

**PRODUCTIVITY COMMISSION INQUIRY INTO
AUSTRALIA'S GAMBLING INDUSTRIES
SUBMISSION BY NICK XENOPHON
INDEPENDENT SENATOR FOR SOUTH AUSTRALIA**

Introduction

I welcome this Inquiry as playing a key role in providing sound policy recommendations on tackling problem gambling, the scale of which causes enormous social and economic harm.

The Inquiry has added relevance given the potential scope of Commonwealth powers (particularly since the 2006 High Court decision in relation to the WorkChoices legislation), which was not apparent at the time of the 1999 Inquiry.

At the outset I wish to reiterate my primary position that the introduction of poker machines in my home state of South Australia led to a massive increase in problem gambling with all its ancillary effects, and that communities would be better off without a product that has shown to be unsafe and harmful to literally hundreds of thousands of consumers nationally.

I propose to use the Terms of Reference as a template for this submission and I would be grateful if I could have an opportunity to appear before the Commission during its public hearings. I also attach and will refer to the following as part of this submission:

- i. *Risky Business: A Few Provocations on the Regulation of Electronic Gaming Machines* (Livingstone, C., Woolley, R., (2007) (International Gaming Studies, Vol. 7, No. 3) (Hereinafter referred to as 'the Risky Business article');
- ii. *Gambling and Corporate Social Responsibility (CSR): Re-defining Industry and State Roles on Duty of Care, Host Responsibility and Risk Management* (Hancock, L., Schellinck, T., Schrans, T., (2008) (ScienceDirect, Policy and Society 27, 55-68) (Hereinafter referred to as 'the Host Responsibility report')
- iii. *The Relevance and Role of Gaming Machine Games and Game Features on the Play of Problem Gamblers* (2008) (Australian Institute for Primary Care (AIPC), La Trobe University, for the Independent Gambling Authority of South Australia) (Hereinafter referred to as 'the Game Features report');
- iv. *Measuring the Economic Impact of Electronic Gaming Machines in Regional Areas – Bendigo, A Case Study* (2008) (Pinge, I., Jimbrada Pty Ltd, Centre for Sustainable Regional Communities, La Trobe University, Bendigo VIC, for the City of Greater Bendigo) (Hereinafter referred to as 'the Bendigo Study');
- v. *Senate Standing Committee on Community Affairs Minority Report into the Poker Machine Harm Reduction (Tax Administration) Bill 2008, the Poker Machine Harm Minimisation Bill 2008 and the ATMs and Cash Facilities in Licensed Venues Bill 2008* (Minority Report prepared by Senator Nick Xenophon and the Australian Greens) (Hereinafter referred to as 'the Senate Minority Report').

1. The nature and definition of gambling and the range of activities incorporated within this definition

- 1.1 Since the Commission, in its 1999 Report, discussed a definition of 'problem gambling' (Volume 1, Summary, pp 17-19) there appears to have been a move, from a definitional perspective, to also consider those at risk of developing a gambling problem. This is particularly important in the context of machine design, host responsibility and regulatory frameworks.

2. The participation profile of gambling, including problem gamblers and those at risk of problem gambling

- 2.1 I note the Commission is not planning to replicate the prevalence study referred to in its 1999 Report, and that there has been some concern over this which I share. However, I believe it is of greater importance that there should be a rigorous methodological approach in comparing the prevalence studies conducted by State and Territory Governments. This is particularly so given the different problem gambling indices that have been used as well as varying approaches in the collection and collating of information.
- 2.2 I refer to the Senate Minority Report (paragraphs 3.14 – 3.18) and the fundamentally misleading claims made by the gambling industry that problem gambling levels have decreased. This arises from an erroneous comparison between the South Oaks Gambling Screen (SOGS) and the Canadian Problem Gambling Index (CPGI).
- 2.3 Further, most prevalence studies carried out since 1999 have focussed on the instantaneous rate of problem gambling rather than the true lifetime rate which is usually 5 times the level (Senate Minority Report, paragraph 3.18). Given the often long term impacts of problem gambling (eg. family break up, loss of assets, criminal convictions) the lifetime rate ought to be considered in the context of policy responses.
- 2.4 The CPGI is useful in that it takes into account at risk gamblers which also should be a driver in policy to reduce the level of problem gambling.
- 2.5 State and Territory Governments have a vested interest in understating the level of the problem caused by gambling (particularly poker machines) given their reliance on gambling taxes. This alone is a compelling reason to ensure that data is collected at a national level using common benchmarks and a rigorous methodological approach.

3. The economic impacts of the gambling industries, including industry size, growth, employment, organisation and interrelationships, with other industries such as tourism, leisure, other entertainment and retailing.

- 3.1 The Bendigo Study (which followed an earlier study in 2000) highlights the net economic impact of EGMs on a regional economy. Its primary finding of the study was that the change in expenditure in Bendigo towards EGM gambling costs the region an estimated \$20.542 million and 207 jobs. These findings were the result of very weak performance of the EGM gambling sector in terms of very low levels of job intensity when compared with any other sector as well as the very low levels of inputs purchased by the EGM gambling sector.
- 3.2 The Study found that the EGM gambling sector is a poor performer compared with other industry sectors because it is capital intensive and uses very little labour for every million dollars of output. As a result it was found that a shift in spending away from activities such as retail activity or accommodation, cafes and restaurants towards gambling will lead to a net fall in employment in the national, state or regional economy.
- 3.3 The study found that *'overall, gaming is a very poor performing and parasitic economic sector which offers very little to national, state and particularly regional and local economies compared with any other industry sector'*(p 9).
- 3.4 The Study also predicted that the effects of the closure of EGM gambling activity in Bendigo and a switch in expenditure towards spending in retail trade would generate additional spending of \$30.207 million and an additional 303 jobs (assuming that no spending by gaming machine operators or the State government returned to the area). When this assumption was relaxed, the net regional effect amounted to a gain of \$26.057 million and 279 jobs. These figures were also used to describe the 'net cost of having gaming machines in Bendigo which costs the region \$26.057 million and 279 jobs assuming that gaming expenditure came from the retail sector' (p11). It was stated that 'if all the \$43.48 million currently spent on EGM gambling in Bendigo was transferred to spending on accommodation, cafes and restaurants, then similar results would be obtained' (p 12).
- 3.5 The concept of 'consumer surplus' in the context of gambling expenditure appears to be questioned by the Study given it highlights *that 'assumptions about rational economic behaviour fall over when addictive behaviour is evident'* given that *'somewhere between 33% and 50% of total revenue is said to come from players exhibiting addictive and non-rational behaviour'* (p 17).

4. The social impacts of gambling industries, the incidence of gambling abuse, the cost and nature of welfare support services of government and non-government organisations necessary to address it

- 4.1 The social impacts of problem gambling have been well documented. The link between problem gambling and family breakdown, crime, mental illness, financial hardship and most tragically of all suicide is well established. What is not so well known is the precise extent of the problem, and much can be done to more accurately measure the numbers affected and steps to reduce the damage caused.
- 4.2 In relation to gambling related crime there is a lack of uniformity and rigour across jurisdictions to assess the causality between criminal behaviour and a gambling problem. Many property related offences (i.e. fraud and embezzlement) are under-reported because family members are the victims, or a business wants to avoid the adverse publicity that a court case could bring.
- 4.3 Police and correctional services authorities could play a role in collating basic information on the link between problem gambling and offending which itself could form the basis of intervention and rehabilitation programs both for those offenders that receive custodial and non-custodial penalties. A national body that collates such information on a consistent basis between jurisdictions is the preferred approach.
- 4.4 There are compelling reasons to establish a victims of crime compensation fund specifically for victims of gambling related fraud and embezzlement. Currently victims of crime funds in Australia are focussed (appropriately) on providing compensation for personal injury, loss and damage, not pure economic loss. However, since State and Territory Governments reap billions of dollars each year in gambling taxes and that offending occurs as a result to an addiction to legalised gambling products it is appropriate that such a fund be set up.
- 4.5 The extent of gambling related suicides could be better assessed if there are more uniform approaches amongst State and Territory coroners.
- 4.6 I endorse the views of John Duns (*Other People's Money: Gambling and Bankruptcy*, (2007) Melbourne University Law Review MULR 4), that 'there is a significant gap when it comes to the relationship between gambling and bankruptcy policy.' Gambling related bankruptcies are highly likely to be grossly understated given the attempts to 'deter and/or punish gambling through the use of criminal sanctions in bankruptcy legislation' (ibid).
- 4.7 The adequacy of funding and the structure of gamblers' rehabilitation services varies from State to State. However, the experiences relating to the Gamblers' Rehabilitation Fund in South Australia are likely to be illustrative of the problems that face such funds generally.
- 4.8 In its first year of operation (1994-95), the Gamblers' Rehabilitation Fund, commenced with \$1.5 million, including \$800 000 of government funding. In 1994, the Net Gambling Revenue ('NGR') on EGMs in South Australian pubs

and clubs was \$186.98 million, with Government taxes totalling \$62.518 million. The current funding available to the GRF is \$5.445 million including \$3.845 million per annum from gambling tax and \$1.6 million from voluntary contributions by industry (the Australian Hotels Association (SA) and Clubs SA contribute \$1.5 million and SkyCity Adelaide contributes \$110 000 annually). The NGR on EGMs for the 2007-2008 financial year \$758.46 million with Government taxes totalling \$295.94 million. The venue share was \$463.42 million. Gambler's rehabilitation funding has failed to keep pace with increases in losses and the number of problem gamblers.

- 4.9 A comparison with other Australian states with similar programs also shows similar results. For instance, in NSW, the Responsible Gambling Fund (RGF), formerly the Casino Community Benefit Fund, derives its income from a levy paid by the operator of the Sydney casino as required by the Casino Control Act 1992. The levy is set at 2 per cent of the casino's gaming revenue and forms a part of the overall taxation arrangements that apply to casino gaming operations. In 2007-2008, NSW collected \$1109 million in EGM taxes (excluding the casino). The total amount expended on the Responsible Gambling Fund (RGF) amounted to around \$12 million of the total gambling taxes.
- 4.10 The Victorian Government developed a 5 year strategy called 'Taking Action on Problem Gambling', which outlines initiatives to the total of \$132.3 million that the government put in place between 2006-07 and 2010-11. Victorian taxes on EGMs in 2007-08 amounted to \$992.3 million (excluding the casino). During that same period, government spending on problem gambling was \$20.5 million.
- 4.11 While these figures may represent increases in the amounts being spent on problem gambling, there is still very minimal funding going towards problem gambling services when compared to the taxation revenue collected by state governments.
- 4.12 The GRF also has a strong industry presence on its Committee - apparently to reflect the co-contribution funding arrangement. This is akin to the tobacco industry directly funding lung cancer research and having a direct role in the scope and direction of that research.
- 4.13 Counsellors have expressed concerns to me about the lack of funding available to them to service the needs of people in the community with a gambling problem. Given that so little is received by each individual service provider by way of grants, agencies often lack the resources to advertise their services in a way that adequately reaches the community.
- 4.14 An interrelated concern is also the issue of the provision of services free from political interference. In the last decade or so there has been a seismic shift in

the way social services are provided in Australia. Governments have increasingly turned to church based and secular welfare groups to provide services that governments were once expected to provide. Job search programs, child welfare programs, health programs, emergency relief and housing, addiction services, counselling services and problem gambling services have all been outsourced. But this has come at a cost.

- 4.15 The Reverend Tim Costello in the 1990s took a stand when he spoke about the way the Kennett Government of Victoria was trying to explicitly gag dissent. He said:

You see welfare is never simply services delivery. Poverty, disadvantage, inequality, are relational, communal and spiritual issues, and for poverty to be overcome, groups who are poor need to discover their voice and they need welfare groups helping them know how to speak out. So for a welfare group to really abandon its ability to empower and to do its advocacy job, a fundamental aspect of its work, I think is very wrong.

- 4.16 On the issue of EGMs, these sometimes subtle, sometimes blunt attempts to silence organisations can be devastating particularly given the reliance of state governments on gambling revenue. It is a searing and obvious conflict of interest that can ensnare and compromise the organisations that receive funding.
- 4.17 This issue can be addressed by implementing legislation requiring advocacy clauses in contracts between the government and social service providers that will guarantee the independence of welfare providers and protect them from consequences when they speak out on social issues including problem gambling. Such a measure would ensure that funding would be truly independent and free from political interference.
- 4.18 The efficacy of gamblers' rehabilitation services needs to be assessed on a rigorous and systematic basis and this could best be carried out by a national research body that is independent of governments, industry and any other vested interests. In particular it needs to be established how many people with a gambling problem are currently receiving help, and of those, how many have been helped to break free of their problem.

5. The contribution of gambling revenue on community development activity and employment

- 5.1 I refer to the Bendigo Study above.
- 5.2 The negative externalities associated with problem gambling are generally minimised or even ignored by those that obtain revenue from gambling

activities. It would be more reasonable to ask what the contribution on community development activity and employment would be if monies lost on gambling were diverted to other sectors of the economy (eg. retail, tourism and hospitality).

6. The effects of the regulatory structures – including licensing arrangements, entry and advertising restrictions, application of the mutuality principle and differing taxation arrangements – governing the gambling industries, including the implications of differing approaches for industry development and consumers

- 6.1 The reliance that State Governments have on gambling taxes begs the question of what roles and functions gambling industry regulators should adopt both in the context of the current legislative frameworks regulators operate under, and the broader context of the role regulators can have in protecting consumers of gambling products. The obvious follow-on question from that is whether gambling regulators have fulfilled a useful and productive role in protecting consumers from harm.
- 6.2 At a structural level that question was in part answered by the Commission in 1999. The Commission highlighted the deficiencies of the institutional arrangements for gambling policies and regulation, including that:
- regulatory responsibilities are sometimes unnecessarily divided;
 - some regulators are part of Government, some are independent;
 - mechanisms for obtaining community input are generally insufficient; and
 - there is inadequate information for good decision-making.
- 6.3 The Commission also questioned the appropriate level at which different decisions should be made, the information which should inform such decisions, and how that information, including community views, should be accessed.
- 6.4 The 1999 Report provided a broad framework for a regulatory ‘model’ drawing on the best aspects of current arrangements – though going beyond what was (and is) to be found in any jurisdiction - that it would comprise:
- ‘big picture’ policy decisions being made by each Government/ Parliament, but informed by more open processes and better information;
 - an independent gambling control authority in each State and Territory;
 - with the primary objective of furthering the public interest;
 - it’s charter emphasizing a high standard of consumer protection as a central objective;
 - with the role of making decisions in accordance with registered criteria, as well as providing objective information to Government and the community;
- 6.5 The framework would include:
- A structure which facilitates its statutory independence;
 - Coverage of all gambling activities; and
 - Processes based on transparency in public consultation.

- 6.6 The Regulatory model proposed would also have an enforcement function separate to the control authority or the policy department, and an independent Board with responsibility for firstly, administering the community benefit fund, secondly, funding of counselling and harm minimisation programs, and thirdly, research and information gathering and dissemination.
- 6.7 Those recommendations were released almost 10 years ago – unfortunately, to this day, very few if any have been implemented.
- 6.8 This also followed a 2002 review of the Commission’s 1999 report which noted that there appeared to be movement in the ‘right direction’ but there was still ‘some way to go’, ‘particularly in trialling and implementing more effective harm minimisation measures, and improving regulatory governance’.
- 6.9 Five years later, the Chairman of the Productivity Commission, referred to the “major policy deficiencies” that “remained” at the 2007 Australian Gambling Expo. He made the point that natural market forces do not apply to gambling, not just because of the nature of the product (namely it’s propensity for massively skewed consumption from addiction), but also because gambling is, and has always been “a creature of regulation”.
- 6.10 The central theme about the need for balance in a regulatory and public policy framework for gambling was also the thrust in the Risky Business article by two of Australia’s leading researches in this field, Charles Livingstone from Monash University and Richard Woolley from the University of Western Sydney, which is summarised in the attached Minority Senate Report.
- 6.11 Livingstone and Woolley argue that the proliferation of EGM’s in Australian club and hotel venues is ‘generating revenues of billions of dollars annually and account[s] for the majority of gambling expenditure’; that these revenues ‘rely on unsafe consumption practices, generating considerable harm’; that ‘clear evidence is available describing unsafe levels of EGM consumption by regular EGM consumers in hotels and clubs, and indicating modifications to the EGM technology and systems to minimize harm’. However, they say, there is a ‘comfortable orthodoxy’, the discourse of ‘business as usual’ that perpetuates current arrangements, focussing on the ‘problem’ gambler as an individualized flawed consumer’.
- 6.12 Livingstone and Woolley state that ‘existing policy instruments could be readily adapted to address harmful characteristics of EGMs’. In Australia and New Zealand, the National Standard prescribes technical standards for EGMs. Its aims are to ensure that the use of EGMs is fair, secure, auditable and that EGMs themselves are reliable in terms of their issues. The National Standard is constructed so as not to ‘unreasonably limit’ technology application, creativity or marketability. Within a networked, ‘technicised’ consumption system such as the EGM system, consumer safety standards are fundamental to calibrating the level of harm produced. ‘The National Standard, however, does not refer to responsible gambling let alone harm minimisation or product safety, creating an artificial discontinuity between technical matters and their consequences.’

- 6.13 The National Standard should be framed in such a way that actually makes significant inroads into the level of addiction caused by EGMs. Currently the National Standard is focussed on issues of technical safety rather than its impact on consumers. The Standard ensures that you won't be electrocuted by poker machines, but does nothing to prevent you from being bankrupted by them.
- 6.14 The current requirement in all States and Territories that EGMs must provide a minimum 'return to player' percentage of the amount bet on the machine is inherently misleading and deceptive to consumers. The fact that the return to player percentage can vary in jurisdictions up to 15 per cent per machine, and that the percentage is generally based on either the life of the machine, the type of game, or an average of machines at a particular venue, provide an illusion to players that somehow, sooner rather than later, they will get most of their money back.
- 6.15 This high volatility of EGMs has been identified by Livingstone and Woolley as an integral part of the core elements that can lead to, or exacerbate problem gambling – something that goes to the core of being open with consumers about the way machines actually operate and something that regulators have a key role in delivering on. The Game Features report provides a useful insight into the way design features can play a role in problem gambling. It also reveals the difficulties the researchers had in obtaining key machine design data from the industry (particularly reinforcement schedules) which are integral in understanding the addictive nature of machines. I urge the Commission to use its powers to obtain the material that Doctors Livingstone and Woolley were unable to get. (In this regard, I refer to the Senate Minority Report, paragraphs 4.1 – 4.8.)
- 6.16 Up until now governments and regulators alike appear to have been preoccupied with the management of the casualties of gambling rather than the harm caused in the first place and, in so doing, ignore the voices of the victims of that harm. The nature of EGMs and the impacts they have on the freedom of individuals to make safe consumption decisions need to be addressed. Given the inherent dangers posed by EGMs, consideration should be given at the Commonwealth level that results in fundamental requirements for consumer product safety in EGMs.
- 6.17 The Host Responsibility article questions whether governments owe a duty of care to gamblers and examines whether the risk of legal liability poses a tipping point for more interventionist public policy responses by both the State and industry in relation to gambling or potentially risk litigation. This includes a proactive role for the state in re-regulating the gambling industry and gambling products, introducing new forms of gaming machine product controls and protections and, reinforcing corporate social responsibility and host responsibility obligations on gambling providers beyond self-regulatory codes. It is argued that there is evidence to inform public policy and government regulation as well as new pressures on gambling providers to take advantage of the new technology or risk litigation. Software programs referred to have the

potential to provide an onus on venues to intervene, with a failure to do so potentially leading to legal liability.

- 6.18 A national approach and body is needed to benchmark regulatory standards and enforcement against the goal of dramatically reducing the harm caused by gambling products, particularly poker machines.

7. The implication of new technologies (such as the Internet), including the effect on traditional government controls on the gambling industries

- 7.1 The *Interactive Gambling Act 2001* attempted, with some success, to tackle the risks posed by an expansion of gambling through online and interactive gambling technologies. The more recent arrival of Betfair which allows for an expansion of gambling by virtue of the product that is offered (including the ability to bet on poor performance) highlights the need for a more comprehensive regulatory approach.
- 7.2 A review of the *Interactive Gambling Act 2001*, given the technological changes and increased opportunities for gambling since its inception is overdue. Such a review should also focus on the risks posed by sports betting on the integrity of sporting codes. The scandal involving the late South African cricket captain, Hansie Cronje illustrates the need for regulators to have sufficient forensic powers to investigate the conduct and finances of those associated with sporting codes.
- 7.3 The Host Responsibility article also highlights the potential benefits of using technology to identify problem gamblers at poker machine venues and to place an obligation on venues to intervene responsibly.
- 7.4 Any review of the *Interactive Gambling Act* should include reference to the ability to void transactions on proscribed games particularly through the use of credit cards.

8. The impact of gambling on Commonwealth, State and Territory Budgets

- 8.1 A common excuse given as to why State and Territory Governments do not to take decisive action to reduce the harm caused by gambling is their reliance on the revenue. My understanding is that to date no economic modelling has been carried out to assess the impact of a significant reduction in gambling taxes on State and Territory budgets. Such modelling should take into account alternative tax receipts through the increase of expenditure on goods and services in other sectors if regulatory measures are adopted to reduce gambling losses (and with it gambling tax receipts).

8.2 Further, any assessment of the impact of gambling on State and Territory budgets should take into account the costs associated with problem gambling including the costs of gambling related crime and the incarceration of offenders, the costs involved in treating problem gamblers, time lost from work and other associated costs.

9. The impact that the introduction of harm minimisation measures at gambling venues has had on the prevalence of problem gambling and on those at risk

9.1 Insofar as this Term of Reference relates to measures adopted by venues, both on a voluntary and as a result of regulation, there is a distinct lack of evidence that has been robustly assessed of such measures.

9.2 There is a real concern that the industry has trumpeted measures (such as Hotel Care in South Australia) as more of a PR exercise than an effective exercise in harm minimisation. For instance, there seems to be a lack of rigour with such programs as to their reporting requirements, of the level and extent of intervention, the effectiveness of such intervention together with the longer term follow-up of problem gamblers. I refer to the comments made in relation to regulatory arrangements in paragraph 6. Having counsellors directly funded by industry with the ostensible role of intervening at venues poses a fundamental conflict of interest for such counsellors.

9.3 The adequacy of the training of venue staff to identify problem gamblers needs to be addressed and the mandating of the use of the software programs referred to in the Host Responsibility article would be a significant step forward.

9.4 The question posed by this Term of Reference again raises the need for a rigour in data collection and its independent analysis and recommendations by a national body.

10. Evaluate the effectiveness and success of these harm minimisation measures used by the State and Territory Governments

10.1 I refer to comments in paragraph 9 as well as the comments in paragraph 4 relating to gamblers' rehabilitation programs.

10.2 In addition it is important that there be robust and accurate measuring benchmarks on a national basis to determine the success (or otherwise) of such programs.

10.3 There are significant concerns about the effectiveness of barring mechanisms from venues in jurisdictions and I draw to the Commission's attention an Inquiry

that is being undertaken by the South Australian Independent Gambling Authority on this very issue (the report of which is currently pending).

- 10.4 State and Territory Governments have been slow to embrace the enormous potential benefits of using 'smartcard' technology to tackle problem gambling particularly with poker machines. I refer to the Independent Gambling Authority's 2005 Report into the feasibility of using smartcard technology to significantly reduce the incidence of problem gambling on poker machines. I also refer the Senate Minority Report and in particular paragraph 7 of that Report on the potential benefits of such technologies.