of counsel	V. Dyer, P. O'Connell and R. Bardsley of Crown Solicitor's Office (at various times)

Leave granted prior to commencement of oral hearings:-

(A) The Australian Hotels Association	P.J.O'Callaghan,Q.C. J.F. Larkins of counsel and A. Joyce, solicitor (at various times)	Mahony &Galvin
(B) The Licensed Clubs Association of Victoria	P. Garling of counsel (of the Sydney Bar)	Madden Butler Elder & Graham
(C) Ainsworth, L.H. and Ainsworth Nominees Pty. Ltd.	D. Landa, solicitor J.J. Spigelman and J. Pritchard of counsel (of the Sydney Bar) and J. Newnan (solicitor and employee of Ainsworth Organisation)	David Landa Stewart & Co., solicitors of Sydney.
(D) Carlton & United Breweries Ltd.	R.C. Horsfall, solicitor	Pavey Whiting & Byrne
(E) Organisations Against Poker Machines	R. Lloyd, solicitor	Ralph W. Lloyd & Co.

	Representative	Solicitors (if any)
(F)	McKay, W.W., Lakes Entrance Sub-Branch of the Returned Servicemen's League, Lakes Entrance Golf Club, Lakes Entrance Bowling Club	W.W. McKay
(G)	Mornington Soccer Club, Bay City Entertainment Centre, Black Rock Football Club, and others	D.J. Corless
(H)	The Anglican Church of Australia (Diocese of Melbourne, Bendigo, Wangaratta, Ballarat and Gippsland), Uniting Church in Australia (Victorian Synod), the Baptist Union of Victoria, the Salvation Army, the Churches of Christ Conference in Victoria and Tasmania, the Presbyterian Church of Victoria, the Victorian Conference of Seventh Day Adventist and Lutheran Church of Australia	D.G. Henshall of counsel, and Father A. Oddy (at various times) E.P. Johnson & Davies
(J)	Bally Australia Pty. Ltd.	V. Korman, solicitor P.D. Cummins, Q.C. and P.B. Murdoch of counsel (at various times) of Sydney Phillips Fox & Masel as agents for Minter Simpson & Co., solicitors
(K)	Various business interests in Lakes Entrance, Bairnsdale and Paynesville	E.V. Crampton

	Representative	Solicitors (if any)
(L) Musicians' Union of Australia, Melbourne Branch	A. Hutchinson	
(M) Inter-Church Council of Men's Societies of Victoria	J.L. Bishop	
(N) Federated Liquor & Allied Industries Employees Union (Victorian Branch)	L. Rubinstein and S. Charlesworth (at various times)	
(O) Rakozu Pty. Ltd.	G. Boffa solicitor	Boffa & Co.
(P) Amusement Machines Operators Association of Victoria	S. Patan and G. Peake (at various times)	
(Q) Hospitality Industry Association of Australia (Victoria)	G. Kratzer (Pres- ident H.I.A.A.) and R.J. Johnston of counsel (at various times)	Margolis & Tuszynski
(R) Institute of Recreation	C. Opie and G. Bryant (at various times)	
(S) Licensed Freeholders' Association of Voctoria	S. Manallack (A.M. Advisory Services) N.R. McPhee, Q.C. and J.H. Karkar of counsel (at various times)	Pavey, Whiting & Byrne

	Representative	Solicitors (if any)
(T) Returned Servicemen's League (Victorian Branch)	A.A. Stobart	
(U) Pacific Poker Machines	A. Baird, solicitor	H.S.W. Lawson Hughes & Co. solicitors of Sydney
(V) Poker Machine Distributors of Victoria	D.G. O'Sullivan	
(W) Cutler, J.H.	J.H. Cutler	
(X) National Council of Women	J. Cheshire	
(Y) Martin, R.	R. Martin	
(Z) Country Women's Association of Victoria	W. Eliason	
(AA) Retail Liquor Merchants Association of Victoria	J. Shimmin	
(BB) Victorian Country Football League	G. Arthur	
(CC) Seventh Day Adventist Church in Victoria	Pastor A. Stanton	

	Representative	Solicitors (if any)
(DD) Secretaries & Managers Association of Australia	P. La Fontaine, solicitor	La Fontaine & Co. solicitors of Sydney.
(EE) Ford, F. & O.A.	O.A. Ford	
(FF) Actors' Equity of Australia	G. Jones	
(GG) Lyon, G.I.	G.I. Lyon	
(HH) Victorian Association for Deserted Children	C.L. Greaves	
(JJ) City of Preston	D. McLean	
(KK) Brighton Union Cricket Club & Cape Country Club	N.F. Pullen	
(LL) Melbourne City Council	S. Daley of counsel	The Corporation Solicitor

Leave granted subsequent to commencement of hearings:-

(MM) Vibert, E.P.	I.B. Ward, Q.C.	Cameron Gillingham Gillingham & Co. solicitors of Sydney.
(NN) Racing Industry of Victoria	J. Hedigan, Q.C. Dr. P. Buchanan of counsel.	Purves & Purves

	Representative	Solicitors (if any)
<u>Persons represented who were not parties:-</u>		
Nutt & Muddle & Sons Pty. Ltd.and McDougal, G.G.	Ross of counsel	Baker & McKenzie
Eastern Gaming Operators Limited	K. Duncan, solicitor	Ellison, Hewison & Whitehead
Clarebrough, P.J.	J. Curtain, solicitor	

Notes:-

1. At the first preliminary hearing of the Board on 8 April 1983, 33 parties were given leave to appear. They were given an identifying letter in the order in which they appeared. All exhibits tendered by them subsequently or which related to them were prefixed by their identifying letter. Exhibits tendered by Counsel Assisting the Board were numbered serially without prefix.

2. Eastern Gaming Operators Limited never became a party. Its submission was tendered by counsel assisting and marked Exhibit 2.00.

3. Mr. P.J. Clarebrough, Group General Manager of the Ainsworth Organisation, was represented by a solicitor on 7 October 1983 for the purpose of tendering an explanation to the Board (T.2877-2896).

4. Nutt and Muddle and Sons Pty. Ltd.. andd Mr. G. McDougall were represented whilst Mr. McDougall & Mr. G. Cregen gave evidence. They did not seek leave to appear as parties.

APPENDIX D

INSPECTIONS CARRIED OUT BY THE BOARD

APPENDIX DINSPECTIONS CARRIED OUT BY THE BOARDVictorian Clubs

Geelong Italian Social Club, Geelong
 Royal Geelong Yacht Club, Geelong
 Geelong Football Club Social Club, Geelong
 Geelong Golf Club, Geelong
 Corio Club, Geelong West
 Italian Social Club, Werribee
 Collingwood Football Club Social Club, Collingwood
 City and Overseas Club, Windsor
 Dandenong RSL Club, Dandenong
 Dandenong Club, Dandenong
 Kew Bowling Club, Kew
 Bendigo Golf Club, Bendigo
 Bendigo RSL Club, Bendigo
 Bendigo Club, Bendigo
 Midlands Golf Club, Ballarat
 Ballarat RSL Club, Ballarat
 Ballarat City Bowling Club, Ballarat
 Ballarat East Bowling Club, Ballarat
 Red Cliffs Club, Red Cliffs
 Mildura Workers Club, Mildura
 Mildura Golf Club, Mildura
 Mildura Settlers Club, Mildura
 Swan Hill Club, Swan Hill
 Swan Hill Golf Club, Swan Hill
 Carlton Football Club Social Club, Carlton
 Echuca Workers Club, Echuca
 Cobram Italian Social Club, Cobram
 Lakes Entrance RSL Club, Lakes Entrance
 Lakes Entrance Bowling Club, Lakes Entrance
 Lakes Entrance Golf Club, Lakes Entrance

New South Wales Clubs

South Sydney Juniors Leagues Club, Kingsford
 Paddington/Woollahra RSL Club, Paddington
 Eastern Suburbs Leagues Club, Bondi Junction
 Hakoah Club, Bondi
 Castle Hill RSL Club, Castle Hill
 Blacktown Workers Club, Blacktown
 Campbelltown Catholic Club, Campbelltown
 Western Suburbs Leagues Club, Wollongong
 Berkeley Sports & Social Club, Wollongong
 Shellharbour Workers Club, Shellharbour
 Port Kembla Golf Club, Port Kembla
 Dapto Leagues Club, Dapto
 Illawarra Yacht Club, Wollongong
 Fraternity Bowling & Recreation Club, Wollongong

Woonona-Bulli RSL Club, Wollongong
 Brighton RSL Club, Brighton-le-Sands
 Dubbo RSL Club, Dubbo
 Railway Institute Bowling Club, Dubbo
 Wentworth & District Services Club, Wentworth
 Coomealla Memorial Club, Dareton
 Tooleybuc Sporting & Recreation Club, Tooleybuc
 Rich River Golf Club, Moama
 Cobram-Barooga Golf Club, Barooga
 Mulwala & District Services Club, Mulwala
 Corowa Golf Club, Corowa
 Railway Institute Bowling Club, Albury
 Commercial Club, Albury
 Lavington Sports Club, Lavington
 Merimbula/Pambula Golf Club, Merimbula
 Merimbula RSL Club, Merimbula
 Merimbula Imlay Bowling Club, Merimbula

Australia Capital Territory Clubs

Canberra Workers Club, Canberra
 Ainslie Football Club, Canberra
 Canberra Southern Cross Club, Canberra
 Woden Valley Bowling Club, Canberra

Victorian Hotels

Lord Nelson Hotel, Geelong
 Dinosaur Hotel, Newcomb
 Great Western Hotel, Newtown
 Sawyers Arms Hotel, Chilwell
 Sundowner Hotel, Norlane
 Caulfield Club Hotel, Caulfield
 Turf Club Hotel, Caulfield
 Southern Aurora Hotel, Dandenong
 Village Green Hotel, Glen Waverley
 Rising Sun Hotel, Bendigo
 Botanical Gardens Hotel, White Hills
 Shamrock Hotel, Bendigo
 Belmont Hotel, Bendigo
 North City Hotel, Ballarat
 Bluebell Hotel, Wendouree
 Western Hotel, Ballarat
 Parkview Hotel, Ballarat
 Irymple Community Hotel, Irymple
 Grand Hotel, Mildura
 Oasis Hotel/Motel, Swan Hill
 Commercial Hotel, Swan Hill
 Caledonian Hotel, Echuca
 Shamrock Hotel, Echuca
 Grand Central Hotel, Cobram
 Royal Mail Hotel, Yarrawonga
 Shamrock Hotel, Echuca

Central Hotel, Lakes Entrance
Builders Arms Hotel, Fitzroy
Royal Hotel, Fitzroy.

New South Wales Hotels

Golden Grove Hotel, Maroubra
Coogee Bay Hotel, Coogee
Court House Hotel, Darlinghurst
Hotel Bondi, Bondi
Bondi Junction Hotel, Bondi Junction
Pennant Hills Inn, Pennant Hills
Namatjira Hotel, Rooty Hill
Blacktown Inn, Blacktown
Bradbury Inn, Bradbury
Unanderra Hotel, Unanderra
Dapto Hotel, Dapto
Coniston Hotel, Coniston
Cabbage Tree Hotel, Fairy Meadow
Brighton Hotel, Brighton-le-Sands
Commercial Hotel, Dubbo
Macquarie Inn, Dubbo
Railway Junction Hotel, Dubbo
Royal Hotel, Dubbo
Royal Hotel, Wnetworth
Coomealla Club Hotel, Coomealla
Tooleybuc Hotel, Tooleybuc
Railway Hotel, Albury
Albion Hotel, Albury
Boomerang Hotel/Motel, North Albury

South Australian Hotels

St. Leonards Hotel, Glenelg
Holdfast Hotel, Glenelg
Brighton Hotel, Brighton
Tonsley Hotel, St. Marys
Belair Hotel, Belair
The Feathers Hotel, Burnside
The Fountain Inn Hotel, Unley
Turf Tavern Hotel, Eastwood
Charles Sturt Tavern, Adelaide
Tattersalls Hotel, Adelaide
Princes Berkeley Hotel, Adelaide
City Hotel, Adelaide
The Royal Admiral Hotel, Adelaide
The Overway Hotel, Adelaide
Southward Hotel, Thebarton
Joiners' Arms Hotel, Hindmarsh
Governor Hindmarsh Hotel, Hindmarsh
Royal Hotel, Torrensville

Restaurants and Reception Centres

Fishermen's Pier Restaurant, Geelong
 Roshashane, Geelong
 Copper Pot Restaurant, Bendigo
 Rendezvous Restaurant, Mildura
 Swagman Restaurant, Ferntree Gully
 Rembrandt's Restaurant, Wantirna South

Victorian Recreation and Leisure Centres

Eaglehawk Recreation Centre, Bendigo
 Hollioake Park Sporting Complex, Wendouree
 Lake Boga Community Centre, Lake Boga
 Cohuna Education & Community Activity Centre, Cohuna
 Paramount Arts Activity Centre, Echuca
 Nathalia Sports & Community Centre, Nathalia
 Box Hill Recreation Centre, Box Hill
 Golden Bowl, Camberwell
 Wodonga Stadium, Wodonga
 Ascot Vale Leisure Centre, Ascot Vale
 Melbourne City Baths, Melbourne
 Bairnsdale Recreation Centre, Bairnsdale.

New South Wales Recreation and Leisure Centres

Wran Leisure Centre, Villawood
 Fairfield City Leisure Centre, Fairfield
 E.G. Whitlam Recreation Centre, Liverpool
 Airds Activity Centre, Campbelltown
 Kellyville Recreation Centre, Kellyville
 Warringah Aquatic Centre, Warringah Shire

Other

ANZ Bank Data Processing Unit, South Yarra
 Martin Meters, Fitzroy
 Ainsworth Consolidated Industries, Rosebery (NSW)
 Dubbo City Council Chambers, Dubbo
 Sovereign Hill, Ballarat

APPENDIX E
DIRECTIONS REGARDING FINAL SUBMISSIONS

APPENDIX EDIRECTIONS RE SUBMISSIONS

1. The final submissions of the parties should be reduced to writing and 10 copies lodged with the Secretary by 1 p.m. on Thursday, 13 October next. Copies of the submissions of other parties will be available by way of exchange at that time. It is a matter of considerable importance that this time be strictly adhered to. I wish to read all submissions and the material referred to therein before the commencement of oral addresses on Monday, 17 October. No doubt the representatives of the parties will wish to take a similar course in relation to the submissions of other parties.
2. Save in respect of matters raised for the first time by the submissions of some other party, parties will be confined in their oral addresses to matters raised by their written submissions. The written submissions should therefore be comprehensive but propositions may (and desirably will) be stated succinctly and orally elaborated as required.
3. It would be helpful if written submissions were arrayed by reference to the various paragraphs in the terms of reference. The submissions should indicate:
 - a) the findings of fact for which the party contends, with references to the evidence said to support those findings
(NOTE: It is not necessary to repeat the evidence but precise references would be appreciated.)
 - b) the recommendations which, it is suggested, the Board should make and the reasons therefor.
4. As discussed with counsel orally, it seems to me that out of all of the theoretically possible permutations there are five possibilities which require discussion in the report. This is said subject to the possibility of persuasion that there are others. I would appreciate submissions on each of the following possibilities:

(The order of statement is not significant. Neither is the list of relevant questions intended to be exhaustive.)

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2.

- a) Introduction of poker machines into licensed clubs (or clubs not in fact licensed - perhaps because of a local option rule or a deliberate non-alcohol policy of the club - but which would comply with the usual licensing requirements) on the New South Wales model.

Subject to argument to the contrary, it appears to me that in the long term it would be unrealistic to expect:

- i. to restrict by law the numbers of members;
- ii. to maintain strict door controls; or
- iii. to prevent clubs with poker machines undercutting hotels in respect of the prices of food, alcohol and (perhaps) entertainment.

This option therefore assumes a reproduction of the New South Wales situation. It raises, inter alia, the questions:

- A. Has the N.S.W. experiment proved successful, on balance? What are the social benefits achieved by the N.S.W. clubs? Could those benefits have been equally or better achieved in another way? Are the proven benefits such as to justify the grant to clubs of a monopoly of the privilege of raising revenue from poker machines?
- B. What are the benefits of the N.S.W. model in terms of economic (no need to repeat submissions on this issue if already lodged) and revenue benefits?
- C. What would be the consequences for other businesses - hotels, restaurants, racing industry, other lawful gambling e.g. bingo, of the N.S.W. Model? To what extent are those consequences socially significant?
- D. What would be the consequences in terms of club life - the nature and size of clubs, the requisite security measures, control by directors, restrictions on the election of directors and appointment of managers?
- E. What are the town planning implications of the "force-fed" growth of existing clubs?
- F. How should the profits be distributed?

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3.

b) Introduction of poker machines into both licensed clubs and hotels.

Subject to argument to the contrary, it appears to me to be the fact that, as a generalisation, Victorian hotels are of a higher standard than N.S.W. hotels in terms of presentation, maintenance, comfort and provision of meals. A question arises as to the extent to which this is caused by:

- i. The existence of, and active supervision of hotels by, the Liquor Control Commission;
- ii. Section 11A of the Liquor Control Act which has no counterpart in N.S.W (but note that there is a major difference in the ratio of draught beer/package beer sales between N.S.W. and Victoria which may be significant)
- iii. the absence of poker machines in Victorian clubs.

This option raises a number of issues. They include:

- A. What view should be taken about the taxation of the proceeds of machines in clubs and hotels? If both are fully taxed, i.e. full proceeds less any compensation for site rent, would anybody want poker machines? Why? Under such circumstances is it realistic to assume non-interference by the club or hotel with the machines so as to gain an illicit benefit? If hotels are taxed more heavily than clubs is there resultant unfair competition for hotels?
- B. What are the implications for hotels of having poker machines - in terms of changing the atmosphere in, and accessibility by children to, hotels, in terms of duties of licensees, etc.?
- C. What are the security problems of having machines in hotels, especially small numbers of machines in small hotels?

c) The adoption of the "community club" notion i.e. a poker machine club in each district, selected by reference to its broad base of community support

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4.

and offering a wide range of activities (the Institute of Recreation/Crampton proposal). This option raises questions which include:

- A. The justification for such a course. Are existing community facilities inadequate? If so, are the deficiencies likely to be rectified in any event within a reasonable time without poker machine community clubs?
 - B. What would be the effect of such community clubs on existing (non-poker machine) clubs with whom they would be in competition for members and revenue? Does it matter if the existing clubs are adversely affected?
 - C. What would be the effect of such community clubs on hotels and restaurants? Is it realistic to assume the likelihood of preventing the under-cutting of food and liquor prices in hotels and restaurants by community clubs? If so, how would this be achieved?
 - D. How do community clubs get going? They need capital to provide the facilities to qualify for the poker machine licence. Is this likely to be forthcoming?
 - E. What are the social implications of having a section of a community club in which gambling is actively promoted? What are the security problems?
 - F. How should the profits be distributed?
- d) the establishment of a limited number(say 6-10 in total) of casino like poker machine establishments designed to:
- i. provide an alternative to the border clubs for those who like to make an excursion to a poker machine establishment, being more accessible than the border clubs but sufficiently distant to require the player to make a deliberate decision to seek out the machines, i.e. eliminating the impulse bet;
 - ii. gain revenue for the State of Victoria especially at the expense of the border clubs and the N.S.W. Treasury.

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5.

The concept is that these establishments would be conducted directly by a Victorian Government agency or by a licensee of the Victorian Government. There would be a poker machine room and restaurant and bar facilities but the government control would be such as to ensure no under-cutting of local hotels and restaurants in terms of food and liquor prices. The security problem would be reduced by the fact that the number of establishments is small and that each is under professional management.

However, the option raises these questions:

- A. How compatible is this option with the recommendations of the Casino Inquiry and the decision of the government to adopt those recommendations?
- B. If the option, as described, is so compatible how realistic is it to assume, over the long term, that the number of establishments will be restricted and that the gambling activities will be confined to poker machines? In other words, can one be confident that the poker machine casinos will not simply proliferate in number and become full-blown casinos?

e) no poker machines in Victoria.

This option would appear to be the appropriate response if:

- 1. the moral argument should be regarded as persuasive. (At present, it seems to me inappropriate to reject poker machines simply on the ground that they involve gambling, even gambling thought by some to be of a particularly pernicious kind. Some people hold that view but many do not. In a pluralistic society it seems inappropriate to prohibit an activity on moral grounds where that moral view is not overwhelmingly held. The better view is to look to the consequences of the particular form of gambling before deciding whether it should be regarded as acceptable on moral grounds.)
or;

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6.

- ii. the social effects of poker machine gambling especially likely social welfare and criminal activity problems outweigh the benefits of any of the available options (What are the social welfare costs? What are the implications in respect of criminal activities? What are enforcement and civil liberties costs?) or;
- iii. none of the four options mentioned above is, on balance, a desirable solution.

5. Assuming a recommendation in favour of the introduction of poker machines (in whatever form) subsidiary questions arise. They include:

- A. What are the desirable controls to be imposed?
- B. Should private manufacturers be allowed to supply the market? Are the existing suppliers suitable in terms of conduct and cost of machines? Would it be better to restrict the market to machines manufactured by, or under licence from, the State government? What are the implications of this in respect of efficiency, cost, player appeal, government involvement?

6. Oral addresses will commence on Monday, 17 October. I presently have in mind that the order of addresses should be roughly the reverse of presentation of evidence, i.e. -

Melbourne City Council and other councils.
Mr. Corless
Racing Industry
Churches
Licensed Freeholders
Australian Hotels Association
Manufacturers, if desired
L.C.A.V.

If other parties wish to address they will be appropriately slotted in.

29 September, 1983.

MURRAY WILCOX Q.C.

APPENDIX F

PERSONS AND ORGANISATIONS OTHER THAN PARTIES
WHO MADE WRITTEN SUBMISSIONS

APPENDIX FPERSONS AND ORGANISATIONS OTHER THAN PARTIES
WHO MADE WRITTEN SUBMISSIONS

Allan, F.J.
 Ashby-Nutt, H. (Mr.)
 Attril, T.J. (Mr.)
 Australian Republican Party

Bachelor, G. (Mrs.)
 Ballarat Chamber of Commerce
 Barham Golf Country Club Ltd.
 Basset, J. & J.
 Bates, M. (Mrs.)
 Belfrage, M.J. (Mr.)
 Blackburn North Baptist Church
 Blundell, K.W.
 Blundell, R.M.
 Brear, L. (Mrs.)
 Buglio, J.A. (Mr.)
 Burke S. (Mrs.)

Cantley, I.J. (Mr.)
 Carlton Association
 Catholic Bishops of Melbourne, Sandhurst and Ballarat
 Catholic Women's League of Victoria and Wagga Wagga
 Chapman, A. (Mr.)
 Connell, R. (Mr.)
 Connolly, P.J. (Mr.)
 Copeman, R. (Mr.)
 Craig, W.H. (Mr.)
 Cross, I. (Mr. & Mrs.)
 Currie, M.D. (Mr.)

Dawson, G. (Mr.)
 Deckert, (Mr.)
 Dudley, N. (Mrs.)

Eastern Gaming Operations Ltd.
 Echuca, City of
 Eltham Basketball Club
 Ewin, R. (Mr.)

Flemington Association
 Forbes, J. (Miss)
 Fyffe, W.V. (Mr.)

Gain, G.J. (Mr.)
 Green, H. (Mrs.)
 Green, J. (Mr.)
 Greenfield, K. (Mrs.)

Halliday, H. (Mrs.)
 Harrison, N. (Mrs.)
 Hart, F. (Mr.)
 Holder, P.R. (Mr.)
 Hunter, T.J. (Pastor)
 Hurley, R.H. (Mr.)

Jones, H. (Ms.)
 Jones, E.C. (Mr.)
 Jones, R.D. (Mrs.)
 Jordan, J.W. (Mr. & Mrs.)

Kamphuls, A. (Mr.)
 Kilby, A. (Mrs.)
 Kilonis, A.G. (Mr.)
 Knight, R.G. (Mr.)
 Kosbab, D. (Mr.)
 Kuhn, A.E. (Mr.)

Lamb, C.P. (Mr.)
 Low, L.M. (Mrs.)

Martin, E. & S.
 Martin, S. (Mr.)
 McAlister, M. (Mr.)
 McCormack, B. (Fr.)
 McDonald, E.A. (Mr.)
 McIntosh, D.G. (Mr.)
 Meyer, M. (Mr.)
 Mildura & District & Eastern Mallee Sports Assembly
 Steering Committee
 Mildura, Shire of
 Miller, E. (Mrs.)
 Morris, J.H. (Mr.)
 Morse, R. (Mr.)
 Mott, C.A. (Mr.)
 Muirhead, A. (Mrs.)
 Muller, R. (Mr. & Mrs.)
 Mullins, G. (Mr.)

Nash, V.B.
 Newell, I.W. (Mrs.)
 Nichols, N. (Mrs.)
 North West Squash League
 North & West Melbourne Community
 Nutt & Muddle & Sons Pty. Ltd.

O'Donnell, A. (Mr.)
 O'Hanlon, J.F. (Mr.)
 Oldmeadow, F.M. (Mrs.)
 Owen, K.M. (Mr.)
 Owens, G.G.

Page, R. (Mrs.)
 Parkville Association
 Parnell, P. (Mr.)
 Patterson, (Mrs.)
 Penberthy, (Mrs.)
 Porter, R. (Mr.)
 Portland, Town of
 Prahran, City of
 Prahran Residents Association

Rafferty, J. (Mr.)
 Ratford, D. (Mr.)
 Religious Society of Friends
 Retail Traders Association of Victoria
 Rosebud Country Club
 Royal Victorian Bowls Association
 Rudd, W.A. (Mr.)
 Russell, K.A. (Mrs.)
 Ryan, M. (Mrs.)

Schmidt, P. (Mr.)
 Schmidt, R. (Mrs.)
 Skinner, P. (Mrs.)
 Smith, R. (Mr.)
 South, S. (Mr.)
 St. Kilda Residents Group
 St. Thomas More's Parish Study Group
 Swan Hill Golf Club

Taylor, A. (Mrs.)
 Toorak South Yarra Club
 Truman, W.R. (Mrs.)

Victoria Park Action Group
 Victorian Association of Performing Arts Centre
 Victorian Farmers & Graziers Association, Meredith Branch

Warrnambool, City of
 Williams, E. (Mrs.)
 Willis, (Mr.)
 Wilson, I.P. (Mr.)
 Wintle, G. (Mr.)
 Wood, A.H. Rev. Dr.
 Woppencamp, F. (Mrs.)
 Wray-McCann, J.J. (Mr.)

Zimnair, J. (Mrs.)

APPENDIX G

PERSONS WHO GAVE ORAL EVIDENCE
OR PROVIDED WRITTEN STATEMENTS

APPENDIX GPERSONS WHO GAVE ORAL EVIDENCE
OR PROVIDED WRITTEN STATEMENTS

ALLCOCK	Clive
ANDREWS	Don
BALDWIN	David John
BENDLE	Ian William
BENNETT	Peter Andrew
BISHOP	John Leslie
BONSER	Douglas Frederick
BOTTOM	Robert Godier
BOUMA	Garry Donald
BULLMAN	Roger
CALDER	Paul Robert
CALDWELL	Geoffrey Thomas
CAMERON	Bruce John
CARLESS	Alan James
CHARLESWORTH	Sarah Catherine Mary
CHUBB	Frederick Albert Charles
CLAREBROUGH	Peter James
COLE	Donald Allan
COLLIE	Michael John Stafford
CORLESS	Denis John
COX	Darryl Maitland
COX	William Murray
CRAGEN	Francis George Bernard
CRAMPTON	Edgar Vincent
CROOK	Russell Nelson
CULLEY	Edward William
CURTIS	Keith Woodham
CUSHMAN	John Grant
CUTLER	John Henry
DALEY	Keiran
DANAHER	Stephen Michael
DEERY	Joh Bourke
DELANEY	John Michael
DICKERSON	Mark
DUNCAN	Stanley
FACER	Victor Alan
FARR	David Russell
FEARN-WANNAN	Howard James
FLOYD	Jeffrey Lane
FORD	Frank
FORD	Olwyn Aileen
FULLERTON	Graeme D.

GLOVER	Keith William
GODFREY	Terry
GRIFFIN	James Philip
HAGGER	Derek Leslie
HAMILTON-SMITH	Elery
HART	Francis Joseph
HAYES	William Francis
HOLLINHEAD	Keith
HOLSMAN	Andrew John
HORNSBY	Marriott Joseph
HUGGARD	Trevor Maxwell
HURLEY	Ronald James
IMRIE	Peter Maxwell
JONES	Keith Stanley
KEARNS	Keith George
KRATZER	Gerd Dieter
LAMB	Christopher James
LAMONT	Colin Charles
LOVEJOY	Ian Leslie
LYON	George I.
McCLIMONT	Graeme Hudson
MacDONALD	Kenneth Ewan
McDOUGALL	Gareth Graham
McKAY	Walter William
McKENZIE	James Stewart
McLEAN	Donald Orrock
MacRAE	Donald Alister
MARTIN	Raymond Lewis
MARTIN	David
MARTYN	Leslie John
MATTHEWS	John Oliver
MAZENGARB	Peter
MEREDITH	Geoffrey
NEWELL	Jeanette Carol
NEWNAN	John Neville
NORMAN	Neville Robert
OBERIN	Donal Keith
PATCHETT	Chris
PANNAM	Peter William
PARKER	David Ernest
PAYNE	Thomas
PETRIE	John
PHIBBS	Peter Julian
PULLEN	Noel Francis

QUINNANE	Francis
RAYSON	Patricia Anne
REED	Karl
REHE	Ross William
ROBERTSON	Thomas
ROCHFORD	James Martin
ROMANS	Donald Bishop
ROSS	Geoffrey Andrew
ROSS	Mark Laurence
RUSSELL	Ernest
RUXTON	Bruce Carlisle
RYAN	Noel Joseph Doane
SHEEHAN	Patrick Francis
SIMMONDS	Jack Kevin
SMITH	Robert John
SOLOMONS	Laurence William
SOMMERICH	Leo
SPELDEWINDE	Byron
STANTON	Harley
SULLIVAN	John Ernest
SWAN	Geoffrey Milroy
TOPLIS	Paul John
URBAN	Andrew
VAGG	Robert Neil
VIBERT	Edward Philip
WASHINGTON	Darryl Lindsay
WEULE	Betty Lorraine
WILLIS	John Vincent
WINTLE	George William

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