
3 The policy framework

Key points

- There are strong rationales for government regulatory and policy involvement in gambling, including the need to ensure probity and to avoid harm to consumers.
- The objective of policy should be the wellbeing of the community overall.
 - This means that measures aimed at addressing the adverse impacts of legalised gambling need to be balanced against the sizeable benefits of gambling for recreational gamblers and the industry.
- Some parties assert the primacy of personal responsibility when people gamble, claiming that this significantly reduces the need for regulation.
 - However, while self-responsibility can reduce the basis for litigation, it is not inconsistent with regulatory intervention. Consumer protection regulation has long aimed to address particular consumer detriments, even where personal conduct is a contributory factor.
- Public health and consumer policy frameworks provide the best basis for coherent and effective gambling policies, emphasising the importance of addressing the gambling environment as well as gamblers' behaviours.
 - The framework for gambling policy needs to recognise that, while the main objective is to prevent or ameliorate the severe harms some gamblers face, it also should address potential detriments facing gamblers generally.
- Policymakers cannot know in advance the precise impact of new gambling policies. Demanding a very high or potentially unachievable standard of proof about 'what works' would risk policy paralysis in an area where there are demonstrably large costs to society from inaction.
- Policy needs to take account of both the costs of mistakenly introducing ineffective policies, as well as the costs of failing to act when a policy option may in fact be effective.

3.1 Governments and gambling

Australian governments have struggled with the contradictions posed by gambling, reflecting the multiple goals of policy, the legacy of the past and the ambivalent attitudes of the public to gambling. Governments are involved in nearly every

aspect of gambling. They act as suppliers, tax collectors and police. They fund and organise help services for gamblers experiencing problems. Above all, they are regulators. They have put in place an array of laws and rules about who can gamble, when and where they can do it, what they can gamble on, which businesses they can deal with and how these can behave.

Governments at all levels have responsibilities for gambling policies. Local governments have planning responsibilities. The Australian Government determines national laws about internet gambling and, through the broader health system, is a supplier of some help services. However, state and territory governments oversee most facets of gambling. Within any government, there are usually several departments or other agencies that oversee particular policies, provide services or act as regulators.

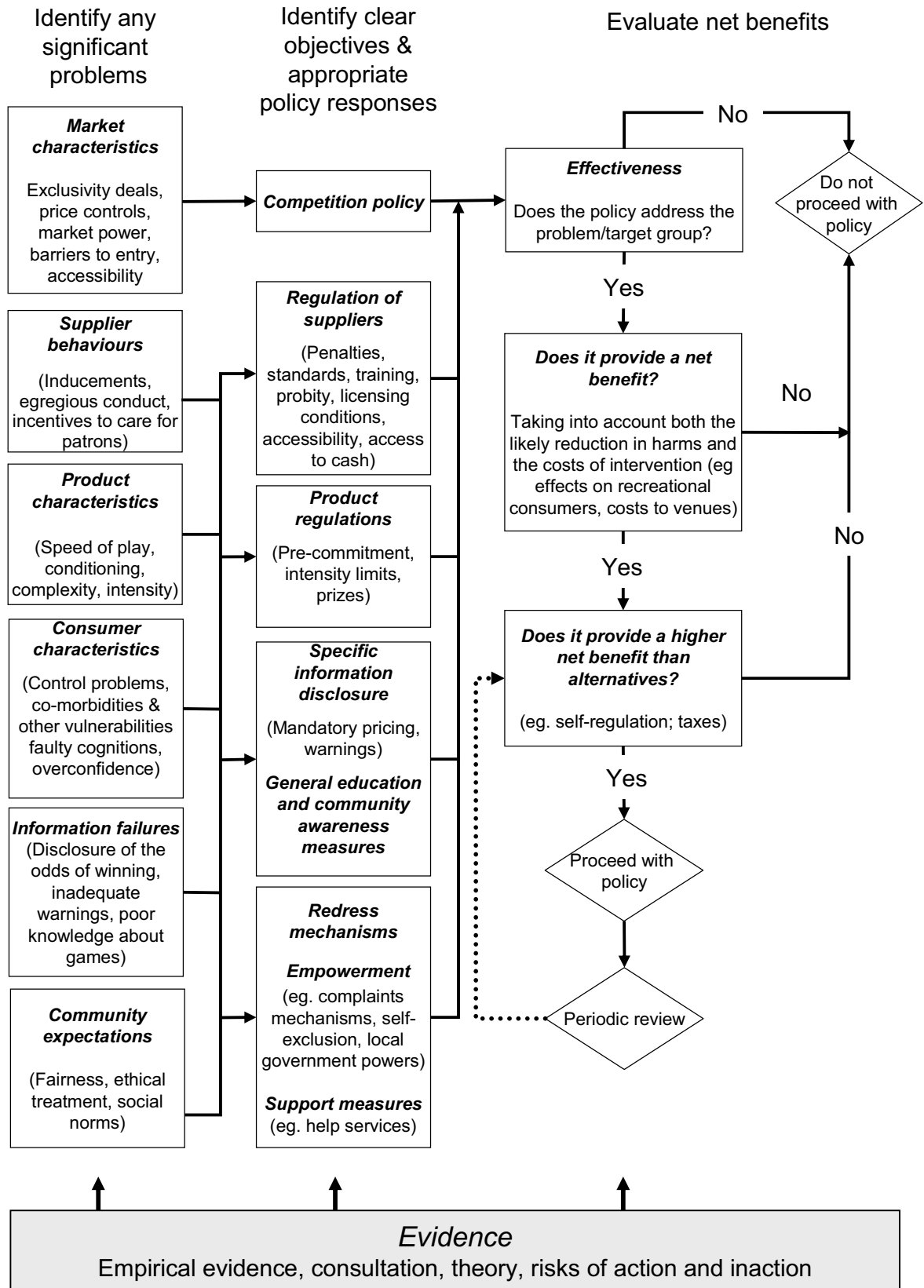
Given the breadth of the regulatory roles of government generally and the number of governments and agencies involved, the policy environment in gambling is highly complex. As outlined in chapter 1, this report does not aspire to assess the adequacy of government regulations and policies across all governments and gambling forms. Rather it selects those areas where the gains for Australian consumers and communities from changed policies are likely to be the largest.

3.2 Steps to good policy

While effective policymaking can be more art than science, there are some simple rules that are generally applicable (figure 3.1). As a rule, gambling policymaking should:

- address problems that are large enough to justify government action and amenable to it
- require clear objectives to develop targeted policies and to reduce the risk of unintended impacts (for example, on recreational gamblers or industry segments where there are few consumer problems)
- reflect assessment of the likely effectiveness of different options, including of their likely costs and benefits, and taking into account the risks of inaction as well as action (a matter discussed in greater detail in section 3.5)
- enable the community and industry to give their views about policy development and the performance of existing policies — underpinned by transparent decision making (and public data availability)

Figure 3.1 Steps to good gambling policy



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- involve impartial periodic reviews of the performance and net benefits of programs after they have been implemented, so that policy measures may be removed or amended (chapter 17).

A key requirement for all of the above features of good policymaking is the appropriate use of evidence — broadly interpreted as in figure 3.1 — to justify policymakers’ decisions. (This underpins the need for high quality gambling research and evaluation — chapter 18.)

The Commission has used this framework in assessing problems affecting Australia’s gambling industries and in determining policy options. This framework is also used, where relevant, in assessing the effectiveness of the processes used by governments when making and evaluating gambling policy (chapters 17 and 18).

3.3 Rationales for gambling policy

Ultimately, the desirability of any changes to current policy settings and institutional arrangements for gambling rests on whether such changes would be likely to improve the wellbeing of the Australian community. However, under that very broad criterion, there are several rationales for government gambling policies, including:

- obtaining the benefits of gambling for consumers and others through legalised supply
- dealing with the vulnerabilities of consumers and communities arising from legalised gambling, and problem gambling specifically
- ensuring the probity of suppliers
- raising tax revenue
- meeting community norms
- reforming legacy regulations.

The benefits of legalised supply

Many people enjoy gambling — having ‘a cheerful night out’ in the words of the Australasian Gaming Council (trans., p. 759). Yet the positive aspects of gambling are often underplayed. This reflects several factors. First, it is easy to be succinct when describing pleasure. (A single consumer surplus estimate can summarise many people’s enjoyment of a good or service.)

Second, and most importantly, the benefits of gambling are obviously not a ‘problem’ requiring any counteracting policy responses. In contrast, harm is a more arresting and immediately policy-relevant phenomenon than pleasure. Public health and consumer policies usually attempt to analyse and reduce detriments, whereas usually (and appropriately), markets and individuals are left to promote and discover enjoyment. Given that policy focus, it is easy to forget that the sum of the millions of Australians’ enjoyment of gambling accumulates to a large benefit.

As noted by HunterCoast Marketing:

... the 1999 report commented on satisfaction from “an enjoyable form of entertainment” and “benefits due to the enjoyment of playing” – presumably for most of the 82% of Australians who had a flutter. Yet this very strong indicator received no prominence in the media. (sub. 57, pp. 2–3).

Accordingly, gambling per se should not be seen as uniformly problematic for consumers. Indeed, in some cases, the Commission is proposing further liberalisation of gambling to increase the potential for enjoyment of gambling (chapters 15 and 16).

The key policy challenge is to avoid inadvertently lowering that enjoyment when trying to reduce the harms associated with gambling. (For instance, it would be possible to reduce problem gambling by abolishing gaming machines, but that would entirely negate the entertainment value of playing gaming machines and would probably reduce overall community wellbeing.) Achieving balance between effective harm minimisation and continued enjoyment of gambling has been a major consideration in designing policies in this report.

Some claim that there are other benefits of gambling for communities, businesses and employees. The existence and size of these is more contestable than the consumer-related benefits of gambling (chapter 6).

Probity

A long-standing basis for government involvement has been concerns about the probity of games (‘rigged’ games), suppliers (organised crime) and gamblers (money laundering), with the ultimate objective being protection of consumers and discouraging criminal behaviour. No participant in this inquiry contested the role of government in this area.

Revenue raising

The gap between Commonwealth grants to the states and their fiscal needs have to be filled through the states' limited avenues for own-source revenue. These include gambling.

Reform of the national tax system — currently being assessed by the Treasury — might overcome this imperative. Nevertheless, in the absence of major overall tax reform, collection of revenue from gambling activities by states and territories is appropriate.

It is less clear, however, that constraints on competition and supply *intended* to underpin significant licence fees (such as those that apply to casinos, or until 2012, the duopoly arrangement for EGMs in Victoria) are warranted, as discussed in the Commission's 1999 report. That said, where supply is constrained for other reasons (such as reducing problems associated with gambling) and where price controls are not feasible or desirable, there are arguments for governments to set licence fees to extract the excessive profits that would otherwise be earned by commercial operators.

Community norms

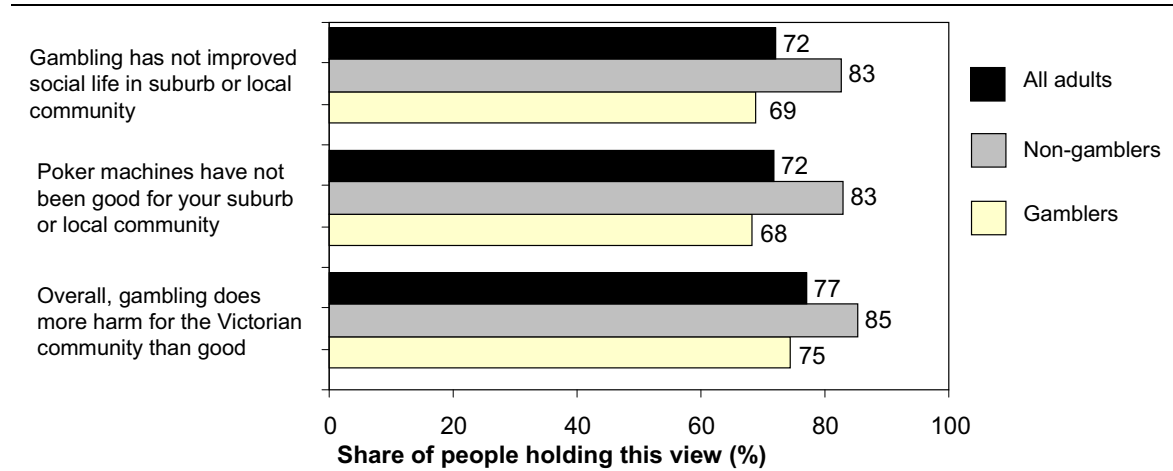
Government regulations can legitimately reflect public opinion about what is socially acceptable, with accountability for those regulations determined through the political process. The evidence suggests that, in contrast with many other pleasurable recreational activities, community norms concerning gambling reflect disquiet about its effects:

- While many Australians gamble, they remain sceptical about the overall community benefits (figure 3.2). For instance, one survey estimated that around 80 per cent of Victorian adults considered that gambling had done more harm than good (with little difference between the views of gamblers and non-gamblers).
- In Australia, commercially-supplied gambling is currently restricted to people aged 18 years and above, whereas in some countries, such as the United Kingdom, adolescents are legally able to gamble on lotteries and fruit machines (a form of electronic gaming machine). No developed countries allow young children to engage in commercial gambling.

Community norms may reasonably provide a rationale for some restrictive regulations, such as in relation to access by children. However, in many other cases it can be very difficult to substantiate that the apparent 'norms' have sufficiently

widespread support to justify them. In addition, such norms tend to evolve over time, so that what might be justified at one time is not at another.

Figure 3.2 People gamble themselves, but remain uneasy about the community involvement



^a Data relate to Victoria in 2003.

Data source: The Centre for Gambling Research (2004a).

Vulnerabilities of consumers

Consumers can face a variety of problems with certain goods and services (PC 2008) and this is particularly true of gambling. There is evidence (chapter 4) of widespread and persistent consumer misconceptions about particular gambling forms that might lead to people spending too much time or money. People are also prone to impulsive decisions that they later regret. (This is not peculiar to gambling. —governments mandate cooling-off periods in law for some types of purchases, such as door-to-door sales, recognising that impulsivity may have adverse effects on consumers.) In some instances, behaviours by gambling suppliers, through advertising and promotions, might accentuate consumers’ general vulnerabilities in this area (chapter 8).

Moreover, some forms of gambling have features that may condition people’s behaviour in ways that are not necessarily in their interest. Such problematic conditioning effects do not require malign intentions or deliberative actions by suppliers, but may simply reflect the fact that, in a process similar to biological evolution, gambling products with more pronounced conditioning effects will tend to be commercially successful. These effects need not be isolated to ‘problem’ gamblers. As in the case of faulty cognitions, they may also affect other consumers. The empirical research has been dominated by a focus on serious gambling

problems, rather than more frequent and less severe difficulties affecting consumers generally.

Some groups of consumers — such as people with intellectual or mental health disabilities, poor English skills, and those who are emotionally fragile (say, due to grief) — may be particularly vulnerable to problems when gambling. That vulnerability is relevant when determining any alleged unconscionable conduct by gambling suppliers, and more generally for regulations, help services and information provision that aim to address the problems of these groups specifically.

Problem gambling

The most notable form of consumer vulnerability is ‘problem’ gambling, where individuals experience difficulties in controlling their gambling. Work undertaken for the Ministerial Council on Gambling reached a generally accepted definition of problem gambling:

Problem gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others, or for the community. (Neal et al. 2005, p. i)

In the Commission’s view, the fact that the extent of harm has to be above a certain threshold level for someone to be referred to as a ‘problem’ gambler (chapter 5), does not mean that harms below that threshold are irrelevant to policy (chapter 4).

Sometimes, particularly in the United States, problem gambling has been identified as a mental illness. While some problem gamblers have pre-existing conditions, such as bipolar disorder or impulsivity disorders, that may pre-dispose them to problems with their gambling (chapter 5), Australian researchers and help professionals have rarely characterised difficulties with gambling as a medical problem (McMillen, sub. 223, p. 6). Instead, they have primarily seen it as a public health issue (see later). Addressing problem gambling has been the key concern of public policy in the decade since the Commission completed its past review and is a major focus of this report.

While problem gambling is one form of consumer vulnerability, it is useful to distinguish it from other problems experienced by consumers, because different policies are relevant to the different nature of the problems.

Vulnerabilities of communities

Some communities face widespread problems stemming from poverty, poor health, low social and human capital, rundown or missing local community resources,

substance abuse and crime. Some Indigenous communities fall into this group, but to a lesser extent, so too do particular communities in most major cities in Australia. These communities may be geographically concentrated or may be spatially-dispersed sub-groups sharing common vulnerabilities (such as recent refugees). These community traits can concentrate risks of problems with gambling, as well as compound some community-wide disadvantages. As part of a package of measures, policies tailored for certain ethnic groups, area-based policies in the provision of help services or specific rules about the accessibility of gambling may sometimes be justified to reduce such community vulnerabilities. (The Commission discusses some of the issues this raises in chapter 14.)

Addressing institutional and regulatory failings

A major basis for adaptations or amendments to gambling policy is to address the flaws in *existing* policy and administrative arrangements.

A more nationally-oriented policy framework

State and territory governments are pre-eminent in gambling policy, each constructing complex sets of arrangements for taxing and regulating the industry, helping people with problems, collecting information and commissioning research. Policy variety can be a useful source of experiments and innovation from which others can learn. However, this requires good, transparent evaluation processes, which have often not been present. Policy variety can also be the result of poor coordination between jurisdictions; the exigencies of local politics; and arbitrary decision making, with little justification for the policy differences.

This raises costs to gambling suppliers and the community generally. Among other things:

- variants of gaming machine standards (and approval processes for new features) apply in each jurisdiction. Sometimes these differences might be justified by reasonable views about what might reduce harm, but some are without clear foundation or create costly regulatory variations (chapter 17)
- jurisdictions have conducted different prevalence surveys at different times. This complicates interjurisdictional comparisons that may have been useful in understanding the nature of the problems people experience from gambling, which is a basis for more effective policy (chapters 4, 5 and 18)
- there has been little coordinated learning about the best way of assisting problem gamblers through help and treatment services (chapter 7).

In some areas of policy, there is a strong rationale for more cooperation and consistency between jurisdictions — that is, ‘policies about policies’. The potential for a national approach in particular areas of gambling is raised, where relevant, in the chapters that follow, with a summary in chapter 17.

Competition policy failures need addressing

As one participant quipped during this inquiry, ‘all gambling industries are special, but some are just a bit more special than others’. This observation derives from the observed differences in government policy across segments of the industry.

The first notable instance is the treatment of the racing industry. It is the recipient of significant government support through hypothecated gambling tax revenue. While some mechanism must exist to secure payment for the racing industry to hold the events on which this form of gambling is based, the existing arrangements may be coloured by the more questionable objective of industry support. That issue is taken up in chapter 16.

A further manifestation of differential industry treatment is policy in relation to online gambling, which is at variance with the treatment of venue-based gambling regulated by state and territory governments (chapter 15).

And while variations in the regulatory treatment of different types of businesses may sometimes be legitimate, these variations need to be assessed against a public, rather than a private, benefit test:

- clubs generally face lower gambling taxes than hotels, and often have greater entitlements to EGMs
- casinos are also subject to varying rules in relation to taxation and machine caps.

In chapter 6, the Commission assesses the extent and nature of the benefits associated with the donations from community gaming venues and, in doing that, considered how concessional taxes for some venue types partly fund these donations. The Commission has also considered many of the complex issues associated with the competitive neutrality effects of taxation and the regulation of clubs as part of the inquiry into the not-for-profit sector (PC 2010).

Regulatory variations may sometimes be appropriate

Throughout this report, the Commission assesses whether casinos, clubs and hotels should be equally subject to specific harm minimisation measures (and in some cases, whether there should be temporary exemptions for some venues — such as

small rural pubs). The same considerations apply to different gambling forms. Exemptions, or variations in regulatory treatment, may be appropriate where:

- the benefits of a regulation vary significantly across venue types or gambling forms. For example, there are grounds for different harm minimisation policies for lotteries, since they pose few risks for most people. In addition, given their characteristics, casinos have significant numbers of interstate and international visitors. These tend to be short-term rather than regular gamblers, and are therefore less exposed to the risks of harm. If the potential benefits of a particular regulatory measure are already relatively modest, then this can tip the balance in favour of an exemption
- the costs are higher in some contexts. For instance, as discussed in chapter 15, credit cards are a customary form of payment in the online environment. Barring credit card payments for online gambling would pose far more costs to this form of gambling than in equivalent physical venues. For a given level of benefits, this may again tip the balance in favour of an exemption. A similar logic may sometimes suggest temporary exemptions for small venues to reduce the adjustment costs associated with the introduction of new regulations.

However, there are limits to the desirability of exemptions. They add to the complexity of regulation and can have unintended impacts if they change the behaviours of venue or gamblers. For example, a problem gambler may seek to circumvent a harm minimisation measure by gambling at an exempt venue. These costs and risks have to be assessed when determining the scope of any exemptions.

3.4 Different frameworks inform policy

Given the breadth of rationales for government policy described above, there is no single theoretical construct for considering policy options.

‘Self-responsibility’ as the appropriate approach?

Many see policy in this area through the lens of personal responsibility. From this perspective, there is a weak rationale for government initiatives to address adverse consequences that flow from individuals’ decisions, with consumers expected to exercise self-control and to take responsibility for their actions when gambling.

Reacting to the draft report, some segments of the gambling industry strongly argued that there should be a greater emphasis on personal responsibility rather than regulatory measures, to resolve the difficulties gamblers face.

... the notion of any personal responsibility on the part of gamblers is largely dismissed within the Draft Report. (Australasian Gaming Council, sub. DR377, p. 11)

The commission and governments in general need to reinstall the notion of people taking responsibility for their own actions, as is the case with several recent High Court decisions, and not throttle down the rights of the vast majority. No-one denies that we need to protect problem gamblers. However, as is the case with various other government policy, the fact that the vast majority of the population has to suffer for the transgressions of the few is a notion that is wearing thin with the general public. We believe the commission has to strike the right balance of harm minimisation against infringing on the basic rights of the general population. (RSL and Services Clubs Association, trans., p. 608)

... the fact that the far greater majority of gamblers enjoy gambling responsibly and the notion of personal responsibility have both been ignored. Why should this greater majority have their rights and freedom of choice compromised as a result of the actions of a small minority? (Leagues Clubs Australia, trans., p. 483)

These new measures once again only address the “vehicle” in the problem and not the “driver”... It’s time for Australians who have seen their freedom of choice consistently eroded to appease those who do not have self control to speak out. If there is to be cultural change, it must be based on facts not emotion and politics. (Club Managers’ Association of Australia — Condon 2009)

While many in the community are ambivalent about gambling and seek to control it further, many also believe in self-responsibility. For instance, in five surveys undertaken between 1996 and 2003, around 80 per cent of Victorian adults considered that the onus was on individuals to control their gambling (Centre for Gambling Research 2004a, p. 142).

The failure of litigation relating to alleged negligence or unconscionable conduct by gambling suppliers partly reflects the significance that courts assign to personal responsibility (chapter 12). More generally, recent cases in other areas have also affirmed the importance of self-responsibility and the need for a clear identification of ‘vulnerability’ or some other exceptional circumstances, before a customer (or a party associated with them) can sue a business for a breach of duty of care.¹

The key principle at stake is that eroding the presumption of self-responsibility could substantially increase the risks of unwarranted or opportunistic litigation, reduce the incentives for people to act prudently, and decrease individual freedoms.

¹ *C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board; C.A.L. No 14 Pty Ltd v Scott [2009]HCA 47 (10 November 2009)*. This case centred on a Tasmanian hotel owner who gave back motorcycle keys lodged for safe-keeping to a (drunk) patron who was subsequently killed in an accident. In this case, the Court determined that the deceased motorcyclist did not appear to show any conventional signs of drunkenness, and told the publican three times that he was able to ride. The court did not reject the potential for a duty of care to exist, just that the exceptional circumstances underpinning any such duty were not present.

In addition, even if it is recognised that the presumption of ‘self-responsibility’ leads to harm to individuals or communities, governments are also imperfect decision-makers. Accordingly, the harms associated with leaving people responsible for their own decisions may not be worse than the harms associated with well-intentioned interventions on their behalf.

These are all important considerations in framing how courts should react to instances where individuals have made decisions leading to harmful outcomes. However, there may still be reasonable grounds for litigation if venue behaviours breach an appropriate standard (chapter 12). And, while sometimes the presumption of ‘self responsibility’ may strongly reduce the merit of litigation, that need not diminish the merit of regulation to the same degree.² In particular, a pure ‘self-responsibility’ model would ignore:

- the general vulnerabilities of consumers, which may be accentuated by particular aspects of the gaming environment and its technologies (chapter 4). Consumers who are misled by a supplier cannot be called ‘irresponsible’
- the vulnerabilities of groups suffering from mental health problems. For example, people with depression and bipolar disorder have a much higher likelihood of developing gambling problems. Overall, around 35 per cent of problem gamblers have a severe mental disorder compared with around 2 per cent of non-problem gamblers (Jackson 2008). These people suffer a particular disadvantage that makes them susceptible to some of the risky features of some gambling technologies, such as the capacity to gamble in a trance for long periods of time or to ramp up spending from very small to very large amounts
- the large number of people who may be regarded as ‘irresponsible’ and their economic importance. As discussed in chapter 5, problem gamblers are a significant proportion of the relevant group of gamblers and they account for a large share of spending
- the fact that apparently ‘irresponsible’ behaviour may have damaging consequences for many people beyond the actual gambler and even for society as a whole (for example, through fraud, domestic violence and work-related costs associated with problem gambling)
- groups where the strong incentives posed by the adverse personal consequences of their actions (gambling, but also binge drinking and dangerous driving) appear to have few effects on their subsequent behaviour. These groups —

² Indeed, in the High Court case described in the previous footnote, the court noted that measures to control alcohol consumption on licensed premises ‘were a step for legislatures, not courts, and it is a step which legislatures have taken only after mature consideration’.

particularly poorly educated and disadvantaged young men — have systematically higher risks of persistent harmful behaviours. Merely asserting the value of self-responsibility does not necessarily address the costs to themselves (or others). In the case of motor vehicle safety, many of the gains in reduced accidents have in fact been based on modifications to the environment (roads, vehicle safety), not the behaviour of the driver (contra Condon 2009 cited above)

- circumstances where people do not know what behaviours would equate with self-responsibility until it is too late. For example, people who believe that gambling losses today can readily be made up by wins tomorrow, next week or next month (a common faulty cognition), may not see current excesses in their gambling behaviour as irresponsible
- the potential for regulation to reinforce, rather than undermine, self-responsibility. In particular, pre-commitment and self-exclusion measures provide all gamblers with the option to exercise self-responsibility, not to undermine it
- the capacity for regulation to be targeted at those with problems, or at risk of experiencing substantial harm, without much effect on recreational gamblers. The need to uphold the principle of self-responsibility is reduced if ‘responsible’ people can still freely undertake an activity without burdensome constraints. For instance, it is hard to see what degree of freedom is lost by a capacity to insert no more than \$20 of cash into a gaming machine while the credit balance is above \$20, as recommended by the Commission (chapter 11). Nothing stops a gambler inserting more money when the balance falls below \$20, and given their usual intensity of play, this will occur only rarely for ‘responsible’ gamblers. Indeed, it even increases the demand on them to behave responsibly by actively requiring them to think about the personal consequences of investing more. Where such a measure would act most would be on impulsive people spending continuously at very rapid rates.

Accordingly, while there are reasonable social expectations that people take responsibility for their own behaviour, that does not limit the need for significant regulation of gambling. Moreover, to the extent that people face gambling problems because of co-morbid conditions or unsafe features of gambling technologies and venue environments, labelling them as ‘irresponsible’, as some industry groups have done,³ risks stigmatising people who need help, while deflecting attention away from product safety issues. A problem gambler wishing to self-exclude or to otherwise approach a venue or some outside body for help, may be less likely to do so if their behaviour is labelled as ‘irresponsible’.

³ Clubs Australia, Media Release, 21 October 2009.

Given the limits to the policy relevance of ‘personal responsibility’, the dominant frameworks shaping public gambling policy are the medical, public health and consumer-focused models (figure 3.3).

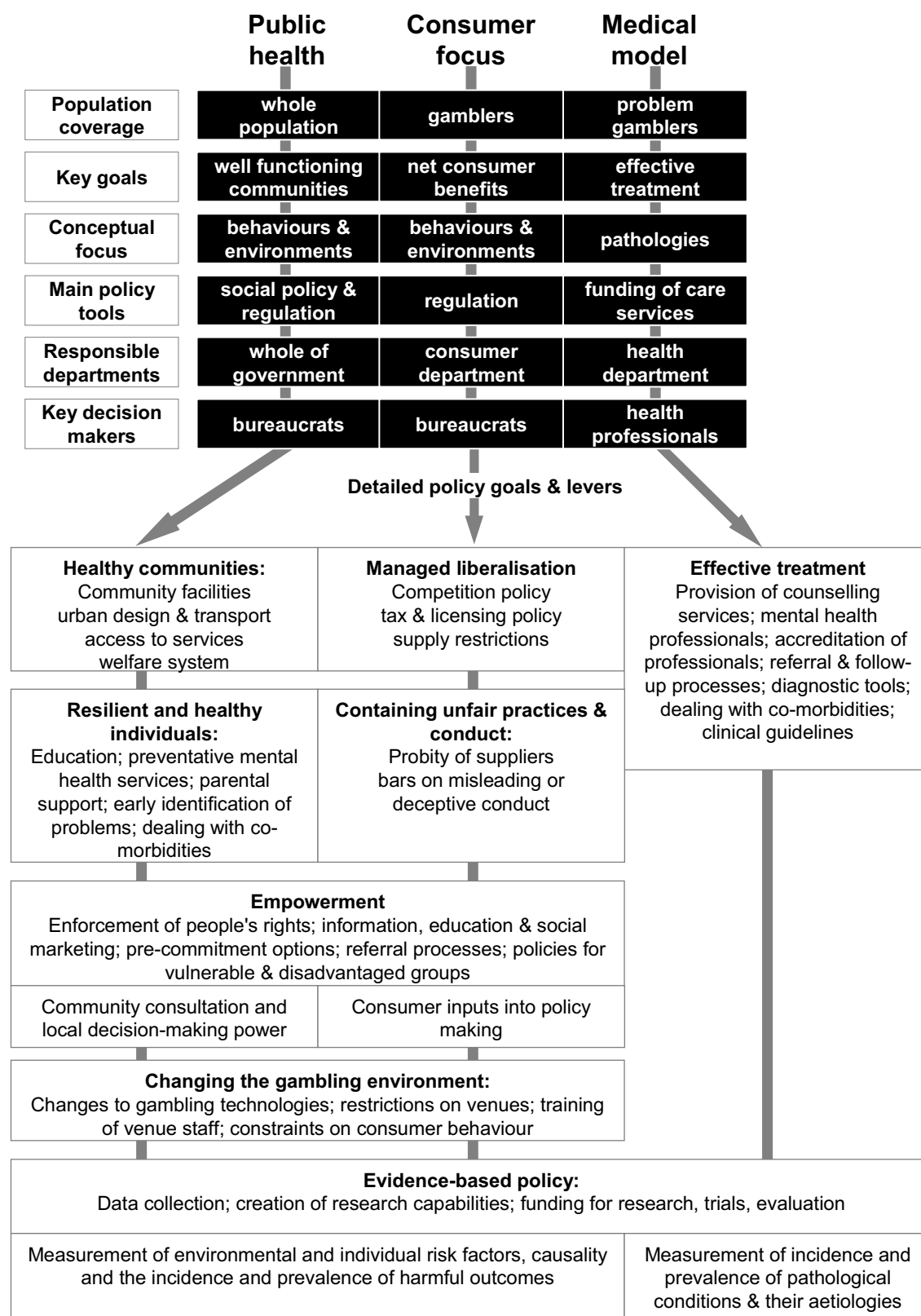
The medical model

This concentrates on the effective treatment of people who already have a health condition, and encompasses the specialised professionals and knowledge required to achieve this. In the gambling area, this includes counselling and psychiatric services for problem gamblers; specific diagnostic criteria, such as the Diagnostic and Statistical Manual of Mental Disorders; specialised therapies, such as psychotherapy and cognitive behavioural therapy; dealing with co-morbidities such as depression or substance abuse; and the development of professional standards and accreditation.

However, even in considering the effectiveness of treatment services (chapter 7), some of the concerns posed by the consumer and public health frameworks still have relevance. For instance:

- non-medical approaches, such as financial counselling, may help people to overcome gambling problems
- people can overcome the problems experienced by their gambling without treatment through learned adaptation of behaviours, self-help manuals and informal help by friends and families. One of the challenges posed for the ‘treatment’ approaches is to demonstrate that they have greater effectiveness than such informal approaches
- all people with a broken leg seek treatment, but few people experiencing gambling problems do so. Why that is the case and what, if anything, to do about it raises social not medical issues. For instance, social stigma appears to be one reason why many people do not seek help
- unlike fixing a broken leg, the outcomes and forms of treatment for gambling problems depend on the community context. For instance, many Asian communities have specific beliefs that counsellors need to consider when helping them. Modes of help may also need to be different in Indigenous communities.

Figure 3.3 Different models for understanding gambling policy



The public health model

This is defined as ‘the science and art of preventing disease, prolonging life and promoting health through the organized efforts and informed choices of society, organizations, public and private, communities and individuals.’⁴

Many researchers and policy analysts have placed policy responses to gambling within a public health framework (Korn and Shaffer 1999; Messerlain et al. 2005; IPART 2004). This was also true of many participants in this inquiry (box 3.1).

In areas outside gambling there have been a myriad of successful applications of the public health approach. These include social marketing to limit smoking (Hammond et al. 2007); immunisation (Applied Economics 2001); the positioning of sleeping infants to reduce cot death rates (Van Der Weyden 2003); ‘black spot’ programs to reduce traffic accidents (Meuleners et al. 2008); design changes to motor vehicles (Morrison et al. 2003); and the removal of carbon dioxide from the domestic gas supply to reduce suicides (Clarke and Mayhew 1988). Historically, measures such as improved sanitation, clean water and public education have been credited with major reductions in morbidity and mortality across whole populations.

In gambling, the public health model is often contrasted with the medical approach. The latter concentrates on the treatment of problem gamblers (that is, resolving individual dysfunction by dealing with the individual), while the former aims to *prevent* problems associated with gambling however they may arise, and, more generally, the *promotion* of wellbeing generally. In that sense, the public health approach shares many of the goals and insights of the economic approach to consumer issues (as for example, set out by a recent OECD paper by Sassi and Hirst 2008).

As is apparent with the preceding non-gambling examples, the public health approach uses many different levers to address risky or socially adverse behaviours or to promote healthy communities. Of particular relevance to gambling, these policy levers include:

- providing communities and individuals with richer opportunities for interactions with each other and for leisure.⁵ In a gambling context, this might, on the one hand, include measures that reduce boredom or alienation as motivating factors for escapist gambling. On the other hand, the public health approach does not

⁴ This is attributed to C.E. Winslow (a bacteriologist at Yale Medical School) in 1920, and still the commonly cited definition of the public health model.

⁵ Income redistribution to reduce inequality is often cited as an important social dimension of the public health approach generally, but it is less clear that this would be relevant to harm reduction associated with gambling.

rule out the positive impacts of gambling. For example, beyond its immediate recreational value, gambling may have broader social benefits to a community, such as through secure and inviting venues (chapter 6)

Box 3.1 Many participants favoured a public health approach

A public health framework, which underpins *Taking action on problem gambling*, recognises that there are a range of behaviours associated with gambling. As gambling behaviour becomes more problematic so too does the range, intensity and complexity of the behaviours involved. This means that multiple strategies are needed to prevent gambling becoming problematic and to reduce gambling related harm. Prevention, treatment and harm minimisation are the cornerstones of a public health policy framework and are used to address other problem behaviours such as alcohol abuse and drug taking. (Victorian Government, sub. 205, p. 67)

The Queensland Responsible Gambling Strategy is a holistic approach to the issue of gambling and acknowledges the spectrum of healthy and unhealthy gambling behaviours in the population. It is based on a public health approach which views problem gambling as a complex issue requiring multiple collaborative solutions and incorporates elements of prevention, protection and rehabilitation. Broadly, the goals of a public health approach to gambling are to promote informed attitudes and behaviours towards gambling, prevent the development of gambling problems, protect vulnerable and at-risk populations and provide help and support to those affected by problem gambling. (Queensland Office of Liquor, Gaming and Racing, sub. 234, p. 8)

We believe NSW needs a Host, Agent and Environment population approach as in drug, alcohol and tobacco. We believe the reason we don't have such an approach at present is that the strong political influence of the gambling industry has blocked development toward this model preferring the "Reno Model" with its focus upon individual behavioural treatments, consumer education and philosophy of responsible choice. This model (in contrast to a public health approach) fails to address the social determinants of problem gambling and product safety issues. (Gambling Impact Society NSW, sub. 59, p. 2)

A public health approach to primary prevention and early intervention that focuses on information, education and treatment for problem gamblers and their co-morbid issues is essential to limit gambling related harm. (South Australian Council for Social Service sub. 179, p. 10)

... regulators and licensing authorities should give more consideration to a public health approach to harm minimisation which stresses the importance of the local social environment on both the aetiology and prevention of gambling-related harm, and on the maintenance of individual and community capacity and wellbeing. (Professor Jan McMillen, sub. 223, p. 23)

Although some jurisdictions maintain that they adopt public health models in gambling, these tend to be heavily focused on 'downstream' interventions such as the provision of counselling services or use of large scale (expensive) media campaigns highlighting the dangers of excessive gambling ... A contemporary public health approach would place far more emphasis on 'upstream' approaches to the problem, in this case effective regulation to limit harm and better regulate the harm causing mechanism – in this case, the EGM system. (Livingstone, Woolley & Keleher, sub. 134, p. 4)

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- providing people with useful factual information so they can make more informed decisions (chapters 8 and 9). For example, in gambling this might mean information about the cost of playing a machine per hour, the likelihood of long-term losses for a regular gaming machine player; provision of information where people have persistent cognitive misperceptions; records of gambling transactions; and strategies to keep gambling expenditure under control (such as the existing capacity for people to set limits on ATM withdrawals)
 - empowering the general community, for example by giving them a say about where gambling may be located in their area (chapter 14), or the capacity to seek control over a family member's problem gambling through third-party exclusions (chapter 10)
 - using social marketing campaigns, for example, to promote help seeking behaviour or to encourage people to watch out for friends who might be developing a problem (as exemplified by the NSW 'gambling hangover' campaign aimed at young men) (chapter 7)
 - legal sanctions, such as prohibitions on certain kinds of inducements to gamble, or on children participating in commercial gambling or failure by venue staff to enforce responsible gambling (chapter 12)
 - mitigating risks by changing technologies. For example, this might involve changes to bet limits, bill acceptors or rates of return, or requiring breaks in play, cashless gaming or pre-commitment (chapters 10 and 11)
 - reducing risks for gamblers by changing the behaviour of staff in gambling venues, through training programs about responsible service of gambling and awareness of the behaviours shown by patrons experiencing problems (chapter 12)
 - altering the environment more broadly, such as through restricting the general availability of gambling opportunities (such as evident in the Western Australian approach to gaming machines); changes in venue operating hours; the location of the gaming room within a venue; the availability of ATMs; and the disclosure of risks through printed or audible warnings (chapter 8, 13 and 14).

A key aspect of the public health approach to gambling — similar to its application to alcohol and motor vehicles — is that gambling is not an inherently 'bad' product whose consumption should be discouraged (as compared with tobacco or illicit drugs). Accordingly, public health approaches centre on a full spectrum of interventions aimed at preventing or mitigating harm. This encompasses prevention, community awareness, harm minimisation and treatment strategies.

The consumer model

The consumer approach recognises that gambling is a consumer good, and that, as for other consumption, the policy environment should seek to maximise benefits for consumers. This includes ensuring appropriate product safety standards; fitness for purpose; informed consent; the absence of unconscionable behaviour and misleading or deceptive conduct by suppliers; protection of vulnerable consumers; and markets that encourage innovation and low prices for consumers.

There are some differences between public health and consumer-oriented approaches. The former would typically ignore competition issues (though these are often strongly associated with consumers' wellbeing), while the latter would not typically look at changes to local communities as a policy option. However, there are more conceptual commonalities than differences. For instance, the imperative for adequate product safety in gambling would require appropriate modification of features of gaming machines that are potentially hazardous to consumers. Consumer policy would target the same features as preventative health measures.

The names do not matter much

There are sometimes debates about what *name* to apply to the framework that might yield policy changes aimed at achieving desirable outcomes. Is a public health, consumer protection, psychiatric, community empowerment or other 'framework' the appropriate one to apply? In the Commission's view, the name matters less than the capacity for the framework to clearly express the goals of policy and to generate the right policy questions and answers. Nevertheless, the 'public health' and 'consumer protection' frameworks — as traditionally understood — provide the broadest insights into the kinds of policies that promote the public good in this area.

The policy goals are clear

The ultimate objective of gambling policy is to achieve the best outcomes for consumers and Australians generally. As the discussion above shows, that involves achieving many subsidiary goals. These goals are to:

- reduce detriment to consumers and the flow-on costs associated with these detriments for family members and society generally. In turn, this requires:
 - preventing the more vulnerable consumers from becoming problem gamblers
 - lower levels of harm experienced by those gamblers who are already experiencing problems (for example, because they are able to more

-
- effectively limit their time or money spent gambling) and, associated with these, reduced harms for their significant others and the community at large
- more effective help services for those gamblers experiencing significant control problems and counselling assistance for their families
 - appropriate behaviours by suppliers of gambling
 - overcoming consumers’ cognitive misperceptions or poor information, so they can make better informed judgments about their gambling decisions
- achieve better value for consumers through:
 - lower prices (alleviating the impacts of anti-competitive arrangements, ineffective cost-increasing regulatory requirements and unnecessary red tape for gambling suppliers — all of which ultimately fall on consumers as higher prices)
 - higher quality and more innovative gambling products
 - a capacity for greater consumer sovereignty by giving consumers more tools to control their own gambling
 - meeting public expectations through:
 - the better realisation of community norms and aspirations, noting that the community’s ambivalence to gambling partly drives regulation
 - more accountable and transparent government decision-making, in an area where the public have a strong policy interest
 - better functioning communities
 - introduce better institutional arrangements for gambling policy making and regulation — a goal that underpins the capacity to achieve the other objectives.

Sometimes there are tradeoffs between policy goals. For example, open competition might lower prices and encourage innovative new products, which benefits consumers as a group. Nevertheless, the resulting increase in accessibility of gambling might exacerbate problem gambling or challenge community norms. So, in working out the best policy options, those who benefit from, and those who are disadvantaged by, any policy measures need to be considered. However, these considerations can fit into a standard economic framework, so the overall goal of gambling policy can still be characterised as maximising net community benefits.

3.5 Evidence-based policy in gambling

Good policy relies on more than plausible rationales. It requires reasonable empirical or theoretical grounds that an intervention would have its desired impacts without excessive costs.

A key question is what quality and quantity of evidence would be sufficient to justify introducing a new policy measure (and, for that matter, after its implementation, assessing whether it should be amended or removed). Sometimes it is claimed that the only convincing evidence for new policies is a trial that incorporates all of its proposed features. However:

- it is mostly impractical for cost, time or ethical reasons to run true experimental trials of social policies (akin to clinical trials in medicine)
- while such trials are sometimes claimed to be the ‘gold standard’, in reality their outcomes depend on their exact design and they may not apply in social contexts outside the environment in which they were tested. For instance, the famous Perry pre-school trial in the United States — a well run experimental trial with a proper control — found that early childhood education had significant lifetime benefits for those disadvantaged children in it. However, wider application of early childhood education through the Head Start program was not as effective
- many trials find that the effectiveness of a policy would probably be improved by changing various design features. But, unless such design features are then tested in another trial, it cannot be substantiated that these new design features would truly work in a full-scale implementation. By that logic, full-scale implementation could be deferred indefinitely.

In the gambling field, there have been only a few trials (and none is equivalent to the ‘double blind’ randomised control trials that are the ‘gold standard’ in medical research).⁶ While the trials have provided useful insights, they have relatively narrow policy relevance and have had some limitations:

- A trial of the effects of various machine modifications illustrates the difficulties of conducting policy-relevant trials — a point emphasised by its authors (Blaszczynski et al. 2001). Among the variety of limitations they identified, the most fundamental was the capacity of gamblers in the study to choose whether to gamble on a modified or unmodified machine or to go to another venue (p. 71). This limited the capacity for a real control/treatment comparison. The design flaw is principally a reflection of the practical difficulties of conducting proper trials in gambling.

⁶ These have related to pre-commitment (chapter 10) and to the impacts of certain features of gaming machines, such as note acceptors and spin rates (chapter 11).

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- The trials of pre-commitment in South Australia and Queensland (chapter 10) illustrate a different dilemma. The trials have been conducted over a long period in several trial sites, with careful data collection (based on card use). They have provided many insights into the practical use of card-based gaming, but they only relate to a partial pre-commitment system. Accordingly, they have reduced relevance to many alternative designs of pre-commitment systems, such as binding systems ('full' pre-commitment).

This does not mean that policymakers should not conduct trials — on the contrary. However, where they run them, the design of the trial should, as much as possible, emulate the proposed policy (box 3.2). (The Commission's proposal for a test-run of a full pre-commitment system should overcome most of the deficiencies that have been present so far in gambling trials in Australia.)

Evaluation evidence based on 'before-policy, after-policy' outcomes may have more (cost-effective) potential to assess the magnitude of policy effects. This approach requires that governments collect evidence before, as well as after, implementation of the policy, and control for extraneous effects that may contaminate the analysis. If undertaken carefully, it will often help guide the wider adoption of policy (for example, to other jurisdictions), the amendment of existing policies or provide evidence for analogous policy initiatives. The Commission strongly favours better ex post evaluation of policies (chapters 17 and 18).

The study by Brodie et al. (2003) of the impacts of lowering the bill acceptor limit to \$20 in EGMs is a rare example of the use of before/after comparisons in gambling, but also provides an example of the difficulties. This is because the change in bill acceptor denomination was quickly followed by another policy change that allowed gamblers to insert multiple notes. Consequently, it is hard to tell whether the initial drop in spending, followed by a return to trend spending, was the result of adaptive behaviour by gamblers (with the implication that bill acceptor limits may not work well) or the result of a new policy initiative that undermined the first (an issue explored in greater depth in chapter 11).

What are realistic options for ex ante assessment of proposed policies?

Trial-based and econometric evidence is useful, but is only a small part of a broader range of evidence that can help governments make informed policy choices. There are many elements to evidence, summed up in a range of questions:

Box 3.2 How would a good policy experiment work?

The goal of experiments is to test the causal impacts of a policy in real world settings. Suppose that a government is considering reducing the denominations of bill acceptors on EGMs. One method for assessing the impacts of this proposal would be to conduct a trial, in which EGM gamblers were assigned randomly to two groups: (a) those who could now only play on gaming machines with lower denomination bill acceptors (the ‘treatment’ group) and (b) those who could only play on unmodified machines (the control). The goal of random assignment is to get groups whose average characteristics are the same.

The people in the two groups would need to remain in their assigned groups. The evidence from the experiment would be weakened if the treatment group could choose to play on machines that had higher bill acceptor denominations — either in the venue concerned or at other venues not participating in the experiment. The point of the experiment would be to understand what would happen to their behaviour if they did not have that choice. A practical way of achieving this condition would be to conduct the experiment for all the gaming machines in groups of similar, relatively isolated towns (some towns with modified machines, and some towns without), with little scope for people to go to other nearby towns to play on their machines. In an ideal setting, people would not know they were participating in a trial so that their behaviour would not be moderated by the fact that they knew that researchers were observing them.

The researchers would run the experiment for a reasonable period to ensure that it took account of subjects’ adaptive behaviour. Then the effects of lower denomination bill acceptors could be estimated as the differences between the treatment and control groups for a range of relevant measures — such as time or money spent playing. Effects could also be estimated for policy-relevant subgroups, such as problem gamblers (of varying severity), at-risk players and recreational players, people playing in hotels or clubs so on.

Researchers could assess the varying effects of a whole range of choices about note acceptor denominations, including only permitting coins (dose response effects). As an illustration, a reduction of a note acceptor denomination from \$100 to \$50 might have negligible effects because most people do not put in more than \$50 notes anyway, and in any case, could easily break \$100 bills into two \$50 ones. However, requiring people to load machines with only \$1 coins might have a much bigger effect on spending. The value of the experimental approach is that it could calibrate policy. (Notably, the terms of reference given to Blaszczyński et al. 2001, did not allow them to consider anything other than the modification of note acceptors to a \$20 limit.)

There are many practical limitations to conducting an experiment like that above:

- the costs would be high, especially if many different machine features were being tested (since that would require many towns and many subjects)
- mandatory player loyalty cards would be required to capture data on playing time and losses
- it would take a long time to organise
- venues would need to voluntarily assent (and some would not, creating biases)
- there would be differences between the control and treatment sites since small towns would often be different from each other (invalidating the assumption that control and treatment groups are alike except in respect of receipt of the treatment)
- it would not be ethical to conceal the fact people were participating in a trial.

That said, a carefully designed experiment could address many of the above deficiencies, providing valuable insights into likely player behaviours after changing machine characteristics.

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- *Are there good theoretical grounds to expect a measure to change behaviour?* For example, given our knowledge of the incentives facing venues, mandatory shutdowns of machines at a time selected by a venue would be likely to occur when machine usage is lowest, and prima facie, would not likely to be effective (and this is borne out by the actual times selected by venues when they are given this discretion — chapter 14).
 - *Is there other analogous evidence supporting or contradicting the policy initiative?* For instance, while educational programs that aim to inform children about responsible gambling have good face validity as harm minimisation measures, the evidence from other related programs is that they can actually promote harmful behaviours (chapter 9).
 - *Is there aggregate evidence, based on ‘natural’ experiments that provide guidance on the effects of policy?* For instance, the effects of bans on smoking inside venues can provide useful evidence about the impact of forced breaks in play. Similarly, the lower proportion of female problem gamblers using help services in Western Australia provides a natural experiment about the impacts of gaming machine accessibility on problem gambling. Likewise, bans on gaming machines in some US states — and their dampening effect on calls to help services — also provides evidence on the link between accessibility and gambling problems, albeit being an expensive demonstration of that link.
 - *Is there evidence on the size and duration of any policy effects?* For instance, mandatory clocks in venues have probably had little impact since their presence does not directly address dissociation, and people mostly have watches anyway.
 - *How costly is the measure likely to be?* The potential benefits of any proposal have to be balanced against its costs (which include any reductions in enjoyment for recreational gamblers). Assessing these — even if qualitatively — can help determine whether an initiative is likely to meet a basic cost-benefit test. A measure that does not have ‘significant’ positive effects may still pass a net benefit test if it does not cost much. Cost indicators also help determine whether there are big risks entailed by the policy if, in fact, the policy is a poor one. The standard of proof for a low cost measure can be smaller than for a high cost measure.
 - *How easy (and inexpensive) is it to reverse or amend the policy?* Easily reversible or amended policies also require a lower standard of proof.
 - *What are the likely positive and negative effects of the policy on different groups of gamblers (‘problem’ gamblers, ‘at-risk’ groups, recreational gamblers) based on an understanding of their gambling behaviours and on what they say?* For instance, if government were considering imposing a \$1 bet limit on EGMs, a key question would be how often do different groups of people bet more

than \$1? (This is an area explored by Blaszczynski et al. and in chapter 11). The answer to that can help assess who could be positively or adversely affected by the regulatory change. It would not be ‘proof’ of effectiveness, but it would help provide assessment of the potential for harm or gain, which is still useful evidence.

- *Given what we know about gamblers’ behaviour, how do we think they may respond to an initiative?* For instance, relocating ATMs outside a venue may create a longer ‘break in play’, encouraging some people with problematic spending to go home. However, they may partly compensate by bringing more cash to venues or simply gambling another day, using up the saved money. Evidence on gamblers’ reactions to other regulations may help predict their responses to new ones.
- *What do experts advise?* Experts may be able to provide answers to some of the specific questions above, but they can also provide expert judgments that balance a range of issues.

While no single fragment of evidence or theory of the kinds described above provide a strong basis for policy action, cumulatively they may do so. The Commission has adopted this broad approach — known as ‘triangulation’ — to evidence in this report. For instance, multiple approaches were used to calculate the expenditure share of problem gamblers, recognising the limitations of any one method.

It is also worth emphasising that ‘evidence’ often needs to be interpreted carefully. There are two common difficulties in the gambling area.

- One is assessing the nature and direction of causality from some feature of the gambling environment to gambling problems. For example, problem gamblers use in-venue ATMs more than other gamblers. This has obvious relevance to the issue of whether governments should ban ATMs from gaming venues (chapter 13). However, while easy access to cash may partly contribute to excess spending by problem gamblers, the main reason that problem gamblers make frequent visits to ATMs is their inability to control their spending. That incapacity would probably persist were ATMs removed, with problem gamblers often accessing cash in other ways.
- Another is isolating the policy factors that might lead to a lower or higher prevalence rate (or spending levels) in different jurisdictions. Given the variety of different policy settings in different jurisdictions, it is difficult to reliably conclude that a specific regulation has an effect (no effect) if the jurisdiction with that regulation has a lower (similar or higher) prevalence rate than jurisdictions without the specific regulation. This problem is accentuated by the imprecision in prevalence studies (chapter 5). Even were a policy to cut problem

gambling rates by 20 per cent — a huge effect — it would not be reliably discernable from the statistical ‘noise’ in the prevalence estimates, at least for many years.

Where lies the onus of proof?

It is common to argue that governments should not introduce regulations unless there is compelling evidence in favour of their net benefits. The unstated assumption behind this rule of thumb is that the cost of:

- failing to introduce a regulation that would, in fact, have been worthwhile (a ‘false negative’) is relatively low
- introducing a poor regulation (a ‘false positive’) is high.

In many instances, this rule of thumb is likely to be correct, given the lack of evidence of effectiveness of, or even a persuasive rationale for, many hurriedly introduced regulations.

However, in some instances the cost of false negatives could be significantly higher than false positives. In this case, a government should require a lower standard of evidence before implementing a regulation, or in some cases, should even reverse the onus of proof to require stakeholders to demonstrate why the government should *not* implement a regulation.

A major area where governments are particularly concerned about false negatives is public safety, where a precautionary approach is often used. For example, regulations do not allow the supply of new drugs or medical appliances until the manufacturers have sufficiently demonstrated their efficacy and safety, given the concerns about potentially large and widespread adverse impacts if a drug has unintended side effects.

In gambling, regulators do not permit a new supplier to supply services until they have demonstrated their probity, in part to protect the customers of that supplier, but also to encourage confidence by consumers in the whole industry. In doing this, they are heeding the adage that ‘one bad apple spoils the barrel’ — the cost of wrongly including a bad apple far exceeds the error of excluding a ‘good apple’. A criticism of gambling policy in the 1990s was that, despite international evidence about the risks of highly accessible gaming, governments did not apply a precautionary evidence-based approach to justify the extensive and rapid liberalisation of gambling in Australia.

Equally, there are grounds for explicit consideration of the relative costs of false negatives and false positives in harm minimisation policies. A good illustration of

this issue is the report by Blaszczynski et al. (2001), which found that a modified bill acceptor on gaming machines was associated with a relatively large reduction in player spending. That suggests that there could be gains from modifying the acceptors. However, the researchers found that there was more than a 5 per cent chance that this effect could be spurious (a false positive), reflecting the statistical imprecision of the study. So policymakers have to weigh up two alternatives when deciding what decision to make:

- a potentially small (but in any case, greater than 5 per cent) chance that changing bill acceptors would not work
- a reasonable prospect that they would work.

Deciding between these options depends on the costs of making the wrong decision. If the costs of modifying bill acceptors were high, there were large adverse effects on recreational gamblers or the harm mitigation from lowering spending were small, then it would probably be appropriate to require a high degree of scepticism about claims of the efficacy of modified bill acceptors (that is, require a low false positive rate). This is because the costs of decision errors would be higher with false positives than false negatives.

On the other hand, if there were sufficient prospective benefits from reducing harm, and the cost of a wrong decision were low (for example, few impacts on consumer satisfaction and low costs of implementation), it would be more appropriate for policymakers to gamble on modifying the machines. In that context, the cost of errors may still be asymmetric, but with higher costs for false negatives than false positives.

In this instance, determining which way the balance ultimately falls depends on other evidence and issues (chapter 11). Regardless, the example illustrates the dilemmas of policymakers acting under uncertainty, and the fact that, policy inertia is not always justified because of weaknesses in evidence. It also illustrates the potentially high payoff from:

- experiments in policy arising from federalism — such as the pre-commitment policy about to be introduced in Victoria
- research, since this can reduce the uncertainty and, accordingly, reduce policy errors
- ongoing monitoring of policies with uncertain effectiveness and their subsequent rigorous evaluation (chapter 18).

So where should the balance lie?

Estimates from prevalence studies suggest that a significant proportion of regular gamblers experience gambling problems and that higher risk gamblers account for a large share of total spending (chapter 5). That implies significant potential gains from policy action, and, by definition, significant potential costs from inaction.

The Commission does not consider that this is enough to reverse the onus of proof — that gambling suppliers be required to show why a whole range of harm minimisation measures should *not* be introduced. However, the high potential costs from inaction, or delayed action, suggest that the evidentiary burden should move from the standard in criminal law of ‘beyond all reasonable doubt’, to something more akin to the standard in civil law of ‘the balance of evidence’. The approach is still evidence-based, but one that accounts for policy uncertainty and the relative risks of being wrong.

The Commission amended its draft recommendation on online gambling on these grounds. There are reasonably strong priors that managed liberalisation of online gambling would give consumers more products and lower prices. And such a policy may well address some of the emerging harms from online gambling, by attracting people from offshore unregulated sites to safer domestic ones. Nevertheless, such a policy also involves some risks — given some of the evidence about problem gambling among online players — and suggested a more staged and precautionary process of liberalisation than the Commission originally thought appropriate.

Some have seen evidence in narrow terms

In response to the draft report, some industry participants questioned the evidence base used by the Commission (box 3.3). There are several aspects of these claims that need to be assessed.

One is whether they are right. In some instances, participants identified errors, and where that was the case, the Commission has corrected them. However, often the claims about erroneous or no evidence were not well founded (for example, in relation to claims about problem gamblers’ use of loyalty club schemes — box 3.3).

Box 3.3 The issue of ‘no’ evidence

Equally, no evidence is offered as to whether the Betfair service actually generated new activity, even new customers – which is quite likely. In any event, accuracy would be hard to achieve in this area. (Hunter Coast Marketing, sub. DR270, p. 17)

Our major concern is that there is no empirical evidence to support that such a measure [limiting the amount that a gambler can put into a gaming machine to \$20 until the balance of credits on the machine fall below \$20] will have a positive impact on problem gamblers. (Clubs Queensland, trans., p. 506)

That is, there is no evidence or theory available that gaming machines per se are the cause of problem gambling ... There is no evidence whatsoever that loss-limiting is an effective harm minimisation measure: it simply limits likely losses on poker machines (Clubs Australia, sub. DR359, pp. 17, 88)

There is also no evidence presented ... that internet can more easily and effectively deliver harm minimisation information than venue based forms of gambling (Lotto Agents Queensland and the Lottery Agents Association of Victoria, sub. DR391, p. 3)

There is no evidence to suggest the Commission’s proposed policy changes will have any additional impact on the downward trends for alleged problem gamblers and those supposed to be ‘at risk’ (pp. 6, 133) ... the Commission provides no evidence to support the concept of False Negatives exists in any published gambling prevalence study (p. 39) ... the Commission has not presented any primary evidence in support of the claim that harm spreads far wider than in those classified as problem gamblers (pp. 68–69) ... We know of no literature or research that would support any implication that problem gamblers are members of loyalty clubs (p. 96) ... No theoretical or evidential bases are provided [to] believe there are any problem gamblers in these data [data relating to spending by loyalty players in a large club] (p. 97). (Harvestdata, attachment to Clubs Australia, sub. DR359)

The AGC contends that there remains little to no evidence of the efficacy of player tracking systems to assist problem gamblers. (Australasian Gaming Council, sub. DR377, p. 4)

It was also claimed that the evidence used by the Commission was flawed or not sufficient to support policy changes:

Methodological flaws = No usable evidence (p. 108) ... The Commission must only draw from third party research ... that ... includes the provision of technical information necessary to assure the validity of the results and the sample sizes are sound for high levels of confidence (e.g. 99.9%) (p. 136) ... (Harvestdata, attachment to Clubs Australia, sub. DR359)

There are limitations in all evidence relating to social policy. This is why ‘triangulation’ methodologies are important and claims of *certainty* about anything should be viewed with scepticism. Among other information sources, the Commission has attempted to verify behavioural patterns relevant to new policies by drawing on an extensive Australian and international literature, information from gambling suppliers, analysis of the unit records of seven major gambling surveys, and the Commission’s own survey of the clients of counselling agencies.

Even with these extensive sources of information, it is not possible to be *certain* about how people will behave after implementation of a policy. By definition, the effects of almost any policy — such as better coordination of counselling services within the mental health system, greater access to online gambling or changes to gaming machines — can only be fully gauged after the policy has been implemented. Governments would never have implemented many important developments in education, health and other social policies, had an absolute standard of proof been required. It was observed by Livingstone and Woolley that, strictly applied, a requirement for ‘hard’ evidence would cripple social policy, and that the demand by some industry participants for such a requirement reflected their desire to maintain the regulatory status quo:

Some industry organisations have suggested that the Commission’s findings and recommendations lack an empirical evidence base. This argument is predictable in that it seeks to defend the status quo, maintaining ‘business as usual’ and forestalling action to address harm (as we suggested in Livingstone & Woolley 2007). ... attempts to generate controversy over propositions such as prevalence rates, the expenditure share of problem gamblers, or the lack of overwhelming evidence in support of a specific course of action, appear to us to be an attempt to delay change for as long as possible. ... we also recognise that absolute certainty is close to impossible in scientific research. Public policy must be formed on the basis of an approach which draws on available evidence to act in favour of the public health and well-being wherever possible – if necessary, taking a precautionary approach. (sub. DR367, p. 1)

One participant put it more bluntly and colourfully, describing efforts to manipulate claims about evidence for partisan reasons as ‘evidential humbuggery’, reminiscent of a well-known political satire on television (box 3.4). It is always possible to selectively use evidence, or set a threshold for proof that is not tenable for effective policymaking in areas where there are genuine public safety risks from inaction.

The key evidential gap

What, in fact, was clearly lacking was compelling evidence of the ‘safety’ of some forms of gambling for consumers — and for the relaxation of regulations that permitted the widespread availability of high intensity gambling within communities around much of Australia. Much of this report aims to correct the consequences of this oversight.

Box 3.4 **Responding to a report with unwelcome findings: the ‘Yes Minister’ method**

Sir Humphrey: Of course. You simply discredit them. ... You point out that the research could be used to put unwelcome pressure on the government because it could be misinterpreted. ... You say it would be better to wait for a wider and more detailed study over a longer timescale. ... Now in Stage Two you go on to discredit the evidence ... You say it leaves some important questions unanswered, that much of the evidence is inconclusive, that the figures are open to other interpretations, that certain findings are contradictory, and that some of the main conclusions have been questioned. ...

Minister Hacker: But to make accusations of this sort – you’d have to go through it with a fine toothcomb.

Sir Humphrey: No, no, no. You can say all these things without reading it. There’s always some questions unanswered.

Minister Hacker: Such as?

Sir Humphrey: Well, the ones that weren’t asked. [Beams]

Minister Hacker: And that’s Stage Two?

Sir Humphrey: Yes. Now in Stage Three you undermine recommendations. “Not really a basis for long term decisions, not sufficient information to base a valid assessment, not really a need for a fundamental rethink of existing policy, broadly speaking it endorses current practice” – all that sort of thing.

Minister Hacker: And that always does the trick?

Sir Humphrey: Nearly always.

Minister Hacker: Suppose it doesn’t?

Sir Humphrey: Then you move on to Stage Four... Now, in Stage Four, you discredit the man who produced the report. Off the record, of course. You say that he is harbouring a grudge against the government or that he’s a publicity-seeker or, better still, that he used to be a consultant to a multi-national company.

Minister Hacker: Supposing he wasn’t?

Sir Humphrey: Then he’s hoping to be. Everyone is hoping to be a consultant to a multi-national. Or he’s trying for a knighthood, or a Chair, or a Vice-Chancellorship. Really, Minister, there are endless possibilities.

Source: Excerpt from the BBC satirical series, ‘Yes, Minister’ episode entitled ‘The Greasy Pole’.