

FROM PATRON CARE TO CONSUMER PROTECTION: POKER MACHINES IN TASMANIA

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Anyone can experience problems with poker machines. Whilst players of lottery are unlikely to experience problems with their gambling (less than 3 people in a thousand), one in ten (that is, 100 in a thousand) poker machine players experience problems.¹ Risks are increased for the gambler by a number of factors, including access to machines, the characteristics of game design (such as repetitive and continuous play, linked jackpots, encouraging maximum bets, limiting information to the gambler), design of the gaming venue and aggressive advertising.² Few players of poker machines realize the true price of playing.

Like strategies to protect consumers and reduce problems in other areas of social life such as alcohol and other drug use, the community deserves the proper regulation of the gaming industry. And, like any other consumer product that poses risks to its users, the Government needs to move away from a narrow focus on referral and treatment of the 'problem gambler' to a broader mandate focused on ensuring, promoting and providing 'safe gambling' for all customers. Strategies to protect the gambling consumer may be termed 'patron care'. All states of Australia have patron care policies, although the details differ from state to state.

The primary objective of patron care should be "to reduce the harmful consequences associated with, or arising from, gambling rather than the total prohibition or complete avoidance of gambling."³ Research shows that "harmful consequences are not limited to pathological or compulsive

¹ Productivity Commission, 1999, *Australia's Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, Volume 1, page 6.54.

² Productivity Commission, 1999, *Australia's Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, Volume 1, page 37.

³ Blaszczyński, A., 2001, *Harm Minimization Strategies in Gambling: An Overview of International Initiatives and Interventions*, Australian Gaming Council, page 4. Retrieved 12 January 2004 from: www.austgamingcouncil.org.au/research/files/

gamblers but may also affect recreational gamblers on occasions.”⁴ This approach means that patron care weaves together the concepts of minimizing harm and broader consumer protection.

Money lost to poker machines in Tasmania

The Productivity Commission estimated that ‘problem gamblers’ account for around 42 per cent of total expenditure on poker machines.⁵ Tasmanians lose approximately \$80 million each year on poker machines in pubs and clubs.⁶ Using the Tasmanian Government’s estimate that 1% of adult Tasmanians are ‘problem gamblers’,⁷ this means that 3100 Tasmanians⁸ are estimated to collectively lose \$33.6 million dollars. This equates to \$10,800 for each ‘problem gambler’, more than half the average annual income in Tasmania.⁹ It is equivalent to annual expenditure on housing, domestic fuel and power, food and medical care and health expenses for a low income Tasmanian.¹⁰

Regulation of gambling

Research into gambling concludes that “the public perception toward problem gambling is that governments that promote gambling have a moral and social obligation to accept responsibility for minimizing any resultant harm that is caused to the community.”¹¹

Since 1993, the Tasmania Parliament has established the:

- community support levy for “research into gambling; services for the prevention of compulsive gambling; treatment or rehabilitation of compulsive gamblers; community education concerning gambling; and other health services”;¹²

⁴ Blaszczyński, A., 2001, *Harm Minimization Strategies in Gambling: An Overview of International Initiatives and Interventions*, Australian Gaming Council, page 4. Retrieved 12 January 2004 from: www.austgamingcouncil.org.au/research/files/

⁵ Productivity Commission, 1999, *Australia’s Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, Volume 1, Figure 7, page 22.

⁶ Tasmanian Gaming Commission, 2001, *Australian Gambling Statistics*, Table 54.

⁷ Steven Kons, media release, 24.9.03.

⁸ ABS 2001 Census shows there are 311098 adult Tasmanians. Retrieved 8 July 2003 from www.abs.gov.au/ausstats

⁹ ABS 2001 Census shows the median weekly income for Tasmania at \$300-\$399 (\$15600-\$20748 annually). Retrieved 10 January 2004 from www.abs.gov.au/ausstats

¹⁰ Expenditure based on results for the “second quintile” (\$300 to \$552) in the ABS Household Expenditure Survey 1998-1999, Summary of Results, 28 June 2000, page 9.

¹¹ Blaszczyński, A., 2001, *Harm Minimization Strategies in Gambling: An Overview of International Initiatives and Interventions*, Australian Gaming Council. Retrieved 12 January 2004 from: www.austgamingcouncil.org.au/research/files/

¹² *Gaming Control Act 1993*.

- Gaming Commission to regulate and control gaming, make recommendations to the Minister regarding gaming policy and administer the levy;¹³ and
- Gambling Support Bureau to work within a public health model of problem gambling.¹⁴

In the 7 years that the levy on gaming has been collected, significant amounts of this money remain unspent. At the end of 2003, Tasmania's Auditor-General reported that "only 68% of total receipts to-date have been distributed."¹⁵ In spite of funds being available for research and a number of submissions from the community for assistance with research projects, there has been no independent research funded by the levy since 1996.¹⁶ The Gaming Commission has failed to establish independent research and a knowledge base on gambling in Tasmania and failed to provide independent advice to Parliament.¹⁷ Neither the Gaming Commission nor the Gambling Support Bureau has made recommendations to Government regarding changes to patron care policies in order to reduce harm. Both agencies were also silent during the recent Government review into smoke-free areas in spite of the dramatic impact that the introduction of smoke-free legislation had on gaming turnover in Victoria.¹⁸

There is an inherent tension in the Tasmanian Government regulating gaming because the Government collects substantial tax revenue and fees from the gaming industry.¹⁹ Effective patron care strategies are likely to reduce gaming turnover and therefore reduce profits to industry and income to Government.

A legal duty of care

In 1999, the Productivity Commission dismissed the industry claim that 'problem gambling' was the result of individual personality traits. It

¹³ *Gaming Control Act 1993*. For a detailed discussion about the Tasmanian Gaming Commission see Law, M., 2003, *The Emperor's New Clothes: The Tasmanian Gaming Commission*, Anglicare Tasmania, available from www.anglicare-tas.org.au

¹⁴ The Gambling Support Bureau, which is funded from the levy, has conducted an advertising campaign and produced information pamphlets about problem gambling. For further information see <http://www.dhhs.tas.gov.au/gambling/harmminimisation/index.html>

¹⁵ Auditor-General Report No. 2, *Government Departments and Public Bodies 2002-2003*, Executive Summary, page 18.

¹⁶ Law, M., 2003, *The Emperor's New Clothes: The Tasmanian Gaming Commission*, Anglicare Tasmania. Retrieved from www.anglicare-tas.org.au

¹⁷ Since inception, the Gaming Commission has sat within the Department of Treasury and Finance and the Secretary of Treasury has been Chair of the Commission. The Chair has recently been changed as a result of lobbying from community groups.

¹⁸ The Age 2003, *Tattersalls panned over 'smoking gun'*, 19 March 2003.

¹⁹ Treasury is responsible for gaming revenue, gaming regulations and gaming licenses.

concluded that problems with gambling “emanate from a multiplicity of environmental, social and psychological facets”.²⁰ This means that the gaming industry, including the owners of the machines and the license holders, have a responsibility to “provide a safe environment for gaming and to provide adequate consumer information and protection for players.”²¹ The Productivity Commission “raised questions about the gambling industry’s duty of care to their patrons and industry’s capacity and willingness to self-regulate to protect consumers.”²²

Recent legal cases have considered whether a duty of care is legally enforceable through common law.²³ Gamblers have argued that venue operators owe patrons a duty of care to prevent excessive gambling. New legislation on ‘responsible gambling’ introduced in some states place very specific legal responsibilities on industry to better inform and protect their patrons. These obligations may surpass common law understanding of duty of care.²⁴

The governments of New South Wales, Queensland, Victoria and the Australian Capital Territory have developed a co-regulatory framework for government and industry to regulate gaming, including patron care policy, together. In contrast, regulation of gaming in Tasmania is dealt with through self-regulatory codes of practice developed by Tasmania’s Gambling Industry Group. This group has developed a ‘responsible gambling code of practice’ and an ‘advertising code of ethics’ for the industry. However, both codes are voluntary and there is no independent monitoring or regulation of the codes nor has there ever been independent evaluation.²⁵ Not surprisingly, the Productivity Commission found that in the gambling industry “self-regulatory approaches are unlikely to be as effective as explicit regulatory requirements”.²⁶

The industry has clear obligations to take actions to protect its customers. With the potential risk of future litigation, the onus of patron care should be

²⁰ Productivity Commission, 1999, *Australia’s Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, page 6.8.

²¹ McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney, page 4.

²² McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney, page 5.

²³ McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney, page 5.

²⁴ McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney, page 7.

²⁵ In 1997, Anglicare recommended the voluntary codes be independently evaluated. However, there has been no response from Government or industry.

²⁶ Productivity Commission, 1999, *Australia’s Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, page 4.

shifted from the gambler to the operators of poker machines with oversight by an independent Gaming Commission. Self-regulation must be replaced by co-regulation.

Minimising harm: not just for problem gamblers

Current research indicates that environmental and social factors place individuals and communities “at risk” of developing problems from gambling.²⁷ This research is critical of responses to problem gambling which focus solely on “treating” problem gamblers through counselling and abstinence. It suggests that while this can assist individuals, it is an approach that fails to take into account the social factors involved.

Broader strategies are needed to minimize harm and reduce the number of people developing gambling problems. Research shows that regular players of poker machines are at risk of developing problems, which affect not only themselves but also their families.²⁸

An integrated public health approach is therefore recommended. This blends individual therapeutic strategies and social policies with regulatory policy.²⁹ The main thrust of patron care must be to protect patrons from exploitation while giving them the power to regulate their own gambling. Community awareness and education campaigns, such as the ones currently run by the Government’s Gambling Support Bureau, are helpful but there must also be strategies that have a measurable impact in reducing problem gambling. Informed choice would require patrons to have information about likely rates of loss/gain from playing different machines, ability for self-exclusion and technology such as smart cards so they can set a limit on losses and frequency of play. Restricting advertising would also be helpful.

The Tasmanian Government and gaming industry’s approach to patron care must therefore be revised. Their focus is currently targeted at people who have already developed a problem with their gambling and who are willing to seek help. Their concept of ‘responsible gambling’, which promotes ‘knowing your limits and gambling within your means’, as the key tool of patron care reduces patron care to individual responsibility. This is a focus on the problem, blaming the victim, rather than looking at prevention.

²⁷ McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney.

²⁸ McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney; and Productivity Commission, 1999, *Australia’s Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra.

²⁹ McMillen, J., and McAllister, G., undated, *Responsible gambling: legal and policy issues*, Australian Institute for Gambling Research, University of Western Sydney.

Tasmania's patron care practices: "deficient"

In Tasmania the provision of 'patron care' is regulated by the gaming providers themselves. The 1999 Productivity Commission inquiry into the Australian gambling industry, commissioned by the Federal Government, was highly critical of this situation³⁰ and yet the Tasmanian Government claims that it is satisfied that Tasmania has 'best practice' patron care.

The Productivity Commission concluded that policies on gambling needed to be directed at reducing the personal and social costs of problem gambling through harm minimization and prevention measures [patron care]. The Commission found that "the current regulatory environment is deficient" and recommended that "more targeted consumer protection measures [patron care] – if implemented – have the potential to be much more effective, with less inconvenience to recreational gamblers."³¹

In particular, the Commission identified the following deficiencies:

- "Information about the 'price' and nature of gambling products (especially gaming machines);
- Information about the risks of problem gambling;
- Controls of advertising (which can be inherently misleading);
- Availability of ATMs and credit; and
- Pre-commitment options, including self-exclusion arrangements."³²

Since the release of the Productivity Commission's report, the Tasmanian Government and the Tasmanian Gaming Commission have neither rectified the deficiencies in the regulatory environment in Tasmania nor developed patron care policies beyond the most minimal practices. In particular, the Government has repeatedly refused to commission a social and economic study of the impacts of poker machines despite the availability of funds collected as a levy on gambling for research. Nor has it acted on the recommendations of a 1997 evaluation of Tasmanian patron care practices which called for further research along with a number of patron care practices be implemented by industry.³³

³⁰ Productivity Commission, 1999, *Australia's Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra.

³¹ Productivity Commission, 1999, *Australia's Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, page 11.7.

³² Productivity Commission, 1999, *Australia's Gambling Industries*, Inquiry Report No. 10, Ausinfo, Canberra, Key Findings, p. 3.

³³ Anglicare Tasmania, 1997, *Patron Care Policies and Programs for the Tasmanian Gambling Industry*.

Patron care across Australia

Patron care strategies vary greatly between the states and territories because they are shaped by local relationships between Government and industry operators. The following list provides a guide to some of the strategies employed in others states. However, none of them have been independently evaluated leaving Anglicare unable to recommend their effectiveness. Anglicare does, however, recommend that these strategies are investigated by the Gaming Commission with trials over set periods in gaming venues in Tasmania.

- **Warnings** on all advertising of gambling products (South Australia)
- **Advertising of prizes** must be accompanied by information about the odds of winning. (South Australia)
- **Advertisements that offer inducements** to play poker machines banned outside gaming areas. (Victoria) Venues prohibited from offering free or discount liquor or free gambling credits as an inducement to gamble. (NSW)
- Clubs and hotels that wish to increase the number of poker machines or relocate to a new neighbourhood must provide a **social impact assessment** that includes details about:
 - the incidence of problem gambling in the local community;
 - the action proposed to be taken to minimize any harm that may be associated with an increase in the number of poker machines in the local community; and
 - any likely employment consequences for other local businesses (NSW)
- **Social impact assessments** must be advertised for public comment (NSW)
- **Regional caps** set at 8 machines per 1000 people. (Victoria)
- **Second screen technology** introduced to provide means for 'responsible gambling' messages to be presented to people playing machines during the course of their play. (Victoria)
- **Records** must be kept of all incidents reported at a gaming venue by a patron regarding a gambling-related problem. The action taken by the gaming venue must also be reported. (Northern Territory)
- There are various models of **self exclusion** mechanisms across Australia.
- The **odds of winning** must be available in printed form at venues. (Victoria) Venues must display the signage: "Your chance of winning the maximum prize on a gaming machine is generally no better than one in a million". (NSW)

- **Electronic information** must provide game and player information, including amount of time and money spent by player to be generated at request of player for all new machines, to be phased in by 2008 for old machines. (Victoria)
- All new machines must display **credit meter** in both credits and in dollars/cents. (Victoria) Machines must display alternating credits and currency value. (NSW)
- \$50 limit on **note acceptors** for all new machines with a phase-out for old machines by 2008. (Victoria) Note acceptors banned in clubs and hotels. (Northern Territory)
- Clubs and hotels must lodge annual audited **community benefit statement** and clubs must contribute at least 8.33% of total net daily cash balance from machines to the local community or pay same tax rate on revenue as hotels. (Victoria)
- Applications for approval of **new premises or to increase numbers** at existing venue must be tested for net economic and social impact of the proposal. (Victoria)

There are various models of community education strategies employed across Australia. For example, the Victorian Government allocated \$6.1 million to a public awareness and community education campaign in 2001-2002. The South Australian Government targeted \$0.8 million over 4 years for a Department of Education campaign aimed at warning young people about the impacts of gambling.

Recommendations for Tasmanian patron care strategies

Although these strategies have yet to be comprehensively and independently evaluated, Anglicare argues that the Tasmanian Parliament should not wait for research to be conducted before introducing measures to protect consumers. Based on the research thus far conducted as well as the findings of the Productivity Commission Inquiry and the experience of Anglicare as a Break Even Service Provider, **Anglicare recommends that State Parliament introduce the following measures to improve patron care:**

- Smoking banned in all gaming areas.
- Independent evaluation of the industry's current self regulation of codes of practice.
- Independent evaluation of existing patron care strategies in Tasmania and evaluation of new strategies once they are introduced.
- The immediate restoration of the legal limits on the amount that can be bet per game. The maximum bet should be no more than \$1. The Tasmanian Gaming Commission should regulate the maximum number of lines that can be played for any one game on the machines.

- Reinstatement of the ban of cash access in gaming venues.
- A ban on note acceptors in hotels and clubs.
- Improved player information. This could include time spent in session, money spent during session.
- Restrictions on opening hours.
- Slower game speeds. The Tasmanian Gaming Commission should regulate the maximum speed at which poker machines can operate.
- A ban on advertisements which offer inducements to play poker machines, outside of gaming venues.
- An independent evaluation of Federal Hotel's Loyalty Scheme as it relates to patron care practices.
- Help-line stickers should be located on the front of machines and the stickers should be durable. Print should be large and clear (able to be read without glasses). Venues should be required to maintain stickers in good order.
- Time of day should be displayed at the centre of the screen every 5 minutes (able to be read without glasses).
- Ability for players to set and manage expenditure on machines. This may require the introduction of the 'smart card'.
- Gaming venues should have an obligation to inform players who are members of the venue of their personal gaming activity via a 'statement of activity'.
- Introduction of 'second screen' technology. This would enable messages to be presented to people playing machines during the course of their play. The messages should pop up every 20 minutes to state the amount of money lost since the session began.
- Review of staff training in gaming venues.
- Review of gaming venue house policies.

From patron care to consumer protection

The Tasmanian Government claims that Tasmania has "best practice patron care". However, patron care practices have never been evaluated in Tasmania. 'Best practice' in patron care can mean very different things depending on whether you are the consumer, gaming venue or regulator. 'Best practice' should refer to strategies that have been proven to be effective in their goal of caring for the patron's best interests.

Whether phrased as 'patron care', 'harm minimization' or 'responsible gambling', two principles that should underpin any strategy for consumer protection are 'duty of care' and 'informed choice'. This means that the gaming industry and Government have a responsibility to minimise harm by ensuring that people who use the machines are protected from exploitation.