14 Are constraints on competition justified?

Box 14.1 **Key messages**

Exclusivity arrangements:

- Governments derive substantial revenue through licensing and taxation of gambling:
  - there is an interdependence between exclusivity arrangements and tax policy;
  - but providing exclusivity to maximise tax revenues is unlikely to be good policy.
- Exclusivity can disadvantage consumers by raising prices and restricting choice.
- There are some savings in regulation costs and probity checking of licensees and key staff.
- Exclusive licensing appears not to have been effective in reducing problem gambling:
  - restricting ownership or operating rights does not necessarily restrict accessibility, and with the exception of casino table games, has not done so; and
  - it is unlikely to assist in implementing harm minimisation practices.
- The provision of appropriate funding for the racing industry does not appear to require TAB exclusivity.
- The minimum telephone bet restriction which applies to bookmakers serves no useful purpose and could be removed immediately.

Restrictions on venue types:

- Current venue restrictions are arbitrary and reflect history and arrangements with particular interests, rather than strong policy rationales.
- It is not clear that linking alcohol and gambling licensing is good policy:
  - a broader, more rigorous, venue-based risk assessment approach may be preferable.
- There is little evidence that clubs provide a less risky environment for gamblers than hotels with respect to harm minimisation:
  - some limited progress has been made in both venue types, and there are benefits in strengthening harm minimisation programs in all venues.
- However, changing the rules now to allow hotels (or other venues) parity with clubs would greatly increase the total number and accessibility of gaming machines in most jurisdictions.
- The difference between casinos and some larger clubs has narrowed considerably, but major differences in regulatory requirements remain.

14.1 Introduction

Chapter 11 listed the various objectives of governments towards their gambling industries. While governments generally agree as to their broad objectives, not all have clear or persuasive rationales and some are mutually inconsistent. The result is a mixture of policies, many of which impinge on competition.

The gambling industries are characterised by many restrictions on competition. Foremost among these are:

- 'exclusivity' arrangements (exclusive licences for particular operators) which apply to major sectors of the industry; and
- restrictions which determine which types of venue may offer gambling services.

These arrangements variously restrict the ownership and provision of particular modes of gambling, the extent of their accessibility to consumers, or both. Exclusive licensing may or may not affect accessibility: for example, restrictions on casinos and lotteries directly limit the ownership of both forms of gambling, but the accessibility to lotteries is not constrained to the same extent as consumers' access to casinos. Accessibility is affected by a range of considerations which are discussed in the next chapter.

Exclusivity arrangements are largely a legacy of history. But they have continued partly because they have advantages for governments, as well as being strongly defended by the beneficiaries. This chapter assesses the extent to which such arrangements also advance community welfare.

14.2 'Exclusivity' arrangements

Governments generally outlaw arrangements which confer market power on particular groups, unless there are good public policy reasons for doing so. Exclusive or monopoly rights are generally opposed because they are inefficient in providing goods and services (and more broadly, their existence can conflict with social norms concerning monopoly privilege).

In his submission, Quiggin noted that economists have long condemned the practice of creating and selling 'artificial monopolies':

> Analysis showed that a legal monopoly was equivalent, in economic terms, to the right to collect a tax. However, whereas most taxes were designed to achieve a balance between the objective of raising revenue and the desirability of minimising the burden of taxation, monopoly prices were set with the sole objective of maximising revenue.

He argued that:

- Artificial monopolies are undesirable *per se*
- The sale of monopolies creates contractual obligations which improperly bind the hands of future governments
- Corruption and misuse of monopoly power is encouraged and the possibility of redress ... is removed (sub. 149, p. 4).

Such arrangements continue to be a common feature of governments' approaches to almost all major forms of gambling. Lotteries, casinos and TABs are prime examples (and recent TAB privatisations have maintained exclusive rights for the new operators), as are exclusive rights to supply gaming machines, operate keno and so on.

Successive governments have used the Trade Practices Act and, more recently, the National Competition Policy to expose anti-competitive arrangements to scrutiny, both within the private and public sectors. Under the *Competition Principles Agreement* signed in 1995, all Australian governments have agreed to review any legislation which contains anti-competitive elements against the principle that:

> legislation ... should not restrict competition unless it can be demonstrated that:
>
> (a) the benefits of the restriction to the community as a whole outweigh the costs; and
>
> (b) the objectives of the legislation can only be achieved by restricting competition (NCC 1998a, p. 321).

The South Australian Government observed that its gambling legislation is 'not designed to be pro-competitive':

> In South Australia there is strong community concern regarding the social impact of gambling. The objective of most gambling legislation is to allay community concern, while also securing the positive economic benefits associated with gambling as a legitimate form of entertainment ... [to achieve] the right balance of consumer protection and consumer sovereignty (sub. D284, pp. 2–3).

It argued that this stance does *not* conflict with the requirements of the Competition Principles Agreement, under which social welfare and equity considerations, and the interests of consumers, may be taken into account when weighing up the benefits and costs of restrictions on competition. (A list of the matters which are required to be taken into account in NCP reviews — to the extent they are relevant to a particular inquiry — is contained in box 14.2.)

In accordance with this agreement, each jurisdiction is to review its gambling legislation. Reviews are expected to:

- clarify the objectives of such legislation;

- identify the nature of the restriction on competition;
- analyse the likely effects of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the objective of the regulation.

Some arrangements in the gambling industries have already been reviewed under NCP, and there have been some policy changes. Others are underway. But governments have deferred some reviews until the outcome of the Commission's inquiry.

Box 14.2 **Competition Principles Agreement: the approach of governments to assessing proposals for reform**

Without limiting the matters that may be taken into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs ...

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses; and

(j) the efficient allocation of resources.

Source: Competition Principles Agreement, subclause 1(3).

The role of this inquiry is not to assess specific pieces of gambling legislation. Rather, in keeping with the breadth of its terms of reference, the Commission has

attempted to contribute an overarching perspective on the key public benefit issues under consideration in all jurisdictions.

That said, some of the criteria in box 14.2 are less relevant to a review of the gambling industry than others. For example, issues with respect to ecologically sustainable development, occupational health and safety and industrial relations have not loomed large. On the other hand, provisions which are most directly relevant for this inquiry are those covering:

- social welfare and equity;
- economic and regional development;
- the interests of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

Some of these have already been touched on in earlier chapters. But others, such as regional development, while possibly relevant to questions of exclusivity, have been raised only fleetingly in this inquiry.

Some broad impacts

Restricting the number of providers through exclusivity arrangements affects the type and quantity of gambling services provided. Limiting the numbers of casino, TAB, keno and lottery licences allows those with licences to vary the services they provide according to demand (although casinos are subject to maximum numbers of machines and tables they may operate). Such arrangements allow a lottery licensee, for example, to maintain large prize pools or larger jackpots, both of which are likely to increase player interest in the game.

Exclusivity arrangements clearly advantage the licence holders, to the extent that they are protected from competition in the same field. Nevertheless, competitive pressures can still come from other gambling forms and, more broadly, from other uses of discretionary spending. But the restriction on direct competition can allow licence holders to provide their services at higher prices than in a more competitive market. This generates what economists call ‘monopoly rent’ (or ‘super profit’). It is a return to the operator over and above that return which would induce a competitive provider to supply the existing level of service.

There is mixed evidence as to whether current exclusivity arrangements are ‘biting’; that is, having an effect on the price and quantity of gambling services. In some cases, they clearly are. For example:

- casino licences have been paid for with substantial licence fees, demonstrating the value expected to be derived from exclusivity (table 14.1). In Victoria, the imminent end of Crown's exclusivity outside of a 150 kilometre radius from Melbourne has reportedly led to expressions of interest from several groups wishing to establish a second casino;
- in the case of gaming machines, New South Wales hotels which sought to operate more than 15 gaming machines were recently able to tender for that right, with average tender prices of about $50 000 per machine being achieved — a clear indication of the 'scarcity value' of those rights. And the value to the two operators of gaming machines in Victoria is partly reflected in the value they paid for that right (for example, Tabcorp paid $597 million for its gaming/wagering licences);
- similarly, the amounts paid by private operators for the rights to operate lotteries, keno, TABs and other services provide a measure of the value of exclusivity.

Table 14.1 **Exclusivity licence fees for casinos: some examples**[a]

Exclusive licence	*Amount paid or payable*
Crown	$200m in 1993-94 plus a further $57.6m over 2 years. And from January 1996 a further $100.8m was payable over three years in return for an increase in table numbers.
Star City	A once only lump sum payment of $376m
Burswood	$1.74m per year (indexed to the CPI)
Queensland's four casinos	$137 500 per quarter
Adelaide	$5 000 per month
Tasmania	$60 800 per month, indexed
Northern Territory	nil
ACT	upfront fee of $19m and annual payments of $540 000

a Illustrative only: excludes other arrangements negotiated as part of exclusivity arrangements.

Source: Australian Casino Association (sub. 124, table 7); and ACIL (sub. 155, p. 148).

Notwithstanding this, the South Australian Government was not convinced that exclusive provision has any effect on prices because of, for example, government controls on payout levels, and competition from other forms of gambling:

> This argument may carry some weight if each mode of gambling is considered in isolation. However, if the broader picture of the whole gambling industry is considered, consumers have a much greater choice ... Exclusivities apply within each narrow mode of gambling but these gambling providers compete with a range of gambling service providers (including each other) as well as more broadly in the entertainment industry

> ... there are significant cross-elasticities[1] between the different gambling markets (sub. D284, p. 12).

Minimum payout ratios, taxation policies and competition from alternatives help control any tendency to 'excess' profits. However, exclusive arrangements necessarily reduce competition from others who would prefer to offer the services protected by these arrangements, and the fact that some providers pay large sums for that exclusivity implies a judgment that this can be recovered from players. Indeed, this point is sometimes made in another way by current holders of the exclusive licences, who argue that, were government policy to change, resulting in a loss of some of the exclusivity period, some form of renegotiation of licence fee arrangements ought to be made.

That said, exclusive rights provide no guarantee of profitability. Indeed, in recent years some casinos have faced considerable financial difficulties. Some may well have overbid for such rights, or spent too much in construction, or derived less than expected benefits. While the casino industry enjoyed a profit margin and a return on assets greater than the average for all business in 1991-92, the ABS (1998b, 1999b) reported that profit margins were:

- 6.5 per cent in 1994-95;
- 8.9 per cent in 1995-96;
- 1.2 per cent in 1996-97; and
- minus 10.8 per cent in 1997-98 (the year that Christmas Island casino suspended operations).

The Australian Casino Association said that:

> The return on assets in the casino industry has, in recent years, been consistently well below the 10 year bond rate (sub. 124, p. 6).

More recently, the fortunes of some casinos appear to have improved (recent takeover and share price activity providing some indication of this).

Taxation issues

The extent to which the licensed providers are able to keep any monopoly profit depends on the licensing and taxation arrangements. Ideally, governments should tax such activities at levels which appropriate any rents for the government (and thus the community).

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[1] The information on this matter is limited (see appendix D) but, if anything, suggests that cross-elasticities have thus far been low.

Governments typically require operators to pay for their exclusive licences in the form of upfront and/or ongoing licence fees and gambling taxes. As suggested, a prospective operator can, in principle, be expected to offer as a licence fee an amount which takes account of the expected financial benefits over the licence period. In this way, governments can tax away much (if not all) of the financial benefits created by the monopoly. This is likely to be achieved most effectively under an open tendering process.

There are thus benefits to government revenue in setting up providers of some forms of gambling as quasi-monopolies. As the South Australian Government noted, the monopoly licence arrangement:

> ... could effectively be characterised as a mechanism for collecting tax revenue ... The gambling industry provides the government with a good source of a least cost revenue collection method (sub. D284, p. 8).

And there may be particular advantages to the government of the day in extracting licence fee revenues upfront, rather than opting for an equivalent stream of gambling taxes over time (which may benefit subsequent governments).

But this in itself does not constitute a sound public policy rationale. Governments could equally set up quasi-monopolies in the production of any good or service, and tax the monopoly rents so created. That they don't do so — or no longer do so — reflects the fact that monopolies reduce consumer welfare by restricting consumer choice and raising prices.

In view of the close link between taxation rates and exclusive licensing, one important issue concerns the implications of any change in taxation rates for policy towards exclusivity arrangements. For example, were tax rates to be reduced without altering exclusivity arrangements, more of the economic rents generated by those arrangements would be retained by the gambling operators. There is thus an interdependence between exclusivity arrangements and tax policy. (This matter is returned to in chapter 19.)

Effects on consumers

From the viewpoint of *recreational* gamblers, exclusive licensing reduces the benefits they would otherwise obtain. Licence holders pay large sums for the right to 'sell' gambling services and expect to recover that from customers. Consequently, services and facilities, convenience to players and the range of

differently-priced games on offer[2] could be expected to be less favourable than under more competitive supply arrangements. In the case of casinos, the NCC noted that there is:

> ... a reduced incentive for the casino operator to improve the games available to casino patrons or to offer additional services ... [and] the period during which casino operators are protected from competition could create customer loyalties to the incumbent operator which may work against potential entrants to the casino (and substitute products) market (NCC 1998b, p. 125).

Instead, much of the benefits of exclusivity accrue to governments and to the licence holder, rather than being competed away to the benefit of players. And where licences are allocated, rather than tendered for — as in the case of some government-owned TABs and lotteries — there is no way of knowing whether the incumbent is a low cost producer of gambling services.

One effect of geographical monopolies is a loss in amenity for those who prefer casinos to, for example, club or hotel gaming. While gamblers in Tasmania and in the Brisbane/Gold Coast and Cairns/Townsville regions of Queensland have a choice of two casinos a few hours' drive apart, most jurisdictions have only one. A South Australian gambler, for example, seeking an alternative to Adelaide casino would have to travel interstate (or forgo the experience), as state government rules prohibit the development of another casino in that state.

Analogous considerations apply in other areas. In the case of lotteries, for example, consumers cannot easily buy out-of-state lottery tickets. For TABs, this is less of an issue, as punters can bet by telephone. But punters cannot choose between competing (off-course) TABs in the same jurisdiction, and so any scope for the establishment of lower cost operators who might offer better odds or services is forgone. And TABs are further protected by restrictions on telephone betting to bookmakers (by, for example, minimum bet sizes) and on advertising of the services of interstate TABs. However, lotteries and TABs attempt to circumvent some of the disadvantages to themselves of exclusivity arrangements by pooling arrangements across jurisdictions.

Potential competitors are obviously limited in the products they are permitted to offer to consumers. This can affect both potential future competitors and current suppliers, who in other circumstances may have moved into fields now covered by an exclusive licence. One response is for such operators to invest in or acquire operators with existing licences, rather than to set up in competition. Tabcorp's purchase of Star City may be seen in this light.

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[2] The price of popular casino table games, for example, ranges from 1 to 8.5 per cent — see box 13.9 in chapter 13.

While exclusivity arrangements disadvantage consumers as a group, it may be that limiting gambling opportunities in this way provides a degree of protection to problem gamblers by limiting the gambling opportunities they face. These issues are considered below and in chapter 15.

Impacts for specific forms of gambling

The effect of exclusive rights on the accessibility of casino gambling is apparent. But there are three other areas where exclusivity has some specific effects on industry structure; namely, on lotteries, gaming machines in some jurisdictions, and TAB funding of the racing industry. These are discussed in turn.

Lotteries

Allen Consulting noted that, while two lotteries have been permitted to operate in the ACT, in order to promote consumer choice:

> Industry participants noted that if only one lottery were operating in the ACT, the administration costs would be reduced by approximately 2.5 per cent, thus increasing the taxation revenue (Allen Consulting Group 1998, p. 54).

But others have questioned the desirability of maintaining exclusive licences. For example, Tattersall's argued that it should be free to compete in other jurisdictions. It sees significant economies of scale and scope in the provision of lotteries, on both the demand side (in respect of the size of the prize pool) and in terms of operating costs. And while the pooling of prizes across state boundaries has allowed the achievement of some economies of scale:

> Lack of competition between lottery providers means that costs are high in some jurisdictions (sub. 156, p. vi).

Tattersall's claimed to have the lowest ratio of expenses to turnover (3.86 per cent) of any operator in Australia. It said it achieves lower costs because of its private trust structure and the incentives provided to staff. It estimated that, if all providers had achieved the same level of costs as itself, total costs Australia-wide would have been some $150 million less than observed.

> Had there been effective competition between service providers across state boundaries, this saving would have been available to governments as higher revenues, or to bettors as a higher maximum prize or expected return (sub. 156, p. vi).

Tattersall's saw the removal of regulatory barriers between states and territories as essential, in part to prepare for expected future competition from large scale foreign lotteries, such as Camelot in the United Kingdom and G-Tech in the United States:

> This would allow the emergence of strong national organisations, capable of meeting future international competition (sub. 156, p. 57).

The price and product benefits to consumers from more competitive lottery arrangements do not appear to have been addressed in any jurisdiction. There are still five major providers, each protected in their own jurisdiction from competition by other lottery providers, and seeking to service what is becoming a national lottery market. The scope for other providers to enter the market with different lottery products is precluded by current arrangements.

The restrictions on interstate competition are often defended on taxation grounds (or because they are seen as a way of channelling funds to worthy causes — see chapter 18). But any alternative, non-exclusive arrangements which could be devised by governments would also be subject to taxation, as shown by ACT revenue sharing arrangements with NSW Lotteries and Tattersall's. Nevertheless, it is likely that current arrangements reflect a perception that government-owned lotteries are first and foremost fundraisers for governments.

Gaming machines

Several jurisdictions provide some form of exclusivity in the supply and operation of gaming machines. For example:

- the (exclusive) operator of Tasmania's two casinos, Federal Hotels, also has exclusive rights to operate gaming machines in that state's clubs and hotels until 2009;
- in the Northern Territory, all gaming machines in clubs and hotels are selected, owned and supplied by the government;
- in Western Australia, Burswood has all of that state's gaming machines, and has exclusive rights to operate games of a kind already approved for use inside the casino elsewhere in the state; and
- Victoria has a 'two operator' system for the supply of gaming machines to clubs and hotels (described in chapter 13).

The Victorian arrangement drew comments in a number of submissions. It clearly advantages the operators and the government (which benefits from licence fees), and there are advantages for the successful venues. The Licensed Clubs Association of Victoria (LCAV) said it provides 'a network control system that has the faith of the Government, public and venues'. It also acknowledged assistance by the operators to clubs which lacked sufficient management skills and understanding of gaming.

But the LCAV said that 'the vast majority of club gaming venue operators' in Victoria do not support current arrangements, as they cannot buy their own machines, have their income from gaming machines effectively dictated to them, and may lose the machines if returns are deemed insufficient by the operator. These views were echoed by the AHHA (Vic), which said that the two-operator system, together with capping arrangements, encourages the concentration of machines into as few venues as possible, and as few multi-venue operators as possible (sub. 154, p. 15). Some views from the clubs and hotels are contained in box 14.3.

Box 14.3 **Victoria's gaming machine duopoly: the views of the clubs and hotels**

The Licensed Clubs Association of Victoria (LCAV) said that:

> ... The operators totally control the way in which gaming is conducted. Few variances can be negotiated with the operators who hold the power through promotional revenue. Significant variation of machine type is not an option on offer to gaming venues, yet this is a key managerial skill in interstate venues ... The current system denies clubs the right to manage their club's services to meet the needs of the patrons and the club (sub. 90, p. 6).

The LCAV said that many clubs want to be offered the choice of purchasing or leasing gaming machines. This is seen as a 'critical element of venue management':

> Having made a substantial investment in facilities, clubs have no security of tenure over the electronic gaming machines. Both Tattersall's and Tabcorp may pull machines out of venues when their turnover is judged too slow and not commercially viable ... Individual clubs are worried as to what their club's future is, as many have long term financial commitments based around gaming (sub. 90, p. 7).

Similarly, the AHHA (Vic) said:

> The system offers no real tenure over machines by venue operators. It allows comparative measures of machine performance to dictate whether machines remain at a venue or not. The system denies the venue operator ... the discretion to limit or alter the supply of the product so as to minimise social costs (sub. 154, p. 15).

The AHA said:

> ... there is absolutely no net advantage to instigating or maintaining monopoly/duopoly type arrangements in any jurisdiction. Perhaps a better approach to that of granting exclusive rights is to allow licensees to purchase machines outright such as the case in South Australia and New South Wales. These arrangements go a long way towards dispelling the industry disquiet in certain states over access issues as it would allow hotels to operate on level playing fields with its direct competitors (sub. D231, p. 49).

A different concern was raised by a residential land developer and homebuilder in Victoria, Dennis Projects Pty Ltd. Many of its new projects are in greenfields sites on the urban fringe of Melbourne, and it noted the difficulty faced by a new hotel or club in obtaining gaming machines:

> ... as a result of the cap neither [Tabcorp nor Tattersall's] has any machines to supply new Hotels, hence a proposal for the construction of a Hotel on the urban fringe ... with all facilities ... lacks viability (sub. D245, p. 2).

Victoria's two-operator system was seen as adding to the uncertainty of investments by venues in gaming rooms and associated facilities, and is accompanied by pressure on them to promote and encourage use of gaming machines. Tabcorp reported that it had increased its average revenue per machine per day to $190 during the second half of 1998, in part by making venues more attractive so that customers would want to stay longer.

It argued that, while commercial realities dictated the need to maximise the return to the operator, the pressure to move gaming machines from one venue to another according to the returns generated at each was more properly seen as a result of the caps which operate in Victoria:

> ... the restriction on the number of EGMs available to the Gaming Operators leaves them with no choice but to reallocate some or all of a Club's EGMs to another Club where EGM performance is likely to be significantly superior (sub. 173, p. 6).

These matters are discussed in chapter 15, which notes that such pressures would not arise in an environment without global caps, where venues (even if individually capped) were free to purchase gaming machines from manufacturers as they saw fit.

TABs

The exclusive rights which all jurisdictions provide to their TABs are supported by a raft of restrictions on the ability of others to compete with them. For example:

- there are restrictions on the activities of bookmakers, covering, for example, where and at what times they may take bets, their telephone betting activities, their ability to advertise and so on; and
- while punters are able to bet by telephone with TABs in other jurisdictions, the advertising of their services is prohibited.

Conversely, TABs are unable to compete for business or to establish agencies in other jurisdictions. In the main, their activities are restricted to totalisator betting on thoroughbred, harness and greyhound racing. And as ACIL noted:

> ... whereas the TABs all have exclusive rights to off-course totalisator wagering in their jurisdictions, they in turn depend for their racing events on board-registered non-proprietary racing clubs whose right to conduct (and timetable) race meeting where wagering occurs is also exclusive (sub. 155, p. 150).

It added that there are a number of groups (such as the quarterhorse[3] and Arab horse associations) which would like to have TAB coverage for their events, but cannot under current arrangements in almost all jurisdictions. Similarly, proprietary racing is excluded by the requirement that no person may receive any 'direct financial benefit' from the 'profits' of a race meeting (CIE 1998, p. 24).

All of these restrictions clearly affect the options open to punters, in terms of *where*, *on what events* and *how* they may make bets, and the *prices* at which betting is made available.

To a lesser extent, they also limit the activities of the TABs. But current regulations, and the considerable convenience which TABs offer, have assisted them to capture most of the wagering dollar (about 94 per cent in 1997-98), notwithstanding that they charge a higher 'price' to the punter than on-course bookmakers (typically three times higher[4] — see table 14.2).

Table 14.2 **The 'price'[a] of a wager, 1997-98**

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*	*Aust*
TAB	15.0	16.0	16.9	17.2	15.5	14.3	14.4	15.9	15.8
On-course bookmaker[b]	5.5	4.5	5.5	5.0	4.9	5.5	6.2	6.4	5.2
Other[c]	14.6	16.1	17.0	16.3	15.4	13.9	7.6	7.4	14.0
Total racing	***13.7***	***14.5***	***15.5***	***14.7***	***14.4***	***13.7***	***11.7***	***9.2***	***14.2***

a Expenditure as a percentage of turnover. For example, on average, a dollar spent on a TAB wager in NSW will return 85 cents to punters. **b** Some figures assumed by Tasmanian Gaming Commission. **c** Includes on-course totalisator and sports betting (racing).

Source: Tasmanian Gaming Commission (1999).

But the environment in which TABs operate is changing. Betting on racing has declined in importance relative to other forms of gambling, and in particular, machine and casino gaming. (And, indeed, Tabcorp and TAB Ltd have diversified into gaming machines.) And future developments are likely to increase pressures on this industry. The Queensland Government noted that these were coming from:

> ... cable television operators, interactive gambling, satellite technology, the privatisation of interstate TABs and the international market place (sub. 128, p. 51).

The Tasmanian TAB also noted that the growth in communications technology:

3 In another study, the CIE (1998) noted that there are some 180 000 quarterhorses in Australia, with a national stud book, and licensing and registration system to register horses, trainers, jockeys, stable personnel etc.

4 The practice of 'rounding down' of payout rates to winners contributes to this price. Such a practice can be significant for large bets placed regularly.

> ... is bringing growing competition to areas previously protected by a statutory monopoly which was part of a national oligopoly of State TABs. No longer can it be assumed that the customer is committed to wager with the local TAB (TAB Tasmania 1998, p. 6).

The success of the TABs has, in turn, led to increased funding for the racing industry (and more racing). But ACIL noted that this support is threatened by sports bookmakers operating on the internet who have no financial links with the racing industry:

> Ultimately the breakdown of the geographic boundaries to the flow of information could upset the distribution agreements between the TABs and their local racing boards, and it might even lead to legal actions by local racing boards intended to recover 'royalties' from interstate operators (sub. 155, pp. 154–5).

In response to these developments, TABs in several states are now offering totalisator or fixed odds sports betting (in some cases, with exclusive rights to do so), often also through the internet. But the totalisator product provides an almost guaranteed income for them and tax revenue for the government. Large scale involvement by TABs in fixed odds betting, were that to occur, would raise questions about the nature of the risk involved and the appropriateness of government agencies bearing that risk. (It would also focus further attention on the merits of maintaining this activity in the public sector — privatisation has already occurred in several jurisdictions and is planned in others.)

The restrictions on TABs and on racing and sports bookmakers are subject to review by regulators and meetings of racing Ministers and officials. NCP reports also play a role: for example, a recent review by Western Australia's Office of Racing, Gaming and Liquor has recommended continuing some restrictions on bookmakers but removing others (box 14.4). And an NCP review of New South Wales' racing and betting legislation is currently underway. The issues paper for that review said that there are a range of objectives for the 'anti-competitive restrictions' of New South Wales racing and betting legislation, namely:

- ensuring the integrity of racing and betting activities;
- prohibiting criminal activity;
- encouraging the sustainable economic development of the NSW racing industry;
- protecting Government and racing industry betting revenues; and
- protecting the economies of scale associated with NSW totalisator betting (DGR 1999a, p. 19).

Box 14.4 **Restrictions on bookmakers: Western Australia's NCP review of betting legislation**

The review argued that restrictions on *where bookmakers may operate* provides a net benefit to the community and should remain in place (ORGL 1999a, pp. 88–9). While they impose costs on bookmakers:

> Restrictions on the locations of bookmakers activities [provide] substantial benefits through reduced costs of monitoring bookmaking activities and reducing adverse impacts in the community from off-course betting and access to credit betting. Despite the potentially substantial costs imposed on bookmakers from reduced business opportunities ... the restriction on locations at which bookmaking may occur provides a net public benefit.

The review concluded that restrictions on *times at which bookmakers may conduct betting* provide little if any public benefit, impose substantial costs on bookmakers and should be removed. These costs:

> ... could be reduced by relaxing the restrictions or leaving decisions on timing of the bookmaking activities up to racing clubs. [This] has occurred in other states ... Advantages include ... allowing establishment of a betting auditorium at a major racecourse ... The major problem created by the establishment of betting auditoriums - the transfer of patronage and betting turnover from one race course to another - has been overcome by negotiation of profit sharing arrangements between the clubs. Disadvantages ... would be reduction in taxation revenue arising from transfer of some betting turnover from the TAB to an on-course betting auditorium. This may, in turn result in diminution in the value of the TAB as a public asset ... (ORGL 1999a, p. 89).

The review considered that the restriction on *minimum levels of telephone bets with bookmakers* should be repealed. It noted that telephone betting was introduced in 1993 on a trial basis, with a minimum telephone bet limit set at $250 (or a bet to win $2 000):

> This ... was a national standard at the time designed to protect turnover of state-owned TAB businesses.
>
> Since 1995, most states ... have moved to reduce the minimum telephone betting levels. A minimum level as low as $100 exists for race betting in a number instances while no minimum level is common for sports betting. In Western Australia the minimum limit for race betting is currently $200 or a bet to win $2,000 ... Bookmakers operating in other states are able to provide telephone-betting services to punters in Western Australia, although it is considered unlikely that small punters betting less than the minimum limits would make use of the interstate services (ORGL 1999a, p. 101–2).

The review assessed that minimum telephone bet levels gave rise to a net public cost and should be repealed. It t gave rise:

> ... to potentially substantial costs to punters, bookmakers and racing clubs, particularly in relation to betting services for small events and minor codes. Benefits may arise from protecting revenues to the government and racing clubs from TAB betting, and in reducing risks of problem gambling though credit betting, but these benefits are considered to be small. In total the restriction was assessed as giving rise to a net public cost ... (ORGL 1999a, p. 102).

Source: ORGL (1999a).

It said that anti-competitive restrictions likely to be canvassed during the review will include:

- *barriers to entry*, such as the exclusions on proprietary racing and forms of racing other than thoroughbred, harness and greyhound, and licensing arrangements for trainers, jockeys and harness drivers;
- *cross-border market protection*, such as restrictions on advertising by TABs or bookmakers not licensed in New South Wales; and
- *restrictions on licensed bookmakers*, who are limited in the events they may take bets on, the time and place of betting, minimum telephone bet sizes and advertising of their services. Procedures for licensing bookmakers and authorising them to conduct telephone, electronic or sports betting may also be reviewed (DGR 1999a, pp. 15–18).

Victoria's NCP review examined broadly similar issues matters (CIE 1998), and the issues paper for South Australia's current review has also raised these matters for public comment (Marsden Jacob Associates 1999).

Many current restrictions are designed with the interests of the current participants — governments, the TABs, the racing clubs and so on — in mind, and should be subject to broad public interest tests. And any policy changes would need to be evaluated in the context of the web of regulations which support current arrangements. But some changes could be made in isolation. **The minimum telephone bet restriction which applies to bookmakers but not TABs serves no useful purpose and could be removed immediately.** It appears to do no more than impose a competitive disadvantage on bookmakers in order to limit competition to TABs.

Some changes are occurring

Across many forms of gambling, there are some instances where exclusivity arrangements have expired and have not been renewed. For example, several casinos no longer have legally binding exclusive rights, although the political difficulties of obtaining a new casino licence may be significant in some, if not all, jurisdictions. And while newer forms of gambling, such as sports betting and internet gambling, are subject to licensing arrangements, they tend to be inherently more competitive.

Nevertheless, it remains the case that some forms of gambling are locked in to exclusive arrangements for some time to come (see box 13.7 in the previous

chapter), with no indication that this is likely to change in the near future. As a number of participants have noted, it would be expensive for governments to extricate themselves from these contractual agreements. The NCC noted, in the context of NCP reviews:

> ... because most monopoly licences include provision for compensation for early termination, the approach favoured by governments is to consider the need for less restrictive arrangements as exclusivity arrangements expire (NCC 1998b, p. 125).

And Quiggin highlighted a quandary for governments:

> Retention of monopoly privileges may make the state liable for the loss of financial assistance grants under the Competition Principles Agreement, while removal of monopoly privileges may leave the government liable to pay compensation to monopolists or face legal action for breach of contract. In most cases, the costs of compensation for breach of contract will be greater than the value of the stream of monopoly profits that have been sold (sub. 149, p. 6).

Is exclusivity justified?

In 1998 the NCC reported on reviews of casino legislation undertaken under the NCP, noting that they highlighted common views of jurisdictions as to:

> ... the responsibility on governments to address community concern about the social impacts of gambling and the perceived attraction of casinos for organised crime ... allowing for multiple casinos would not reflect the strong support of ... constituencies for limits on the level of gambling.
>
> ... the contribution made by gambling to State and Territory revenue. Keeping in mind community views about the desirability of limits on the amount of gambling, the reviews found that financial returns to the community (licence fees and taxation) are maximised through a single licence arrangement ...
>
> ... the cost to the community of maintaining probity is minimised with a single licence because the cost of regulating one large venue is less than the cost of regulating many small venues (NCC 1998b, p. 123).

The NCC noted that, while it was not convinced about several of the justifications given, governments had judged it 'probable' that exclusive licensing arrangements in their jurisdictions had provided a net community benefit (NCC 1998b, p. 125).

As noted earlier, the Commission has looked at these issues in the broad against criteria that are consistent with those applicable to any NCP review.

Chapter 11 has shown that there is little to commend some of the justifications put forward to defend exclusivity arrangements. In particular, it argued that the need for revenue generation can have an unbalanced influence on policy in this area. But

chapter 11 also raised the possibility that particular equity, social or industry efficiency imperatives might justify exclusivity.

With those in mind, the rest of this section looks at exclusivity in the provision of certain gambling services and asks:

- Does it help control problem gambling through limiting accessibility?
- Does it facilitate harm minimisation processes?
- Does it reduce pressures to advertise?
- Is probity checking a justification for exclusive arrangements?
- Are there industry efficiency reasons of a kind which might justify exclusivity?
- Is regional development facilitated?

Does it help control problem gambling through reduced accessibility?

As shown in chapter 8, a key issue for problem gambling is *accessibility* to gambling opportunities. But the link between accessibility and exclusivity varies by mode of gambling.

For example, while lotteries are operated as local monopolies, and this restricts the type of lottery tickets which can be purchased, it does not restrict accessibility to lottery gambling, as tickets can be bought widely — for example, at newsagencies. In any case, there is little evidence to date of problem gambling relating to lotteries (although some fear this may arise as lottery draws become more frequent).

Similarly, while TABs are also local monopolies, bets can be placed at TAB agencies, many clubs and hotels, and by telephone and internet. So while TABs are exclusive licensed, accessibility is not unduly restricted. But unlike lotteries, TABs are a significant source of problem gambling (chapter 6). Controlling accessibility might imply controlling the (already very large) number of races upon which wagering can take place, and is not in itself an ownership issue (chapter 15).

For casinos, the situation is somewhat different. Casinos provide some games (such as keno and gaming machines) which are also provided by many other venues, and some, such as table games, which are exclusive to them and which distinguish casinos as gambling venues. This means that restricting casino numbers through exclusivity arrangements can only restrict accessibility to one form of gambling. (And it is no longer the dominant gambling activity in most casinos. To take an extreme example, in Tasmania's two casinos, gaming machines earn over $21 million, whereas table gaming generates only $1.3 million).

But as shown in chapter 6, gaming machines — the major source of problem gambling — are already widely available in nearly all jurisdictions. Limiting the number of casinos through exclusivity arrangements can have little effect on accessibility to this form of gambling (other than in Western Australia).

In Victoria, the duopoly's exclusive rights to own and operate gaming machines in clubs and hotels bring no obvious advantages with respect to access and problem gambling (Indeed, the combination of the duopoly and global caps may adversely affect problem gambling — explained in chapter 15.)

In sum, **exclusivity arrangements, as implemented, have in most jurisdictions not reduced the accessibility drivers of problem gambling, other than for casino table games**.

The South Australian Government said that:

> The greatest benefits associated with exclusivity to table games at the Casino relate to harm minimisation and revenue generation. Harm minimisation is achieved through restricting access to table games (sub. D284, p. 13).

But it did not accept that this imposed a cost on gamblers who enjoy table gaming, in view of the wide range of substitutes for table gaming in the gambling industry and more broadly in the entertainment industry:

> ... the costs of restricted access to table games are more theoretical than real in that there are numerous suppliers of gaming machine and other gambling opportunities and the community displays no real desire for table gaming ... to be more widely available ... Given the widespread availability of other gambling opportunities in the State, the cost to consumers of exclusivity for the Casino would be trivial (sub. D284, pp. 10–11).

But it added that:

> ... supply restrictions can only be justified if they reduce the social costs of problem gambling by more than the adverse impact on recreational gamblers. This is true with regard to Casino gambling (p. 13).

Does it facilitate harm minimisation processes?

Harm minimisation programs have been established in some casinos, clubs and hotels as part of industry codes of conduct. Their effectiveness is discussed in chapter 16.

In some jurisdictions, codes of conduct have been established across all main provider groups, thereby facilitating the implementation of harm minimisation strategies in the venues covered. For example, Queensland's Responsible Gaming Advisory Committee's *Responsible Gambling Statement* and Victoria's Gaming

Machine Industry Code of Conduct have been put in place by the key sectors involved and bind them all to such requirements as advertising gambling help-line services. Given the variety of venues involved, this suggests that a key consideration is the commitment of the various components of the industry.

The Victorian duopoly has the advantage that the two operators may be able to police a self-regulation approach more effectively than under more dispersed ownership of gaming machines. But it is questionable whether self-regulation is the best approach to dealing with problem gambling (chapter 16).

Self exclusion orders may be easier to enforce for people with problems stemming from table games through casino exclusivity. But it has no such advantages with respect to problem gaming machine gamblers (other than in Western Australia).

The Commission sees no significant advantages for harm minimisation arising from exclusivity arrangements as such. A preferred approach is to focus efforts on improving the efficacy of harm minimisation programs in a range of venue types. This is the subject of chapter 16.

Does exclusivity reduce pressures to advertise?

Some participants have argued that moving away from the practice of providing exclusive licences may lead to more intense advertising of gambling, with adverse consequences for problem gambling, as competing providers sought to capture a greater share of the market for their services.

The extent to which this is likely to occur is difficult to judge. Some exclusive licence holders (such as casinos and lotteries) are heavy advertisers of gambling facilities and a larger number of providers might well mean more advertising in total. However, the Issues Paper for the South Australian NCP review of racing and wagering legislation argued that, while such concerns may have had force during earlier stages of gambling liberalisation:

> The concern to avoid or minimise promotional effort has weakened as gambling has become more widespread and community acceptance of gambling increased. This concern appears to have been more relevant for the State lottery and the TAB in 1966 than it was for the introduction of the casino in 1983 (Marsden Jacob Associates 1999, p. 32).

But this is not a matter on which decisions about exclusive licences should hinge. Rather, they should be judged in terms of the totality of effects they have on the range and prices of gambling services, including any social impacts. And similarly, the Commission considers that a better approach is to examine advertising as a issue on its own terms. This is the approach taken in chapter 16.

Is probity checking a justification for exclusive arrangements?

It is likely that limiting the number of near-monopoly casinos, TABs and lotteries facilitates probity checking and regulation, because of the small number of venues or licensees involved. Having a single operator is likely to lower the cost and increase the effectiveness of probity checking of licensees and staff, and help keep monitoring and other regulatory costs to a minimum. Effectively this is an argument based on the benefits of achieving economies of scale and scope.

In respect of its casino, the South Australian Government said that:

> ... table games provide a significant opportunity for fraud and require intensive monitoring ... The provision of a single [casino] licence ensures probity of the highest standard at the lowest cost. Exclusivity enables much more stringent and effective probity checking than if South Australia had several casinos to monitor ... A single casino permits greater presence of casino inspectorate staff (sub. D284, p. 7).

The Western Australian Government said that there were a number of checking and monitoring benefits associated with its restriction on gaming machines:

- by restricting the conduct of gambling on gaming machines to licensed casinos, it is less costly and more feasible to maintain the integrity of this particular gaming product. Inspection, audit and surveillance can be conducted more effectively;
- the cost of the government monitoring of gaming machines is lower because of the smaller number of venues operating gaming machines (sub. 76, p. 30).

But these economies have to be set against inefficiencies which arise from having a single exclusive licence. As discussed earlier, these include reduced choice and convenience to players and the price effects of having an exclusive licence. It is the balance of such costs and benefits which is important. Governments do not argue that there should only be a single insurance company or bank because of the economies which would be involved in prudential checking or tax auditing — the offsetting benefits in such areas as price, choice and savings in time are indisputable.

As noted in chapter 16, **a better approach is to institute probity checking procedures which are appropriate to the mode of gambling and venue type, and to charge the licensee accordingly.** In this way, they become part of the cost structure of the industry and are reflected in operating arrangements and future decisions.

Are there industry efficiency reasons of a kind which might justify exclusivity?

Chapter 12 noted that there were two areas where industry efficiency arguments may provide a possible rationale for selective treatment. One concerns the lottery

industry, where exclusivity helps provide larger prizes. The other concerns the funding of the racing industry by TABs as part of their exclusivity agreements.

Lotteries

Providing an exclusive licence to a single lottery provider in a single jurisdiction (and preventing competition from other jurisdictions) allows it to provide bigger prize pools than otherwise. This is important because large prizes are the principal attraction of lotteries, providing benefits to consumers, in part because adding another player to a lotto pool increases the expected value of a bet (sub. 156, p. 39).

But within most jurisdictions, larger prizes are already being obtained by commercial arrangements under which the various operators pool their activities. Indeed, the major lottery products (Lotto, Powerball and the like) are now routinely provided through national blocs (chapter 13). In this way, some of the shortcomings of exclusive licensing are being overcome. This suggests that economies of scale cannot be a good argument for exclusive lottery licences (in the same way that they cannot be a good argument for a single exclusive licence for a bank or a retail shop).

Were exclusivity arrangements to be removed, one possibility might be the emergence of a small group of operators competing in several jurisdictions. Depending on the economies available, this might lead to an increase in the player returns from lotteries (currently low compared to other gambling products at 65 per cent for lotteries, 60 per cent for lotto and 62 per cent for instant lotteries). In such a case, some of the potential competitive gains identified by Tattersall's would accrue to consumers as lower prices.

But equally, differences in costs of production, together with consumer demand for large prizes, might see the emergence of major national lotteries, in place of the pooling arrangements now entered into as a response to limits on interstate competition. Such outcomes are best decided by consumers choosing the products they prefer. Depending on the number of competitors in the market, such an outcome may require monitoring on competition policy grounds. But **in the Commission's view, the capacity to provide larger lottery pools does not constitute an argument for government-enforced exclusivity.**

TAB funding of the racing industry

The conditions governing the exclusive licences for the TABs (whether government-owned or private) include the requirement that they contribute funds to the thoroughbred, harness and greyhound industries. For example, as part of the privatisation of the Queensland TAB, the government has negotiated revenue

sharing arrangements with the racing clubs for the next 15 years. And in Victoria, the now-private Tabcorp is required to share both gaming machine and wagering income with the Victorian racing industry. Across Australia, about $400 million is paid by TABs to their racing industry.

This requirement reflects the fact that, unlike sports betting on football matches or car races, wagering is the major reason for horse racing to take place. If those providing wagering services were not to contribute to the racing industry, the industry itself would decline. As the Australian Racing Board noted:

> The Australian Thoroughbred Racing Industry is a gambling industry in the sense that off-course and on-course wagering on racing outcomes is the major revenue source for the Industry (sub. 48, p. 1).

Without some form of policy response, 'free riding' might lead to the racing industry providing too few races:

> The nature of racing events is such that it is difficult to exclude parties from utilising the primary product of the event - the outcome or result of a race. As such, it is possible that betting service providers could 'free ride' on the racing industry, taking bets on races without contributing to the costs of running them. Such a situation could lead to there being too few race meetings and a smaller racing industry (CIE 1998, p. 36).

Exclusively licensing a single TAB in each jurisdiction, heavily restricting the competition it faces, and requiring it to direct some of its revenues to the racing industry are the means by which this problem is currently addressed. But while it is a convenient and effective way of raising tax revenue and providing secure funding to the racing industry (and may have other benefits with respect to assuring punters of the integrity of the betting activity), it is a blunt instrument for overcoming such 'market failure'.

But there can be no guarantee that current arrangements result in the 'right' amount of funding or lead to the running of the 'right' number of races, particularly in view of the many anti-competitive restrictions which apply. (Indeed, there are arguments that biasing wagering towards the TAB pooling arrangements has led to an excess of lower quality races — see subs. 3 and 14.)

Moreover, TAB monopolies in each jurisdiction are under threat from technological developments such as interactive home gambling and the increasing availability and popularity of sports betting (albeit from a small base). Alternative ways of achieving appropriate funding for the racing industry may need to be canvassed. For example, the advantages and disadvantages of some form of levy arrangement could be reviewed (box 14.5), although any such development would need some form of interjurisdictional agreement to work. However, it would have the advantage of

directly addressing the problem raised by ACIL and others of betting on racing being offered by some who do not contribute to the funding of those races.

But as noted earlier, any change in policy would first need to consider a wide range of related questions, such as the exclusive rights given to the racing clubs, licensing procedures for bookmakers, the limits on the codes covered and so on, as these restrictions serve a range of objectives.

However, the broad principles which should guide the approach of governments to the racing and betting industries ought to be essentially the same as for any other industry (chapter 12).

In short, there is a case for government intervention to overcome the particular market failures which affect the racing industry.

Interactive home gambling and the increasing availability and popularity of sports betting will increase the pressures on TAB monopolies in each jurisdiction. But TAB exclusivity and the restrictions which underpin it do not appear necessary to ensure an appropriate level of funding for the racing industry.

Any changes to the exclusivity arrangements for TABs would need to take into account the role of betting agencies which offer betting on racing but do not contribute to the funding of racing.

Facilitating regional development?

It is difficult to predict specific regional development spinoffs from the exclusivity of casinos, lotteries and so forth (or from removal of that exclusivity). However, the exclusivity of TABs does appear to have some benefits for regional and country areas. For example, the Western Australian Government noted that:

> TAB distributions to the racing industry, particularly in country and regional areas, are important to the social fabric of the State. Weekend race meetings are extremely popular social events and play a major role in the social integration of farming communities. This has an additional flow on effect of maintaining community interest in horses (sub. 76, p. 36).

But that said, it is not clear what consequences for regional race meetings would follow in circumstances where TABs were not exclusive and racing for wagering purposes were not limited to the three current codes. Much would depend upon whether there continued to be demand for the same kinds (and standards) of races now run.

Box 14.5 **Funding for the racing industry: what alternatives to TAB exclusivity?**

A 'property rights' approach?

At one extreme might be a world in which the exclusive arrangements for TABs and many of the restrictions on bookmakers were removed, and each was free to take bets on a wide variety of sports and events. In time, their activities would evolve towards a preferred balance of totalisator and fixed odds bets on a wide range of sports and other activities. Specialisation might occur.

In such a world, 'free riding' could be solved by establishing legally enforceable rights to gambling on racing events and allowing *any* betting agency to negotiate fee arrangements with the holder of those rights (eg racing clubs). (Arrangements would subsequently develop for cross licensing, as with rights to televise sporting events.)

But a key question would concern who would control any such rights. Resolving this would require a review of the regulatory structures that underpin the racing industry. An indication of the difficulties involved comes from the Queensland Government, which noted that:

> The issue of ownership of the racing product to broadcast through pay television has caused controversy within the ... racing community. The interrelationship between ownership of television rights to racing and income from racing has raised many questions for which there are currently no definitive answers in the current rapid technological developments (sub. 128, p. 51).

Such arrangements would need to be quarantined to those cases where the incentive to operate races came essentially from the wagering, with the likelihood that the game would be undermined in the absence of such a mechanism. This rationale would not apply to sporting events (such as football) undertaken for other reasons.

A levy approach?

Another approach would be to levy all wagering on racing, whether undertaken though TABs and racing or sports bookmakers, and pay a proportion to the racing industry.

The size of any such levy on gambling revenues could be determined by all industry members (including, for example bookmakers), with the role of government limited to seeing that the levy is agreed to and enforced. In this way, the industry as a whole could decide how much ought to be collected and how it might be used. And were such decisions to be made at the national level, this might help overcome some of the inefficiencies of the current state-focused arrangements.

Such a levy is already used in the United Kingdom explicitly to provide funding for the racing industry:

> Bookmakers are required to pay a levy on their horserace betting turnover through the Horserace Betting Levy Board, which has a statutory duty to make funds available for the benefit of horseracing. The levy is in the form of a fixed fee per betting office plus a percentage [of turnover] ... Total payments therefore rise and fall in line with horserace betting expenditure (Field and Dunmore 1997, p. 1).

In the case of regional exclusivity for casinos, this can provide a boost to business activity and employment in the region concerned. Local businesses which help build and supply the casino benefit, and short- and long-term employment in some occupations in the area could rise. While some competitor businesses will be disadvantaged by the competition (and might lose employment), others gain, and business activity in the region as a whole is likely to be higher. However, the net effect on the region will depend upon the circumstances of the development and of the region concerned. And any such evaluation would need to ensure that all of the economic and social impacts were properly accounted for.

The South Australian Government noted that:

> ... there may be some benefits from a regional perspective if South Australia can preserve a stake in the national tourism market ... in a region with under utilised resources, such as high unemployment, a tourism/casino development could provide additional benefits to the economy. Attracting a major developer may also require an incentive structure that would enable them to offset their establishment costs and may therefore require an exclusivity period (sub. D284, pp. 6–7).

It added that, in the event that Adelaide Casino were to be sold by the Government as planned, its exclusive licence would assist in attracting new investors into South Australia to retain and develop the casino, as well as maximising sale proceeds (sub. D284, p. 8). Nevertheless, it acknowledged that:

> ... it may be a zero sum game nationally (sub. D284, p. 6).

Any large scale development will draw employment and other resources from elsewhere in economy (both within the same jurisdiction and outside). So what benefits one industry or region will in part be at the cost of others. While the effects in different parts of the economy will depend upon the markets for labour and other resources in the region and more widely, the net effects Australia-wide must necessarily be small.

For such reasons, it is not at all clear that regional development provides a sound rationale for exclusivity in gambling licensing, or that this approach would have any advantages over other policies which would also encourage regional development.

Summing up on exclusivity arrangements

Exclusivity arrangements impose costs on the community. And while revenue raising is used as a major rationale for these arrangements, it is not a strong justification. Other arguments put forward in favour of granting exclusive licences are also not compelling.

In the Commission's view, the key consideration is the effect which these arrangements have on problem gambling, and in particular, on the accessibility of gambling, and the implementation and effectiveness of harm minimisation practices.

While some problem gamblers benefit from the reduced access to table gaming which results from casino exclusivity, there is little to suggest that these arrangements lead to good social outcomes overall. And exclusivity is a very indirect way of tackling accessibility and harm minimisation.

14.3 Should gambling be restricted to particular venue types?

Current arrangements concerning the places where gambling is offered reflect history and ad hoc decisions of governments. But at their core are restrictions based on limiting gambling to adults, and the linking of gaming machine gambling to venues with liquor licences. A key restriction in each jurisdiction which has gaming machines sets different limits on the numbers of gaming machines for clubs and hotels.

Chapter 12 has shown that problem gambling provides a rationale for special gambling policies. But a key question concerns the criteria to guide decisions about future increases in the availability of different forms of gambling, particularly for those already shown to be more problematic.

A related question is the extent to which governments *can* restrict access, given the rise of interactive gambling, not only at home but through the increasing availability of internet cafes or internet terminals in shopping malls, airports and other public places.

Gambling and liquor licences

Gaming machines are generally restricted to premises which have certain types of liquor licences. Given the role of alcohol in adult recreation activities, this may seen unexceptional. It also provides clearly defined boundaries and premises, and facilitates the exclusion of under age gambling (although children may obtain entry into clubs even if not into gaming rooms, and exclusion of minors from gaming areas could easily be a feature of a gaming licence which was not linked to alcohol).

The Australian Hotels Association supported a linking of liquor and gaming licences as a sensible initiative to minimise minor access, noting that:

> Establishments that provide liquor are only available to the adult population and the restriction of gambling services to hotels is an ideal way of limiting access to minors ... the hotel sector is well versed to effectively deal with the sensitive issues associated with both gambling and alcohol consumption [and it] provides an environment that is highly controlled (sub. D231, pp. 52–3).

The Queensland Government said that:

> History has played some part in the continued use of liquor licensing as a basis for gaming venue approvals but no other method of assessment has been proposed which could successfully replace this system. The current regime is positive in the sense that it establishes an environment that is adult based (hence restricting minors) and requires a common nominated licensee who is responsible for the conduct on the premises (sub. D275, p. 14).

It added that:

> ... possession of a liquor licence is not the sole basis for the licensing of sites, but *one* of the criteria for applying for a licence (p. 14).

But there are some apparent anomalies. For one thing, other gambling venues are not so licensed: why exclude gaming machines from TAB agencies? And some liquor-licensed establishments cannot have gaming machines (for example, restaurants or grocery stores with liquor licences). One reason may be concern about the increase in accessibility to a problematic form of gambling. Or concern about increasing the 'convenience' nature of machine gambling. These questions of accessibility are discussed in the next chapter.

The Australian Hotels Association said:

> ... there is limited evidence to suggest that the provision of gambling and alcohol in the same establishment plays a significant role in a marked increase in irresponsible gambling practices and further research on these topics should be conducted before drawing policy recommendations (sub. D231, p. 47).

While clubs and hotels have broadly similar liquor and gaming licences, they are treated in very different ways in most jurisdictions. Foremost among these are the caps on numbers of gaming machines allowable per venue.

However, several participants noted that a person's control over his or her gambling activities is necessarily reduced with alcohol consumption. A recent study for the Nova Scotia Department of Health provided support for this view: it found that people who play gaming machines while drinking tend to gamble for twice as long as those who do not drink. The Australian Hotels Association noted the Nova Scotia study but argued that there is insufficient evidence to suggest that problem gambling is more likely to occur if alcohol is involved. It said that studies should be based in Australia, as:

> ... there are significant differences throughout the world in public behaviour due to different cultures and environmental factors (sub. D231, p. 54).

Nevertheless, some counselling agencies and welfare groups expressed concern about the effect which alcohol can have on some people's gambling behaviour. And Nunkuwarrin Yunti of South Australia said that:

> The enmeshment of alcohol and gambling opportunities under the same roof seems to be a trend far more common today than ever before. PUB/TABs are far more common than stand alone agencies in South Australia. Gaming machine licences are always linked to licensed premises, preventing the setting up of alcohol free venues. Any steps to minimise the opportunity to consume alcohol and gambling in the same venue is supported as a step to minimise associated harm (sub. 106, p. 6).

Given the evidence as to the high risks for some in the community from gambling, and that such risks can be exacerbated by alcohol, the provision of gambling in venues which serve alcohol might be thought problematic. While there are advantages to problem gamblers in reducing accessibility (chapter 8), it seems odd to limit such opportunities only to venues where drink is available.

In principle, applications for gaming licences ought to be judged against criteria based on assessment of the risk of harm, without direct reference to licensing for consumption of alcohol. This might, for example, cover such matters as venue location and layout, training of staff, harm minimisation programs and the like (some of which are already picked up in current licensing arrangements). In this way, both venues with alcohol licences and those without may be considered for gaming licences.

But much depends on the process by which such decisions are made (chapter 22). If the consequence is more outlets, that would lead to greater accessibility and therefore to greater problems. This matter (and the question of whether gaming machines might be located in other venues) is taken up in the discussion of gambling accessibility in chapter 15.

Venue type and problem gambling

Earlier chapters have indicated some of the areas in which there are significant differences in the approach of regulators to different types of gambling mode or venue. Clearly, for example, casinos are regulated to a much greater degree than clubs and hotels. But chapter 6 has shown that there is insufficient evidence to argue that casinos are a *particularly* serious source of problem gambling. In fact, with respect to gaming machines, the evidence points the other way: less problems appear to be attributable to casinos than to clubs and hotels. In large part this

reflects their small numbers, their location and role as a destination venue for many, and the small proportion of total expenditure on gaming machines that they represent.

It is a common perception among members of the public that clubs provide safer gambling environments than hotels. Many believe that clubs are more caring than other venues about their patrons (who are, in the main, members, rather than customers), and their non-commercial status means staff and management have less interest in generating profits. However, a contrary view was put by the AHHA (Vic), which said:

> Professional managers are attracted to clubs. The profits from gaming are distributed via the management agreement, and the objective of ensuring community benefit can be thwarted (sub. 154, p. 11).

The perception that clubs are safer was a view reflected in the results of the Commission's own survey (chapter 15). However, that chapter also points out that such perceptions may well be ill-founded. Clubs, like other venues, have said that they generally do not actively intervene with players because of the difficulties of identifying problem gamblers, concern about giving offence, or possible potential for liability at law. Instead, they rely on passive measures such as signs and brochures.

A comparison of the proportion of gaming machine spending accounted for by problem gamblers in clubs and hotels suggests that a higher proportion is accounted for by clubs in New South Wales and by hotels in Victoria. It seems that, in a particular jurisdiction, problem gamblers dominate in the most popular form of venue in that jurisdiction. The Commission found no difference between clubs and hotels with respect to the incentive to intervene with problem gamblers.

Moreover, even if it could be shown that there was a lesser risk of harm in clubs generally, this may still not justify special treatment of clubs as a group. Individual clubs vary in many respects, including in the quality of their internal programs and their capacity to implement them effectively. The Commission has seen some that are clearly very good, others less so. The same applies to hotels. There is no completely safe environment. But gamblers will be safer in some clubs than others, and in some hotels than others (chapter 8).

A sound approach to policy is to determine what sorts of environments are not appropriate, and incorporate this into codes of conduct or regulation. This is discussed in chapter 16, which canvasses a range of matters concerning warnings for players, payout arrangements for prizes, machine design and other matters relevant to harm minimisation.

Big clubs —casinos by another name?

Some argue that there are no longer sufficient differences between casinos and the 'super clubs' which have emerged (in New South Wales, in particular) to justify significantly different treatment by regulators. Casinos offer a somewhat different experience to the local club or hotel, a difference which is reinforced by government fiat (and which adds value to the 'brand name'). Both compete for discretionary income. But:

- big clubs, like casinos, provide lavish surroundings, hundreds of gaming machines in large gaming rooms and a full range of associated services such as bars, restaurants, world-class entertainment and so on;
- some clubs offer horseracing games and 'virtual' casino-like table games such as blackjack and roulette and at multi-terminal gaming machines;
- for many clubs, gaming revenue constitutes a higher proportion of their total income than is the case for casinos (which are all operated as hotel-casinos); and
- a few clubs in New South Wales have more gaming machines than the smaller casinos in other States (for example, only three of Australia's 13 casinos have more gaming machines than the Penrith Panthers Club).

This perception was reinforced by some club officials, who acknowledged that they saw themselves as managing 'casino-like' operations.

Moreover, the distinctiveness of casinos in Australia has declined over time: some which commenced operations with only table gaming now derive a high proportion of their gaming revenues from gaming machines. While casinos account for about 6 per cent of Australia's gaming machines, gaming machines account for a significant proportion of total casino revenue: for some, table gaming revenues dominate, but in other cases, a very high proportion of their income comes from gaming machines. This is consistent with experience in the United States, where casinos also derive a significant and increasing proportion of their profitability from gaming machines.

This adds weight to the argument for a common approach to regulation (and self-regulation), and as noted earlier, some jurisdictions and industry groups are already taking this course.

Summing up on gambling and venue type

Current venue restrictions are somewhat arbitrary. They reflect history and arrangements with particular interests, rather than strong policy rationales. In

particular, it is not clear that linking alcohol and gambling licensing is good policy. There may be merit in a broader venue-based risk assessment approach to gaming licences.

There is little evidence that clubs provide a less risky environment for gamblers than hotels with respect to harm minimisation. However, progress has been made in making some clubs and hotels safer. In the Commission's view, there are likely to be benefits in strengthening harm minimisation programs.

The difference between casinos and some larger clubs is becoming less clear, but major differences in regulatory requirements remain. And changing the rules now to allow hotels parity with clubs would greatly increase the total number and accessibility of gaming machines in most jurisdictions.

Underlying much of this discussion is the question of accessibility to gambling. That is the subject of the next chapter.