
17 Regulatory processes and institutions

Key points

- Over the past decade, governments in regulating gambling have increasingly:
 - focused on the public interest in policymaking and incorporated health and consumer concerns into policies and programs
 - utilised stronger regulatory processes, including improved stakeholder consultation
 - commissioned research to improve understanding about gambling
 - facilitated a dialogue between jurisdictions and coordinated some policy directions, including through the Ministerial Council on Gambling.
- But against well-recognised standards for best practice, significant deficiencies remain. While jurisdictions vary on which areas are most in need of improvement, in general, there is a need for:
 - greater independence of gambling regulators
 - a stronger commitment to public consultation and transparent processes
 - increased public access to regulatory impact assessments (with their public release at the time policy decisions are announced)
 - policy decisions that are clearly articulated and exposed to public scrutiny.
- There are also costly differences among jurisdictions resulting from different electronic gaming machine standards and approval processes:
 - efforts should be made to reduce these differences
 - variations should be based on legitimate concerns for harm minimisation and take into account the costs that differences impose
 - policy directions that have been ‘unwritten’ should be made explicit and public.

17.1 Introduction

The Commission has proposed various changes to existing government regulations, some for immediate implementation and some to be put in place over the medium term. However, in the long run, policy and regulation will need to respond to new gambling technologies and market developments. In that context, a key question is: how to ensure that *future* policies and regulations will accord with the public interest? That question is all the more important given the pervasive role of

government in gambling industries. Governments tax, supply, plan and regulate gambling and provide help services. Given their central and sometimes conflicting roles, there is abundant potential for adverse outcomes.

This chapter discusses areas where government institutions and processes affecting gambling can be altered to minimise these risks. It first looks at elements of best practice regulation. It then discusses:

- the need for independent regulators with responsibility for all gambling in each jurisdiction
- the relative merits of alternative placements of gambling policy in different departmental and ministerial portfolios
- the transparency and robustness of government processes
- national regulation and jurisdictional consistency.

17.2 What does best practice look like?

The main ingredients for good policy and regulatory frameworks are now well recognised and have been articulated in COAG (2007), Australian Government (2007a), OECD (2005), and Argy and Johnson (2003). For these frameworks to function effectively, the institutional setting will generally have to meet a number of core criteria. Hence, drawing on the Commission's 1999 institutional blueprint for gambling regulation, some guidelines for structuring gambling governance are outlined in box 17.1 below.

Without reiterating in detail what is generally understood, the key ingredients of a best practice regulatory environment for gambling include:

- concentrating on the public interest, emphasising the broader interests of consumers rather than sectoral concerns or governments' revenue interests
- governance structures that limit political discretion and separate the independent activities of regulators from the parliamentary accountability of policymakers
- good communication between institutions with responsibilities for gambling
- rational and transparent policy development based on good evidence, evaluation, judgment and theory (and the accumulation of expertise and research to underpin decisions)
- appropriate levels of consultation so that all views can be heard.

Box 17.1 A model institutional setting for gambling regulation

In its 1999 report, the Commission proposed a 'regulatory blueprint' to address deficiencies then pervading the gambling regulatory environment. Drawing from that blueprint, and updating it to reflect what has been learnt from the range of institutional approaches now in place, a best practice institutional setting for gambling would involve:

- an independent statutory regulator with responsibility for monitoring and implementing all gambling regulations and a charter to:
 - further the public interest
 - address consumer protection issues
 - undertake and commission independent research and make public recommendations. (Core functions of gambling regulators are outlined in box 17.2.)
- policymaking functions within a portfolio preferably relevant to consumer, justice and health matters, but not specifically within treasury or industry orientated departments
- the relevant minister for gambling having direct responsibility for harm minimisation
- independent administrative arrangements for gambling counselling and help services, with decisions on how to allocate funds and monitoring the effectiveness of services occurring through either government health departments or a special purpose independent body
- an independent national policy research and evaluation centre.

Progress has been mixed

Since the Commission's 1999 review, governments have made progress in a number of areas. For example, policymaking has generally been more 'rational' and placed a greater emphasis on the public interest, including by:

- establishing independent regulators
- integrating health and consumer matters into gambling policy to balance the influence of treasuries
- formalising channels for stakeholder consultation, including by setting minimum consultation timeframes and releasing issues and discussion papers
- initiating regulatory impact analysis requirements
- undertaking major research programs and funding Gambling Research Australia as a forum for managing national research (chapter 18)

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- establishing the Ministerial Council on Gambling to facilitate a better dialogue between jurisdictions and to coordinate policy directions and determine broad national research priorities.

But, while governments and policymakers are aware of best practice principles, and have applied them in some areas, there are instances where other factors may interrupt their effective implementation:

- Governments face many conflicting incentives — revenue incentives, public health and community goals, industry development and pressures from political lobbyists. These competing interests can make it hard to develop coherent and consistent policy. Although gambling has been an active policy space for governments, many measures introduced would have had limited effect on reducing harm. While this may reflect that gambling policy is a complex regulatory area, it is also likely to reflect the competing interests of governments.
- The extent to which best practice is adopted will be influenced by the personalities of politicians and senior officials, the will of government and the quality of bureaucratic advice, each of which are inherently difficult to control for.

There are some particular areas where many jurisdictions' institutional and regulatory structures in gambling fall below best practice:

- Although there are common aspects of regulation across many gambling activities, most states and territories are yet to bring all forms of gambling under the responsibility of a single regulating body in each jurisdiction.
- The gambling regulator in some jurisdictions does not have sufficient purview to be effective, even if independent, with the functions of some regulators falling short of core regulatory functions that necessitate independence.
- Other regulators have broad ranging responsibilities, but lack independence to enforce decisions without potentially facing pressures from government, industry lobby groups and other advocates.
- Because gambling regulation and policy spans a diverse range of disciplines, the government department with the main carriage for gambling policy usually coordinates between agencies involved in gambling-related activities. Some jurisdictions do this better than others, but some agencies with expertise in ways to reduce and address harms from gambling (such as those dealing with consumer, health and justice issues) are sometimes left on the periphery of policy development.
- Although consultation has improved considerably since the Commission's 1999 report, there is concern that it could be carried out more fully, particularly by

governments being more transparent about the basis for their decisions and engaging in consultation earlier in the process of policy development.

- Regulatory gate-keeping requirements have not been well applied. Public access is poor and the timing of the public release of regulatory impact assessments often lags the announcement of policy decisions.

The next two sections look more closely at how the commitment of governments to best practice regulatory processes and institutions wavers in some instances, including what kinds of specific improvements could be made.

17.3 Governance structures still need work

Although state and territory governments have made changes to the structure of their gambling regulatory institutions, there is scope for improvement. The core institutional requirements proposed below essentially recap the proposals the Commission made in its 1999 report, with a few changes to reflect what has been learned from the range of approaches adopted by jurisdictions over the last ten years. For some jurisdictions, implementation of this model would need only minor changes, but for others, more substantial changes would be required.

Regulators should be fully independent

In the absence of a regulator's statutory independence, ministers and governments can come under pressure to influence regulatory activities in ways that may not be in the public interest, nor transparent and open to public scrutiny. (Independent regulators are helpful to governments precisely because they short circuit any expectation that government should step in on particular matters — whether this be triggered by popular opinion or pressure from advocates.)

Pressures can be placed on organisations if their financial independence or staffing decisions can be unilaterally altered. As such, independence should extend to:

- financial matters, including personnel and resourcing
- management, including the security of tenure of the executive and rules for their appointment and removal
- the ability to undertake research, which should be freely accessible to the public
- public accountability and transparency, including both advice and recommendations made to ministers as well as any directions coming from a minister.

In particular, full independence requires that gambling regulators do not have responsibilities that also extend to the development of the regulations that they implement. Rather, policy development should primarily be the responsibility of the relevant minister and policy department — a role that Clubs Australia strongly support, seeing democratically elected and accountable representatives as best suited to deal with the public interest (sub. DR359, p. 100). An advantage of such a separation between regulating and policymaking is that regulators can closely interact with industry, but cannot directly change policies, thus reducing the potential for the regulator to be ‘captured’ by industry and/or other stakeholder groups.

The Commission stressed the importance of independent regulators in its 1999 report, and that view was supported by a number of participants in this inquiry including Anglicare Tasmania (sub. 83, pp. 2–3) and the Victorian Interchurch Gambling Taskforce (sub. 220, p. 14). However, McMillen observed that no state or territory government has truly embraced an independent model:

With the possible exception of South Australia, close structural and procedural links between policy agencies and the statutory authorities have been retained or strengthened since 1999. As in the past, ministers and Parliaments ultimately determine policy, while government departments are responsible for policy advice and implementation, as well as many regulatory functions. In most states/territories, ‘independent’ control authorities in Australia function essentially as agencies of government ... and have limited capacity for independent action. (sub. 223, pp. 14–15)

Moreover, while most jurisdictions have now established a statutory ‘independent’ regulator or control body of some form, there is considerable divergence in operation. For example:

- In South Australia, there are effectively two regulators. The Independent Gambling Authority (a statutory body) is the principal regulator and undertakes ‘structural’ regulatory activities. The Office of the Liquor and Gambling Commissioner is housed within government and performs the role of an ‘operational’ regulator, carrying out both regulatory and enforcement functions, including approving gaming machines and undertaking ‘on-the-ground’ enforcement. Such an arrangement may lead to confusion and inefficiencies.
- In New South Wales, there is no statutory independent regulator for all forms of gambling, and although a Casino, Liquor and Gaming Control Authority was established in 2008,¹ its regulatory responsibilities are shared with the Director of Liquor and Gaming within the associated policy department.

¹ The Authority is a New South Wales Government agency, but is not subject to the direction or control of the minister, except in clearly defined circumstances as prescribed in legislation.

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- The Queensland Gaming Commission (the independent regulatory body for gaming in Queensland) has decision-making responsibilities somewhat similar to those of gambling regulators in other jurisdictions, but is restricted to dealing only with gaming, meets monthly, and relies on secretariat support and advice from within government.
 - The Tasmanian Gaming Commission is a 3-person body reliant on support from officers of the Department of Treasury and Finance. The Tasmanian Gaming Commission acknowledges in its submission that some in the community perceive that they are too close to government. However, they suggest that any closeness also has advantages, including access to appropriately skilled staff, which in their opinion, would not be available to an independently staffed regulator, given the limited resources available within their jurisdiction (sub. DR311, p.4).

Clearly, the breadth of responsibility and independence across gambling regulators varies significantly. Some undertake regulatory reviews and oversee research projects, while others have significantly narrower regulatory responsibilities. In some jurisdictions, the policy department or enforcement body has the main carriage over matters that are reserved for the regulator in other jurisdictions. While it appears that many of these differences reflect the size of a jurisdiction and its associated resourcing capabilities, it may also be a sign of the level of independence and influence that a government is prepared to bestow on the regulator.

Ensuring independence

Statutory independence usually involves drawing a boundary around the regulatory responsibilities provided to the statutory regulatory agency, with policy development and some residual quasi-regulatory functions left to the policy agency or agencies. A range of core functions commonly undertaken by gambling regulators is outlined in box 17.2.

Even though a regulator may possess statutory independence and operate with the broader public's interest in mind, it has a responsibility to advise and report to a minister and is accountable to parliament. While such arrangements can effectively balance independence and accountability, processes are also needed to ensure that the minister does not provide direction to the regulator or, if this does occur, such directions are published and tabled in parliament.

Transparency helps regulators to demonstrate to third parties that they are operating free from any influence or direction (perceived or otherwise). Moreover, by publicly reporting to the minister, the basis for any regulatory decisions that flow from its advice is also transparent.

Box 17.2 Core functions of gambling regulators

The breadth of regulator responsibilities in gambling can vary widely. In part, this reflects that the boundary between the respective roles and responsibilities of regulators and policymaker is often unclear. There is also considerable potential for gaps and overlaps, and while necessary demarcations develop, there are some functions that are clearly more regulatory in nature, and where a degree of independence is often warranted.

At the broadest level, there is a case for gambling regulators to control, supervise and regulate all gambling within their jurisdiction. This would include administering gambling legislation, regulations and Codes of Practice relevant to all commercial forms of gambling — casinos, gaming machines, lotteries, racing, wagering and bookmakers. Associated with these responsibilities, regulators would also have more specific functions to:

- approve gambling activities
- administer regulations covering the integrity of the gambling product, including equipment and procedures
- develop guidelines to protect consumers from harm and further the public interest
 - approving applications for licences
 - approving games and evaluating the potential for increased harm
 - abiding by conditions of licences, such as responsible gambling staff training.
- perform research on how aspects of the regulatory environment might be improved and, in turn, advise and make public recommendations to the relevant minister(s).
- provide public access to comprehensive industry data, including gaming machine numbers, expenditure and tax revenue for all forms of gambling.
- collect taxes, fees and charges relevant to gambling laws.

In undertaking their functions, regulators should be explicitly required to operate in the public interest, including protecting consumers and reducing gambling-related harm.

While operating at arms length from government may impede communication between government and the regulator regarding policy development, independent regulators can contribute via formal channels with the relevant minister. Indeed, avenues for regulators to contribute to gambling policy already exist in some jurisdictions through the accountability requirements placed on the regulator to report to and advise the minister.

But to give traction to the independent advice of regulators, governments could be required to publicly respond to any formal recommendations received; hence avoiding situations where the regulator provides advice that appears to be overlooked. For example, Anglicare Tasmania commented that:

When the Tasmanian Gaming Commission, with new commissioners, gave strong advice to the Treasurer about options for harm minimisation, he ignored the majority of the options. (sub. DR355, p. 3)

The regulator should cover all forms of gambling

In its 1999 report, the Commission proposed that all forms of legalised gambling be controlled by a single, independent regulatory agency in each state and territory. The reasons for this are to minimise the risk that:

- special arrangements will be established and maintained for different groups, venues or providers at the expense of the broader public interest
- inconsistent policies will be put in place in what are ostensibly like circumstances, especially so far as measures to protect consumers are concerned.

Governments have variously taken steps to integrate overlapping agencies and apply more consistent approaches to the regulation of gambling. But, there are still a number of instances where casinos, lotteries and various forms of racing are regulated by separate bodies, which may or may not be independent of government. As stated by McMillen, arrangements often reflect ad hoc decisions and customised fixes to issues emerging from liberalisation:

Current regulatory structures are characterised by a wide variety of approaches, heavily influenced by the changing views of governments at different times and by specific arrangements entered into with particular providers. (sub. 223, p. 15)

Prolonging such arrangements is likely to be administratively more costly and often less effective than having more integrated regulatory responsibility.

Although governments have signalled their intent to bring all forms of gambling under the one regulatory umbrella and, where relevant, standardise control mechanisms and consumer policies, most are yet to consolidate multiple bodies. There are strong grounds for governments to fast-track efforts to bring all forms of gambling within their jurisdiction under the regulatory control of a single independent body.

RECOMMENDATION 17.1

Each jurisdiction should ensure that its gambling regulator has:

- ***statutory independence from government***
- ***regulatory control over all forms of gambling within that jurisdiction***
- ***a charter that emphasises the public interest, and explicitly includes consumer protection and harm minimisation.***

Departmental and ministerial carriage of gambling policy

Gambling has traditionally been a treasury responsibility, reflecting its important revenue-raising role. While most jurisdictions have moved principal responsibility for gambling policy out of the treasury portfolio, South Australia, the ACT and Tasmania have not.

There are likely to be benefits in having gambling within a portfolio where a broader range of policy-related considerations are more readily taken into account. Many portfolios have some expertise relevant to gambling. However, departments responsible for health, consumer policy and justice would have more direct relevance, as they have specific expertise relating to the risks and harms of gambling.

While currently no jurisdiction has gambling policy falling within its health portfolio, having well-functioning channels for communicating and exchanging information with health departments is essential. In particular:

- Counselling and other help services for gambling have important parallels with the expertise of health departments, especially given co-morbidities.
- Agencies with gambling responsibilities can also make valuable contributions to health policies. For example, the link between smoking and gambling (including the impact of the smoking ban on the social costs of problem gambling) featured prominently in the Regulatory Impact Statement for the New South Wales Smoke-Free Environment Regulation 2007 (Allens 2007).

Similarly, examples of where broader consumer and legal concerns intersect with gambling policy include:

- privacy issues related to card-based gaming and pre-commitment systems, including anonymity, the kind of information that should be collected and the rules that should be applied to data collection and use
- the implication of any changes in the courts' interpretation of venues' statutory duties and their duty of care to patrons, and in cases where they have been alleged to have acted negligently, or engaged in unconscionable or misleading and deceptive conduct
- the effectiveness of strategies for informing and empowering consumers.

Linkages between gambling policy and revenues mean that governments have in-built incentives to involve treasuries in policymaking. Designing gambling regulations often touches on a number of transitional issues requiring specialist modelling expertise and information from treasury. However, the placement of gambling policy within a portfolio with responsibilities for raising revenue, fostering tourism or supporting industry increases the potential that gambling policies will be

exposed to conflicts of interests. It is also less compatible with the most important considerations for developing effective measures to empower consumers, reduce harms and effectively deal with the social costs of problem gambling.

Regardless of which department has main carriage for gambling policy development, it is important that good working relationships be established with all relevant portfolios.

Ministerial responsibility

Currently, responsibility for gambling in nearly all jurisdictions is that of a single minister (and in some jurisdictions, there is also a separate minister for racing). There is an argument, however, that the breadth of a minister's portfolio responsibility can also affect the coherency of gambling policy with respect to relevant health, consumer and legal issues. If ministerial responsibility for gambling were to include greater recognition of these issues, it is likely that decisions on gambling policies would be better informed and provide the minister with direct access to advice that spans the breadth of gambling policy. However, to ensure that consumer, legal and public health matters are given due attention in gambling policy, the relevant gambling ministers' responsibilities should include an explicit responsibility for harm minimisation.

Several participants have suggested that gambling policy sits most appropriately within the control of a minister who is also responsible for tourism (Australasian Casino Association, sub. DR365, p. 28; Gaming Technologies Association, sub. DR344, p. 6). The basis for this argument is that the gaming industry is linked to hospitality and tourism, and that many Asian countries have combined the two policy areas.

The Commission does not dispute that tourism and hospitality has relevance within the gaming industry but remains firm that it is not the central focus of gambling regulation. Gambling policy should focus on the public interest, with emphasis on consumer protection and ways to reduce harms from gambling in the community.

RECOMMENDATION 17.2

The relevant minister for gambling in each jurisdiction should have an explicit responsibility for harm minimisation.

17.4 Improving regulatory processes

A common complaint from many participants has been the difficulty of obtaining a clear understanding about why regulatory decisions were made and the evidence upon which the decision was made. This is both a transparency issue and one of process and appropriate consultation. This section evaluates how governments can:

- improve the way they consult with stakeholders
- improve transparency about the reasons for policies
- better communicate the rationale for, and expected outcomes from, policies through regulatory impact analysis.

Several submissions from industry have flagged concerns about the costs of implementing and complying with government regulations, including many of the Commission's draft report recommendations (for example, Australasian Gaming Council, sub. DR377, p. 25; Racing Industry Consultation Group, p. 3). This section also looks at the issue of compliance burdens on gambling businesses.

Improving consultation

When conducted properly, public consultation is an important source of evidence for governments, and helps increase accountability. Lack of public consultation increases the risk that regulation will be poorly designed, ineffective and costly to comply with. For example, regulation of gambling frequently touches on technical aspects of machine operation, but to ensure that a regulation will work efficiently in practice, it is important that governments adequately consult on the technical viability and transition costs of proposed measures. That said, even the best consultation processes will not necessarily build agreement.

Effective consultation with a full range of stakeholders — including gambling providers, manufacturers, community groups, local councils, problem gamblers and gambling support service providers — will also draw out deficiencies in how gambling governance is structured (for instance, if policymaking is positioned too close to the interests of any particular sector or interest group).

Principles for best practice consultation are well-known to governments and generally require that it should:

- be continuous and initiated early in the policy development process
- be broad-based and take in the views of a diverse range of stakeholders
- allow sufficient time for considered responses

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- clearly inform what is to be achieved out of consultation and how responses have been taken into consideration
 - be reviewed periodically to look at ways that make it more effective.

Although progress has been made in improving consultation and increasing transparency in the regulation of gambling, and most jurisdictions have developed clear guidelines on consultation, there are still significant lapses in practice. This is an ongoing frustration for those forced to comply with, or otherwise affected by, gambling regulations. Both industry and the community sector have raised concerns about this.

For example, Gaming Technologies Association (GTA) said that governments' consultation with industry experts is often deficient:

It has been the experience of GTA members that all too often decisions are made in response to emotive triggers in the absence of sound evidence and appropriate industry and expert consultation. (sub. 263, p. 3)

GTA also said that South Australia, Queensland, Tasmania and Victoria have made announcements about introducing various responsible gambling measures without apparent evidence or consultation with key stakeholders (sub. 263, p. 5). In particular, the Commission understands that there is some disquiet about a lack of consultation with gaming venues and gaming machine manufacturers concerning:

- the legislated requirement for pre-commitment, and the costs and implication of the prospective ban on ATMs in Victoria
- significant regulatory changes to gaming machines announced by the Tasmanian Government in 2009 (including bet limits and cash input limits).

Betsafe similarly identified the important role of consultation, stressing the gaming industry's need for clarity about policy proposals and associated impacts on their viability. They argued that governments had generally failed to consult as a matter of process and that:

... the history of governmental regulation in the gaming industry throughout Australia has been one of hasty regulation with inadequate consultation. (sub. DR345, p. 11)

Another common complaint from industry is that consultation occurs too late in the policy-making process to ensure that governments make fully informed decisions. Even when stakeholders are consulted, they can face difficulties in adequately addressing key policy details, such as those included in a draft regulatory impact statement, when these are not publicly released prior to a decision being made.

Some participants representing community and consumer interests have expressed concern that advocacy of consumers' interests, and their ability to contribute to public

consultations, is lacking in gambling policy development, largely reflecting inadequate funding. For instance, the Public Interest Advocacy Centre commented that:

... it is difficult for a voluntary group to access the necessary expertise to analyse and manage the volume of information as it comes to hand and develop the skills to influence government and political processes. A specialist entity that is independent of government, industry and problem gambling treatment services, that can interpret information, make submissions and negotiate from a public interest perspective ... could be effective either at a national or state level, if appropriately resourced. The entity could sit within an organisation such as one of the councils of social service. (sub. DR389, p. 20)

Similarly, the Council of Gamblers' Help Services suggested that:

There is a substantial resource imbalance which disadvantages community based organisations in engaging effectively with consultation processes. (sub. DR326, p. 7)

The Gambling Impact Society said that:

Unlike many other areas of government, it appears that there is minimal allegiance in this area of policy development to the notion of consumer representation or inclusiveness. (sub. 253, p. 6)

Indeed, consumer representation and participation is well established in other regulatory areas, such as health care, energy policy, financial and consumer credit issues and other areas of consumer policy. And, although it is becoming common for consumer and community representation to be included on gambling policy advisory panels, consumer input is not well coordinated and sometimes neglected when it comes to core policy developments. It appears that some sectors of the gaming industry do not consider it appropriate for the views of the public to be 'represented'. In particular, Clubs Australia questioned the authority of consumer 'representatives', and in turn, failed to see merit in consumer representatives being treated as key stakeholders in the consultation process (sub. DR359, p. 102).

The Commission acknowledges that the diverse views of consumers and the public will often make it difficult to form a consistent and representative position. However, consumers' interests clearly lie at the heart of harm minimisation in gambling and it is legitimate that their views be represented to contribute to policy development.

Nevertheless, to contribute effectively, the timeframe provided for consultation needs to be sufficient. Jurisdictions variously specify minimum consultation timeframes for all regulatory proposals to ensure proper account is taken of the knowledge, experience and opinions of stakeholders. But despite these policies, community groups and smaller organisations can struggle to meet the timeframes specified by governments for making formal submissions (usually 28 days). Tight timeframes can mean that smaller community organisations, which usually have

access to fewer resources and expertise, are less able to properly address pertinent aspects of a policy proposal. As this tends to be less of an issue for well-resourced organisations and industry groups, governments can sometimes receive unbalanced feedback.

For example, the Victorian Government's call for submissions on the Exposure Draft of the Gambling Regulation Further Amendment (Licensing) Bill opened on the 11 December 2008 and closed on the 13 January 2009. Although this satisfied the minimum allowable period of consultation, it did not conform to the 60 days recommended, and was conducted over a period that is inconvenient to all stakeholders. As stated by one party that made a submission on the exposure draft:

It is difficult to avoid the impression that the timing and timetabling of the call for comments has been arranged in order to limit the range and/or quality of comments received. This is most unfortunate and suggests that the Government does not wish the Bill to be subject to careful scrutiny. (Livingstone 2009, pp. 1–2).

Similarly, in assessing the Victorian Government's decision to increase the number of gaming tables permitted at the Crown Casino, the Victorian Commission for Gambling Regulation (VCGR) allowed only 18 days to receive public submissions on the economic and social impacts of the proposal. Only one submission was received, which also criticised the short timeframe for the VCGR's inquiry and receipt of submissions (VCGR 2009, appendix 2).

Governments should resist seeing consultation processes as an obstacle and recognise that it is helpful for facilitating effective implementation and encouraging public acceptance. In particular, efforts to provide consultation that is more effective should take the following into consideration:

- The length of formal consultation should be proportionate to the magnitude and complexity of the regulatory proposal. As there is often a lot at stake for different parties with interests in gambling, longer timeframes may be necessary to allow development of a considered and informative response. Although this may take more time, consultation that is initiated early may help to avoid delays in the policymaking process.
- Industry and manufacturers are an important source of information about the potential costs of regulatory measures, unintended impacts and issues affecting the implementation of policies. An expectation that there will be genuine and early consultation can significantly reduce the regulatory uncertainty they face, and avoid unnecessary costs and disincentives.
- To assist stakeholders to target their input and provide constructive feedback, methods for consultation should give sufficient direction about the scope of the policy issue being addressed. Some states are moving towards the release of

regulatory impact analysis as a basis for consulting, including in the form of a consultation RIS, such as in Western Australia.

- The power of local governments to influence gambling policy is often weakened by their lack of comprehensive and strategic policies on gambling. Local councils may need to draw on additional expertise to represent the views of their local community on gambling issues, particularly concerning the number and location of Electronic Gaming Machines (EGMs) within their local area.
- Consultation should be transparent and ensure that particular stakeholders do not unduly influence the direction of policy. Particular interests or personalities should not be able to dominate policy advisory or consultative groups that comprise representation from a variety of interest groups. Equally, it is important that input from less well-organised groups such as consumers and local communities is not marginalised by more powerful players.

RECOMMENDATION 17.3

Governments should strengthen consultation processes and incorporate the views of stakeholders, including gambling providers, manufacturers and consumer representatives, into policy development processes. Governments should clearly specify appropriate mechanisms for providing input, and set minimum consultation timeframes that reflect the importance of the issue. Details of consultations should be made publicly available.

Improving transparency — reasons and evidence for policies

Transparency is especially important where governments face sectoral pressures and other potential conflicts of interest that could lead to policies and regulations that are not always in the broader public interest. In particular, transparency about the reasons and evidence for policies can draw government and public attention to areas where:

- evidence appears to be missing
- there could be unintended impacts or additional problems that the policy does not address
- there is a possible flaw in analysis or evaluation methodology.

Importantly, transparency deters governments from being ‘sloppy’ about implementing best practice regulatory processes. If a poor decision is made, they should be accountable to the public that regulations have a clear rationale and are in the public interest.

In some areas, governments have become more comfortable with increased transparency, including by publishing EGM statistics, requiring more accountability for community benefit contributions and making processes for allocating gaming machines more clearly structured and open to community input. But, although many of these areas are less contentious and the risks for governments are lower from increasing transparency, there are still some aberrations and inconsistencies in how transparency is applied practice. For instance, a number of submissions from participants have indicated that transparency is lacking for community benefit funds, including the collection and basis for distributing funds (Maribyrnong City Council, sub. DR364, p. 3; Public Interest Advocacy Centre, sub. 222, p. 13; Xenophon, sub. 99. p.6). (Similarly, a number of participants have expressed dissatisfaction about access to EGM data — a matter that is taken-up in chapter 18.)

For matters that are more contentious, there is often a complete absence of well-articulated and publicly available evidence about the desirability of gambling policy decisions, including the expected impacts (positive and negative) of new measures.

While it may be that governments would still have made the same regulatory decisions, lack of transparency heightens the risk of unintended consequences, and can diminish the credibility of some decisions, including their acceptance by stakeholders and the public. For instance, the recent decision by the Queensland Government (currently under review) to allow \$100 and \$50 notes to be used in EGMs in premium play areas of casinos may well have merit (chapter 11), but was not well-explained or consulted upon, despite conflicting with previously stated responsible gambling objectives and an earlier decision not to permit this.

A number of participants commented on a lack of transparency in regard to gambling policies. For example, the Victorian Local Government Association argued that decision-making should be much more transparent and include the measurement of the social and economic costs and benefits (sub. 75, p. 28). Similarly, the Council of Gamblers' Help Services commented that:

... the rationale for variations in harm minimisation measures across jurisdictions is not transparent, which stems from the lack of public knowledge of the evidence base behind decisions. (sub. 132, p. 4)

Governments can improve the transparency and public articulation of policymaking in gambling by:

- more openly evaluating policy options and clearly stating what evidence was used to support policy decisions
- providing more information and data on the effectiveness of gambling policies by, for example, improving public access to:

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- nationally consistent data on government-funded gambling counselling services
 - deconfidentialised unit record survey results and up-to-date estimates of gambling expenditure
 - providing more information about the operations of the Ministerial Council on Gambling, including its processes, more detailed meeting outcomes and its proposed future directions. A key purpose of this would be to reduce uncertainty for stakeholders and allow them to be better positioned to provide useful and targeted input about the potential risks and impacts of any foreshadowed policy directions.

Understandably, governments perceive practical limits on having more transparent processes in gambling, particularly when commercial or competitive issues are concerned, or they believe there is a risk of various interest groups misrepresenting or wrongly interpreting the information provided. Governments may also limit public disclosure to speed up policy development, or perhaps to minimise debate about controversial issues.

Nevertheless, a clear, comprehensive public explanation about why a regulatory proposal has become policy should be seen as a key responsibility of governments, and is especially important in areas where the views of stakeholders vary widely. For most matters, any risks or inconvenience to governments from greater transparency about their policy decisions does not warrant withholding this information. In some cases, information may be commercial-in-confidence, but that should not be used to undermine transparent processes more broadly.

Improving transparency — regulatory impact analysis

A Regulatory Impact Assessment (RIA) provides a framework for helping policymakers incorporate evidence into the formulation of policy. While having a range of associated benefits, its overarching purpose is to increase the quality of regulation. This helps ensure that policy design and decisions will be adequately informed and, in turn, that regulations will be more efficient and effective by identifying:

- the problem the regulation is to address
- the objectives of a policy response
- the impacts, costs, benefits and risks of different options
- the approach that provides greatest net benefit to society.

The design of some gambling policies can be all but ‘locked in’ before alternatives have been carefully evaluated and adequately consulted on. The purpose of RIA is considerably eroded if it is only performed at the end of the policymaking process and government, or other decision-making bodies, have already made a decision.

In addition, public access to RIAs and related documents is often poor and lacks appropriate timeliness to be influential in regulation and decision-making. Improved transparency of RIA documents will help to make governments more accountable and help drive an evidence-based culture that, over time, should improve the quality of policy design and the standard of decision-making.

Improving the timeliness and ease of access to Regulatory Impact Assessments

Public exposure of RIA documents, whether initially in the form of a ‘consultation regulatory impact statement (RIS)’, or later in the more comprehensive form of a ‘decision RIS’, is useful for a number of reasons:

- it helps to increase public understanding and support for proposals
- it highlights any weaknesses in design, including any unintended consequences, often relating to unforeseen costs and business impacts
- it can reduce compliance costs if the design of a regulation addresses some unforeseen impacts and, in turn, raises compliance.

Currently, most gambling regulations are not exposed to public scrutiny in this way until well after governments have announced their decision. Sometimes it can take months or even years for a regulation to be tabled after an initial decision to regulate has been agreed. Moreover, in some jurisdictions, such as South Australia, public availability of RISs is non-existent, while in others, such as Western Australia, RIA procedures have only just been implemented for primary legislation.

There are compelling reasons for a RIA to accompany all major policy proposals submitted to decision-makers, and indeed, some jurisdictions already require it. But, the release of RIA documents often occurs too late to allow sufficient time for stakeholders to provide feedback and for the community to engage in discussion before the matter goes to parliament. For all significant regulatory proposals, the Commission sees benefits in the public release of regulatory impact statements *at the time government decisions are made public*.

This requirement would change current arrangements in a number of ways. For example, the announcement by the Victorian Government that ATMs will be removed from gaming venues by 2012 does not appear to be associated with a publicly available RIS. Moreover, the *Gambling Regulation Amendment (Licensing)*

Act 2009 (Vic) was assented to in June 2009 and includes a provision about the placement of ATMs, but the Commission has been told that public discussion about the merits of this specific provision did not take place. In the absence of a publicly available RIS, stakeholders face considerable uncertainty.

Currently, even after a RIA has been released for public information, ease of public access can be difficult. The Commission sees an important role for an online register of regulatory impact analysis documents in each jurisdiction (as was also proposed in the Commission's Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services (2009a)). At the time of the public announcement of a regulatory decision, the community could access the relevant rationale and evidence contained in the RIA that informed the decision. Such improvements to both the ease of access to information and its timeliness would be of value to the community, allay some of the frustrations of many stakeholders and instil a discipline on governments.

Over the past decade, jurisdictions have made significant improvements to RIA requirements, which offers an important foundation for advancing regulatory processes (box 17.3). Among a range of across the board changes to regulation gate keeping and oversight, all jurisdictions have established supporting institutions that advise and check compliance of regulatory proposals (table 17.1). In the Commission's view, a centrally managed, online register of RIA documents would be a timely addition to these changes. (Central management of an online register also reduces the risk that special consideration is afforded to regulatory areas where political sensitivities are often present, such as gambling regulation.)

To some extent, several jurisdictions already attempt to provide online access to RIA documents, mainly by listing published documents on a webpage and creating online links to departmental websites. But overall, public access remains unreliable, and some gambling-related RIA documents that are known to exist are not available at central sites or in a timely fashion. For each jurisdiction's central register to provide a reliable point of access to all RIA documents, coordination between line departments and the institutional body with regulatory oversight needs to improve.

Box 17.3 Jurisdiction-wide improvements to regulatory processes

Improved processes for regulation making and review have mostly been driven by commitments through COAG processes, that have both raised the bar and increased the pace of reform. Some states have appointed a Minister with specific responsibility for championing better regulation and public management — including in New South Wales, Queensland and South Australia. And, in many jurisdictions, treasuries have taken a more prominent role in strengthening the standard of, and requirements for, RIA by line agencies.

All states and territories have established a body responsible for screening compliance with regulatory impact assessments (table 17.1). The remit and function of these agencies varies, with the Victorian Competition and Efficiency Commission having the most independence and analytical capacity. Some have a more restricted, administrative role, leaving individual departments responsible for their own compliance.

The compliance burdens of regulations are increasingly accounted for, and some jurisdictions have set red-tape reduction targets.

RIAs for subordinate legislation were established in most jurisdictions in the late 1980s and 1990s — beginning in 1985 in Victoria and, most recently, in 2001 in the ACT. The scope of RIA has since expanded to primary legislation, and in some states and territories, there is a requirement to consider national and cross-jurisdictional effects when assessing the costs and benefits of regulation.

Mechanisms for systematically reviewing and updating regulations have been introduced in most jurisdictions — written into legislation, under the sub-ordinate legislation Act (or equivalent), or in Western Australia, as part of the RIA process.

Sources: OECD (2009); COAG Communiqué 10 Feb 2006; COAG Communiqué 29 November 2008.

What determines whether a Regulatory Impact Assessment is undertaken?

In most jurisdictions, a RIA (or equivalent document) is required for all *significant* new and amending regulation (table 17.1). Whether this is the case is usually determined by the portfolio minister (for example, if an appreciable economic or social burden is likely to be imposed on a sector of the public). Many gambling regulations do not appear to trigger a RIA, and it is not always clear why a RIA was not required for some gambling regulatory proposals. The apparent absence of RIAs could indicate two things:

- many gambling regulations, including those flagged to have the specific intention of reducing harms from gambling, are not expected to have significant impacts (which may suggest something about the expected effectiveness of some regulatory measures)

- a lack of consultation and transparency in regulation.

A ‘consultation RIS’ can serve an important function by assisting with consultation prior to a policy proposal going to decision-makers, and in turn, by ‘demystifying’ the expected impacts. And, while a consultation RIS would not usually include the detail of a ‘decision RIS’, it can assist stakeholders to provide useful and directed feedback. Other measures for facilitating consultation include the release of issues papers, consultation and discussion papers and exposure drafts. Jurisdictions increasingly use these devices, and the consultation they encourage can result in changes to the draft bill or regulations, but they should not be used as a substitute for the preparation of a proper RIS and its public release.

Table 17.1 Regulatory impact analysis requirements and institutional arrangements

<i>Institution responsible for regulatory oversight</i>	<i>Regulatory Impact Assessment requirements</i>
New South Wales	
<p><i>Better Regulation Office (within the Department of Premier and Cabinet)</i></p> <ul style="list-style-type: none"> • Provides advice on new and amending regulation and assesses the adequacy of Better Regulation Statements against ‘Better Regulation principles’. • Advises the Minister for Regulatory Reform whether a BRS is inadequate. 	<p>Regulatory Impact Statement (RIS) required for all principle statutory rules (under the Subordinate Legislation Act 1989).</p> <p>All <i>significant</i> new and amending regulation requires a Better Regulation Statement (under the 2008 Guide to Better Regulation).</p>
Victoria	
<p><i>Victorian Competition and Efficiency Commission</i></p> <ul style="list-style-type: none"> • Independently assesses RISs and Business Impact Assessments for compliance which is attached to the proposed subordinate legislation. • Can require a department to undertake further analysis if the RIS is inadequate. 	<p>RIS required for proposed statutory rules that impose an <i>appreciable</i> economic or social burden (under the Subordinate Legislation Act 1994).</p> <p>A Business Impact Assessment is required for legislation with significant effects on business or competition.</p>
<p><i>Scrutiny of Acts and Regulation Committee</i></p> <ul style="list-style-type: none"> • Disallows approved regulation if it is not compliant with RIS requirements. 	<p>The Standard Cost Model is required for any regulatory instrument causing a material change in businesses administrative burden.</p>
Queensland	
<p><i>Queensland Office of Regulatory Efficiency (within Treasury)</i></p> <ul style="list-style-type: none"> • Provides advice to departments, but does not assess compliance. 	<p>RIS required for subordinate legislation that is likely to impose appreciable costs on the community (under the Statutory Instruments Act 1992).</p>
<p><i>Department of Premier and Cabinet</i></p> <ul style="list-style-type: none"> • Provides regulatory advice and oversight in the development of primary legislation. 	<p>A Public Benefits Test is required for all new and amending primary and subordinate legislation restricting competition.</p>

(Continued next page)

Table 17.1 (continued)

<i>Institution responsible for regulatory oversight</i>	<i>Regulatory Impact Assessment requirements</i>
Western Australia	
<i>Regulatory Gate Keeping Unit</i> (within the Department of Treasury and Finance)	A preliminary impact assessment is required for all proposals.
<ul style="list-style-type: none"> Assists government agencies and monitors and reports on compliance. If a RIS is deemed inadequate, the proposal may not proceed to the decision maker. 	RIS required for all primary legislation showing a significant negative impact (based on the PIA). To be extended for all subordinate legislation and quasi-regulation in the future.
<i>Department of Treasury and Finance</i>	
<ul style="list-style-type: none"> Has primary gate keeping responsibilities. 	
South Australia	
<i>Department of Trade and Economic Development</i>	RIS required for all cabinet submissions
<ul style="list-style-type: none"> Reviews and assesses the adequacy of Business Impact Statements and advises on the Business Cost Calculator. 	A Business Impact Statement and Business Cost Calculator report is required for all proposals with a significant impact on business.
Tasmania	
<i>Economic Review Unit</i> (within the Department of Treasury and Finance)	RIS required for all new legislation imposing competitive restrictions or negative impacts (under the Legislation Review Program)
<ul style="list-style-type: none"> Reviews all primary and subordinate legislation and certifies compliance with RIS requirements for legislation to proceed. 	RIS required for all new and amending legislation that imposes a significant burden, cost or disadvantage.
Australian Capital Territory	
<i>Regulation Policy Unit</i> (within the Department of Treasury)	RIS required for all new regulation, new and amended legislation or government direction.
<ul style="list-style-type: none"> Sets RIS standards and assesses the quality of the RIS. Non-complying RISs can proceed, but the advice of the regulation policy unit is attached. 	
Northern Territory	
<i>Regulation Impact Unit</i> (within Treasury)	A Preliminary Regulation Impact Assessment (PRIA) is required for all legislative proposals.
<ul style="list-style-type: none"> Performs an administrative role, with individual departments having responsibility for complying with RIS requirements. 	RIS required for all legislative proposals where the PRIA identifies a significant negative impact.

Sources: OECD (2009); various state and territory departmental websites.

There is also scope to improve the quality of regulatory impact assessments relating to gambling. In many instances, an evaluation of the impacts is all that takes place, which is a lower regulatory hurdle than a cost–benefit evaluation. For many regulatory proposals, the costs of implementing policy changes may be high, or involve unintended consequences. But as noted earlier, stakeholders are not always adequately consulted about the potential costs or effects of proposed regulations. Greater modelling of, and consultation about, such costs — even if these are not readily quantifiable — would improve policymaking.

In many instances, estimates of the benefits of a regulatory change can only be broadly conceived and will be subject to significant uncertainties. Being mindful of the degree of uncertainty is important, especially in view of the costs of implementing a regulatory change. Equally, the extent to which uncertainty might be tolerated would require firm evidence that the costs of policy inaction are high.

RECOMMENDATION 17.4

Given the potential for adverse social impacts and costs to business, governments should routinely undertake regulatory impact assessments for all major regulatory proposals for gambling, and make them publicly available at the time policy decisions are announced.

Accounting for compliance costs

In addition to the principles of good regulatory process already discussed in this chapter, it is important that governments and regulators take proper account of compliance burdens when designing and implementing regulations. Meeting regulatory objectives should not impose unnecessary costs on businesses and the community. This is important in gambling given the central role of regulations, which heavily influence the day-to-day activities of venues and the decisions of machine manufacturers.

Good regulatory process requires that policymakers include estimates of compliance costs when assessing the broader costs and benefits of alternative regulatory approaches. This does not mean that the best regulatory option will be the simplest to implement or administer, but it will mean that proper attention is given to potentially lower cost ways of achieving regulatory objectives.

Responding to pressure to ease compliance burdens on business, many jurisdictions have recently developed or endorsed the use of standardised and streamlined tools for measuring compliance costs. The adoption of such tools is becoming more common across jurisdictions. In South Australia, for example, a business cost calculator report is required for all proposals with a significant impact on business. Similarly, a related standard cost model is used in Victoria (table 17.1). Such tools to measure compliance costs will be subject to their own limitations and assumptions. However, in the complex regulatory sphere of gambling, understanding how compliance costs arise from businesses implementing and administering regulatory changes are especially useful.

In general, principle- or performance-based regulation that allows businesses to choose the lowest cost way to comply can often achieve policy objectives in the

most cost-effective way. As noted by the Australasian Casino Association, the diversity in local conditions will mean that a one-size-fits-all approach will not always work (sub. DR365, p. 28). That said, prescriptive regulation may be needed in certain circumstances and may even reduce compliance costs by increasing certainty for businesses. Venue specific legislation (i.e. separate legislative requirements for clubs, hotels and casinos) can sometimes fall within this category, and is often strongly supported by industry (The Australasian Casino Association, sub. DR365, p. 28).

A range of approaches are used to regulate gambling industries. Approaches vary across jurisdictions and change over time. In particular, more flexible, self- and co-regulatory approaches may initially be used, with more prescriptive regulation introduced if compliance is deemed inadequate. For example, when commenting on the South Australian gambling industry's intervention schemes (which assist venues to comply with their code of practice obligations), the presiding member of the Independent Gambling Authority said:

If it were not for the emergence of Gaming Care and Club Safe, the authority would now be recommending further serious machine reductions directed at achieving a 30 per cent reduction in numbers of premises with gaming (IGAb 2007, p.27).

Consultation with business and the community is another way that the regulatory burden on business can be reduced. As already discussed, it is an essential ingredient when bedding down the details of regulation, including minimising any unintended adverse impacts on recreational gamblers. It is also important that regulatory reviews, including implementation reviews by regulators, provide an opportunity to learn from business about aspects of compliance that are costly and ways that implementation could be changed. This might result in regulators making simple changes, such as offering online renewal and payment of license fees, or modifying reporting and administration requirements.

For example, design features of self-exclusion schemes can have significant effects on business compliance costs. Such schemes have to balance the benefits of patrons being able to exclude from multiple venues, against the costs of administration by venues, including managing large databases and identifying excluded patrons. As the number of venues that a patron can be excluded from increases, the additional benefits to a self-excluded patron starts to decrease, while the administration cost to venues can rise greatly.

The way that regulatory changes are introduced will also have an important bearing on compliance and adjustment costs for businesses. While chapter 19 discusses transitional issues in detail, it is important to recognise that the costs of compliance will vary according to:

-
- the pre-existing technology, which broadly reflects past and present regulatory settings in each jurisdiction, including the standard EGM operating systems and platforms in use
 - advances in technologies over time. For example, any transition to server-based systems has the potential to provide governments with additional regulatory flexibility and to enable much lower compliance cost for venues
 - business characteristics, such as size and demand for its product. For example, smaller venues might be afforded longer implementation periods to limit their adjustment costs
 - regulatory certainty and the confidence that businesses will be adequately consulted about regulatory changes and given advance warning
 - the consistency of regulatory requirements across jurisdictions.

Many of these issues are discussed in section 17.5, particularly regarding the gaming machine national standard.

17.5 National regulation and jurisdictional consistency

Gambling regulation is a state and territory responsibility, and current arrangements reflect this. Nevertheless, governments have agreed that addressing problem gambling should be approached jointly, and intergovernmental processes were established around the time of the Commission's 1999 report to help achieve this. For example:

- COAG established the Ministerial Council on Gambling, comprising state and territory gambling ministers, in April 2000.
- The Council oversaw the development of a national framework on problem gambling to address education, training, responsible gambling environments, and counselling and support services.
- It also established Gambling Research Australia to develop and manage a national research program.
- The *Australian/New Zealand Gaming Machine National Standard*, which was introduced in 1998 and agreed to by all states and territories (and New Zealand), was progressively adopted and refined.

Notwithstanding these intergovernmental arrangements, there remain different views among the states and territories about the best ways of regulating gambling. Some of these differences are considerable, in terms of both the regulation employed and the administration of that regulation.

In many areas, the policy approaches recommended in this report are best administered at the level of an individual jurisdiction (although there would be benefits from consultation and information sharing among jurisdictions). Examples include the proposal for gaming machine pre-commitment options (chapter 10) and many venue-based interventions (chapters 12–14).

However, in some cases there would be benefits from a single national approach, or a formally coordinated approach across jurisdictions. This report has made recommendations in a number of areas where this would be the case, including:

- gambling prevalence surveys (chapter 5)
- a national framework to improve counsellor training and accreditation (chapter 7)
- online gambling (chapter 15)
- funding of the racing industry (chapter 16)
- the collection of data and research questions (chapter 18).

The gaming machine national standard

One area where there are continuing unresolved differences among jurisdictions concerns gaming machine standards. There are major differences in policy parameters and technical specifications, notwithstanding that a national EGM standard exists and there are longstanding intergovernmental arrangements for reviewing its requirements.

The purpose of the Australian/New Zealand Gaming Machine National Standard is to:

... set out the core requirements, common to all jurisdictions, for the design of gaming machines and games for operation throughout Australia and New Zealand and to guide testers in their testing for compliance with the Standard. (Rev. 10, p. 12)

However, each jurisdiction contributes an appendix that sets out ‘any additional or differing requirements for that jurisdiction’ and:

It is the prerogative of each jurisdiction on the extent to which this document is adopted. (GMNS, Rev. 10, p. 12)

The New South Wales Government said that the appendices mainly contain technical requirements such as those relating to compliance plates, locks and keys and application for approval ‘submission requirements’. It argued that such differences were justified and ‘cause minimal inconvenience to manufacturers’, but it acknowledged that inconsistencies in centralised monitoring systems and game design harm minimisation measures were problematic for manufacturers (sub. 247, p. 42).

The GTA, representing gaming machine manufacturers, expressed concern that, in the decade since the inception of the Standard, regulators have not been able to agree upon a common set of technical requirements, nor on a common set of principles to meet concerns regarding responsible gambling:

... [the national approach] was expected to unify and simplify the technical requirements and submission process throughout Australian and New Zealand jurisdictions, which should have resulted in significant cost reductions to industry. Unfortunately after ten years, the respective regulatory authorities continue to hold divergent views. (sub. 147, p. 28)

Moreover, the Standard ‘appears to lean toward perpetuating interjurisdictional inconsistencies’ by the inclusion of separate appendices for each state and territory, some of which are ‘unduly onerous’ (pp. 27–8). Manufacturers face significant costs in having to obtain regulatory approval in up to eight jurisdictions, whose requirements can differ markedly. The GTA said that this imposes significant financial costs and time delays, and:

... it is virtually impossible to provide one common game or gaming machine across all Australian jurisdictions, as (for example) parameters to tolerate the differences are very difficult to ‘build in’ to game or machine architecture. (sub. 147, p. 30)

The GTA proposed that national standard setting would avoid unnecessary delays that are costly to the industry, increase certainty for business and support innovation and investment, including in measures that address the needs of different audiences (sub. 263, p. 3).

But not all differences may be unwarranted

While a greater degree of national uniformity (or at least consistency) would lead to cost savings to manufacturers and venues, it is difficult to argue that all jurisdictional differences are unwarranted.

Each jurisdiction has regulatory arrangements that it justifies on harm minimisation grounds, although the evidence base for implementing some measures is highly variable. It can comprise a mixture of findings from experimental studies and prevalence surveys, observations of how recreational and problem gamblers behave in different circumstances, professional advice from counsellors and the views of gamblers themselves. Taken together, this evidence might present a compelling case, but for many measures the available evidence is more equivocal.

In some cases, different policy approaches reflect different judgments about the likely effectiveness of a particular measure in reducing harm. It also reflects different degrees of willingness to experiment with policy changes that may not

always be well-based empirically, but where it can reasonably be presumed that a particular policy change would have some beneficial effects. (The markedly different attitudes among the jurisdictions to note acceptors on EGMs provide an example. This is discussed in chapter 11.)

Efforts should be made to reduce differences

Nevertheless, in many instances differences are costly. To some extent, they reflect a legacy of different EGM technologies and communications systems, which reduces the scope for (or at least raises the cost of) a more unified approach. For example, the New South Wales Government acknowledged that there would be benefits from all jurisdictions using the same centralised monitoring system protocol but noted that:

... once a protocol has been established in a jurisdiction, there is a significant cost associated with switching over to a new ... protocol. This is because all gaming machine software needs to be upgraded as well as the entire [centralised monitoring] infrastructure. (sub. 247, p. 42)

However, many differences do not fall into this category, and efforts should be made to limit differences to those that are justifiable in the light of different judgments by governments about the effectiveness of particular harm minimisation measures. As the GTA pointed out:

... legislators and regulators should be mindful of the impacts of their decisions on venues, suppliers and their various support resources. (sub. 263, p. 5) ... industry and key stakeholders need to be consulted early ... to ensure effective implementation of any rationalisation and accreditation systems. (sub. DR344, p. 24)

The GTA said that whenever change is required to the configuration of EGMs, software retrofits may be required:

The process involves retrieval of the original software which must be redesigned, redeveloped, retested (by the [supplier] and also by licensed external test laboratories), resubmitted to the respective regulator and approved for distribution. Every affected gaming machine must then be physically visited by a licensed technician, who must enter the machine, break security seals and record their destruction, locate/remove and replace computer chips, re-secure and test the machine before re-establishing connectivity with the respective electronic monitoring system and logging all of the above activity. (sub. 263, p. 5)

A starting point should be a presumption of uniformity of standards, with jurisdictions being required to make a case for a different approach. Ideally, if one jurisdiction were to decide that it wanted to introduce a particular change to an EGM on harm minimisation grounds, it could first seek the agreement of all jurisdictions as to how such a function ought best be implemented. To the extent

that agreement could be achieved, it would allow for greater uniformity in software and EGM design, and also reduce costs for other jurisdictions should they later decide to introduce such a feature.

There are also differences among the states and territories in the processes for obtaining approval for EGMs. Approval must be obtained from the regulator in each jurisdiction for which the game is intended. Among other things, manufacturers are required to engage an approved testing facility to undertake independent verification of all software and various other matters, and to report to the regulator. This process is required independently by each regulator. GTA members collectively pay \$20–\$30 million annually to approved testing facilities. (GTA, sub. 147, pp. 29–30).

While a jurisdiction may want to test a new game or machine to see that it meets its requirements, many aspects will be common across jurisdictions (for example, the operation of the random number generator) and there may be scope for one jurisdiction to accept an accreditation for some matters that have already been tested in another jurisdiction.

FINDING 17.1

Despite their name, gaming machine national standards are not really national standards, and the processes for their development and alteration are cumbersome and unnecessarily costly to industry.

RECOMMENDATION 17.5

Governments should reform gaming machine national standards by requiring consistency, unless the costs of variations can be justified by likely consumer benefits.

- ***Variations should be based on legitimate harm minimisation criteria and should take into account the costs that such differences impose on other jurisdictions, manufacturers and venues.***
- ***Governments should jointly investigate the scope to rationalise current arrangements for accreditation and testing of gaming machines, to remove any unnecessary duplication of effort and cost.***

Different approval criteria; different approval processes

In addition to state and territory differences in the rules for EGM approval, manufacturers indicated that they face additional uncertainty about approvals due to

the interpretation of each jurisdiction's requirements by the regulator. The GTA said that:

Some of these requirements are written into appendices, some are documented into separate guidelines, some are specific [such as the NSW gaming machines prohibited features register] and some are general [such as the SA game approval guidelines]. All are subject to ad hoc rejection decisions, often after costly external laboratory testing has been successfully completed and the approval submission has been provided. (sub. 263, p. 8)

For example, in South Australia, the Liquor and Gambling Commissioner must refuse to approve a game if approval is 'likely to lead to an exacerbation of problem gambling'. The guidelines are issued by South Australia's Independent Gambling Authority, and:

... provide, in effect, that if a game has certain characteristics, it is presumed in the absence of evidence to the contrary as likely to lead to an exacerbation of problem gambling. (GTA, sub. 147, p. 15)

The GTA said that it was not clear what evidence the Independent Gambling Authority relied on when it identified certain game characteristics as problematic, adding that the characteristics in question are permitted by regulators in other Australian jurisdictions, but not in South Australia (sub. 147, p. 14).

In the case of Victoria, the GTA noted that the responsible minister may make an interim ban order in respect of a gambling product or practice if the minister considers that it 'undermines or may undermine a responsible gambling objective':

The term 'responsible gambling objective' is defined, although in part by reference to 'problem gambling', which is not defined. ... Such provisions are aimed at addressing problem gambling. However, they are rendered unworkable by the absence of a definition of problem gambling. (sub. 147, p. 16)

Other examples include the 'prohibited features register' in New South Wales, and the 'general principles' adopted by the OLGR in Queensland when assessing new games and products (sub. 234, p. 23). In both jurisdictions, the industry may not realise that a game feature is unacceptable until very late in the approval process.

Moreover, the GTA said that if a regulator makes a decision that a new product is not acceptable, there is no obligation for it to justify that decision. And 'even when a reason is provided, there is no empirical evidence or policy investigation provided' to support it:

A regulator can simply indicate that a decision was made not to accept the innovation and the manufacturer has no choice but to accept the decision. This can result in aborted research and development efforts, strategic re-evaluation and enormous waste of human and technology resources. (sub. 147, p. 19)

GTA added that its members ‘regard it as imperative’:

... that games are approved against a clear evidence based mandate and specific requirements, [and] that some form of ‘appeal’ mechanism be implemented whereby gaming machine manufacturers are apprised of reasons for declined submissions, have the opportunity to address or refute those reasons and thus avoid repeat declined submissions. (sub. 147, p. 27)

The Commission understands that there can be a large element of judgment in assessing some game features, but there are also significant costs to manufacturers and to venues when game features are refused approval. To guide manufacturers, and to minimise any unnecessary costs, there would be benefits in each jurisdiction making clear in advance what it will and will not accept when assessing gaming machines for approval.

In cases where particular features are rejected, the reasons for the rejection should be explained in sufficient detail to guide future decisions by manufacturers.

Adding to manufacturers’ concerns about the transparency of approval criteria is the frustration that time periods for approvals are too protracted. According to the GTA, gaming machine approvals can take up to seven years. It proposed that governments should pre-commit to a reasonable time period to approve (or reject) gaming machine features (sub. DR344, p. 24).

Unnecessary delays in approval processes not only impose costs on manufacturers, but also limit the capacity of governments to introduce effective harm minimisation measures in a timely fashion. In view of the scope for significant benefits from early introduction of such measures, this is of particular concern. Indeed, the implementation time-lines proposed in this report will be difficult to achieve without more timely regulatory processes. This matter is further addressed in chapter 19.

FINDING 17.2

There is insufficient guidance given to gaming machine manufacturers about whether or not particular gaming machine features are likely to obtain regulatory approval. While complete certainty is unattainable, greater clarity of the expectations of jurisdictions would reduce costs for manufacturers and venues.

RECOMMENDATION 17.6

Regulators should ensure that all of their requirements for gaming machines and games are specified clearly and made available publicly:

- ***Where new developments are judged to be unacceptable, clear reasons should be given so as to provide guidance to the industry and inform the community.***

In sum, implementing any package of reforms will involve adjustment within the gambling industry. To achieve this transition smoothly, it is important that industry can invest and innovate with confidence. An important foundation for this will be much greater certainty surrounding gaming machine approval processes and standards, with any divergences having to be justified by established consumer benefits.