

***SUBMISSION TO THE PRODUCTIVITY COMMISSION'S  
INQUIRY INTO GAMBLING 2008-09***

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I welcome the opportunity to provide a submission to assist the Productivity Commission's current *Inquiry into Gambling*. I appreciate the acceptance of a late submission due to travel and family commitments; however I have not had time to review or respond to submissions already posted on the Commission's website.

For convenience this submission is presented five parts, grouping together a number of the Inquiry's specific terms of reference and questions as outlined in the *Issues Paper* 2008. My proposals focus on ways of creating a safer, more equitable and accountable Australian gambling environment. My submission addresses questions related to:

- The structure of gambling activities and participation in gambling, including problem gambling and those at risk, including implications of new technologies (e.g. the internet);
- Social and economic impacts (e.g. social benefits, problem gambling, gambling impacts on communities, tax, community benefit funds)
- The nature and effects of regulatory structures (including consumer issues, government and industry responses, codes of practice)
- The effectiveness of harm minimisation measures on problem gambling and those at risk; and
- The extent to which these issues have been supported by research.

My submission is based upon extensive experience in gambling research and policy analysis in all Australian states/territories. I also have had practical experience as a gaming regulator, appointed to Gaming Commissions in Victoria (1991-93) and Queensland (1990-2003). A short biography and an abbreviated list of relevant publications are provided below.

I also refer the Commission to my various publications and to my written and personal submissions to various gambling inquiries, including:

- 2000 Senate Select Committee on Information Technologies *Inquiry into Internet Gambling (Netbets inquiry)*.
- 2001 NOIE (National Office of Information Economy) *Inquiry into the Feasibility and Consequences of Banning Internet Gambling*.
- Commonwealth Department of Communications, Information Technology and the Arts (DCITA) 2004 *Review of Issues Related to Commonwealth Interactive Gambling Regulation*;
- 2020 National Summit – *Communities & Governance* groups: 19-20<sup>th</sup> April 2008;
- Australian Senate Community Affairs Committee, Australian Senate: *Poker Machine Harm Reduction Tax (Administration) Bill 2008*, August 2008; and
- Australian Senate Community Affairs Committee: *Inquiry into the ATMs and Cash Facilities in Licensed Venues Bill 2008*, September 2008.

I have not repeated all the information and comments made in previous submissions.

## 1. The structure of gambling activities and participation in gambling, including problem gambling and those at risk, including implications of new technologies (e.g. the internet)

Policy and regulatory environments for Australian gambling continue to vary from jurisdiction to jurisdiction. Gambling accessibility, participation patterns and problem gambling prevalence consequently vary from state to state (McMillen 2009a, Table 2). While there have been identifiable changes in Australian gambling behaviour since 1999, it is not known if this is a direct result of policy reform. Per capita spending on Australian gambling has flattened; and gambling expenditure as a proportion of household discretionary income has declined from 3.16% in 1999–2000 to 2.93% in 2005–06. There is no firm evidence that problem gambling has diminished to a significant extent, however.

Unlike the rapid industry growth in the 1980-90s, since 1999 Australian *gaming* has been characterised by an unstated policy of containment. For example, all jurisdictions have placed new restrictions on EGM numbers. Even so, market competition and technology continue to drive gambling development, accessibility and growth with new sales and service systems and gambling products. For example, all Australian TABs and most lotteries, with the exception of WA providers, have introduced internet products. Although the WA government has opposed internet sales by licensed operators, WA TAB introduced Customer Information Terminals (CITs) to WA betting outlets in 2007. This has replaced the old paper-based betting information system with computerised touch-screen technology. Similarly, Lotterywest has installed self-serve lottery terminals in their retail outlets. The popularity of sports betting is also predicted to rise with the advent of digital television and other interactive technologies; for several years companies have been seeking regulatory approval to provide interactive betting services via mobile phones.

However the past decade has been most notable for the emergence of national oligopolies. Some former gambling competitors have formed powerful national alliances and now operate both gaming and wagering in several jurisdictions, e.g.

- The Australian Lotto Bloc (ALB): all Australian lotteries are now members of the ALB which shares national products and prize pools.<sup>1</sup> There also have been recent suggestions for a national sports lottery.
- Tattersall's: lotteries in most states (including Golden Casket), EGMs, wagering (UNiTAB and SA-TAB)
- Tabcorp Holdings Ltd: four Queensland casinos, EGMs, wagering (TAB agencies and Sportsbet internet wagering in NSW, Victoria and the NT; Luxbet in the NT) and Trackside, internet animated racing.
- PBL: two casinos (Burswood Resort Casino, Crown Casino), a national internet sports betting exchange (Betfair).
- Australian & Liquor Holdings Ltd (ALH, a subsidiary of Woolworths): EGMs in hotels in various states.
- SkyCity Entertainment Group: casinos in Adelaide & Darwin. SkyCity also operates three casinos in New Zealand.

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<sup>1</sup> Although the Australian Lotto Bloc (ALB) held its first Lotto draw in March 1981, NSW did not join until 2000.

These changes represent a remarkable transformation of the Australian gambling industry since the 1970s, when all forms of legalised gambling, with the exception of Tattersall's lotteries in Tasmania and Victoria, were owned and operated by state/territory governments or run by community groups for charity (McMillen *et al.* 1999). Community-based and charitable gambling are struggling for revenue, unable to compete with commercial operators; and with privatisation of the NSW lottery scheduled this year, only South Australian Lotteries and Lotterywest will remain government-owned. The progressive commercialisation of Australian gambling that began in the 1980s, as well as governments' own economic priorities, continues to shape the gambling environment.

More generally, it is too soon to predict the effects of the current global crisis and national economic uncertainty on gambling behaviour, impacts and gambling problems. Initial indications suggest that consumer behaviour overall has already changed; many people are being more discriminating with their spending. The public now may be more sensitive to the risks of gambling and/or the harm minimisation policies introduced in recent years could encourage problem gamblers, in particular, to moderate their gambling.

Conversely, gambling appeared to be 'recession-proof' during the 1990's recession. Recent evidence also indicates an increase in lottery sales in some states. This may be partly due to demographic trends, as older workers have retired. While that age group tends to gamble on lotteries more than other groups, they also are relatively frugal, with lower gambling expenditures overall. Other contradictory trends include rising unemployment, giving those people more leisure time but decreased discretionary income. It is also possible that publicity about this inquiry could result in a slight decline or flattening in gambling participation, as it did in 2000-02.

### **Internet gambling**

In 1999 the Australian internet gambling industry was a global leader, raising concerns about possible impacts and problem gambling. Race betting, lottery sales, casino games and sports betting were all provided by licensed internet providers. Although the Productivity Commission had grave concerns about the potential for problem gambling and underage gambling, it rejected prohibition as an impractical solution; it recommended 'managed liberalisation within a nationally agreed framework'.

In response, state and territory regulators worked together to develop an agreed policy to regulate the industry, including a range of harm minimisation measures (McMillen 2001).<sup>2</sup> Under the AUSModel for player protection, for example, gamblers could set limits on individual and cumulative bets and self-exclude from play; a cooling-off period would apply to gambling limits and self-exclusion. Internet gambling sites would also be required to offer self-help programs for problem gambling and a referral service to counselling services; advertising restrictions would apply, etc. The newly-formed Ministerial Council on Gambling was expected to have a leading role in achieving cooperation between state/territories and uniform national standards.

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<sup>2</sup> Not all states agreed to the AUSModel, however; e.g. WA was opposed to the legalisation of cross-border internet gambling, a stance that the WA Government has maintained.

However, at the first meeting of the Ministerial Council on Gambling the Commonwealth unilaterally announced a legislated moratorium on new internet gambling licences while it investigated the policy options, including the possibility of prohibition. After a Senate inquiry and lengthy and heated debate, the *Interactive Gambling Act 2001* was passed by the Commonwealth Parliament, effectively banning Australian and overseas providers of internet casino-style *gaming* from advertising or providing interactive gambling services to customers located in Australia (McMillen 2003a, 2003b). The *Act* does not apply to Australian internet gambling services for races, sports and lotteries, which have continued to proliferate.

I have argued that the *Interactive Gambling Act* and associated regulatory arrangements are fundamentally flawed for several reasons (McMillen 2003a, 2003b, 2004). Since 2001, the number of 24-hour internet bookmakers has increased sharply and all state lotteries with the exception of WA's Lotterywest have introduced internet sales and marketing.<sup>3</sup> As predicted, many bookmakers have relocated to the Northern Territory attracted by more favourable regulations and taxes than in other jurisdictions. In the absence of a national agreement about betting protocols and player protection measures for internet wagering, tensions and disputes between the NT and other jurisdictions were inevitable. For example, when NT bookmakers ignored requests by the NSW Government not to accept bets on the 2000 Olympic Games, TABQ quickly followed suit.

Further, historical definitions distinguishing gaming and betting are becoming blurred as gambling providers invest in technology that enables development of instant internet lottery games and randomised betting, e.g. 'mystery bets'.

The *Interactive Gambling Act* was reviewed in 2003-04 by the Commonwealth government and found to have major deficiencies – e.g. it fails to achieve its main objective of blocking access by Australians to online casinos. Although the *Act* has prevented the expansion of online casino gaming, Australians continue to gamble with offshore providers of internet gaming and wagering. While this is not illegal, many of those sites may be illegal and unregulated, lacking basic player protection measures. I am unaware of any evidence that indicates that the *Interactive Gambling Act* has prevented or discouraged Australian residents from gambling with offshore internet providers or reduced the potential for gambling-related harm.

On the contrary, my own research funded by an ARC Linkages grant and with cooperation of UNiTAB and NSW-TAB and Lasseter's Online Casino, found that Australian residents have continued to gamble with offshore internet services, some holding several accounts (McMillen 2003a, 2004; Woolley 2003).<sup>4</sup> Five online surveys were conducted in 2000 and 2001 with TAB wagering patrons (a total of 3,506 respondents) and with patrons of Lasseter's Online Casino (1,285 respondents). Lasseter's Online Casino also provided access to data on the gambling patterns of their gaming patrons. The study found participation in online wagering increased over the period of study, as many TAB patrons migrated from telephone to internet gambling media. Furthermore, although the majority of respondents were TAB

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<sup>3</sup> Lotterywest has received approval to operate online but has not yet done so.

<sup>4</sup> At the time of legislation, Lasseter's was the only Australian online casino provider and did not accept bets from Australian residents outside Alice Springs. Lasseter's closed its online services in October 2008.

wagering patrons, their participation in online gaming with offshore providers also increased.

The study also examined patrons' attitudes to regulation, use of consumer protection measures and self-identified problem gambling, using two proxy questions rather than a full screen. Detailed findings of that study were provided to the Department of Communications, Information Technology and Arts (DCITA) in 2004 to assist their inquiry (McMillen 2004). More recent Canadian research has reported that Australians are among the world's highest spenders on international internet gambling sites (Wood & Williams 2009).

### **Problem gambling**

Following the PC's 1999 inquiry, there was considerable debate about the definition of problem gambling and the most appropriate ways of measuring it in general population surveys. In 2003 I was commissioned by the Victorian Gambling Research Panel to undertake a comparative evaluation of three problem gambling screens: the Victorian Gambling Screen (VGS), the Canadian Problem Gambling Index (CPGI) and the South Oaks Gambling Screen (SOGS, version 5+). Using methods of concurrent validation, the study was based on a population survey of 8,479 adult residents in Victoria (McMillen *et al.* 2004a, 2004b). Although finding overlap, limitations with all three screens, overall the study found that the CPGI demonstrated the best measurement properties of the three gambling instruments. As well as essential questions about screen validity, the reports discuss issues for future consideration regarding prevalence studies and the measurement of problem gambling.

A further issue relates to ambiguities and assumptions in definitions of problem gambling and gambling-related 'harm'. For many years a medicalised approach, originating in North American clinical psychology and quantitative methodologies, shaped the accepted wisdom about problem gambling (McMillen 2007). However, based on Australian evidence most researchers in Australia, with few exceptions, have abandoned the clinical view of gambling as a disorder or addiction, and adopted a broader 'harm' understanding of gambling-related problems. The national definition currently accepted in Australia defines problem gambling as '*adverse consequences for gamblers, others or for the community*' (Neal *et al.* 2005).

As Svetieva and Walker (2008) have argued, however, the CPGI which was adopted as the national problem gambling screen at the same time as the national definition 'will not adequately capture the notion of harm that underpins current definitions of problem gambling'. 'Adverse consequences' in the national definition are narrowly defined in terms of time and/or money spent gambling. Furthermore, as well as inconsistent assumptions about the nature of 'harm', both the national definition of problem gambling and the CPGI have an implicit individualistic emphasis. Yet there is growing evidence of other gambling-related harms to 'others and the community' – e.g. adverse consequences for families, community capacity/resilience, cultural groups, social norms & traditions, etc. To quote from a journal article that compared the CPGI, SOGS and VGS:

'One important issue for future research is whether any of the existing screens do in fact represent an appropriate understanding of problem gambling, particularly in culturally and socially diverse societies such as Australia .... The limitations of

the screens examined in this study suggest that further development and refinement of their content facets is required.

Construction of problem gambling screens has been largely based on empirical evidence from problem gamblers in treatment and expert consensus about the nature of the problem. As noted previously, however, much of that expert opinion has come from psychology and psychiatry, and thus it has emphasised particular behavioural indicators and solutions. Moreover, despite evidence of high gambling participation rates among different cultural groups, problem gambling research has been dominated by western concepts, methodologies and solutions such as psychological counselling ...

In recent years governments in Australia have devoted extensive resources to the provision of problem gambling counselling and treatment services, as they have in New Zealand and many other countries. Despite considerable public investment in counselling services, however, evidence indicates that only 3-5% of people with gambling problems seek professional counselling – and then only when they have reached a crisis .... Males, indigenous and ethnic gamblers are less likely to utilise mainstream counselling services than other groups. Significantly, most people turn to families, friends and their social network for support.

Community-based gambling studies using qualitative, exploratory methodologies also reveal that people experience and define gambling problems in diverse ways and have differing expectations of support .... This raises questions about *the universality and relevance of the content items in existing prevalence screens* [italics added]. Emerging research suggests that problem gambling is much more than a financial, behavioural or psychological problem of individuals; it is a highly complex phenomenon that profoundly affects families and communities as well as gamblers.

The CPGI is a relatively new screen and is currently being refined to accommodate the findings of several completed Canadian studies. It is thus opportune to consider ways that the screen might also be modified to better conceptualise and measure problem gambling for application in different contexts...

Moreover, current screens record indicators of ‘harm’ only from the perspective and experience of regular gamblers. None examine gambling-related harm as experienced by family members or the community. To properly measure the prevalence of problem gambling as generally defined in Australia – i.e. defined as the adverse effects of gambling for the gambler *and for others* – it is necessary to complement screens with research that measures gambling-related problems experienced by family members and the community. Some Australian prevalence surveys have briefly examined these issues, e.g. by asking all respondents whether anyone in their family or social network has had a gambling problem .... But none have explored the nature or extent of those negative effects to inform a definition of the gambling problem from the perspective of those who are affected more generally. Complementary research on this issue is indicated’ (McMillen & Wenzel 2006, pp.168-9).

Lack of understanding and precision in the definition of problem gambling and gambling-related ‘harm’ continues to impede effective development of policy and harm minimisation measures. Research has suggested that problem gambling can manifest in various ways and follow multiple pathways (Blaszczynski and Nower, 2002). Some gamblers appear to move progressively from unproblematic gambling to moderate problems to a severe problem; other gamblers plunge rapidly into gambling

problems – sometimes as the result of a gambling ‘binge’ (Blaszczynski and Nower, 2003). For others, ‘problem’ gambling is episodic, with intermittent periods of controlled gambling and problem gambling; natural ‘recovery’ also appears to be common (Abbott *et al.*, 1999).

Problem gambling also has been shown to affect men and women in different ways; young men are especially at risk. An understanding of the gender and cultural risk factors, patterns and impacts of problem gambling is central to the provision of effective and acceptable services and programs. Services to assist people affected by problem gambling (individual gamblers, their families, friends and communities) need to go beyond psychological or financial counselling to address the multitude of contributing factors which precipitate different experiences of problem gambling. It is encouraging that gambling support services in Victoria, for example, will be located in community centres with a range of health and social professionals.

We know, for example, that Indigenous people are reluctant to seek help from mainstream counselling services when gambling problems affect their lives. A provisional conclusion based on the limited body of evidence is that commercial gambling has exposed Indigenous Australians to higher risks of gambling problems than the general population (McMillen & Donnelly 2008; Paterson 2007; Young *et al.* 2006; AH&MRC 2007). Yet little is known about potential harm, risks and benefits of commercial gambling for Indigenous families, social relationships and responsibilities, economic and community wellbeing.

My recent review of research on Indigenous gambling, possible determinants of problem gambling and available support services has argued that:

‘This reluctance is attributed to a ‘mismatch’ between the needs of Indigenous gamblers and families and available services...Disregard for Indigenous diversity and knowledge inevitably affects the design and effectiveness of service provision for Indigenous gamblers, their families and their communities.

By adopting a narrow focus on individual gambling behaviour, for example, research and counselling efforts miss the role of kinship organisation as the fundamental system of ordering which underlies Indigenous world views and social practice. Family kinship and social responsibilities are central to the value systems of Indigenous Australians and many other cultural groups...

Several researchers have suggested that Australian Indigenous gambling behaviours and cultural perspectives differ from and can be contrasted with Western concepts of time and money which are the focus of much gambling research and the national definition of problem gambling... Consequently studies of the relationship between commercial gambling and Indigenous communities have raised more questions than answers. Current knowledge gaps highlight the need for research which is culturally relevant as well as appropriate for policy development and support services within different Indigenous communities. Cultural, social and economic differences which exist between Indigenous and non-Indigenous Australians suggest it is reasonable to expect that the experience of gambling in its various forms, as well as its social and economic impacts, could also be different. Different subgroups between and within each Indigenous community also vary greatly in their patterns of gambling and in risks of incurring adverse consequences for themselves or others. Some groups in the Indigenous population seem to be at greater risk than others, even though their gambling patterns might be comparable...

Central questions are whether there are other valid and legitimate perspectives on Indigenous gambling to the dominant western paradigm, and indeed if there are a range of Indigenous perspectives arising from different geographical, historical and social circumstances. If so, a universal screening tool and centralised policies are likely to be ineffective. Disregard for Indigenous diversity and knowledge inevitably affects the design and effectiveness of service provision for Indigenous gamblers, their families and their communities.’ (McMillen & Donnelly 2008).

### **Recommendations – participation and problem gambling**

In terms of the national definition of problem gambling (Neal *et al.* 2005), there is a particular need for clear conceptual definition and empirical measurement of gambling-related harm, defined as ‘adverse consequences for gamblers, others or for the community’). Governments have relied heavily on prevalence surveys in the past, but a more open-ended exploratory research approach is required to allow gamblers and people affected by problem gambling to contribute meaningfully to knowledge on the issue.

Further clarification of the nature and extent of gambling-related ‘harm’ and problems in the Australian community is essential to provide a reliable indication of the need for services and preventative programs. Research should explore and understand the particular experiences, needs and contexts of gambling behaviour in cultural communities, with an ultimate focus on self-management of gambling-related health, social and economic issues.

This will be a lengthy and costly process, a challenge that individual state/territory governments are unlikely to tackle. The pragmatic demands of government dictate that they tend to focus on more immediate regional problems and needs. This task is more appropriate for GRA. In the meantime, the CPGI is the best (albeit flawed) available instrument to measure problem gambling prevalence in the Australian population – as long as its limitations are recognised.

## **2. Gambling impacts**

Debates and disagreements about the costs and benefits of gambling, and ways to measure impacts have continued since the 1999 inquiry. While conventional cost-benefit (CBA) framework is commonly used in impact studies, there are profound disagreements among economists over impact methodology, level of analysis, relevant variables and interpretation of data.

I have been critical of many gambling impact studies, primarily because the main focus is often on quantifiable economic variables (expenditure, employment, tourism, etc.) at the state (i.e. net) level of analysis. The CBA methodology favours economic methods and indicators above social indicators which are inherently more difficult to quantify, or for which aggregate data may not be readily available. In such studies social costs are often narrowly measured around problem gambling prevalence. Other potential gambling-related ‘harms’ and adverse consequences are rarely investigated, although many have been identified in the literature. While regional impacts are sometimes discussed for EGM expenditure and services for problem gamblers, analysis therefore tends to emphasise *net* economic impacts.



Alternative frameworks allowing more detailed and integrated analysis of gambling impacts at regional and local community levels are being developed. For example, see the 2008 *SEIG* framework including wellbeing indicators proposed for Canadian provinces (Anielski Management Inc. 2008). I have also developed a framework which would facilitate more detailed local area studies, relationships between residents & gaming venues, leakage between localities, the ‘sponge city’ phenomenon, changes and interactions over time, etc. However, trial studies have shown that there are major gaps in essential datasets at the local level – e.g. an absence of adequately robust and comparable data for social capital indicators and relationships; and official datasets such as those produced by ABS do not adequately reflect the connectivity between ‘communities’ & their dynamic aspects. Deficiencies in GIS techniques and disagreements about relevant models and variables also prevent reliable analysis of causal relationships between gambling and community impacts (McMillen 2009b).

With further refinement, however, that multidisciplinary methodology could be used to develop local area databases and/or to better inform policy and regulatory decisions about the licensing and impacts of EGM venues. It also could facilitate a localised and responsive public health response that more effectively reflects local conditions and actively engages with the affected communities.

I argued to the 1999 inquiry, for example, that ‘there is no simple explanation for the impacts of ‘caps’ on Australian communities, or an easy uniform answer to the question of whether caps (i.e. venue caps, or global statewide caps) have a beneficial or negative effect. Each state and each locality is different – and consequently the effect of caps varies widely, depending on policy and market conditions’. At the time I agreed with the Commission that caps are a blunt policy instrument, although when coupled with other responsible policies, limiting the number and availability of gaming machines may be effective. My views on that issue have not changed.

Since then preliminary research in three jurisdictions using a local area framework has raised questions about the limitations of regulatory strategies such as venue licensing and ‘caps’ on EGM numbers based on simple measures such as gaming machine density (McMillen 2009b; McMillen & Doran 2006; Marshall, McMillen & Doran 2004). While convenient access to gambling is known to influence participation, direct links between venue location and problem gambling are less certain.

Analysis of EGM expenditure in Victoria over several years suggests that the regional caps policy in that state fails to achieve its objectives of reducing the levels of problem gambling in vulnerable areas. ‘A fundamental defect in the criteria that have informed the current caps policy is the assumption that venues attract patronage and expenditure from residents in the local area. Accurate analysis of venue ‘catchment’ areas and patronage requires detailed local-area analysis and a different methodology to identify which gamblers frequent which venues’ (McMillen & Doran 2006). That is exacerbated by the narrow socio-spatial criteria (LGAs, SLAs) which predefine the ‘catchment’ areas for individual venues and their immediate populations. This rigid definition of a gambling ‘community’ fails to acknowledge research showing that venue catchments can vary widely, often spanning different LGAs.

It is also impacting on the application of several governments’ current attempt to reduce EGM numbers. Social impact studies are required with initial licence

applications in Victoria that allow local councils to lodge objections, some of which have been successful. Under the EGM reduction scheme, however, some local councils which have previously rejected additional EGMs are reportedly under pressure from neighbouring councils to accept machines that must be transferred to meet the current reduction target. In NSW, on the other hand, current policy aims to curb the expansion of EGMs using transfer of EGM entitlements and limiting the number of machines per venue. Although also informed by policy assumptions about EGM density and venue patronage, NSW does not have regional 'caps'. In that state the transfer of EGM entitlements reportedly has resulted in the relocation of machines from less profitable rural areas to more profitable locations, e.g. in metropolitan areas.

Using criteria similar to that in Victoria, the South Australian Government legislated in 2005 for a 15% reduction in the number of machines in the state. The policy aim was to reduce the number of EGMs *and* the numbers of venues. However, that policy has had limited impact on gaming revenue or gambler behaviour (Delfabbro 2008a). Delfabbro's study found there was a pre-existing over-supply of EGMs in South Australia and that many venues benefited from fewer machines. It also found that many venues adopted strategies to counter the effects of the machine reductions.

While Delfabbro's South Australian research found that most patrons gamble at venues close to home, research in different contexts has shown that some people will travel long distances to gamble at their preferred venue (e.g. Marshall, McMillen *et al.* 2004). The demand for machine gambling can be influenced by other services provided by the venue. For example, many venues offer cheap meals, fine dining and other activities subsidised by gambling revenue, that attract gamblers as well as non-gamblers. In most states, however, hotels tend to offer fewer non-gambling facilities than clubs. Venues in central locations (at transport hubs where many people work, shop and seek entertainment) also attract patrons from wide areas (McMillen & Doran 2006). Consequently policies based on simple measures such as reducing machine numbers in particular localities are not likely to reduce gambling-related harm.

Gambling behaviour is also influenced by a wide range of environmental factors other than the gaming machines themselves – e.g. venue types and size, geographical location & venue layout, availability of money for gambling, industry practices, etc. Research has consistently found that the prevalence of problem gambling is higher among hotel patrons, for example. These differences also partly explain the variation in problem gambling prevalence between Australian jurisdictions.

Socio-spatial research using a multidisciplinary framework including Geographical Information System techniques (GIS) has provided additional insight into the local area impacts of EGMs over time. For example, comparative local area research has shown that:

- In all localities studied, the 'fit' and interaction between gaming venues and their local communities have altered significantly since the venues were licensed;
- Gambling behaviour, policy impacts, community harm and wellbeing varied from one locality to another.
- Communities are not confined by official geographical boundaries (LGAs, SLAs); they also include a number of distinct communities within their boundaries. Even localities with high levels of social capital have pockets of

transient workers, temporary housing, etc. Similarly, disadvantaged localities have pockets of relative affluence;

- Communities are not static or passive entities. Interaction and mobility by residents and by local businesses is common. Communities also respond to changing circumstances and local problems in varied ways. While some communities respond by building regional capacity to address local problems and the adverse consequences of problem gambling, other localities lack cohesion or capacity to address gambling-related problems;
- In general, the annual increase in expenditure per EGM tends to be significantly higher in hotels/pubs than clubs. However the change in expenditure was not consistent with the increase in EGM numbers;
- Seasonal fluctuations in EGM expenditure varied from one locality to another – in some cases quite markedly. Seasonal patterns were not directly related to new venues or an increase in EGM numbers, however. This suggests that other localised factors may affect patterns of expenditure;
- Travel patterns by patrons to EGM venues varied within & between communities. The spatial extent of venue catchments also varied considerably, including for EGM gamblers residing in pockets of disadvantage;
- Leakage of EGM patronage/expenditure and the ‘sponge city’ phenomenon occurred in some localities, but not others. That is, some venues drew patrons from neighbouring communities outside official boundaries of Local Government Areas (LGA) and Statistical Local Areas (SLA);
- On available data, community ‘harm’ and benefit from gambling varied between localities and the communities within them; and
- Venue engagement with community groups varied from one venue to another. However it was not clear from available data if patterns of venue ownership (e.g. the trend to large gambling organisations operating several venues, such as Tabcorp, Tattersall’s, Australian & Liquor Holdings Ltd [ALH, a subsidiary of Woolworths]) limit or strengthen the potential for providers to develop a positive relationship with the local community.

Further, as was the situation in 1999, global and regional restrictions on EGM numbers have meant that many clubs and hotels have been excluded from the commercial benefits of gaming. There was a pronounced division in between the ‘haves’ (those venues with EGMs, increased patronage and incomes and improved facilities) and ‘have nots’ (venues without EGMs who now lack comparable resources and facilities to compete for patronage).

### **Recommendations – Community impacts**

The recent response to localised disadvantage by the Rudd government and some states (e.g. the Commonwealth Government’s Social Inclusion agenda and similar initiatives in Victoria and South Australia) offers considerable promise to address deficiencies in understanding the effects of gambling on communities.

- With cooperation of COAG, those programs could be developed for all Australian jurisdictions to include a specific focus on gambling-related community wellbeing, resilience, risks and harm (e.g. by the National Research Panel I have proposed below).
- Important objectives would be to develop standardised local area datasets and to identify ways to build community capacity and strengthen communities so they are more supportive environments for gamblers, their families and socially-isolated groups.

- There would be a key role for local authorities and community agencies in this process, especially to encourage collaboration between adjacent shires to develop a regional response.

### **Tax and Community Benefit Funds**

With the exception of WA, gambling taxes have contributed a large share of state/territory total revenues since the 1970s. Since 1999, however, overall growth in Australian gambling tax revenues has slowed and real tax revenue from gambling has declined in several jurisdictions. The share of taxation revenue derived from gambling also varies considerably by jurisdiction due to widely different tax rates and variation in the availability and popularity of gambling products, as well as the relative strength and diversity of the overall state economies (McMillen 2009a, Table 1). In New South Wales, for example, gambling taxes comprise 32% of the national total reflecting higher EGM numbers and expenditure in that state. Even so, EGM tax rates in New South Wales are lower than elsewhere (for example, South Australia, Queensland and Victoria), largely the result of determined opposition by the club sector (Australian Gaming Council 2007; McMillen & Wright 2008).

Commercial gambling also has become so pervasive and central to community life that it has changed Australian society in subtle but powerful ways. EGM revenues have financed extensive club and hotel refurbishment with new facilities that attract patrons from other businesses and activities. 'Community benefit' payments to local organisations, sports groups and counselling services also bind them to the gambling operators while other groups struggle to survive (McMillen 2009a).

However funding arrangements vary widely although community contributions from gaming venues amount to only a small proportion of EGM profits. In NSW, for example, 2% of casino gaming revenue funds problem gambling support services, research, education and awareness programs and other community projects. The Responsible Gambling Fund (RGF) from EGM taxes provides grants for projects relating to problem gambling. The RGF is administered by an appointed panel of community and government representatives assisted by a secretariat from the Office of Liquor, Gaming and Racing (OLGR). In addition the Community Support and Development Scheme (CSDE) provides clubs with a tax rebate of up to 1.5% of EGM gaming tax for financial support of activities relating to community welfare, social services, community development or support services, community health services, employment assistance activities.

The South Australian Gamblers Rehabilitation Fund (GRF) is recurrently funded by contributions from all gaming providers - the Australian Hotels Association (SA), Clubs SA, SkyCity Adelaide - and the South Australian Government. The current funding available to the GRF is \$5.445m., of which \$3.845m. per annum comes from gaming tax and \$1.6m. is a voluntary contribution from industry.

In Queensland, each of the four casinos pays 1% of gross profit into a Casino Community Benefit Fund administered by a specific Trust established for that casino. Licensed clubs pay 8.5% of EGM tax into a Gambling Community Benefit Fund (GCBF) administered by QOLGR. Hotels with monthly metered wins over \$100,000 also pay into a Health Services Levy in a sliding scale based on EGM earnings (from 0-20%). Gaming venues also are encouraged to make additional community contributions in cash or kind. Calculation of contributions includes the commercial value of 'in-kind' contributions such as community group access to venue meeting

rooms, etc. However, I understand that community payments by Queensland gaming venues in 2003-04 totalled only 3.4% of EGM profits after tax.

Voluntary community contributions tend to be highly selective, often directed to recipients that promote the venue with various forms of 'badging' (e.g. sponsorship of sports teams and equipment, courtesy buses to the venue, physical infrastructure). In many cases the recipient groups have become dependent on that funding. For example, when the Carr Government tried to increase EGM taxes to fund the state's acute health and transport infrastructure needs, the ClubsNSW's vigorous campaign against the proposal was supported by public rallies of sports associations and well-organised community groups, including a targeted protest at the launch of the National Rugby League season (McMillen & Wright 2008).

### Recommendations – community benefit funds

These funding arrangements are so entrenched that it will take policy reform and alternative sources of community funding to change the situation. In the current political and economic climate, such a radical policy shift is highly unlikely unless there is strong, persistent public demand for it to occur.

- If ever a decision was taken to remove the dependency of community groups and sports clubs on funding derived from gambling revenue, rather than allowing those sporting and community groups to collapse it would be preferable for gambling sponsorship to be progressively and gradually replaced with other sources of funding, as was done with tobacco sponsorship. As that public policy example has shown, this process can be achieved with public support but it would take several years.
- Meanwhile gambling community benefit funds could be required to allocate funding on a pro rata basis to those communities which generate the revenue (rather than going into a centralised account which may fund something external to the community).
- Progressive governments also could readily develop new policies and/or models for allocation of community grants to provide more equitable distribution of gambling funds on a *needs* basis – e.g. for emergency relief and services for disadvantaged people in the local community, public housing, etc.
- State/territory governments could also facilitate the development and growth of alternative recreational facilities and strengthen social capital and infrastructure in local areas.
- There also have been calls for funding decisions and the responsible agencies to be more transparent & accountable.

## 3. Regulation

The PC's 1999 inquiry found that while Australian gambling regulatory arrangements have 'some positive aspects', there were significant shortcomings including: inconsistent rationales; priority to economic and revenue objectives; lack of substantive independence of core regulators; disregard of consumer interests; fragmented responsibilities; lack of due process and procedural transparency; patchy consultation processes; and inadequate data collection and research.

To achieve regulatory consistency and independence, the cornerstone of the PC's regulatory 'blueprint' was an independent gambling authority with control over all forms of gambling, also tasked with the objective of furthering the public interest

through transparent consultation processes. The PC's model proposed institutional separation of regulatory functions, separating government policy development, decision-making and enforcement from oversight of that policy by an independent control authority. Similarly, the PC suggested that a separate agency should control funding for service programs and community education.

Since then, there has been increased attention to gambling regulation from governments and changes have been made to regulatory policies and processes in several states. A 'new regulatory paradigm' also has emerged in response to social issues (problem gambling, adverse social impacts) and to public demands for more democratic and accountable gambling regulation (McMillen 2002; Delfabbro *et al.* 2007, pp.42-65). Most government and statutory regulators have been given additional regulatory powers to protect the public interest. Various regulatory instruments have been designed for consumer protection and issues of ethical industry practice have become increasingly important. This shift in regulatory priorities has resulted in positive policy changes, especially where consultative frameworks have been established so community groups can make active contributions to the policy process (e.g. RGAC in Queensland, RGMAC in Victoria).

Market growth has been managed by limiting the number of operating licences (e.g. 'caps' on the number of gaming machines) and by controlling operating conditions, forms of advertising, taxation rules, etc. With the exception of the Queensland Gaming Commission, which regulates EGMs in clubs and hotels only, the jurisdiction of core government departments and statutory regulators has been extended over all forms of gambling.

Yet the legalisation and regulation of gambling by individual state and territory governments has led to a fragmented, inconsistent and complex web of government controls and requirements. Different regulatory roles, standards and reforms have been shaped by local circumstances and government priorities. Current regulatory structures are characterised by a wide variety of approaches, heavily influenced by the changing views of governments at different times and by specific arrangements entered into with particular providers. In some cases regulatory reforms have been met with resistance by organised industry interests, drawing on their considerable resources and political connections.

As a result, Australian gambling regulatory regimes (i.e. the legislation, regulatory agencies, powers and processes that govern Australia's gaming industries) differ between the various states/territories. This has resulted in different licensing criteria and regulatory standards between jurisdictions as well as between different types of gambling. Probity and integrity standards for wagering providers, for example, continue to be less rigorous than for licensed gaming operators.

No state/territory government has embraced the PC's proposed model for gambling regulation. With the possible exception of South Australia, close structural and procedural links between policy agencies and the statutory authorities have been retained or strengthened since 1999. As in the past, ministers and Parliaments ultimately determine policy, while government departments are responsible for policy advice and implementation, as well as many regulatory functions. In most states/territories, 'independent' control authorities in Australia function essentially as agencies of government – i.e. to perform their regulatory functions they rely on the

government for resources, advice and information, and have limited capacity for independent action.

All statutory authorities are hampered by basic political-legal and capacity deficiencies to varying degrees – e.g. legislative constraints on their role; limited resources; the potential for political appointments; part-time involvement & frequent turnover; reliance on information and advice from government policy officers &/or reluctance to challenge recommendations of government staff; inconsistency in decisions between authorities; insufficient community input and public accountability, etc. Further, the legislated powers, processes and resources of these authorities, and their relationships with government, differ from one state to another.

As in many other industries, a pronounced shift from government ‘command and control’ models to more cooperative governance also has emerged where governments work in partnership with industry to develop practical regulatory procedures, often relying on self-monitoring and routine risk-based audits, rather than direct surveillance. In the main, Australian gambling regulators seek compliance through negotiation and persuasion than through active enforcement and deterrence. Even so, industry representatives continue to argue for more self-regulation.

Preliminary research has exposed flaws and risks in the regulatory systems. Relatively little emphasis now seems to be given to the deterrence, detection and prosecution of statutory defaults and criminal activities, a distinct shift from the 1970-80s when those issues were a gambling regulatory priority. The shift to risk-based auditing and compliance systems for gaming raises questions about regulatory outcomes. Moreover, regulators and, in some cases, ministers have considerable discretion regarding enforcement and sanctions for misconduct and breaches of regulation. Mandatory periodic reviews of gambling licences are only required for casino operators in NSW and Victoria. Those reviews are undertaken by the respective statutory authorities (i.e. the CGCA and VCGR) who rely heavily, but not exclusively, on information provided by the government’s regulators.

Lack of systematic evidence of regulatory ‘failure’ could be presented as confirmation that existing regulations have been effective. In the absence of an independent regulatory review, however, that argument may be based on a false premise. It could reflect ineffective regulatory scrutiny and exposure rather than successful enforcement of gambling laws.

There have been documented instances of regulatory failure such as money laundering and concerns about regulatory ‘capture’. For example, a review of regulations and corporate practices at Star City Casino found defects in regulatory arrangements and serious breaches of regulation and public standards by the casino operator (McMillen and Woolley 2000; NSW Casino Control Authority 2000; Farrell 2002). Similar defects in internal regulatory procedures at Crown Casino have been reported in the media; and several cases of alleged regulatory breaches by casinos and other gambling providers have been before the courts, attracting media attention. Publicity about incidents of fraud associated with sport betting and several cases of questionable conduct by gaming providers also have undermined public confidence in the industry and the capacity or will of government and regulators to act in the public interest.

Regulatory failure is more likely to occur in jurisdictions where market competition and revenue dependence induce regulatory complacency or lack of vigilance (McMillen 2006). A potential conflict of interest continues to exist for governments reliant on industry revenue - e.g. when government's economic interests conflict with social or regulatory imperatives. Reliance by state and territory governments on gambling revenues and general reluctance to consider alternative tax options create pressure to accommodate industry demands for regulatory concessions to maintain profits.

Governments that invest in gambling enterprises (e.g. via superannuation funds) also have a vested interest in facilitating industry growth and continued profitability. In some cases this in turn has encouraged state/territory governments to react to external competitive pressures and to industry demands for regulatory concessions (McMillen & Wright 2008). Public concerns also have been expressed about links between governments and gambling industry groups (e.g. through lobbyists, consultants and political candidates) and large donations by the industry to political parties, most notably in NSW and the ACT. In contrast, several years ago the ALP decided not to accept donations from the tobacco industry because of the harm caused by tobacco products. I would welcome a similar decision by all political parties on donations from gambling interests.

A fundamental flaw in the current Australian regulatory regime, however, is the varied and often inconsistent approach to licensing of gambling providers. Gambling licences are a privilege. Given the potential for large profits and for social harm, controls over market entry therefore should be comprehensive and stringently applied. Yet licensing processes and criteria (i.e. the way regulators approve market entry and the standards and conditions under which licensed providers must operate) vary markedly from one jurisdiction to another. This is reflected in the wide diversity in types, size and distribution of gaming venues and wagering operators between states and territories.

For example, in South Australia hotels operate over 90% of non-casino EGMs; sometimes these hotels have few non-gaming facilities other than a bar, bottle shop and small 'bistro'. In the ACT and NSW, EGMs are concentrated in large clubs which are permitted to install hundreds of EGMs as well as to establish 'branch' venues. In Victoria's distinctive regulatory system, a unique duopoly of EGM owner/operators (Tattersalls and Tabcorp), in conjunction with the government's policy of allocating an equal number of EGMs to clubs and hotels (105 machines per venue) and statewide and regional 'caps' on machine numbers, has meant that for many years operators placed EGMs in venues on the basis of revenue performance. Many argue that this arrangement has been a major factor in problem gambling in that state.

In contrast, the majority of EGMs in Queensland are located in clubs (with a maximum of 280 machines) which must provide a wide range of non-gambling facilities for patrons. Since the 1990s, the Queensland Gaming Commission has determined licences on the basis that club incomes are not unduly dependent on gambling revenue. Queensland hotels can install 40 machines (subject to limits by the Queensland Gaming Commission) but those hotels also must provide non-gaming facilities.



Similar jurisdictional differences exist with wagering. For example, since 1999 tax concessions and more liberal licensing and operating conditions in the Northern Territory have attracted several private internet bookmakers from other jurisdictions.

A brief description of the situation for EGM regulation in some states will illustrate the current diversity, tensions and issues. I am most familiar with regulatory relationships and processes for gaming in Queensland; hence I have given more detailed comment on that system. However this must not be interpreted as more critical of Queensland than other jurisdictions. Although this is far from a comprehensive analysis (e.g. I have not considered regulatory outcomes), there appear to be problems and defects with the regulatory structures, processes and relationships in all jurisdictions.

### ***1. NSW***

Structural reforms by the NSW Government in 2006 consolidated the core regulatory and operational functions for both EGM gaming and wagering (policy development, control, enforcement, revenue assessment and program administration) in one central department (Office of Liquor, Gaming and Racing [OLGR]). Casino regulation remained with the Casino Control Authority [CCA] (McMillen & Wright 2008).

In July 2008, however, the Government removed the structural separation between casino regulation (CCA) and EGM gaming in clubs and hotels (OLGR, Licensing Court of NSW and Liquor Administration Board), transferring these functions to the new Casino, Liquor and Gaming Control Authority (CLGCA). This agency is now responsible for licensing, regulatory and other decision-making functions for the casino, registered clubs, liquor and gaming machines. The Compliance Division is responsible for routine and special investigations of licensees and licensed premises, clubs registered under the *Registered Clubs Act 1976*, provisions of the *Gaming Machines Act* and other legislation relevant to gambling. Administration of wagering remains with the OLGR.

NSW harm minimisation reforms since 1999 have been criticised as ‘weak options which will make both the State Government and gaming industry happy’ (McMillen & Wright 2008). In 2004 the Independent Pricing and Regulatory Tribunal (IPART) recommended that the department (OLGR) should take responsibility for the ‘planning, direction setting and guidance for responsible gambling policy’ to promote a ‘culture of responsibility’ in clubs and hotels (IPART 2004, 27). IPART also recommended that gambling treatment services be transferred from OLGR to the Department of Health &/or a collaborative relationship be established between the two departments. However concerns have been expressed that OLGR lacks the organisational culture or political will to develop a ‘comprehensive public health approach to gambling’ (Gambling Impacts Society Inc. 2008). Government concessions on a number of harm minimisation measures after pressure from industry continue to be widely criticised.

In January 2009 several new harm minimisation reforms were introduced, including: clubs are being encouraged to relocate into new development areas; restrictions on distribution of promotional material; controls on linked and progressive jackpot machines; and a complaints process and an Ethics Complaint Panel have been established to raise ethical standards in the industry. With some exemptions, venues

located in a shopping mall or arcade will no longer be allowed to increase the number of EGMs; and EGMs will not be approved for new venues in those locations.

A new local impact assessment (LIA) process also has replaced the previous social impact assessment requirement to predict the impact of additional gaming machines in a local government area (LGA). Using a ranking system based on density of poker machine entitlements, per capita gaming machine expenditure per capita and the SEIFA index of relative socio-economic disadvantage, LGAs have been classified into three bands. Depending on the classification of the local government area where the venue is located, the venue may or may not be required to complete a LIA when applying for an increase in the number of gaming machines. This process is under review and may be modified in 2010. As explained above (Gambling Impacts), I have reservations about the assumptions and methodology underlying this approach.

## **2. Victoria**

By contrast, in Victoria a centralised ‘control’ authority for all forms of gambling was already in place in 1999 (the VCGA), but existing arrangements had been widely criticised for blurred boundaries between the VCGA’s regulatory role and the perceived influence of Ministers over regulatory decisions (McMillen & Wright 2008). Since then, Victorian gambling policy and regulation have undergone a comprehensive, integrated and continuing reform process, involving consolidation of legislation and restructuring of regulatory relationships as well as new harm minimisation and research initiatives (Office of Gaming and Racing [OGR] 2006; VCGR Annual Report 2007-08; *Gambling Regulation (Licensing) Amendment Act* 2009).

Although current Victorian regulatory arrangements are closer to the ‘blueprint’ proposed by the PC than they were in 1999, subsequent reforms by the Victorian Government have not resulted in independence of the ‘control’ function from government or a clear separation of regulatory structures and operations. Rather, functions of the new Victorian Commission for Gambling Regulation (VCGR) and departmental officers continue to overlap. The new office of Executive Commissioner (a public official and member of the VCGR) has strengthened the relationship between government policy and the Commission’s regulatory functions.

Statutory VCGR Commissioners appointed by government are the central decision-making authority, responsible for licensing (venues, key personnel, suppliers, etc) and enforcement of all legislation relevant to gambling in Victoria. Government regulators in the VCGR have regulatory, supervision and administrative responsibility for the casino, lotteries, all forms of wagering, hotel and club gaming machines. The Compliance Division is responsible for routine and special investigations of licensees and licensed premises. The VCGR’s Annual Report and newsletter (VCGR News) gives information on the aggregate number of complaints, investigations, disciplinary actions and prosecutions of licence holders.

A research strategy to ‘better align policy and service delivery’ has been developed within the Department of Justice, which is the now Victorian Government’s central policy advice and research agency for gambling. Following concerns about the research program directed by the former Gambling Research Panel, a Responsible Gambling Ministerial Advisory Council (RGMAC), consisting of representatives from community groups and industry, and an Independent Peer Review Panel (IPRP)

of experienced researchers also were established to advise on policy-relevant research; and funding was provided to Melbourne University to establish a Problem Gambling Research and Treatment Centre. The Victorian Government has enlisted local communities and councils in the reform process, although the role of Community Advocate seems to have been suspended after a review in 2007. Whereas public interest groups have been marginalised in NSW, Victorian reforms since 1999 have been more inclusive of community views and more prescriptive over industry.

For example, the VCGR consults representatives of local councils and community groups, who also can submit objections to the licence application which must be considered by the VCGR. As can occur in NSW, submissions to the licensing process are considered in open hearings. The Victorian licensing process is time-consuming and legalistic, however, and local representatives are often disadvantaged by limited resources (McMillen & Masterman-Smith 2001; Masterman-Smith 2002). Even so, in some cases the input of community agencies and local councils to those hearings has successfully prevented EGMs being introduced to their community. Moreover, the VCAT provides an avenue for appeals against VCGR licensing decisions.

In addition to state gaming taxes, licensed hotels in Victoria pay 8.33% of net gaming revenue to a Community Support Fund which is used to provide statewide gambling counselling and help services. Licensed club and racing club venue operators also are required to pay an additional 8.3% of net gaming revenue towards community benefits. Clubs must lodge a Community Benefit Statement (CBS) with the VCGR each year. Tax penalties are imposed for late lodgement; and clubs which have not paid the required community benefit contribution must make up the difference.

### ***3. Queensland***

In Queensland, the Queensland Office of Liquor Gaming and Racing (QOLGR), now a division of the Department of Employment, Economic Development and Innovation (DEEDI), is the central policy and regulatory agency for gambling and liquor. QOLGR is responsible for maintaining the integrity and probity of the gambling industry (machine gaming, casinos, charitable gaming, lotteries and keno), responsible gambling policy, research activities and managing the allocation of funds for community benefit. Its regulatory role includes implementing the licensing regime, the provision of policy advice on gambling issues, compliance and inspection activities, prosecutions for offences under gaming legislation, and implementing responsible gambling measures.

QOLGR also manages the secretariat for the Responsible Gambling Advisory Committee (RGAC). The RGAC was established in the late 1990s to advise the Minister with membership from other government departments, industry, community groups. It was designed to encourage a 'whole of government' approach to gambling policy, to give community groups a permanent mechanism for active input to policy development and research, as well as to achieve a high level of industry commitment and compliance. QOLGR also manages the allocation of funds from the Community Investment Fund, which includes grants to community organisations from the Gambling Community Benefit Fund (GCBF).

The relationship between QOLGR and the Queensland Gaming Commission (QGC) is arguably problematic insofar as the Commission lacks the independence and resources suggested by the Productivity Commission. To assist with its regulatory functions, the part-time Commission relies heavily on information, advice and

recommendations of the QOLGR. The QGC, which normally meets for only a half-day once each month, does not have its own secretariat; nor can it commission its own research or obtain independent legal advice.

The Queensland Gaming Commission is a statutory body responsible for licensing EGM venues, approving increases in EGM numbers and hours of gaming in clubs and hotels. Its authority applies to clubs and hotels only; Queensland's four casinos are regulated by the QOLGR. This regime differs from that in other states where casinos are regulated by the same statutory authority responsible for EGMs and other forms of gaming. Although the Commission previously licensed key gaming personnel, this responsibility now rests with QOLGR.

On receiving EGM licence applications, QOLGR conducts an investigation into the application and makes an assessment on the suitability of the applicant to be granted a licence. The Executive Director of QOLGR makes a recommendation to the Commission based on the findings of that investigation. The Commission may grant or refuse the licence, or impose any conditions which the Commission considers are in the public interest for the proper conduct of gaming, including placing limits on the numbers of EGMs. The Commission also has powers to suspend or cancel licences and request that the Executive Director of QOLGR provides 'show cause' notices to gaming venues and other licensed participants in gaming. Breaches of legislation and sanctions imposed are reported in the Commission's Annual Report.

In considering EGM licence applications, the QGC has responsibility to 'balance the benefits of machine gaming against the potential for harm to the community'. In addition to legislated requirements, in 1999 the Commission developed 'guidelines' for licence applicants indicating the social impact criteria, economic issues and venue design issues which would inform their decisions. The requirement for Community Impact Statements (CIS) based on those guidelines and a responsible gambling statement was subsequently written into legislation in December 2000. For example venues are required to develop a range of non-gambling activities to ensure that income is not dominated by gambling. Local councils and community groups can submit objections to the licence application which must be considered by the Commission. However, unlike the Victorian Gaming and Racing Commission (VGRC), the Queensland Commission does not hold public hearings or interviews related to the licence.

There is no statutory requirement for the Queensland Gaming Commission to publish reasons for its decisions, although these are provided to applicants. Appeals on the Commission's decisions are made to the Magistrate's Court or the Minister, who has authority under the *Gaming Machine Act 1991* to issue ministerial directions. For example, there have been cases when the Minister, on appeal, has 'set aside' a determination by the Commission to cancel a gaming machine licence (e.g. Queensland Gaming Commission 2008, p.7), returning the matter to the Commission for further consideration. In such cases the QGC relies for legal advice on Crown Law, the Government's own legal service provider. Notwithstanding the merits of the appeal, the Commission's reliance on information provided by QOLGR and on Crown Law's legal advice compromises its capacity to act independently of the Government and/or the Minister.

On the other hand, following a review of all Queensland tribunals in 2008, proposed reforms could improve public accountability of QOLGR decisions. Whereas the Commission previously has had authority to hear appeals against certain decisions by the Executive Director QOLGR, that function has recently been transferred to the new Queensland Civil and Administrative Tribunal (QCAT).

Although the Commission can impose additional conditions on an EGM venue licence, there is no formal procedure for the Commission to check if those conditions have been acted on, or their effectiveness. Nor is there any mechanism for the Commission to follow-up on a venue's CIS to see if the predicted community benefits have been achieved – or indeed if the CIS guidelines are actually relevant. Gambling research and evaluation is administered through QOLG. Projects are either conducted internally, commissioned by the department or awarded through competitive grants/tenders (e.g. prevalence surveys, reviews of the *Queensland Responsible Gambling Code of Practice*).

Harm minimisation strategies and support services such as the Gambling Helpline also are funded and administered by QOLGR. Queensland was the first state to have an integrated harm minimisation program, developed with the Responsible Gambling Advisory Committee [RGAC], a collaborative 'partnership' between industry, government and the community. [I should disclose that I was commissioned by Qld Treasury in 2001 to develop ten Implementation Resource Manuals (IRM) which provide practical procedures for all Queensland gambling providers on how to effectively implement the *Queensland Responsible Gambling Code of Practice*.]

However it is not clear whether the RGAC continues to have a meaningful or effective role in policy advice, research or program evaluation. Moreover, communication with other gambling agencies (e.g. the Queensland Gaming Commission) is limited and managed through QOLGR. For example, the RGAC does not have a role in the licensing process; and the QGC is not provided with regular information about the RGAC's activities, although on a few occasions the Chair of the Commission has asked to address the RGAC. In my experience, neither the RGAC nor QGC receive regular information from QOLGR about relevant research findings or policy initiatives in other states/territories.

The Queensland approach is therefore more centralised than in some other states (e.g. Victoria, South Australia), with most of the major functions (regulation, policy, service delivery and research) for all forms of gambling concentrated in QOLGR. The Commission is responsible only for licensing EGMs in clubs and hotels, but even this function cannot be undertaken without essential support from the department.

#### ***4. South Australia***

Whereas most state governments have retained a close link between gambling policy and regulatory functions, South Australia's Independent Gambling Authority (IGA) is closest to the 'independent' control authority suggested by the Commission in 1999. The IGA is a statutory authority supported by a small secretariat staffed by public servants, which, while nominally part of the Department of Treasury and Finance, is physically and operationally separate from the department.

The functions and powers of the IGA are more extensive than its counterparts in other jurisdictions and include:

- To ensure that an effective and efficient system of supervision is established and maintained over the operations of gambling licensees and to advise the Minister on matters relating to the operations of licensees;
- To develop and promote strategies for reducing the incidence of problem gambling and for preventing or minimising the harm caused by gambling;
- To undertake, assist in or co-ordinate ongoing research into matters relevant to the Authority's functions, including research into the social and economic impacts of gambling and the gambling industry, the likely impact on the community of any new gambling product or gambling activity; and strategies for reducing the incidence of problem gambling and preventing or minimising the harm caused by gambling.; and
- To review the two *Codes of Practice* (Advertising and Responsible Gambling) every second year.

The Authority has 'power to do anything that is necessary for, or incidental to, the performance of its functions'. The scope of the harm minimisation functions of the Authority and the enabling power to give effect to these functions is very wide. For example, in 2003 the IGA issued guidelines for approval of games that could aggravate gambling problems; in 2004 a problem gambling family protection orders scheme was introduced, allowing family members of a (problem) gambler to apply to the IGA for certain orders to be made with the consent of the gambler; and in 2006 the IGA issued gaming machine licensing guidelines including considerations regarding social impacts. The Authority also can hold public inquiries and obtain independent legal advice, unlike the Queensland Gaming Commission.

The Liquor and Gaming Commissioner (LGC) administers all gaming legislation in South Australia and is responsible for gaming licences, including gaming venues, EGMs and the number of machines per venue. The Commissioner is an independent statutory officer whose activities are supported by the Office of the Liquor and Gaming Commissioner, which is part of the Justice portfolio. However like the IGA, the Commissioner is accountable to Treasurer in gaming and wagering matters. The LGC's responsibilities include to:

- Determine all applications for gambling and key personnel licences;
- Approve gaming machines, games and the centralised monitoring system (CMS), as well as the number of EGMs per venue and hours of operation;
- Approve rules and systems for wagering and resolves disputes; and
- Report to the IGA.

There is considerable overlap between the functions of the IGA and the Commissioner. For example:

- The Commissioner can add to the conditions of a licence, but the IGA also can make conditions on a licence in response to a Social Effect Test.
- The Commissioner is responsible to the IGA for the constant scrutiny of licensed gaming providers – i.e. inspection, monitoring and scrutiny of gaming operations, and disciplinary action against licensees.
- The Commissioner can review banning of persons by licensees, while people may ban themselves from gambling establishments under the authority of the IGA. People banned from casino gambling by the Liquor and Gaming Commissioner (LGC) can appeal this decision to the IGA.

- The IGA is responsible for development and reviews of the Codes of Practice, while the LGC is responsible for regular monitoring and enforcement. The IGA is unable to enforce the Codes or apply sanctions, although breaches and penalties are published in the LGC's report to the IGA (which is attached to the IGA's Annual Reports).

A third South Australian gambling agency is the Office of Problem Gambling Services (OPGS), a division of the Department for Families and Communities, which administers the Gamblers Rehabilitation Fund (GRF) and manages the gambling support services. The GRF is kept within Treasury and funds the Gambling Help Services (including a clinic at Flinders University and a network of counselling services), the 24-Hour Gambling Help Line, community education programs, research and evaluation.

A Responsible Gambling Working Party with representative from industry and community agencies has been established to look at ways to help gamblers set limits on their gambling. The government previously rejected the recommendation of its IGA for pre-commitment smartcards to be used for the State's gaming machines. Thus the Working Party's current focus is on financial literacy and education programs for schools.

While the IGA has more independence and powers than statutory regulators in other states/territories, there also is significant potential for tensions, communication breakdown and lack of coordination between the IGA's regulatory functions and decisions, and the government's agencies for policy advice (Treasury), licensing and enforcement (LGC), and harm minimisation (OPGS).

Regulatory arrangements for EGMs in the Northern Territory and Tasmania are similar to those in Queensland. Although legislation shaping the gambling environment differs (e.g. numbers of machines, licensing criteria), the statutory licensing commissions in those jurisdictions also rely heavily on government information, administrative and legal support to perform their regulatory functions. The ACT differs insofar as the ACT Gambling and Racing Commission has its own secretariat and is responsible for the Territory's harm minimisation and gambling research programs.

### **Regulatory impacts - licensing**

As noted previously (Gambling Impacts) inconsistent and deficient *licensing* criteria and processes in the various jurisdictions have differentially shaped the Australian gambling environment and community impacts. There is growing evidence that gambling impacts vary from locality to locality, even where numbers of venues and/or EGMs are comparable. Some communities seem more resilient than others, despite similar numbers of EGMs and/or gaming venues. We also know that gamblers behave differently in different environments; e.g. NSW, ACT and SA have the highest proportions of per capita expenditure derived from EGMs. And at a general level, gaming machine expenditure in hotels is higher than in clubs.

Based on findings from local area research in three jurisdictions, I have argued that regulators and licensing authorities should give more consideration to a public health approach to harm minimisation which stresses the importance of the local social environment on both the aetiology and prevention of gambling-related harm, and on the maintenance of individual and community capacity and wellbeing (McMillen 2009b). For example, although many regulators require applications for venue/EGM

licences to identify the potential impacts on disadvantaged groups/areas, *social capital* assessments of community capacity and/or resilience are not required with licence applications.

Moreover, regulators do not monitor *actual impacts or changes* around the venue after the licence is granted (e.g. changes to local environment & neighbourhood conditions). This is a particular issue of concern in localities which experience development or decline (e.g. economic change, rapid suburbanisation, deindustrialisation, changed transport/traffic arrangements, etc.).

Local authorities, community agencies and groups are often a useful but under-utilised source of local area data and information on changes associated with gambling. However those data are not always comparable across communities; and local knowledge is often subordinated to official ABS statistics, quantitative data or the opinions of professional experts.

### Recommendations – licensing

While it is not practical to expect previous licensing decisions to be reversed or amended, I submit that:

- In each jurisdiction with CIS requirements, current EGM licensees should be followed up to investigate if the impacts predicted in original community impact statements submitted with their applications have been achieved (i.e. benefits and amelioration of adverse impacts).
- Comparative analysis of the local area impacts of EGM venues in a number of selected localities would alert regulators and policy-makers to emerging trends, thus allowing remedial action to minimise harm and maximise local community benefit;
- A comparative review of licensing criteria, processes and outcomes is needed to identify the flaws and advantages of different licensing systems; and
- Regulatory reform of licensing criteria and processes is indicated to rectify any problems identified and achieve greater national consistency.

Despite the different regulatory systems in various jurisdictions, there has been no systematic audit or analysis of each state/territory's licensing processes, level of compliance, enforcement strategies and outcomes. I submit that a comprehensive and comparative review of gambling regulation (gaming and wagering) is required to identify regulatory priorities, deficiencies and necessary reforms. The audit should be applied to Australia's wagering industries (TABs, bookmakers) as well as gaming providers (EGM venues and manufacturers, casinos, lotteries, etc) in all states/territories.

- The review would assist an 'evidence-based' approach to regulatory enforcement and inform regulatory models of current best practice and cooperative compliance. With constructive and democratic collaboration between major institutional participants in regulatory activity, the aim would be to identify the most effective and appropriate regulatory instruments and relationships without unnecessarily increasing the regulatory burden on industry or regulators.

### Gaming Machine National Standard

The PC's 1999 inquiry identified several features of EGM gambling that were potential risk factors for problem gambling. Further, while states/territories have agreed on *minimum* national standards for configuration of gaming machines and the



parameters of play by gamblers, the parameters actually applied to the operation of gaming machines can vary markedly. The extent to which the National Standard is implemented in any particular jurisdiction is determined by the regulators in that state/territory. The Victorian Appendix to the National Standard, for example, includes a specific chapter on responsible gambling requirements that are a prerequisite for the approval of any gaming machine type or game in that state, while the NSW Appendix to the National Standard does not include similar provisions.

Gaming machine features (e.g. size of stake & prizes, speed of play) therefore differ between states/territories; and there is sometimes variation in parameters between different types of venues within each jurisdiction (e.g. between clubs, hotels and casinos). Consequently recent research on the effects of gaming machine features (e.g. Blaszczynski, Sharpe & Walker 2001; Livingstone, Woolley & Borrell 2006; Livingstone & Woolley 2008) relate only to the particular jurisdictions where the research was undertaken (NSW, Victoria and South Australia respectively). Their findings cannot necessarily be generalised to other states/territories. Further, venue licensing and operating requirements, as well as industry structure, in those three states differ from each other and from other states. This diversity has created different environments for EGM gambling and it is likely that gamblers behave differently in those different contexts.

Even though that research is inconsistent and inconclusive, it has provided important information on EGM gambler behaviour and their interaction with the machines. Combined national and international evidence indicates that the speed of play (i.e. reel spin), large maximum bets, note-acceptors and large jackpot prizes are potential risk factors for problem gambling – and therefore they should be more restricted and regulated. However the Australian gambling public has become accustomed to fast machines and large-prize jackpots, for example, so it could be difficult for regulators to retrospectively slow down machines or remove linked jackpots without a consumer backlash.

Blaszczynski, Sharpe and Walker (2001) examined if specific machine modifications were likely to be effective in harm minimisation – i.e. how machine characteristics might influence both behaviour and gambling expenditure. Using experimental design, they found that play speed significantly influenced enjoyment and satisfaction; and that problem gamblers were more likely to use banknote acceptors larger than \$20 and to bet more than \$1 per spin. They concluded that slowing reel speed was relatively ineffective in reducing expenditure unless combined with other modifications such as reducing the maximum bet size and removing note acceptors. This study has been criticised for several reasons, however: e.g. inconsistencies in reporting the findings and failure to control for the potentially confounding effects of other machine features.

A South Australian laboratory study using simulated gaming machines and three groups of 24 gamblers also explored player preferences (Delfabbro, Falzon & Ingram 2005). In these experiments, machines were configured to offer different features, including play speed, and participants were given the choice of gambling on simulated machines with different configurations. The results showed that the play speed, availability of sound, number of lines and number of bets all influenced player preferences. Gamblers preferred faster machines, disliked the absence of sound, preferred to play maximum lines rather than one line with maximum credits, but had no clear preference regarding machine illumination/graphics, etc.

The recent South Australian study by Livingstone & Woolley (2008) has been more controversial; their methodology and conclusions are likely to be criticised on several grounds. That study aimed to identify relationships between a range of machine features and their impact on player behaviour including possible transition to patterns of problem gambling. A particular focus was the effect of machine configurations such as reinforcement schedules, pay tables and prize allocations on actual gambler behaviour and the development of gambling problems.

Assuming that gambling-related harm largely derives from expenditure of excessive amounts of money and time, the authors are highly critical of machine manufacturers for designing machines that they argue encourage this to occur. They also criticise regulatory authorities for setting machine technical standards which, in their view, have the capacity to escalate losses and harm. They argue that gaming machines ‘which generate high average bet levels, particularly high average bet levels proportional to credit value, provide a capacity for losses and harm to escalate rapidly. The opportunity for open-ended or excessive gambling is thus the fundamental configuration of EGM gambling consumption, built into the design and structural characteristics of EGM technology’ (p.21). Importantly, they conclude that it is the combination of many machine features, not any single characteristic that is responsible for ‘excessive’ gambling and gambling-related harm. While their study may have limitations, my experience as researcher-regulator leads me to think that there is good reason to consider their claims more closely.

Most of the research evidence on the effects of regulatory restrictions on EGM configurations has been summarised by Delfabbro (2008b) and includes:

#### *Restrictions on maximum bets*

Limits on the maximum bet with gaming machines in clubs and hotels have been used in some Australian jurisdictions as a harm minimisation measure to reduce the ‘rate of play’ (McMillen & Pitt 2005). The Victorian Government, for example, has recently imposed a \$5 maximum bet for EGMs in that state.

- Blaszczynski *et al.*’s 2001 experimental study found that reducing maximum bet from \$10 to \$1 resulted in significantly decreased EGM expenditures and time spent. An independent review of evidence from that study also concluded that restricting the maximum bet size to \$1 showed ‘strong potential as a machine-based modification to minimise harm associated with problem gambling’ (Tse, Brown & Adams 2003, p. 6).
- A South Australian survey (South Australian Department for Families and Communities 2007) found problem gamblers and moderately ‘at risk’ gamblers (using the CPGI) were more likely to play \$1 machines than ‘low risk’ gamblers.
- In the ACT and NSW the maximum bet amount for a multi-stake machine is \$10 and a single stake machine at \$2. However our ACT study found that reducing the maximum bet to \$1 did not result in behavioural change for either recreational or problem gamblers, as it was perceived as a higher limit than was usually bet (McMillen & Pitt 2005). The large majority of ACT club patrons interviewed (84.5%) usually bet \$1 or less at a time; 69% normally bet 50c or less; none said they usually bet more than \$3. Most ACT gamblers and counselling agencies consider the current ceiling of \$10 to be too high.
- A qualitative study in Victoria found the ‘overwhelming’ majority of problem gamblers suggested that the maximum bet should be \$1 or less per play (New Focus Research 2004).

#### *Jackpot prizes*

The 1999 PC inquiry found that the size of the prize is ‘a significant determinant of demand for jackpot gambling products such as lotteries, lotto and lotto-type games, keno and linked gaming machines’ (PC 1999, p. 3.12). On the other hand, our 2003 Victorian survey found that linked jackpots (large prize machines) were a relatively minor factor in determining the choice of venue for EGM gambling; 77.3% of Victorian machine gamblers said they never visit a venue because it has linked jackpots (McMillen *et al.* 2004a).

Yet regular observation in a variety of venues suggests that many regular gamblers prefer jackpot machines to other EGMs. During my experience as a regulator (1990-2003), it also was clear that EGM expenditure increased in venues when they installed jackpot machines, especially machines that offered very large prizes. Detailed analysis of expenditure data on jackpot machines, using electronic tracking and/or analysis of machine data, has not been made public in Australia, although that type of research may have been undertaken by industry providers and government authorities. To my knowledge, there also has been no reliable research into relationships between the size of machine prizes and problem gambling. Such research would require methodologies that explore direct and indirect causal relationships between expenditure on jackpot/large prize machines and gambling-related problems.

#### *Restricted cash payment of winnings*

In 2004-05 we conducted an ACT empirical study of recent reforms requiring venues to pay gaming machine winnings above \$1,000 as either a cheque or electronic funds transfer (McMillen & Pitt 2005). That ACT study found support from recreational and problem gamblers for the new policy, although there was insufficient evidence to indicate whether the policy had been effective in preventing or reducing problem gambling. It appeared that restrictions on cash payment of winnings had impacted on gambler behaviour, but many gamblers were bypassing the restriction to ensure they had cash to continue gambling.

We recommended to the ACT Government (through the ACT Gambling and racing Commission) that existing restrictions on cash payment of winnings should continue to operate without amendment but should be monitored to obtain more reliable objective information of its effects on small clubs and problem gamblers.

#### *Note-acceptors*

In 2004, based on preliminary trial research in the ACT we concluded that removal of note acceptors was no longer a practical reality in the ACT (McMillen, Marshall & Murphy 2004). Rather, we recommended removal of large denomination notes from EGM note-acceptors (at the time of the study, EGMs in ACT clubs accepted \$100 notes). We also concluded that evaluation of these policy changes was necessary to monitor their impact and effectiveness.

The ACT Government acted on our policy recommendations; however our recommendation for an independent evaluation of changes introduced after our study has not been implemented. Moreover, some ACT venues promptly installed ‘note-breakers’ that exchange high denomination banknotes for low denomination notes, thus making it more convenient for gamblers to use smaller denominations more frequently.

#### *Loyalty cards, smartcards and precommitment*

Our 2004 ACT study found an apparent relationship between the use of loyalty cards and self-identified problem gambling (McMillen, Marshall & Murphy 2004). A large

proportion of regular (57.2%) and problem gamblers (66.6%) said they often-always use their loyalty card when playing EGMs

There is increasing support among regulators and some industry groups in Australia for the use of smart-card technology to allow gamblers to limit their expenditure or to set pre-determined limits (McDonnell Phillips Pty Ltd 2005). There also seems to be public support; many people consulted for an ACT project endorsed the potential for smartcards to assist harm minimisation (McMillen, Marshall & Murphy 2004). However expert analysts disagreed about the possible benefits of smartcard technology: one view was that this technology, if well-designed, would make other harm minimisation strategies redundant; another view was that it was impractical and would not minimise problem gambling. All agreed that practical barriers to the strategy include commitment of all gaming venues to the strategy, costly infrastructure and the involvement of financial institutions.

Evaluation of precommitment strategies and the potential benefits for harm minimisation is currently underway in Queensland. As well as the obvious question of which strategy to adopt and the practical challenge of introducing such a radical change to a well-established industry, a key issue for consideration is whether the scheme should be voluntary or mandated.

I submit that a voluntary scheme will have limited effectiveness as a harm minimisation measure. Problem gamblers will be less likely to use the precommitment options than other gamblers. While there is likely to be initial consumer resistance to a mandatory scheme, other public health policies (e.g. seat belt legislation) have shown that most people quickly adjust their behaviour and accept the new requirements.

#### **Recommendations – gaming machine restrictions**

In hindsight and based on information since my 2004 ACT study, I also recommend trial control studies of removal of EGM note-acceptors in different jurisdictions and localities.

- Through COAG and/or the GRA the Commonwealth also could assist with comparative trial studies of other contentious regulatory proposals (e.g. reducing reel spin speed, in combination with other machine reconfigurations; restrictions on jackpot prizes; precommitment schemes; banning auto-play, etc.).
- Appropriate baseline and post-intervention studies should be conducted to monitor the impacts on recreational gamblers and problem gamblers, as well as the venues and other industry groups.

#### **Regulation of internet wagering**

Although the structure and practice of the contemporary gambling industry is national and transnational, in many cases the risks to regulatory control, security and problem gambling identified in the *Netbets* inquiry persist. In the NT, for example, internet licences were awarded by merely amending existing legislation for racing and land-based casinos. Only the Victorian Government seems to have attempted to explicitly address the different nature of racing and sports betting with reforms to sports betting legislation. Nor have all internet wagering sites been governed by uniform legislative

and player protection standards similar to those proposed for online gaming in the AUSModel (e.g. betting limits).<sup>5</sup>

There has been a trend towards greater uniformity in Codes of Practice, however. For example, UNiTAB's operations in Queensland and South Australia are governed by the respective state Codes of Practice as well as UNiTab's *Responsible Gambling Policy*; and all internet wagering providers in the Northern Territory must comply with the *NT Responsible Gambling Code of Practice*, which is similar to the Queensland Code. Tabcorp's purchase of TAB wagering and sports betting outlets in Victoria, NSW and the Northern Territory also has created an opportunity for standardised company practices (*Tabcorp Responsible Gambling Code of Practice*). Although those Codes share many similar aspects (e.g. self-exclusion, advertising restrictions), however, they also differ in some respects.

While states and territories retain authority over licensing, conduct and compliance of internet gambling providers, the Commonwealth and its agencies have primary for enforcement and administration of *prohibitions* under the Act. The Australian Communications and Media Authority (ACMA) administers a co-regulatory *Code of Practice* with the Internet Industry Association (IIA) that focuses specifically on gambling issues. That Code is concerned only with prohibited gambling sites, however; it makes no mention of player protection for gambling-related harm. ACMA receives consumer complaints under the Code, which may be referred to the Australian Federal Police (AFP) for further action.

Under these complex arrangements, internet gambling presents difficulties for consumers seeking to find a reliable, responsible provider even in Australia. It is unlikely that Australians are aware of precisely who has responsibility for regulating the internet gambling site they have accessed, or whether appropriate regulatory and consumer protection standards are being met, or who to contact if they have a complaint. Few public complaints are received by ACMA, for example.

Most of the regulatory inconsistencies and inadequacies identified in the 2001 Senate *NetBets* Report persist – e.g. inconsistent wagering legislation between states/territories, difficulties in detection and prosecution of unauthorised conduct and consumer protection standards, etc. (Senate Select Committee 2001). Traditional site-specific, localised and inconsistent internet gambling regulations are ill-equipped to deal with an increasingly national and international industry. These factors have significantly diminished state governments' control over internet gambling and challenge the principles of state sovereignty (McMillen 2000, 2001, 2003b).

Internet gambling raises important questions about the capacity of individual state/territory governments to regulate a cross-border industry. Most recently, in 2008 the High Court rejected the attempt by the Western Australian Government to block access by Betfair to WA residents and racing information from that state, opening the way for cross-border advertising and sales by all internet gambling operators. The High Court's decision parallels the WTO decision against the United States' efforts to block internet gambling providers based in Antigua from accepting wagers from US residents. In the US, the most effective strategy seems to have been a joint initiative

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<sup>5</sup> I have focused on internet wagering in this section, but many similar issues arise with internet lotteries. In contrast, the NZ Lotteries Corporation in collaboration with regulators have placed a limit on internet lottery expenditure by any individual.

by Mastercard and Visa to refuse financial transactions by US citizens with offshore gambling operators. Similarly, nations in the European Union are struggling to find a way of preventing their residents from betting with UK bookmakers. Other potential difficulties and disputes arise over the collection of cross-border gambling taxes.

Australian states/territories have responded to cross-border wagering and the High Court's Betfair decision in various ways. South Australian Independent Gambling Authority, for example, has established an interstate Register of Authorised Betting Operators which is updated and published weekly. No change in policy has been announced in several states (e.g. NSW and ACT); and WA continues to review its position.

There also have been well-publicised cases of problem gambling involving serious fraud - e.g. the Telford (\$23m.) and Faithfull (\$19m.) cases. While the offending gamblers have received criminal convictions, I have been unable to confirm if the responsible wagering operators have been penalised by regulators.<sup>6</sup> Not only do those cases raise questions about compliance with the *Cash Transactions Reporting Act*, it is possible that player protection measures developed for online casinos in 2001 could have prevented such cases.

More recently, there have been protests about internet betting agencies offering 'free bets' to induce gamblers and political donations by the club industry (McMillen 2009a). I have provided the Commission with an example of unsolicited advertising and 'free' bets by a licensed Australian internet wagering provider. Australians also have objected to sports sponsorship and advertising during televised cricket and football matches by betting operators.

#### **Recommendations – internet gambling**

I submit that the Commonwealth should commission an independent review of current regulations for internet gambling, including the *Interactive Gambling Act*, and the conduct of licensed internet wagering and lottery providers. This task could be undertaken by the proposed Gambling Review Taskforce (see below), with appropriate support from experts in telecommunications technology.

Based on the findings of that inquiry, I also submit that Australia needs uniform standards for licensing, industry practices and consumer protection for internet wagering providers as well as more effective monitoring and enforcement strategies. Those reforms could best be achieved through the Gambling Review Taskforce (see below) and cooperation between states/territories and the Commonwealth.

#### **Codes of Practice**

A number of governments have introduced mandatory Codes of Practice (South Australia, the ACT and Northern Territory). Under a mandatory Code all licensed gambling providers are prohibited from contravening the Code's standards of conduct. Queensland has a voluntary Code designed in collaboration with industry to establish uniform standards while also reflecting the specific needs and aspirations of each industry sector (e.g. Queensland). At the same time several industry groups developed voluntary Codes of Practice (e.g. for the Victorian gaming machine

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<sup>6</sup> Changes in departmental responsibility for gambling in several states have made it difficult to locate past annual reports documenting those events.

industry, ClubsNSW). In those states (NSW, Victoria), gambling legislation has been changed to require all industry participants to an approved Responsible Gambling Code of Conduct.

All gambling Codes are designed to regulate the conduct of industry providers and staff towards other industry participants and consumers. Codes can therefore cover a wide range of standards. To some extent individual sectors of the gambling industry require specific standards and strategies designed for their particular circumstances. For example, casinos, clubs and hotels differ in structure, management and gambling practices as compared with the charity and non-profit sector. However many governments (e.g. Queensland, ACT, SA) have concluded that there is sufficient commonality between industry sectors to have one Code of Practice with exemptions or variations where appropriate. Having one primary Code also emphasises a common approach to gambling regulation across industry sectors.

Achieving compliance with voluntary Codes of Practice is often challenging. Uniform compliance is difficult to achieve, especially if monitoring and enforcement procedures are weak. In many other industries, Codes of Practice tend to evolve over five years from being voluntary to becoming mandatory, largely because of problems with compliance and 'freeriders'.

As a general rule, compliance with either voluntary or mandatory Codes is relatively easy to achieve for single venue operators with a centralised management system, such as a casino. On the other hand, gambling providers with a central agency and contracted retailers (e.g. TABs, lotteries) should be able to prescribe standards of conduct through their management agreements with retailers, although the decentralised distribution of retailers/agencies can make monitoring compliance more difficult.

Achieving uniform compliance is significantly more difficult for those forms of gambling based on voluntary industry associations (e.g. hotels, clubs, charitable gambling). Often a significant proportion of those industry sectors is not represented by the peak association and thus has no commitment to the Code. These problems are aggravated by wide distribution of outlets, diversity in size and character, different levels of commitment to the code, and varied standards of professional management in venues. In the case of charitable gambling, the occasional and voluntary nature of many activities presents the prospect of uninformed and inconsistent standards.

States also have different ways of monitoring compliance and relevance of their Codes. I am unaware of any government that has commissioned an independent compliance audit of the gambling Code in that jurisdiction. A common strategy has been to develop a self-assessment compliance audit checklist for venues and outlets. This is supplemented by occasional inspections by government regulators. For example, compliance and effectiveness of the voluntary Queensland *Responsible Gambling Code of Practice* was designed to be routinely monitored and evaluated by several methods: site inspections by QOGLR; examination of complaints; examination of venue/operator records (e.g. on self-exclusions, a register of reported incidents and actions taken); and annual venue surveys in which venues are audited using self-rating methods (McMillen & Doherty 2001).

These procedures are all undertaken internally by QOLGR. Serious breaches of the code and penalties imposed are published in the QOLGR *Newsletter*. Queensland Treasury also

has commissioned research to examine staff perceptions of the *Responsible Gambling Code of Practice* and cultural change (Breen, Buultjens & Hing 2005; Queensland Office of Gaming Regulation [QOGR] 2008)

In most jurisdictions, the public has little information on which to assess if the industry is complying with regulations. Reporting requirements which allow public scrutiny and accountability also vary between jurisdictions. The LGC reports to the IGA on compliance and enforcements of SA's Codes of Practice; that report is included in the IGA's Annual Reports. Like QOLGR, since 2006 the ACT Gambling and Racing Commission (ACT-GRC) has published an online *Compliance Bulletin* with reminders about requirements of the ACT *Code of Practice Regulation 2002*. The Bulletin also publishes breaches of regulations and the disciplinary action taken. It is notable, however, that ACT venues have been disciplined most often for failure to lodge financial reports to the Commission. This is a common pattern in most states and raises questions about the regulatory priorities of authorities and the effectiveness of self-reporting regulation. Moreover it is highly unlikely that the general public are aware of publications by regulatory agencies.

It is difficult to find information on consumer experiences of Codes of Practice, however (e.g. patron complaints against the industry or changes in conduct). One exception is the South Australian Liquor and Gambling Commissioner's report to the IGA which gives the number and nature of complaints, and actions taken (Independent Gambling Authority 2008, pp.69-71).

Public submissions also were sought during the review of mandatory codes in South Australia and the ACT with different outcomes.

- In 2004 the ACT-GRC's review received only 12 submissions. No information was provided on breaches of the Code in the Commission's report, which focussed on recommendations for practical changes to industry requirements (e.g. staff training and reporting).
- In 2006 the IGA conducted a public inquiry into its regulatory functions, including the Codes of Practice (Advertising and Responsible Gambling). That review found examples of non-compliance with measures in the Codes and inadequate enforcement by some hotel and club licensees. Those findings highlighted 'the need for more effective and targeted enforcement action' (IGA 2006).
- In addition, in 2007 the IGA funded independent research to examine the impacts of the SA Codes on *gambler* and *venue* behaviour (Martin & Moskos 2007). That study found no evidence that the gambling behaviour of recreational gamblers changed significantly after the introduction of the Codes. In contrast, spending on EGMs by problem gamblers declined, as did the frequency with which they gambled and the length of their gambling sessions. Venues had implemented some aspects of the Codes (provision of literature and documentation of responsible gambling procedures) more quickly than others. However 'almost all venues did not immediately comply fully or accept the need to do so, and many probably still did not fully accept the need to comply' (Martin & Moskos 2007, p.109).
- An additional study, funded by GRA, examined the capacity for venue staff to identify problem gamblers in venues, as required by the SA and ACT mandatory Codes (Delfabbro *et al.* 2006). That research provided guidelines to assist venue managers and staff with that obligation.



As a result of these reviews the IGA proposed new consumer protection measures for SA's Codes, including prohibition of loyalty schemes. In response, the club and hotel industry has agreed to work together with the 'concern sector' to take responsibility for approved harm minimisation interventions with their patrons. A dedicated intervention program has not been established in the wagering sector, however. The IGA also made additional recommendations regarding the enforcement role of the Liquor and Gambling Commissioner; those proposals are subject to approval by Parliament.

### Recommendations – Codes of Practice

Even though many gambling products and providers now operate across state/territory borders, the standards and practices in Australian gambling Codes vary in many respects between jurisdictions, and from one industry Code to another.

I strongly recommend that gambling legislation in each state and territory be amended to reflect current 'best practice' standards specified in a national gambling Code of Practice. That Code could be developed following a review by the proposed Gambling Review Taskforce.

- I recommend a common Code of Practice with exemptions or variations in standards and strategies as appropriate for the particular individual sectors of the industry. This will emphasise a common approach to consumer protection across industry sectors.
- To achieve a more consistent national approach, the ACCC could take a facilitative role in developing an effective national Code of Practice with industry and state/territory governments to ensure that regional and operational differences are accommodated. There may also be a role for Standards Australia to assist.
- I submit that the Code should be supported by *effective sanctions* against operators who are not compliant and be subject to *regular independent review* (e.g. via a public inquiry as in SA).

I submit that regular reviews of compliance with the Code could be undertaken by the proposed Gambling Review Taskforce (see below), seeking input from industry and the public. If compliance with voluntary codes of practice proves to be difficult to achieve, as it often does, a mandatory code of practice will be necessary to ensure that all Australian gamblers are given uniform standards of consumer protection, regardless of their state of residence.

Alternatively, the ACCC may have authority under the *Trade Practices Act* to monitor and enforce acceptable national standards of consumer protection in the gambling industry. Part IVB of the *Trade Practices Act* sets up a mechanism whereby industry Codes of Practice can be made enforceable. A range of penalties and remedies are available if a Code is breached, e.g.:

- Injunctions to prevent the prohibited conduct continuing or being repeated or to require that some action be taken;
- Corrective advertising;
- Damages;
- Ancillary orders of various kinds in favour of persons who have suffered loss or damage because of the conduct.

Publicity in the *local press* about breaches of standards, suspension of licences and/or temporary closure of facilities (or a section of the venue) also would encourage greater compliance.

## **Recommendations – Gambling Regulation**

Recent papers by Gary Banks have argued for more interventionist regulation over industry practices, especially gaming machines (Banks 2002, 2007). Some analysts, including myself, also have argued for uniform national regulatory standards to remedy inconsistencies and policy failures. Contemporary gambling also involves policy and regulatory issues of national interest – consumer protection, economic development, social equity and welfare, crime control, financial transactions, taxation, etc. And operators such as Tattersall's and Tabcorp have expanded their businesses since 1999 and now operate a variety of gambling forms across several states. Those contradictory pressures necessitate comprehensive, independent analysis of current regulations, performances and capacities in the face of such challenges.

To achieve national consistency, regulatory effectiveness and accountability, I submit that the Australian Government should facilitate an independent and comparative regulatory review to consider and report on the nature, extent and outcomes of gambling regulation in all jurisdictions (i.e. for all forms of gaming and wagering).

States/territories will be wary of federal intervention, however, especially after the Commonwealth's intervention with the *2001 Interactive Gambling Act*. In the current economic climate the potential public benefits of any national initiative also should be weighed against the costs and administrative burden to government.

With cooperation of COAG, one option would be to establish a national **Gambling Review Taskforce** with appropriate authority and resources - perhaps similar to the National Health and Hospitals Reform Commission or the National Emissions Trading Taskforce. The Taskforce's functions could include:

- To review and make recommendations on relationships and processes between governments, statutory regulators, the industry and communities (including advisory and lobby groups). As well as regulatory arrangements and outcomes, Codes of Practice, etc., the review should include political donations and government investments. Review of political donations by the gambling industry may not be necessary, however, if proposed reforms to federal legislation on political donations are legislated to apply to states/territories;
- To review and recommend ways to address inconsistencies and deficiencies in Australian gambling policy and regulation.
- To review and recommend reporting procedures to ensure more transparent and accountable regulatory systems so the public can assess if regulations are effective.
- To develop and advise on national standards of consumer protection.
- To review existing Codes of Practice and develop a national Gambling Code of Practice that sets uniform basic standards and compliance criteria for all forms of gambling in all states/territories.
- To monitor the performance of state/territory and industry Codes of Practice in enforcing legislated requirements and regulating the conduct of gambling providers towards consumers. Alternatively this task could be undertaken by the ACCC (see above).
- To review and advise state and territory governments on minimum national standards for EGM testing, configuration of gaming machines and the parameters of play by gamblers.

- To advise on and monitor regulatory methods of gambling-related harm prevention for gamblers, families, and other social and cultural groups.
- To advise on and monitor a national community education program...

The national regulatory review could comment on:

- Ways to resolve the conflicting objectives and interests of government. What should be the respective regulatory roles of industry and government? How can communities provide a crucial regulatory balance to industry perspectives?
- The effectiveness of regulatory measures: compliance, consistency, transparency. How reliable are self-reporting compliance procedures? What are the most effective and efficient regulatory strategies and options? In which circumstances?
- Tax regimes for various forms of gambling (consistency, fairness, distribution of gambling revenues, etc), including scrutiny of providers' community contributions and 'community benefit funds' derived from gambling revenues.

I submit that the Taskforce should be appointed by the Commonwealth, in consultation with COAG. Membership could include representatives from non-gambling regulatory agencies, industry, senior academics from relevant disciplines (e.g. administrative law, financial regulation, social welfare, telecommunications and technology), as well as people with previous experience in gambling regulation. The Taskforce could be supported by an appropriate Commonwealth department and report to COAG. It should also consult regularly with the proposed National Advisory Panel (see Research, below) and the Ministerial Council on Gambling. Any preliminary findings or recommendations should be discussed with Ministerial Council on Gambling before final reports are produced or published.

#### **4. Harm minimisation measures**

To some extent Australia has been an experimental laboratory for harm minimisation policy. All states & territories have introduced harm minimisation measures since the Productivity Commission's 1999 inquiry, but those strategies have not been applied evenly across all jurisdictions (Council of Australian Governments 2008). Gambling legislation in most states and territories include some mandatory 'responsible gambling' measures (e.g. provision of rules of the games, bans on credit, self-exclusion schemes) as well as authorising governments to make regulations relating to consumer protection (e.g. advertising, provision of information about problem gambling and support services). However, many of the measures introduced are aimed at changing gambler behaviour – e.g. information about gambling, telephone help-lines, counselling services for problem gamblers, self-exclusion schemes, etc.

Governments have put considerable emphasis on evidence-based analysis to guide these policy reforms, commissioning strategic research into problem gambling prevalence, socio-economic impacts, etc. But prevalence surveys tend to limit the scope of inquiry and predefine problems and issues within the questionnaire design. Consequently all governments have devoted considerable resources to provision of telephone and face-to-face problem gambling counselling and treatment services. Yet these programs do not seem to be meeting the needs of the Australian community. Evidence has shown that only

a small proportion of people estimated to have gambling-related problems seek professional help from these agencies.

Often informed by a clinical understanding of gambling problems, the emphasis in service delivery has been on psychological counselling, even though community agencies report that gamblers tend to seek other forms of help, e.g. financial and relationship counselling, emergency relief, etc. For example, in our 2003-04 Victorian survey 94.8% of those people who had sought help for gambling problems reported that financial problems or relationship problems had prompted them to seek help (McMillen *et al.* 2004a).

We also know that many people with gambling problems seek help from families, friends and their social network, yet there has been little investment in support programs to assist those groups. And in many cases the particular needs of cultural groups and gender-specific needs of men and women are not being met (e.g. Marshall *et al.* 2005; McMillen *et al.* 2004c).

Other responsible gambling strategies have been adapted from Responsible Service of Alcohol programs. This approach conveniently mirrors the regulatory strategy adopted for gaming machines licensing when gaming machines were introduced in the 1950s (NSW) and in the 1980-90s in other states.

It is not clear if those harm minimisation reforms (e.g. changes to industry practices, advertising, consumer education, etc) have effectively addressed gambling problems, however. In keeping with the principle of informed choice, for example, information about gambling, community education and awareness campaigns, and school education programs are essential components of an integrated multi-strategy public health approach. But evidence from other public health areas has shown that information alone rarely changes behaviour; changes to the harmful products and environment are also required.

As well as funding counselling services and community education, since 1999 state/territory government have introduced changes to EGM gaming in an effort to reduce gambling-related harm. In some states, these gambling regulation reforms have embracing a degree of constructive collaboration between government departments, regulated gambling entities and representatives of community interests.

Research suggests that restrictions on venue opening hours (e.g. venue shutdown between 3-6am) are unlikely to be effective as a harm minimisation measure (McMillen & Pitt 2005; ACNielsen 2006). Queensland and Victoria have recently imposed restrictions preventing EGM venues other than casinos (i.e. clubs and hotels) from opening before 10am. This policy is more likely to have a beneficial impact for preventing and minimising harm if the restrictions are extended to the hours after midnight.

Mandatory cash payment of EGM winnings is another strategy proposed to minimise gambling-related harm. Since 2002 the ACT's mandatory Code of Practice has required gaming venues to pay EGM winnings above \$1,000 by cheque or electronic transfer. The rationale was to prevent gamblers from 'reinvesting' winnings and gambling longer than intended. It also was designed to give gamblers a 'cooling off' period after big wins. In 2005 we investigated the effects of that policy on recreational gamblers, problem gamblers and venues (McMillen & Pitt 2005). However we found

that many gamblers have adopted ways to subvert the intention of the measure - e.g. by cashing out or gambling down below \$1,000 to avoid payment by cheque so they can continue gambling. Industry and venue managers also respond to such changes, as their response to restrictions on note-acceptors in the ACT demonstrated.

Implementation of policies to limit ATM withdrawals or remove ATMs from gambling venues also is often proposed by community groups as a harm minimisation measure but opposed by the gambling industry, ostensibly due to the potential inconvenience it would impose on non-problem gamblers.

Our 2004 exploratory trial study of access to cash (i.e. the use of ATMs, EFTPOS and note-acceptors) in ACT gaming venues found little empirical evidence linking the use of ATMs to problem gambling in the Territory (McMillen, Marshall & Murphy 2005; Murphy, McMillen & Marshall 2005). While all self-identified problem gamblers interviewed in that study reported easy and immediate access to cash as exacerbating gambling-related harm, the sample was extremely small (nine gamblers out of a survey population sample of 755). Without a prevalence survey and cooperation from venues and financial institutions, we were unable to cross-check for accuracy the self-report data on problem gambling or withdrawal and spending patterns, or to examine cause-effect relationships, etc.

Importantly, the ACT community was divided on whether to remove ATMs from gaming venues: 47% of surveyed residents supported the proposition, while a similar proportion (43%) disagreed. Contextual factors also were given considerable weight in our analysis, especially in light of inconclusive and inconsistent evidence from other data sources. For example, the unique urban geography and gambling environment in the ACT were significant factors underlying our findings and recommendations – e.g. there are no ‘strip’ shopping centres; there are no EGMs in Canberra Casino; and the number of EGMs in hotels is extremely small, in marked contrast with some states where hotels dominate the gaming environment (e.g. South Australia, Victoria). In the ACT, large clubs located in carefully planned suburbs are the hub of social and gaming activity.

In the ACT study, the weight of empirical evidence from multiple sources was not strong or convincing enough to support a recommendation to remove ATMs from ACT venues. My personal view has long been that ATMs should not be located in gaming rooms and that there should be daily withdrawal restrictions on ATMs in venues, although I also recognised that people will find ways of avoiding this restriction (e.g. by using several bank cards). Over time I have been persuaded that removal of ATMs is likely to be more effective as a harm reduction strategy in most situations. However there is an important distinction between opinion and scholarly analysis of data. On balance it was our professional judgement that the incomplete and inconsistent empirical evidence did not support such a radical policy shift in the ACT at that time. We concluded that further investigation potential links between problem gambling and ATM usage was required.

At the same time we were convinced by evidence from our study and from other states that immediate policy reform was indicated in the ACT – an important conclusion from the study. Our report recommended \$200 daily withdrawal restrictions on ATMs in venues (there was no regulated withdrawal limit in ACT venues at that time).

On the other hand, evidence from Victorian research suggests that gamblers' use of ATMs and note-acceptors differs in that state context. It also suggests that attitudes towards policy reform may not directly reflect gamblers' own behaviour. About half of Victorian regular gamblers reported that they rarely or never withdraw money before they gamble (52.5%); or withdraw money from an ATM at the venue (89.1%). Around 25% of Victorian gamblers, mainly regular gamblers, reported they use ATMs in the venue sometimes or often when they gamble. Significantly, a majority (92%) of Victorian problem gamblers also reported that they had used note-acceptors when gambling on machines. Most had done so in a pub or hotel; 60% said they often or always inserted notes when playing gaming machines.

As in the ACT, that study also found that the large majority of Victorians supported policy reform of ATM facilities and note-acceptors in gaming venues, even though a large proportion of those patrons also said they often use venue ATMs. However the Victorian study also was unable to investigate potential relationships between problem gambling and ATM use. Subsequent Victorian research by Rodda and Cowie (2005) has addressed that question, providing evidence that Victorians with gambling problems are significantly more likely to withdraw cash from venue ATMs than other patrons.

Yet the effects of removing ATMs from gaming venues are unknown. Any policy that prevents immediate access to cash in a gambling venue is likely to inconvenience recreational gamblers in the short term. That said, it is also likely that most recreational gamblers will adjust their behaviour to accommodate reasonable restrictions on ATM facilities.

Residents in rural Victorian communities with limited access to banking facilities also could be inconvenienced if ATMs were removed from their local club/pub. In that context, case-by-case exemptions to the government's proposed ATM removal policy seem justified. At the same time, based on venue response wherever such exemptions have been allowed (e.g. NSW shutdown policies, etc.) there will be numerous venue applications for exemptions under this provision. As noted above, baseline research and post-intervention studies will be essential to provide information on which the VCGR can base its regulatory decisions.

A small number of state governments (such as Queensland, South Australia and Victoria) have been proactively monitoring policy impacts, while other governments have reacted with ad hoc, incremental responses to problems as they arise. Independent evaluation of programs has begun in only a few states (e.g. Thomas, Jackson & Thomasen 2002; Breen, Bultjens & Hing 2005; McMillen & Pitt 2005; McMillen & Doran 2006; Martin & Moskos 2007; Delfabbro *et al.* 2007; Delfabbro 2008a; Shandley & Moore 2008), and governments do not always act on the research evidence. Lack of reliable baseline data and the reluctance of industry to co-operate with research also are major obstacles to understanding policy effects (McMillen, Marshall & Murphy 2004; Livingstone & Woolley 2008). Consequently there is little evidence to indicate whether responsible gambling policies have achieved their main objectives (e.g. reduction in problem gambling and community harm), or which harm minimisation strategies are effective in reducing gambling problems and which are not.

To compound the issue, there does not seem to be an agreed understanding of the goals of harm minimisation measures such as treatment services (e.g. abstinence or reduction of gambling-related harm?) or a consensus on how to measure effectiveness

of prevention programs (e.g. a decline in problem gambling prevalence and/or incidence, or reduction in other forms of gambling-related harm as well?).

#### Recommendations – harm minimisation

I submit there is a need for policy improvements to reduce the prevalence and incidence of problem gambling and for a national harm minimisation approach to achieve greater consistency across all states and territories.

There is also an obvious need for comparative evaluation research (including pre- and post-intervention studies) to understand the effects of harm minimisation measures in different gambling environments.

- I also submit that higher priority should be given to prevention and primary interventions; at present the emphasis is on treatment programs for gamblers who often are in crisis.
- An effective prevention program would give greater attention to changing the gambling environment, industry practices and government policies.
- The conventional service delivery model also needs to be reviewed and reformed to better meet the needs of diverse groups. Alternative support services for problem gambling other than counselling and clinical therapies should be funded, and service delivery broadened to include gamblers' families and other social networks.

In the absence of conclusive evidence linking ATM use and problem gambling in different gaming environments, and any evidence of the impacts of removing ATMs, I do not support a blanket national withdrawal of ATMs from gaming venues. Rather, I submit that further comparative research is required to adequately investigate potential links between problem gambling and ATM usage, cause-effect relationships, etc. in different jurisdictions and regions:

- With cooperation of the states/territories and the ATM Industry Reference Group, the Commonwealth could collaborate with industry and the states/territories on control trial studies to examine the options and effects of removing ATMs from gaming venues. If necessary, it could use its constitutional powers over financial institutions to assist with such research. The proposed removal of ATMs from Victorian gaming venues in 2012 provides a timely opportunity for baseline research and post-removal evaluation studies.

## 5. Research

Policy reforms since 1999 have put greater emphasis on research and evidence-based analysis than previously. However the gambling research agenda has been funded and controlled mainly by state and territory governments through their own research programs, rather than by Gambling Research Australia (GRA) or the Ministerial Council on Gambling. Most research thus tends to be state-based and inconsistent, reflecting parochial concerns and preventing comparative analysis.

Contractual arrangements and protocols for gambling research differ from state to state, and from one research agency to another; funding arrangements and the type of gambling research also vary (McMillen 2009a). Australian university & government programs differentiate three types of research as follows:

1. **Internal research** conducted by the government agencies themselves. On a few rare occasions industry providers have assisted these projects (e.g. the current trial of precommitment measures in Queensland). Research outcomes from these

projects often are not published, while others are. Queensland Treasury, for example, has undertaken several projects analysing available government data as well as new projects focussed on specific issues (e.g. annual venue surveys and large *Gambling Household Surveys* 2001, 2004, 2006). Data analysis for such projects is usually undertaken by the Office of Economic and Statistical Research (OESR), a division of Qld Treasury.

2. **Research consultancy:** Strategic research commissioned & funded by governments/industry/NGOs. Such research continues to be contentious (see Adams 2008). Research consultancies can be commissioned via a direct request to the researcher (e.g. research commissioned by the Australasian Gaming Council) or via a competitive tender process. Tender briefs typically define the project objectives and parameters; thus funding agencies have significant direction over project objectives, design and management (e.g. the GRA protocol).
  - 2.1. Government or industry-funded research is typically focused on a policy issue to address specific problems/questions. Research funded by lobby or 'public interest' groups, NGOs, etc. can have a normative or advocacy dimension.
  - 2.2. Research consultancies often involve replication of previous studies; hence it can be a relatively conservative & risk-averse research approach. Research outcomes are not necessarily published.
  - 2.3. There seems to be scepticism about the independence of industry-funded research (e.g. by the Australian Gaming Council, GIO, club and hotel organisations).
3. **'Academic' research:** Project objectives, design & outcomes are defined by the researchers. Research can be funded by government grants, universities or central research agencies (e.g. ARC, NHMRC) and administered by the research institution. This type of research can include collaborative partnerships with industry and governments (e.g. ARC Linkages Program grants).
  - 3.1. In both types the funding agencies have less influence over research questions, methodologies & findings. Critical analysis, conceptual development and normative debates are often encouraged by the funding criteria.
  - 3.2. However this type of research is often more costly and protracted, with longer timelines. Applications are peer-reviewed, resulting in lengthy delays. Gambling research is often not understood by ethics committees, making ethics approval difficult to achieve, and standards differ between universities. Research reports also are usually peer reviewed and publications encouraged. Industry often finds the academic approach complex, cumbersome & time-consuming.

Both research consultancies and the 'academic' grant model are used by some state governments (Queensland, Victoria and South Australia). Only the research grant model can be said to be genuinely independent of direct or indirect influence by the funding agency. For example, government influence over research consultancies is explicit in the project terms of reference. Nor are projects funded by statutory authorities always independent of government influence. I was told by two supposedly independent statutory agencies (funding my research in different jurisdictions) that my research findings would 'embarrass the government'. Similarly, an industry-funded project in another jurisdiction was suspended after disagreements about research objectives, etc.



Collaborative partnerships *with* (rather than *for*) government and industry are essential for effective and informed policy development (McMillen 2005). If we are to better understand Australian gambling and its impacts co-operative efforts by government, industry, researchers and community groups are essential. With necessary safeguards (for example, public accountability and independent peer review), such partnerships can have important benefits for all groups involved and for the community as a whole.

There appears to be a general reluctance by the gambling industry to cooperate with government and academic research, however, especially where the findings are likely to be submitted for peer review and be published (e.g. McMillen, Marshall & Murphy. 2005; Livingstone & Woolley 2008). This can prevent access to essential data and seriously impede the quality of the research findings. That said, I have had two ARC Linkages grants which involved constructive collaborations with industry providers - a comparative impact study of the Brisbane and Cairns casino (McMillen 2000b); and a study of the development of internet gambling (McMillen 2004). In neither case did industry partners interfere with the research process, analysis or findings.

It is also notable that research protocols for government-funded gambling research do not include standard provision for industry collaboration. I submit that this provision should be available in protocols for GRA and state/territory research, with appropriate protection of confidential data – as occurs in the ARC Linkages Program. Industry could benefit from such partnerships, although at first it may be difficult to convince many gambling providers of this. Consideration could be given to making cooperation with research a licence condition under certain circumstances; the relevant regulator could act as supervisor and mediator in such cases.

In New Zealand, for example, the *Gambling Act* may require licensed gambling providers to provide information for ‘research and policy analysis and development associated with the purposes of this Act’.

More generally, in 2004 I raised several concerns about the state of gambling research in Australia which still have not been adequately addressed:

- Significant gaps in our knowledge. Many of the areas of research identified by the PC in 1999 continue to demand investigation and analysis. Underlying this problem is the capacity for state/territory governments to control the gambling research agenda and the precarious state of research funding in the current university environment.
- A heavy bias towards applied, strategic research – i.e. an over-reliance on participation studies, prevalence surveys and economic models that address the pragmatic and strategic objectives of state/territory governments. Industry-sponsored research tends to react to proposed government policies, and thus is also selective and self-interested.
- To minimise costs and/or monitor trends, researchers frequently replicate previous research designs and methodologies (e.g. problem gambling prevalence studies). Such studies can provide useful information, but they rarely contribute to theoretical development or methodological improvement.
- Research dependency on industry or government funding also encourages incrementalism and fragmentation of expertise and infrastructure, rather than sustained and coordinated research programs.

- The corporatisation of the university sector in the past decade and subsequent budget cuts have produced a general crisis of academic resources and morale. As a general rule, gambling research centres are self-funded and individual researchers must generate their own research grants. Researchers are thus compelled to compete for scarce research funds. Funding from independent academic sources such as the Australian Research Council (ARC) is highly competitive and difficult to obtain; and government-funded research is periodic and unpredictable. ‘Gambling researchers in most Australian universities have become trapped on the competitive funding treadmill, constantly chasing after external grants’ (McMillen 2005).

Many gambling researchers are isolated in their respective universities without support and dialogue with other colleagues working in the same area. Frequently they have heavy teaching or other responsibilities. Even where a university has a group of gambling researchers, numbers are often small and funding is precarious. To retain staff on short-term contracts, some groups take on more projects than they can manage effectively, sometimes with adverse effects on the quality of research outcomes. Several academic groups also have had difficulties recruiting and/or retaining high quality staff willing to specialise in gambling research. Regardless of discipline, there are more attractive career options for well-qualified graduates.

To my knowledge, funding arrangements for existing gambling research groups (excluding ARC grants) are:

- In addition to university staff salaries, the University of Sydney’s Department of Psychology receives recurrent funding from the NSW Government via the Responsible Gambling Fund to provide a problem gambling treatment clinic. Further funding for the department’s research is obtained from the Ontario Problem Gambling Council (Canada) and research consultancies.
- Flinders University also provides a problem gambling treatment clinic (the Statewide Gambling Therapy Service) staffed by qualified counsellors, funded by SA’s Gamblers Rehabilitation Fund.
- The Centre for Gambling Education and Research (CGER) in the School of Tourism and Hospitality, Southern Cross University has university funding for two full-time staff, one on a 2-year secondment from the University of Western Sydney [UWS]. When required, additional assistance with research is provided by academic staff from various parts of the university, funded on a project-by-project basis from external consultancies. The Centre’s researchers also provide industry education and staff training programs in tourism and gambling management which generate additional income.
- Gambling research at Adelaide University is funded by university salaries as well as external consultancies and ARC grants to researchers in the Department of Psychology and the South Australian Centre for Economic Studies (SACES).
- The Centre for Gambling Research in RegNet, Australian National University (ANU-CGR) received university funding for one professorial appointment. A research fellow on a 2-year appointment (2002-04) was funded from RegNet resources but that contract was not renewed. Additional staff salaries had to be obtained through research consultancies on a project-by-project basis.

There have been two recent exceptions to this pattern:

- In 2005 the Northern Territory Government (Treasury) and Northern Territory Community Benefit Fund provided joint recurrent funding to Charles Darwin University (CDU) for a program of gambling research focussed on the Northern Territory. Several gambling researchers from various disciplines and an administrator are employed in the Gambling Research Unit, School of Social Policy Research (SSPR). The group has received additional funds from interstate research consultancies and an ARC grant; and
- In 2007 the Victorian Government provided a large block fund to establish the Problem Gambling Treatment Centre, a cooperative initiative between the government, Melbourne University and Monash University. This grant has allowed recruitment of a relatively large research team to develop a sustained research and training program specifically focussed on problem gambling treatment. The Centre also applies for external consultancies and grants.

In some cases, contractual agreements between funding agencies and universities place unacceptable constraints on academic independence and research autonomy. The situation at the former ANU Centre for Gambling Research provides a cautionary illustration of problems that can occur. That Centre was governed by a ‘highly prescriptive’ *Deed of Agreement* between the ACT Gambling and Racing Commission (ACT-GRC) and the university, placing ‘onerous obligations...that potentially compromise academic independence and performance’ (Head of Program, RegNet 2007).<sup>7</sup>

Governance arrangements for individual projects also can present difficulties. In 2003-05 the ANU Centre was already committed to three major projects in other jurisdictions, but was required to undertake five additional projects for the Commission with relatively small budgets, very tight timelines and specific terms of reference. This necessitated hasty recruitment and training of several staff new to gambling research. Those difficulties were exacerbated by inconsistency between staff obligations specified in various research contracts and some ANU employment contracts that prevented adequate staff supervision.

Centre funding also was irregular and unpredictable: e.g. in 2005 the Commission provided only \$40,000 for research; and in 2006 the Commission notified there was no research funding for 2006-07 ‘and beyond is also in doubt’ (ACT Gambling and Racing Commission 2006).<sup>8</sup> Without recurrent funding and the capacity to attract and retain skilled staff, the Centre was unsustainable.

More generally, all universities want to improve their external research funding performance (and thus their core budgets and national ranking), so even when a cross-institutional research team does receive a grant, each participating university strives to be the leading institution. Commonwealth and state funding arrangements for university research therefore encourage competition, rather than cross-institutional collaboration. This situation can be a disincentive to assemble the best research team for the task.

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<sup>7</sup> The Commission never intervened during the research process, but it prevented a conference presentation on methodology and distribution of a research report for peer review.

<sup>8</sup> In 2005, I notified the Commission I would not undertake *A Review of the Impact of Restrictions on Note Acceptors in the ACT* using the methodology and timeframe they proposed. The Commission did not proceed with my alternative suggestion for a joint application to the ARC Linkage Grant Program.

Yet no single Australian university has the wide range of multidisciplinary skills, experienced staff resources or infrastructure support for effective research into a dynamic, increasingly national gambling industry and its diverse consequences. To overcome such problems, a national collaborative gambling research centre was first proposed in 2004. The initiative was announced at the 2004 NAGS conference by the Australian Casino Association and subsequently confirmed by Minister Kaye Paterson in early 2005. The Department of Families and Community Services (FaCS) discussed the proposal with the ANU Centre for Gambling Research which proposed a 'hub-and-spoke' model to include the universities listed above, governed by a Board of Management with broad stakeholder membership. The Department also consulted other universities and with state and territory governments; and consultants were commissioned to investigate funding and governance arrangements. After the consultants' report was submitted, the proposal did not proceed.

On the other hand, the Ministerial Council on Gambling (MCG) made little progress with its objectives until 2003-04 partly because of tensions between levels of government over internet gambling. The Council has met only eight times since 2000; I understand that three of those occasions focussed on the Commonwealth's internet gambling moratorium and subsequent legislation and review. The deep political tensions between governments that emerged over that issue were exacerbated by persistent Commonwealth attacks on state gambling policies. Efforts to achieve uniform national regulation of ATMs also faltered when the Commonwealth refused to use its powers over financial institutions to assist the states.

Relationships between the Commonwealth and states/territories have improved in recent years and there has been some progress with a joint research agenda. The National Framework on Problem Gambling 2004 and establishment of Gambling Research Australia (GRA) in 2005 and its research program (the) suggests that both levels of government recognise that a more coordinated, consistent approach to gambling research and evidence-based policy is required on issues that affect all jurisdictions.

In contrast to state-funded research programs, the stated aim of GRA is for collaboration between states, territories and the Commonwealth for *national* research to inform policy development. In this regard the principles, key focus areas, objectives and strategies of GRA's research agenda are relevant and broadly stated, thus allowing flexibility in response to different regional circumstances and issues.

A number of working groups have been sharing information on research issues as well as responsible gambling. Importantly, this process of 'policy learning' has been achieved by increased consultation between states and territories, with Commonwealth support (DFHCSIA). Recently this process has been improved by participation of a member of the Community and Disability Services Ministers' Advisory Council (CDSMAC) Gambling Working Party, who provides input from the social policy and community perspective.

However the full national potential of the Commonwealth-funded and GRA programs have not been achieved. The program reflects the pragmatic policy and research interests of the states/territories; there is little apparent input to the research program from community groups, industry or the experienced research community. Only two of the projects funded by the Commonwealth between 2003-05 are accessible on the

DFHCSIA website. Few projects funded by the GRA have been published and/or completed, although implementation of the program has been more productive since 2004-05.

Although some of the completed research has been innovative and made a major contribution to national debates (e.g. McDonnell Phillips Pty Ltd 2005), most studies have involved reviews of previous research. Evaluation studies and comparative analysis of policies across jurisdictions have been rare (e.g. Delfabbro *et al.* 2006). Significantly, no *national* evaluation of harm minimisation policies has yet been commissioned, e.g. to better understand which gambling regulations or consumer protection measures are effective and which are not.

In contrast to the broad priority areas of previous years, in 2008 three specific national research priorities were identified: access to cash and pre-commitment tools; responsible gambling environments; and EGM consumer protection. GRA has yet to indicate if research has been commissioned on the last two issues.

Important national issues that notably have not been identified by GRA for future research include:

- National research to understand the nature and effects of gambling-related harm and ‘adverse consequences for gamblers, others and for the community’ in varied socio-cultural groups and environments.
- National research on the nature, extent and outcomes of gambling regulation, harm minimisation and consumer protection measures.
- Comparative analysis of the different application and impacts of the Gaming Machine National Standard in various jurisdictions.
- Research to advise national standards of consumer protection and a national community education program.
- Research to guide national models of prevention and treatment services for gamblers, families and other social and cultural groups...etc.

### Recommendations – Research

In the context of this inquiry, I understand that proposals for a national collaborative research centre are again being developed by some universities. It is unlikely that all state/territory governments will agree to support a national collaborative centre in addition to the GRA program, however. If past experience is any guide, state and territory governments will want to retain control over the research agenda in their own jurisdiction. Several already have major funding commitments to their own research program. Understandably, they also need to retain the capacity to respond promptly to investigate local issues.

Moreover, I am not convinced that the university sector is necessarily best placed to provide a national gambling research program. A multiple-university model would be difficult to coordinate and costly to maintain, particularly between projects (i.e. the cost to a university of retaining staff and providing infrastructure support when it does not have a grant for gambling research). The relatively high on-costs added to most university-based projects are another disincentive for funding agencies.

Moreover, the number of experienced gambling academic researchers is relatively small and has a narrow disciplinary base. Much of that expertise is based in clinical psychology/treatment, economics and survey methodologies. Even now, the pool of experienced gambling researchers is so small that GRA and state/territory

governments find it difficult to find enough people to peer review project applications and research reports.

A wider range of skills, experience and resources is needed to address the complex social, cultural, political and technical aspects of contemporary gambling. A number of commercial consultancies have recently demonstrated gambling expertise that is at least comparable to and sometimes more innovative than university research. They have contributed new ideas, skills, concepts and methodologies to the area, as well as practical policy solutions. Importantly, their research infrastructure, governance arrangements and staff resources are often superior, providing greater research capacity and appreciation of the complexity and multidisciplinary nature of gambling issues.

I submit that the existing GRA national research model could be enhanced to take better advantage of all the Australian research resources available. Rather than building a national research strategy around the existing pool of academic researchers, a more effective approach would seek to broaden gambling expertise and expand the skills base by attracting more *non-gambling* researchers to the field – drawing on academic and private researchers in a variety of areas, consumer research groups, research divisions of government at both state and federal levels (e.g. the Australian Institute of Family Studies). There has been a trend in this direction in recent research commissioned by GRA and some state/territory governments.

One relatively cost-effective improvement to current GRA arrangements would be to establish a part-time expert **National Advisory Panel** to advise GRA on research issues of *national* importance and to assist with development of a coherent national research strategy. Representative membership could include community agencies (e.g. gambling and financial counsellors, ACOSS and/or state equivalents), experienced gambling researchers (academics and private consultants), industry peak organisations, national consumer protection groups, etc. Specialised non-gambling expertise (e.g. on the technical aspects of internet gambling, EGM configurations, legal and constitutional issues, economic analysis, etc.) could be recruited to the Panel on a needs-basis.

In effect the current two-level research program would be retained. States and territories would continue to undertake their own strategic research programs addressing local issues but the proposed changes would strengthen the independence, national relevance and quality of the GRA's program.

Improved governance arrangements and consultation could address the twin challenges of national relevance and independence. Consultation processes and research governance measures recently introduced in Victoria could be considered as possible guidelines. The National Advisory Panel could combine functions broadly similar to Victoria's Responsible Gambling Ministerial Advisory Council (RGMAC) and Independent Peer Review Panel (IPRP), i.e. to advise the GRA on national research issues, provide independent public scrutiny and ensure that appropriate lines of public accountability and transparency are in place. Under the banner of 'new federalism' the National Advisory Panel could be appointed and funded by, and report to the Ministerial Council on Gambling. Recommendations also could be provided to COAG for discussion and response.

The expert Panel could have a range of additional functions that would improve the national relevance and quality of research commissioned by GRA, e.g.

- To develop a national strategy for gambling research, establishing research priorities and outcomes arising from this inquiry - i.e. to balance the perspective of state/territory governments with a national public interest perspective.
- To advise on research for conceptual clarification and empirical measurement of gambling-related harm to guide service delivery and preventative programs for gamblers, others and communities.
- To develop a research methodology for comparative analysis of the application and impacts of the Gaming Machine National Standard in various jurisdictions.
- To develop or advise on standardised data sets and methodologies that would allow comparative analysis across state/territories. For example, compilation of local area social & economic indicators, standardised data sets with a specific focus on gambling-related risks & harm, community resilience, etc.
- To develop a framework for a comprehensive national regulatory audit, involving evaluation and identification of effective regulatory policies, regimes and relationships for all forms of gaming and wagering, and identify factors that motivate or hinder compliance with regulatory enforcement.
- To develop a research framework for comparative local area studies and development of targeted harm minimisation policies for specific communities and groups. That framework could facilitate localised, responsive and equitable public health responses to gambling-related harm and benefit. It also could be used to inform policy and regulatory decisions about the licensing and location of gaming venues and other gambling outlets.
- To advise on models of harm prevention and treatment services for gamblers, families, and other social and cultural groups.
- To advise on the refinement of gambling protocols to achieve common research standards and quality assurance procedures.
- To serve as a national ethics committee for GRA-funded research. This would remove the current discrepancies in ethics standards between universities and provide a more prompt and informed approval process. The assistance of state governments might be required to overcome objections from some universities.

As noted above, the proposed National Advisory Panel also could advise and assist a National Gambling Review Taskforce, thus linking research and policy/regulation at both national and state/territory levels. The combined aim of both agencies would be to bring together a wider range of skills and interests to provide a *national perspective* on gambling research, policy and regulatory issues, thus complementing and enhancing the role of state and territory governments.

### **Final comments**

COAG's agreement to establish this inquiry suggests that there is momentum for national research cooperation to inform policy improvement. In combination, these factors provide an unprecedented opportunity for nationally consistent and democratic gambling reform.

Invoking the principle of cooperative federalism, my brief submission to the 2020 Summit urged the Rudd Government, through the Ministerial Council on Gambling, to foster national collaboration on:

- Mechanisms to achieve policy consistency and sustained/effective community input into research, policy development and evaluation;
- Comparative interstate research to understand gambling-related 'harm' in families/communities, including the consequences of gambling in different types of venues and localities; and
- Comparative analysis of the efficacy of harm minimisation policies in different community environments.

Examples of interstate cooperation achieved in the past include the National Gaming Machine Standard for EGMs, the 2001 AUSModel for interactive gaming (superseded by the Commonwealth's 2001 *Interactive Gambling Act*), mutual agreements between some states on regulatory issues (e.g. licensing of key gaming personnel), and Gambling Research Australia's (GRA) research program. Although none of these initiatives was achieved without considerable effort, they provide the foundation for collaboration between the Commonwealth and state/territory governments towards a genuinely national approach to Australian gambling policy and regulation.

Some industry groups and governments with fiscal problems undoubtedly will be more resistant to change than others. The current economic crisis is impacting on the revenues and responsibilities of all Australian governments and gambling operators, and thus will have a bearing on the way they respond to the current inquiry. Industry groups appear better prepared, more strategic and more responsive than in 1999, and so are likely to argue their case more strongly and coherently than before. At the same time, many gambling providers operate across state borders and recognise the need for greater national consistency.

Community groups on the other hand, are still fragmented and lack equivalent resources, but their collective submissions will be equally important. They confront the harmful effects of problem gambling on a daily basis, so I trust the Commission will give due weight to their evidence, as it did in 1999. Regrettably this is not always the case. When presented with a research report detailing first-hand accounts of the experiences of problem gamblers, one statutory agency asked me how that information would be at all helpful to their regulatory responsibilities.

The challenge for gambling policy is to draw on a range of evidence (qualitative and quantitative) about the harms and benefits of gambling to inform and develop practical intervention strategies that are likely to be effective in different regions, communities and cultural groups. This will require more coordinated and exploratory research than in the past to better understand 'the adverse consequences of gambling for gamblers, others and for communities' - and to evaluate those strategies to determine what works and what doesn't. A further challenge is to establish *national* standards of consumer protection and service delivery for all Australians, regardless of socio-cultural background or where they live. In that respect, public participation and debate, supported by compelling information, could encourage governments and industry to undertake change for the better. The outcomes of this inquiry could go a long way towards improving the wellbeing of the Australian public and restoring their trust in governments and industry.



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### Professor Jan McMillen – Short Biography

I have conducted gambling research in all Australian states/territories and published over 50 research reports since 1996. My research concentrates on the study of gambling behaviour, community impacts and the analysis of gambling policy and regulation. In 1996 I was appointed to Australia's first chair in gambling research at the University of Western Sydney (Australian Institute for Gambling Research [AIGR] 1996-2003) and more recently was Director of the Centre for Gambling Research at the Australian National University (ANU-CGR 2003-2007). In 2008 I was appointed as Adjunct Professor to the Centre for Gambling and Addictions Research, National Institute for Public Health & Mental Health Research, Auckland University of Technology.

In 2006, as part of an external review of all research staff in the Research School of Social Sciences (RSSS), my ANU research was reviewed by an independent international panel commissioned by the Australian National University. The international quality and impact of my research was given an A rating (top 10% internationally).

From 1985-86 I was the foundation President of the National Association for Gambling Studies (NAGS). In 2001 I established the prestigious academic journal *International Gambling Studies* & was Editor until 2007. I continue my contribution to that journal as Co-editor and reviewer.

I have also been a regulator, appointed to Gaming Commissions in Victoria (1991-93) and Queensland (1990-2003). My dual roles as researcher-regulator have provided a detailed understanding of the responsibilities of gambling operators and the practical aspects of gaming policy and regulation.

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