

12 January 2009

Gambling Enquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

SUBMISSION TO THE PRODUCTIVITY COMMISSION GAMBLING INQUIRY

INTRODUCTION

I was formerly the Commercial/Legal Officer with the Victorian Casino Control Authority. For many years I have studied gambling and I chair a charitable/educational organization that educates to prevent the harmful effects of problem gambling.

I make this submission on my own behalf as an Australian citizen.

Almost all of these materials relate to gaming machine and have been put to the Senate Standing Committee on Community Affairs. The Committee released its report on 10 November 2008 and materials will be available to you from the Committee website.

The purpose of this submission is to:

- (i) update the materials;
- (ii) put them to the Commission on a formal basis;
- (iii) configure them within the format of the terms of reference; and
- (iv) make some observations on issues relating to other types of gambling.

The contents of this submission are set out on the next page. The underlined items are enclosures.

I would be happy to appear before your Committee if so required.

Kind regards

Tim Falkiner
Melbourne

MATTERS RAISED UNDER TERMS OF REFERENCE

The nature and definition of gambling.

- Educational materials describing gambling
- Escape gambling as sacrifice in transcendence.
 - DVD – Spiritual Dimension of Gaming Machines
 - Transcript – Spiritual Dimension of Gaming Machines

The economic impacts of the gambling industries

- Regional cities and towns – diversion of revenues from other local businesses
 - Iowa study – Fairchild & Ors
- The impact of gaming machine related crime on financial institutions
- Destruction of careers of convicted gaming machine problem gamblers
- Assigning an economic cost to pain and suffering
- Harm suffered by children of problem gambling parents
- Problem gambling losses are a moving feast

The effects of the regulatory structures governing the gambling industries

- State Governments have failed to ensure gaming machines are honest and safe
 - DVD - Pokie Jokie
 - Unbalanced reel gaming machines paper – Falkiner & Horbay
 - Comments on near-miss slot machine design paper – Falkiner
 - Affidavit of Kevin Harrigan PhD
- Failure of ACCC to act on complaint that starved reel technology unsafe, misleading, deceptive and unconscionable
 - Original letter to ACCC.doc
 - falkiner horbay 09 09 06
 - ACCC reply.pdf
 - Second letter to ACCC.doc
 - Letter to NIGC re technical regs on CIII and CIII machines.doc
 - CB 6-person complaint Nov 13 (2).doc
 - ACCC reply 16 May 07 pages 1 and 2 in .jpg format
- Historical account of credit controls on gambling activity since 1710
- Futility of caps

THE NATURE AND DEFINITION OF GAMBLING

EDUCATIONAL MATERIALS DESCRIBING GAMBLING

The two elements of gambling

Recreational gambling constitutes the staking of money on a random number generator.

Gambling is not possible without money or something valuable. If children play a card game such as “Snap” or “Beggar-My-Neighbour”, they are not gambling – unless they play for money or something of value.

A random number generator has two characteristics:

- (1) an element of randomness, and
- (2) an outcome which is readily quantifiable.

One does not bet on the sun rising in the morning because that is too certain. One does not bet on the shape of the next cloud to appear because, although there is randomness, the outcome is open to dispute.

Classes of gambling

Gambling tends to be classified into four categories though these distinctions can become blurred. Two of the categories involve betting on “inanimate” random number generators.

Lottery – this involves a remote mechanical random number generator, for example, a barrel full of marbles, ping pong balls blown about by a blower.

Gaming – this involves mechanical random number generators operated in the vicinity of the players, sometimes by the players themselves – cards, dice, roulette wheels and pokies.

The essential difference between lotteries and gaming is that with a lottery, the random number generator is at a remote site, whereas with gaming, the players are close to the random number generator.

The other two categories involve betting on “animate” random number generators. In the first case, animals and in the second, humans.

Wagering – betting on animal races, usually horses and dogs.

Sportsbetting – betting on the outcome of sporting competitions such as football, cricket, golf.

All these things combine randomness: the tumbling of marbles in a barrel, the shuffling of cards, the running of animals and the bounce of the ball. But all give rise to a quantifiable result.¹

More materials

More information on the nature of gambling is contained on the Know the Odds Inc page at <http://www.knowodds.org/math.html>. There are also a number of definitions of gambling at <http://www.knowodds.org/defns.html>.

¹ Mathematical Association of Victoria Annual Conference Papers 2008 – page 91

The role of speculation in the present economic crisis

I am not going into the issue of commercial speculation in derivatives other than to note that this activity which has caused widespread disruption to the world financial system would formerly have been rendered unenforceable under the Gambling Act 1845 and subsequent legislation.

If you have not read them, I strongly recommend you read:

Warren Buffett's 2002 letter to the Berkshire Hathaway shareholders

<http://image.guardian.co.uk/sys-files/Business/pdf/2008/09/15/2002pdf.pdf?source=cmailer>

and

The Bet That Blew Up Wall Street - Steve Kroft On Credit Default Swaps And Their Central Role In The Unfolding Economic Crisis – CBS News

<http://www.cbsnews.com/stories/2008/10/26/60minutes/main4546199.shtml>

GAMING MACHINE ESCAPE GAMBLING AS SACRIFICE IN TRANSCENDENCE

The majority of problem gamblers on the machines are not action gamblers but what are called “escape gamblers”.

I will use the term “escape gamblers” and “addiction” but I do not believe the activity carried on by escape gamblers is properly characterized as “gambling” for reasons I will explain below. Also, psychologists use the word “addiction” in relation to problem gambling without enquiring whether the activity is addictive or compulsive. The difference is explained in the passages below (my underlining) taken from an outstanding book by two Jungian psychoanalysts.²

Action gamblers play the machines for excitement and to win money.

Escape gamblers are using the machines for “*a morphine-like anaesthetization*”, a phrase used by Professor Bo Bernhard of the University of Nevada.³

As Professor Bernhard⁴ and Dr. Charles Livingstone⁵ point out, the money is only important to escape gamblers insofar as it buys them time on the machines.

² *Unlike addictions, compulsions do not tend to give the person pleasure. The rituals are performed to obtain relief from the discomfort generated by the obsessions. Anxiety is modulated by incorporating control. Activities are confined to those permitted by the controlling and rejecting other. Intrapsychically, moralizing and perfectionism work to keep the needy parts of the self under control (Benjamin 1996: 246—51).* Source: Nancy J. Doughney and Jacqueline J. West – *The Matrix and Meaning of Character* - Routledge 2007 at page 86.

³ Radio National – 22 November 2004 - Professor Bo Bernhard, Problem Gambling Centre, University of Nevada

⁴ Radio National – 22 November 2004 - Professor Bo Bernhard, Problem Gambling Centre, University of Nevada, “*Quite honestly, very rarely is this, for addicts, (talking about escape gamblers) about money. I cannot tell you how many patients we have had who play the pokies and who say they used to get really frustrated when they hit jackpots because that*

According to the Gambling Impact Society of New South Wales, 70% of escape gamblers are women and only 10% of women are action gamblers.⁶ Information I obtained from a South Australian treatment provider indicated that 80% of the men and 90% of the women being treated by her were escape gamblers.

One identifies the escape problem gambler by considering the machine or machines played. (An action gambler will play a wide range of machines and particularly those with linked jackpots.) There is now clear evidence that escape gamblers have favourite machines based on archetypal symbols such as: hearts, dolphins, gods, goddesses, dragons and unicorns. This may sound strange but there are four largely independent threads of evidence pointing to this: (1) observations of treatment providers and anecdotal evidence, (2) Charles Livingstone’s “Commodification of Interiority” paper⁷, (3) my interpretation of the symbolism on machine panels and (4) the “Loved Ones No. 3 table which is produced below.⁸

What is the name of your favourite pokie machine? (PG Q15)

Table 41 – Preferred pokie machine

No favourite	17
Hearts/Sweethearts	13
Dolphin/Treasure chest	8
Adonis/Gold coins	8
Queen of the Nile/Cleopatra/Jewel of the Nile/Pyramids/Egypt	7
Black rhino	5
Orchid mist/Chinese Pagoda gates/Geisha	4
Red hot chilli peppers	4
Indian dreaming	4
Georges	3
The lions	3
Moons and unicorns	3
Oriental theme/Three crowns/Red and gold	2

bumped them out of a zone, because it slowed me down, somebody had to come over and pay them.”

⁵ Dr Charles Livingstone – Desire and the Consumption of Danger: Electronic gaming machines and the commodification of interiority – Addiction Research and Theory - December 2005 13(6) 523-534 at page 527

⁶ <http://www.gisnsw.org.au/gambling/Gambling-Why.html>

⁷ Livingstone (supra) at page 527

⁸ December 2005 Victorian Dept of Justice study The Experiences of Problem Gamblers, Their Loved Ones and Service Providers - Round 3 – see Table 41 for list of preferred machines played by problem gamblers. (I had, independently, identified these machines using symbolic analysis coupled with anecdotal evidence from treatment providers and problem gamblers.)

Reelin & Rockin'	2
Eighteen others	1 each

To understand the effect of the symbols it is necessary to use analytical psychology which was developed by the Swiss psychoanalyst Carl Gustav Jung.

Jungian theory is obvious but difficult to grasp because we have been so conditioned to thinking about the rational mind and the concept of free will.

Jung approached the psyche from a Darwinian viewpoint.

Man has developed consciousness slowly and laboriously, in a process that took untold ages to reach the civilized state (which is arbitrarily dated from the invention of script in about 4000 BC.) And this evolution is far from complete, for large areas of the human mind are still shrouded in darkness. What we call the "psyche" is by no means identical with consciousness and its contents.⁹

Jung taught that the mind was not a 'tabula rasa', a blank slate, but that the human mind contained established, inherited, thought patterns.

... one finds that many dreams present images and associations that are analogous to primitive ideas, myths and rites. These dream images were called 'archaic remnants' by Freud; the phrase suggests that they are psychic elements surviving in the human mind from ages long ago. This point of view is characteristic of those who regard the unconscious as a mere appendix of consciousness (or, more picturesquely, as a trash can that collects all the refuse of the conscious mind).

Further investigation suggested to me that this attitude is untenable and should be discarded. I found that associations and images of this kind are an integral part of the unconscious and can be observed everywhere – whether the dreamer is educated or illiterate, intelligent or stupid. They are not in any sense lifeless or meaningless 'remnants'. They still function and they are especially valuable ...

A Wikipedia entry puts it as follows:

According to Jung, archetypes heavily influence the human life cycle, propelling a neurologically hard-wired sequence which he called the stages of life. Each stage is mediated through a new set of archetypal imperatives which seek fulfillment in action. These may include being parented, initiation, courtship, marriage and preparation for death.¹⁰

Archetypal symbols are images that stimulate the archetypes. These are the traditional religious symbols. Jung describes them in the following passage:

There are many symbols, however (among them the most important), that are not individual but collective in their nature and origin. These are chiefly religious images. The believer assumes that they are of a divine origin – that they have been revealed to man. The skeptic says flatly that they have been

⁹ Carl G Jung "Man and his Symbols" Dell 1968 at page 6

¹⁰ http://en.wikipedia.org/wiki/Jungian_archetype

*invented. Both are wrong. It is true, as the skeptic notes, that religious symbols and concepts have for centuries been the object of careful and quite conscious elaboration. It is equally true, as the believer implies, that their origin is so far buried in the mystery of the past that they seem to have no human source. But they are in fact collective representations emanating from primeval dreams and creative fantasies. As such, these images are involuntary spontaneous manifestations and by no means intentional inventions.*¹¹

Jung wrote of the spiritual character of archetypes, “... *the archetypes, when they appear have a distinctly numinous character which can only be described as ‘spiritual’ ... It mobilizes philosophical and religious convictions in the very people who deemed themselves miles above any such fits of weakness.*”¹²

So we have people who are suffering distress of the spirit and they come up against these machines and they are particularly vulnerable.

Most of the potent machines have a life/death/rebirth theme. Some people ask, “How can these mythological panels affect a person who does not know, for example, the association between dolphins and salvation or the Isis/Osiris/Horus mythology?” The answer is the themes are archetypal. They “lock into” the inherited “riverbeds”, “fault lines”, “hard-wiring” of the human mind. The human mind is automatically attracted to these symbols. For an account of how ancient civilizations developed or adapted a life/death/rebirth mythology see the Wikipedia article.¹³

One would expect that the life/death/rebirth machines, which prepare one for death, to be played by persons in the latter half of life and this seems to be the case. As Jung observed, when we are young we are concerned about living; in the second half of life we are concerned about death.

Not all the machines are targetted at those with an apprehension of death. One of the machines targets abused women. One woman wrote to me, “*By the way. I want you to know that the abuse I received at the hand of my father, who was also very loving, was not sexual, but psychological and physical. And just to let you know that I think you have a really clear idea of the reality of the messages, I was addicted to the Geisha machine for quite a while.*”¹⁴

Some of the treatment providers are starting to realize the machine themes are important. I was attending a conference at the Richmond Town Hall in 2007 when I was approached by three female treatment providers all wanting to know about the symbols. At that meeting, three persons present identified themselves as problem gamblers and each played only one machine: two played only SweetHearts II and the other played only Queen of the Nile.

¹¹ Man and his symbols at pages 41 and 42

¹² C. G. Jung - De Laslo (ed) Basic Writings of CG Jung, Princeton University Press 1990 at pages 77 & 78

¹³ http://en.wikipedia.org/wiki/Life-death-rebirth_deity

¹⁴ Private correspondence

Given these people are not playing the machines to win money, but for time on the machines, why do they bet maximum lines? Why do they not simply play one line which would be cheaper and extend their time on the machine?

One reason is perhaps that they get more free spins quickly when they play multiple lines and free spins are seen as an affirmation.

The other reason for the expenditure of more than the minimum amount required to play the machine is that the activity is sacrificial. This is what one Jungian psychotherapist wrote: *“Hence the issue of sacrifice, which has always been central to religious activity is also brought into play. Sacrifice has always been a core value of religious activity and of course has a relatively high significance as the resources one has available to make sacrifice are diminished. There is also always a hidden bargain involved in sacrifice. Sacrifice is the way in which one “buys” favour with the higher power, and that favour ultimately translates into a release from suffering. Since the people for whom you are advocating could be seen to be suffering extreme circumstances the factor of sacrifice as a bargain for release from suffering is likely to play a strong part in the compulsive action of gambling. Hence, once again, the new age/religious theme would be a significant factor, at the symbolic and subliminal level, of the attraction that the player has for the machine; this is likely to increase the level of transcendence in the experience of gambling for the player.”*

The reel starving (the cheating mechanism embodied in the Australian machines - explained below) augments the supernatural quality of the archetypal symbols because the machine takes in money/offering contrary to its appearance. So that gives a surreal or “miraculous” effect.

These people are caught in this. You have the extreme low self-esteem and self-worth. You have the losses translating into sacrifice feeding into this self-sacrifice and self-abuse – further impoverishment, further sacrifice and so it goes round in a cycle.

The Jungian psychotherapist wrote, *“... Deeply embedded in this problem is the issue of self worth. Most of the women you speak of have suffered severe impoverishment of self-esteem and self worth, often from a very early age, and simply winning a prize would not transform them into people they themselves would feel worthy of rebirth. Hence continual self-sacrifice and self abuse clothed in the symbolism of sacrifice in transcendence may be all that is left to them”.*

Amongst the escape gamblers are women suffering from a range of traumas including things such as: childhood sexual assault, childhood physical or emotional abuse, rape, abusive relationships, post partum depression, loss of a loved-one, menopause and fear of death. As Sue Pinkerton observed, carers seem to be particularly susceptible.¹⁵ Kate Jamieson, sentenced to a

¹⁵ Another issue of concern is that it seems that it is vulnerable women, women under stress, who are developing into problem gamblers. One woman the author spoke to had lost a loved one, another had suffered the failure of a family business. A caller on a talk-back program had a child with a learning disability.[58] The National Australia Bank teller who stabbed an elderly client in a bid to cover her gambling caused thefts, was suffering from an undiagnosed depressive disorder arising out of violence and sexual abuse as a child.[59] The mother who stole \$130,000 of her quadriplegic son's compensation payout, told police she

minimum four years jail, suffered grief over the death of her father and her father-in-law.

The mechanism of escape gambling, a very different activity to action gambling, explains why this type of gaming machine problem gambler only has problems with gaming machines and not other forms of gambling. This is not the marketing of simply another addictive substance to a person who is vulnerable to addictive substances and who would take some other substance in substitution. Many escape gaming machine gamblers are exemplary members of the community, good husbands, wives, daughters, mothers, fathers. They have no prior history of addiction and, but for the machines, would have led normal lives and contributed positively to the well-being of their families and the community.

On this analysis, for the escape gambler, gaming venues can be described as performing a mechanized, commercialized, spiritual or religious role with the machines as altars and the play, sacrificial ritual. This process is utterly exploitative and heartless. The cheating mechanism in the machines exploits the player's desire for gain; but the use of archetypal symbolism on the machines is worse because it exploits the player's desire for spirituality. It is worse than exploitation by a religious cult because it is without human contact.

I mentioned that I did not consider this activity constituted gambling. If we describe gambling as staking money on a random number generator (such as a gaming machine) in the hope of winning, then this activity is not gambling.

I have supplied the Committee with a copy of a DVD of a public lecture I gave at the Theosophical Society on 9 October 2007 titled: "Spiritual Dimensions of Gaming Machines".

I recently gave the husband of a gaming machine problem gambler the Pokie Jokie DVD (describing a cheating mechanism in the machines) and the Theosophical Society DVD. He wrote back in the following terms:

"Also, it is the Theosophical Society DVD which I think is the more important of the 2 which is yet to be made available by some means ... even a text version with stills would be great .. the point is you make some connections that people would never see, but help to explain the gravity like pull these machines have .. a google search for dolphin, unicorn, isis, adonis and "Tim Falkiner" has no hits .. this is such a shame .. it is really good work .. I want people to be able to watch you present this."

I have attached to this emailed letter a transcript of my lecture (***Theo Soc lecture transcript.doc***).

started gambling after her husband died of cancer.[60] Another woman lost control of her gambling after her husband's death from cancer.[61] Ms Tania Coppel, a gambling counsellor with Sunshine Community Health Services, said she was seeing an alarming number of women who had developed gambling problems while suffering from post-natal depression.[62] Source: Women and Problem Gambling - A paper delivered by Mr Tim Falkiner, Chairman, Know the Odds Inc at a lunchtime forum at Ross House, 247 Flinders Lane, Melbourne on Wednesday, 11 February 1998 - downloaded from <http://www.knowodds.org/womhist.html#suffer>

THE ECONOMIC IMPACTS OF THE GAMBLING INDUSTRIES

REGIONAL CITIES AND TOWNS – DIVERSION OF REVENUES FROM OTHER LOCAL BUSINESSES

The introduction of gaming venues into provincial cities and country towns will divert economic activity from other businesses in those centres. Whilst it is difficult to perform input/output analysis the enclosed Ohio study¹⁶ makes it clear that where gambling was introduced, retail activity was suppressed. The Commission will doubtless receive evidence from other submitters concerning the low employment levels associated with gaming machine gambling.

This is undesirable for two reasons.

First, it can be expected that this will hasten the drift of population to the capital cities and our major cities are reaching the limits of their economic growth. This is evidenced by the increasing calls for very expensive capital works in Melbourne and Sydney.

Secondly, for reasons given below, the machines - by incorporating starved reel cheating technology - are competing unfairly with other businesses. I put this to the Senate Committee in the following terms:

What they are doing with these machines is like adding amphetamines, an illegal substance, to beer. The machines are a service industry using a deceptive product and competing unfairly with service businesses for disposable income. That is particularly relevant with the corporations power.

*These machines are taking money from restaurants, newspapers, hairdressers, chemists and from all the businesses competing for discretionary expenditure.*¹⁷

POKIES-GENERATED CRIMINAL ACTIVITY IMPACTING ON BUSINESS

The Melbourne Age newspaper in May this year referring to a report by Warfield & Associates, forensic accountants on gambling related fraud.¹⁸

The report apparently contains information that over the past decade, Victoria:

- Led the country in gambling-related fraud.
- Pokies accounted for more fraud than any other mode of gambling, with more than 200 pokies players stealing \$64 million to fuel their habits.

¹⁶ Impact of Casinos on Retail Sales in Mid-Size Iowa Cities by Loretta Fairchild, Ph.D., Jonathan Krutz, MBA, and Amy Stickney

¹⁷ Transcript Thursday, 11 September 2008 at page 14

¹⁸ State Tops in Gambling Fraud – Age, Cameron Houston, 13 May 2008

- The average loss to fraud where the person was addicted to poker machines was \$350,148.
- An "overwhelming majority" of compulsive gamblers had no history of dishonesty.

(This last point is worth noting in that it runs counter to the argument that these gaming machine "addicts" are "naturally addictive" persons who will simply move from one addiction to another if the machines are taken away.)

The situation for the financial institutions from which money is embezzled is made worse by the repeal of Section 67 of the Lotteries, Gaming and Betting Act:. This provided as follows:

Section 67 - Moneys stolen or embezzled and paid away in bets, etc, recoverable by person from whom stolen - Where any money is stolen or embezzled and paid to any person as or for or by way of or on account of a wager or bet the person from whom the money was stolen or embezzled may in any court of competent jurisdiction recover the money or any sum not exceeding the amount thereof from the person to whom the money was so paid.

In my view, Australia should place the interests of business before that of gambling. The present economic crisis has been caused by gambling. It would be simple for the federal government to pass a federal version of section 67 under, inter alia, the corporations power.

Businesses which employ problem gamblers can experience:

- absenteeism;
- lost productivity;
- poor quality workmanship;
- disputes amongst employees arising out of borrowings;
- rudeness towards/disputes with customers and business contacts;
- accelerated turnover of staff where problem gamblers seek payout moneys, accrued holiday pay and/or long service payments;
- crime including:
 - embezzlement;
 - theft;
 - sale of corporate information;
 - use of corporate name for fraud; and
 - violence.

Regarding the sale of corporate information, it is reported that an ANZ Bank employee, a compulsive gambler, passed on confidential bank information to a loan shark which enabled a sophisticated fraud to be perpetrated against the bank costing the bank at least \$1.5 million.¹⁹

Internal security procedures and insurance can only afford limited protection. Disruption to business and loss of reputation are not insured against and can occur despite the best procedures. The National Bank, for example, recovered the \$4,000 embezzled by its problem-gambling teller but the more serious issue for the bank was its embarrassment that its teller tried to murder

¹⁹ "Employee in \$1.6m fraud" Phillip Cullen – Herald Sun 29/6/04

an elderly customer by entering her home and stabbing her eighteen times with a ten-inch boning knife.²⁰

In Victoria, the Courts have taken a stand against gaming machine related crime and have been sentencing gaming machine problem gamblers to heavy sentences of imprisonment.²¹ Bearing in mind what we now know about gaming machines the question must be asked why should the courts use such a clumsy, harsh, expensive and unreliable mechanism of heavy sentences of imprisonment when the government could so easily take action to make the machines honest, safe and very substantially reduce the level of gaming machine problem gambling, with its attendant crime?²² This goes directly to the issue of productivity as defined in your Commission's objectives.²³ Pellaris' arguments not only apply to the banking industry but also to the gambling industry.

The government, the gambling industry and the mercantile community all have an interwoven interest in maintaining high-risk gaming practices. The mercantile institutions, which have their funds stolen by problem gamblers, share directly or indirectly in the substantial revenues generated by these unsafe machines. These industries have not made representations to the government to have the machines rendered safe and it can only be assumed

²⁰ Herald Sun Newspaper "Attack ruins a life" Lynda Dugdale, "Gambling led to frenzied attack" Wayne Miller and Tanya Giles 2 August 1996 - Herald Sun Newspaper "Poke addict admits knife kill attempt" Norrie Ross 14 June 1996

²¹ A typical recent case is the Jamieson Case (2006)²¹ in the County Court. The judge was clearly perplexed as to why a "*generous, kind and caring person, a devoted mother and wife*" with no gambling culture and from a functioning family had become addicted to gaming machines. Kate Jamieson embezzled \$3.5 million from the Bendigo Bank. His Honour attributed it to confluence of the domestic unhappiness on the one hand – occasioned by the terminal illness of her father and father in law - with the ease and attraction of the gambling on the other hand. His Honour also suggested chasing, the escalation of gambling to recover moneys lost, as an explanation – a "*snowball*" effect. He considered the defendant had become "*trapped by the gimmicky enticements and rewards which seemed to be accepted as part of the regime. How a so called civilized society can allow and offer the mindless operation of poker machines to witless members of the public ...*" His Honour considered the cases. He balanced the need for denunciation and general deterrence and specific deterrence having regard to the massive thefts and misappropriations over three years with great planning and effort and in total breach of the significant trust then enjoyed by the defendant - representing grave offending - against all the mitigatory matters: prior exemplary character, addiction, confession, remorse, loss of position, separation from family.²¹ This resulted in a sentence of seven years imprisonment with a minimum of four.

²² The government could obviate the risks by simple measures such as balancing the machine reels, changing the panels and software of the New Age religious machines, limiting stakes, removing note acceptors and introducing smart cards. The treatment providers use the ambulance-at-the-foot-of-the-cliff analogy to describe what they do.

²³ The issue of unreasonable waste of public resources was raised in a submission to the Australian Crime Commission Parliamentary Joint Committee inquiry into the future of serious and organized crime in Australian society by the Director of Public Prosecutions Stephen Pallaras, QC who submitted: "*A real question of policy is raised for prosecutors and police as to the extent to which scarce public resources can be devoted to any but the most serious cases of this type of offending, when frequently the victim bank's own risk management decisions have contributed to their vulnerability in these matters.*"²³ Pallaras' message was that it was unfair for the banks to take the benefit of lax lending policies which resulted in the burden falling on the prosecutors and police (and, by extension, the courts and prison systems.)

that this failure results from a decision that it is more financially beneficial to put up with the embezzlements than to forgo the profits.

The Victorian government, like the mercantile community, is benefiting. It is benefiting from the taxes derived from gaming machines, a dangerous, misleading and deceptive consumer product that it has legalized and endorsed.

If the mercantile organizations and the government adopt such a cavalier approach to white collar crime, why should the courts adopt a different approach based on what has become an obsolete code of morality? The courts should not single-handedly take upon themselves the responsibility of using long sentences of imprisonment in an attempt to limit the consequential damage.

DESTRUCTION OF CAREERS OF CONVICTED GAMING MACHINE PROBLEM GAMBLERS

Another cost of gambling recognized by the courts and which should be taken into account in any study is that officers in financial institutions who commit fraud will be unlikely to regain employment in their profession – *“the loss forever of a working position which had become a substantial part of her life and her scant prospects of obtaining a like position.”*²⁴ It seems that even where the offender seeks employment in other fields, that employment can be jeopardized also. Sentencing a gaming machine problem gambler, a former bank officer, Judge Williams of the County Court observed, *“You have been trying to work [as an invalid carer] but have there have been terminations of work by reason of your pending charges.”*²⁵

Since an "overwhelming majority" of these offenders had no history of dishonesty,²⁶ these crimes destroy the career of functioning, valuable members of society. Even if these people are able to be retrained, this will involve re-education costs in time and money and the taking of a new job at lower income or unemployment. The employer will also have to retrain a replacement employee.

ASSIGNING AN ECONOMIC COST TO PAIN AND SUFFERING

The cost, in financial terms, of the pain and suffering of problem gamblers and their families, which could be expected to be a most significant input into any regional cost/benefit calculation, is as far as I am aware, omitted - making these cost/benefit exercises most inaccurate. In calculating damage under the law the legal system takes into account both special (i.e. out of pocket) and general (pain and suffering) damages. Academics performing gambling cost/benefit studies are departing from this legal norm.

It may be argued by the gambling industry that the general benefit of a casino should also be factored in (I think this was done once) but my view is that it

²⁴ DPP v. Raddino (2002) 128 A Crim R 437,

²⁵ R v. Jamieson, Kate [2006] VCC 1649

²⁶ State Tops in Gambling Fraud – Age, Cameron Houston, 13 May 2008

probably already is in the form of gambling expenditure which represents what the gamblers pay for the enjoyment of gambling. If my view is correct, all studies which show gambling expenditure as a benefit are failing basic accounting principles by entering figures on one side of the book without putting the corresponding entry into the other side.

Even if we wanted to ignore placing a financial value on the pain and suffering of problem gamblers because that value is supposedly offset by the financial value of the “fun and excitement” derived by gaming machine gamblers, we should at the very least financially calculate the pain and suffering of the spouses and children of the problem gamblers.²⁷ Not only did they not get “fun and excitement” from the gambling but they they never chose to gamble, nor did they chose to live in a problem gambling household.

Estimates of the cost of the pain and suffering caused by problem gambling could be estimated by putting to an experienced torts lawyer a representative set of examples of individuals and families impacted by problem gambling (both direct i.e. a problem gambler and indirect i.e. relation, friend, business contact of a problem gambler) and the question that should be put to the trial lawyer in each case is, *"If these people's sufferings had been caused by an actionable event and a court had ruled in their favour and damages were claimable under the common law, what amount do you expect a jury would have awarded each of them for their pain and suffering?"*

Having obtained an opinion for a representative sample of cases a series of estimates could be worked out for incorporation into any economic analysis of gambling activity. It should not involve too much effort.

PROBLEM GAMBLING LOSSES ARE A MOVING FEAST

All the problem gamblers I have seen start playing machines (or the tables), lose control and push large sums of money into them. Having borrowed on credit cards or against their house or stolen the money - after a time they run out of sources of finance and they stop pushing money into the gambling industry. This generally happens quite fast – one to four years. But the gambling industry revenues continue to grow and we know that a large part, if not the bulk, of the money is coming from problem gamblers.

So the inescapable conclusion is that problem gambling, at least as far as revenue is concerned, is a moving feast. People become hooked, lose their assets and drop out of the system only to be replaced by others who in turn peak and burn.

Having suffered financially, families would struggle to re-establish themselves. On many occasions they would lose the house and have to struggle to get back into the housing market. Many families would split which then raises the cottage cases, how to maintain two housing units when the couple could not even maintain one.

²⁷ There is the added fact that about 46% of gaming machine moneys come from problem gamblers and it is conjectural whether they “enjoy” their activity; is it an addiction or a compulsion?

The point I make is that the harm is widespread, like a grass fire with a moving front. This is different to static expenditure patterns such as expenditure on clothing or tobacco where one is looking at a relatively static population. This has not, to my knowledge, been the subject of a specific study.

The harm is, of course, social as well as economic.

HARM SUFFERED BY CHILDREN OF PROBLEM-GAMBLING PARENTS

In assigning a monetary value to the pain and suffering of the children of problem gambling parents it should be recognised that the suffering of these children takes two forms. The first, is the direct physical and mental suffering caused by the deprivation of food, clothing and essentials²⁸ and of the breakdown of the family relationships.

The second type of suffering lies in the children's' reduced likelihood of growing up free of addictive behaviour.

"Jacobs' (1989) research on children of pathological gamblers has revealed consistently a higher propensity for use of tobacco, alcohol and a range of narcotics than their classroom peers with average parents. These children also had an earlier onset for behaviours such as gorging food and gambling activity."²⁹

Parental dysfunction of itself, rather than copying of a parent's problem gambling, by creating dysfunctional families, tends to replicate vulnerability in succeeding generations, trapping them as part of an underclass.³⁰

In the case of one USA study, the level of acknowledged attempts to commit suicide by children who described one or both parents as problem gamblers was twice that of their classmates.³¹

²⁸Romney (supra) at page 3

²⁹Martin C McGurrin "Pathological Gambling: Conceptual, Diagnostic and Treatment Issues" Practitioners Resource Series 1992 at page 57

³⁰Durand Jacobs (supra) at page 270

³¹Durand F Jacobs PhD "Illegal and Undocumented: A Review of Teenage Gambling and the Plight of Children of Problem Gamblers in America" contained in Shaffer & Ors at page 278

THE EFFECTS OF THE REGULATORY STRUCTURES GOVERNING THE GAMBLING INDUSTRIES

STATE GOVERNMENTS HAVE FAILED TO ENSURE GAMING MACHINES ARE HONEST AND SAFE

The government owes a duty to its citizens under consumer protection laws to ensure that products in wide use by the community are safe. Gaming machines are not safe. “Available evidence indicates that more than half of regular EGM users [are] current problem or at-risk gamblers.”³² Eighty-four percent of problem gamblers cited gaming machines as their favourite form of play.³³ (Department of Justice, Victoria 2005 (Loved Ones) p 84). Seventy-eight percent of men and 96.2% of women who attended Gamblers Help played EGMs.³⁴

The government owes a duty to its citizens to ensure the machines do not constitute cheating devices.

Casinos are fastidious about the regularity of their table gaming equipment. Gamblers have come to expect that casino equipment is of the highest quality and that things that look the same, act the same. Gamblers expect a dice to be numbered one to six, to be a near-perfect cube and, statistically, have an equal chance of producing any of the six numbers. Gamblers, seeing a deck of cards in a casino, assume that there are fifty-two cards made up of four suits of thirteen cards from Ace through to King.

The government reinforces this belief in standards. Because the government knows that if gamblers lose faith in the integrity of the equipment, they will stop playing. Not only will the casino lose its cash flow but the government will lose its tax stream.

Gaming machines are cheating devices

Players expect the reels to be the same. Just as a dice player expects the dice not to be loaded, so the gaming machine player assumes the reels are equal.

Gaming machines, however, are cheating devices. They use starved reels to generate near misses giving the appearance the machines should be paying out.³⁵ They are a class of “near miss”³⁶ machine.

³² Livingstone, Charles and Woolley, Richard (2007) 'Risky Business: A Few Provocations on the Regulation of Electronic Gaming Machines', *International Gambling Studies*, 7:3, 361 – 376 – Livingstone cites studies from Ontario, Victoria and NSW

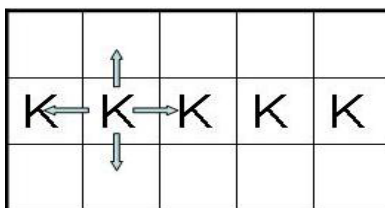
³³ Loved Ones Study (Department of Justice, Victoria) 2005 at page 84.

³⁴ Analysis of clients presenting to problem gambling counselling services July 2001 - June 2002 (Department of Human Services, Victoria 2001) at page 15

³⁵ The “*Unbalanced Reel Gaming Machines*” paper written by Roger Horbay (President of Game Planit Interactive Corporation, Canadian electronic gaming machine expert and problem gambling specialist, trainer and researcher) and the author was delivered at the IPIC Conference in Melbourne 2006. It is published in a number of places on the web including http://www.casinofreepa.org/images/documents/falkiner_horbay_09_09_06.pdf. It has formed the basis of consumer complaints in Canada, the USA and Australia.

³⁶ For an explanation of what constitutes a near-miss machine read Chapter IV of Burbank, Jeff *License to Steal – Nevada’s Gaming Control System in the Megaresort Age* University of Nevada Press 2005. This chapter describes what took place in the litigation before the Nevada regulators over the Japanese Universal machine. It contains descriptions of the near-miss techniques used in Nevada.

Essentially, there are two ways of gaffing (rigging) a reel gaming machine. Imagine a machine with five Kings on the pay line.



This would be a payout. How do we stop this happening?

We have to move one of the Kings. Either we move it horizontally or we move it vertically. Both ways involve deception, concealed asymmetry.

In Australia, we move the King horizontally by crowding the Kings on to the first and third reel and starving them on the second reel. For example, we put six Kings on the first reel and six Kings on the third reel but only one King on the second reel.

Seemingly just missing – Prof. Skolnick

Starved reels, referred to as “*differential placement of jackpot symbols*” has misled generations of players with near misses according to Professor Jerome K. Skolnick³⁷:

“Generations of players have pulled slot machine handles and produced jackpot symbols on the first and second reels, seemingly just missing out on the jackpot. What happens is this: because of the differential placement of jackpot symbols players wrongly - though not necessarily consciously – believe that jackpot odds are something like 4 x 5 x 5 (100 out of 8000), while, in fact, the odds are 4 x 5 x 1 (20 out of 8000.) ...”

Deceptive – Nevada Gaming Commissioner

A number of statements made during a 1988 case before the Nevada Gaming Commission made it quite clear the machines in Nevada were near miss. One commissioner is reported to have remarked about starved reel design.³⁸

“I can remember the old mechanical machines when you would load up the first reel and the second reel and have one bar on the end, and if that isn’t messing around with the pay line I don’t know what is. I mean, you are just as deceptive in that instance as you are with any concept of deception. It will bring those bars up on the first two reels but nothing shows on the third reel. And people keep coming back because they think they are going to win.”

The Two Elements of Mechanised Cheating

If we examine cheating equipment: loaded and shaped dice, short Blackjack decks and asymmetrically weighted skittles, - we see that mechanised cheating methods all embody concealed asymmetry.

The table below shows how this is supported by language.

³⁷ Skolnick, Jerome K. (1978) *House of Cards – the Legalisation and Control of Casino Gambling* Little Brown & Company, Boston, Toronto Copyright 1978 at page 64

³⁸ Burbank, Jeff *License to Steal – Nevada’s Gaming Control System in the Megaresort Age* University of Nevada Press 2005 at page 123

Cheating Terminology			
Honest		Dishonest	
Regular	Above board	Irregular	Underhand
Straight	Up front	Crooked	Covert
Square	Candid	Devious	Shady
True	Forthright	Double-crossing	Shadowy
Unbiased	Open	Shifty	Clandestine
Upright	Plain	Bent	Sneaky
Upstanding	Transparent	Gaffed	Stealthy
On the level			Concealed
			Furtive
			Secretive
			Hidden
Symmetry	Transparency	Asymmetry	Concealment

Words denoting symmetry and transparency are used to describe honest practices and words denoting asymmetry and concealment are used to describe dishonest practices.

The reels are taken to be the same but they are different and the difference is concealed.

Ordinary people becoming addicted

Roger Horbay, a Canadian expert in gaming machine design, points out it is the fraudulent design of the machines which is causing the high levels of problem gambling.

“I believe one is an honest, fairer game and one is exploitive and probably fraudulent. And it is the fraudulent exploitative games that are destroying all the people who are playing them. It is not the bingo. It is not the lotteries. It is the EGMs.

And why are they destroying so many people? Because they can effectively fool the players into thinking the odds are better than they actually are and that a big win is coming.”³⁹

Getting back to the issue of the type of people who become problem gamblers on the machines, Roger Horbay, the Canadian counsellor, trainer and gaming machine expert posed the question at a New Zealand conference in 2005:⁴⁰

“I was doing a lot of cognitive therapy with my clients trying to correct the misconceptions they have about the machines. And at the back of my mind I am thinking, ‘But the misconceptions are created by the machines!’ And we are pathologising them and labeling them and wondering why they have all these faulty cognitions when the machine is causing them to think that way. So, I’ve been going across North America. Usually, in every audience there is a lawyer – or a recovering lawyer – and I am saying, ‘This process is highly addictive.’ And a lawyer would stand up and say, ‘That’s fraudulent!’

...

³⁹ Problem Gambling Foundation of New Zealand 2005

⁴⁰ Problem Gambling Foundation of New Zealand 2005

I am questioning now, as a counsellor, 'Is this an addiction, or is it the cover-up of a crime? Is the addiction paradigm covering up crime?' You know - and I have to seriously think about that question and the more I learn about the machines the more I think it's the second one.

Yes, there are addictive people who get really addicted easily. But there is a whole bunch of people who don't – and they are addicted. Now are they addicted? Or are they victims?"

(It is to be noted that at that time Horbay and Assoc Professor Kevin Harrigan were concerned about virtual reel mapping which generates near misses in the vertical plane and were unaware of the implications of starved reels, which I rediscovered, which generate near misses in the horizontal plane. Horbay confirms his comments apply with equal force in respect of starved reels which are used in Australia.)

Summary

To sum up:

The machines are unsafe. They are cheating devices. The cheating device makes them unsafe. They turn ordinary people into problem gamblers. They are causing immense harm in the community.

Materials enclosed

"Pokie Jokie DVD (v3.4)" which clearly explains:

- how they work;
- how the cheating is effected; and
- why the cheating makes them so dangerous.

"Unbalanced Reel Gaming Machines" This is a paper published on the internet in September 2006 and co-authored by Roger Horbay of Gameplanit Inc. and me. Roger Horbay had discovered the machines were using virtual reel mapping and I discovered the Australian machines were using reel starving (referred to as "unbalanced reels" in the paper). It was the first paper to explain the use of unbalanced reels, starving, puffing, dithering, vertical randomized near misses, asymmetrically weighted symbols and horizontal randomized near misses. The paper also examined cheating techniques in table and carnival games and explained why reel starving and mapping, using concealed asymmetry, constituted cheating.

"Comments on Near-Miss Slot Machine Design" This is a paper produced by me. The paper extracts statements, from 1932 to the present, which have been made concerning the deceptive design of gaming machines and the effect of deceptive design on the player. Materials are assembled in chronological order. I can provide scanned copies of the sources if requested.

Affidavit of Kevin Harrigan PhD This is the affidavit of the expert witness for the Plaintiffs in the Supreme Court of Labrador and Newfoundland Trial Division case of Estate of Susan Piercy and Ors v. Atlantic Lottery Corporation sworn 18 December 2007 in support of the class action based on argument that gambling supplier knows or ought to know that VLTs are inherently deceptive, inherently addictive and inherently dangerous when

used as intended. The statement of claim and supporting affidavit can be downloaded from <http://www.chescrosbie.com/vlt.html>. I draw the attention of the committee to paragraph 27 of the statement of claim and paragraphs 45 to 51 of the affidavit. This is the gaff which is used in Australian machines.

Response to Gaming Technologies Association Dismissal of My Submission that the Starved Reel Machines are Cheating Devices

The Gaming Technologies Association at the Sydney hearing (proof page 58) simply tabled a 119-page set of standards before the committee without referring to any provision in the document or giving any explanation as to whether and, if so, how the standards stopped reel starving. The Association offered no explanation as to how the machines worked. The Association offered no detailed evidence in rebuttal of my evidence that the starved reel gaming machines were cheating devices.

“... gaming machine manufacturers completely reject the assertions made by Mr Falkiner in both his submission and yesterday’s presentation. They are a complete nonsense. We wish to table for the committee’s consideration the gaming machine national standard that Mr Falkiner claimed was the foundation of his cheating claims.”

The Association alleged my evidence that the starved reels are cheating mechanisms was based on the standards. This is incorrect, my evidence was based on comparing starved reel gaming machines to other cheating table and carnival games.

The Association did not furnish the Committee with any detail as to where my evidence was incorrect. It did not tell the committee how the machines work; nor did it deny that the machines use starved reels.

It must be questioned whether the Association ever read my submission as the Association denied being familiar with the Newfoundland Class Action whereas the supporting affidavit, sworn by Assoc Professor Harrigan, formed part of my submission posted on the Senate website. (The action had also been noted on a gambling website⁴¹ and raised at the Victorian Upper House enquiry in the Shire of Macedon submission which is posted on the Victorian Parliament website^{42 43} .

Senator XENOPHON—Are you familiar with a class action in Canada against the Atlantic Lottery Corporation? It is in the Supreme Court of Newfoundland and Labrador.

Mr Gibson—No.⁴⁴

The Association has indicated that information on the internal design of the machines will only be provided by the manufacturers to “valid stakeholders” who enter into “commercial in confidence deeds”.

⁴¹ Gambling Watch Global 6/16/2008: Status of Newfoundland and Labrador Class Action Piercey/Atlantic Lottery Corporation

⁴² <http://www.parliament.vic.gov.au/council/gaminglicensing/Transcripts/Macedon.pdf>

⁴³ It would follow from a news report that the Piercey case has been temporarily rebuffed on the ground that Atlantic Lottery Corporation was a Crown corporation and, as such, immune from federal trade practices law. The Plaintiffs intend continuing under another cause of action. <http://www.thewesternstar.com/index.cfm?sid=201829&sc=506>

⁴⁴ Senate transcript - Friday, 12 September 2008 – page 60
<http://www.aph.gov.au/hansard/senate/commtee/S11204.pdf>

Senator XENOPHON—Doctors Livingstone and Woolley in their report to the IGA on machine design and machine features earlier this year—and you were at the hearing—specifically said that they requested this information and it was not provided. You are saying that you would provide it to them now, if they requested it again?

Mr Ferrar—Absolutely. The only caveat is the commercial-in-confidence issue. This is the way that gaming machine manufacturers differentiate themselves from each other in the marketplace. So, they may consider it to be commercial-in-confidence. I have checked with them in the last 24 hours, and they are very happy to provide any information under a commercial-in-confidence deed to any valid stakeholder.⁴⁵

It is intolerable players are denied access to the rules of the game. The reel design of the machines forms part of the rules of the game and players have just as much right to know the contents of the reels as they have to know what cards are in a blackjack deck or what numbers are on the dice in a craps game. We are talking here about a consumer product that is causing enormous harm and the manufacturers are saying, “*We are not going to tell you what is in it!*” The argument that intellectual property rights need to be protected is not valid as experts who know what they are looking for can quickly ascertain the internal design of the machine from the results of play. The basic design of the machines has been around for many years.

COMPLAINT TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION – CONSUMER COMPLAINTS IN USA AND CANADA

The history of the complaints made to the ACCC is set out below and the documents are attached.

First complaint to the ACCC

In December 2006, Duty of Care Inc., Tim Costello and I lodged requests seeking that the Governor in Council make a Consumer Product Safety Standard regulation under the Trade Practices Act 1974 requiring the balancing of reels in reel gaming machines intended for use by Australian consumers. The complaint was accompanied by the Unbalanced Reels Gaming Machines paper. See “**Original letter to ACCC.doc**” and “**Falkiner_Horbay_09_09_06.pdf**”.

I drafted the form of the complaint and, in an attempt to confine the issues, limited the complaint to the making of a consumer product safety standard.

ACCC first reply

By letter of 4 January 2007, Mr. Brian Cassidy, the chief executive officer of the ACCC wrote claiming the complaint was not consistent with the intent of section 65 of the Trade Practices Act 1974 (the consumer product safety standard provision). The letter recommended the matter be taken up with the relevant minister in State and Territory governments. See “**first ACCC reply.pdf**”.

Overseas consumer complaints

Roughly contemporaneously, other consumer complaints, also based on the paper, were initiated in the USA and Canada.

⁴⁵ As above at pages 60 and 61

National Coalition Against Legalised Gambling to US Indian Gaming Commission

On 12 November 2006, Dr. Guy C. Clark, Chairman, NCALG had lodged a submission together with the Unbalanced Reel Gaming Machine paper requesting the outlawing of (inter alia) unbalanced reel gaming design with the US Federal agency, the National Indian Gaming Commission. The submission can be downloaded from <http://www.nigc.gov/Portals/0/NIGC%20Uploads/classiigmeclasfnstds/comrecdfothrs/ncalg.pdf> . The NCALG complaint which comprised the cover sheet (See “**Letter to NIGC re technical regs on CIII and CIII machines.doc**” and the unbalanced reel paper – above) drew attention to mapping and unbalanced reels noting (inter alia):

We would suggest that a new technical standard should be introduced that bans any process or feature that has the potential to mislead players by distorting the players perceptions in any manner. The use of mapping and unbalanced reels should be outlawed because their intended purpose is to give the player the perception the odds are better than they actually are by displaying game outcomes, using mapping to "weight" various outcomes that deliberately "distort" the true odds of winning. This appears to us to violate consumer protection standards that the federal government applies to almost every other industry in the country.

Gambling Watch Network to Canadian Competition Bureau

On 15 January 2007, a group called Canada’s Gambling Watch Network filed a Six-Person Complaint (see “**CB_6-person_complaint_Nov_13 (2).doc**”) to the Competition Bureau calling for an “*Investigation of Canadian Gambling Industry and Misleading And Deceptive Technologies Employed By Electronic Gaming Machines (EGMs), including Slots & VLTs.*”

This complaint included the following:

“EGMs employ processes that are commonly termed "unbalanced reels" and "virtual reel mapping". These processes enable EGMs to deliberately display a representation of the odds of winning that do not reflect the true odds of winning and that are intended to entice excessive play based on illusions of favorable odds and near-misses of prizes. In effect, they recklessly make representations to the public that is false or misleading in a material respect. This causes players to take financial risks based of false or misleading representations of the true probabilities of winning various prizes that they would not take if the true odds and operation of EGMs were known and comprehensible to them.”

Second (widened) Complaint to the ACCC

The overseas complaints had been drawn more widely than the first ACCC complaint and it was decided to widen the focus of the Australian complaint adding the grounds of:

- Misleading or deceptive conduct; and
- Unconscionable conduct.

This was done on 12 April 2007 (see *second letter to ACCC.doc*). The widened complaint took over and expanded the original complaint.

The complaint was headed Australian Reel Gaming Machine Standards Network describing itself as an association of concerned citizens. The complaint was phrased as follows:

Expanded Request – Association of Concerned Citizens

With the concurrence of the requesters, the Australian Gaming Machine Standards Network, an unincorporated association of concerned citizens, have taken over and expanded this request to bring it into line with complaints lodged in Canada and the USA. (Key members of the network will sign and forward their copies of this complaint individually.)

The Network members seek action from the ACCC under the Trade Practices Act and any other relevant federal legislation on the basis that the unbalanced reel gaming machines are:

- *an unsafe consumer product*
- *misleading and deceptive to the consumer*
- *unconscionable in their operation against the consumer.*

The Network members request your Commission, as the chief Australian agency charged with consumer protection, to do its duty and act with the utmost expedition to use its resources and powers to protect Australian consumers by requiring the balancing of reels in gaming machines used by them.

I sent a copy of the complaint and the complaint was also sent by Linda Hancock and Duty of Care Inc. Linda Hancock sent copies to Charles Livingstone, James Doughney and Michael O'Neill but I do not know whether they signed and sent off letters.

ACCC reply

A reply was received dated 16 May 2007 from Mr. J. J. Wunsch, Director, Product Safety Policy of the ACCC (see **ACCC reply 16 May 07 page 1.doc and ACCC reply 16 May 07 page 2.doc**). It should be noted there is nothing in the letter that the matter was drawn to the attention of the Commission and the reply has come from a section head.

The ACCC reply states:

- We do not understand the “regulatory and political environment” nor the “regulatory processes”;
- We have not identified the details of any specified breach;
- The information provided discloses no obvious breach of the Act involved; and
- We are attempting to pervert the legislative intent of the Act by using it to regulate gambling.

The letter again recommended we take the matter up with the State gaming ministers.

No action taken following reply

No further action has been taken with the ACCC. It was felt that to do so would only cement the ACCC into a position where it could not take action

without being embarrassed. At present, the matter has not been hard pressed or publicised and a decision has, as far as the correspondence discloses, only been made at a comparatively low level in the organisation.

Whilst we are disappointed with the initial response of the ACCC, the complainants are concerned only that the ACCC should take action.

HISTORICAL ACCOUNT OF CREDIT CONTROLS ON GAMBLING SINCE 1710

This is not a complete account but it does drive home the fact that, for the last few hundred years, British and Australian parliaments have recognised the need to restrict the granting of credit to gamblers and enacted laws to achieve this end. This chapter is important as regards wagering and sportsbetting, not just gaming machine gambling.

Early Legislation Designed to Limit Gambling Harm

Charles II had passed the Gaming Act of 1664 which provided that “*all lawful games and exercises should not be used otherwise than as innocent and moderate recreations, and not as constant trades and callings to gain a living or make unlawful advantages thereby.*” Judging from the gambling excesses of the Restoration in which the king himself took no small part⁴⁶, one can only suppose the Act had little effect.

The Act of Queen Anne 1710 and the 1845 modification

There are two ways a gambler can get credit.

- From the gambling supplier: bookmaker, casino, gaming operator etc.
- From a third party: a bank or money lender etc.

Queen Anne enacted legislation which was to set the “legislative attitude” for hundreds of years. Her Gaming Act of 1710, (the Act of Queen Anne) rendered gambling illegal and entitled the loser to sue for recovery of the money. It also voided any agreement to lend money for gambling and any security given for such loans.

The Gaming Act of 1845 modified the rigor of the 1710 legislation. It rendered all wagering contracts void which, put very simply, had the effect that neither party could sue the other. The loser no longer had the right to sue for recovery of the lost bet. This meant wagers had to be made in cash and this had the effect that one gambler could not give credit to another – or if he did he could not sue for the debt. In the words of one judge, “*a mere debt of honour, depriving it of all legal obligation, but not making it illegal*”.⁴⁷

⁴⁶ “*I can never forget the inexpressible luxury and profaneness, gaming and all dissoluteness, and as it were total forgetfulness of God (it being Sunday evening) which this day se’night I was witness of, the King sitting and toying with his concubines, Portsmouth and Cleveland, Mazarine &c; a French boy singing love songs in that glorious gallery, whilst about twenty of the great courtiers and other dissolute persons were at Basset round a large table, a bank of at least 2,000 in gold before them ...*” - L. J. Ludovici “The Itch for Play” Jarrolds 1962 at page 72

⁴⁷ Haigh v. Sheffield Town Council (1874) LR 10 QB 102

From 1845 on to recent times, statutory provisions maintained this position, effectively prohibiting:

- The gaming supplier from granting credit by preventing the gaming supplier from suing for gaming debts; and
- Third parties from lending moneys to a gambler for gambling purposes.

British legislation carried over into Victorian Acts

Up until recently, the provisions in Victoria were contained in:

- Lotteries Gaming and Betting Act 1966 sections 15, 19, 24 and 67.
- Instruments Act 1958 section 14
- Bills of Exchange Act (Commonwealth) 1909 – 1936 section 34
- Racing Act 1958 (bets with registered bookmakers)

The case law attending this legislation is quite complex: dealing with lawful and unlawful games, innocent third parties and characterization of moneys used for gambling. However, the thrust of these laws were clear – to make problematic gambling illegal and to deny access to the courts where games were legal.

Section 14 of the Instruments Act 1958 continued the prohibition on third parties from lending moneys to a gambler for gambling purposes enacted in the Act of Queen Anne. It did, however, contain a narrow exemption allowing bookmakers to pay winning bets at racecourses with securities. One 1929 British case illustrates the working of the prohibition against lending for betting purposes.⁴⁸

Recent freeing up of credit for gamblers

Casinos – cheques as security for chips

In the case of the casino, gamblers can purchase chips with cheques. The following account of the cheque cashing and presentment arrangements in casinos and the reasons for them is set out in the second reading speech to the Casino Control Amendment (Cheques) Bill 1996 where the government was seeking to relax credit controls to bring the Sydney casino more into line with other casinos.

*The Hon. R. D. DYER (Minister for Community Services, Minister for Aged Services, and Minister for Disability Services) [12.31]: I move:
That this bill be now read a second time.*

The general objective of this bill is to permit a slight alteration to the existing legislative requirement for the presentation of personal cheques

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from patrons of the Sydney Harbour Casino. The bill seeks to achieve this objective by ensuring that cheques paid into a patron's deposit account with

⁴⁸ “In 1929 a plaintiff wished to recover money he lent in order to provide more capital for a firm of bookmakers. His loan was secured by a deed. The plaintiff was successful. Lord Justice Scrutton declared that the money so lent was recoverable because it might have been employed for causes that were quiet legal. The defendants had not demonstrated that the loan was knowingly made for betting purposes.” Source: L. J. Ludovici, *The Itch for Play, Gamblers and Gambling in High Life and Low Life* - Jarrolds 1962.

the Sydney casino operator are banked within 20 working days if the cheques are drawn on an account located outside Australia, banked within 10 working days if each cheque is for \$5,000 or more and is drawn on an account located in Australia, or banked within one working day in all other cases.

Section 74 of the Casino Control Act prohibits the extension of credit to a patron of the Sydney Harbour Casino. Given that problem gamblers may seek to borrow money for gambling, a restriction on credit has always been considered important. It is customary for casino operators to accept cheques from patrons. The Act reflects this practice by allowing the Sydney casino operator to establish for a patron a deposit account to which may be credited cash, a personal cheque or a travellers cheque. Chip purchase vouchers may then be debited against the patron's deposit account. Some of the advantages of a credit restriction are lost if cheques are allowed to be cashed - if there is no money to cover the cheque, in practical terms credit will have been given.

However, the Act addresses this potential problem in three ways. First, the casino operator is required to bank a cheque accepted from a patron within one business day after it is accepted. Second, the operator is specifically prohibited from accepting post-dated cheques or cheques from persons whose previous cheques were not met on presentation to a bank within one working day. Third, the operator may not agree to the redemption of a cheque accepted from a patron for the purpose of avoiding the obligation to bank the cheque within one business day.

As a restriction on general domestic patrons chasing wins, which is common in some areas of gambling, the one-day cheque presentation requirement is an effective means of preventing patrons who can least afford to gamble from gaining de facto credit. However, as a means of permitting the Sydney casino operator to attract high-stakes domestic and international patrons, the current restriction means that the Sydney Harbour Casino is uncompetitive in these limited, but potentially lucrative, markets. The Government has determined that there are no commercial or public-interest reasons for a one-day cheque presentation requirement applying to premium domestic and international patrons of the Sydney Harbour Casino.

In seeking to introduce this change, it should be appreciated that the bill will not interfere with the current arrangements whereby all the risks of a dishonoured cheque would rest with the casino operator. In other words, the State cannot be the loser. The Government will not be affected by any bad debts because the gaming operations funded by those debts will still be included in the calculation of the casino duty and community benefit levy payable to the Government.

The bill will preserve the status quo for cheques of less than \$5,000 in the case of patrons without Australian cheque accounts. On the one hand, this may have the effect of patrons writing cheques for \$5,000 or more, simply to take advantage of available cheque presentation time frames. On the other hand, it is argued that writing a cheque for \$5,000 or more will make many

patrons think carefully about their capacity to afford a cheque of that value - which is just as it should be. It must also be borne in mind that the Sydney casino operator is unlikely to accept a cheque from a person without first establishing whether the person has sufficient available assets to meet the amount of the cheque.

As patrons will be required to establish a rating with the casino operator prior to gambling, the potential for a general patron to cash a cheque for chasing wins is greatly diminished. In the Government's view this is an important public interest safeguard. The new provisions will not apply to cheques accepted by the casino before the commencement of the proposed amendments - except that electronic funds transfer redemption will be allowed for cheques that have already been accepted.

The bill will allow electronic funds transfer as an additional means by which cheques can be redeemed by a patron. Currently this can be done by cash or cheque, including a travellers cheque, or a combination of the three. While the proposed amendments essentially will preserve the status quo for the receipt of cheques by the casino operator, they will also bring the commercial operation of the Sydney Harbour Casino more into line with other casinos around Australia. However, I stress that the proposed increases in the cheque-cashing time frame are still well below the limits set by other casinos in Australia and overseas. The bill provides benefits for important domestic and international casino visitors while, at the same time, includes appropriate safeguards to discourage those who cannot afford large wagers. I commend the bill to the House.

A similar arrangement pertains in Victoria. Cheques can be used for the purchase of chips but must be presented with a period set by the regulator. Cheques can be redeemed prior to presentation.⁴⁹

(Prior to the expansion in the USA, Nevada casinos could extend credit to gamblers. Gamblers signed promissory notes called “markers” in return for chips. The gamblers protection was that these gambling debts were not legally enforceable in Nevada, nor in other states. The casinos would send collectors to pressure the gamblers for payment but they had to be somewhat prudent to prevent complaints to the Nevada Gaming Commission.⁵⁰ No doubt Nevada was also concerned not to attract federal intervention.)

Casino ATMs

In Victoria, section 81AA of the Casino Control Act 1961 prohibits ATM credit withdrawals and debit withdrawals of greater than \$200⁵¹ per transaction within 50 metres of any entrance to the casino (which I take to be the gaming floor and back of house). There are no restrictions on machines outside the 50 metres.

⁴⁹ Casino Control Act 1961 section 68 (Victoria) (I was given to understand that gamblers do not like their bank managers getting too many of their cheques presented for payment by casinos.)

⁵⁰ Mario Puzo “Inside Las Vegas” Grosset & Dunlap 1976 at pages 220 to 230

⁵¹ This might now be \$400

Venue ATMs

In Victoria, I recall being told that the banking ombudsman has required, on more than one occasion, banks to forego debts incurred on credit cards where there was a clear pattern of withdrawals from gaming venues immediately after midnight when fresh credit became available. Such withdrawals are a clear indication of problem gambling. I do not know whether these decisions of the Ombudsman (if indeed there were decisions) were based on the Act of Queen Anne principle or on grounds of unconscionability. My understanding is that the banks will not now put their own ATMs in Victorian venues but leave this task to independent contractors so as to distance themselves. I do not recall having seen a bank-branded ATM in a venue.

According to the VCGR the proposed Victorian amendments will be as follows.⁵² ATMs on gaming venue premises will be limited to \$400 per day but they will accept credit cards as well as debit cards. (I suspect the availability of credit withdrawals will more than offset the \$400 per day limit. Note the \$400 limit applies to each card, not each person.) Also, the venue operator will be able to cash one gambler's cheque of up to \$400 each day. (Query whether the venue operator can hold the cheques to enable them to be redeemed or must present them.)

Victorian Legislative Controls on Wagering

The current regulations on gambling on credit are contained in the Gambling Regulation Act 2003 which consolidates all of the State legislation regulating gambling other than two Acts specifically relating to the casino. Section 2.1.1 of the 2003 Act repeals the Gaming and Betting Act 1994.

Restrictions on Credit for Wagering

Under section 2.4.1, “*a gaming or wagering contract or agreement (whether written or not) is void.*”

Section 2.4.2 contains let-out provisions for (inter alia) approved bookmakers.

The statutory provision designed to limit wagering on credit is found in section 4.7.6 of the Act which provides as follows.

4.7.6 Offence to extend credit etc.

The licensee or wagering operator or a permit holder, or an agent or employee of the licensee, wagering operator or permit holder, must not—

⁵² VCGR News – Summer 2008 on www.vcgr.vic.gov.au website

- no automatic teller machine (ATM) will be allowed in the gaming machine area of a gaming venue, a restriction that is already in the VCGR Rules but, by now being in the Act, has the effect of increasing the maximum penalty for any breach from 25 to 60 penalty units;
- no ATM will be allowed anywhere in a gaming venue unless the ATM restricts a person to a cash withdrawal of \$400 per day from any debit or credit card;
- if a gaming venue is situated within a racecourse, no ATM will be allowed within 50 metres of any entrance to any gaming machine area unless the ATM restricts a person to a cash withdrawal of \$400 per day from any debit or credit card;
- a venue operator must not cash more than one cheque per customer per day up to a maximum of \$400

- (a) accept a bet made otherwise than by means of money or by debiting the amount of the bet from a betting account with a balance sufficient to cover the amount of the bet; or
- (b) lend money or any valuable thing in connection with wagering or gaming; or
- (c) accept a bet as part of a transaction involving a credit card; or
- (d) extend any other form of credit.

Penalty: 60 penalty units.

Presumably Tabcorp does not allow individual bets to be paid by credit card. However, to the concern of treatment providers, Tabcorp allows moneys to be paid into a betting account with a credit card. This effectively enables gamblers to obtain gambling moneys on credit though the act of having to consciously transfer moneys does provide some limited check on impulsive behaviour.

Northern Territory Bookmakers Can Extend Credit to Gamblers (this will cause immense harm and requires federal intervention)

The whole wagering industry is undergoing change with the freeing up of bookmaking between states following the decision of the High Court in Betfair Pty Limited v Western Australia [2008] HCA 11 (27 March 2008). Bookmakers are setting up in the Northern Territory where taxes are low and there is no restriction on the extension of credit to gamblers. Tabcorp is setting up a bookmaking operation in the Northern Territory to remain competitive and will presumably run two operations.⁵³ Tabcorp estimates \$5 billion will be wagered with Northern Territory operators next year.

I have no doubt whatever the ability of the Northern Territory bookmakers to extend credit to gamblers will cause widespread social harm throughout Australia. Only the other day there was a newspaper article noting that a Northern Territory bookmaker was suing a punter for \$4 million.⁵⁴

There is an urgent need for federal legislation to prohibit the granting of credit by bookmakers to gamblers to prevent widespread harm from Northern Territory bookmakers and also to prevent the “cascade effect” where consumer protection laws are abandoned by the other states to enable their bookmakers to grant credit to gamblers so they can compete on a “level playing field” with NT bookmakers.

(As a general comment, although the states dragged the Betfair decision on their own heads by privatising the totalisators, I am apprehensive the state racing industries, deprived of state government protection, will wither and become like the industry in the USA. At present, the Victorian racing industry is propped up by a cosy arrangement between the totalisator and the state government. But if the bookmakers can avoid paying for maintaining the racing industry, they will. They will pay the minimum necessary to keep animals running around tracks every day from dawn to dusk to enable the maximum number of events for the gamblers to bet on. Other matters such

⁵³ [Tabcorp](#) move north to reveal how Territory bookies are raking it in John Schell, Herald Sun August 13, 2008

⁵⁴ <http://www.casinogamblingweb.com/> - article by Tom Jones – 4 January 2009

as race meeting attendances, quality of horses, probity and country meetings will inevitably suffer.)

Conclusion

The above notes, hurriedly compiled as they are, show clearly that previous generations and governments have been concerned about the hazard of giving credit to gamblers. They have legislated to prohibit or proscribe the giving of credit to gamblers, particularly where the gambler is in the heat of gambling passion and is careless as to the consequences.

The history of the laws limiting the availability of credit to gamblers highlights the pivotal role of credit – in the form of ATM withdrawals – in the social harm being caused by the pokies in Australia.

When considering the evidence on ATMs put to the Commission, I entreat the Commission to have regard to the evidence put to the Senate Committee by the former pokie problem gamblers Gabriela Byrne and Sue Pinkerton and to the treatment providers working at the coal-face: Kate Roberts, Christopher Davidson and Lincoln Poole. As I stated in my evidence, it is these people who are the experts on what is important for the problem gambler in the venue. As Poole pointed out, these problem gamblers behave like alcoholics suffering memory loss and blackouts. These problem gamblers are obviously suffering from a psychological disorder, a special disability, a compulsion or addiction. It is the responsibility of a humane society to protect them and not exploit them.

Lesson to be Learnt from the Street Betting Experience

The following account of street betting, a scourge in Britain around the late 1800s and early 1900s, shows how housewives gained access to credit by purchasing clothes and furniture on time payment and pawning these goods to obtain money to bet on horses. Street betting became the target of the York Anti-Gambling League and resulted in the House of Lords Select Committee on Betting (1902) and Lord Davey's Street Betting Bills of 1903 and 1905.

Extract from "Gambling Among Women" An Essay by J. M. Hogge M.A. "Betting and Gambling - A National Evil" edited by B Seebom Rowntree and published by Macmillan & Co. Ltd. 1906

I have my health and strength [he said], and I have always plenty of work; the job I'm on now will last another six months. It's true I have seven children, but I make no trouble of working for their support. We used to go to church when we was first married, my wife and I; we lived at Southampton then, and we both thought a deal of Canon Wilberforce. It was him that tied the knot. Since we came North I have not gone to any church: wife was taken up with the children. But I always washed myself, and put on my Sunday suit when Sunday came round; sometimes I'd take the kids for a bit of a walk into the country, and sometimes I'd take a stroll round with a few of my mates. Anyways I held up my head straight and thought I as good as any - my meaning is that I thought I had the right to look anyone in the face, for I believed till a week ago that I did not owe any one a penny piece. It was Saturday even, and up comes to me a bailiff chap, but I did not know then

that he was a bailiff; he shoves a paper into my hand and I reads on it "Judgment Summons". Personally served on the Defendant," and there below it I sees my name written in. I said "Take it away, I never have aught to do with such things." I had to take it in, and I found it was an order for £1:2:3, that should have been paid long before to a firm called a "Clothing Company," trading from a town twenty miles away. Not half a dozen words did I say to any one that day, just sits dumb and dazed over the fire; not a wink did I sleep, but by Sunday morn breakfast was over I'd got my plans made.

I gets a bit of lead pencil from one of the lads, turns the children out of the room, spreads out a piece of paper, and sits myself down. Then I says to the wife, "My lass, I have never chastised thee, never; but now thou hast just got to bring me every bill and every pawn-ticket, and thou has just got to think on, and to tell me of every penny I owe, and if I find thou hast kept aught back, I shall feel fit to take off my belt and to thrash thee with it to within an inch of thy life, and if I have to go to goal for it, I'll go."

By tea-time that Sunday I'd got that paper about covered with figures, and reckoned up it comes to £70. There were two doctors' bills, four coal-cart men, there were three lots of goods from the "Clothing Company," and four from the "Furnishing Company," and both these I were told firms of peddling fellows whom I had never seen, because they are such curs they never show their face at a door when the master's in, and when they have sold their goods (all on the weekly payment system) to silly women, they go off home by train, so as the husbands can't follow them home and give them the horsewhipping they deserve.

I found a deal of things that Lord's Day. I went up to look at the children's beds and saw the blankets was gone off them. I looks in the drawers and found them empty where they should have been full of children's clothing and bedding. I understood that day why the two eldest girls were so long getting themselves places; they had naught but what they stood up in. Folks might say I should have looked into things a bit sooner, but I were one that always said, "If the man earned the money and turned it over to the wife, it were the wife's place to lay it out to advantage."

We had not been living in that house above a twelvemonth but it all come about since we'd moved in. I could see nothing wrong with the street when we took the house; it looked quiet enough. It had not been built so long; the house was clean and airy, and there was an extra room for the lads, that were the chiefest thing we moved for.

How was I to know, when nobody telled me, that the women in this was all a-cheating their husbands, and was just one a bigger gambler than another?

As near as I can make out their practices was like this. They'd all back horses with the money they should have kept in a safe place against rent day, and them that lost would wait while Monday when the pack man come round, and they'd take a suit of clothes or a pair of blankets on the weekly payment system. Straight away they would carry them to the pawn shop, so their husbands having never set eyes on the stuff would never miss it out of the

house. I suppose they'd think they'd done a clever thing when they had raised the money for the rent and a bit over besides to back another horse.

Sometimes the Day of Judgment would seem to have come to one or another when county court summonses would come to their house, but so long as their husbands did not see the papers, they'd put off the day of reckoning a bit longer.

My wife says they'd run round to one another's houses and say, "I'm in a deal of trouble, will you oblige me to-day by taking a pair of blankets off the Clothing Company and pledge them for me, and I'll pay you back when I can? And if you get into trouble some day, I'll help you out if you'll just oblige me this once." My wife knew nothing about such ways afore we came to live in this street, but she were a quick learner, and gets into it like a lad gets into his new sums when he gets put up a standard at school.

It's none so very hard when it's put plain - horses, packman, pawn-shop, and a county court; and then over again, more horses, more packmen, more pawn-shops and more county court.

Sorry to trouble you with such a long yarn, but I put it to you as a practical question, How am I to get out of this fix? If I go to goal I lose my work, and rent's running on, and grocery bills and coal bills are running on, for seven bairns can't be fed on air, and I am told going to goal does not clear off the whole of the bill to these pedlar fellows, but only a little bit of the back payments, and you may be taken again as soon as you come out for another bit. I put it to you plain, What is a man in my circumstances to do?

It is clear from the account that the harm caused by the wives' problem gambling was greatly exacerbated by their access to credit. The committee may compare the cold-hearted role of the banks today with that of the "peddling fellows" and pawnbrokers operating in the working-class districts of late-Victorian Britain.

FUTILITY OF CAPS

The Commission will no doubt receive submissions detailing how machine caps have made little if any impact.

I would simply point out three things.

First, taking out a few machines from a venue is like trying to stop alcoholism by taking one tap out of a pub. I think this remark was attributed to the then leader of the Victorian Opposition, Robert Doyle, and it puts the point very nicely.

Secondly, it is clear from the table to the Loved Ones No. 3 study⁵⁵, that the impact is not uniform from machine to machine. I gave the following response to a question at the Theosophical Society:

⁵⁵ December 2005 Victorian Dept of Justice study The Experiences of Problem Gamblers, Their Loved Ones and Service Providers - Round 3 – see Table 41 for list of preferred machines played by problem gamblers. (I had, independently, identified these machines using symbolic analysis coupled with anecdotal evidence from treatment providers and problem gamblers.)

“You have touched on the issue of caps, of limiting machine numbers. One thing that this shows is that most or half the problem gamblers are playing half a dozen machines out of a hundred machines out there. Just putting on caps and saying we are just going to take twenty machines away will not necessarily have any effect; it has not been having any effect. In that you may be taking the motor torpedo boats away from the fleet and leaving the aircraft carriers and battleships.”⁵⁶

Thirdly, I suspect that problem gamblers and social gamblers tend to play at different times. The social gamblers play in the happy hours and the problem gamblers tend to play during school hours and late at night/early morning.

⁵⁶ Spiritual Dimension of Gaming Machines – presentation by Tim Falkiner to the Theosophical Society of Melbourne on 9 October 2007