

POKER MACHINE INDUSTRY LICENSING

1. BACKGROUND

- 1.1 The Premier, the Honourable N.K. Wran, Q.C., M.P., announced on 5th May, 1985 that legislation requiring the licensing of all persons involved with poker machines would be introduced in the next Parliamentary Session which commences in September.

The Board has been given the task of implementing this initiative.

- 1.2 As requested by the Premier, the views of interested parties within the poker machine industry have been canvassed. Many submissions, some in great detail, have been received and the views expressed therein taken into account in the formulation of the following proposals.

The Board has also held several forums for interested parties to meet Board Officers to discuss matters relating to the Governmental initiative.

- 1.3. It is clear there is an almost universal desire from all sectors of the industry for a system of licensing of persons external to clubs to be implemented. It is, therefore, recommended that a system of licensing certain categories of persons within the poker machine industry be introduced by legislation.

- 1.4. The sources of the impetus for such a course of action include the following:-

- Report of the Royal Commission into Allegations of Organised Crime in Clubs, 1974 (The Moffitt Report) which made severe criticisms of certain persons and corporations then active in the industry;
- Report of Board of Inquiry into Poker Machines, 1983 commissioned by the Victorian Government (The Wilcox Report) which inter alia described the record of the New South Wales Club industry in the area of criminal activities associated with poker machines in clubs as "deplorable";
- Recommendations of the Club Industry Advisory Council (5/9/84);
- Constant favourable mention by the Poker Machine Technical Committee;
- The preponderance of submissions made by Clubs, Club representative bodies and other persons (manufacturers, agents, technicians, consultants) which indicated an acceptance of the need for licensing.

Such a system, when introduced, will have the potential for raising standards of honesty and competence within the groups licensed, expelling or preventing the entry of persons not meeting the prescribed standards, and improving the image of and raising public confidence in the club industry.

1.5 It is also recommended that the existing legislative provisions relating to the licensing of poker machines be repealed and replaced by (or amended to include) provisions which will give the Board more specific and stringent control over the standards to which poker machines must conform before they may be licensed for operation in clubs. Again, support for this general concept has been almost universal within the industry and is given special urgency by the recent passage of the Amusement Devices legislation. The proposals will also institute the commencement of a phased delicensing of the existing stock of licensed poker machines.

1.6 In formulating these proposals, the legislation operative in the A.C.T. concerning poker machines and in N.S.W. concerning approved amusement devices has been examined. In many instances, the principles adopted in those spheres have either been accepted or rejected. Where appropriate, reasons have been given for acceptance or rejection of such principles.

2. The personnel to be licensed

2.1 "Poker machine dealers"

The classification of the role of a poker machine dealer and the permitted scope of his activities is an area of contention. This is brought about by the fact that within the poker machine industry there exists an entrenched body of importers and rebuilders of machines, whereas in the amusement device legislation, imported and rebuilt devices are ineligible for licensing.

2.2 Insofar as the poker machine industry is concerned, it is considered essential that the availability of imported and rebuilt machines to clubs remain, for an interim period at least.

The reasons for this major departure from the amusement device legislation are as follows:-

- (a) there is an existing market for imported and rebuilt machines.
- (b) the availability of these machines has developed a healthy level of competition within the poker machine sales market;
- (c) clubs and the industry generally strongly support the availability of a wide choice of machines, irrespective of their origin;

- (d) evidence is to hand that the imported and rebuilt machines are equal or superior to locally manufactured machines in terms of security, reliability and profitability;
- (e) rebuilt machines may be purchased for less than one half retail price of locally manufactured or imported machines; an extremely important consideration, given the marginal financial condition of many existing registered clubs;
- (f) imported machines and some rebuilt machines have proven to be technologically superior to locally manufactured machines; this has engendered the necessity for local manufacturers to research and develop technological advancements in their products;

2.3 The drawbacks involved in permitting imported and rebuilt machines, which motivated their non-recognition by the amusement devices legislation are as follows:-

- (a) In practical terms it is more difficult to enforce standards of manufacture, behaviour, financial liability, physical security and similar matters on persons or entities not within the jurisdiction of the licensing authority (N.S.W.).
- (b) By requiring local manufacture, assembly, etc. as a prerequisite to approval by the authority, the legislation will tend to promote employment opportunities and technical development, with consequent improved competitiveness of local manufacturers.

In view of these factors, their benefits to the club industry outweigh whatever other benefits, if any, are achieved by requiring locally manufactured machines.

2.4 It is, therefore, recommended that imported and rebuilt poker machines be accepted for licensing, for an interim period provided they meet the minimum criteria-(in the same manner as other machines submitted to the Board for approval.) If, for example, the proposed legislation were to commence on 1st January, 1986 local manufacture should become mandatory on and after the 1st January, 1990. This statutory limitation can then be reviewed at any time during the interval, should changes in the industry's circumstances so warrant.

A "poker machine dealer" therefore would be authorised by the legislation to manufacture and/or import (for the prescribed period only) and/or rebuild (for the prescribed period only) and/or assemble and sell "poker machines". For the purposes of the legislation, poker machines will later be described as falling into two categories, i.e. "permitted" and "approved" poker machines.

The Committee considered that the question of the optimum degree of control over the manufacture and assembly of poker machines, particularly in view of the possible need to justify the long term banning of imported machines, is of considerable importance. See appendix to this paper for further development of this issue.

2.5 "Poker Machine Sellers"

The definition of "seller" in the Amusement Device legislation is appropriate to be followed in the poker machine legislation, ie, a licence authorising a person to sell certain "permitted" and "approved" poker machines.

This licence may be held by a person who is employed by a dealer, a selling agent of a dealer or who is self-employed.

2.6 "Poker machine technician"

The definition of "technician" in the Amusement Device legislation is appropriate as a basis for the poker machine licence, i.e. a licence to service, repair or maintain, certain "permitted" and "approved" poker machines.

However, it will require modification to exclude club personnel (either employees or "honoraries") who, as a matter of exigency, presently conduct minor "running repairs" to poker machines as an incidental feature to their normal activities. Thus the proposed licence will authorise the licensee to service, repair or maintain certain "permitted" and "approved" poker machines where those activities constitute the whole or the predominant part of his normal business or occupation.

This licence may be held by a person who is employed by a dealer, a selling agent of a dealer, or who is self employed or who is employed exclusively by a club.

2.7 "Poker machine adviser"

A licence is considered to be required for "a person who engages in the giving of advice or issues or publishes analysis or reports concerning poker machines to clubs."

There is no equivalent licence in the Amusement Device legislation.

This licence may be held by a person who is employed by a dealer, a selling agent of a dealer, or who is self employed, or who is employed exclusively by a club.

The need for such a licence is justified by the high degree of reliance many clubs place on the advice, analysis and reports given by persons concerning poker machines. The advice and reports often influence clubs to make important commercial decisions, frequently involving large capital expenditure, such as the purchase of poker machines.

Consultants, computer bureaux and club poker machine managers would be the potential licensees in this area.

It is envisaged that the persons required to hold this licence will be those who engage in the activity of providing their services direct to a club or clubs upon their express or implied request. Persons who provide information at large, e.g. per medium of journal or newspaper articles alone would not require an adviser's licence.

2.8 The licences referred to in 2.4, 2.5 and 2.6 above have closely analogous equivalents under the Amusement Devices legislation. It is considered desirable that applicants already holding those A.A.D. licences not be required to undergo fresh examination as to their "fitness and propriety" to hold poker machine licences. Similarly, in the future, a holder of any poker machine licence should be deemed fit and proper to hold any equivalent A.A.D. licence for which he may apply. Naturally this would not grant a "rollover" applicant any wider powers than a fresh applicant. For example, a holder of a poker machine dealer's licence, in receiving an A.A.D. manufacturer's licence would not be entitled to import or rebuild approved amusement devices. Also, these "rollover" considerations would only apply if the applicant is legally identical, e.g. if one company in a group holds a licence under one Act, an application under the other Act by another company within that group would have to be considered afresh.

2.9 It is recommended that the classes of licence referred to in 2.4, 2.5, 2.6, and 2.7 be adopted.

3. The position regarding the poker machine agent

3.1 Considerable concern has been expressed about the role of the "agent" in the poker machine industry. The Wilcox Report and the Moffit Royal Commission made reference to the dubious activities of some "agents" in the selling of poker machines and provision of other services to clubs, and their dealings with poker machine manufacturers.

The drafters of the Amusement Device legislation, regulating a new industry saw fit not to provide for the concept of amusement device selling agencies. It appears this decision was reached on the advice of officers of the Licensed Gaming Investigation Group (formerly Task Force II) of the Police Department and on the strength of comments made by the Moffit and Wilcox reports. It was also believed that the retail price of poker machines was considerably greater than they might be if clubs dealt direct with manufacturers, owing to exorbitant commissions being paid to selling agents.

3.2 The retail price of an amusement device is approximately \$4,000 compared to about \$7,000 for a poker machine. It is

not known, however, that the exclusion of agents in the amusement device industry is the sole reason for the lower price. It is also known that poker machines of equivalent standard to those supplied in New South Wales are purchased by clubs in the A.C.T. for about \$1,000 less per machine. Although agents sell machines in the A.C.T. for manufacturers, as in New South Wales, it is difficult to understand why New South Wales clubs generally pay \$1,000 more. Perhaps there are reasons such as higher costs associated with maintaining overheads, and service facilities in a larger geographical area. However, it is also believed that machines of at least equivalent standard have been exported to the U.S.A. for approximately \$A2,000 per machine.

In view of this information there is some doubt as to the existence of selling agencies being the sole cause of higher prices in New South Wales. Indeed, it is known that some clubs in New South Wales have made use of their relatively great bargaining power to buy machines direct from the manufacturer at about \$5,500 each. However, because such clubs can negotiate quantity discounts, which are not unusual in the commercial arena, it does not necessarily follow that this should be the retail price for all clubs.

- 3.3 The poker machine selling agents have been quick to justify their cause and place in the industry. In their submissions they have hastened to point to the many services they provide to the clubs, to justify continuation of their businesses and livelihood. These are summarised as follows:-

The "agent":-

- (a) represents poker machine "dealers" in the supply of machines to clubs;
- (b) advises clubs on location and management of poker machine installations;
- (c) provides clubs with "on the spot" and "ad hoc" repairs and assistance with machines avoiding delays while waiting for a manufacturers service if any. (N.B. not all manufacturers presently provide "service" of their machines).
- (d) provides clubs with the option of a full time independent service arrangement for maintenance and repair of poker machines;
- (e) provides clubs with poker machine evaluation service advising on machine performance;
- (f) provides effective competition with the large Ainsworth organisation in the servicing of machines;

- (g) provides an unbiased source of advice and choice of machines available for clubs to purchase from the several dealers most agents represent;
- (h) provides personal service through close contact with clubs in the area the agent services;
- (i) is committed to a responsible sales and service policy in the interest of clubs and the agent's business.

Many clubs, too, have come out strongly in support of the poker machine agent and the role the agent plays in the club industry. It is noted, however, that these expressions of support largely only arose as a result of a rumour promoted by the agents themselves, that there was a proposal to eliminate them. Nevertheless, the support given them by the club industry is overwhelming and, in view of this and the role and the many services they provide, it is considered that their involvement should be retained.

3.4 It is recommended that the poker machine "agents" be provided for in the licensing proposals

- 3.5 Because of the many diverse roles played by the agent, it is felt inappropriate to have a licence classification exclusively for the "agent". Some "agents" act as sellers, technicians and advisers; some act as technicians only; others perform only two of the classified functions.

In view of this an agent who engages in each classified activity will require, in effect multiple licences; two activities - two licences etc.

It is not necessarily proposed that multiple licence documents be issued - the holding of more than one licence is signified by the endorsement on the one document. However, these details need not be solved at this point in time.

- 3.6 One advantage seen by having multiple licences or endorsements is the fact that being separate and distinct licences, the Court may impose sanctions, if thought fit, restricting or forbidding particular activities of an agent while he maintains continuity of business and livelihood in the other activities. This opportunity would be available to the Court from the outset of considering the granting of licences or at any time during the term of the licences.

3.7 It is recommended that provision be made for persons to hold multiple licences

4. Provision for Restricted Licences

- 4.1 It may be necessary for the Court to have the power to restrict the licensee in the activities in respect of which the holder would normally be entitled to undertake. This probably will be relevant in the case of assessing levels of

competence in the duties associated with the licensee's activity.

For example, it may be determined that a technician is competent only to work on a specified class of poker machine or an adviser may only be competent to prepare and report on machine performance rather than analyse results and advise clubs.

This could be administered by imposing conditions on the licence.

With regard to an applicant for a dealer's licence who proposes to import poker machines during the allowed period, it is envisaged that he will be required to nominate the foreign manufacturer/s concerned. The licensing authority would then be empowered to call for documentation and conduct investigations, require lodgment of security deposits etc. as it saw fit. When granted, the licence would then be endorsed with a condition confining permitted importing activities to the nominated manufacturer/s. Any future decision by the licensee to import machines from other sources would require a further application.

- 4.2 It is recommended that the Court or Board have the power to impose conditions restricting the activities of licensees

5. Persons who may hold licences

- 5.1 It is proposed that there be no restrictions on the class of entity able to apply for and hold a licence, i.e. whether it be a natural person or corporation. This differs from the Amusement Device legislation in that only natural persons may hold seller's or technician's licences. The reason for this departure is because of the existence of "agencies".

While it would be required for any seller, technician or adviser who is a natural person to be licensed for each activity engaged in, there are occasions when a corporation trades and enters into contracts and relations with clubs for provision of services. In view of this, there should be a requirement that the corporation also holds a licence or licences, it being the entity contracting with a club.

- 5.2 If the licence of an employee (necessarily a natural person) was withdrawn, it might also be considered necessary to take some disciplinary action against his employer (possibly, the corporation). If that corporation were not required to be licensed, this might prove difficult or impossible.

This problem does not arise where a seller on behalf of a dealer might commit some unlawful act and lose his licence, because the dealer is also licensed and is answerable to the Court or the Board for his employer's actions.

- 5.3 It is recommended that all licences be capable of being held by natural persons and corporations

- 5.4 It is further recommended that any corporation engaging in activities confined to licensed sellers, technicians or advisers-, also be licensed

6. Criteria for Granting Licences

It is considered that the criteria for the granting of licences be equivalent to those prescribed under the Liquor Act, in respect of the Amusement Devices legislation. The major grounds for objection for the amusement devices licensing appear to be that the applicant is of bad repute or that the applicant is not a fit and proper person to be the holder of a licence (S.45(3)(e)).

Considerable research has been undertaken into the grounds for objection against and other criteria for the granting of licences under other N.S.W. Statutes. Most provisions go much further in establishing the fitness of applicants for licences, including requirements of minimum age, absence of prosecution for offences, financial viability, minimum paid-up capital, formal educational qualifications and competency. Careful consideration has been given to establishing some of these other criteria for adoption in poker machine industry licensing. While it would seem desirable to include as many constraints on persons to hold a licence as possible, it is difficult to justify why poker machine industry personnel should be treated more strictly than those affected by the Amusement Device legislation.

- 6.1 Moreover, there is a clear distinction between most other licensing schemes (Motor Dealers, Auctioneers and Agents, Builders, Motor Vehicle Repairers, Travel Agents etc.) and the amusement device and poker machine licensing schemes. This distinction is that those other licensing schemes regulate the activities of persons who deal with and handle the monies of the general public direct - they have been established to protect the interests of the consumer in the general public. This is not so with the proposed legislation or the Amusement Devices legislation.
- 6.2 In view of these reasons, it is recommended that the criteria for and the grounds of objection against the granting of licences be the equivalent of those adopted for Amusement Devices in the Liquor Act

7. Competence and Courses of Instruction

- 7.1 It is considered essential that a successful applicant for a technician's licence be able to demonstrate competence. There exists within the industry a significant level of dissatisfaction with the competence of many poker machine mechanics. It is inevitable, however, that the proposed legislation contain transitional provisions, "grandfather" clauses or similar. There is simply no existing, widely acknowledged, objective criteria in existence, possession of which would serve as strong or conclusive evidence of an individual's competence as a poker machine technician. The establishment of such a criteria, e.g. a TAFE certificate

course is obviously a desirable objective but also a long term one. It would be impossible to set it up before commencement of the main legislative changes. Even if it were possible transitional provisions would have to be made to enable persons presently in the industry to continue their activities whilst undertaking such a course. Also it would not be feasible to require that all existing service personnel undertake this course. It must be accepted that a large proportion of the present workforce might have sufficient actual expertise (even if this is difficult or impossible for us to assess objectively) but be of an age or educational standard, which makes unreasonable the requirement to complete successfully a TAFE certificate course.

- 7.2 Insofar as "advisers" are concerned the same comments generally apply, except that the subject matter of the applicant's competence (optimal denominational mix of machines, numbers of machines, physical location, type performance etc.) would probably not be amenable to incorporation in a TAFE course. It might therefore be necessary for the Board to develop its own "course of instruction", or admission examination. It is recommended that all INITIAL applicants for technician's or adviser's licences have their competence assessed on an ad hoc basis. The Board would adhere to an undisclosed policy of conceding competence to be demonstrated unless there is some indication on the face of the application that the person is incompetent. As soon as the TAFE course is established the Board can publish a requirement that future applicants for technician's licences must undertake that course as a condition of granting the licence, and complete it according to TAFE rules to keep the licence (refer S. 150 of the Liquor Act). The Board can then retrospectively apply such a condition to such individual initial licence holders, or classes thereof, as it sees fit.
- 7.3 Applicants for adviser's licences must successfully complete the Board's course of instruction or admission examination before the licence is granted.
- 7.4 There is, however, an anomaly which is apparent. While a requirement would exist for an adviser to attain competency, no such requirement seems necessary for a seller to conduct selling activities. Selling, however, constitutes inherent traits of advising and it seems questionable whether there should be a requirement for advisers to be confirmed as competent without sellers requiring the same tests. Should there be such a requirement, this will constitute a departure from the Amusement Device legislation.

There is no necessity, at this stage, to resolve this matter. However, it is raised for consideration in due course when decisions are to be made regarding tests of competency.

- 7.5 It is recommended that provision be made similar to S.150 of the Liquor Act requiring applicants for licence to undertake a course of training or instruction
8. For the purposes of enforcement, it is recommended that all Licensees be required to have a place of business within New South Wales
- 8.1 They will be required to maintain such records as the licensing authority may require at the nominated address, for access by inspectors when necessary.
9. Administering the Licensing System
- 9.1 It is recommended that the procedures for administration of the system of licensing be developed along the same lines as those applicable to Amusement Devices in the Liquor Act, in respect of:-
- Making of applications
 - Objections to applications
 - Grant of applications
 - Disciplinary provisions
10. Enactment of legislation to existing industry
- 10.1 The system of licensing should be introduced with as little disruption to the industry as possible. This can be achieved as follows and it is recommended that the following course of action be taken:-
- (a) Assuming the main body of the new legislative provisions are to commence on 1st January, 1986, notice will be provided to prospective applicants for all classes of licence that initial applications must be lodged on or before 31st March, 1986. There will be a provision making it an offence to carry on any activity for which a licence is required, on and after 1st April, 1986.
 - (b) Upon application, a person shall be issued with a written acknowledgement of lodgement with the Court in a prescribed form, authorising the applicant to carry on business authorised by the licence.
 - (c) The written acknowledgement shall stipulate that it is not a licence, but a mere permit to carry on in the profession or business until such time as the application is determined. It will be subject to suspension, revocation or withdrawal by the Court.
 - (d) The written acknowledgement will have effect for an indefinite period, pending determination of the application.

- (e) The full fee shall be paid by the applicant upon lodgement of the application and paid annually or periodically as determined.
- (f) It is possible that in the period 1st January, 1986 - 31st March, 1986 applications for dealer's licences might be lodged by persons or corporations which have not previously been engaged in supplying poker machines to the industry. It follows that, pursuant to the automatic issue of the written acknowledgement referred to in (b) above, a legislative provision designed to permit established firms to continue normal operations until their applications have been considered on their merits, will operate to allow the unfettered initial entry to the industry of "new" poker machine suppliers. The potentially undesirable consequences of this are that an insubstantial or undesirable enterprise might be established, sell a significant number of machines to clubs, then fail to get a licence, thereby leaving the machines' purchasers "high and dry" insofar as spare parts, service, unexpired warranties are concerned (the same could occur if an established dealer were to fail to gain a licence, but is considered to be a more remote possibility).

An alternative course is to deny "new" applicants the benefit of the transitional provisions by restricting their application to established dealers, defined by being named in a regulation. However, this also has undesirable consequences, e.g. real or apparent unfairness if this list was drawn up administratively; delay if the subject of a judicial hearing. The recommended course of action is to permit "new" applicants to commence business immediately upon receipt of the written acknowledgement, subject to a provision that if such applicant is not carrying out the functions of a dealer to the satisfaction of the licensing authority by e.g. 1st June, 1986, he will cease to be able to carry on business until such time as a licence is granted. If the licensing authority also exercises its discretion to hear applications from new (and/or suspect) operators in priority to others, we should achieve the optimum result of not arbitrarily discriminating against new applicants per se, but ensuring that their applications are finally dealt with before they have reached the stage of having poker machines approved by the licensing authority and sold to clubs.

- (g) A similar problem might be thought to arise in the case of "new" applicants for seller's, adviser's or technician's licences. However, it is the committee's opinion that the scope for mischief which might result from permitting them an unimpeded start in the industry is insufficient to warrant special provisions being made. Naturally it would be preferable if their applications could be processed first.

11. Licence Fees

11.1 Commensurate with the level of fees payable in the Amusement Devices legislation it is recommended the following annual fees be set:-

- Dealers' licence	\$5,000 p.a.
- Seller's licence	\$ 250 p.a.
- Technician's licence	\$ 100 p.a.
- Adviser's licence	\$ 100 p.a.

11.2 These fees apply to the entitlement of persons to hold licences relative to the poker machine industry only. They are separate and distinct from the amusement device industry licensing entitlements.

11.3 It is recommended that the holders of ostensibly the same type of licence for both industries be required to pay both fees

12. Costs of Investigation of Applicants

12.1 It is recommended that the reasonable costs of investigation of applicants, as determined, be paid by applicants

13. Forms of Application and Licence

13.1 It will be necessary to draft forms of application for licences and this is recommended to be undertaken during the passage of the legislation.

13.2 It is considered that the latest adopted forms for Amusement Device legislation could be used as a reasonable guide as to content.

14. Definitions of "Poker Machines"

14.1 Firstly, it is worthy of comment that the existing definition of poker machine in S.50A of the Gaming and Betting Act is inappropriate to machines of today and the future because:-

- (a) their use or operation does not depend upon insertion of a coin;
- (b) they do not play poker - in fact many machines are being marketed today and probably in the future which bear little resemblance to playing a game of cards, let alone poker;
- (c) "draw poker" and other card games played on amusement devices have been reserved for the hotel industry;
- (d) the equipment marketed today and probably for the future is not in the nature of a "machine" - there are few mechanical parts.

14.2 Therefore, it is considered that, while the term "poker machine" is used throughout this paper, there is a need to refer to the equipment as a "gaming device" or some other appropriate name.

14.3 "Approved Poker Machines"

Under the new guidelines and criteria proposed to be established for the acceptability of poker machines for licensing, there will be a desire to distinguish between them and poker machines which were approved for licensing up to the date of commencement of the new legislation.

For this purpose, a definition of "approved poker machine" is required to represent the new machines.

14.4 It is desirable that an unambiguous definition is adopted so as to leave no doubt what is an approved poker machine and what is not. Coupled with this issue is the considered view of the Committee that the possession of an "approved poker machine", other than by licensed persons or other approved persons be an offence similar to the Amusement Devices legislation (S.138A of the Liquor Act).

The current laws relating to poker machines are inadequate in that one has to look at a thing to determine whether it is:

- a machine, instrument or device;
 - kept, used or operated for the purpose of gaming; or
 - intended or designed for use or operation for the purpose of gaming; or
 - capable of being used or operated for the purpose of gaming; and
 - used or operated by the insertion of one or more Australian coin(s).
- and thus, a poker machine.

The definition allows for easy avoidance of a thing to be caught as a poker machine.

The "approved amusement device" definition in the Liquor Act is considered to be free of loopholes, is unambiguous and makes it quite clear what an approved device is - one that has been gazetted by Regulation.

14.5 In order to achieve this certainty of definition, but avoid the administrative difficulties inherent in processing large numbers of gazettal notices, it is proposed to follow the spirit of that definition, but reserve the power of approval for the licensing authority.

- 14.6 In view of this, it is recommended that the definition of "approved poker machine" be as follows:-

"approved poker machine" means an electronic, or partly electronic machine declared by the Board to be an approved poker machine for the purposes of this Act or an electronic, or partly electronic machine of a class or description of electronic, or partly electronic machines declared by the Board to be an approved poker machine for the purposes of this Act.

15. "Permitted Poker Machines"

- 15.1 In order that the Act may be applied to those poker machines actually licensed and installed in clubs at the time of commencement of the Act, these machines need special classification.

It is pointed out here that the Act is proposed to regulate and authorise persons holding dealer's, seller's, technician's and adviser's licences and registered clubs to carry on activities concerning "approved poker machines" and "permitted poker machines" only. It will be an offence to deal with these two classifications of machines without a licence.

This means that machines which are not "permitted" machines as at the commencement of the Act or "approved" machines cannot come into the system of licensing. This will have the effect of alerting manufacturers and agents, well in advance, of the necessity to clear their existing stocks of machines in readiness for the introduction of the "approved" machines. Hopefully, this might also generate sales of existing stock at considerably lower prices and the voluntary delicensing of some of the more objectionable of the currently licensed poker machines.

- 15.2 An appropriate definition of "permitted machines" would best be left to the draftsman and this is recommended

16. Private ownership of Poker Machines

- 16.1 As distinct from "approved" poker machines, it is not proposed that the possession of "permitted" machines by persons other than the equivalent classes of persons mentioned in S.138A of the Liquor Act be an offence. This proposal will also apply to extant machines which are not "permitted" machines, but which may have been licensed in the past, no matter whose ownership or possession they are in.

The existing offence under S.17 of the Gaming and Betting Act for the unlawful playing of a poker machine should suffice insofar as those machines are concerned.

16.2 The effect of this proposal is to maintain the status quo in regard to the private ownership of poker machines in New South Wales but prohibiting private ownership for machines to be licensed under the new legislation ("approved poker machines"). This will keep the current retailers in business for a considerable period while achieving a long term goal of eradicating the "non-industry" possession of poker machines. The extent to which the Board or the Government desires to accelerate this effect will be the decision of higher authority than this Committee. However, options available in this regard range from disallowing the private ownership of "permitted" machines or some class thereof, the immediate banning of private ownership of poker machines of all types (a probably unenforceable measure) through to the proposal outlined in this paper.

17. Phasing out of machines which are unsatisfactory

17.1 It is considered desirable that machines which do not conform to acceptable standards be phased out of the licensing system.

This may be achieved by adhering to the following proposals:-

- (a) machines which are not "approved" or "permitted" machines are not to be re-licensed;
- (b) certain "permitted" machines, once de-licensed shall not be re-licensed. It is proposed that this regulation apply from the date of commencement in respect of the machines which are totally mechanical in operation (estimated at some 8,000 machines at the present time);
- (c) further regulations be made as seen fit to refuse re-licensing of certain permitted machines as considered appropriate;
- (d) provide that regulations be made to require de-licensing of certain permitted machines as considered appropriate.

18. The Position of the Secretary

18.1 It is noted that the Registered Clubs Act already vests the Licensing Court with authority to hear and determine applications for approval to act as the secretary of a registered club (S.33). It is considered that this legislation should be amended to:-

- i) prohibit a person taking office until his application has been expressly approved. At present persons may commence their employment immediately, and his application is granted after one month unless specific objection is taken by a licensing inspector (S.33(5));

- ii) provide for the new offence of failing to control the club's poker machine operations in a manner satisfactory to a poker machine inspector (or, delegate of the Secretary or Principal Registrar). At present the only criteria is "fit and proper" and it might be difficult to refuse the application of an incompetent person on this ground;
- iii) prescribe, by regulation, a standard form of application, requiring disclosure of such relevant information as employment history, qualifications, experience, criminal offences etc. At present, no such information is required to be furnished;
- iv) set out, in detail, what the licensing authority considers to be the responsibilities of a secretary. As the Act is presently silent on this matter, it would presumably be more difficult to prove that an individual has failed to fulfil his responsibilities.
- v) amendment of the definition of secretary to include general manager. As it appears to be the intention of the legislation to exert jurisdiction over the chief executive officer of the club, the club could avoid the legislation by splitting the offices of secretary and manager. A small number of clubs follow this practice already, although it is not known for what intention.

18.2 If these amendments are made, it is considered that the Court's jurisdiction over secretaries would have the same effect as specific licensing provisions.

19. Honorary Secretary

19.1 The legislative criteria for approving the applications by paid and honorary secretaries are identical, as are their duties and obligations under the Registered Clubs Act. The Act provides, however, that it is a sufficient defence to certain prosecutions for a secretary to prove that he was, at all material times, acting in an honorary capacity (S.56(1)(c)).

It is felt that the potentially serious consequences of the commission of offences relating to poker machines far outweigh the desirability of providing a legislative acknowledgement of the probable incompetence of honorary management. The Committee recommends the abolition of the defence mentioned above insofar as it relates to poker machines. However, it is acknowledged that the management and members of clubs with unpaid secretaries are almost universally sorry for themselves in their real or imagined travails, and would object strongly to this initiative.

20. Costs of Processing Applications

20.1 As a general principle it is considered desirable that the administrative expenses of receiving, investigating, hearing

and granting/refusing applications should be met out of application fees. To this end, it is considered unnecessary to provide for reduced fees for applications lodged late in the licensing period (alternatively, express provision might be made that no pro rata reductions will be made to the fees for those applications). Should any application, e.g. for a dealer's licence require extraordinary outlays for the conduct of an investigation, the Superintendent of Licensing ought put a case to the Court justifying the proposed out-of-pocket and travelling expenses. The court may then, if it thinks fit, order the applicant to deposit a specified amount for the purpose of defraying those expenses.

21. Increase in Investigative Staff

21.1 It appears obvious that for the proper administration of the proposed legislative changes there will need to be an increase in the staffing levels of the Amusement Devices Investigation Unit (which operates under the control of the Superintendent of Licenses) in order to permit them to carry out the necessary investigation of applicants. It is recommended that such increases be made permanent. This will necessitate the making of a significantly larger allocation of funds available to that Unit.

22. Common Expiry Date

22.1 In order to simplify the Board's administration of the existing Amusement Device legislation and the proposed poker machine licence provisions, it is recommended that a common expiry date (or fixed renewal date) for all licences be provided for. The most obvious date is 15th February.

23. Disciplinary Provisions

23.1 It will be necessary to enact a comprehensive series of measures whereby holders of licences can be made to account for breaches of legislation, licence conditions or failure to adhere to desirable standards of behaviour. The Committee proposes to submit detailed proposals as soon as possible, using the relevant provisions of the Liquor Act as a model.

24. Placement of Legislative Enactments

24.1 As registered clubs will continue to have the exclusive right to keep, use and operate poker machines, the Committee considers that a desirable measure of legislative consolidation would be achieved by removing all legislative provisions relating to poker machines from the Gaming and Betting Act to a new part (Part X) of the Registered Clubs Act.

25. Incidental Matters

25.1 Particulars relating to the following are proposed to be dealt with by regulation:-

- Forms of application licences
- Procedures for the hearing of applications and granting of licences.

APPENDIX

The point to be addressed is the degree of control desirable over the manufacture and assembly of poker machines, more particularly those which are imported.

The amusement device legislation, according to the Court's interpretation, requires an unspecified degree of manufacture and assembly in N.S.W. for the definition to be met.

The legislation itself does not stipulate to what extent one has to engage in the manufacturing process to meet the definition of a dealer. However, the Courts have ruled that, provided the applicant has an integral role in controlling and overseeing the final production of a device, notwithstanding that sub-contractors may be engaged to carry out the work, the definition is met. It has also been held that imported components are permitted.

It is not appropriate, at this point, to review the requirements of local manufacture and assembly of amusement device dealership. It is acknowledged that a greater degree of control over a dealer's manufacturing activity is achieved, if that activity is carried on within the jurisdiction. The question is, however, what greater assurance do we have that a machine is suitable for licensing if it is manufactured and assembled in N.S.W.? If the machine or its components do not meet the prescribed standards, it will not be acceptable, irrespective of where manufactured. Some emphasis has been placed on the importance of the logic board or EPROM (erasable programmable read only memory) in so far as this is what controls the functions of the game played on the machine.

In the absence of the logic board or EPROM, the machine is passive and cannot function. If the integrity of a machine is to be covertly compromised, it is this component which is most likely to be the subject of attack.

Therefore, if strict controls over the manufacture of a machine are to be required, it would seem this is the area needing the most attention bearing in mind that the machine must comply with the standards and conform to its approved specification at all times regarding the security and reliability of its hardware.

In order to control the manufacture and assembly within the jurisdiction, two alternatives have emerged.

1. That the importer of the machine (ie, the licensed dealer) must set up some manufacturing and assembly content locally. This would require some "hands on" manufacturing process as well as possibly importation of other components and some local assembly.

If this was required, it would confer some direct responsibility on the licensed dealer in the manufacturing and assembly of machines. It might be argued that greater control over the licensee's activities in producing the licensed machine is achieved by this requirement, rather than relying on the

competence and integrity of the foreign manufacturer, who is not within the jurisdiction.

2. That the foreign manufacturer be required to hold a licence. This would probably necessitate the foreign manufacturer establishing premises and an actionable entity within the State to carry out local manufacture and assembly.

This requirement might eliminate the need to employ the services of the existing importer and put it and its employees out of business. The requirement might also be seen as being too onerous on the foreign manufacturer and the availability to clubs of the imported machine might be jeopardised.

A third option is offered.

While these two alternatives may have some benefits in so far as enforcement is concerned, it seems that the existing situation could be retained provided sufficient accountability is conferred on the importing licensee. This would have the effect of gaining sufficient control over the licensing of machines without disrupting the existing arrangements. A condition of the importing dealers licence might be attached to the effect that the licensee shall at all times remain responsible for the machines security, quality and integrity, notwithstanding the fact that the licensee has no direct "hands on" control of the machines production. It would be spelt out clearly to the licensee that it may supply machines to the New South Wales market only on the condition that it will comply fully with the legislation. If it is unable to satisfy the Board as to any aspect of licensing requirement, the dealer's licence will be in jeopardy or appropriate sanctions will apply to it. Acknowledgement of this principle is expressed, or may be inferred from the submissions of existing or potential importers, all of whom naturally favour permission to import poker machines being maintained. There may be practical difficulties in vetting a foreign manufacturer to ensure it's fitness and propriety.

A further condition could make it incumbent on the importing dealer to take all reasonable steps to enable the foreign manufacturer to be investigated to the satisfaction of the Court.

It is recommended that this third option be adopted.