



Clubs Australia

**SUBMISSION TO THE  
PRODUCTIVITY COMMISSION  
INQUIRY INTO GAMBLING**

*Response to Draft Report*

December 2009



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## CHAPTER 1 – INTRODUCTION

ClubsAustralia is of the view, insofar as poker machines and the Club Movement are concerned, that the Productivity Commission's Draft Report is flawed in a number of key areas.

The Report's strong focus on gaming machines – apparently because other forms of gambling are considered 'safe' – is unexpected. The evidence presented to support many of the findings is, we believe, deficient and does not support the extreme recommendations proposed. If implemented in full, the recommendations would have a huge detrimental impact on club viability. This has not been addressed by the Commission and the Draft Report has therefore surprised and seriously disappointed the Club Movement.

Every industry has positives and negatives, few more so than gambling. Without assessing the positives, the negatives can be used to justify changes that could never be validated if the impacts to the positive contribution of gambling – for example, by not-for-profit clubs – were properly assessed. ClubsAustralia has found this approach has been taken systematically throughout the Draft Report: the *costs* of gambling on gaming machines have received analysis, but the *positives* from gambling to the economy, jobs, infrastructure and 'the social good' have been completely ignored.

This is despite Terms of Reference #3 and #5, which required the Commission to undertake such analysis. The submissions of approximately 130 clubs, club supporters and related gambling industries have been ignored or deemed of less significance than individual problem gamblers of questionable representative merit, and academics whose careers are funded through anti-gambling research.

ClubsAustralia therefore asks: why did the Commission ignore two of the Terms of Reference? In our view, the absence of cost-benefit analysis raises issues about the impartiality of the Commission in framing the Draft Report. Indeed, it is notable in this regard that the Commission has ignored the findings of the NSW Independent Pricing and Regulatory Tribunal's (IPART) inquiry into the NSW Registered Clubs Industry, which was conducted only two years ago. The IPART report balanced the positives against the negatives and concluded by being supportive of clubs and the contribution they make to their communities through gaming revenue.

The Commission's decision to ignore the numerous pro-club submissions and evidence is not only a failure to meet the Terms of Reference but, ClubsAustralia believes, is also a contributing factor to the Commission's anti-club recommendations.

Indeed, each of the Draft Recommendations put forward by the Commission does not assess cost estimates on: implementation; revenue impacts (for industry or governments); impact on problem gambling as opposed to recreational gambling; or general economic impacts, such as on employment, tourism, club charitable contributions or ability to service debt.

For example, by recommending mandatory pre-commitment, the Commission has effectively recommended that the majority of the 200,000 poker machines in Australia be replaced within six years. It has not costed this recommendation, assessed the impact of that cost on small clubs run by volunteers, determined a likely impact on problem gamblers, questioned whether recreational gamblers might find less restrictive forms of gambling to avoid pre-commitment or estimated the

extent of the likely fall in revenue for venues and government. Without such analysis, it is not apparent how the Commission can come to the conclusion that pre-commitment can be justified.

Perhaps the most surprising element of the Draft Report is the Commission's recommendation to liberalise interactive gambling. Interactive gambling represents a clear and present danger which the Commission has failed to adequately recognise or respond to. The dangers include: rapid revenue growth; diversity of options and platforms for gambling; no control whatsoever over international websites and limited regulation of Australian online and interactive activity; absence of harm minimisation measures; unrestricted advertising and inducements; ease of access for minors; and evidence of substantially higher problem gambling prevalence rates than venue-based gambling.

The Commission's approach is almost entirely focused on venue-based gambling, with a 'hands-off' approach to that which is deemed too hard to regulate (that is, the internet). ClubsAustralia is, unsurprisingly, critical of this approach.

The internet, while presenting regulatory challenges, should not be immune. In other areas, such as child pornography and discrimination, the internet is policed. The Commission has turned a blind eye to the growing imperative to regulate interactive gambling and ClubsAustralia strongly believes the Final Report should correct this omission.

The Commission's focus on venue-based gambling extends to a lack of attention to the issue of personal responsibility. 'Personal responsibility' as a phrase appears only twice in the entire Draft Report. Yet the Commission quotes research which shows most problem gamblers "self-correct" within 12 months, meaning self-help options are effective and are needed more than dramatic changes to poker machines. Targeted responses to assist problem gamblers are available, effective, affordable and supported. ClubsAustralia believes options which target problem gamblers should be given preference over measures which affect everyone, that is, strive to develop sharp not blunt instruments.

Indeed, the High Court has found that personal responsibility is required when consuming alcohol. ClubsAustralia welcomes the Court's recent decisions, which have great relevance to poker machine players and the Commission's proposed legal redress. Personal responsibility does not abrogate venues from responsibility, but does make people responsible for their own decisions.

The Commission has claimed in the Draft Report that measures with even "modest efficacy" in reducing problem gambling merit implementation. Yet the finding on which this statement relies – that there is a \$450 million cost saving for every 10 per cent fall in problem gambling – has not been justified or proven. The Commission has also omitted to identify the extent to which such savings can be realised; that is, the level at which the prevalence rate will realistically 'bottom out'. It must be accepted that the rate of problem gambling will never be nil and that as the prevalence rate falls, the cost to further decrease the rate will inevitably increase as harm minimisation becomes more intrusive. If the suggested measures are introduced and gaming machine players become increasingly frustrated, players will move to alternative forms of gambling particularly problem gamblers who are known to consume more than one form of gambling product.

Prevalence studies are consistently showing reductions in the level of problem gambling. Queensland's latest study shows prevalence of only 0.37 per cent, down consistently in each of four

studies from 0.83 per cent eight years ago. Not only has the Commission failed to acknowledge this evidence that problem gambling is consistently declining (in every state and territory) but no evidence has been presented to prove that the Commission's claimed cost savings have been realised. In other words, Queensland should have experienced "benefits to society" of 55 per cent of the "costs associated with problem gambling" since 2001. ClubsAustralia looks forward to the Commission substantiating this social benefit in the Final Report.

Despite evidence that the incidence of problem gambling has almost certainly declined over the last ten years, the Draft Report strongly criticises all eight state and territory governments, and their regulators. Yet in the Commission's own view there is a lack of high-quality, reliable analysis. The Draft Report contains numerous qualifying phrases to indicate the absence of fact. "May" appears 519 times, "could" appears 424 times, "potential" 211 times, "possible" 119 times, "estimate" 187 times and "might" appears on 133 occasions in the Draft Report, excluding the appendices. Justifying such caution, interstate comparisons show dramatic differences in gambling spend per capita, density of machines and regulation.

Yet prevalence rates in each jurisdiction are relatively similar (all below 0.8 per cent), either showing effective Government and venue measures are in place or that the prevalence rate is probably near its effective minimum. Many of the states have clearly decided against extreme measures in the absence of sufficient evidence or cost-benefit justification. Each state and territory has sought to respond to the unique circumstances it faces with different gaming regulations and in a way which avoids crippling the industry. The application of a 'one size fits all' approach at a national level should be rejected.

ClubsAustralia believes a number of the recommendations proposed would have a severe deleterious impact on the nation's clubs by reducing their gaming revenue and through flow-on effects to other revenue sources. This impact must be understood and properly weighed against recommendations. ClubsNSW has utilised KPMG to conduct expert analysis of the impact of reductions in annual revenue of 10, 20 and 30 per cent. ClubsAustralia believes even the 30 per cent downturn is conservative if each of the Draft Report recommendations were implemented. The KPMG analysis at 30 per cent downturn using 2007/08 figures would reduce club revenue by \$2 billion per year and cost 11,500 jobs in NSW over the short run. These figures, which are only for NSW and only relate to a downturn in club revenue, would likely double if extrapolated to clubs nationally.

This impact would put a substantial hole in state and territory government revenues that would have to be sourced elsewhere, presumably through new or increased taxation. It would also hurt many working Australian families. This would be more acceptable if it could be proven that the measures would substantially reduce problem gambling. However, proof is sorely lacking and the recommendation of such costly, potentially ineffective measures is therefore ill-considered.

Yet despite an absence of the level of certainty that should precede far-reaching change, the Commission's Draft Report is far from hesitant in recommending a new approach to the operation of poker machines in Australia that would cost billions of dollars in implementation costs, billions in lost revenue and billions in lost tax annually that would have to be found elsewhere, not to mention the impact on jobs, related industries and community groups.

ClubsAustralia therefore finds it misguided for the Commission to castigate the states for implementing unnecessary, ineffectual and costly regulatory changes, but to then hypocritically recommend further changes which would cripple the industry on the basis of sweeping assumptions that are likely to have little impact on problem gamblers.

It is important to note that ClubsAustralia is not opposed to all of the recommendations put forward in the Draft Report. ClubsAustralia sought from the start of this process to be constructive and made a number of recommendations in our six point plan for reducing problem gambling. It is pleasing to see some of these have been taken up by the Commission. While possibly absent from evidence about their potential effectiveness at assisting those who are problem gamblers, the fact that they are likely to be affordable and effective goes a long way towards seeing them as worthwhile.

Finally, ClubsAustralia takes issue with the Draft Report's dominant focus on poker machines, to the near-exclusion of other forms of gambling. The Commission found that the growth of revenue from poker machines over the last ten years was only 12 per cent, or 1.1 per cent per year (compounded). This rate of growth does not typically cover inflation. ClubsAustralia believes that much of this growth was in hotels rather than in clubs; though it is noted that the Draft Report did not differentiate between clubs and hotels. By comparison, internet gambling is experiencing average growth of 25 per cent per year, yet the Commission has seen fit to recommend the internet be liberalised.

ClubsAustralia is of the view that the modest growth rate of poker machines, together with evidence of declining problem gambler prevalence, negates the need for a fundamental rethink of current efforts to mitigate problem gambling on gaming machines.

In that regard and for the reasons outlined throughout this submission, we find the Commission's Draft Report to be a very poor basis for long-term decision-making.



## CHAPTER 2 – THE IMPACT ON CLUB VIABILITY, JOBS AND REVENUE

ClubsAustralia believes that a number of the recommendations proposed in the Draft Report would dramatically reduce club revenue and/or require increased expenditure by clubs. This would impact the financial viability of clubs as well as their capacity to support jobs and meet their not-for-profit purposes.

The extensive economic and social contribution made by the not-for-profit Club Movement is underpinned by gaming revenue. Clubs generate economic activity and jobs in outer suburban and regional areas where unemployment is relatively high and local economies are not as well supported by large private businesses or the public sector.

The jobs provided by clubs are comparatively low skilled, and the loss of such positions in areas of low employment opportunity may cause long-term unemployment for unskilled, aged and disabled workers, along with those who rely on part-time or casual work (including students and working mothers). Such groups traditionally experience difficulties seeking employment, but commonly find work opportunities in clubs.

To assist the Commission to understand the impact of its recommendations on the club movement, ClubsNSW commissioned KPMG-Econtech to model the impact on short and long term club employment, state employment and Gross State Product of a 10 per cent, 20 per cent and 30 per cent reduction in NSW club gaming revenues and NSW club total revenues.

ClubsAustralia believes that a 30 per cent reduction in revenue is the most likely outcome if certain draft recommendations are implemented on their own. This belief is supported by prior trials and analysis of similar proposals and is outlined elsewhere in this submission. Collectively the impact of the draft recommendations may be far greater and ClubsAustralia therefore deems the assumption of a 30 per cent reduction to be conservative.

The reason for assessing a reduction in total club revenues, in addition to the impact of a reduction in gaming revenue alone, was because gaming is considered by ClubsAustralia to be a major driver of attendance at clubs. If gaming becomes less appealing, members may choose alternative entertainment options (other than in clubs) which would impact upon overall club revenue rather than gaming alone.

In addition, in many cases clubs generate gaming profits that allow them to operate other activities at less than commercial rates (for example, they might provide a service for slightly lower than market rates, at cost price, or at less than cost price).<sup>1</sup> A loss of revenue from gaming may reduce the sustainability of this business model and may reduce the appeal of club food, beverages and entertainment along with accessibility of such products and services to many lower-income members. These members may therefore cease their membership or be less able to afford to attend their local club as frequently, with consequential impacts for revenue and employment.

It should be noted that the following commentary represents only the views of ClubsAustralia and should not be attributed to KPMG except where indicated.

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<sup>1</sup> Independent Pricing and Regulatory Tribunal of NSW, *Review of the Registered Clubs Industry in NSW*, Final Report, June 2008, p.91.

## Gaming and club viability

Clubs are susceptible to changes in gaming policy for a number of reasons. The Allen Consulting Group estimated that on average, gaming machine profits accounted for 174.6 per cent of a club's profit. In other words, for every dollar of profit generated by a club, gaming machines contribute an average of \$1.74 and the remaining activities make a *negative contribution* of \$0.74. This demonstrates the extent to which gaming machine revenue subsidises other club activities.<sup>2</sup>

## Current financial position of clubs

Phased increases in gaming machine tax in NSW from 1 September 2004 have reduced the financial viability of clubs in that state. The deteriorating financial performance of clubs has a direct negative effect on the economic and social contribution made by clubs. To pay additional gaming machine tax, clubs have made significant changes to business operations and achieved efficiencies including shedding 8,431 jobs in four years<sup>3</sup>.

### *KPMG's findings*

In its December 2008 report on the viability of the NSW registered club industry, KPMG found that the average EBITDARD % for all but the largest clubs was below 15%<sup>4</sup>. Profitability below this level was identified by IPART in its 2008 report as being an indicator that a club was either in, or at risk of being in financial distress.

KPMG's December 2008 report<sup>5</sup> also found the following:

- By 2012, clubs of all size were forecast to be below the 15% EBITDARD threshold
- By 2012, at least 190 clubs were forecast to be at risk of closure
- By 2012, the social contribution made by NSW clubs was forecast to fall by between \$219 million and \$343 million
- By 2014, the combined decline in trading performance and the decline in capital investment may result in:
  - An average of 3,912 jobs lost in the NSW economy annually;
  - An average of 391 jobs lost in clubs annually; and
  - A decline of \$1.6 billion in NSW Gross State Product (GSP) in net present value terms.

### *ClubsAustralia's comment*

ClubsAustralia believes this shows that the club industry is already facing an uncertain future. Faced with another shock, in the form of a large and sustained reduction in revenue and/or the requirement to increase expenses to pay for harm minimisation measures of uncertain merit, clubs will be highly vulnerable to gross financial distress or failure.

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<sup>2</sup> The Allen Consulting Group, *Clubs and the Mutuality Principle*, commissioned by ClubsNSW, March 2006, p.5.

<sup>3</sup> The Allen Consulting Group, *Socio-Economic Impact Study of Clubs in NSW*, February 2008

<sup>4</sup> KPMG, *Financial and Economic Position of the NSW Club Industry*, 16 December 2008

<sup>5</sup> KPMG, *Financial and Economic Position of the NSW Club Industry*, 16 December 2008

## Policy shifts affect financial viability

Recommendations alone have the effect of causing clubs to reconsider their operations. Since the Draft Report was issued, ClubsAustralia has been notified by a number of clubs that they will no longer pursue their business development plans. This includes Twin Towns Services Club in northern NSW, which has ceased progress on a \$35 million re-development to avoid taking on debt that may not be serviceable if the Commission's draft recommendations were implemented.

The effect of gaming-related government policy can be seen by examining the impact of the increase in club gaming machine tax rates announced by the NSW Government in 2003 and phased in progressively over a five-year period.

### *KPMG's findings*

KPMG analysed the effect of increased gaming tax rates on the financial viability of NSW clubs and found that the financial viability of the majority of clubs was directly linked to the net contribution of gaming: gaming revenue minus gaming tax and direct gaming expenses.<sup>6</sup> KPMG found that increases in marginal tax rates over time resulted in a lower net contribution from gaming and an associated deterioration in club financial performance and viability.

Clubs reported the need to reduce wage costs and employment levels in terms of overall staff numbers and staff hours as they sought to minimise their major operational expense. Clubs also reported that they failed to reinvest adequately in club facilities with declining revenues and cash earnings which, over time, led to deteriorating facilities and clubs losing their market appeal. With an increasing number of clubs experiencing hardship, many clubs indicated that financial institutions had become reluctant to lend and in some instances had placed onerous and restrictive covenants on their operations.

Further, clubs reported that they were unable to support members and community groups to the same extent and reduced financial contributions, including those made through the Community Development and Support Expenditure (CDSE) Scheme. These fell from \$74 million in 2006/07 to \$62 million in 2007/08<sup>7</sup>.

Finally, smaller clubs in financial distress reported that they were unable to find amalgamation partners among larger, financially stronger clubs. KPMG found that while 90 per cent of the smallest clubs surveyed viewed amalgamation as a solution to their financial problems, only 10 per cent of larger clubs indicated a willingness to amalgamate in the current circumstances.

## Implications for regional economies and jobs

Clubs are major employers in areas experiencing higher than average levels of unemployment. As a consequence, it is in these areas that the deterioration in the financial viability of clubs, brought on by shifts in gaming-related policy, may be most acutely felt.

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<sup>6</sup> KPMG, *Financial and Economic Position of the NSW Registered Clubs Industry*, commissioned by ClubsNSW, December 2008.

<sup>7</sup> Official figures from NSW Office of Liquor, Gaming and Racing

As noted earlier in ClubsAustralia's first submission, gaming machine revenue fell by 30 per cent in Quebec following the introduction of pre-commitment.<sup>8</sup> As such, ClubsAustralia believes that a 30 per cent reduction in gaming revenues would be a conservative estimate of the impact of limitations on access to cash, restrictions on maximum bet and max cash insert as well as technology-based pre-commitment and other draft recommendations.

#### *KPMG's findings*

KPMG's 2009 report employed The Enormous Regional Model (TERM),<sup>9</sup> which essentially treats each region as a separate economy, providing a high degree of regional detail and allowing examination of region-specific impacts. KPMG found that "Registered clubs in New South Wales are major contributors to regional economies in terms of both economic and social benefits" and that a 30 per cent reduction in NSW club revenue would equate to approximately \$2 billion per year.

This loss of revenue was forecast to result in:

- An estimated annual loss of approximately 3,300 jobs in clubs over the short term. This short-term loss eases over the long term to a reduction of 2,970 jobs. This improvement of 10 per cent indicates that clubs may find it very difficult to recover, even over a long period of time, from the loss of revenue.
- For the NSW economy as a whole (including clubs), there was forecast to be an estimated loss of approximately 11,500 jobs in the short term. In the long term, the total flow-on impact may be a loss of 3,680 jobs.
- A reduction in NSW Gross State Product (GSP) over the short term of \$820 million per annum in terms of the 2007/08 economy. In the long term, the impact may fall to \$158 million per annum.

#### *ClubsAustralia's comment*

A reduction in gaming revenues for clubs will particularly impact regional economies, though have a long-term impact upon the economy more broadly. ClubsAustralia expects that few businesses would be able to survive a sustained revenue reduction of 30 per cent. Clubs are no exception and, because their not-for-profit status means they generally do not accrue and save large surpluses, they are generally ill-equipped to make the necessary investments to viably transition for the future.

In relation to the loss of 11,500 jobs in the short term, ClubsAustralia notes that this would include local food suppliers to the club, handymen and cleaners that provided contract services as well as accountants and others.

In the long term, those 3,680 people would be the long-term unemployed throughout NSW who were unable to find alternative employment after a number of years, owing to the lost opportunities through clubs. The other employees will eventually find work in other sectors over time.

It should be noted that the forecast job losses do not take into account the impact upon other gaming sectors in NSW, nor in other jurisdictions.

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<sup>8</sup> See Chapter 1.4 in this submission.

<sup>9</sup> The TERM model is a bottom-up CGE model of Australia developed by CoPS at Monash University.

## The need to consult

The potential for gaming policy to negatively affect clubs and communities, graphically illustrated above, was acknowledged by IPART in 2008:

*IPART investigated what clubs earn and spend, and has confirmed the common perception that most clubs are highly dependent on gaming machine revenue. As a result they are very vulnerable to any change related to the regulation of gaming machines. This is a key finding of the review, and has led IPART to recommend that any future changes in Government policy affecting the revenue stream from gaming machines should be preceded by consultation with the clubs industry to determine the likely impact of proposed changes.<sup>10</sup>*

ClubsAustralia wholeheartedly supports this conclusion and suggests the Productivity Commission re-evaluate the recommendations throughout the Draft Report to determine their likely impact so that a cost-benefit analysis can be undertaken.

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<sup>10</sup> IPART 2008, Executive Summary, p.3.

## CHAPTER 3 – THE POLICY FRAMEWORK

### Response to Draft Finding 3.1

*Even under conservative assumptions, a sustained 10 per cent reduction in the costs associated with problem gambling is estimated to generate benefits to society of around \$450 million a year in 2008-09 prices, and longer term benefits amounting to several billion dollars. This implies that even harm minimisation measures with modest efficacy may produce worthwhile net benefits so long as they do not also involve excessive costs.*

ClubsAustralia is surprised at the cursory treatment that the Commission has afforded to such an important matter as the costs and benefits of harm minimisation. Before undertaking *any* significant policy considerations and decisions, a comprehensive review of the costs versus the benefits must be undertaken. It is noted that the Draft Report has addressed only half the equation, and ClubsAustralia does not believe that this represents best practice or is sufficient for fair and balanced public policy recommendations.

ClubsAustralia has sought expert opinion<sup>11</sup> on a number of matters and suggests that there are significant questions regarding the robustness of the calculation used.

These include:

- issues requiring further explanation, for example the growth assumptions used;
- the inclusion of ‘at risk’ gamblers in the modelling, at the same rate as problem gamblers;
- the exclusion of co-morbidity as a factor; and
- reliance on data that uses an extremely small sample size.<sup>12</sup>

The Draft Report begins its analysis by stating that in 1999, the Commission estimated “total social costs of between \$1.8 and \$5.6 billion with an additional loss of \$2.7 billion due to “excess” spending by problem gamblers”.

It is also noted that in 2009 it has been considered unnecessary to undertake “any further detailed research in this area as the exact numbers are not relevant for policy action”. In its place, a so-called “thought experiment” was conducted to explore the “order of magnitude” of gains from a 10 per cent reduction in harms.

This is despite the Commission’s critical finding in 1999 that “estimates of the net contribution to society, ranged from a net loss of \$1.2 billion to a net benefit of \$4.3 billion”. That is, it can be seen that on a cost-benefit analysis, gambling is likely to have a net positive value. Failure to reconfirm this assessment is a serious omission in the Draft Report.

Since the 1999 Report was published, rigorous quantification has been made of clubs’ contribution to the provision of community infrastructure and support – that is, social capital and the role gaming

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<sup>11</sup> Appendix 1, Harvest Data, “Response to Productivity Commission’s Draft Report into Problem Gambling” – prepared for ClubsAustralia, 14 December 2009.

<sup>12</sup> Appendix 1, pp.44-65.

machines play in clubs.<sup>13</sup> ClubsAustralia suggests that it is obligatory to include such data in any analysis, including (and especially) this Inquiry.

The Draft Report claims that there are potential benefits of \$350 million (this represents the benefits from EGMs only) Australia-wide from a 10 per cent fall in prevalence. The Commission does not attempt to distinguish between different types of gambling provider models (clubs/hotels/casinos).

ClubsAustralia questions whether a single page (Box 3.3 – “Some ‘back of the envelope’ calculations”) is appropriate for assessing the costs associated with problem gambling in clubs. This is a significant and complex issue, which requires careful consideration of costs and benefits before using such analysis to justify significant policy initiatives that will lead to huge negative impacts on revenue.

ClubsAustralia also questions the underlying assumptions used to arrive at the figure of \$450 million and has some serious concerns that the Commission must address to provide certainty to governments and industry<sup>14</sup>. These include that the Draft Report has failed to identify the actual costs on which it has based the figure proposed. ClubsAustralia presumes that if a 10 percent fall in prevalence will save \$450 million, the total amount that might be saved is \$4.5 billion.

The Commission has recommended other parties be transparent in regard to the release of data and this call for transparency requires the Commission to answer the following questions: Who pays how much of the \$4.5 billion and what does the figure comprise? Has the figure fallen as a result of declining prevalence rates and, if so, has it fallen proportionately with the decline in each jurisdiction? What evidence is there of this decline in social costs? If the amount spent has not fallen or has not fallen proportionately with the decline in prevalence rate, the Commission must explain why the discrepancy has not undermined the proposed link between social costs and declining prevalence rate.

This is important, as ClubsAustralia is of the opposite view to the Commission on this issue: we believe that in order to ensure prevalence rates continue to fall, the costs to effect such an impact will inevitably increase. That is, while some ‘social costs’ may decrease, expenditure by governments and industry will *increase* because harm minimisation must become more intrusive and more all-encompassing. This increased expenditure on implementing and maintaining harm minimisation will replace expenditure that might otherwise have been spent directly on those with social problems, for example through club charitable contributions.

The Draft Report claims that inflation and real HDI have pushed up social costs by around 70 per cent in nominal terms over the decade. However, ClubsAustralia notes that real net national disposable income per person grew by 2.8 per cent a year on average over this period. This suggests an increase of around 30 per cent.

That is, there is a “perceptual gap” in this assumption. The Report needs to make clear why it has chosen inflation and HDI as guides, as opposed to other available indicators such as GDP per person. Additionally, all cost estimates should be in real per-capita terms, to accurately reflect any growth in the population and changes in the cost of living over time (rather than just income).

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<sup>13</sup> NSW IPART, “Review of the Registered Clubs Industry in NSW”, Final Report, June 2008.

<sup>14</sup> Appendix 1, pp.44-65.

ClubsAustralia notes that the Draft Report claims to use “conservative” values in its calculations of \$450 million (\$350 million for EGMs only). In the case of revenue share attributed to problem gamblers, 20 per cent is assumed (as opposed to 40 per cent). ClubsAustralia believes that 20 per cent is far from conservative in the case of clubs and therefore does not agree with the finding of 41 cents in the dollar, about which further comment is made in other parts of this submission and the Attachment<sup>15</sup>.

In contrast to the 1999 Report, the 2009 Draft Report includes ‘at risk’ (CPGI 3 – 7) gamblers in its calculation. ClubsAustralia seriously questions the inclusion of this category with the same rate as ‘problem gamblers’. Apart from the obvious and acknowledged difficulty of quantifying harm for this category, there is no evidence or theory to suggest that at risk gamblers progress to become problem gamblers; that is, that they follow pathological progression. Further analysis of this can be found in the Attachment.<sup>16</sup>

Finally, while the 1999 Report took account of co-morbidity effects, the 2009 Draft Report appears to ignore this important consideration. This is concerning, because it fails to account for the high number of problem gamblers who would seek treatment and have high social costs *regardless of their gambling consumption* because they also suffer from other problems. It has been suggested that up to 70 per cent of problem gamblers suffer from co-morbid conditions.

In conclusion, ClubsAustralia rejects the finding and methodology used by the Commission in estimating the benefit from reducing the prevalence of problem gambling because:

1. It includes ‘at risk’ problem gamblers at a rate equal to that of problem gamblers when the science questions the basis for their inclusion at all.
2. It omits to assess co-morbidity as a significant factor in calculating any costs attributable to problem gambling and the likelihood that these costs must still be met regardless of a fall in the prevalence rate.
3. It does not analyse how far problem gambling prevalence can realistically fall – it will never be nil and there will be substitution to other forms of gambling. Therefore the estimated total savings will never be met and may moderately increase.
4. Despite problem gambling prevalence in Queensland falling by 55 per cent over the last eight years, no evidence has been provided to substantiate the alleged savings from such a significant decline. Has expenditure on counsellors, the social costs to communities and the incidence of divorce, bankruptcy and related indicators fallen by 55 per cent?
5. It fails to take into account the benefits derived from clubs which has now been accurately quantified for NSW by IPART. That is, the purported savings have not been offset against the tangible and intangible benefits from gambling, especially in clubs.
6. The increased expenditure required to effect a further decline in the prevalence rate has not been offset against the purported savings.

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<sup>15</sup> Appendix 1, pp.95-130.

<sup>16</sup> Appendix 1, pp.50-52.



## CHAPTER 4 – THE PREVALENCE OF PROBLEMS WITH GAMBLING

In 1999 the Productivity Commission (using the SOGS test instrument and a score threshold criteria of 5+) found that on average, 2.1 per cent of Australian adults suffered a problem with gambling that was sufficiently significant to warrant classification as “problem gambling” (the term “pathological gambler” has also been used). It is acknowledged that at SOGS 5+, this is a volatile screen with high levels of false positives. No empirical research has shown any evidence of false negatives.<sup>17</sup>

For scores below a SOGS 5 threshold, the test was regarded as too unreliable for identification of problem gambling and was rejected by the Productivity Commission.<sup>18</sup> In numerical terms, 2.1 per cent translated to 293,000 adults.<sup>19</sup>

A decade later, most Australian jurisdictions have retested their populations at least once, using what is acknowledged to be a more appropriate testing instrument, called the Canadian Problem Gambling Index (CPGI).<sup>20</sup> Using the CPGI, the jurisdictions have produced scores that consistently demonstrate a decreasing incidence of significant problem gambling and, based on available evidence, decreasing ‘at risk’ gambling.<sup>21</sup> It is noted the Draft Report re-examines the NSW prevalence study data and increases the incidence rate from 0.8 per cent to 0.95 per cent, claiming that this increase is “modest”.<sup>22</sup>

The Draft Report estimates that on the basis of the recent surveys, the incidence rate of problem gambling is likely to be around 0.75 per cent (median 0.7 per cent) – which equates to 125,000 people.<sup>23</sup> Since the Draft Report was published, new estimates have been released that show that the rate continues to fall.

Bearing in mind the qualifications and issues associated with comparing results measured at different times using different measuring instruments, a decrease from 293,000 in 1999 to 125,000 years later is noteworthy and should be of particular importance to policy-makers.

In the view of ClubsAustralia, this is one of the strongest and most reliable indicators that an issue of concern is being controlled, is being dealt with, and is trending downward.

This view is echoed by the Queensland Government, with the responsible Minister saying:

*The 2008-09 Queensland household gambling survey results show that problem gambling is now affecting just 12,000 Queenslanders, or 0.37 per cent of the adult population, down from 0.47 per cent in 2006-07. The figure has been dropping continuously since the strategy was implemented in 2001.*<sup>24</sup>

ClubsAustralia believes other states and territories are experiencing similar downward trends in prevalence rates.

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<sup>17</sup> See Attachment, *Harvest Data Report to ClubsNSW*, 14 December 2009, pp.38-41.

<sup>18</sup> Productivity Commission 1999, Volume 1, p.6.45.

<sup>19</sup> Ibid, p.6.45.

<sup>20</sup> Draft Report, p.4.6, Box 4.2.

<sup>21</sup> Attachment, pp.26-27.

<sup>22</sup> Productivity Commission 1999, Table 4.8, Footnote C.

<sup>23</sup> Draft Report, p.4.23.

<sup>24</sup> Press Release, Queensland Minister for Tourism and Fair Trading, 17 November 2009.

However, the Draft Report casts this achievement in a different light, stating: “While far from certain, problem gambling prevalence rates appear to have fallen somewhat.”<sup>25</sup> The Commission then effectively dismisses this decrease as irrelevant on the basis that “measuring lower intensities of problems is relevant to harm minimisation and consumer polices.”<sup>26</sup>

That is, according to the Draft Report, the basis for deciding whether a person has a ‘problem’ or has suffered ‘harm’ must be much lower than a SOGS5+ or CPGI8+ criteria – and by extension, important and potentially costly and damaging policy decisions should be made on significantly less reliable indicators.

It is important to understand and emphasise the significant and real issues that arise when reliable, quantifiable indicators are not utilised and the concept of ‘harm’ is broadened, as in this Draft Report. This is particularly relevant when discussing problem gambling in a framework that should be objective, evidence-based, and taking into consideration the costs and benefits of gambling.

The Attachment to this submission shows that all available evidence points to a decrease in the prevalence rate of problem gambling and ‘at risk’ gambling, and seriously questions the principles on which the Draft Report chooses to include ‘at risk’ gamblers in the analysis of harm.<sup>27</sup>

The Draft Report states at page 4.2:

*Gambling regulations, counselling support services and other harm minimisation measures are costly for government and those businesses supplying gambling services and equipment. Ultimately, those costs fall on taxpayers and gamblers. There must be a big enough problem to justify such costs and to motivate specialised measures targeted at gambling, rather than, as is usual with most other consumer services, standard consumer protection laws and resort to general mental health services. (emphasis added)*

However, the Draft Report then appears to abandon this objective approach when it makes the following “Key Point”:

*The significant social costs associated with problem gambling mean that even policy measures with modest efficacy will often be worthwhile.*<sup>28</sup>

That is, even if a measure has minimal effect, the Commission believes it is still worth implementing irrespective of the cost. In relation to the significant costs associated with gambling, the Draft Report states that this is based on a “rough” estimate of the “social harm”.<sup>29</sup>

ClubsAustralia submits that this is an unbalanced approach that completely ignores the social and economic contribution of clubs,<sup>30</sup> particularly as the social contribution for NSW clubs alone far exceeds the Australia-wide saving that the Draft Report projects from a 20 per cent reduction of “social harm”.

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<sup>25</sup> Draft Report, p.4.1.

<sup>26</sup> Ibid.

<sup>27</sup> Attachment, pp.74-82.

<sup>28</sup> Draft Report, Overview p.XIV.

<sup>29</sup> Ibid, p.3.23.

<sup>30</sup> Costed by NSW IPART and supplied in the ClubsAustralia submission.

The Commission makes no obvious attempt to investigate any benefits derived from clubs and their ability to operate gaming machines. Such information is readily available: in addition to the detailed consideration given to the social contribution of clubs by the NSW IPART, some very recent research clearly demonstrates the intangible benefits of clubs that have access to gaming machines.<sup>31</sup> This includes the much-maligned practice of playing gaming machines alone, a practice that is regarded as indicative of anti-social – and thus harmful – activity by many anti-gaming machine proponents.

Quite correctly, the Draft Report states that:

*At a more fundamental level, debates about the numbers can be traced to differences in judgments about what comprises problem gambling. It is simply not possible to ‘accurately’ measure something whose definition is not widely agreed.*<sup>32</sup>

That is, despite decades of research and consideration, even academic researchers and experts cannot agree on a definition of problem gambling that enables accurate and objective measurement of the problem. It may well be that a definition cannot be arrived at, as it is so deeply rooted in human behaviour to which differing beliefs and norms are applied. Much of gambling behaviour is subject to a very wide interpretation, dependent on philosophical, religious and other views. An analogy can be found when attempting to draw a line as to where ‘long term productive investment’ ceases and stock market ‘speculation’ begins:<sup>33</sup> such a distinction depends very much on each individual’s subjective view of what constitutes acceptable and unacceptable investment activity. The same is true of the spectrum of gambling activity undertaken by individuals. Where does entertainment stop and problems begin?

ClubsAustralia also notes that in this debate the issue of causality has not been resolved. That is, there is no evidence or theory available that gaming machines *per se* are the cause of problem gambling.<sup>34</sup> A growing collection of research has also found that the most afflicted problem gamblers have the kinds of biological brain disorders that are found among drug and alcohol abusers.<sup>35</sup> This has profound implications for policy-makers who are contemplating addressing gaming machine features and design, rather than directing their resources at identification and treatment.

The Draft Report acknowledges the increased reliability of setting benchmarks using higher scores on problem gambling screens such as CPGI8+.<sup>36</sup> ClubsAustralia agrees that this is important for policy

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<sup>31</sup> Independent research from Dr Virginia Simpson-Young has found that club attendance is an important vehicle for older Australians to demonstrate their independence and form social relationships. Dr Simpson-Young observed older members of a registered club in Sydney participating in activities including bingo and playing poker machines. Her observation of the way older club members play poker machines sheds insight into how recreational players use gaming machines and the importance of clubs as social venues. One of her conclusions is noted: “Although actual social playing (that is, sitting at the same or adjacent machines) was uncommon, social interaction with companions (or others) before, afterwards or while moving around the poker machine area, was very common. A complete absence of social interaction seemed to be rare”; Simpson-Young, Virginia, *Meat trays, marginalisation and the mechanisms of social capital creation: An ethnographic study of licensed social club and its older users*, 2008, p.112, [http://ses.library.usyd.edu.au/bitstream/2123/4049/1/PhD\\_thesis\\_Virginia\\_Simpson-Young\\_2008.pdf](http://ses.library.usyd.edu.au/bitstream/2123/4049/1/PhD_thesis_Virginia_Simpson-Young_2008.pdf)

<sup>32</sup> Draft Report, p.4.7.

<sup>33</sup> “Gambling Dressed Up as Investment”, Robin Bowerman, *Border Mail*, 9 October 2009.

<sup>34</sup> Attachment, p.32.

<sup>35</sup> Las Vegas Sun, “Illness theory gaining ground for gambling addiction - Similar disorders found in alcoholics, those with a compulsion to gamble”, 23 November 2009

<sup>36</sup> Draft Report, p.4.9.

setting and funding decisions, because it picks up both the severity and breadth of problems and can reliably guide government.

Lowering the threshold causes difficulties. The Draft Report acknowledges these difficulties under the heading “Harms are hard to measure and to aggregate”<sup>37</sup> – but continues to argue for harm to be viewed in a very broad and largely unquantifiable context.

Argument in support of a lower threshold is to be found in Tables 4.2 to 4.7, and culminates in Draft Finding 4.1, which effectively argues for the inclusion of people who do not fall into the category of problem gamblers but nevertheless “say they are harmed by their gambling”. This finding goes on to form the basis for expanding the problem gambling net and developing a “quantitative image” of the magnitude of the problem. In essence, this is achieved by combining problem and “moderate risk” gamblers. There is also a suggestion that even those in the no risk group suffer harm;<sup>38</sup> that is, those that experience moderate risk which “may make them vulnerable to problem gambling”.<sup>39</sup>

An example of the justification for the net-widening approach can be found in an analysis provided of “regular gamblers” from the 2006 NSW prevalence study. The results are summarised in Table 4.3, “People experiencing significant problems with their gambling”. As expected, the proportion of persons in each category (No risk (CPGI 0), Low risk (CPGI 1-2), Moderate risk (CPGI 3-7) and Problem (CPGI 8+)) increases when the sample is restricted in this manner. However, it is important to note that while the analysis claims to have applied a “fairly stringent test” to ascertain “harm”, this test was based on a telephone survey asking whether respondents:

- Always felt they had a problem;
- Often or always experienced adverse health effects;
- Always experienced financial difficulties;
- Always felt guilty;
- Always experienced adversely affected job performance;
- Self-rated their problems as 5 or more on a 1 to 10 scale;
- Had self-excluded;
- Had tried to get help;
- Had experienced suicidal ideation.

Any one or more positive responses were taken to mean the person experienced significant problems; that is, experienced significant harm. ClubsAustralia has not been given the opportunity to analyse the data<sup>40</sup>, but it would seem that reliance on self-reported data from a telephone survey, using a threshold of just one positive response to a set of questions – many of which are subjective – is at the very least highly questionable. Certainly, it is not suitable for informing significant policy decisions.

Table 4.7, “Psycho-social harms” appears to be included as further support for an argument about the magnitude of harm being caused by gambling. This table defines harm occurring if a person experienced:

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<sup>37</sup> Ibid, p.4.8.

<sup>38</sup> For example, Figure 4.2.

<sup>39</sup> Draft Report, p.4.1, “Key Findings”.

<sup>40</sup> Attachment, pp34-35

- Often or always feeling guilty about their gambling;
- Often or always being criticised about gambling;
- Did not spend enough time to look after family's interests;
- Break-up of important relationship;
- Obtaining money illegally;
- Trouble with police.

The results are used to establish a "Share of affected people" who scored CPGI 0 – 7 and illustrate that there is a significant proportion of the CPGI 0 – 7 – that is, no risk to moderate risk gamblers – who are affected, or suffer harm.

ClubsAustralia submits that this is not a sound, evidence-based foundation on which to justify significant policy decisions and is not acceptable to illustrate or quantify the magnitude of problem gambling. This position is supported by analysis commissioned by ClubsAustralia that suggests incidence rates of problem and at risk gambling are exhibiting a declining trend.<sup>41</sup>

It is becoming clearer that given the acknowledged difficulties of measuring and quantifying gambling harm, only evidence-based and reliable data that reliably measures problem gambling should be utilised. Any analysis should also take into account co-morbid conditions: a factor not considered in Draft Report.<sup>42</sup>

In the view of ClubsAustralia, this absence of rigour means the Commission has failed to make a case for expanding the net and making unfounded statements which are intended to inform policy – such as:

*Despite low prevalence rates in lower risk groups the actual number of people affected in these groups can be even greater than those categorised as problem gamblers. Lower risk groups account for 90 per cent of people rating themselves as having some kind of problem.*<sup>43</sup>

There is no definitive evidence or verifiable theory that can explain the progression path or paths involved with problem gambling.<sup>44</sup> Recreational gamblers do not progress on a 'slippery slope' from 'at risk' status to inevitably ending as problem gamblers. The great majority of gamblers play safely and within their means. While some people may feel guilty about a particular session (when they lose), these feelings are insufficient to consider them on a parallel with problem gamblers and it is therefore inappropriate to use the regret of these people as justification for implementation of intrusive or expensive policy options. Problem gamblers may be affected by psychological, physical, environmental, social or other factors and these influences deserve serious analysis. When considering options to treat them, it must also be remembered that the incidence of problem gambling as defined by the only reliable guide readily available,<sup>45</sup> CPGI8+, has declined.

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<sup>41</sup> Attachment, pp.24-28.

<sup>42</sup> Ibid, p.53.

<sup>43</sup> Draft Report, Key Findings, p.4.1.

<sup>44</sup> ClubsAustralia Submission, section 6.13.5, "At-Risk and Pathological Progression"; Attachment, p.74.

<sup>45</sup> Draft Report, p.4.9: "A high score on an integrated measure of problem gambling, such as the CPGI or SOGS, can pick up both the severity and breadth of problems. In that instance, the right prevalence measure is probably CPGI8+ or SOGS10+, as this will guide governments about funding needed for specialised counselling and treatment services."

## Response to Draft Finding 4.1

*There are many people not categorised as ‘problem’ gamblers who, nevertheless, say they are harmed by their gambling.*

In ClubsAustralia’s opinion, this finding confirms the flawed approach adopted by the Draft Report and foreshadowed in Chapter 3 – which, while apparently advocating a “balance of evidence approach”<sup>46</sup> to policy formulation, then develops a case for the application of unreasonably harsh policy measures based on a biased and unsubstantiated body of evidence.<sup>47</sup>

## Response to Draft Findings 4.2, 4.3, 4.4, 4.6

*4.2: There are estimated to be between 90,000 and 170,000 Australian adults suffering significant problems from their gambling in a year (0.5 to 1.0 per cent of adults), and between 230,000 and 350,000 people with moderate risks that may make them vulnerable to problem gambling (1.4 to 2.1 per cent of adults).*

*4.3: Around 15 per cent of Australian adults gamble regularly (excluding Lotto and ‘scratchies’). While imprecise, it is estimated that around one in ten of this group would be classified as problem gamblers, with around an additional 15 per cent experiencing moderate risks.*

*4.4: About 5 per cent of adults play gaming machines weekly or more often. Around 15 per cent of this group would be classified as problem gamblers, with around an additional 15 per cent experiencing moderate risks. Altogether, around one third of regular gaming machine players face significant risks.*

*4.6 While far from certain, problem gambling prevalence rates appear to have fallen somewhat. It is unclear how much this reflects natural adaptation or the impact of government policy, though both are likely to have contributed:*

- *adult population prevalence rates can be misleading about the extent of problem gambling – the key concern is the proportion of regular gamblers who have problems.*

At their core, these findings all seek to reinforce the common theme of Draft Finding 4.1, which is not based on sound evidence but rather a subjective interpretation of harm and an attempt to expand the definition beyond reasonable limits.

As already noted, the Draft Report adopts a view that net-broadening is required to include low and moderate risk problem gambling categories when trying to quantify harm. In order to achieve this, harm is defined in a very subjective manner involving concepts such as feeling ‘guilty’ or ‘anxious’ about one’s gambling – things that are difficult to measure and aggregate.<sup>48</sup>

Following the Commission’s analysis of various survey data, the Draft Report goes on to argue that it is not prevalence in the general population that should be of concern, but *prevalence within that group of people who voluntarily undertake the activity of gambling* – that is, regular gamblers.<sup>49</sup>

<sup>46</sup> Draft Report, p.3.30, “So where should the balance lie?”

<sup>47</sup> For further comment on bias and consideration of evidentiary standards please refer to Attachment, pp.14-20.

<sup>48</sup> Draft Report, p.4.8.

<sup>49</sup> Ibid, pp.3.30, 4.26: “The risks should relate to people who gamble”.

The detailed analysis and data sets used – which in our view should be made readily available for independent expert review<sup>50</sup> – results in a finding that problem gambling prevalence rates among gamblers are around 25 per cent higher than those implied by adult rates (around 0.9 per cent for CPGI 8+ and 3.0 per cent for CPGI 3+).<sup>51</sup> These rates are not significantly higher than those for the entire population and, coupled with the decreasing rate of problem gambling, do not justify a drastic policy response.

The Draft Report then analyses prevalence rates among “regular” players, who are defined as weekly players on at least one non-lottery form of gambling or those spending over a certain threshold dollar amount. Not surprisingly, it finds a higher percentage of problem gambling prevalence.

Without being given access to this data, ClubsAustralia suggests that it is reasonable to expect the proportion of people suffering problems will logically increase as the sample is refined to include only the subset of people that undertake a particular activity; that is, when over-sampling of a particular group takes place, it is expected that the proportion of persons experiencing some harm or benefit would increase.

For example, if a group of 100 people were selected randomly and were a representative cross-section of the entire population, then those whose health was adversely affected or suffered harm directly as a result of, say, ‘mountain climbing’ or ‘rock fishing’ would be very low. However, if the group of 100 were selected from members of a mountaineering or rock fishing club, then the relative quantity of harm suffered can be expected to be significantly higher, even though in absolute terms (that is, taken as a part of the whole population) it would remain the same. Taken to an extreme, such an approach will produce what appear – misleadingly – to be very disturbing statistics, which could be used to substantiate a call for drastic and urgent public policy measures. However, when viewed in a broader context and with the benefit of quantifiable data, the statistics do not form a case for policy action of the type suggested in the Draft Report.

As an example, rock fishing has been claimed to be a leading cause of drowning.<sup>52</sup> Drowning is a tragic event that should be minimised, and efforts to minimise it must be supported. Continuing with this example, if rock fishing deaths – possibly refined to account for specific locations, times or weather conditions applying when fishing took place – were to form the basis for water sports policy generally, then a distorted decision framework would be created from the outset. As in the case of water activity, gambling is a pursuit enjoyed by a significant proportion of the population – and a narrowing of focus to substantiate a case for harsh policy settings, almost exclusively in relation to gaming machines, is unsupported. (It is also noted that despite the use of over-sampling as a basis for support, Draft Finding 4.3 suggests that 10 per cent of regular gamblers would be classified as problem gamblers – a figure which ClubsAustralia notes is trending downward. That is, 90 per cent of regular gamblers are *not* problem gamblers – and this proportion is increasing.)

By way of comparison with the analogy above, the revenue from problem gamblers is reported by the Commission to be around 40 cents in the dollar. This estimate was taken from a small number of

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<sup>50</sup> ClubsAustralia notes difficulty in obtaining access to the raw survey data available to the Commission and suggests it is appropriate to allow public scrutiny of the raw data sets used to produce the report. Also see Attachment, pp34-35 and p147.

<sup>51</sup> Draft Report p.4.26.

<sup>52</sup> Surf Life Saving New South Wales, Circular 2073, November 2006.

surveys, each of which included less than 30 alleged problem gamblers and each survey had sampling biases. Yet the survey results from these small, biased samples of *alleged* problem gamblers (they were not clinically interviewed) have been extrapolated as though all 125,000 problem gamblers in Australia have that ratio of spend relative to all adults in Australia. ClubsAustralia suggests it is very brave to make such a finding with so small a sample.

In ClubsAustralia's view, the approach taken by the Draft Report has significant flaws. Firstly, while expanding the net to amplify the calculated harm caused, the Draft Report does not attempt to place this into any broader context. For example, the Draft effectively dismisses CPGI 8+ as a proven and realistic threshold for measuring harm, yet does not attempt any rigorous analysis of the costs versus benefits that result from such an assumption. The Draft Report relies on emphasising a very subjective interpretation of harm caused by participation in gambling, and using this as the basis to argue for additional and significant regulatory controls that will have a major negative impact on the revenue streams and viability of clubs.

Secondly if the principle of over-sampling – that is, narrowing the sample to those regularly participating in gambling – is regarded as reasonable, then ClubsAustralia suggests it is also valid to distinguish between the different gambling providers or models, and the costs versus benefits of each. The Draft Report does not make any attempt to analyse and distinguish between the different types of gambling providers or models of gambling that have evolved. In the case of NSW, club gaming machines have been available for over 60 years, generating revenue streams that have made (and continue to make) an enormous positive contribution to their communities – providing local employment, community facilities and infrastructure that would otherwise not have been available.

ClubsAustralia believes that the Draft Report has failed to examine evidence and submissions or commentary that may indicate different models of gambling result in different costs and benefits. ClubsAustralia has commented on the role and contribution of clubs in its first submission to the Productivity Commission; however, this does not appear to have been taken into account.

ClubsAustralia submits that clubs provide a demonstrably and significantly higher social contribution/benefit to communities than other forms of gambling, as well as providing a more 'benign' gambling environment.

In ClubsAustralia's view, Draft Findings 4.1 to 4.6 do not present objective evidence that can be used to support an argument for the introduction of additional restrictions on gaming machines, their features, or operational conditions in clubs.

Without an objective cost-benefit analysis – as opposed to an approach that focuses almost entirely on gaming machines, whose features appear to be taken without causal proof as a root cause of significant social harm in the context of gambling activity – it is reasonable to conclude that Draft Findings 4.1 to 4.6 are without sufficient justification to remain in the Final Report.

#### **Response to Draft Finding 4.5**

*It is estimated that problem gamblers account for around 40 per cent of total gaming machine spending (the midpoint of a range of estimates as high as 60 per cent and conservatively at least 20 per cent). Moderate risk gamblers account for a further significant share.*



ClubsAustralia notes that the Commission's 1999 Report estimated the share of gaming machine revenue derived from problem gamblers to be 42.3 cents in the dollar, and for wagering 33.1 cents. Calculations for 'all gambling' (including lotteries and so forth) resulted in an adjusted total of 33 cents. Further comment on the flaws identified can be found in the Attachment.<sup>53</sup>

It is also noted that while the claimed share of revenue from problem gamblers involved with wagering is similar to that of gaming machines, the Commission gave no consideration to addressing problem gambling issues associated with wagering/sports betting by using measures of a similar severity to those recommended for gaming machines.

Some ten years later, with significant evidence of a decline in the incidence of problem gambling and solid evidence that at-risk gambling rates have declined,<sup>54</sup> the Draft Report finds that the spend attributable to problem gamblers is 41 cents in the dollar; though this appears couched in a view that it is likely to be higher.

ClubsAustralia believes that there are significant questions that arise when some basic statistics are collected and reviewed. As an example, if 41 cents in the dollar is attributed to NSW problem gamblers, the following rough calculations and questions can be formulated:

- The total gaming machine revenue from NSW clubs, hotels and casino for 2008/09 was approximately \$5,022 million;<sup>55</sup>
- The rate of problem gambling, using CPGI 8+, measured by the NSW Prevalence study was 0.8 per cent;
- The adult population of NSW at June 2009 was estimated at 5,474,398;<sup>56</sup>
- By this calculation there would be 43,795 problem gamblers in NSW, spending a total of \$2,009 million in 2008/09;
- That is, the average spend per problem gambler would be approximately \$47,000 annually.

It seems highly unlikely that this level of spending – typically attributed to be from people with lower income levels – can be sustained without drawing significant attention to its incidence.

In relation to household income, it is unlikely that sufficient funds are available to sustain such levels of spending on gaming machines without raising significant and observable financial stress. ABS data on the distribution of "Equivalent Household Disposable Income"<sup>57</sup> indicates that approximately two thirds of households in NSW operate on an annual equivalised household income of less than \$47,000 with a median level of around \$38,000. While equivalisation is a more sophisticated measure of a household's ability to maintain a standard of living, on an Australia-wide basis more than one third of households have gross income of less than \$47,000 annually. (Gross income does not account for tax or Medicare levy.)

It is reasonable to assume that if the 41 cents in the dollar is correct, the occurrence of bankruptcy due to problem gambling should be significant. However, data published by the Insolvency and

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<sup>53</sup> See Attachment, pp.68-78.

<sup>54</sup> Ibid.

<sup>55</sup> NSW Office of Liquor Gaming and Racing Quarterly Gaming Statistics and Casino Liquor and Gaming 2008/09 Annual Report.

<sup>56</sup> ABS, 32010DO001\_200906 "Population by Age and Sex, Australian States and Territories, Jun 2009", Table 8.

<sup>57</sup> ABS Household Income and Distribution 2077-8, 6523.0, p.56.

Trustee Service Australia (ITSA) shows that in NSW, from a total of 14,751 bankruptcies/insolvencies in 2008/09, only 505 were attributed to 'Gambling and Speculation'.<sup>58</sup> 'Gambling and speculation' thus accounts for less than 3.4 per cent of all bankruptcies. Less than 1.1 per cent of problem gamblers in NSW can be seen to have declared bankrupt in 2008/09.<sup>59</sup>

There thus appears to be an inconsistency between objectively measurable financial damage and the type of damage that would be expected if the 41 cents in the dollar assertion were correct.

Detailed analysis of the methodology of the studies used to substantiate the figure shows that flaws include:

- Unresolved challenges in correctly identifying how much people actually spent gambling, as opposed to guessing (can you recall how much you spent on lunch last year with any accuracy?);
- Insufficient numbers of proven problem gamblers being sampled to realistically quantify annual spend relative to the general gambling population; and
- Failure to recognise that a high spend on gaming machines may be indicative of financial capacity to gamble, rather than evidence of problem gambling (that is, it can only be determined if a person is a high roller as opposed to a problem gambler through expert assessment; and, therefore, treating high roller spending as problem gambling expenditure will provide an inflated value of problem gambler spend).

In relation to high spend on gambling, ClubsAustralia notes that in 1999 the Commission found that:

*Of course, this does not mean that heavy spending equates with excessive spending or with problem gambling — indeed it is still true that a majority of heavy gamblers are not problem gamblers (using the SOGS criterion of 5+).*<sup>60</sup>

It is questioned why this truth has apparently been abandoned in 2009 and replaced with an approach that attempts to exaggerate the harm and proportion of spend attributable to problem gamblers on gaming machines and specifically in clubs.

In light of the insufficient evidence to justify reliance on the '41 cents in the dollar' figure, and the present inability to accurately identify the real problem gambling expenditure rate with greater certainty, ClubsAustralia asserts that the Commission should refrain from giving credence to the figure. Apart from being unreliable, it is used inappropriately by some people to criticise industry and advocate for restrictions on gaming machines that cannot otherwise be justified.

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<sup>58</sup> Insolvency and Trustee Service Australia, Inspector-General's Report on the Bankruptcy Act 1966, Annual Report 2008-09, <http://www.itsa.gov.au/dir228/itsaweb.nsf/docindex/About+Us-+per+cent3EPublications-+per+cent3EAnnual+Reports>.

<sup>59</sup> This figure would be lower if 'speculators' were removed.

<sup>60</sup> Productivity Commission 1999, Attachment P, p.6.

## CHAPTER 5 – COUNSELLING AND TREATMENT SUPPORT SERVICES

ClubsAustralia supports many of the findings and recommendations in Chapter 5 of the Draft Report. However, it is felt that the Commission has failed to acknowledge or address the recommendations of ClubsAustralia in this area. For example, ClubsAustralia presented the Commission with detailed analysis of family intervention as well as improving counselling services and accreditation of counsellors but this is not dealt with.

It is apparent from the Draft Report that the Commission feels insufficient information is being provided to assist problem gamblers to implement low-cost self-help options. This is important, as the Commission has found most problem gamblers do not seek assistance. Yet there are numerous self-help options available, many of which are inexpensive and likely to be effective if targeted correctly.

Most importantly, it is not known to what extent problem gambling is a symptom, rather than a cause, of co-morbidities. If the Commission accepts (at 5.4) reports that somewhere around 55 per cent of problem gamblers have depression, 29 per cent have alcohol problems and 19 per cent have drug problems, it is necessary to identify whether treating problem gambling will resolve these other issues. Alternatively, treating problem gambling may only ever be of temporary benefit.

There is growing evidence to support the view that co-morbidities are the cause rather than the symptom of problem gambling.<sup>61</sup> If the Commission cannot be certain that depression and drug use is caused by problem gambling, rather than the other way around, it is premature to make recommendations for changes to poker machines that would be expensive with little likelihood of addressing the root causes of problem gambling.

While some simplistically refer to treatment as the ‘too-late’ option, in the absence of certainty about how to identify someone likely to become a problem gambler, the alternative to treatment (prevention) poses potentially enormous costs and uncertain outcomes.

### Response to Draft Recommendation 5.1

*Building on existing initiatives, governments should:*

- *place greater emphasis on campaigns that (i) highlight potential future financial losses associated with problem gambling and (ii) make the community aware of behaviours indicative of problem gambling, to encourage earlier help-seeking and interventions by family and friends*
- *provide information and a one-item screening test, as part of other mental health diagnostics, for optional use by health professionals and counsellors to assist them to recognise and refer people experiencing gambling problems. Screening should be targeted at high-risk groups, particularly those presenting with anxiety, depression, high drug and alcohol use – with subsequent evaluation of the effectiveness of this measure*
- *promote self-help and the option for brief treatments, as such relatively low cost interventions can increase self-recovery of people experiencing problems with gambling.*

<sup>61</sup> *Las Vegas Sun*, Liz Benston, “Illness theory gaining ground for gambling addiction: Similar disorders found in alcoholics, those with a compulsion to gamble”, 23 November 2009 <http://www.lasvegassun.com/news/2009/nov/23/illness-theory-gaining-ground/>

ClubsAustralia supports community campaigns that provide information and general assistance to problem gamblers. However, it is not known to what degree such campaigns represent value for money compared with more targeted approaches.

The Commission recommends making the community “aware of behaviours indicative of problem gambling.”<sup>62</sup> However, experts are divided on what such behaviours are and stress that no behaviour is conclusive, noting that “[t]here are clearly no absolute formulas for predicting or recognising with 100 per cent accuracy the presence of a gambling ‘problem’ ”<sup>63</sup> and that “[i]ndicators of problem gambling are not necessarily overt or recognisable by staff.”<sup>64</sup>

The Draft Report notes that on visits to venues, Commission staff identified “people experiencing problems with gambling” (at 5.14) but that the individuals were not always approachable. It is not apparent how the Commission staff could possibly have known these people were problem gamblers if they did not approach the people to ask sufficient questions. ClubsAustralia cautions the Commission against presumptions about which behaviours might indicate someone is a problem gambler based on a cursory visual examination, when authorities on problem gambling psychology and behaviour believe it is not possible to draw accurate conclusions on this basis:

*On occasions he/she may display agitation due to work related problems and find that gambling is a distraction that helps him/her unwind. He/she does not meet criteria for problem gambling and it would be inappropriate and an intrusion for gaming staff to raise the issue for discussion.*<sup>65</sup>

The Commission (at 5.14) asserts that problem gamblers “may be more approachable at particular times/places, such as when at the cashier or when claiming a cheque.” Again, the experts caution against such an approach:

*It is always better if the player makes the first approach. Years of research have helped us realise that the causes of problem gambling are complex, and it is only the players themselves who take corrective actions against them.*<sup>66</sup>

The specialist consensus in this field is that hospitality staff are not equipped to detect a problem gambler, and experts are united in opposition to staff intervention – instead believing the player should make the first approach. It is therefore not appropriate for the venue to be penalised for failure to take action against a merely *suspected* problem gambler.

While the Commission recommends greater emphasis on community-wide information and awareness campaigns, no comment has been provided as to why the amount currently spent on such campaigns is inadequate or how much funding would be appropriate. The Draft Report identifies \$48 million spent in 2007/08 on counselling, support services, community education and research but does not identify how much is currently spent on the community campaigns

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<sup>62</sup> Draft Report, Draft Recommendation 5.1.

<sup>63</sup> Tim McCorriston, Psychologist, “Potential Problem Gambling Behaviours and Staff Training” in Australasian Gaming Council, *Current issues related to identifying the problem gambler in the gambling venue*, August 2002, p.32.

<sup>64</sup> Kate Earl, Psychologist, “Observable Behaviour” in *ibid*, p.19.

<sup>65</sup> Professor Alex Blaszczynski, “Problem gambling behaviours: what can be observed in venues and how should staff respond?”, in *ibid* at p.12.

<sup>66</sup> Professor Robert Ladouceur, “Problem gambling behaviours: what can be demonstrated in the venue and how should staff respond?”, in *ibid* at p.24.

specifically. Nor does the Draft Report show how many problem gamblers are currently being directly assisted by these campaigns or how much additional money or campaigning is needed to further reduce problem gambling. Moreover, the Commission's support for community-wide campaigns seems at odds with its lack of support for gambling education (Draft Recommendation 6.2), which presents better potential than an advertising campaign for reducing myths about gambling. ClubsAustralia believes greater consideration should be given to these more targeted programs.

Clearly more work is needed in evaluating the effectiveness of measures and promoting low-cost self-help options. Clubs have a key role to play in that, and are able and willing to distribute written material in areas it will be most effective.

### Response to Draft Finding 5.1

*Gambling treatment outcome studies report that, irrespective of the type of treatment provided, most clients benefit. Although cognitive behavioural therapy is the approach with the most empirical support, no one style of intervention is recommended as best practice.*

ClubsAustralia questions the weight given by the Draft Report to subjective assessments on the success of gambling counselling made by the counselling services themselves. Indeed, it should be expected that treatment services report themselves as being successful – few are likely to identify themselves as flawed.

While counselling assists many of those who seek it and should be encouraged as one of a suite of options, it is clearly not perfect. Most relevant, but relatively unexplored, is the Commission's finding in Box 5.2 that over 60 per cent of pathological gamblers were so characterised for one year or less and that pathological gambling is not chronic. If these findings are correct, then over a (relatively short) period of time the great majority of problem gamblers are self-correcting without professional assistance. Governments might therefore find financial savings by reducing funding to counselling and instead increasing self-help options.

A minority of problem gamblers utilise counselling services: approximately 17,500 per year from the Commission's estimated 125,000 problem gamblers. The Commission finds some evidence in Appendix J, unrecognised in the Draft Report, that the small proportion of problem gamblers who utilise counselling services typically experience problem gambling for an extended period of time, compared to the 60 per cent of overall problem gamblers who self-correct within a year. Table J4 shows that almost 80 per cent of those who were attending counselling services and completed the survey had experienced problem gambling for more than two years. This indicates that those who do utilise counselling services may be the most 'extreme' problem gamblers, incapable of effective self-correction. Such a finding, if correct, would indicate the need for improved counsellor training and increased powers to assist the problem gambler who attends counselling.

More importantly, the assessment that long-term problem gamblers are more likely than short-term problem gamblers to utilise counselling services raises questions about the information they provide. Because they are less likely to be capable of controlling themselves and more likely to be in the grip of a pathological gambling addiction, their responses about measures that would help

reduce their gambling are less likely to be representative of gamblers with less severe addictions. In other words, implementation of recommendations from these ultra-extreme gamblers about what would be effective is likely to be more intrusive than measures that would be proposed by less extreme gamblers, and more likely to affect spending on gaming machines than proposals to improve self-help options.

Further, although their perspective should be respected and is worth consideration, problem gamblers simply do not possess objective, science- and research-based expertise in identifying successful treatment and/or prevention methods. Indeed, it is arguable that those who have struggled for a long period of time without self-correction may be even less equipped to identify what will work for the majority of affected gamblers.

Although many problem gamblers self-correct, just as a patient does not prescribe their own medical treatment, the Commission should not rely primarily on problem gamblers' anecdotal opinion as the basis for recommendations as to appropriate measures.

### Response to Draft Finding 5.2

*Outcome and client follow-up data following treatment, while limited, show significant decreases in clients' involvement in gambling and their gambling-related problems.*

Setting aside whether problem gamblers who utilise counselling services are unrepresentative of problem gamblers generally, follow-up is necessary to determine which treatment is effective, the extent to which it is effective and why. These findings need to be collated and analysed nationally, in order that they may be used to determine whether effective in-venue measures might be implemented.

Outcomes to date from client follow-up data about the effectiveness of counselling are commonly very positive. This is because the data is written by the treatment service as a report card on its own service and is a tool for claiming funds from government, venues and industry. The follow-up work should therefore not be conducted by the service itself, if it is to have credibility. This is best indicated by the reporting of government services, which show a reduction in the number of calls to G-line and a decreasing percentage of problem gamblers across the country identifying EGMs as their principal preferred form of gambling (at J10).

In analysing some of the data, the Commission (at 5.26) reports that G-line in NSW found "the proportion of respondents saying they 'can now manage their gambling' in the affirmative to be 84 per cent at one month, 93 per cent at three months". It should be noted that the respondents were able to 'manage' their gambling, which is very different from quitting. Similarly, follow-up data collected by the Hornsby Drug, Alcohol and Gambling Services found (at 5.27) the "average weekly gambling expenditure had *fallen*" (emphasis added); it had *not* stopped.

If the great majority of problem gamblers can be reformed and be able to continue playing within their means, post-treatment or post-problem gambling syndrome, the solution to problem gambling must be related to changing individual behaviour rather than technological change.

While a problem gambler *might* lose less money if the machine had restrictions imposed, they might also easily substitute poker machine gambling for something less restrictive. The most effective solution will involve identifying individuals with co-morbidities and other behaviours which can lead to problem gambling, and making available self-help tools to allow people to gamble sensibly again.

### **Response to Draft Recommendation 5.2**

*Governments should work together to establish a national minimum standard of training for problem gambling counsellors.*

ClubsAustralia supports the recommendation. A key requirement for counsellors should be an understanding of co-morbid disorders (depression, drug and alcohol dependency, mental disorder) and how those conditions manifest as problem gambling. Counsellors must also be empowered to make interventions if required. This additional power should only be granted to individuals who are qualified and accredited to determine which interventions are appropriate.

Venues that are aware a member or patron has been referred to a counsellor in combination with self-exclusion from the venue should commit to not allowing the problem gambler to re-enter the venue until they have been formally released by their counsellor. This will assist and empower counsellors whose clients are at risk of recidivism, and ensure venues know that a member is reformed upon their return. This is particularly so where clubs are concerned; as member-based organisations, their patrons' wellbeing is a principal consideration and working cooperatively with counsellors will allow them to serve their members with confidence.

Counsellors should have to account for how their grant money is spent, through regular reporting with independent oversight. Such reports should detail how many people have been treated over the period, the proportion of people whose treatment is deemed successful, and other relevant information. This information could be used by government to help assess whether new problem gambling measures are effective over time, and would assist in identifying areas that are under- or over-serviced.

### **Response to Draft Recommendation 5.3**

*Governments should work to provide stronger formal linkages between gambling counselling services and other health and community services.*

Counselling services are typically jointly funded by government and the gaming sector, but could be strengthened by improving access to bank account records, clinical expertise and nationally consistent standards.

### **Response to Draft Recommendation 5.4**

*Governments should ensure that, existing funding mechanisms for help services are based on greater contributions from those gambling forms found to involve the greatest social harms.*

This recommendation is too impractical to be implemented. It is not apparent how the need for resources might be determined in a region – self-interested counsellors would be at liberty to increase the demand year on year. It also raises questions about whether co-payments by venues should be determined based on the number of patients, the number of patients successfully treated, or some other means. It is far from clear how the contributions might be assessed: which venue would contribute how much? For example, a venue with a large number of gaming machines may have smaller turnover than a venue with fewer machines (as is often the case when comparing clubs with hotels). Lotteries may be more popular in a region, so should newsagents make contributions proportionate to their lottery sales? What of casinos or racecourses that draw people from multiple regions? Would there be any contribution from internet or mobile phone gambling and if not, why not? Who would apportion the contributions and select which help service received how much?

Further, the Commission identifies that many in the anti-gambling lobby have open disregard for any person who receives funding from gambling – including counsellors – believing the money somehow tarnishes their integrity. Broadening the source of funds for counselling services to include all gambling venues proportionately will not make the source of funds any more legitimate in the view of the anti-gambling lobby. It will, however, create a complex and bureaucratic process for the assessment and distribution of funds, which is not in anyone’s interest.

#### **Response to Draft Recommendation 5.5**

*A nationally consistent and publicly available dataset, including agreed outcome measures, would improve the evidence base on gambling help services. The collection of data could be coordinated by the Commission’s proposed gambling policy research centre (draft recommendation 15.3) or the Australian Institute of Health and Welfare.*

This recommendation is supported. It is considered vital that research is done into those who are problem gamblers to determine:

- What factors influenced their level of gambling and choice of gambling option?
- What demographic are they: old or young; with or without family or responsibilities?
- How long were they problem gamblers? Have they been problem gamblers previously and if so, why do they think they failed to control their gambling this time?
- What measures did they perceive to be effective at reducing excessive spend?
- Which came first, their co-morbid disorder or their problem gambling?

The answers to these questions can assist both industry and regulators to determine effective ways to target those at risk of becoming a problem gambler and provide better assistance to those who are currently problem gamblers.

However, ClubsAustralia takes issue with the quote by Walker on page 5.39. While ClubsAustralia agrees that the aim is to assist problem gamblers to reform for life, this should not involve “helping people to quit gambling for life”. Gambling is a legitimate activity from which many people gain immense enjoyment. The aim of treatment should be to assist people to control their behaviour and gamble *responsibly and within their means*, rather than quit. As outlined previously in this chapter, recovery from a gambling problem need not be synonymous with abstinence.



## CHAPTER 6 – GAMBLING INFORMATION AND EDUCATION

### Response to Draft Recommendation 6.1

*Governments should draw on the Victorian model for gambling warnings:*

- *making them conspicuous on machines and other areas of venues*
- *using imagery that has been found to be effective*
- *highlighting the behaviours that are indicative of problem gambling and the benefits of altering these*
- *including contact details for help services.*

*Warnings should be market-tested for effectiveness prior to their introduction, and their impacts assessed by monitoring help-line services before and after implementation. They should be periodically changed to maintain their effect.*

The Commission puts forward a range of research and observations relating to the effectiveness of warning signage in gambling venues, aimed at both discouraging harmful gambling behaviour and providing information on where and how to access help services.

The Draft Report appears to indicate a view that in general, warning signage is a low-cost, effective component of a comprehensive problem gambling strategy.

ClubsAustralia notes that warning and help line signage is an area that has been visited extensively by state and territory jurisdictions in recent years. The Commission has acknowledged this activity, noting that governments “already pursue a range of information provision strategies”.

While the effectiveness of warning and help line signage is by no means clear, ClubsAustralia is of the view that appropriate signage should be selective, targeted and ‘rational’ in the context of licensed premises.

The volume of signage currently required by state and territory regulations relating to licensed premises is extensive. Clubs have to display signs relating to entry requirements, in-premise access restrictions, sale of alcohol and tobacco, age restrictions, and a range of other issues in addition to gambling signage – which can deal with a number of topics including help lines, the signs of when gambling may be a problem, odds of winning on a gaming machine, and so forth.

Some governments have sought to rationalise the amount of mandatory signage on licensed premises because of this saturation effect, whereby people actually do not take in the messages because the amount of signage on display is too visually overwhelming. In addition, there is a significant compliance burden on premises to ensure signs are displayed appropriately and are designed in a manner required by regulations.

ClubsAustralia suggests that while the information presented in the Draft Report may be of some value to state and territory jurisdictions, the ongoing issue of signage should be evaluated in the context of all other licensed premise signage currently required by law – so that rather than a proliferation of gambling related signage for its own sake, the emphasis is placed on its effectiveness and in-venue placement.

## Response to Draft Recommendation 6.2

*Given the risk of adverse outcomes, governments should not extend school-based programs without first assessing the impacts of current programs.*

The Commission notes with concern that “[l]ittle evidence has been collected about the effect of school-based gambling education programs on students’ gambling behaviour” and recommends that governments “should not extend school-based programs without first assessing the impacts of current programs”.

It is apparent from the Commission’s investigation that there has been virtually no evaluation made of such programs with respect to the impact on the development of problem gambling.

It is also noted that several state jurisdictions are actively implementing early intervention and education programs aimed at improving school-aged students’ understanding in such areas as chances of winning, addictive behaviour, and support services to assist people who are seeking help due to their gambling activity.

While the evidence appears to be somewhat deficient, on balance the strong impression given by the Commission is that there is not clear value in state and territory jurisdictions’ continuing to support early education programs. It is not clear from the information provided (other than some research conducted into driver education) why the Commission sees “risks” in terms of possible harm that may be associated with such programs, as the risk – if indeed there is any – would appear to be by far outweighed by the positives that may flow from expenditure in this area.

It is also of interest that the Commission considered it worthwhile to reproduce Uniting Care Australia’s “suspicion” about school education programs for gambling that were supported by sections of the gaming industry. The clear implication is that because a proposal was supported by gaming aligned providers, any attempt to address the issue of problem gambling had to be disingenuous. ClubsAustralia would have hoped that the Commission would put such unfounded and biased comments to one side, rather than give added currency by giving them weight in the Draft Report.

School-based gambling education can be viewed as analogous to sex and drug education. While there are some who feel uncomfortable about the provision of such education, society is sufficiently enlightened to accept that education about such matters should be provided in a responsible way so that children are better prepared for life. The fact that sex and drug education are considered acceptable but that gambling is not, raises concerns.

ClubsAustralia has no reservations in supporting the efforts of state and territory jurisdictions in funding school-based education programs: education in life skills is, in our view, always preferable to no education at all in this critical area. Further, it would be desirable if such programs became fully integrated into schools’ Health and Personal Development curricula, rather than as isolated or one-off studies.

ClubsAustralia also endorses a national approach to teaching financial literacy and budget-setting, where students learn about the management of banking services, including credit card debt and

entering into mobile phone and motor vehicle agreements among other areas where financial stress is regularly suffered.

Utilising school-based education would be far less expensive than a community-wide campaign and, because many people ignore or are not reached by such campaigns, would over time reach a wider audience. The Commission refers to tobacco campaigning taking 40 years to effect behavioural change. Gambling is not tobacco, in either the severity of the problem or prevalence, but school-based health education has played a demonstrably successful role in teaching people about the dangers of smoking and how to live healthily.

### Response to Draft Recommendation 6.3

*As gaming machines and networks are replaced, governments should require any new equipment to be compatible with systems that can provide player statements and dynamic warnings.*

There is currently discussion in NSW and likely amongst the national gaming machine standards group regarding the adoption of a new gaming machine communication protocol to replace an existing standard. The new protocol would facilitate advanced communications between gaming machines and systems in a standardised manner. That is, all gaming machines that were capable of ‘talking’ in the particular ‘language’ could communicate with any gaming machine system designed to understand that language.

It is worth noting that in this respect, all states and territories already have various ‘standard’ communication protocols, although these are usually more limited in functionality than newer technology. The older communication protocols already allow gaming machines in each state or territory to communicate – that is, be ‘compatible’ – with systems used in those states.

It appears, then, that Draft Recommendation 6.3 is not breaking new ground when it comes to facilitating gaming machine compatibility with systems. It is also noted that many of the systems currently in use already facilitate player statements and with further development are likely to be able to facilitate dynamic warnings.

In an effort to gain an understanding of the intention of Draft Recommendation 6.3, ClubsAustralia notes that the Draft begins by referring to concerns expressed by the organisation Duty of Care.<sup>67</sup> Duty of Care is concerned about gambling machine providers breaching codes of practice or gaming machines malfunctioning. In the opinion of Duty of Care, these concerns give rise to a situation where:

*...gambling machine consumers are disadvantaged as a result, those same consumers are unable to prove to a court’s satisfaction that they were even in the venue at the time the breach [sic] or malfunction occurred let alone how much they are out of pocket as a result. This is totally unacceptable.<sup>68</sup>*

ClubsAustralia suggests that neither of these concerns can be addressed by Draft Recommendation 6.3, which calls for “compatibility with systems”; we also make the following observations:

<sup>67</sup> Productivity Commission of Australia, *Gambling: Draft Report*, October 2009 (“Draft Report” hereafter), p.6.25.

<sup>68</sup> *Ibid*, p.2.5.

- How can a ‘system’ monitor and control breaches in codes of practice? Exactly what breaches is the system meant to detect when it is connected to gaming machines and receives information from individual machines and not information about venue codes of practice?
- How is the ‘cash card’ concept for ‘occasional players’ (as detailed in Chapter 7) to be accommodated?
- In the case of gaming machine malfunction, there are already features built into gaming machines that cause the machine to suspend play and/or indicate when a malfunction occurs.<sup>69</sup> To suggest that an independent ‘system’ is capable of detecting malfunctions more effectively than the gaming machine itself shows a lack of understanding of how systems operate<sup>70</sup> and the diagnostic functions built into today’s gaming machines.
- In the case of gathering records of attendance at premises that can later be used in court proceedings, ClubsAustralia reminds the Commission that there are existing identification and entry requirements associated with clubs. Entry requirements are subject to regulation and enforcement. If a member of a club chooses not to insert their player loyalty card when playing a gaming machine and thereby avoid having their play tracked, that is their choice.

ClubsAustralia believes that the patron’s right to choose for themselves should not be overridden by arguments such as those presented by Duty of Care. Such arguments create an impression that there is an overwhelming need for universal tracking of individuals who happen to frequent venues with gaming machines, when this is not the case.

The Draft Report acknowledges that:

*...player statements can already be obtained from many venues through voluntary membership of loyalty programs. When analysing a trial of cashless gambling in New South Wales, Nisbet (2005b) found that very few people accessed player statements.<sup>71</sup>*

ClubsAustralia adds that in NSW, the cost of providing such functionality was significant and caused clubs to upgrade systems that otherwise would not have required upgrading. A retrospective cost-benefit analysis if undertaken today would, in ClubsAustralia’s view, reveal that a mandatory requirement for player activity statements was not justifiable. It is also worth noting that anecdotal reports suggest a significant proportion (as much as fifty per cent) of gaming machine players who are club members and have a loyalty card choose *not* to use the cards when playing gaming machines.

Despite these player preferences, the Draft Report goes on to state:

*Ideally such statements would cover all gambling activity by a person – across all machines in all venues they visit. It would also be desirable if patrons could choose how often they receive*

<sup>69</sup> For example, extensive histories of “last games played” that can be recalled, meter consistency tests, and other self-checking routines performed at bootup and during operation.

<sup>70</sup> ClubsAustralia refers here to the type of gaming environment found today in all Australian jurisdictions, that is, predominantly stand-alone gaming machines connected to systems.

<sup>71</sup> Draft Report, p.6.26.

*the information and how much detail they can obtain. The technical requirements for such a scheme are similar to those required for a broad based pre-commitment scheme (as outlined in chapter 7). Any such system would have the residual value that it may also address concerns about the capacity for consumers to seek redress were machines to malfunction.<sup>72</sup>*

That is, Draft Recommendation 6.3 is effectively adding another layer of complexity to the mandatory universal technology-based pre-commitment system covered in Chapter 7.

There are fundamental flaws in this concept of a universal system that would track players through multiple (and otherwise unconnected) venues and generate player activity statements with potentially significant amounts of detail, despite ample evidence that players do not utilise such facilities. In addition, it appears that support for such a system comes from the incorrect notion that the system will be able to address issues of gaming machine malfunction.

This Draft Recommendation appears to be underpinned by the argument made by Duty of Care, which is rejected by ClubsAustralia as it exhibits a basic lack of understanding of the operation of gaming technology, does not consider player choice and has no regard for the substantial costs and challenges involved in implementation.

#### **Response to Draft Recommendation 6.4**

*Governments should ensure that gambling suppliers do not provide information to consumers that creates the false impression that future winning numbers can be inferred from past results. This should apply to all gambling suppliers, including government-operated lotteries.*

ClubsAustralia supports efforts to ensure that deliberately contrived false impressions regarding randomness are not created.

However, ‘randomness’ itself is a difficult concept. Support for the Draft Recommendation must therefore be qualified by a requirement that any regulatory application be well-researched, made in consultation with experts in the field, and presented to patrons appropriately.

Poorly conceived requirements will not only penalise game developers and suppliers by limiting their ability to create interesting games, but may also have *no* beneficial effect on the player while depriving them of entertaining and innovative new features.

As a hypothetical example, the 100 per cent ‘double-up’ feature on gaming machines often displays the last eight or so results, such as red/black/red/red/red/red (order is most recent first). If the concern is that such a display creates false impressions or misunderstandings in gamblers and should be banned, then any regulator contemplating such a move must undertake a comprehensive review into the *actual* impact on player understanding of randomness rather than the *imagined* impact, and also ascertain player views regarding the entertainment value of such features.

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<sup>72</sup> Ibid, p.6.26.

## CHAPTER 7 – PRE-COMMITMENT AND SELF-EXCLUSION

The Draft Report appears to assume a universal technology-based pre-commitment solution is the *only* variation of pre-commitment capable of addressing the issue of player control.

ClubsAustralia provided significant analysis and comment<sup>73</sup> on the issue of universal technology-based pre-commitment, its rationale, and cost. We are disappointed that the Draft Report appears to have overlooked this input.

The only references to ClubsAustralia in relation to pre-commitment have been sourced inappropriately, without context from sources outside ClubsAustralia’s submission, and in a way that bears no relation to the argument presented in the formal ClubsAustralia submission.

The citations refer to two pieces of information. The first is an advertisement to club members describing an annual conference seminar session on server-based gaming; this two-paragraph article was intended primarily for publicity purposes, but has been presented as though it represents ClubsAustralia’s position on server-based gaming. The second appears to be a quote from an independent speaker/analyst conducting a seminar as part of a broader “Building Better Business” series for NSW clubs. The Commission should note that while the seminars mentioned are conducted under the umbrella of ClubsNSW, the opinions and material presented are those of expert practitioners in their field, are *not* necessarily the view of ClubsNSW or clubs generally, and *cannot* be construed to indicate any particular type of behaviour on the part of clubs.

It is also disappointing that the Draft Report fails to take advantage of an opportunity to conduct a balanced and objective analysis of the rationale, costs and benefits of a universal technology-based pre-commitment solution(s), and instead appears to develop its recommendations from what is arguably a philosophical and morally-based foundation; for example:

*The desire to have control over one’s future behaviour is not peculiar to gambling, being a much more common aspiration. Indeed, it has a classical heritage. In Homer’s Odyssey, Ulysses has himself bound to the mast of his ship to avoid the temptations of the call of the Sirens...*<sup>74</sup>

*... partial pre-commitment would give Ulysses a knife to cut his bonds when the sirens call.*<sup>75</sup>

Gambling on gaming machines is thus presented by the Commission as a palpable evil – one so pervasive and uncontrollable that it must be addressed at all costs, even if this means “tying people to the mast” for their own good.

ClubsAustralia believes its remarks from the March 2009 submission – “There is no case for requiring a capital investment of this magnitude to facilitate the introduction of technology-based pre-commitment” – remain valid, and require re-examination by the Commission as well as policy-makers.

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<sup>73</sup> ClubsAustralia Submission to the Productivity Commission Inquiry into Gambling – March 2009 (“ClubsAustralia Submission” hereafter), pp.15-23.

<sup>74</sup> Draft Report, p.7.3.

<sup>75</sup> Ibid, p.7.21.

## Response to Draft Recommendations 7.1 – 7.3

7.1: Governments should modify existing self-exclusion arrangements so that:

- self-exclusion applies to all venues in a jurisdiction, triggered by a single, simple application by the gambler concerned
- people who have self-excluded would be placed on a state-wide database
- venue staff request identification from gamblers collecting cheques for major prizes.

As in Victoria, there should be confiscation of prizes won by persons shown to be in breach of self-exclusion orders.

7.2: Governments should ensure that, in any of the self-exclusion programs offered by venues, gamblers have the choice of:

- immediately invoking self-exclusion at the venue (without interview), or
- excluding themselves at a place outside the venue, or
- to the extent, practicable, being able to self-exclude through remote means.

7.3: Governments should ensure a more coherent approach to the diverse set of existing provisions for self-exclusion periods and revocation by requiring that:

- self-exclusion agreements run for a minimum of six months
- people signing deeds of exclusion be able to reverse their agreement within 24 hours
- agreements for periods of three years or less cannot be revoked until at least six months after their starting date, while agreements for periods of more than three years cannot be revoked until at least one year after their starting date
- revocation only be permitted after evidence of attendance at a counselling service and the judgment by an appropriate professional about the capacity for the person to safely gamble
- people seeking revocation should, after a successful application, face a period of up to three months before it takes effect
- subject to evidence and due process, there be a capacity for family members to make applications for third party exclusions and for nominated venue staff to initiate involuntary exclusions of gamblers on welfare grounds.

ClubsAustralia has long supported the principle of self-exclusion, publicly stating that:

*Self-exclusion remains an appropriate and effective measure as one of a number of tools that can be employed to assist a problem gambler. In this case, a person is seeking to be prevented from entering a gaming area or club. This should be complemented by referral to appropriate counselling services so that self-exclusion leads to effective rehabilitation.*

*However, ClubsAustralia believes self-exclusion across multiple venues would be highly problematic in effect. ClubsAustralia is not aware of any multi-venue self-exclusion scheme which is operating effectively or successfully, one reason being that a large club like Penrith Panthers, with around 40,000 patrons visiting the club each week, would find it difficult to identify patrons who do not usually frequent the club.<sup>76</sup>*

While Australian jurisdictions have adopted differing approaches to implementing self-exclusion, it is worthwhile recalling what self-exclusion represents.

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<sup>76</sup> ClubsAustralia, *Submission to the Productivity Commission inquiry into Gambling*, March 2009, p.220.

By way of example, in NSW self-exclusion is a signed agreement between the venue and the self-excludee that places obligations on both parties and, importantly, changes the legal rights of the self-excludee and the venue – a point often missed by those calling for simplification of self-exclusion deeds.

Legislation in NSW recognises the implications of entering into a self-exclusion arrangement by requiring the self-excludee to be given the opportunity to seek legal or other professional advice;<sup>77</sup> indemnifying the club and employees to the extent that as much force as is reasonably necessary can be used to remove a self-excluded patron or prevent their entry; and providing protection from civil or criminal liability for acts undertaken in relation to enforcement of the self-exclusion agreement.<sup>78</sup>

In our view, the legislation correctly identifies the legal significance of the self-exclusion agreement. That is, entering a self-exclusion arrangement is not to be regarded as a minor administrative activity undertaken without proper consideration from both parties, but rather a serious agreement between the two parties that carries responsibilities for both.

To make self-exclusion work as effectively as possible there must be shared responsibility and commitment by both parties. In ClubsAustralia's view, the greatest chance of assisting a problem gambler through the self-exclusion process lies in a process where appropriate executives/managers at each club where the patron chooses to gamble meet with the patron to discuss the process and its implications, understand the particular circumstances of the patron, and execute the agreement accordingly.<sup>79</sup>

While proponents of multi-venue schemes argue that single-venue schemes detract from the effectiveness of self-exclusion,<sup>80</sup> it is ClubsAustralia's view that a single-venue approach assists in establishing commitment from both parties to the agreement. That is, it represents a method of implementation that automatically achieves an appropriate sharing of responsibility, requiring an effort and commitment from both parties.

ClubsAustralia supports the view that self-exclusion is a gateway to counselling treatment. Once the gambler is in treatment, proper remedial action(s) can take place – which may or may not include self-exclusion from other venues.

The use of self-exclusion as an end-in-itself misdirects the focus from the primary objective of treatment. Multi-venue self-exclusion schemes create a bureaucratic overlay whose true value has not been assessed in comparison to single-venue schemes.

From an administrative perspective, it is likely that single-venue self-exclusion schemes involve more effort for the venue and the patron (at least initially) than a centrally administered multi-venue

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<sup>77</sup> *Gaming Machines Regulation 2002*, clause 47(2)(c).

<sup>78</sup> *Gaming Machines Act 2001*, section 49.

<sup>79</sup> Note that the meeting does not necessarily have to take place at a club. While ClubsNSW/ClubSafe recommends that deed execution takes place at the club, in some circumstances a neutral meeting place may be arranged; for example, where the patron is too anxious about attending the club because the urge to gamble becomes uncontrollable.

<sup>80</sup> Typical arguments put forward include: a) It can be difficult and expensive for the potential self-excludee to meet with all clubs and hotels where they can potentially gamble; and b) by extension, the aforementioned difficulty weakens the resolve of the patron to address the problem thereby lowering the psychological barrier to re-entry.



scheme where only one venue or ‘administrator’ executes a deed and other venues simply receive ‘notification’ about the exclusion details from (it is assumed) a trusted source.

However, while single-venue schemes may initially present the self-excludee with additional administrative overhead, this is not an argument that provides any insight into the *efficacy* of single-versus multi-venue self-exclusion as a problem gambling initiative. In ClubsAustralia’s view, multi-venue set-ups are likely to reduce commitment from both the patron and the venue, particularly in cases where there is no face-to-face personal contact involved and the self-excludee is not in regular attendance at the venues nominated.

### Problems with multi-venue schemes

The weaknesses inherent in multi-venue schemes are well known and documented. The Victorian Gambling Research Panel (GRP) (now dissolved) released a report in April 2003.<sup>81</sup> The key findings were summarised as:

- Relatively small numbers of people use the program: it was estimated that between 2.5 per cent and 3.5 per cent of problem gamblers utilised the program. This small percentage is supported by Blaszczyński et al’s estimate of between 0.4 per cent and 1.5 per cent of problem gamblers utilising self-exclusion programs.
- The scheme was not capable of enforcement due to difficulty with identification; this compromises the effectiveness, growth potential, and credibility of the program.<sup>82</sup>

In order to address what are arguably the most serious weaknesses, the GRP report recommends a computer-based system for transferring photographs to venues. This would necessarily entail some form of computerised central notification system, supported by a central data management system with privacy and security issues that would need to be strictly enforced.

That is, the solution offered is one that focuses on the use of identification technology. However, as noted by the Draft Report: “...even Star City Casino [which uses such technology] has acknowledged that detecting problem gamblers can be very difficult.”<sup>83</sup> ClubsAustralia notes that in practical terms Star City conducts a single-venue scheme. That is, even for this large and well-resourced venue, utilising a single-venue scheme with “highly trained staff and sophisticated electronic equipment,”<sup>84</sup> the application of self-exclusion can be very difficult; this demonstrates that its use across multiple venues would be even more fraught with difficulty. Concerns regarding identification in multi-venue schemes have also been reported by a NSW multi-venue self-exclusion scheme operator.<sup>85</sup>

It is worth emphasising that the inability to reliably and accurately identify self-excluded persons generates criticism about venues, governments and by extension the gambling industry as a systemic failure. By way of contrast, however, police are trained to identify wanted criminals but

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<sup>81</sup> The South Australian Centre for Economic Studies, “Evaluation of Self-exclusion Programs”, prepared for the Gambling Research Panel, *GRP Report No.2*, 2003, p.145; and IPART, “Promoting a Culture of Responsibility” June 2004, p.77.

<sup>82</sup> Blaszczyński, Ladouceur and Nower, “Self-Exclusion: A Gateway To Treatment” September 2004, prepared for the Australian Gaming Council, p.7.

<sup>83</sup> Draft Report, p.7.8.

<sup>84</sup> *Ibid.*

<sup>85</sup> “The best we have – for now”, *Hotel News* September 2003 (a publication of the AHA (NSW)).

there is an acceptance that this is not a perfect system, even though photographs and other information are widely circulated.

Despite the fact that difficulties with identification are inherent in self-exclusion schemes, some jurisdictions have implemented elaborate and costly multi-venue schemes that utilise considerable infrastructure and resources. The public expectations of such schemes are understandably high.

However, in reality it is easy to publicly expose the inability of multi-venue schemes to work as expected.<sup>86</sup> Once such schemes are established, venues are subjected to onerous demands associated with identifying self-excludees from an ever-increasing database of problem gamblers. Although it is clearly unrealistic to expect a venue to deny entry to *every* self-excluded gambler in a state on *every* occasion, this can nevertheless become the broad expectation of the general public and media looking for a 'story'.<sup>87</sup>

The need for such elaborate schemes is questioned. Why should a venue in Tweed Heads, a tourist destination with a large transient population, be required to recognise and exclude a person who has self-excluded in Blacktown and may only visit the area once a year or even less? In ClubsAustralia's opinion, this represents an unrealistic expectation that creates an additional administrative burden on venues and is a requirement whose efficacy as a problem gambling initiative has not been proven despite genuine attempts in Victoria and South Australia. An informed comment central to this discussion is made by Blaszczyński et al:

*Philosophically, the current system is hampered by a focus on external control that all but abrogates individual responsibility to control gambling behaviour... The individuals are active in initiating the program but, once initiated, they become passive, as responsibility shifts to gambling venues to detect and police possible breaches... Such a perspective effectively limits opportunities for gamblers to develop improved stress-coping skills and increases the possibility that they will return to gambling or substitute alternative, maladaptive coping strategies in the future.*<sup>88</sup>

Self-exclusion acts as the gateway into counselling. In our view it does not make any sense to mandate elaborate, unworkable schemes which seem designed only to give the appearance of concerted action on problem gambling. Resources should be directed at making the best effort possible to treat the underlying problem.

It is noted that the Draft Report has made no attempt to address operational considerations or principles necessary for successfully conducting a central multi-venue scheme in the Australian gambling environment, which includes three distinctly different gaming venue models: community clubs, hotels and casinos. Australia is a distinctly different environment from, for example, the Netherlands, where gaming is a state-owned monopoly and occurs only in casinos. Many considerations have simply not been addressed, including:

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<sup>86</sup> "Banned – but pokies addict just walks in", Maria Moscaritolo, *The Adelaide Advertiser*, 20 October 2003.

<sup>87</sup> For example, the case of a South Australian couple attempting to ban themselves from all venues state-wide because they had a gambling problem but wished to undertake a state-wide touring holiday, "Pokie addicts in new ban bid", *The Adelaide Advertiser*, 4 October 2005; and "Gambling couple win their state-wide ban from pokies", Jemma Chapman, *The Adelaide Advertiser*, 14 October 2005.

<sup>88</sup> Blaszczyński et al, "Self-exclusion: A Gateway to Treatment", p.13.

- implementation and maintenance costs;
- administrative responsibility (including activation and de-activation from the active list of excludees as well as establishing, maintaining and verifying that information originates from a trusted source);
- responsibility for and guarantee of privacy once the patron’s identity is made available to all nominated venues.

ClubsAustralia believes a single-venue-based scheme, coupled with referral to counselling, is a preferred model for achieving the desired outcomes. It represents a solution that naturally assigns responsibility on both the venue and the problem gambler at their most basic level – that is, the human interface – rather than relying on technology as a cure-all solution.

The Commission has recommended that “there should be confiscation of prizes won by persons shown to be in breach of self-exclusion orders” (Draft Recommendation 7.1). It is not clear how self-excluded problem gamblers would benefit from being denied any prizes that may be won in the event they deliberately breach their self-exclusion arrangements to gamble. It is also not apparent why the gambler would self-identify that they had breached their self-exclusion deed. While venues could refuse to issue the funds to the player, that may place staff in a situation of conflict and would be regarded as an Occupational Health and Safety risk. Alternative means of confiscation would face challenges in retrieving the money from the player after it has been issued.

While confiscation of prizes might send a message to the individual about keeping to their side of the deed, it must be remembered that financial loss from gambling has already been an ineffective deterrent to the person who has breached their self-exclusion deed, so ClubsAustralia questions how this would pose any substantive disincentive. It is suggested that the Commission seek further evidence regarding the efficacy of this Draft Recommendation, particularly in light of extensive commentary about self-exclusion by the Victorian Supreme Court in *Kakavas*<sup>89</sup>.

### Response to Draft Recommendation 7.3

ClubsAustralia believes that there is merit in further considering this recommendation and how it might be implemented.

### Response to Draft Recommendations 7.4 – 7.5

*7.4: Governments should implement by 2016 a universal pre-commitment system for gaming machines that:*

- *provides a means by which players could set personally-defined precommitments and, at a minimum, a spending limit, without being subsequently able to revoke these*
- *encourages gamblers to play within safe spending and time limits by specifying default limits*
- *enables gamblers to opt-out, with periodic checking of their preference to do so*
- *applies to all gaming machines in all venues in a jurisdiction*
- *allows occasional gamblers to stake small amounts*
- *avoids identity fraud*
- *is not complicated for gamblers to understand and use*

<sup>89</sup> *Kakavas v Crown Melbourne Limited & Ors* [2009] VSC 559 (8 December 2009).

- *does not unduly affect the enjoyment of those selecting safe playing options*
- *presents few obstacles to future innovation in the presentation and design of the system.*

7.5: *In advance of the full implementation of the pre-commitment system, governments should:*

- *determine the exact limits and other options available in the default and optout modes of the system, and the design of the interfaces with gamblers*
- *market test and trial the appropriate set of user-controlled options and ensure technical standards that would enable a common system to be deployed across Australia*
- *give priority to the development of national standards that would permit machine manufacturers to sell machines during the transition period that would be network-compliant when the system was ‘switched on’*
- *develop approaches to ensure probity in the system, deter tampering with cards or other pre-commitment devices, and ensure the system meets national privacy regulations*
- *determine marketing of, and information provision about, the pre-commitment system to consumers.*

ClubsAustralia opposes the Commission’s recommended system of pre-commitment. The Commission has set benchmarks for introducing pre-commitment. Whether pre-commitment measures are appropriate in practice will depend on:

- the likely effectiveness of the measures;
- the monetary and non-monetary costs of any proposals for venues and gamblers, including inconvenience and any erosion of people’s freedom; and
- privacy concerns and the receptiveness of gamblers to the options for control.<sup>90</sup>

However ClubsAustralia asserts that international practice and research do not satisfy the Commission’s benchmarks for mandatory implementation of a universal technology-based pre-commitment system. Indeed, the Draft Report appears to ignore its own benchmarks when stating:

*The results of pre-commitment trials in Australia and the experiences from commercial and overseas systems, such as those in Nova Scotia and Norway will provide some careful insights, but they will not ‘prove’ or ‘disprove’ the value of pre-commitment per se (any more than proving or disproving the efficacy of one drug says much about the efficacy of a substitute).<sup>91</sup>*

It would appear then that the Draft Report has already concluded that mandatory, universal technology-based pre-commitment should be introduced, irrespective of evidence to the contrary. Any contrary evidence can only serve to provide some “careful insights”. That is, even if the evidence does not support the efficacy of such a solution, keeping “Ulysses tied to the mast” at any cost is considered appropriate. ClubsAustralia strongly disagrees with this approach and its conclusion.

The following points were made in the original ClubsAustralia submission and are relevant to reconsideration of the recommendations made:

- While universal technology-based pre-commitment is attractive at a superficial level, it is fraught with significant practical difficulties in implementation and monitoring.

<sup>90</sup> Draft Report, p.7.6.

<sup>91</sup> Draft Report, p.7.31.

- Evidence shows that universal pre-commitment will deter a large percentage of casual and recreational gamblers who will rightly argue they can engage in other forms of gambling without such impositions.
- This is particularly relevant if pre-commitment is introduced as a de-facto licensing scheme that is used to discriminate between players – for example, if players wishing to play without a card are subject to lower play limits or lower jackpots than those who choose to play with a card.
- ClubsAustralia suggests that any such policy would unjustifiably discriminate between players and have significant negative implications for both patrons and clubs.
- ClubsAustralia holds strong concerns about the use of technology-based pre-commitment on two grounds: first, technology-based measures of this kind have not yet been proven to help problem gamblers but would pose a disincentive to recreational gamblers to play and may reduce how much they play; and second, the cost to implement it would be significant.
- Independent analysis of the Productivity Commission's 1999 data suggests the incidence of loss-chasing by gamblers who think they may have a problem – which would seem critical to the notion of pre-commitment in the gambling debate – is minuscule.
- There is considerable debate about the level of problem gambling and whether it is going down, let alone whether pre-commitment will be the 'silver bullet'. In the absence of facts establishing that meaningful problems exist that may be addressed with pre-commitment, pre-commitment should not be imposed.
- It is not known to what degree pre-commitment may reduce problem gambling, if at all. Without strong evidence that pre-commitment will actually reduce problem gambling, as opposed to a general principle that 'player options are likely to increase consumer protection', ClubsAustralia questions how the cost of installation and maintenance can be justified.
- Experimental research has found that the higher the perceived cost of pre-commitment, the less likely it is that individuals subject to temptation will choose to commit. So while pre-commitment as a concept may appear an attractive way to help people manage consumption of gambling products, the extant research does not agree that imposing such restrictions will be successful.
- The only Australian National Survey of Gambler Pre-commitment Behaviour was undertaken in 2005, by McDonnell-Phillips. The study found that gamblers did not relate well to the pre-set limits and in particular did not respond well to term limits being effectively imposed upon them; in other words, they played less.
- Player Activity Statements are an example of a technical measure, providing player information on spend in terms of money and time, that has not achieved its goal: its introduction was a significant and ongoing expense to clubs without any measurable impact on problem gamblers.
- In Nova Scotia a trial and study of a card-based option found that the pre-commitment card system discouraged casual players from playing EGMs. There was also evidence that the card system encouraged EGM players to leave the area of the study to undertake play. There was evidence of players borrowing or sharing cards to play. Given these outcomes it is obvious that if the card-based pre-commitment measure were employed in Australia there would be potentially detrimental and damaging effects for EGM play among both recreational and problem gamblers.

- There were a number of recommendations from the Nova Scotia study, including that the smart card should only be available to those who choose to use it and not be mandatory. The study recommended against making the card system more stringent by enhancing the controls to reduce card sharing, without extensive further research and testing.
- The report also noted that respondents voiced concerns about privacy of the playing data and having to reveal personal information to obtain a card before play could commence.
- After what is arguably the most advanced trial and research undertaken anywhere in relation to pre-commitment, the system being implemented in Nova Scotia has settled on the following features:
  - The pre-commitment features will be voluntary, even if card-only machine activation is made mandatory. In other words, although in the future gaming machines may require a card to be inserted to initiate play, once a card is inserted, a player does not need to activate and use system features such as pre-selecting time or money;
  - Privacy and other concerns have led to a decision that the system will feature player anonymity. While each player card will have a unique identifier, there is no way it can be linked by government or any other party to the actual player;
  - There is no plan to utilise the system to track play and identify problem gamblers. The principle is to equip the player with tools that they can decide to use voluntarily. That is, this is an “opt-in” solution, rather than “opt-out” as proposed by the Draft Report. ClubsAustralia also believes that attempting to use a pre-commitment system to identify problem gamblers would be a breach of privacy and civil liberty;
  - The system requires a high-speed internet connection to the venue in order to operate. That may be possible in a small Canadian province with relatively few gaming venues affected and only 2,500 affected gaming machines, but the same cannot be said of Australia;
  - The Government is funding the cost of converting all of the VLTs (around 2,500) as well as the ongoing cost of operating the system. ClubsAustralia would also add that the model in Nova Scotia is vastly different to that in Australia. The Nova Scotia model is a monopoly ownership of VLTs by Government with venues effectively receiving a commission for operating the VLTs.

Put simply, the evidence does not support or justify mandatory pre-commitment. Further discussion and detail regarding rationale, cost and effectiveness of universal technology-based pre-commitment can be found in the ClubsAustralia submission of March 2009.

### **Specific feedback**

The Commission seeks feedback on the detailed aspects of the design of pre-commitment systems meeting the broad criteria outlined in recommendation 7.4, including:

#### **1. The viability of using one-off small denomination cash cards for occasional gamblers to use on machines, with only minimal identification requirements**

ClubsAustralia does not support mandatory use of cash cards for ‘occasional gamblers’ and believes that the rationale for such an initiative is based on a flawed approach and lack of understanding about the impact and effectiveness of such a system.

Apart from the obvious complexity involved and the cost of implementation, ClubsAustralia asserts that imposing such a barrier on occasional gamblers will simply force them away from clubs to spend their discretionary income on other activities, including other forms of gambling which are not affected by such restrictions. The recommendation has also been made without any consideration of the negative impacts on clubs and the community infrastructure they support.

Recommendation 7.4 outlines a conceptual framework for what at its core is a system requiring universal identification of gaming machine players. The essential characteristics of the pre-commitment system are player identification on any machine within a jurisdiction, or perhaps nationally.<sup>92</sup> This is required in order to ensure any bet and prize limits that the player may have set, or any government-mandated maximum spend/time limits imposed, can be centrally controlled and enforced by the system. That is, there should be non-stop supervision of individual gambling activity on gaming machines irrespective of where the person chooses to gamble in land-based clubs, hotels or casinos.

However, the Draft Report also recognises that such a restriction may not be appropriate for ‘occasional players’ and suggests that the system should allow occasional gamblers to stake small amounts, with a limit of \$10 suggested. In order to maintain control over player spend, the use of cash is abolished and replaced with a cash card. Cash card purchase would also require identification, although the Draft Report states that this is a lesser identification level than that for other play. Presumably, this is intended to track and discourage or prevent the occasional player from spending more than \$10. To spend more than \$10, or whatever other limit is mandated, would require the purchase of another cash card – which presumably requires identification to be shown again, further frustrating recreational punters. It is assumed the system can draw on prior data regarding card purchases made, in order to raise ‘alarms’ or refuse a purchase.

It is noted that such a requirement is underpinned by a view, advocated by the Draft Report, that the catchment of those suffering harm or potential harm must be extended to include even occasional gamblers and zero risk gamblers.<sup>93</sup>

The Draft Report has not considered the nature of the ‘message’ that would be sent to the great majority of people, who would be inhibited from an *ad hoc* decision to play by identification requirements to bet up to \$10. These onerous restrictions would indicate that playing gaming machines is dangerous, that gaming machines are different to other forms of gambling, and that barriers have been introduced to prevent ordinary people from harming themselves.

To an impartial observer who is at all familiar with gaming, it must be obvious that it is far simpler and less intimidating for occasional gamblers to walk up to a gaming machine and insert cash than to subject them to a process that requires purchasing cards with identification before being allowed to have a small bet. The imposition of such requirements suggests that the Commission views gambling as a deviant behaviour.

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<sup>92</sup> While Draft Recommendation 7.4 suggests “all gaming machines in all venues in a jurisdiction”, Draft Recommendation 7.5 suggests that Governments should ensure “technical standards that would enable a common system to be deployed across Australia”.

<sup>93</sup> For example, Draft Report p.4.19: “Moreover, even people rated as zero-risk gamblers can face problems. So, for example, while only around 0.2 per cent of such gamblers find it often or always difficult to limit their gambling time, they account for around 30 per cent of all gamblers experiencing this problem (figure 4.2).”

A moment's reflection would clearly highlight the particular difficulties that result for clubs that are heavily reliant on tourists; for example, those clubs along the eastern seaboard that rely on gaming machine revenue and have significant infrastructure supporting tourism. The impact that such a requirement will have on tourist spending will be very large. Similarly, 'impulse' decisions to play would be dampened by the imposition of these hurdles to gambling.

Indeed, it is not clear how the system might work for gamblers who choose to play together. These social punters would need to decide whose card to gambler with, whose play will be tracked as if they had played alone and they may need to reconfigure their set limits in order to facilitate joint play. In ClubsAustralia's view these hurdles are far more likely to discourage play by recreational players, singly or in groups, than by problem gamblers.

This view is supported by survey work undertaken by UMR Research in October 2009 on behalf of ClubsNSW. 2,000 patrons of clubs were surveyed and in response to the question "*If laws were changed and you had to register before you were allowed to use a poker machine*", 31 per cent of respondents replied that they would play less than they do currently. This shows that it is not only problem gamblers who are inconvenienced, many recreational gamblers will be affected.

A follow-up question was asked of that 31 per cent, "*Would you choose another form of gambling that did not require registration and the use of a player's card?*" Worryingly for ClubsAustralia, 43 per cent of respondents, that is approximately 15 per cent of players, would choose another form of gambling that was unrestricted. Patrons were not surveyed as to whether they would quit all forms of gambling and find alternate entertainment options. ClubsAustralia suggests these survey responses are strong evidence that substitution will occur if mandatory pre-commitment is introduced.

The UMR survey also asked "*Do you usually set limits of time and/or money prior to playing poker machines?*" 79 per cent of respondents said that they set their own limit in advance of play. Importantly, in response to the next question, "*Do you stick to the limits set?*" fully 96 per cent of respondents advised that they do. These results indicate that most people are able to successfully control their own play and would not be assisted by an expensive, technological 'solution'.

At a more architectural level the cash card concept, if mandated, will result in a requirement for two functionally different systems, one for 'regular' and one for 'occasional' gamblers. Each system must be individually designed to meet its primary purpose of monitoring and controlling gambling behaviour but utilising different methodology.

The first system must be designed to identify, monitor and control the spending of regular gamblers. It appears this version would permit notes and coins and utilise some form of universal identification, such as a card. Pre-commitment will be mandatory if a regular player wishes to play 'normal' games and require a central data bank of player information (state-wide and possibly national) to analyse and collect information and act on it in real time.



The second is a system without overt pre-commitment functionality<sup>94</sup> and tailored to the occasional gambler. This system introduces the use of a cash card as opposed to notes and coins. The details of this proposal have not been supplied.

In terms of design, the Commission provides very little specificity, and ClubsAustralia raises the following considerations. Firstly, is the cash card intended to be venue-based, jurisdiction-based or nationally-based? Each of these models will have significant implications in terms of cost and complexity. For example, what safeguards must be present to address the issue of potential fraud? If the cards were worth \$10 each, might they be targets for theft, could they be traded for cash and would it be possible to electronically modify them to store more credit?

Counterfeiting of currency is one issue which requires significant cost on the part of the Government to monitor and control. What are the security requirements and costs associated with alternative forms of currency; for example, what are the costs of ensuring credit card fraud is controlled? What successful cash card solutions applicable to gaming environments are available, or is this a solution that is expected to be developed and paid for by clubs without any discernible advantage over notes and coins when viewed from a commercial perspective? If the cash cards operate across multiple venues what complexities does this introduce as they are now effectively replacing “cash” as the monetary exchange medium?

ClubsAustralia suggests these considerations alone are very significant and would not withstand the scrutiny of a rigorous cost-benefit analysis to address potential harm that might arise from occasional gamblers coming into contact with a gaming machine.

## **2. The capacity to configure machines to play in a low-intensity “safe mode” if no pre-commitment method is being used**

ClubsAustralia is puzzled by the Commission’s enquiry into this approach. ClubsAustralia is not aware of any research that supports playing of some gaming machines in a ‘safe mode’ having any efficacy in reducing problem gambling and does not support this option.

Figure 7.1 defines ‘safe mode’ as having the following features:

- 100 per cent return;
- Free games only; and
- Low intensity play.

Loss-limited machines already exist. They exist at home as a game on a personal computer, in a video-arcade parlour or as ‘fruit’ machines. Clubs do not typically operate such machines, other than the arcade-style games in children-friendly areas. This is because club-goers do not want to play loss-limited machines. They want machines which allow them to spend how much they choose, with a concomitant potential win. People choose to spend their money within reason on what they like and poker machines are far more popular than other, loss-limited, entertainment options. Very few people would participate in a lottery if the maximum prize were \$20; the ‘thrill’ would not be sufficient for most gamblers. The same is true for gaming machines.

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<sup>94</sup> The control is exercised through the maximum value that can be purchased.

An issue not addressed in the Draft Report relates to what occurs when a gambler in a venue has 'safe mode only' status imposed on them by the pre-commitment system. It is highly likely that such a player will not want to play safe mode games and if a normal game is not available in the venue the person will seek to play unrestricted, migrate to another venue or another form of gambling. Is the safe mode play status required to follow the player from venue to venue? What issues does this present for a venue if a player simply enters to play 'free games' and can potentially win monetary prizes? There is also the issue of ensuring every manufacturer has gaming machines with duplicate games; that is, 'safe mode' games and 'normal' games in every gaming machine. The safe mode game would have to be invoked by the central pre-commitment system automatically. Such functionality carries with it liability for potential loss of earnings if applied incorrectly, such as through-system failure or other glitches.

The Draft Report acknowledges that any pre-commitment systems will result in additional cost. The Report also emphasises a view that 41 cents in every dollar of gambling revenue comes from problem gamblers, a finding with which ClubsAustralia strongly disagrees.

The Draft Report goes on to suggest ways of recouping the cost of any pre-commitment system. The method suggested involves reducing the player return,<sup>95</sup> despite evidence from ClubsAustralia of market forces driving player return higher – an increasing trend for over a decade.<sup>96</sup>

There appears to be some confusion in the Draft Report about player return. On the one hand the Draft Report suggests player return can be reduced to cover costs and on the other increased to 100 per cent to assist problem gamblers. There also appears to be confusion as to what features of a machine actually contribute to problem gambling harm. If loss of money is the principal issue<sup>97</sup> then this is addressed by the 'free games only' requirement. Why is it necessary to adjust player return if no further substantial monetary loss can be experienced in any venue in the state?

If game features are the issue in exacerbating problem gambling, then why not choose to implement the low-volatility-only option?

In relation to 100 per cent return games, these are already available on many gaming machines. They are often known as a 'double-up' feature, and have been present on games for decades. Players can choose for themselves whether to utilise this feature. However it is not apparent why clubs should operate 100 per cent return games, as they would provide no financial return to the club but would require staff, operational and maintenance expenses.

Significant resources are already expended on evaluating and approving gaming machines. A cornerstone of this process is certification of gaming machines to ensure they exhibit a player return that is consistent with the design specification ('machine math'). This provides the regulatory authority, by way of the evaluation testing and backed up by established monitoring systems, with a

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<sup>95</sup> Draft Report, p.7.39: "In that case, to recover the costs, player losses must increase to \$2.545 billion or by 1.8 per cent. The decrease in the player return that would finance the costs of machine modifications would be 0.179 percentage points (or a new rate of return of 89.8 per cent)."

<sup>96</sup> ClubsAustralia Submission, Fig.7.16.

<sup>97</sup> Draft Report, p.11.2: "The harm that people with gambling difficulties experience relates to the losses they incur relative to their personal financial resources, and the personal, legal and workplace consequences for them." As Blaszczyński et al observed: "The source of gambling-related harm has its origin in an individual's personal decision to access and risk funds in excess of that which can be afforded. (2004, p.13)."

means of analysing and monitoring the gaming machine's performance. This ability – and the practice of requiring any changes in player return percentage to be authorised prior to change – is fundamental to ensuring the integrity of gaming machine operations. The framework, established over many years of experience, gives the player, the government and the venue confidence in the gaming machines installed.

A feature such as 'safe mode' will not only make it more difficult to monitor gaming machine performance but, in ClubsAustralia's opinion, will also serve to confuse players and the venue as to actual machine performance. It also creates an opportunity to potentially mask abnormal and fraudulent behaviour in relation to gaming machines and limits the ability of the regulator and venues to pick up on anomalies.

Significant operational issues also arise from the proposal, which would effectively require the dynamic transformation of games from 'normal' to 'safe mode'. As an example, when a player reaches the limit imposed and is obliged to play 'safe mode', what policy will apply regarding access to prizes won? What policy will apply to linked jackpot contributions and prizes?<sup>98</sup>

As an example, the most popular linked jackpot systems<sup>99</sup> rely on bets made by the player to determine the winner of the jackpot prize (that is, the winning machine). If the player is playing 'free games', what entitlement – if any – do they have to claim a jackpot, to which they have previously contributed? How will other players who are not receiving free games view this situation? If the answer to this is that 'safe mode' automatically prevents players from participating in linked jackpot prizes, then there are issues of fairness that arise, because the player having previously contributed to the jackpot pool is no longer able to participate in a game where the expected return can be in excess of 100 per cent at certain stages of the jackpot prize pool cycle.

ClubsAustralia believes the Commission has misunderstood the nature and role of player return, and this has resulted in a 'safe mode' concept that is flawed in its conceptual and practical application. Comprehensive evaluation of the commercial impact of such an initiative must be undertaken.

ClubsAustralia rejects the concept of 'safe mode' because it is ill-conceived, impractical and not supported by any evidence as to its efficacy in assisting problem gamblers.

### **3. Any requirements that might apply to players who opt out of pre-commitment**

ClubsAustralia does not support pre-commitment that is based on the principle of 'opt-out'; reasons for this have been outlined above.

### **4. Measures to avoid identity fraud**

It is assumed that the "identity fraud" referred to is that resulting from the 'sharing' of cards, where a gambler has exceeded their limits and acquires someone else's card to satisfy their gambling needs.

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<sup>98</sup> Linked system jackpots rely on the accumulation of a percentage of bets made by all participating players on the link. This includes not only in-house links but also state-wide linked jackpot systems.

<sup>99</sup> Reference is made to "mystery jackpots" where the awarding of the jackpot prize is triggered through bets made on the gaming machine as opposed to the generation of a combination of symbols on a screen.

In ClubsAustralia's view the issue of identity fraud only gains prominence if universal technology-based pre-commitment systems are mandated. If a more commonsense approach is adopted, reliant upon shared responsibility, then in the view of ClubsAustralia the issue of developing costly technical or other measures to address identity fraud will not arise.

No matter how foolproof and 'perfect' the universal gaming machine pre-commitment system is designed to be, there are existing – and increasing – opportunities to access other forms of gambling, on which the Draft Report has not placed mandatory pre-commitment requirements.

Even in clubs, where patrons are required to provide their identification or membership card on entry, it would be almost impossible to identify someone playing with someone else's gambling card. How does the Commission propose to address the common practice of 'group play' e.g. husband and wife or friends sharing a machine? Whose card is to be recognised and what constitutes fraud?

The practical difficulties in mitigating such activity are too extreme to contemplate serious consideration.

#### **5. The appropriate transition to a pre-commitment system and the capacity of some jurisdictions to provide systems prior to 2016**

In its initial submission to the Inquiry, ClubsAustralia outlined estimates of the cost and complexity involved in implementing universal technology-based pre-commitment,<sup>100</sup> and remains firmly of the view that there is no case for requiring a capital investment of this magnitude to facilitate the introduction of technology-based pre-commitment.

In relation to implementation of a universal pre-commitment system, the Draft Report<sup>101</sup> performs what is in our view a cursory review, using evidence from a source that does not have adequate experience in the Australian gaming environment to support conclusions on privacy and costs. The assumption that costs might be ameliorated through a reduction in player return is, we believe, ill-considered.

The Draft Report seriously underestimates the complexity and cost of a transition from the current situation of stand-alone gaming machines without any centralised pre-commitment functionality, to one where a system exercises universal control over every gaming machine within a jurisdiction, and potentially Australia.

ClubsAustralia has previously advised the Commission that we expect the average cost per machine to retrofit pre-commitment would be \$2,000 - \$5,000 and \$20,000 to replace a machine. Small clubs, like the Hervey Bay Golf Club in Queensland would be more likely than a large club to require the replacement of all of their 35 machines, costing \$700,000 for a club with only 2,900 members.

Any rigorous analysis would need to draw on experience from governments that have actually been involved in the introduction of monitoring systems, such as NSW and Queensland.

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<sup>100</sup> ClubsAustralia Submission, pp.15-23.

<sup>101</sup> Draft Report, 7.6: "Costs, transitions and other challenges".

This information should be combined with the detailed specifications of any proposed universal pre-commitment system. ClubsAustralia suggests that while the introduction of monitoring systems was challenging, it would be dwarfed by the complexity involved in a universal pre-commitment system.

Monitoring systems are designed to monitor static entities; that is, the gaming machine and record-and-store reliable data that the gaming machines are programmed to supply on demand. Additionally, venues are required to provide advice to the machine monitor or government about installation and removal of gaming machines, that is, their location.

The proposed universal pre-commitment system raises requirements to a new level. It will be required to track human beings that go from machine to machine and venue to venue, and potentially across state borders. The system envisaged must be sufficiently robust to prevent any loopholes so that a gambler cannot escape its control.

ClubsAustralia notes that Victoria is due to implement its state-wide pre-commitment system in 2012.<sup>102</sup> While the Commission recommends introducing pre-commitment nationally by 2016 regardless of the outcomes of the Victorian experiment, it is suggested that policy-makers in other jurisdictions carefully evaluate this system once it is operational before rushing into a costly and potentially ineffective measure.

With this in mind, ClubsAustralia believes it is meaningless to set concrete dates for nation-wide implementation of such a system until a full understanding is available of the exact technical specification required for it to function flawlessly,<sup>103</sup> coupled with a detailed understanding of the technical complexities involved in each jurisdiction. Further, it would be wrong to set a date for implementation without knowing to what extent the measure might be effective at reducing problem gambling and whether it is justified on cost-benefit analysis.

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<sup>102</sup> Although it will not be implemented along the parameters set in the Draft Report.

<sup>103</sup> See issues regarding use of cash-card for occasional players.

## CHAPTER 8 – VENUE ACTIVITIES

### Response to Draft Recommendation 8.1

*Governments should enhance existing compliance and complaints-handling arrangements by:*

- *enabling their gambling regulators, or accredited compliance auditors, to regularly appraise gambling venues' compliance with harm minimisation measures, both mandatory and voluntary, and publicly report their findings*
- *introducing a mechanism for gamblers and venue staff to make complaints to the relevant gambling regulator about venue conduct contributing to problem gambling. This mechanism should be promoted to gamblers within venues and to staff through their responsible gambling training.*
- *enabling their gambling regulators to publish annually the number and nature of complaints about a venue, the action taken and, where the complaint is substantiated, the name of the venue.*

*The Commission invites participants to comment on penalties or disciplines that gambling regulators could impose on venues for breaches of mandatory harm minimisation measures.*

The Commission's commentary leading to Draft Recommendation 8.1 will no doubt be noted by state and territory regulatory authorities. As an overall observation, however, ClubsAustralia believes the Commission has not given sufficient weight to the measures and actions put in place by regulatory authorities in recent years, which are tailored to suit the circumstances in each particular jurisdiction. In addition, the Commission seemingly embraces a number of suppositions that are unsubstantiated by any research or other material outside some submissions put to the Inquiry.

In particular, ClubsAustralia takes issue with observations made by the Commission with respect to Codes of Practice, mandatory enforcement of Codes, and complaint handling.

Firstly, there appears to be a hypothesis underpinning much of the Commission's thinking concerning the way in which gaming machines are operated, including by registered and licensed clubs. This is stated in the Draft Report as:

*The Commission considers that there are not sufficiently compelling incentives for venues to act voluntarily to effectively protect their patrons from gambling harms. Central to this is the fundamental commercial dilemmas confronting all venues; effective actions to reduce gambling harms would be detrimental to revenue and profitability.<sup>104</sup>*

ClubsAustralia rejects this notion. While there may be isolated examples of venues acting inappropriately, in ClubsAustralia's experience such behaviour does not occur in registered clubs on such a scale as to justify the conclusion reached by the Commission.

Clubs are not-for-profit enterprises operated primarily for the benefit of members and the community. With respect to harm minimisation, this manifests in clubs' feeling they have a special obligation to 'look out for' their members. They simply do not see it as within their operational ethics or interests to deplete harm minimisation measures within their facilities, for the sole purpose

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<sup>104</sup> Draft Report, p.8.4.

of extracting more revenue from their patrons. As an example, ClubSafe was introduced in advance of legislation and was voluntarily taken up by over 1,000 NSW clubs.

The notion that clubs will not implement harm minimisation measures that are likely to have an adverse impact on revenue cannot be reconciled from a commercial perspective. Why would a club be motivated to bankrupt and cause harm to a member, when commercially the goal must be to keep the patron for life? By working to ensure patrons enjoy their gaming experience and help them gamble responsibly, clubs hope to keep them and their social circle coming back to the venue for repeat visits well into the future. The idea that they are cravenly trying to extract every last dollar from a patron – as the Commission is suggesting via ‘the revenue dilemma’ – is a superficial, hypothetical, anti-gambling notion that is not supported by reality.

The Commission is unable to cite any instances where clubs have disregarded harm minimisation for the sake of revenue. In this regard, the Commission seems to have ignored the major cultural shifts that have occurred in recent years to address problem gambling – these have been instituted by not only government but also industry, which has demonstrably taken a leading role in measures to reduce the rate of problem gambling and help those who are affected.

By comparison, many of the findings and recommendations contained in the Commission’s Draft Report seem driven by a philosophy that less revenue across the gaming industry must equal better outcomes for problem gamblers. The two cannot and should not be conflated.

ClubsAustralia believes the Commission’s treatment of complaint handling is unbalanced. Firstly, the Draft Report contains no mention of the role personal responsibility should play in the handling of consumers’ grievances. Secondly, there is little recognition that the option of bringing a grievance to the attention of the relevant regulator is generally already in place. Lastly, the Commission again seems to discount that it is commercially sound practice for a club to try and accommodate any grievances brought to their attention, in order to secure the person’s continued patronage. Government regulators already monitor venues’ adherence to the legislated requirements and there are penalties for failure to comply. The recommendation is therefore out of touch with reality.

In relation to voluntary codes of practice, ClubsAustralia is not aware of any state or territory that relies solely on this measure to address problem gambling, so much of the debate put forward by the Commission on the deficiencies of voluntary codes is somewhat academic.

States and territories have all instituted legislation to address the issue of responsible operation of gaming machines. While voluntary codes are recommended to clubs throughout Australia, governments have enforced aspects of these codes and other measures to address the issues which are seen as priorities and necessities within the context of each jurisdiction.

However, the efforts of governments and state and territory club associations to seriously address the issue of problem gambling and bring about change do not appear to have gained much traction with the Commission. This is disappointing and will, it is hoped, be remedied in the Final Report.

## Response to Draft Recommendation 8.2

*Governments need to enhance gamblers' capacity to obtain judicial redress against gambling providers that behave egregiously. This could include a new statutory cause of action to apply in circumstances where a venue-based provider has behaved in specified ways that would clearly contribute to harms.*

*The Commission seeks views on whether a new statutory cause of action should be established and what criteria would be appropriate.*

No gambler ever complains when they win. Problem gamblers and those who would seek legal redress are, by definition, those who have gambled and lost. Allowing additional avenues of redress for gamblers would be like allowing share investors to sue their stockbroker for providing loss-making investment advice. ClubsAustralia strongly cautions governments against acceptance of the recommendation that gamblers have an additional avenue of legal redress against venues.

The issue of legal redress through civil action against gambling operators is deeply vexed. While redress is currently available in 'extreme' circumstances where the gambling operator behaved unconscionably, the process is expensive, time consuming and uncertain for all parties. The Commission does not identify how these factors would be addressed should a new cause of action be allowed.

In addition, the Commission's Draft Report fails to identify the very real risk that an additional avenue of redress might encourage some gamblers to engage in extreme betting practices, in the hope or expectation that any eventual losses would be reimbursed following legal action. The Commission's Draft Recommendation must be considered within the context of this very likely 'opening floodgates' scenario.

It must also be asked whether a legal cause of action is a 'good' redress. The damages lost and that might be claimed are only ever financial. Restitution would be complex; tax would have been paid by the venue on the amount lost. Moreover, even if a claim were successful the 'victim' might well remain a compulsive gambler with a likelihood of future losses.

The legal process for determining an entitlement to compensation is through civil action. The burden of proof is on the balance of probabilities, not beyond reasonable doubt as is the case in criminal law. While the evidentiary burden is seemingly low, proving *causality* – that is, that the gambling operator caused the losses claimed – is always going to be difficult. A new cause of action will not alleviate the need to prove causality or the challenge to quantify damages.

Gambling, more than other activities, carries with it an expectation of financial loss for the participant. Gambling is an inherently risky activity and it is very difficult for a court to separate the extent of a person's calculated risk-taking from the element that is compulsive, psychologically affected activity. For example, a gambling session might begin as calculated risk and progress through compulsion; a court is never going to be able to calculate the percentage of losses caused by the compulsive element. In addition, there is an important element of entertainment derived from the activity and this would also need to be considered by the court in relation to damages, even if there is a new cause of action against operators.



A court would also need to take into account *contributory negligence*; that is, the person's contribution to their own losses. This might arise through the individual breaching their self-exclusion, gambling in breach of counsellor's advice, or gambling when the individual was aware of the harm their actions were causing to themselves and/or others. Each of these factors would reduce the damages a court could award, even if a person successfully argued their case against a venue.

At Box 8.8, the Commission quotes *Uniting Care* in arguing that problem gamblers are discouraged from seeking redress as "they are likely to incriminate themselves in identifying inappropriate activity by a venue". This comment is unsupported by any evidence to substantiate the allegation that inappropriate activity occurs, nor is it apparent how such activity would incriminate the individual. Clearly a poker machine cannot be 'rigged' to provide better outcomes. Even if a person may be inappropriately induced to play or provided with illegal incentives to continue playing, the decision to play or not is ultimately made by the individual.

### Common law negligence

The question of whether harm is 'foreseeable' must be challenged. While one can expect to lose if gaming machines are played long-term, the impact of such losses is often unknown. For example, a person might play only one cent per line and thereby minimise their losses; the venue does not tell a person how to play or how much to spend. A person might have a high discretionary budget and be able to afford their play; the venue cannot know what a person's income or household budget might be. The person might win on occasion and the venue cannot know how the wins received by the player offset the losses. Only the knowledge that a person is vulnerable might be a factor in ascertaining duty of care, because financial harm is more likely for that person.

### Duty of care

Since the release of the Commission's Draft Report, the High Court has concluded two cases which considered the duty of care owed by licensed venues to their patrons.<sup>105</sup> These cases will almost certainly have a strong impact upon future cases concerning provision of gaming by venues, in that they place responsibility squarely on the individual. Three of the judges went further than the five-judge unanimous decision, recommending that the Court "avoid repetition" of such cases and warning against "interfering paternalism".

The Court ruled in the *Scott* case (at 52) that:

*... persons in the position of the Proprietor and the Licensee, while bound by important statutory duties in relation to the service of alcohol and the conduct of the premises in which it is served, owe no general duty of care at common law to customers which requires them to monitor and minimise the service of alcohol or to protect customers from the consequences of the alcohol they choose to consume.*

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<sup>105</sup> *Adeels Palace Pty Ltd v Moubarak; Adeels Palace Pty Ltd v Bou Najem* [2009], HCA 48 (10 November 2009) and *C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board; C.A.L. No 14 Pty Ltd v Scott* [2009] HCA 47 (10 November 2009).

The Court found that the opposite view would impose upon individual autonomy. ClubsAustralia submits that these findings are highly pertinent to problem gambling, which has very similar issues of personal responsibility.

The Court also found the term “intoxication” difficult to define and even more difficult for staff to identify. Again, this relates directly to problem gambling, which is even more challenging to identify, especially within a hospitality rather than clinical setting. Whereas alcohol can cause visible effects following consumption, gambling does not. Whereas intoxication occurs in a single session and might be identified in a simple test, problem gambling typically occurs over a long period of time involving numerous visits (to potentially multiple venues). There is no simple test that will define each person as a problem or recreational gambler. Problem gambling is therefore far harder to define than intoxication and, ClubsAustralia believes, is highly likely to be found by a Court to be impossible to rule against a venue.

In contrast to these important rulings, it is disconcerting that the Commission’s Draft Report pays scant attention to the notion of personal responsibility. The term appears twice in the entire Draft Report. While ClubsAustralia believes gaming venues have a moral responsibility to assist their patrons in avoiding harm, no court will find a breach of moral duty to be a breach of civil law – unless the person has a special responsibility through professional skills, such as a doctor’s duty to assist victims at the scene of an accident.

The decision to move away from the notion of a duty of care to patrons does not absolve clubs or others from their moral duty, and will not lead to a diminution of care through responsible gambling practices. Clubs will continue to maintain their mandatory and voluntary harm minimisation measures. The High Court decisions simply ensure, as they should, that an individual cannot sue for breach of a moral duty of care.

### **Unconscionable conduct**

It would be abhorrent to take advantage of a vulnerable person and encourage them to gamble, knowing that they have a particular weakness and that inducing them to pursue their compulsion may be causing them great harm. However, there is still a high evidentiary burden needed to prove:

- a) A patron had such a vulnerability;
- b) The venue knew about the vulnerability;
- c) The person in question acted in such a way as to exploit the vulnerability; and
- d) That action was unconscionable.

If all four elements can be proved in a particular case, the courts should find in favour of the claimant and the venue should dismiss the individuals responsible.

But, importantly, the fact that all four elements have not been proved in a given case is not evidence that the law is impotent to protect problem gamblers – or that, as the Commission argued at 8.23, “gamblers are left without compensation that may be warranted.” Rather, it shows that the individuals who have sought to claim compensation have been unable to meet the evidentiary burden required of a claimant.

This is the situation in regard to Harry Kakavas.<sup>106</sup> The Victorian Supreme Court accepted that Mr Kakavas was a pathological gambler and that Crown Casino was aware of his condition. The Casino and Mr Kakavas signed a self-exclusion deed to prevent him playing. However Mr Kakavas later requested revocation of his self-exclusion by letter, accompanied by an expert psychologist's opinion that he had made so much progress in overcoming the gambling problems from which he had previously suffered that "he now feels ... that he now has both the insight and requisite behavioural skills to maintain his involvement at the Casino at no more than that of a recreational gambler." The Court found (at 15):

*... it is his case that he, being helpless to resist the lure of the gambling salon – indeed, being so helpless that he could not even take the straightforward path to self-exclusion – was enticed by Crown, and against his better judgment, to become a regular, long-term patron of the Casino, and to gamble there for as long as it took to exhaust his admittedly extensive funds.*

*This proposition cannot survive close examination. Crown was acutely aware, when contact was made with Mr Kakavas in late 2004, that in any negotiations which followed, he might not accept the conditions Crown wished to impose upon him... This case, then, depends upon the plaintiff being able to prove on the balance of probabilities that he could not resist the inducements deliberately and unconscientiously dangled before him by Crown. Captured by his pathological gambling addiction, he could not resist Crown's initial or any subsequent approach, even though he knew that in the self-exclusion process he had readily to hand a means of avoiding the consequences of his addiction. The facts tell a different story.*

The Court found in this case there was equality of bargaining power. Mr Kakavas had the power to self-exclude and knew the process because he had been through it previously. He had convinced expert psychologists that he was able to control his gambling and they provided written reference to that effect on his behalf – on the understanding that he would self-exclude if he fell back into problem gambling.

The Court further found that it was unreasonable to expect the Casino to view Mr Kakavas as having any special disability or vulnerability. Kakavas held himself out to be a very wealthy person, he had expert opinion to support his case that he was no longer a problem gambler, and he was able to engage in complex negotiations with the Casino about his entitlements. He could not therefore be deemed to have passed the test for unconscionable conduct.

The Kakavas case proves that problem gamblers have a legitimate course of action through unconscionable conduct, if they are able to establish *on the merits of their case* that such conduct occurred. However, it also shows that individuals have a responsibility to utilise the non-litigation courses of action at their disposal.

Instead of the Commission recommending by implication that the bar be lowered so that more problem gamblers can make claims, as it appears to do in the Draft Report, the Commission should question whether society wants to encourage litigation in this area. Apart from creating an abnormal exception to the principles that underpin the tort law system, such an outcome would have

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<sup>106</sup> *Kakavas v Crown Melbourne Limited & Ors* [2009] VSC 559 (8 December 2009).

numerous practical impacts, including increasing venues' insurance premiums, modifying players' gambling activities, and altering the relationship between venue and patron.

### **Egregious behaviours**

The areas suggested by the Commission at 8.23-24 for consideration by courts are unnecessary. Where a venue has acted egregiously, as argued above in regard to unconscionable conduct, a court should find in favour of the claimant through current legal courses of action. The burden of proof and assessing damages may not be easy, but the courts are already empowered to award damages and remedies as appropriate.

ClubsAustralia believes the Commission's support for awarding damages on the basis of "controlling the risk of gambling harms" (at 8.24), is misguided. It may be "consistent with general consumer policy" (though ClubsAustralia disputes this) but it is entirely out of step with the tort law system, both in terms of its *raison d'être* and in its basic evidentiary requirements.

The specific examples of egregious behaviour proffered by the Commission only illustrate the overlap with existing regulation, and how the proposed changes would be both unnecessary and unworkable in practice.

For example, compliance with self-exclusion is already mandated by gaming machine legislation in various jurisdictions. But bringing a claim against a venue for failing to enforce self-exclusion is unrealistic, particularly if regional self-exclusion is implemented. Clubs are best placed of any gambling operator to implement effective self-exclusion, due to the membership sign-in procedures. However, a number of clubs have in excess of 40,000 members. Even with sign-in processes it is not possible to be 100 per cent confident of identifying each person upon entry. Clubs take the steps they can to identify and remove a self-excluded patron; however, as identified in the recent High Court decisions, patrons must assume some responsibility for themselves beyond signing a form and thinking other people will act for them.

Revocation of self-exclusion is part of the process of re-entering society after having experienced and self-corrected after a phase of problem gambling. ClubsAustralia has suggested that counsellors be empowered to advise venues not to revoke a self-exclusion until the patient is treated and recovered. This recommendation was not taken up by the Commission.

Another cited example of egregious behaviour is offering alcohol to a patron, which is an inducement to gamble. More than that, in NSW at least, it is a breach of the Gaming Machines Regulations, clause 48.

*A hotelier or registered club must not:*

*(a) offer or supply any free or discounted liquor as an inducement to play, or to play frequently, approved gaming machines in the hotel or on the premises of the club...*

*Maximum penalty: 50 penalty units.*

Despite the law above, it would be difficult to prove the venue acted irresponsibly. It would have to be proved that the venue offered the drink, as opposed to it being purchased at the bar. It would have to be proved that the person was visibly intoxicated, which the High Court found to be a

challenging area in which it was not prepared to impose an expectation upon staff. Even if such evidence were provided and sufficient to win the case, the losses that might be claimed would only relate to the particular gambling session in which the venue was proven to have been in breach, and only for the time during which the player was intoxicated as a result of the venue's breach.

This is another reason why the legal process is not the right way to respond to problem gambling. The damages specific to an occasion of service are so limited that, even if a number of breaches can be proven, the amount of money that might be claimed is relatively small. This is why ClubsAustralia recommended the focus on venues be by regulators, rather than on expanding the opportunities for problem gamblers to sue.

Finally, if governments choose to implement Draft Recommendation 8.2, the course of action should apply to *all* forms of gambling. Despite the Commission's focus on venue-based gaming, unconscionable conduct does not only exist among venues; if anything, it is more likely to occur in other forms of gambling which are less regulated and less easily monitored. In our original submission, ClubsAustralia showed cases where internet companies have been found to have fraudulently stolen patrons' money, rigged games and altered the advertised odds. There are no doubt also examples of newsagents misusing lottery player's funds, bookies behaving inappropriately, and telephone betting games which charge more than was advertised. As ClubsAustralia submitted, better regulation is required to address such misconduct. However, as shown, a statutory cause of action is not recommended as a means of addressing such activity in any context.

### Response to Draft Recommendation 8.3

*Governments should enhance existing training requirements by:*

- *preparing problem gambler identification and intervention guidelines for venues, including a short list of commonly agreed indicators of problem gambling*
- *requiring gambling venues to provide staff training on these guidelines and on the process for lodging complaints about a venue.*

ClubsAustralia supports a more practical and focused approach to training of frontline venue gaming staff. However, given the acknowledged difficulties in proactively identifying problem gamblers, imposing such requirements on staff is opposed. ClubsAustralia does support incorporating appropriate material in training courses with the aim of raising staff awareness about potential problem gambling behaviour.

In a collection of papers prepared for the Australian Gaming Council,<sup>107</sup> ten renowned researchers and practitioners presented their views on identification issues. While it is common sense to try and offer assistance to patrons in obvious distress – for example, physical distress such as crying – other indications are considerably more subtle and require substantially more diagnostic ability and information than is normally available to staff. In summary, the AGC discussion papers show there is

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<sup>107</sup> Australian Gaming Council, *Current Issues Related to Identifying The Problem Gambler In The Gambling Venue*, August 2002.

no consensus on a set of criteria that can be used in the gaming room to identify a problem gambler. However, there is consensus that staff *should not diagnose* problem gamblers.<sup>108</sup>

The Draft Report acknowledges that there are difficulties with proactive identification of problem gamblers,<sup>109</sup> and that there is “less opposition” toward such a requirement than observed in 1999.

The Draft Report states that more recent research and studies have been conducted into this aspect of problem gambling. However, the results still remain very far from definitive. In our view, the research study results remain unable to be translated into a practical, hands-on application by what in many cases are relatively junior staff, who are typically employed on a casual basis. This is not to say that a well researched and developed training course should not include such information; ClubsAustralia is merely opposed to the mandating of such requirements, which would be unreasonable and unenforceable.

The Draft Report suggests that there are a number of frequent behaviours that might trigger suspicion, citing a recent study by Delfabbro et al. The conclusion of the Delfabbro study, as quoted in the Draft Report, is highly relevant to this consideration:

*...the identification of problem gamblers within venues is certainly theoretically possible, and... there are a number of visible indicators that can be used to differentiate problem players in situ from others who gamble. (2007, p. 18)*

What is missing, however, is an indication of the level of training and expertise required to proficiently apply the fifty or so “behavioural indicators” and the amount of time for which a patron would need to be observed in order to arrive at a justifiable conclusion regarding their behaviour.

ClubsAustralia suggests that to responsibly apply such intervention guidelines/indicators, in a way that does not cause difficulties for a patron or venue staff, would require a knowledge base and communication skills of a level similar to that of the researchers. Moreover, it would require the accumulation of reliable data, by way of careful observation and analysis of patron behaviour over a number of hours or a number of gambling sessions. Such prerequisites are simply not practical in a busy hospitality industry environment and are in fact what occurs in one to one visits with professional counsellors or psychologists.

ClubsAustralia is supportive of the creation of training courses to provide staff with better skills and knowledge. However ClubsAustralia does not support penalties for failure to identify and support a suspected problem gambler due to the challenges in doing so, identified above.

In relation to lodgement of complaints, the Draft Report indicates that some jurisdictions have established complaint mechanisms. ClubsAustralia supports informing any and all dissatisfied patrons that there is an avenue for complaint to the regulator. However in the interests of efficiency, resolution of complaints at the venue level should be attempted *in the first instance*. Such an escalation process is a feature of the ClubSafe program in NSW.

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<sup>108</sup> Ibid, p.3.

<sup>109</sup> Draft Report, p.8.30: “During the Commission’s 1999 inquiry, most participants expressed opposition to the idea of problem gambler identification and intervention in venues. There appears to be less opposition now (box 8.11). However, there are continuing concerns from participants in the gambling industry, who see practical difficulties with proactive identification and intervention.”

## Response to Draft Recommendation 8.4

*Governments should prohibit venues from offering inducements that are likely to lead to problem gambling, or are likely to exacerbate existing problems, including offering free alcohol or food to a patron who is gambling.*

Mass-media advertising is a key ingredient in the monumental growth of online gambling. Unlike other forms of gambling in Australia, there are few restrictions on advertising of online gambling.

The Draft Report fails to address the issue of online gambling advertising or inducements. Given the Commission's admission that online gambling is most likely *more dangerous* than land-based gambling, it would seem logical that restrictions placed on gaming, on casino table games, and so forth should also apply to online gambling – if not stricter regulation.

ClubsAustralia supports the Commission's Draft Recommendation 8.4, prohibiting venues from offering inducements that are likely to foster problem gambling. However, any ban on inducements must include the provision of free credit (that is, free bets) for online gambling. The Commission states in its Draft Report that it addresses this issue in Chapter 12. However, ClubsAustralia could find no analysis or recommendation on the issue of free credit in Chapter 12. This should be remedied in the Final Report.

ClubsAustralia views the online gambling industry's practice of offering free bets as particularly dangerous. Governments in Victoria, NSW and South Australia have introduced laws forbidding the advertising of incentive bonuses for sign-ups; however, the websites of many online operators reveal that the sign-up incentives still exist and are being promoted online. For example:

- Centrebet's website states: "Centrebet – Australia's Best Bet – offers the best sign up bonus in all of Australia. Simply join Centrebet, place your first bet, and we'll give you double that amount in a Free Betting Bank, up to \$150!"
- Sportsbet.com.au states: "Join today and receive up to \$300\* in cash!"
- ISAbet.com offers \$100 in free bets once a player joins and bets \$30. Should they bet \$100, the free bet increases to \$150. Should the new gambler deposit \$2,000, then they will receive \$1000 in free bets. All they need do is type in the promotional code when they join of "HIGHROLLER". The company's website states: "Amazing \$1000 Free Bets with 15 per cent Sign Up Bonus!"

Other online gambling companies offer free bets to existing members when they "refer a mate". As an example, BetEzy.com.au offers up to \$2,500 to anyone who refers another player. ISAbet.com offers \$50 when a "mate" places their first bet, saying: "There's something in it for everyone, each friend you refer that deposits and plays will receive a \$20 Free Bet. You can refer as many friends as you want and earn unlimited bonuses."

Unlike most land-based gambling operators, online gambling companies are permitted to advertise gambling on radio, television, roadside billboards and online. Additionally, many online operators advertise during televised broadcasts of sporting programs popular with children and teenagers, such as rugby league games, cricket matches and programs such as the NRL and AFL Footy Shows.

Numerous major sporting events, such as rugby league fixtures, advertise online gambling companies on the fencing that surround the football field.

This advertising is often featured during the telecast – as opposed to during commercial breaks – with commentators discussing fluctuating odds. Children, who are exposed to the commentary, have no way of avoiding the discussion and the odds which are shown on the screen.

This should be of serious concern to the Commission, given that a recent study found that 42 per cent of youths reported that gambling advertisements make them want to try gambling<sup>110</sup>, and 40 per cent of young people cited advertising as the primary reason for gambling.<sup>111</sup> Australian research shows that between 63 and 82 per cent of 12–17 year olds gamble each year, and evidence suggests that most problem gamblers develop their problem in their youth.<sup>112</sup> Adolescents who gamble online are more likely to be problem gamblers, have lower grades, engage in delinquent activities, abuse alcohol and illicit drugs, and take medication for depression.<sup>113</sup>

During the two weeks leading up to the 2008 Melbourne Cup alone, Australia’s six largest online gambling companies spent more than \$2.25 million on advertising, almost all of it on radio, according to Nielsen AIS research.<sup>114</sup> Based on current metropolitan advertising rates, this amounts to almost 100 hours – or more than four days non-stop – of gambling advertising during the fortnight before the Melbourne Cup.

Whereas those jurisdictions which allow land based venues to advertise the existence of gaming have an advertising code of practice to prevent inappropriate messages, it is not apparent to ClubsAustralia that the same harm minimisation or oversight applies to online gambling.

ClubsAustralia believes children should not be subjected to advertising for a product which the Federal Government has deemed inappropriate for anyone under the age of 18. ClubsAustralia notes the Distilled Spirits Industry Council of Australia (DSICA), which represents about 80 per cent of the alcohol industry, has already commenced phasing out advertising. Already DSICA members, such as Bacardi Breezer-maker Bacardi Lion and Jim Beam Brands Australia, have undertaken not to advertise on TV before 9pm.<sup>115</sup>

Clubs and hotels in most jurisdictions are prohibited from promoting their gambling operations – or in NSW, even acknowledging such facilities exist – in advertising and signage. It is a glaring inconsistency that online gambling operators should not be subject to a similar restriction.

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<sup>110</sup> Derevensky, J, A Sklar, R Gupta, C Messerlian, M Laroche, and S Mansour, *The effects of gambling advertisements on child and adolescent gambling attitudes and behaviours*, 2007.

<sup>111</sup> Griffiths, M and A Barnes, “Internet gambling: An online empirical study among student gamblers”, *International Journal of Mental Health and Addiction*, 2007, pp.194–204.

<sup>112</sup> Monaghan, Sally, Jeffrey Derevensky and Alyssa Sklar, “Impact of gambling advertisements and marketing on children and adolescents: Policy recommendations to minimise harm”, *Journal of Gambling Issues*, Issue 22, December 2008, p.253

<sup>113</sup> MacKay, Terri-Lynn, *Betting on youth: Adolescent Internet gambling in Canada*, April 2005, accessed at [www.responsiblegambling.org/articles/Terri\\_Lynn\\_MacKay\\_discovery\\_2005.pdf](http://www.responsiblegambling.org/articles/Terri_Lynn_MacKay_discovery_2005.pdf)

<sup>114</sup> Tabcorp, *Call for a national approach to the regulation of the Australian wagering industry – Submission to the Productivity Commission Review of Gambling*, [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0003/88455/sub229.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0003/88455/sub229.pdf), p.14 (accessed 8 December 2009).

<sup>115</sup> “Government under pressure to regulate alcohol advertising”, *The Australian*, 3 April 2009, <http://www.theaustralian.com.au/news/breaking-news/rudd-pressured-over-alcohol-ads/story-fn3dxity-1225697301368> (accessed 8 December 2009).



## CHAPTER 9 – ACCESS TO CASH AND CREDIT

### Response to Draft Finding 9.1

*While causality is hard to demonstrate conclusively, easy access to ATMs/EFTPOS facilities appears to increase spending by problem gamblers. Problem gamblers use these facilities far more than other gamblers and say they would prefer to see ATMs removed from venues so they can better control their spending.*

Access to cash is not, as the Commission stated at 9.11, a contributor to problem gambling. ClubsAustralia is not surprised that problem gamblers who utilise counselling services would support limiting access to cash. These are people who have accepted the damage caused by their excessive gambling and are seeking assistance to prevent themselves from causing further self-harm. The damage caused is financial loss and it is to be expected that these people (like all gamblers who lose) would wish they had not spent the money. If asked, they might support restrictions on all ATMs in the country, bans on second mortgages, or other restrictions on access to cash.

While there is debate about the exact nature of problem gambling ClubsAustralia is of the opinion that problem gambling is a psychological illness often caused by a related psychological or physical factor such as depression, loneliness, and/or drug or alcohol dependence. Problem gamblers are compulsive. Understanding this goes a long way towards explaining why limiting access to cash within a gambling venue will not stop problem gambling. The simple fact, amply supported by evidence, is that problem gamblers arrive at the venue *with* cash. This is supported at 9.26, with a finding that “problem gamblers had a much greater tendency... to bring more than \$200 with them to gambling.” Tasmania, which already imposes a ban on clubs and pubs operating ATMs, has a problem gambling rate higher than South Australia and Queensland. The Tasmanian prevalence rate is not substantially lower than the other jurisdictions. Clearly the absence of access to cash within venues does not have, on its own, a profound impact upon the prevalence of problem gambling.

Easy, proximate access to cash may exacerbate the amount lost in a particular gambling session – but it is not the *cause* of such loss. The cause is the lack of control of the individual. The individual is a compulsive gambler and will find the money to satisfy their compulsion to gamble. Submission 148, quoted by the Commission at 9.13 should be sufficient proof: “We will leave a venue to access an ATM.” Problem gambling is a psychological illness. The most that might be said of access to cash is that it may exacerbate the losses a person might otherwise have realised.

Therefore, while some problem gamblers receiving counselling services may think limiting access to cash within venues is a good idea, this finding is neither surprising nor sufficient to justify change.

### Response to Draft Finding 9.2

*Although a ban on ATMs from gaming venues has the potential to assist problem gamblers, it has uncertain benefits and costs, including the risk that problem gamblers seek to subvert the ban. An evaluation of the Victorian ban on ATMs should provide useful evidence.*

The Commission has recognised the importance of cash within clubs and rejected calls to recommend a ban on ATMs in gaming venues. However, further analysis of the effectiveness of a ban, through assessment of the Victorian ban due in 2012, is unnecessary. As stated above, Tasmania already implements a ban on ATMs in clubs and pubs without clear evidence of the merit of such a ban.

The Commission could – if evidence of the value of an ATM ban were truly desired and wanted quickly – issue a recommendation in the Final Report that the Tasmanian Government lift its ban on ATMs in clubs for a period of time, during which the impact upon problem gambling could be assessed through that one measure. It could be tested in some areas rather than state-wide, and would provide much better evidence than is presently available. In the absence of such evidence, it is not apparent why the entire state of Victoria should suffer the inconvenience of a ban with, at best, marginal merit. It is therefore recommended that the Victorian Government reverse its proposed ban on ATMs within gaming venues.

### **Response to Draft Recommendation 9.1**

*Governments should fine-tune existing regulations of ATMs/EFTPOS facilities by introducing the following changes in gaming venues:*

- *Cash withdrawals from ATMs/EFTPOS facilities should be limited to \$200 a day.*
- *ATMs/EFTPOS facilities should be a reasonable distance from the gaming floor, visible to the public and venue staff, yet not to gamblers from the gaming floor.*
- *Warning and help messages should be clearly visible on ATMs/EFTPOS facilities.*

*The Commission seeks views on the practicability of exempting casinos from draft recommendation 9.1 in relation to their high rollers and international visitors.*

The Commission's own findings in this section simply do not support the recommendation. The Commission observes, at 9.24, that the average withdrawal from gaming venue ATMs is much less than at non-venue ATMs around Australia. In other words, people already choose to limit how much they withdraw at gaming venues. Table 9.5 at 9.25 shows that self-identified problem gamblers in the ACT withdraw small amounts of up to around \$200. It is non-gamblers and recreational gamblers who make withdrawals at much higher amounts; these withdrawals are made infrequently and not necessarily for the purpose of gambling but to buy food, drink and/or entertainment during an outing, and/or for general spending money for the next few days.

As shown above, the Commission also finds, at 9.26, that problem gamblers typically bring large amounts of cash to the venue with them. While some individuals may suffer harm at losses of up to \$200 in a session, it would be poor public policy to limit maximum withdrawals when the evidence shows that the vast majority of people are capable of self-regulation, and that the approach would not benefit problem gamblers.

The Commission at 9.23 quotes an academic who recognises how limited the behavioural responses of problem gamblers are to existing withdrawal limits. The Commission also reports evidence that most people have multiple cards and can therefore 'get around' a withdrawal limit through multiple accounts or through a single, larger-than-normal, transaction prior to arriving at the venue.

ClubsAustralia believes the position of Regis Control on the issue of restricting ATMs is untenable and should not be relied upon by the Commission. Regis has a clear conflict of interest: as a company that seeks to provide technology which would potentially negate the need for access to cash, they have a commercial interest in ATMs being banned or limited. The arguments put forward by Regis (submission 82 at pp.11-12) show how disingenuous they are: it is highly unlikely, to the point of absurdity, that there is even one person in Australia who visits a gambling venue every single day of the year, withdrawing the maximum possible amount from a venue ATM and spending all of the amount withdrawn on gaming machines. Their statement at the conclusion of the quote sourced by the Commission at 9.23, that “other countries have in effect restricted ATM withdrawals by adopting cashless gaming” is nothing more than an attempt to push their technology for private gain. Acceptance of Regis’s argument by the Commission, to the detriment of clubs and club-goers throughout Australia, is strongly opposed.

Rather than mandating bans or very low limits which evidence shows are easily circumvented by those it is meant to help, ClubsAustralia supports empowering individuals to make their own decisions to limit potential harms. Options for problem gamblers to limit access to cash were provided in our original submission, such as asking the bank to set a lower limit which would be effective for all ATMs, not just those in gaming venues. ClubsAustralia suggested problem gamblers could leave their debit cards with venue management. New ATM technology has appeared on the market since our first submission which allows the user to pre-set the amount to which they want their withdrawals to be limited, on that account, for that ATM. There is also the capacity for the venue manager to ‘override’ the individual’s selected amount so that upon request the manager can set a lower limit for the individual, which only the manager can increase.

The capacity for individuals to control their own withdrawals and make their own decisions, illustrated by significantly lower average withdrawals from gaming venue ATMs than those elsewhere, should be sufficient evidence that lower limits are not required. Further demonstration that limits do not work is found in evidence that problem gamblers frequently bring cash with them and have multiple accounts. Statements from problem gamblers that they think a ban or withdrawal limit “might” have helped are insufficient to justify imposing a significant inconvenience (and potentially higher withdrawal costs) upon the overwhelming majority of people who use venue ATMs as a safe, convenient way to access cash. ClubsAustralia strongly cautions the Commission against forming policy recommendations on the basis of biased and anecdotal conjecture.

South Australia currently has a withdrawal limit in gaming venues of \$200 and Victoria currently has a limit of \$400, yet both states have a similar prevalence of problem gambling to every other jurisdiction which does not have a withdrawal limit. Queensland has no withdrawal limit but has a lower prevalence rate than SA, which has a withdrawal limit; in turn, SA’s prevalence rate is lower than Tasmania which has a ban on ATMs in gaming venues. This casts doubt on any suggestion that bans on ATMs and withdrawal limits are a ‘silver bullet’ for reducing problem gambling. While they may have some impact, they are not measurably effective and should not be supported.

### **Removing ATMs from the gaming floor**

Typically, ATMs will be located at the entrance to the venue. This is because it is convenient for those who need cash within the venue or who want to take the cash outside the club, it is an area

closely observed by staff so it is safe for making withdrawals and, most importantly, it is convenient for staff/contractors who need to re-supply the machine with cash.

ATMs are already banned from the gaming room floor in most jurisdictions and this is sufficient. Due to layout and size, venues will face different challenges in operating an ATM at a 'reasonable' distance from the gaming room. The gaming room might be near the venue entrance. In that case, the gaming room cannot be moved because the machines require access to electrical outlets and it would be prohibitively expensive to switch rooms just to create distance between the gaming machines and the ATM. In other venues, particularly large clubs, the gaming room is not walled off from other areas. It would be expensive and impractical for those clubs to make the ATM 'invisible' to patrons on the gaming floor.

In addition, it is not apparent how far a 'reasonable' distance from the gaming room might be. This may be a particular issue for small clubs which do not have the size to move the ATM very far from the gaming room.

### **Warning and help messages on ATMs/EFTPOS**

There are clear differences between ATMs and EFTPOS. While ATMs can easily be programmed to have warning messages appear on the screen during a transaction, EFTPOS involves a handheld unit that the patron only sees when entering their PIN. The EFTPOS terminal might be behind the bar, where it is difficult to put a warning message. While ClubsAustralia is supportive in principle of warning and help messages, such a requirement should only apply to ATMs.

### **High roller rooms**

The Commission has recommended in various parts of the Draft Report to exclude casino high roller rooms from restrictive recommendations.

Firstly, ClubsAustralia is concerned about the nebulous nature of this term: the Commission has not attempted to define the size of a high roller room, or what features such as net worth characterise a 'high roller'. ClubsAustralia is aware that casinos often induce frequent gamblers, who would normally attend their local club, to gamble at the casino as valued 'high rollers'. These are typically people who enjoy gambling and do so frequently but cannot necessarily be regarded as high rollers.

The Commission writes at 9.30 that "High rollers tend to be footloose in the sense that they are more able to switch to another international casino if the services and amenity of a particular Australian casino is not to their liking." This statement has absolutely no foundation in reality and betrays a lack of understanding of the gambling market. There is no evidence that an international visitor would switch casinos based on the location of an ATM. They might have an account with the casino to gamble, into which they could transfer money from their bank account. Casinos would be more prepared than other gaming operators to cash cheques. Besides, true 'big fish' are likely to want to gamble more than the usual \$1000 limit on an ATM. It is noted that *Kakavas*<sup>116</sup> bet up to \$300,000 on individual hands. The presence of an ATM is irrelevant to genuine high rollers.

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<sup>116</sup> *Kakavas v Crown Melbourne Limited & Ors* [2009] VSC 559 (8 December 2009).

## Response to Draft Recommendation 9.2

*Other than for online gambling, and for high rollers and international visitors in casinos, governments should prohibit the use of credit cards for gambling.*

Comment is provided in the previous response about why exemptions should not apply to high roller rooms. This includes opposition to continued use of credit cards for gambling by high rollers.

The Commission, at 9.33, has put forward evidence which shows that 25 per cent of moderate and problem gamblers withdraw money using credit cards<sup>117</sup>. On the same page, it cites the 2001 ACT gambling prevalence study which found 70 per cent of SOGS 10+ gamblers obtained cash advances on credit cards to gamble. Other studies have also found a greater prevalence among problem gamblers to utilise credit where it is available.

ClubsAustralia believes that gambling on credit is to be discouraged as a matter of principle. This is because of the potential for a person to extend their losses beyond what they have in their bank account, or for them to face interest repayments on gambling losses. We believe a person should only be allowed to gamble with money they have, not to create debt (to be repaid at inflated credit card interest rates) to facilitate impulsive gambling decisions.

If the Commission accepts that principle, then it should be universally applied. In regard to internet gambling, as with high roller rooms, the player can set up a betting account with which to gamble. This need not use money from a credit card but could involve a transfer of money from the player's designated bank account. Requiring the money to come from a bank account would also limit the capacity for fraud – for example, by children using a parent's credit card to gamble – because the money would need to be transferred across rather than simply entering in details on the credit card.

Payment via bank account, through Electronic Funds Transfer (EFT) or BPay, is a viable alternative for internet gambling sites which alleviates their purported reliance on the conduct of transactions on credit. Problem gamblers' reliance on credit is much higher than non problem gamblers', and the impact of such reliance can be damaging for the individual.

In one reported case, a 14 year old lost \$7000 in three months of gambling at an online casino using his father's credit card and faked identity details.<sup>118</sup> The article reports the boy is now receiving counselling for internet addiction:

*Youth psychologist Dr Michael Carr-Gregg said growing numbers (of) Australian youth were becoming addicted to the internet... Dr Carr-Gregg said schools and governments had a major role in encouraging parents to be much more proactive when it came to young people and the internet.*

A ban on credit can be implemented cheaply, especially for internet operators, and the effect of such a ban targets those most likely to experience harm. There is little chance of circumventing the ban, and broad application to all forms of gambling ensures gamblers cannot switch from one venue

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<sup>117</sup> Though ClubsAustralia reiterates that it is inappropriate to consider moderate gamblers as similar to problem gamblers

<sup>118</sup> *Herald Sun*, "How my boy lost \$7000 gambling", 28 November 2009, <http://www.heraldsun.com.au/news/victoria/how-my-boy-lost-7000-gambling/story-e6frf7kx-1225804952111>

or form of gambling to another in order to get around the restriction, removing any competition issues. That is why ClubsAustralia believes a ban on credit is justified and desirable for universal implementation.

### Response to Draft Recommendation 9.3

*Governments should require venues to pay any gambling prize above \$250 by cheque or direct credit to the gambler's account, except for winnings by high rollers and international visitors in casinos.*

The issue of prizes paid by cheque has, as acknowledged by the Commission, already been the subject of action by every state and territory jurisdiction, with widespread limits imposed following concerns about reinvestment of winnings, cooling off periods and patron security.

However, the Commission has presented very little information to support the proposition that a universal limit of \$250 for cash payment of winnings be adopted. The absence of any cost-benefit analysis on this matter seems to indicate that the Commission believes this measure would not be difficult for the industry to achieve and may result in some (also unquantified) benefits for problem gamblers. ClubsAustralia rejects this supposition.

As part of its rationale, the Commission concludes that “gamblers are continuing to gamble with their winnings and a small proportion of gamblers are avoiding payment by cheque”.<sup>119</sup> While not wishing to trivialise this finding, it is hardly a startling revelation that as a general rule, people playing gaming machines enjoy the experience more when playing with winnings over and above stake money. The Draft Report goes on to conclude:

*The Commission considers that the cash threshold for payments should be set at a low level. With a low cash threshold, staff would be able to identify gamblers making many wins – a strong indicator of large overall losses and a risk factor for problem gambling.*<sup>120</sup>

The implication is that a gaming machine player “making many wins” would have many cheques, and would therefore be recognised by staff. Just how a gaming machine player would accumulate many cheques is unstated and unclear. The circumstances giving rise to the accumulation of cheques would be by movement between gaming machines or a player having a win over \$250, cashing out by cheque then either moving to another machine or returning at a later time and again winning over \$250, then collecting a cheque, and so on.

Such behaviour would be somewhat bizarre; even if the player did have a problem, shifting between machines would be unlikely due to the inconvenience and break in play caused by having to cash out by cheque (as well as the possible incentive to continue play until just below \$250 then cashing out). Further, a person playing responsibly is usually only interested in cashing out when they want to end play, with play usually confined to one or two machines.

In any case, the real issue for clubs in setting such a low ceiling lies mainly in the costs of administering such a system, compared to the doubtful benefit of assisting a problem gambler and the inconvenience that would flow to recreational gaming machine players.

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<sup>119</sup> Draft Report, p.9.40.

<sup>120</sup> Ibid.

## Quantity of cheques generated, administrative cost and security

A survey conducted by ClubsNSW of 16 clubs for the 12-month period from November 2000 to October 2001, when the cheque cashing limit was set at \$1000, showed that this small number of clubs alone generated 67,664 cheques in compliance with the regulation – causing a significant administrative burden, along with a growing security risk. While it was difficult to ascertain the exact number of additional cheques that were being generated across all NSW clubs due to the cheque issuing requirements, a conservative estimate of 750,000 additional cheques (at an average of 535 per club) were being generated each year. The cost of this, through both staff labour and banking fees, would be considerable. For large clubs in particular, this would dramatically increase the number of cheques to be signed and utilise much of the time of the club's most important and responsible staff.

ClubsNSW was also of the view that cheque fraud (forgery) increased after the introduction of cheque cashing legislation. Cheque fraud involves persons acquiring a cheque from a club then altering the content details thereon. The obligation to issue cheques in the quantities that would be generated by a limit of only \$250 would no doubt increase the likelihood of increased forgery.

As a result of this administrative burden and growing fraud risk, in 2006 the NSW Government raised the cheque generation limit from \$1000 to \$2000. ClubsAustralia submits that it would be poor public policy for the Commission to recommend that a decision taken by a State Government, which considered the justification for and impact of the decision, be reversed.

## The decline of cheques as a method of payment

Put bluntly, cheques are a dying currency. With the adoption of EFT, the use of this method of payment is now being actively discouraged by banks. This occurs principally through the imposition of fees that attempt to direct people to other means of payment. In 1995, cheques accounted for more than 80 per cent of the value of all non-cash payments but by 2007 this had fallen to 14 per cent,<sup>121</sup> with levels today no doubt lower still.

In the United Kingdom, major retail outlets are banning cheques. The pharmacy chain Boots has banned cheques in all of its 1,500 stores, after reporting that cheques had fallen to 0.1 per cent of all payments.

*Unfortunately cheques still pose probably the highest risk of fraud to ourselves and our customers, and because they are increasingly not used we have decided to phase them out completely.<sup>122</sup>*

Petrol retailer Shell implemented a cheque ban in 2005. Other UK companies to do away with cheques include John Lewis, Tesco, Marks & Spencer, Argos, Asda, WHSmith and Next.<sup>123</sup> The companies report faster service at the counter without cheques.

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<sup>121</sup> RMIT University, *Journal of Internet Business*, "Killing the Cheque" [http://jib.debi.curtin.edu.au/iss05\\_Jackson.pdf](http://jib.debi.curtin.edu.au/iss05_Jackson.pdf) at p.29.

<sup>122</sup> BBC News, "Boots to ban chequebook payments" 17 April 2007, <http://news.bbc.co.uk/2/hi/business/6565015.stm>, accessed 7 December 2009.

<sup>123</sup> RetailWeek, "John Lewis tests ban on cheques", 11 February 2008, <http://www.retail-week.com/john-lewis-tests-ban-on-cheques/658949.article>, accessed 7 December 2009.

The Guardian newspaper<sup>124</sup> in England has reported that cheques cost as much as one pound each to process. Scandinavian countries and Ireland have already voted to phase out cheques. Great Britain has announced an "end date" of 2018 will be set for cheque clearing in Britain, with the Payments Council reporting cheques are "in long term, terminal decline"<sup>125</sup>.

*The DCITA report found that cheque payments involved approximately five times the resource costs of direct entry (DCITA, 2006)... A 30 per cent reduction in cheque use in favour of direct entry would result in a \$190 million saving to the economy each year. In addition to the production costs of cheques, businesses have cited cheques as providing the most issues and challenges out of the various payment methods (DCITA, 2006).*<sup>126</sup>

While the Commission suggests that winnings be electronically transferred to an account nominated by a player, this option has not proven to be popular in clubs, with patrons and many clubs not in a position to carry out this type of transfer. It requires players to carry around and furnish a club with their banking details – not a convenient or desirable arrangement for many patrons, especially those who play casually in a number of venues. Apart from the practice of 'playing down credits,' clubs report that many players simply prefer to be paid in cash. In addition, many clubs do not use their internet access to facilitate electronic payments:

*Seventy one per cent of businesses in Australia with less than five employees had internet access, while 92 per cent of business with between 20 and 99 employees had internet access however only 29 per cent of these size businesses made electronic payments (ABS, 2006b).*<sup>127</sup>

In relation to visitors, ClubsAustralia has received feedback that interstate and overseas visitors are often placed in a situation where issuing winnings by cheque creates unnecessary complications and difficulties. This arises because such patrons have restrictions on being able to cash a cheque – for example, they are leaving that day or the next day, or do not have an account with a financial institution in this country, or both.

In summary, ClubsAustralia is not aware of any research to date that can point conclusively to a low base limit for the payment of prizes by cheque as being effective in reducing harm from excessive gambling. It would, however, inconvenience many recreational players who prefer payment by cash as well as increasing the administrative burden on clubs.

ClubsAustralia believes legislation should act in a way that encourages fewer cheques while taking into account the reality of the gambling environment – which includes a balance between player preferences and harm minimisation.

#### **Response to Draft Recommendation 9.4**

*Governments should impose the following cheque-cashing requirements on gambling venues, other than casinos in respect of high rollers and international visitors:*

<sup>124</sup> The Guardian, *Cheques to be bounced into history*, <http://www.guardian.co.uk/business/2009/dec/15/cheques-bounced-out-history> 15 December 2009

<sup>125</sup> [www.paymentscouncil.org.uk](http://www.paymentscouncil.org.uk), accessed 18 December 2009

<sup>126</sup> Op. cit. *Journal of Internet Business* at pp.32-33.

<sup>127</sup> Ibid. p.49.



- *winners' cheques should not be allowed to be cashed*
- *self-drawn cheques should have the same limits as in draft recommendation 9.1.*

The Commission's recommendations on cheque cashing are noted; however, again, this area has been well covered by all jurisdictions and limits set according to individual circumstances.

While it may appear that blanket rules are preferable in this area, ClubsAustralia believes that exceptions in certain circumstances may be necessary. For instance, in some regional and remote areas where banks no longer exist, often it is the club that provides a quasi-banking facility for members of that community who have no other ready access to cash.

No doubt there are other circumstances that give rise to exemptions to cashing winning cheques and setting varying cashing limits for other cheques. ClubsAustralia suggests that the particular circumstances around cheque-cashing are best accommodated by the relevant government regulators.

It is also noted that the Ministerial Council on Gambling will be looking further at the issue of a national approach to the placing of limits around ways in which cheques could be cashed by venues.

## CHAPTER 10 – ACCESSIBILITY OF GAMING MACHINES

### Draft Finding 10.1

*The prohibition on the casino in Canberra from operating modern gaming machines is not warranted. Permitting the casino to operate gaming machines within the existing ACT cap, subject to the application of appropriate regulatory harm minimisation measures, is not likely to increase accessibility or increase gambling harms.*

In the ACT, the Gaming Machine Act 2004 only permits access to poker machines to clubs, and the Casino Control Act 2006 continues to prohibit gaming machines in the Canberra Casino; ClubsAustralia believes there are no compelling reasons for this to be changed.

In particular, ClubsAustralia and ClubsACT strongly disagree with the Commission’s Draft Finding 10.1 that the Canberra Casino should be given access to poker machines. Our objection is based on the long-held view that it will unnecessarily liberalise gaming in the ACT by allowing privateers in, with negative flow-on effects.

Licensed clubs in the ACT were permitted access to gaming machines 32 years ago. Today the ACT is the only jurisdiction where “C class” electronic gaming machines are owned and controlled by not-for-profit, community-based clubs, and where the surpluses are not privately accrued but are returned to the community.

During the liberalisation of gaming during the 1990s, NSW – which had had a community-based gaming model for over 35 years – extended access to gaming machines to pubs/hotels and a casino. At about the same time Queensland, Victoria, and South Australia provided (differential) access to gaming machines to all three sectors – from scratch. Today in every jurisdiction apart from WA and the ACT, poker machines can be found in pubs on virtually every street corner (with 70,000 machines in hotels across the country) and there are over 12,000 gaming machines in the 13 casinos located around Australia.

The profits from these 82,000 machines go to wealthy individuals, privately owned and run syndicates, and Australian and foreign-owned corporations. Woolworths now owns and operates more gaming machines than any other single entity, and a number of hotel chains have listed on the Australian Stock Exchange.

For their part, successive ACT Governments have rejected the call for the liberalisation (or privatisation) of gaming by taverns, hotels and the Canberra Casino – choosing instead to put social responsibility ahead of revenue-raising by restricting them to not-for-profit, community-based clubs.

The explosion in privately-owned gaming, which the Commission itself decries and acknowledges was the period in which the greatest harm was done, has not been replicated in the ACT. As recently as September 2008, in the lead-up to the last ACT election, all three major parties (ALP, Canberra Liberals and the ACT Greens) confirmed their support for the community-based gaming model going forward.

We believe that if the Canberra Casino were allowed poker machines it would only be a matter of time before it would be extended to hotels and taverns on “competitive neutrality grounds”. Under such a scenario, the major beneficiaries of profits from gaming machines would be the privateers – as they increasingly are in most of the other Australian jurisdictions.

Clubs take no comfort from the Commission’s comment that addressing this Canberra Casino anomaly would not provide grounds for additional gaming machine liberalisation in respect of hotels and taverns in the ACT. We also dispute the Commission’s conclusion that allowing gaming machines in the Canberra Casino would not increase gambling harms. ClubsACT acknowledges that adding one venue will not dramatically affect accessibility, and we have never argued that it would. Also, because the machines would be provided under the existing cap, we accept it would not increase the overall number of machines.

However, based on the differential in gaming turnover and net revenue earned on gaming machines in different venues – that is, casinos as opposed to hotels and clubs – 200 gaming machines in the Canberra Casino could be expected to earn at least double that of the same number of machines in a Canberra club.<sup>128</sup> Given the Commission seems to believe that gaming spend is a proxy for problem gambling, then by this logic we assume it would also agree that this increased spend is likely to exacerbate problem gambling.

In ClubsAustralia’s and ClubsACT’s view, the ACT Government has nothing to be defensive or apologetic about in maintaining their stand of only allowing community-based licensed clubs to operate gaming machines in Canberra. It is a distinction worth fighting to preserve and is clear, unequivocal and defensible socially. While the Commission appears to have dismissed the contribution clubs make to the economy and community, the benefits derived from clubs are real and significant, and have been quantified recently by the IPART’s Review of NSW Clubs.

As mentioned in ClubsAustralia’s and ClubsACT’s first submission to the Productivity Commission, it is a model that we believe the other jurisdictions would be more than happy to return to – as stated by the past premiers of both Queensland and Victoria. South Australia and Victoria, which did not initially provide sufficient incentive for the community-based gaming model, are also now taking some steps to rectify the situation.

The same logic used to recommend EGMs in the Canberra casino could justify extending casino table games to clubs and pubs around the country, as long as the number of gambling tables in a jurisdiction does not increase. Indeed, the Commission’s assertion in the Draft Report that lotteries pose “no substantive risks” (at xx) should lead to a recommendation that all retailers be entitled to sell lottery tickets. ClubsACT is concerned at the lack of logical consistency in the Commission’s approach to these issues.

The Commission has not differentiated between the motives of private and public interests, or recognised the greater harms that may occur in privately owned venues, as evidenced by the significantly greater revenue per machine in hotels and casinos than from club EGMs. While the Commission has recognised that the core business of casinos is gambling, it has not recognised that

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<sup>128</sup> Draft Report, Appendix C.22.

the core business of a casino is to make a *profit* from gambling activities, to benefit *private* interests – while the core business of a club is to support the club’s purpose and their community.

Government policy must seek to find a balance. ClubsAustralia believes the ACT Government has got the balance right and commends the community gaming model to other jurisdictions.

For our part, we believe that the community-based club gaming model has always had, and will continue to have, inherent advantages over other models. ClubsAustralia therefore disagrees with Draft Finding 10.1 and recommends that it be omitted from the Commission’s Final Report.

### Response to Draft Recommendation 10.1

*Drawing on the Queensland approach, governments should introduce a shutdown period for gaming machines in all hotels and clubs that commences earlier, and is of longer duration, than currently.*

*The Commission seeks feedback on the period of shutdown that would best target problem gambling, with least side-effects on recreational gamblers.*

ClubsAustralia does not support this recommendation because its efficacy in assisting problem gamblers is unproven, while it would impose significant costs on recreational gamblers and clubs.

It appears the Commission itself has limited support for the recommendation to shut down an important source of club revenue for a full third of a day. The comment at 10.26 bears repeating:

*Even with fine-tuning, restrictions on caps, operating hours of gaming machines and other restrictions on accessibility are unlikely to be as effective as other harm minimization measures... this is primarily because small changes to accessibility make little difference to the overall accessibility of machines.*

This tepid support is consistent with the Commission’s historical aversion to caps, including restrictions on playing time. Indeed, in its previous gambling report the Commission found that the greatest effect of a mandatory shutdown would be on recreational gamblers, stating that:

*...restrictions on opening time would probably have few significant positive social effects, unless made draconian by current standards. Most problem gamblers do not gamble every day of the week, nor for extremely long hours. Controlling hours of opening – say to 6 days a week for 18 hours a day – would probably lead to some minor re-arrangement of the scheduling of gambling, without significant cuts in expenditure or total time played. Problem gamblers are more likely to still play, even at a marginally more inconvenient time, because they are unresponsive to price (either in a dollar form or as an intangible cost). Recreational gamblers, on the other hand, would have their recreational options circumscribed.<sup>129</sup>*

Since the Commission formed that opinion in 1999, there has been no credible research or analysis to support a *volte face*. Blue Moon’s work, relied on heavily by the Commission in its 2009 Draft Report, “uncovered only limited research focusing on mandatory shutdowns” and much of the available research is attitudinal only – based on the views of gamblers and venue managers. The Blue Moon work has serious limitations, including:

<sup>129</sup> Productivity Commission of Australia, *Australia’s Gambling Industries*, 1999 at 16.53.

- the research design was not intended to include a state-wide representative sample of gamblers;
- the research was largely based on interviews;
- there was a small sample of problem gamblers, with only 78 participants; and
- the face-to-face interviews conducted with gamblers produced a sample skewed toward young males.

Despite these limitations, this research was used by the Commission as corroboration of a Canadian study that showed “that higher risk groups are more likely to be playing after midnight than lower risk groups.” (See elsewhere in this submission for ClubsAustralia’s view on the Commission’s use of the “at risk” category.) This is hardly a compelling argument for closing down an important income stream for clubs for an extended period of time.

Likewise, much of the research undertaken by Shottler and referenced by the Commission was based on the thoughts of only 25 problem gamblers. While it is valid to gauge the opinion of gamblers and the wider community on the effectiveness of measures, as stated in response to Draft Recommendation 5.1, they should not be treated as scientific evidence and do not always reflect effective or acceptable options.

Indeed, the solid empirical research that exists does not support an extended shutdown. As an example, cited at 10.18 in the Draft Report, McMillen and Pitt (2005) concluded there was insufficient evidence or consensus about the value and effectiveness of the then-three-hour mandatory shutdown in the ACT (from 4am to 7am) while ACNielsen (2003) concluded that the three-hour shutdown had a minimal impact on minimising problem gambling.

In a recurring theme, the Commission has failed to consider the costs and impacts associated with its recommendation. A shutdown between 1am and 9am would significantly impact non-problem gamblers who may have ‘unusual’ times available for recreation; for example, shift workers. There is anecdotal evidence of adverse impacts on members of clubs which are subject to existing shutdown conditions and are located in areas where there is a significant population of shift workers. The imposition of this measure has restricted the availability of club facilities for these workers and impacted on the revenue of the club with no evidence to suggest that the issue of problem gambling has been addressed.

Examples of occupations operating for 24 hours per day, 7 days a week include hotels, hospitals, media production, bakeries, foundries, supermarkets, steelworks, refineries, airport maintenance, baggage and maintenance workers, waterside workers, mines, petrol stations, fast food, banking and finance, call centres, security companies, police, cleaners, ambulance and fire officers, road maintenance, public utilities (gas, electricity and water), students, information technology, public transport (buses, taxis, water taxis), road transport (deliveries, logistics, cargo, furniture) and others.

By the sheer nature of their industry and occupation, people employed in such industries live a different life to those who enjoy traditional working hours. Their entertainment and recreation time is vastly different to the norm, and as such they frequent clubs at less typical times. It is legitimate to ask why these people (many of whom are members of clubs), should be treated differently or ‘punished’ because they work different hours.

While some sections of the community appear to believe that 'late night' hours are a time for sleeping and not for recreation, the reality is that this no longer represents a sustainable view and nor is it possible in a modern society.

ClubsAustralia believes that there is insufficient evidence to support the view that extending the shutdown period for poker machines will ameliorate problem gambling. Even if this evidence existed, before it could be implemented it would require an analysis of the costs associated with implementing such a policy for recreational gamblers and clubs.

## CHAPTER 11 – GAME FEATURES AND MACHINE DESIGN

### Response to Draft Finding 11.1 and Draft Recommendation 11.1

*FINDING: Current bet limits imposed by all jurisdictions are set too high to be effective in constraining the spending of problem gamblers, given the speed and intensity of play that a modern gaming machine allows. The maximum bet needs to be low enough to constrain the spend rate of problem gamblers, but not so low as to adversely affect recreational gamblers (who typically bet at quite low levels).*

*RECOMMENDATION: In all jurisdictions, the maximum bet limit on gaming machines, other than those in high roller or VIP rooms at casinos, should be set at one dollar.*

ClubsAustralia considers the Commission’s recommended maximum bet arbitrary, unsupported by evidence, and incognisant of the associated costs.

#### Intensity of play

In this section of the Draft Report the Commission develops a concept of “intensity of play” without properly defining it or testing its robustness. According to the New Penguin English Dictionary, “intensity” is a noun that means “extreme degree of strength, force, or energy” and this is clearly the connotation the Commission was seeking to support its recommendation. The Commission lists elements of modern EGM design that it believes increases “intensity of play”: multiple lines, multiple credits, spin rates, return to player, jackpots, note acceptors, proximity of ATMs, cash insertion limits and bet limits. However it presents no proof and no substantiation of its view, only an assertion that these are variables in the “intensity of play” equation.

As a tool for assisting the development of public policy, the Commission’s concept is worthless, having neither predictive nor analytical power. Applying the “intensity of play” logic to the real world would lead you to think that the intensity of play is different in each jurisdiction. Play in South Australia – where machines do not have note acceptors or linked jackpots – would be expected to be less intense than in Victoria, where they do. However, this presumably would be offset by the fact that the maximum bet in South Australia is \$5 higher than in Victoria. The intensity of play in Tasmania can only be guessed at with the absence of ATMs, but the Commission should be quite sure that play in NSW is the most intense of all in order to validate its theory. The absurdity of this concept should be self-evident, particularly upon analysis of prevalence rates in each jurisdiction. However, given more time, ClubsAustralia would be prepared to delve deeper into it to see what relationship, if any, “intensity of play” has to problem gambling.

The Draft Report’s narrative unfolds as follows: modern EGMs have complex features that, compared to the original machines of the 1950s, dramatically increase the “intensity” of play and the potential spend (which the Commission thinks should be measured in hourly units) by gamblers. This potential spend, according to the Commission, is at an unacceptably high level of between \$600 and \$1,200 and should be reduced \$120. A simple way of doing this is to cap the maximum bet at \$1: one tenth of the highest maximum bet that exists for gambling on poker machines. Indeed, despite the Commission’s vagueness on the concept of “intensity of gambling”, it has decided that the

amount of poker machine gambling should be dramatically reduced by arbitrarily setting a much lower limit on how much a player can bet in a single event, and therefore over a period of an hour.

Consistent with the approach taken in other parts of the Draft Report, the argument presented to support the finding and recommendation is unbalanced. Also absent is solid evidence suggesting this measure will help problem gamblers, or any analysis of the impact of the recommendation on recreational gamblers, clubs, workers, local economies and local communities. ClubsAustralia will address these inadequacies below.

### **Other forms of gambling not “intense”?**

For reasons that are not stated, the Commission’s willingness to reduce the “intensity of play” only applies to poker machines. This singular focus on poker machines is justified elsewhere in the Draft Report as being a result of an analysis that poker machines are the most popular form of gambling, that the preponderance of problem gamblers play poker machines, and that these players contribute 41 cents in every dollar of poker machine revenue. In its 1999 Report, the Commission found that wagering was the second most popular form of gambling and that problem gamblers contributed 33 cents in every dollar of total revenue for that mode of gambling. Yet the Commission has chosen not to revisit this analysis and consider recommendations to reduce the intensity of wagering and sports betting.

The most obvious point to make is one that the Commission failed to even acknowledge: that if the potential spend per hour is the measure of intensity, then poker machine gambling is the *least* intensive of all gambling modes. At one cent per spin, poker machines have the *lowest* minimum bet of any gambling mode. The most cursory investigation would have revealed the following bet limits/potential hourly gambling spends:

- Horse racing – unlimited;
- Trotting – unlimited;
- Dogs – unlimited;
- Sports betting – unlimited;
- Casino table games – unlimited;
- Online casino games – unlimited;
- Keno – unlimited.

Looking at it another way, a gambler can spend \$1200 at the following rate:

- Horse racing – 60 seconds;
- Trotting – 2 minutes;
- Dogs – 30 seconds;
- Sports betting (including spread betting and betting on the run) – instant;
- Casino table games – 30 seconds;
- Online casino games – instant; or
- Keno – 3 minutes.

The Commission did not assess problem gambling prevalence for any of these gambling modes, so we are unable to test the relationship between bet limits, potential hourly spend, and problem



gambling. However, if we accept the Commission's thesis that poker machine gambling causes more damage than any other form of gambling, then there cannot be a relationship between bet limits, hourly spend, and the level of harm caused by different gambling modes.

Another point to note is that the development of other gambling modes has mirrored the game innovation of poker machines that the Commission finds so concerning. In 1956, punters could bet for a win or place with cash on-course with the tote (or illegally with their SP bookmaker). Today, people can bet on account, on credit or with cash, on- and off-course, by telephone or online on a suite of betting options unimaginable in 1956:

- Win, place;
- Each-way;
- Quinella;
- Trifecta;
- Exacta (Box, standout, roving banker);
- Running double;
- Duet;
- All-up;
- First 4;
- Quaddie;
- Big 6.

These innovations, according to the Commission's methodology, should have increased the intensity of wagering – which should be of concern, given that a third of the wagering dollar in 1999 came from a problem gambler. The parallels with poker machines are apparent, but evidently deemed unworthy of consideration by the Commission.

### **Real value of a bet**

ClubsAustralia turns now to the Commission's statement that "current arrangements allow individual bets that dwarf what was possible when EGMs were first introduced into NSW."<sup>130</sup>

The Commission appears to be unaware that the maximum bet of \$10 was introduced in NSW in 1988 and has now been in place for 21 years. The real maximum bet (that is, discounted for inflation) is now \$5.60 and will continue to decline over time. Put another way, if the maximum bet were indexed to inflation it would now be \$18. This difference between the nominal and real value of money is taught in high school economics and should be factored into any analysis of a maximum bet, especially when historical comparison and a 50-year-old benchmark is invoked in support of such a severe recommendation.

It is of concern to ClubsAustralia that it appears the Commission is seeking through the \$1 maximum bet proposal to turn poker machines into amusement devices rather than gambling devices. In this respect, the Commission makes its position clear at 11.15, where it states that "(l)ower maximum loss rates per hour are... more in accord with a view of EGMs as a form of entertainment that players should expect, on average, to pay for."

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<sup>130</sup> Draft Report, 11.4.

ClubsAustralia has provided comment elsewhere in regard to personal choice being an important consideration when determining how much an individual finds enjoyment in ‘staking’ on a particular bet or during a particular session.

### Evidence not compelling

The Commission relies heavily on Blaszczyński’s 2001 research in making its finding and recommendation. The Commission reproduces ClubsAustralia’s concerns with the research, which are valid, before going on to dismiss them because the target group for the measure is a “much narrower subset of regular gamblers who are experiencing harm.”

This moving of the goalposts in no way invalidates ClubsAustralia’s concerns in relation to the research, which is that Blaszczyński found that the proposed reduction of maximum bet from \$10 to \$1 “potentially might, for a small number of players, reduce both the development and the severity of gambling problems.”<sup>131</sup>

This finding was subject to strong qualification by the author that it is not clear whether players would compensate for a \$1 maximum bet by playing longer and a recommendation that further research be conducted – so this measure “may” prove to be an effective harm minimisation strategy for a very small proportion of players (7.5 per cent of the 20 per cent in the total sample who were found to be problem gamblers in terms of SOGS scores of 5+). Of the 497 participants on whom data was available for this study, 3.5 per cent placed maximum bets of an amount greater than \$1. Further analysis by gambling status revealed that 2.3 per cent of recreational gamblers and 7.5 per cent of ‘pathological gamblers’ placed bets greater than \$1.<sup>132</sup>

So in fact, using the Productivity Commission figure of 2.1 per cent of Australian adults being problem gamblers, the University of Sydney research suggests that it is possible that the reduction of maximum bet to \$1 “may” help only 0.16 of one percent of the adult population.

At 11.11 the Commission – again relying on Blaszczyński’s work – completely dismisses ClubsAustralia’s concerns by stating that “the important point remains that, if few players bet above \$1 per button push and they were more likely to be problem gamblers, it becomes difficult to justify a bet limit much above that level.”

If the research were conclusive there might be grounds for making such a statement, but it is not. ClubsAustralia is firmly of the view there is insufficient evidence that problem gambling is closely correlated with bets of over \$1. Even Blaszczyński’s research is constricted by its terms of reference and, as noted by the researcher himself, constitutes evidence for play on one-cent-denomination poker machines only.<sup>133</sup>

The Commission itself identifies the shortcomings in research around this issue, citing its 1999 Report, which said:

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<sup>131</sup> Blaszczyński, Alex, Louise Sharpe and Michael Walker, University of Sydney Gambling Research Unit, *A Report for The Gaming Industry Operators Group – November 2001*, p.10.

<sup>132</sup> *Ibid*, pp.8, 10.

<sup>133</sup> *Ibid*, p.7.

*...any measure to reduce intensity should use a large dataset of gambling sessions by problem and non-problem gamblers to set the appropriate level of controls on denominations, credits and total amount bet per button press.*<sup>134</sup>

This is followed by the admission that “in the decade since that report this has not been done systematically.” However this does not deter the Commission which, in its apparent desire to reduce the evidentiary threshold so that the recommendation can be justified, says that “considerable piecemeal evidence can be gleaned from the various studies and state prevalence surveys.”<sup>135</sup> ClubsAustralia’s views on the robustness of these surveys, and the extent to which they can be relied upon to make policy decisions, are stated at length elsewhere in this submission. Suffice to say here that in 2009 the Commission has, by its own admission, made a recommendation based on “piecemeal” evidence, in a manner it strongly criticised elsewhere in the Draft Report.

The Commission’s approach is in stark contrast to that of IPART in its 2005 gambling report, which did not recommend a specific maximum bet level for poker machines in NSW – instead choosing to call for further research on the matter. McMillan and Pitt also recommended that further work be conducted on bet size.<sup>136</sup> Overall, the Commission has not established a case for introducing a policy change of this nature.

### Limitations of evidence

The Commission is aware that the average bet in each jurisdiction is not significantly higher than \$1 per spin. However ClubsAustralia cautions the Commission about using this as justification for its draft recommendation to reduce the maximum bet to \$1. That is, ClubsAustralia believes it would be a gross misuse of the data on average bet to assume that because the average bet is around \$1 that there would be little impact on player’s enjoyment or playing ‘style’ if the maximum bet were reduced to \$1.

‘Average bet’ does not give an indication of turnover distribution or revenue distribution, meaning that policy decisions based on average bet alone are made on a less than sufficient analysis. The average bet can be calculated in many ways; for example, over the entire gaming machine installation, by machine denomination or various other groupings. A calculation of average bet requires knowledge of the amount bet and the number of bets (‘stroke’).

The average bet placed, by definition, averages out a range of bets from as little as one cent per spin to as much as \$10. This allows people on a broad range of incomes and ‘thrill levels’ to choose how much they want to play. That is, the average bet masks the distribution of turnover (human behaviour/choices) that goes to produce the ‘average’ and also masks the impact on club revenue that a reduction can potentially have.

An example of the masking effect is illustrated in the table below which shows a hypothetical turnover distribution by machine denomination:

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<sup>134</sup> Draft Report, 11.14.

<sup>135</sup> Ibid.

<sup>136</sup> McMillan and Pitt, in Ibid, 10.18.

| Machine denomination | Total Turnover | Stroke (bets) | Average Bet |
|----------------------|----------------|---------------|-------------|
| 1 cent               | \$1,000,000    | 2,500,000     | \$0.40      |
| 10 or 20 cent        | \$200,000      | 200,000       | \$1.00      |
| \$1                  | \$170,000      | 34,000        | \$5.00      |
| Total                | \$1,370,000    | 2,734,000     | \$0.50      |

While the average bet is 50 cents the ramifications of a reduction in the maximum bet to \$1 are obvious. With this distribution a ‘rough’ guess might estimate a direct impact on turnover of 20 per cent, that is most of the turnover generated by players who choose to play \$1 machines and around half of the turnover generated by those who play 10 and 20 cent machines will be directly affected. However it is not known whether affected players would be problem gamblers or whether they would continue to play machines or find alternate forms of unrestricted entertainment/gambling. This is only meant for purposes of illustration and the actual impact will depend on each individual club and the way their patrons choose to play.

In this context ClubsAustralia reminds the Commission that the Commission’s 1999 Report stated:

*Of course, this does not mean that heavy spending equates with excessive spending or with problem gambling — indeed it is still true that a majority of heavy gamblers are not problem gamblers (using the SOGS criterion of 5+).<sup>137</sup>*

In terms of player preferences it is also important to note that the average bet masks modification in play during a particular gambling session. The Commission needs to understand that players may change their bet limit from spin to spin. If they have a win and are playing above their ‘stake amount’ (how much they inserted into the machine), players often choose to increase their bets in the hope of leveraging off their win to have a bigger win. Alternatively they may simply decide to ‘have a go’ at a higher bet limit for a number of spins.

While a reduction to \$1 maximum bet may therefore not seem to affect average bet, it will affect the upper end of the playing style and will potentially modify spend and playing behaviour. Further detailed consideration of the economic impact is discussed later.

### **Costs associated with introducing a \$1 maximum bet**

It is of great concern to ClubsAustralia that the Commission has given the potential costs of this recommendation scant attention. In a masterpiece of understatement, the Commission says that “venues would lose some revenue” as a result of implementing a \$1 maximum bet.

<sup>137</sup> Productivity Commission 1999, Attachment P, p.6.

The most reliable research on the impact of a \$1 maximum bet is the Centre for International Economics's *Report Prepared for the NSW Gaming Industry Operators Group – October 2001* (CIE), which found:

*The turnover data from existing player behaviour suggests that, on its own, that measure puts 17 per cent of club machine revenue at risk, on average. The comparable figure for hotels is 39 per cent.*<sup>138</sup>

The impact on NSW club and hotel revenue, and taxes, is significant. By comparison, the indoor smoking bans resulted in a revenue drop in NSW of around 11 per cent for clubs and 13 per cent to 14 per cent for hotels. Assuming 17 per cent and 39 per cent revenue declines predicted by GIO, the impact on clubs and hotels in NSW alone is estimated to be a revenue decline of over \$1,100 million, with a decline in gaming machine tax of approximately \$388 million.

ClubsAustralia asserts that is a very high cost to pay to provide an unsubstantiated and perhaps ineffective outcome to a very small number of people who can be better helped in alternate and more affordable ways – without causing detriment to clubs.

The Commission briefly acknowledges the adversity that *could* come with its recommendation, including job losses and club closures, but does not quantify the costs in any way. The Commission states:

*It remains the case that some venues would be adversely affected. Such effects could include reduced services and facilities and temporary employment effects, although the evidence is that short-term 'shocks' do not have protracted employment effects. But such changes may accelerate pressures towards amalgamations, and some smaller clubs may close.*<sup>139</sup>

The equivocation over the likely impact of its recommendation is difficult to comprehend. Anyone with first-hand knowledge of life in regional and suburban Australia would know the importance of the local club to economic and social prosperity in the local area. The significance of clubs in Australian life is amply demonstrated in the submissions made by clubs and club supporters, and ignored by the Commission in the text of the Draft Report. These submissions show what stands to be lost if this recommendation was adopted.

Finally, the Commission identifies implementation costs associated with machine and game changes could be as high as several thousand dollars per machine. Again, there is no precision or even an attempt at a 'back of the envelope' calculation, as though the author is fearful of seeing the number on the page. But ClubsAustralia is willing to try. If the changeover cost is a conservative \$3000 per machine, then venues nationally would need to meet a one-off expense of \$600 million dollars to effect this change alone.

For example, Tamworth City Bowling Club is located in the NSW regional centre of Tamworth. The club is highly reliant on revenue from its 13 gaming machines to remain viable. The club's members are predominantly elderly and utilise the venue's 2 bowling greens. The club also has a restaurant that offers affordable meals for up to 200 patrons. The club currently employs 7 staff directly, with an additional 6 staff being contracted to the club. Tourists in search of food and entertainment at

<sup>138</sup> Centre for International Economics, Report Prepared for the NSW Gaming Industry Operators Group, October 2001, p.X.

<sup>139</sup> Draft Report, p.11.16.

reasonable prices frequent the club. This is particularly the case when the club acts as a venue for the ten day annual Country Music Festival, when the club's facilities are extremely popular.

In recent years the club's profitability has declined markedly from \$77,737 in 2007 down to a mere \$5,450 mainly due to a ban on indoor smoking in licensed venues in NSW. At \$3,000 per machine, the Tamworth City Bowling Club would be required to find \$39,000 to implement this recommendation and then face a likely 17 per cent reduction in annual revenue. If the changes suggested by the Productivity Commission to gaming machine use, especially those like the \$1 maximum bet which have high implementation costs coupled with lost revenue, were adopted it is clear that the community facilities and services the club provides to tourists and the town would be unsustainable.

This would leave the 800 members who rely on the club's meals and facilities to pay more for similar services elsewhere. The club's vital economic role in supporting regional tourism and local employment would also be lost. This would be replicated in towns and regions throughout Australia.

Combined with a fall in revenue of \$1.1 billion for NSW alone, extrapolated as a 'thought experiment' to be \$2.2 billion nationally per year, the cost of implementing this recommendation is considered to be so extreme that it dramatically outweighs the relatively insignificant and disconcertingly unsubstantiated benefit it may provide to problem gamblers.

#### **Response to Draft Finding 11.2 and Draft Recommendation 11.2**

*FINDING: The limits on the maximum amount of cash that can be inserted into gaming machines are set too high. A lower cash input limit would not hinder the preferred betting style of most players, but would act as a brake on high intensity play by preventing players from loading up gaming machines with multiple high denomination notes.*

*RECOMMENDATION: In all jurisdictions, the maximum amount of cash that can be inserted into a gaming machine should be \$20, with no further cash able to be inserted until the maximum credit on the machine falls below \$20.*

- *This restriction should not apply to gaming machines in high roller or VIP rooms at casinos.*

The Commission seeks to reduce the amount of money that can be inserted into a gaming machine, on the basis that problem gamblers might benefit from a break in play which may prevent them from spending 'too much' money. Other forms of gambling, however, are far less restricted:

*Greg Inglis's last-minute try against New Zealand in the opening match of the Four Nations Tournament saved one punter a whopping \$86,250 in the early hours of last Sunday morning. While he still dropped a cool \$63,750 on the match, it could have proved much worse if the Kiwis had held on for a rare win against arch rivals Australia. The punter slapped \$150,000 on the Kangaroos at the short price of \$1.15.<sup>140</sup>*

Sports-betting allows bets that are only limited in quantum by a person's ability to finance. By comparison, the Commission recommends limiting poker machines to \$20. That is 7,500 times less than the bet placed by the punter in the example quoted above. It is not apparent why poker

<sup>140</sup> "Inglis saves punter small fortune", Brent Zerafa, *The Daily Telegraph* 30 October 2009, p.138.

machines should be so heavily restricted when it is so easy for people to lose far more money, more quickly, and often with far less oversight by the regulators, on other forms of gambling.

It should be apparent that some people can afford, and enjoy, placing 'large' bets. To someone of wealth, \$20 is insignificant. If they like to play at \$10 per spin, the limit would allow them only two spins, or approximately ten seconds of play, before needing to insert another note. Capping a machine input limit at \$20 would discourage that person from playing. ClubsAustralia does not believe that to be good public policy; and it would not be good for clubs.

Indeed, the \$10 maximum bet limit has been in place in NSW for over 20 years. In that time, inflation has risen as has personal wealth, yet the Commission has found the average spend per spin is well below \$10. People are clearly able to decide for themselves that simply because the machine allows \$10 spins does not mean they should play that way. ClubsAustralia supports providing choice to consumers.

While the Commission at 11.22 is supportive of the notion that the policy might reduce total spend, it has also accepted that this might not even indicate the policy had been effective. In other words, venues will experience less revenue but problem gambling may be unaffected.

This view is reinforced by the Commission, at 11.23, that poker machines "are not like other products". ClubsAustralia agrees. Unlike other forms of human behaviour, gamblers will often play on impulse. They might have some time on their hands and decide to 'give it a go' for a few minutes of amusement. The imposition of barriers to play by recreational gamblers in particular (who, it must always be remembered, comprise the vast majority of gamblers) will break the nexus between the impulse and the start of play. In contrast, a problem gambler in the grip of a fixation is unlikely to be deterred by small inconveniences. This may explain why problem gambling does not necessarily fall following the introduction of this measure, but venue revenue falls. The measure is thus an extremely blunt instrument.

The Commission reported at 11.23 that in 2001, the Queensland Government reduced maximum credit to \$20 and "soon adjusted" the decision back to \$100. ClubsQueensland advises the decision was reversed after just five days. The Draft Report states that this was "in view of the disparity of treatment with casinos". While a convenient justification, it is not credible. There remain a number of significant regulatory differences between Queensland casinos and clubs/hotels. In fact, the decision to reverse the limit back to \$100 was made within days of the original decision because clubs, hotels and the Queensland Treasury noticed a dramatic and immediate drop in revenue state-wide of approximately 30 per cent.

Taking into account the finding by NSW IPART that they were unwilling to make a recommendation on this matter "in view of the lack of evidence" (at 11.24), a fall in club gaming revenue of 30 per cent nation-wide would equate to some \$4 billion per year.<sup>141</sup> ClubsAustralia believes that to be a very large price to pay for implementation of a recommendation which lacks supporting evidence.

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<sup>141</sup> KPMG's analysis at Appendix A finds clubs in NSW alone are assessed to fall \$2 billion per year from a 30 per cent drop in revenue.

### Response to Draft Recommendation 11.3

*Governments should ensure that gaming machine players are informed about the cost of playing, through disclosure of the 'expected' hourly expenditure and the percentage cost of play.*

- *Expected hourly expenditure should be shown as a range, from the minimum based on a low intensity rate of play to the maximum permitted within the machine's parameters.*
- *The percentage cost should be calculated as 100 minus the return to player percentage.*

*The Commission seeks feedback on the use of loss-limited gaming machines as an appropriate harm minimisation measure. It seeks views on the specific option outlined in chapter 11, and in particular, on design features that could make it practically implementable. It also seeks views on any other option that would have essentially the same harm minimisation benefits.*

*In view of the limited research on the effects of jackpots on gaming machine play, the Commission seeks further views and information about whether any changes are warranted and, if so, what form they should take and the likely associated costs and benefits.*

Unlike the Productivity Commission, ClubsAustralia does not believe poker machine players to be ignorant of the costs and risks of play. Other forms of gambling, such as horse racing, do not need to advise gamblers that they risk losing their entire wager if the horse does not place. While a 'bookie' will display the odds that might be won, this is substantially different to a horse's actual odds of winning. That is, no one ever knows what a horse's chance of winning will be: it may be scratched before the race starts, injure itself mid-race, or run other than expected.

Those who gamble learn quickly to assess the risks versus the rewards and will modify their gambling behaviour accordingly. Some will bet large amounts on low-odds-returning race 'favourites', while others will opt to bet on horses or combinations that offer large returns on a small gamble. ClubsAustralia believes poker machine players also consider the risks and exercise personal choice in regard to how they choose to spend their gambling money.

Knowing what was *actually* spent, or over what time period, is different to knowing what *might* be lost and how quickly. But as with all forms of gambling, there is no 'expected' hourly expenditure. A player can choose to play on a high-value machine, in the hope of a large win. Alternatively they may play a lower-value machine, such as a one cent machine, which will lengthen the playing time at a lower cost. This information is almost exactly the same as that provided by a bookie at a horse race.

The Commission suggests that if people are informed about the approximate cost of play per hour it will modify their approach. Yet no two gambling sessions will ever be the same. High intensity play may be rewarded by a big win, while conservative play may result in no wins and vice versa. It is therefore potentially misleading to advise patrons of an expected or maximum loss rate per hour.

Many other entertainment activities also do not advise the patron of such a cost, but could do so with greater accuracy than gambling. Rides at the fairground do not quote the cost against the length of the ride, nor do movie cinemas quote the cost of the movie per minute. People choose the activity for the entertainment value and decide afterwards if the experience was worthwhile and worth repeating. Indeed, the reaction of people to a bad movie or to an unenjoyable experience while playing a gaming machine will usually be the same: they leave.



Importantly – and unrecognised by the Commission – poker machines are the cheapest single ‘punt’ available. A person might spend as little as one cent per spin if they choose, with one dollar lasting several minutes. This is why ‘expected’ loss per hour cannot be advertised, because it is a matter of personal choice how someone chooses to gamble and how much they choose to spend.

ClubsAustralia therefore believes players have a right and responsibility to utilise their judgment. No amount of information about expected losses in a minute or an hour will reduce this responsibility. The player is free to choose how quickly or slowly they push for the next spin, dependent on their budget for the session, the amount of time they have to gamble, and how they like to play.

The Commission should note that poker machine players are already able to be informed about the actual cost of their play and length of play, if they choose to utilise Player Activity Statements (PAS). Clubs throughout Australia report negligible numbers of requests to view a PAS. In light of the low number of requests, ClubsAustralia believes that players *do not want to know* how much they have spent or how long they gambled. The Commission’s recommendation to provide further information therefore seems at odds with what players want and should not be implemented unless evidence can be presented to show that it would be effective at reducing problem gambling. Until such evidence is available, ClubsAustralia believes Draft Recommendation 11.3 should be omitted from the Final Report.

#### **A comment on loss-limited machines**

The Commission has argued that loss-limits should be imposed in the same way that governments impose speed limits (at 11.27). This analogy is loose, as governments have not sought to limit the top speed of cars. Cars can travel more than twice as fast as the maximum speed limit in Australia. Drivers exceed the speed limit *at their own risk*. Similarly, state and territory governments regulate and approve (or reject) machine design and characteristics. Players must be responsible for their own gambling behaviour.

Every gambler is different, in terms of capacity to spend (when taking into account their income, assets and financial responsibilities) and risk appetite. Five thousand dollars per year may be a lot for some people, but not for others. It may also be a large amount for a person in a particular year and a low amount in another. That is why there are a variety of gaming machines, with different bet levels. Some people will always choose to place large bets, others will never. Diversity of choice should be encouraged and ClubsAustralia cautions the Commission about defining a certain amount spent per year as evidence of ‘hazardous behaviour’.

Loss-limited machines exist. They exist at home as a game on a personal computer, in a video-arcade parlour or as an old ‘fruit’ machine. Clubs do not typically operate such machines, other than the arcade-style games in children-friendly areas. This is because club-goers do not want to play loss-limited machines. They want machines which allow them to spend how much they choose, with a concomitant potential win. People choose to spend their money on what they like and poker machines are far more popular than other, loss-limited, entertainment options. Very few people would participate in a lottery if the maximum prize were \$20; the ‘thrill’ would not be sufficient for most gamblers. The same is true for gaming machines.

The Commission accepts that venues would be impacted by the introduction of loss-limiting. Figure 11.2 indicates the impact might be as much as \$10,000 per year. This is justified by asserting at 11.29 that “any effective harm minimisation measure will do this” (that is, reduce venue revenue). ClubsAustralia disagrees.

- There is no evidence whatsoever that loss-limiting is an effective harm minimisation measure: it simply limits likely losses on poker machines;
- There is a multitude of measures which have minimal financial impact on venues, such as counselling, staff training and limits on credit betting. While the ultimate impact of their effectiveness is reducing problem gambling (and thereby venue revenue), the impact is targeted at problem gamblers alone and therefore less harmful to venues than those measures which affect all gamblers;
- It distorts the operation of gaming. Payouts to players can only be high enough to attract patronage if the risk is also relatively high. If RTP is set at 100 per cent for some people it increases the frequency of payouts as well as the likelihood of large payouts to those people. This reduction of risk will force venues to reduce the RTP for other players and, thereby, reduce the attractiveness of gaming in the first place;
- It creates a market for loyalty cards that have reached their annual limit and increases the likelihood of fraud against venues;
- It is not known whether it can be implemented or what the cost of implementation might be; and
- Gambling is not a children’s lucky dip. Simply because you enter does not mean you will win a prize. Gambling is inherently risky. It is not the responsibility of venues to limit the losses of those who choose to spend a lot. Individuals must accept personal responsibility that they gamble at their own risk.

### **A comment on jackpots and machine design features**

Jackpots and free spins increase Return To Player (RTP). A free spin can be equated with a retail shop offering ‘buy one get one free’. People can choose whether to play a jackpot-enabled machine or not, and they can choose to play a machine that offers free spins or not. That explains why some machines are more popular than others: it comes down to personal preference. The use of such features is to increase the options and entertainment value of gaming by making it appeal to a wider audience.

Some contributors, like Tim Falkiner, are willing to hypothesise that machines are rigged, like “loaded dice”, and are psychologically programmed to entrap the vulnerable. Falkiner has no background or training in psychology or the manufacture, operation or regulation of gaming machines, yet the Commission has quoted him in relation to these fields of expertise:

*I used to be a solicitor, a town planner and then a barrister. I was the commercial legal officer at the Casino Control Authority as the Crown Casino documentation was being bedded down. I assisted in the writing of the regulations dealing with casino table games.<sup>142</sup>*

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<sup>142</sup> Tim Falkiner, evidence before the Senate Standing Committee on Community Affairs, 11 September 2008, Melbourne, <http://www.aph.gov.au/hansard/senate/commttee/S11203.pdf> at CA13.

The Commission quotes Falkiner’s submission at 11.30 in regard to “escape gamblers” and their reaction to “archetypal symbols” as though these have some inherent appeal to certain types of people: “Carers seem to be particularly susceptible.” No evidence for this hypothesis is offered. Falkiner is also quoted by the Commission at 11.31 arguing that gaming machines “cheat” and “deceive” players. This is not the first time Mr Falkiner has argued that machines “cheat”:

*I felt that it was most important to mention to the committee that gaming machines are cheating devices. This cheating device causes over 80 per cent of our problem gambling.*<sup>143</sup>

This is pure fabrication. ClubsAustralia is concerned that the Commission should accept what is no more than the opinion of a layperson – with little more knowledge, skills or experience than the ‘man on the street’ – as that of an expert.

Similarly, other anti-poker machine commentators believe that jackpots increase problem gambling by enticing people to play for longer in the hope of a big win, while some hypothesise that small, frequent wins and free spins constitute ‘reinforcement’ that encourage punters to play longer. It is apparent that there is insufficient evidence to support either argument.

In the absence of scientific evidence that problem gamblers are uniformly affected by particular machine designs or features, ClubsAustralia cautions governments against accepting the conjecture of anti-gambling activists.

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<sup>143</sup> Ibid, CA13.

## CHAPTER 12 – ONLINE GAMING AND THE INTERACTIVE GAMBLING ACT

ClubsAustralia welcomes and endorses a number of the Productivity Commission's statements regarding online gambling. However, some areas of serious concern have been overlooked; this both creates an unbalanced playing field through legislative inconsistencies with other forms of gambling and fails to address the very real risks attached to online gambling forms.

ClubsAustralia is concerned by the Commission's:

- acceptance of credit cards as an acceptable method of payment for online gambling;
- failure to consider a debit card, EFT or BPAY as safer forms of payment for online gambling;
- failure to consider the potential harm in allowing advertisement of online gambling; in particular, advertising which is likely to be viewed by children, such as during televised sporting events;
- seeming reluctance to request research into links between online gambling and problem gambling. The Commission identifies what it considers shortcomings in existing research into online gambling, concluding that findings indicating substantial dangers to online gamblers may be overstated;
- failure to acknowledge the widespread practice among online gambling operators of offering inducements to gamble. Offering new members \$150 in free bets is common practice and encourages gambling among people who otherwise may choose not to;
- failure to recommend that staff employed by online gambling operators undertake RCG-equivalent training, similar to that which is compulsory in most Australian states for those working in bricks-and-mortar gaming venues.
- almost exclusive examination of online gaming, offering little analysis of online wagering and none of mobile gambling. While it could be argued that the latter is a relatively minor form of gambling, overseas experience shows that as mobile phone technology improves via 3G technology, mobile gambling is likely to substantially increase in popularity in Australia. Furthermore, overseas experience again shows that mobile betting is particularly attractive to young people, minors included.

### Response to Draft Recommendation 12.1

*The Australian Government should repeal the Interactive Gambling Act, and in consultation with state and territory governments, should initiate a process for the managed liberalisation of online gaming. The regime would mandate:*

- *strict probity standards, as for online wagering and venue-based gambling*
- *high standards of harm minimisation, including*
  - *prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling resources*
  - *the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability to opt-out, with periodic checking of a gambler's preference to do so*
  - *the ability to self-exclude*
  - *automated warnings of potentially harmful patterns of play.*

*The Australian Government should evaluate the effectiveness of these harm minimisation measures, as well as the regulator overseeing the national regulatory regime, on an ongoing basis.*

ClubsAustralia welcomes the Commission's recognition that online gambling may lead to an increase in the number of problem gamblers through its high level of accessibility.<sup>144</sup> This view is supported by recent evidence suggesting that increased exposure to gambling in a population increases the prevalence of gambling and gambling-related problems.<sup>145</sup> ClubsAustralia notes Betfair Australia has also communicated to the Commission it can offer no guarantee that liberalising online gambling in Australia would not increase the number of local problem gamblers.<sup>146</sup>

It is ClubsAustralia's view, however, that this recommendation in isolation offers little likelihood of a substantial strengthening of the safety net for those who gamble online. The recommendation to repeal the Interactive Gambling Act ("IGA") will certainly increase online accessibility – which, as stated above, is identified by the Commission as a likely contributor to a higher rate of problem gambling.

There are benefits to repealing the IGA. As the Commission concludes, it would reduce the flow of Australian income being lost to overseas-based online gaming operators. This is of obvious benefit to the Australian community and Federal Government. Repealing such a law also removes the moral inconsistency of banning Australians from a form of gambling which the Federal Government allows local operators to offer to non-Australians.

Repealing the IGA would also bring about a significant lift in the integrity and honesty of online gambling, given that recalcitrant Australian operators would be subject to local prosecution. There are numerous examples of unscrupulous overseas-based online gaming operators that are virtually impossible to prosecute locally. Given the risk factor of gambling with offshore sites, it is likely that many Australian gamblers would switch their betting allegiance to locally-based companies if legally able to do so. This in turn might bring about an overall improvement in the integrity of the online gambling industry, as overseas competitors look to win back Australian customers.

Although, as outlined above, there may be net community benefit from the removal of the current restrictions which prevent Australians from participating in local online gaming, this cannot be achieved in legislative isolation.

The use of credit cards; the offering of incentives such as free bets; and TV, radio, print and online advertising *must all be prohibited*, in line with other gambling forms. Otherwise, ClubsAustralia predicts a significant increase in the number of problem gamblers, especially as online gambling take-up inevitably continues to increase with the explosion in new media.

There are a number of other very serious concerns that the Commission and regulators must address prior to considering the repeal of the IGA. This includes determining which government(s) would have responsibility to regulate and tax internet operators. For example, why should a single state or territory claim tax from a website that charges people Australia-wide, especially if the

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<sup>144</sup> Draft Report, p.12.7.

<sup>145</sup> Fisher, S (1993), "Gambling and pathological gambling in adolescents", *Journal of Gambling Studies*, Volume 9, pp.277-288; Hardoon, KK, & Derevensky, JL (2001), "Social influences involved in children's gambling behaviour", *Journal of Gambling Studies*, Volume 17, pp.191-215; Abbott, MW (2007), "Situational factors that affect gambling behaviour" in G Smith, D Hodgins & R Williams (Eds.), *Research and measurement issues in gambling studies* (pp.251-278), New York: Elsevier.

<sup>146</sup> "Online gambling needs controls: Betfair", *The Sydney Morning Herald*, 8 December 2009, <http://www.smh.com.au/business/online-gambling-needs-controls-betfair-20091207-kfgg.html>, accessed 8 December 2009.

Federal Government has the legal and financial responsibility to regulate the online operator? Without the Act, *how* would regulation occur and how would the Commission's proposed harm minimisation measures be enforced? What penalties would apply to stop non-compliance by an internet operator?

Further justification is required before the internet can be considered safe to liberalise. This should include a full assessment of *impacts* rather than simply benefits. The impacts potentially involve less tax and fewer jobs from the delivery of the same service, and reduced financial and infrastructure benefits to local communities from internet operators.

ClubsAustralia does not believe the Commission has sufficiently considered the risks and impacts involved in repealing the IGA and suggests further analysis be undertaken.

### **Proper regulation of the online industry**

The Commission states in its Draft Report that ClubsAustralia supports a continued ban on internet gambling.<sup>147</sup> This is quite simply inaccurate, and must be corrected. ClubsAustralia believes it would be hypocritical to advocate a ban on any form of gambling, given its clear support for gaming as a legitimate form of entertainment. Far from banning online gambling, ClubsAustralia instead believes that it should face *identical regulation* to that placed upon gaming machines.

Furthermore, ClubsAustralia does not view itself as a competitor to online gambling as stated by the Commission in its Draft Report.<sup>148</sup> This description implies that the views of ClubsAustralia are formed with the intention of harming the online gambling industry, so as to protect the Australian club industry. This is not the case.

As evidence of the club industry's sincerity in relation to this issue, ClubsAustralia points the Commission to the refusal by ClubsNSW of two business offers recently made by local online gambling operators.

ClubsNSW was approached in June and September 2008 by Centrebet and BetEzy respectively. Both online operators wrote to ClubsNSW offering expressions of interest in forming business partnerships. Both offers were refused on the basis that – as already outlined in this submission – online gambling was rife with dangerous practices, such as credit card-based gambling. One of the online companies offered 50 per cent of any profit with no upfront or ongoing investment from ClubsNSW other than its endorsement of the company: a lucrative proposition by any estimation. It is fair to conclude that ClubsNSW's refusal involved forsaking considerable financial benefit, and should demonstrate to the Commission how seriously the Club Movement takes current failings in online gambler protection.

ClubsNSW circulated a media release to make public its rejection of these offers – in the process highlighting and expressing concern about the limited harm minimisation measures both companies had in place. At that time, Centrebet – which had been operating for 16 years – offered as its sole support for problem gamblers an email address to Gamblers Anonymous in the United States.

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<sup>147</sup> Draft Report, p.12.20.

<sup>148</sup> Ibid.

ClubsAustralia notes that as a result of this public exposure by the club industry, Centrebet upgraded its online support for problem gamblers.<sup>149</sup>

### Credit cards

ClubsAustralia believes the use of credit cards when gambling online is simply dangerous, and remains of the firm position that people should not gamble with money they do not have.

ClubsAustralia rejects the Commission's conclusion that credit cards allow gamblers to accurately monitor their losses. Bets from the one account can be placed from a variety of sources such as multiple credit cards, debit cards, cash, free bets, e-wallets such as Moneybookers and Neteller, and BPay. However, winnings are only paid into a savings account, making it confusing and difficult to track losses and compare losses to winnings.

Furthermore, ClubsAustralia rejects the Commission's finding that credit cards make it easier for other family members to detect any problems.<sup>150</sup> Credit card statements are sent to the primary card holder; in many, if not the majority of cases the person who receives the statement is most likely also to be the person using the card to place bets. It is, in the view of ClubsAustralia, overly optimistic to expect that 1) the primary card holder is not the gambler, 2) family members have access to the affected relative's credit card statements, and 3) they are able to track gambling payments which are most probably made to multiple gambling operators and over a lengthy period of time.

Indeed, a recent case in Melbourne was brought to light where a 14 year old boy lost \$7000 gambling using his father's credit card over a three-month period, due to his parents' failure to inspect each charge on their credit card statement.<sup>151</sup> Given that the parents in this case did not even check their own statements, ClubsAustralia questions how the Commission can be so confident that families will have access to, let alone scour the credit card statements of their relatives.

Legislation exists in all states preventing credit cards from being used on EGMs or at casinos. This is a position ClubsAustralia supports, on the basis that all forms of gambling should be funded with the gambler's own money. Credit card-funded gambling is essentially gambling done using a short term loan – one which, if not paid off in 55 days or less, attracts an average interest rate of around 20 per cent. ClubsAustralia remains of the strong view that legislation relating to credit cards and online gambling should be brought into line with that which exists for EGMs and casino games. Anything else creates a clear inconsistency in the Commission's approach to safe gambling and the dangers credit cards can create for those who gamble.

The Commission at 12.24 argues that there are few alternatives to credit cards when funding online gambling. ClubsAustralia believes a simple solution exists – using technology that is already used by online operators – which would prevent users from spending money they do not have. The Commission must consider the use of a debit card system.

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<sup>149</sup> ClubsNSW Media Release, "ClubsNSW rejects internet gambling offer", 29 September 2008, accessible at [http://www.clubsnsw.com.au/AM/ContentManagerNet/ContentDisplay.aspx?Section=Media\\_Releases\\_2008&ContentID=15647](http://www.clubsnsw.com.au/AM/ContentManagerNet/ContentDisplay.aspx?Section=Media_Releases_2008&ContentID=15647)

<sup>150</sup> Draft Report, p.12.9.

<sup>151</sup> *Herald Sun*, "How my boy lost \$7000 gambling", 28 November 2009, <http://www.heraldsun.com.au/news/victoria/how-my-boy-lost-7000-gambling/story-e6frf7kx-1225804952111>

A debit card operates like an electronic cheque and bears virtually no physical difference to a credit card (although in some cases, accounts are designed exclusively for use on the Internet, meaning there is no physical card). Indeed, the only difference – albeit an important one – is that transactions transfer money from the bearer’s bank account, instead of requiring the bearer to repay the amount at a later date with the possibility of substantial interest incurred. A debit card should not be confused with an ATM/EFTPOS card. Debit cards, like credit cards, are acceptable through internet and over the phone, while ATM cards are not.

This is not fringe technology. Debit cards are already extremely popular, accounting for 24.6 per cent of all transactions among merchants with annual turnover of \$1 million or more, a recent survey found. This was virtually identical in percentage to credit cards, which comprise 26.5 per cent, while cash and cheques made up the rest.<sup>152</sup> Reserve Bank of Australia figures show that debit cards take up 31.8 per cent of all non-cash retail payments. Between June 2008 and 2009, the purchase value using debit cards increased by 14.7 per cent, the largest growth of any non-cash payment form.<sup>153</sup> Visa reports that the debit card is the fastest growing consumer product they have ever released; 70 million people use a Visa debit card each month, and over 115 million people worldwide hold a debit card under that brand.<sup>154</sup>

Debit card technology is well suited to online gambling in that it allows Australians to bet using money that is their own, while not requiring the installation or update of new technology for the online business. Indeed, 100 per cent of Australian online gambling operators have recognised the popularity and security of a debit card by declaring it an acceptable form of payment when placing bets. The vast majority of debit cards are offered free of charge as part of a savings account, are offered by all major banks, and enjoy the same security measures that make credit cards a popular form of online payment.

It is therefore an ideal form of payment for online gamblers with built-in safeguards to prevent, or at least limit over-spending (such as on gambling).

ClubsAustralia notes statements to the Commission by Betfair Australia’s chief executive, Andrew Twaits, who commented: “I think what we as an industry need to do is to provide the safest platform that we possibly can.”<sup>155</sup> ClubsAustralia argues that if the online industry is genuine in its commitment to maximising gambler safety, then credit card use must be banned and replaced by debit card technology.

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<sup>152</sup> “Debit cards on the rise”, SBS World News, 2 March 2009, <http://www.sbs.com.au/news/article/1010010/Debit-cards-on-the-rise> (accessed 8 December 2009).

<sup>153</sup> Reserve Bank of Australia, Payments Systems Board Annual Report 2008-2009, August 2009, <http://www.rba.gov.au/PublicationsAndResearch/PSBAnnualReports/2009/Pdf/2009-psb-ann-report.pdf>, Table 2, p.7.

<sup>154</sup> “History of Debit Cards in Australia”, Debitcard.com.au, <http://www.debitcard.com.au/debit-card-articles/17-history-of-debit-cards-in-australia>, accessed 8 December 2009.

<sup>155</sup> “Online gambling needs controls: Betfair”, *The Sydney Morning Herald*, 8 December 2009, <http://www.smh.com.au/business/online-gambling-needs-controls-betfair-20091207-kfgg.html>, accessed 8 December 2009.



## Mobile betting

ClubsAustralia once again calls on the Commission to carefully consider implementing strict regulations relating to the use of mobile betting. Notably, the issue of mobile betting was largely ignored by the Commission in its Draft Report. ClubsAustralia is concerned by this omission, given the likely growth in this form of gambling over the coming years – particularly among young people.

From a worldwide revenue base of \$1.5 billion in 2005, gambling via mobile phone is tipped to reach \$26 billion by 2012.<sup>156</sup> Betting activities are divided among the principal categories of sports and spread betting, mobile lotteries and scratch cards, and casino and skill games.

Companies such as Betezy.com.au and Betfair.com.au offer users the opportunity to download software that allows them to place live bets via their mobile phone. Allowing betting to occur using such a familiar device as a mobile phone is an invitation to gamble that most young people are not sufficiently experienced to handle; nor can they appreciate the inherent risks involved. A survey of young consumers, conducted by the NSW Office of Fair Trading, found that nearly 90 per cent of young people have their own mobile phone, and one in five people aged 15-17 have trouble paying their phone bills.<sup>157</sup> This financial stress will only be exacerbated by the growth in mobile gaming.

Adding to the danger of mobile betting is the fact that many gambling websites have ‘free play’ sections that children and teenagers can access where they learn more about gambling. Gambling-like content can also be accessed in various non-monetary forms on mobile phones, video games and social networking sites such as Facebook and MySpace. This makes gambling a more visible, attractive and ubiquitous activity to adolescents. The broad accessibility of gambling also makes self-exclusion from gambling more difficult for vulnerable individuals and problem users.<sup>158</sup>

ClubsAustralia calls on the Commission to consider and respond to the potential danger of mobile betting as mobile phone technology improves and allows mobile betting to become more convenient and attractive to young people.

## Response to Draft Recommendation 12.2

*The Australian Government should assess the feasibility and cost effectiveness of:*

- *Australia-wide self-exclusion and pre-commitment options for equivalent online providers*
- *the capacity for extending self-exclusion through the payments system or through software solutions selected by problem gamblers*
- *the scope for agreement on international standards on harm minimisation and their enforcement through self-regulatory or other arrangements.*

The Draft Report is unequivocal in its call for a universal technology-based pre-commitment system in clubs.

<sup>156</sup> Juniper Research, *Whitepaper – Mobile Gaming: A Good Bet For The Future*, October 2007, [www.juniperresearch.com/shop/products/whitepaper/pdf/MobileGamblingWhitepaper.pdf](http://www.juniperresearch.com/shop/products/whitepaper/pdf/MobileGamblingWhitepaper.pdf), p.5, accessed 24 March 2009.

<sup>157</sup> NSW Office of Fair Trading, NSW Youth Consumer Survey, November 2009, [http://www.fairtrading.nsw.gov.au/pdfs/About\\_us/Youth\\_consumer\\_survey\\_findings\\_09.pdf](http://www.fairtrading.nsw.gov.au/pdfs/About_us/Youth_consumer_survey_findings_09.pdf), accessed 8 December 2009.

<sup>158</sup> King, Daniel, Paul Delfabbro and Mark Griffiths, “The Convergence of Gambling and Digital Media: Implications for Gambling in Young People”, *Springer Science+Business Media*, LLC 2009, p. 7.

However, in its assessment of online gambling, ClubsAustralia notes that the Draft Report:

- Recognises fundamental differences in terms of access and convenience between online and venue-based gambling.<sup>159</sup>
- Calculates spending on online gambling that is conservatively assessed at around \$790 million,<sup>160</sup> and increasing at rates significantly faster than land-based gaming.
- Acknowledges that online gambling has at least as much potential for harm<sup>161</sup> – and, in ClubsAustralia’s view, potential for significantly more harm – than land-based gaming.
- Acknowledges a reliance on funds accessed from a line of credit<sup>162</sup> for online gambling purposes.
- Suggests that it is simpler to implement a universal pre-commitment system with online gaming than in land-based venues, because “...the account-based nature of online gaming means that it is straightforward to identify gamblers and to enforce any pre-commitment options they may choose.” Additionally, the Draft Report notes that there are other advantages not readily available to land-based gaming such as web-based interventions and automation, all of which apparently constitute a significant improvement over venue-based harm minimisation measures.<sup>163</sup>

Despite the above assessments of the risks and opportunities of online gambling, the Draft Report only recommends an “assessment of feasibility and cost effectiveness” into pre-commitment systems in online gambling. This stands in conspicuous contrast to the recommendation for a universal technology-based pre-commitment system by 2016 in clubs.

The Commission also inexplicably and unjustifiably downgrades the importance of issues concerning online gambling – involving social interaction, risk to young people, and consumer protection – by stating that they are “sometimes raised” and “less compelling”.<sup>164</sup> Though it is not clear how the Commission thinks such risks are being minimised online or might be improved.

In what appears to be an effort to avoid serious consideration of costs associated with the introduction of universal technology-based pre-commitment in clubs, the Draft Report suggests ways of accommodating costs. For example, a staged transition, new and unspecified commercial benefits, and a reduction in player return are cited as appropriate mechanisms.<sup>165</sup> In contrast, there is no consideration of such mechanisms in the case of online gaming – but rather a recommendation for a “cost effectiveness” analysis.

ClubsAustralia suggests that any rigorous consideration of costs as compared to benefits would highlight major differences between the positive contributions made to communities and society

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<sup>159</sup> Draft Report, p.12.7.

<sup>160</sup> Ibid, p.12.17.

<sup>161</sup> Draft Report, p.12.15: “While the risks associated with online gambling are likely to be overstated, the relatively high prevalence of problem gamblers is still a cause for concern. At the very least, it indicates that the internet is very attractive to this group and, though the evidence is weak, gambling online may exacerbate already hazardous behaviour. In any case, it is clear that careful regulation of the industry is warranted.”

<sup>162</sup> Ibid, p.12.7.

<sup>163</sup> Ibid, pp.12.21-12.22.

<sup>164</sup> Ibid, p.12.8.

<sup>165</sup> Draft Report, p.7.39.

generally from land-based gaming in clubs, versus online gaming. Such analysis would not support the mandatory introduction of universal technology-based pre-commitment systems in clubs.

By comparison, even a cursory cost-benefit analysis would show that it is relatively affordable to introduce pre-commitment to online gambling and, with almost no positive return to the community contributed by online gaming, it can be quite easily justified.

ClubsAustralia submits that there is a major inconsistency in the approach taken by the Commission, and believes there is no basis for subjecting the two forms of gaming – that is, club gaming machines and online gaming – to different standards of assessment. This is particularly the case when that standard is skewed so heavily towards online gambling and against clubs.

## CHAPTER 13 – DEVELOPMENTS IN THE RACING AND WAGERING INDUSTRIES

TAB wagering facilities have been a service offered by clubs for a long time. The TAB facility, while popular with a section of the membership, is provided as a service to members and guests rather than being seen as a source of revenue. This is because the conditions under which TAB services operate provide only marginal returns for venues.

A portion of the revenue from each bet placed at a club TAB goes back to the racing industry. ClubsAustralia believes this is entirely appropriate, and is therefore critical of the online bookmakers who are taking advantage of the horse racing industry while failing to support it.

Online bookmakers face almost no operational overheads and are therefore able to offer better odds than venue-based TABs which must pay rent, staff, electricity and other fixed costs. The absence of any requirement on online bookmakers to contribute to the racing industry allows them to further improve their odds relative to venue-based wagering.

ClubsAustralia would regard the provision of an exemption to online bookmakers from making a contribution to the racing industry as giving an unjustified advantage. ClubsAustralia believes online bookmakers should contribute the same percentage of revenue to the racing industry as is currently paid by venues.

## CHAPTER 14 – REGULATORY PROCESSES AND INSTITUTIONS

### Response to Draft Recommendation 14.1

*Each jurisdiction should ensure that its gambling regulator has:*

- *statutory independence from government*
- *regulatory control over all forms of gambling within that jurisdiction*
- *a charter that emphasises the public interest, and explicitly includes consumer protection and harm minimisation.*

ClubsAustralia notes the Commission's call for a single regulator of all forms of gambling and preference that the regulator should be independent of government. The Commission expresses the view that since its 1999 Inquiry, most governments have moved to establish independent regulators; remove the responsibility for gaming solely by Treasuries and integrate gaming into more health- and consumer-oriented portfolios; formalise channels for stakeholder consultation; initiate regulatory impact analyses (RIAs); and conduct research.

The Commission apparently sees conflicts of interest in governments' ability to balance the revenue implications of gaming against the need to reduce harm. That is, in the Commission's view, if reducing harm means lowering revenue to venues and therefore state treasuries, governments will be reluctant to adopt those measures. The Commission indicates that the public interest would be better served by separating governments' revenue interests from their regulatory decision-making process.

Firstly, ClubsAustralia would like to restate the point that measures which *address problem gambling* should be at the heart of government action, rather than attempting to deal with the notion of 'harm minimisation'. This latter concept is far too broad and contains an intrinsic judgment that gaming machines are innately harmful – a concept which ClubsAustralia rejects.

In any event, when 'problem gambling' is broadened to 'harm minimisation', there arises a much greater propensity for government action to lose focus and concentrate on measures which are more anti-gaming, rather than specific targeted measures to help problem gamblers. In these circumstances there is a real risk that the vast majority of people who enjoy playing gaming machines will be disproportionately affected when weighed against potential benefits for problem gamblers.

In relation to the proposition concerning the benefit of an independent regulator, ClubsAustralia observes that 'independence' is often in the eye of the beholder. Any regulator will be constituted by persons of varying backgrounds and expertise, who may harbour all sorts of agendas, views and biases that might be well outside what would be the textbook notion of independence. In reality, the concept of an independent person is a myth, and there is no guarantee that the outcomes devised by independent bodies will produce superior outcomes for problem gamblers.

As to the broader proposition that governments are in conflict when considering measures which will have a detrimental impact on revenues if implemented, in our view the evidence does not bear this out. Firstly, while the Commission acknowledges that governments have made what it considers

to be some ‘progress’ since the 1999 Inquiry, in ClubsAustralia’s view insufficient weight has been placed on the amount of effort and activity that has been applied by state and territory governments over this period. ClubsAustralia’s first submission to this Inquiry detailed the vast array of measures introduced in the intervening period between the Commission’s two investigations into gambling.

Secondly, an analysis of the proportion of government revenues sourced from gaming machines does not indicate that governments have been increasing their reliance on gaming revenue. In NSW, for instance, the proportion of gaming revenue to overall revenue has declined from 5.5 per cent in 1996-97 to 3.6 per cent in 2008-09.

This raises another interesting point. There is often a misconception that governments have a major dependence on gaming revenue and hence conclusions can be drawn about their reluctance to institute measures that may upset this source of revenue.

Again, this is not borne out by the facts. The table below shows that across all state and territory governments, the proportion of gaming revenue as a percentage of total revenue is in fact less than 5 per cent and as low as 1.7 per cent (excluding Western Australia at 1.5 per cent, which has no gaming machines except for Burswood Casino). Clearly, while gaming revenue is no doubt an important component of government budgets, it by no means dominates the revenue base.

| <b>2007-2008</b> | <b>Gaming as a percentage of Total Revenues</b> |
|------------------|---|
| NSW              | 3.6 per cent                                    |
| Victoria         | 4.5 per cent                                    |
| Queensland       | 2.7 per cent                                    |
| SA               | 3.3 per cent                                    |
| ACT              | 1.7 per cent                                    |
| NT               | 1.7 per cent                                    |
| Tasmania         | 2.4 per cent                                    |
| WA               | 1.5 per cent                                    |

Source: State and Territory Budget Papers

In relation to the involvement of government ministers in setting gaming policy, it is our view that administration and implementation of gaming policy would be an appropriate activity for a regulator, while the development of policy should be overseen and/or developed by the relevant minister. An elected and accountable representative is well placed to deal with the public interest, rather than a so-called independent body. Every parliamentarian has a primary responsibility to act in the public interest, part of which is to take on board the views of all interested parties and act in a transparent manner. This includes an understanding that in the absence of gambling tax revenue, alternative revenue streams must be found. ClubsAustralia is not aware of any other tax setting

which is determined by an independent agency of government. Setting tax rates is a key responsibility of elected officials and central to our democracy.

The Commission expresses doubt, at 14.4, that the elected representative is able to best balance “revenue incentives, public health and community goals, industry development and pressures from political lobbyists. These competing interests can make it hard to develop coherent and consistent policy.”

ClubsAustralia does not believe the case has been sufficiently argued to justify why statutory independence from government is required; other than to remove the unsubstantiated and hysterical claim by some anti-gambling advocates that ‘governments are compromised’ in the exercise of their decision making prerogatives.

In ClubsAustralia’s view, government may well be the *best* placed to read community sentiment and translate this into coherent and effective policy. Balancing a range of views and interests is a day-to-day requirement for state and territory ministers and in a democratic system, our elected representatives have unique accountabilities and public expectations placed on them. To delegate such an important issue as the development of gaming policy solely to a regulator would in our view be an abrogation of their elected responsibilities.

Governments are required to make decisions on a range of issues of social significance. It is a serious allegation to suggest that governments of all political persuasions are incapable of making appropriate decisions in the future in regard to gaming and by extension to imply that past and current governments have failed to address the public interest. ClubsAustralia suggests that is an inference better left to the judgment of voters than to another independent statutory body.

#### **Response to Draft Recommendations 14.2, 14.3, 14.4**

*14.2: The relevant minister for gambling should have an explicit responsibility for minimising harm from gambling.*

*14.3: Governments should strengthen consultation processes and incorporate the views of stakeholders, including gambling providers, manufacturers and consumer representatives, into the process of policy development. Governments should clearly specify appropriate mechanisms for providing input, and set minimum consultation timeframes that reflect the importance of the issue. Details of consultations should be made publicly available.*

*14.4: Given the potentially adverse social impacts and the costs to business related to gambling policy, governments should routinely undertake regulatory impact analysis for all major regulatory proposals and make them publicly available at the time government decisions are made public.*

ClubsAustralia notes recommendations 14.2 to 14.4, which are mainly directed at achieving improved consultation, transparency and accountability through RIAs.

As stated above, ClubsAustralia believes elected representatives are and should be accountable for the regulation of the gambling sector, and particularly for overseeing measures to reduce problem gambling and help problem gamblers. As we have always stated, this should involve extensive consultation with stakeholders and a thorough assessment of the potential impact of proposed measures and ongoing assessment of existing regulations to determine their efficacy.

However, ClubsAustralia does not see merit in the suggestion made by the Commission in Draft Recommendation 14.3, that “consumer representatives” be treated as key stakeholders in the consultation process. It must be questioned whether such people are in fact representative of the general population, whom they represent, and what expertise they can offer.

With respect to the Commission’s statement that regulations should have a clear rationale, ClubsAustralia believes that many of the measures recommended in the Draft Report itself lack this rationale, with no apparent basis other than an aim to lower gaming machine revenue at any cost. While Draft Recommendation 14.4 advises governments to be aware of the “potentially adverse social impacts and the costs to business related to gambling policy”, the absence of such analysis by the Commission in relation to any of the measures proposed is – as stated elsewhere in this submission – of enormous concern and disappointment to ClubsAustralia.

### **Response to Draft Recommendation 14.5**

*Governments should reform gaming machine national standards by requiring consistency unless the costs of the variations can be justified by their likely consumer benefits:*

- *Variations should be based on legitimate concerns for harm minimisation and should take into account the costs that such differences impose on other jurisdictions, manufacturers and venues.*
- *Governments should jointly investigate the scope to rationalise current arrangements for accreditation and testing of gaming machines, to remove any unnecessary duplication of effort and cost.*

ClubsAustralia sees merit in uniform gaming machine technical standards that facilitate the development and production of gaming machines and systems or equipment that can communicate/integrate with each other, and that meet a minimum set of security and integrity standards common across all jurisdictions. This should include such matters as communication protocols, metering and security.

However, ClubsAustralia does not support the imposition of technology-based gaming machine standards intended to address social issues related to gambling harm minimisation such as pre-commitment or game design.

ClubsAustralia believes that technology and gaming regulation develop at different rates, with technology far outstripping regulation. Technology and regulation are also driven by different imperatives.

In the case of gaming technology, there is a constant drive for innovation in order to develop products that are more attractive and desirable to customers, less costly and offer greater flexibility for the operator.

In the case of regulation, the primary drivers are likely to be ones that look toward ensuring security and integrity of gaming machine operation and protection of government tax revenue.

Since around the time of the Commission’s 1999 Report and in the period following, some state and territory governments introduced legislation that specifically included minimisation of gambling



related harm as a primary objective.<sup>166</sup> This objective was additional to the already well established objectives of security and integrity.

In the case of NSW, a significant number of specifically legislated problem gambling initiatives were developed. These include a ban on external gaming machine advertising and signage, consumer-directed problem gambling warnings, compulsory gaming machine shutdown periods, machine caps, machine trading scheme with built in forfeiture mechanism, mandatory self exclusion, prohibition of credit betting, limits on value and prohibition of cash prizes for gaming machine related promotions, and many others.

The impact of these regulatory measures on technology is arguably minor, as they are general in nature and not specifically directed at any type of technology or game.

However, there is also another level of regulation which exerts significant influence on technology, through the guidelines and standards against which gaming equipment and games are approved for use. These regulatory instruments have a direct impact on the types of games that are approved and the type of gaming-related equipment that can be operated by gaming machine venues. To this day, their effectiveness in addressing problem gambling remains unproven: for example, there is no evidence that placing limits on the degree of ‘volatility’ permitted in a game has any influence on problem gambling.

All Australian jurisdictions with gaming machines utilise some form of technical approval process, supported by guidelines or standards which are used to evaluate the games and equipment submitted by licensed manufacturers for approval.<sup>167</sup>

The national technical standards<sup>168</sup> are controlled by regulators with input from gaming equipment manufacturers and operators (casinos, clubs and hotels). The national technical standards have, over time, acted as a filter to extract those requirements that are common to each gaming state/territory, while allowing for differences by way of state-specific ‘attachments’ to the standards. This means that in reality there is no one standard against which gaming equipment manufacturers can obtain a single regulatory approval that is recognised by every state and territory.

Over time – and in a manner not dissimilar to the inclusion of harm minimisation objectives in legislation – the national standards have been subject to attempts to widen their scope by including additional rules. These rules, motivated by attempts to address ill defined concepts such as harm minimisation or other issues, have typically been imposed without any evidence regarding their efficacy in addressing problem gambling. In ClubsAustralia’s opinion such rules go beyond the purely technical considerations which technical standards are normally intended to address. By comparison, there are standards that address how mobile telephones interconnect with each other and around the world, but features are provided at the discretion of the manufacturer, and these standards do not include limits placed on them as to how long a person can talk or what phone features are allowed or disallowed because they may potentially result in higher expenditure. There is, however, this type of interference in the design and operation of gaming machines and recommendation 14.5 (point 1) encourages this type of regulation.

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<sup>166</sup> Gambling Legislation Amendment (Responsible Gambling) Act 1999, No 49 (New South Wales).

<sup>167</sup> Licensing or its equivalent is typically state-based.

<sup>168</sup> Australian/New Zealand – Gaming Machine National Standard – Revision 9.0 – 23 March 2007.

It is also important to appreciate that technical considerations are objective in nature and readily evaluated and measured, whereas problem gambling considerations are not. Examples of technical considerations include random number generation, security, accountability (metering), communication protocols and electrical safety. ClubsAustralia has provided comment to the Chair of the National Standards working group from time to time, commenting on attempts to expand the scope of the national standards<sup>169</sup> and arguing against this trend, which we believe falls well outside the intent of the technical standards.

In addition to national technical standards and state specific attachments some jurisdictions have developed a set of criteria<sup>170</sup> which directly influences technical features associated with game design. ClubsAustralia is not aware of any objective research that has shown such features to be factors that might exacerbate problem gambling and has also argued that there is no attempt to balance factors such as player enjoyment, entertainment or convenience when implementing a technical policy that prohibits these features.

In ClubsAustralia's opinion these types of technical restrictions – for example, limitations on game standard deviation which affect the game volatility, as well as 'truncation' rules and, until recently, restrictions on the choice of denominations that are permitted on a single gaming machine – have had a negative impact on the types of games and game features available.

Feedback from clubs indicates that newer games, subject to volatility and truncation restrictions, are noticeably less popular with patrons than older games that are not subject to these restrictions. As a result, and from practical necessity, clubs are retaining the older games which still have these features, rather than replacing them with new games and new technology. In some cases clubs are actually seeking out and installing older games because of patron demand.

It is our view that attempts through policy instruments such as technical standards or guidelines to remove features of games that contribute to enjoyment, stimulation and attractiveness only has the effect of making these games less interesting and stifling innovation. This is not good policy and does not effectively address the issue of problem gambling, but rather disadvantages all players – of which, it cannot be restated enough, problem gamblers are a minority.

ClubsAustralia further notes that in its 2004 report, IPART also expressed concerns about the use of technical standards for developing and establishing responsible gambling measures.<sup>171</sup>

ClubsAustralia believes that potentially successful products that would otherwise have been available to clubs and their patrons have been prevented from reaching the market, because ill-conceived restrictions have been included in the technical standards and guidelines which underpin the approval process. As well as robbing players of enjoyment, this has also had significant negative implications for research, development and high-tech employment in Australia.

In summary, ClubsAustralia believes that gaming machine technical standards should be used to address purely *technical* issues related to the design, manufacture and approval of gaming machines

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<sup>169</sup> See correspondence to Chair of National Standards Working Party, 27 August 2002, 16 August 2003, 12 August 2004, 5 July 2005, 6 August 2008.

<sup>170</sup> NSW Gaming Machine Prohibited Features Register, Revision D.

<sup>171</sup> IPART 2004, p.149.

and equipment, while legislation is the appropriate vehicle for addressing social issues such as gambling harm minimisation.

### Response to Draft Finding 14.1

*There is insufficient guidance given to gaming machine manufacturers about whether or not particular gaming machine features are likely to obtain regulatory approval. While complete certainty will not be possible, greater clarity of the expectations of jurisdictions would reduce costs for manufactures and venues.*

ClubsAustralia believes this finding is most appropriate to be addressed by gaming machine manufacturers through their association, Gaming Technology Australia.

### Response to Draft Recommendation 14.6

*Regulators should ensure that all of their requirements for gaming machines and games are specified clearly and made available publicly:*

- *Where new developments are judged to be unacceptable, clear reasons should be given so as to provide guidance to the industry and the community.*

ClubsAustralia supports the recommendation that regulators clarify and make publicly known the requirements and guidelines for gaming machines and games.

However, ClubsAustralia notes that the Gaming Technology Australia (GTA) submission to the Inquiry also called for games to be “approved against a clear evidence based mandate and specific requirements”.<sup>172</sup>

In ClubsAustralia’s view, Draft Recommendation 14.6 does not address a fundamental issue raised by the GTA submission, relating to cause and effect and its implications for regulators who control the approval of new and innovative features.

In our view the Draft Report generally presents a negative assessment of gaming machines, which is underpinned by an unsubstantiated view that a causal relationship exists between gaming machines and problem gambling. ClubsAustralia notes that such a relationship has *not* been established and the evidence is growing that co-morbidities, rather than gaming machines, cause problem gambling.

In this context Draft Recommendation 14.6 appears to assume the regulatory default position should be to reject any new development or innovation related to gaming machines, unless the manufacturer/designer can prove that it will not lead to an increase in problem gambling.

This situation would result in the likely prohibition of new or innovative features or technology, based on purely subjective opinions and the inability to prove why the innovation is ‘not harmful’. ClubsAustralia believes this position would unreasonably stifle innovation.

ClubsAustralia provided examples relevant to this type of policy framework in its initial submission to the Inquiry,<sup>173</sup> one of which related to NSW which has established a Prohibited Features Register.

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<sup>172</sup> Draft Report, p.14.24.

This register would appear to fulfil the requirements of recommendation 14.6 – as, arguably, do the National Standards for Gaming Machines which impose requirements on standard deviation and truncation.

The essential feature that is missing is a requirement for the regulator to ensure that the standards are not only specified clearly and with reasons but are also underpinned by evidence. This is critical where guidelines are being made in relation to problem gambling and ill-defined concepts such as harm minimisation. Further comment on difficulties that arise when technical standards are used to introduce gambling harm minimisation measures is provided in the ClubsAustralia submission.<sup>174</sup>

ClubsAustralia submits that Draft Recommendation 14.6 needs to be clarified to include the need to apply balance and objectivity when formulating requirements for gaming machines.

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<sup>173</sup> ClubsAustralia Submission – March 2009, p.223.

<sup>174</sup> Ibid, p.223.

## CHAPTER 15 – GAMBLING POLICY RESEARCH AND EVALUATION

The Commission's first key point – that government-funded research has been poorly directed when it comes to determining how to effectively reduce harm from gambling<sup>175</sup> – is correct. But it is also true of research funded other than by governments, including by Australian academics funded by universities, industry or the anti-gambling lobby. International research, funded by governments or otherwise, also lacks direction on effective harm reduction. This is because problem gambling is a highly complex subject, influenced by a range of personal factors including financial capacity, co-morbidity and freedom of choice; for example, someone may recognise their gambling habit as excessive but still choose to spend their money on poker machines rather than in other ways. Yet all parties want options for effective harm reduction. That is why improved co-ordination of research and evaluation is required.

To that end, ClubsAustralia broadly agrees with the findings and recommendations from Chapter 15 of the Draft Report. While there are numerous academics earning a living through gambling research, the research is at times misdirected, the findings contradictory, and there is an absence of quality follow-up analysis. Most importantly, the concept of cost-benefit analysis is almost non-existent in academic work related to gambling. Some anti-gambling academics, such as anti-poker machine activist Charles Livingstone, argue publicly that a high impact on venues and state governments through restrictions intended to dramatically reduce gambling activity and limit the entertainment value of gambling is sufficient evidence of success. The best outcome for such advocates is no longer safe gambling – with accepted positive flow-on effects for venues, communities and governments – but prohibition.<sup>176</sup>

This is why greater independence of research and reviews is not ideal, because individuals with a 'barrow to push' can undermine the process by arguing for fundamental change when low-cost reform might provide an effective (and affordable) outcome. This is highlighted by research which is self-directed at findings that may lead to a dramatic reduction in problem gambling, but that is not treated credibly by government or industry because the recommendations are so extreme, would adversely affect so many recreational gamblers, and would be so expensive to implement and/or in their revenue impacts that they cannot be put in place. There is therefore no contribution to meaningful reform.

Rather, greater co-operation between government, industry and researchers would ensure access to the best possible data and analysis of impacts from all points of view. ClubsAustralia believes this will also engender goodwill when it comes to implementation of recommended changes.

ClubsAustralia believes that the Commission should ensure each of the Draft Recommendations in the Draft Report are subjected to a cost-benefit analysis before their inclusion in the Final Report, and requests the Commission introduce an additional recommendation in regard to gambling policy evaluation: that it always be assessed on a cost-benefit basis due to the potential impact on venues and governments.

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<sup>175</sup> Draft Report, at 15.1.

<sup>176</sup> "So should we abolish poker machines? There is an argument to do so I think." Charles Livingstone, during Public consultations on gaming licence arrangements post-2012, 27 July 2006 at page 26, <http://www.gamblinglicences.vic.gov.au/media/docs/Dr-Charles-Livingstone-62441efc-2af5-4bbd-8822-ec6e387307a3-0.pdf>, accessed 9 November 2009.

## Response to Draft Recommendation 15.1

*All jurisdictions should improve the usefulness and transparency of gambling survey evidence by:*

- *conducting prevalence surveys at the same time and using a common set of core questions*
- *making de-confidentialised unit records of gambling surveys available in a public domain data archive, at no cost to users.*

ClubsAustralia supports this recommendation. It is noted that while the Commission has found information to be “highly inconsistent across jurisdictions” (at 15.6), this is almost certainly due to different levels of maturation of the gaming industry in each jurisdiction as well as regulatory differences (different maximum bet levels, note acceptors and so forth). ClubsAustralia believes that NSW, as the jurisdiction with the most mature gaming market, is likely to be a guide for player activity in other states as their industry matures.

While transparency of information can lead to better analysis and ultimately better proposals for reducing problem gambling, transparency is not always positive – particularly in the gambling space. The Commission quotes Livingstone et al, at 15.7, in support of greater access to data. Yet this particular contributor to the gambling debate has consistently misused data:

*One recent commentator, Charles Livingstone, listed ‘financial ruin, relationship breakdown, the neglect of children, theft and fraud, and in some cases suicide and imprisonment’ as being among the harm that poker machines cause. While it is clear that poker machines have contributed to these problems, the actual figures seem to be much lower than Livingstone implies.*

*In 2004-05, there were 4,372 business bankruptcies in Australia of which 63 were attributable to gambling speculation. In the same year, there were 16,324 personal bankruptcies of which 480 were gambling related. (And bear in mind that the gambling category includes all types of betting, not just poker machines.) Twice as many business bankruptcies were caused by ‘failure to keep proper books’ while four times as many personal ones were caused by ‘domestic discord’. Maybe Senators Fielding and Xenophon should turn their attention to accountancy courses and marriage guidance.*

*Interestingly, on the issue of marriage and relationships, a 2006 Relationships Australia survey placed gambling 22nd of 24 possible factors ‘negatively influencing relationship with partner’, with a score of just 3 per cent. Six times as many people had relationship problems due to disputes over housework and three times as many complained about the ‘influence of in-laws’. So while pokie critics stress about poker machine spin rates, perhaps they could do more good if they worried about in-law visitation rates.*

*As one of the most regulated industries in the nation, the gambling industry has been forced to take a number of measures designed to ameliorate the problems caused by excessive gambling.<sup>177</sup>*

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<sup>177</sup> Richard Allsop, Institute of Public Affairs, “Class and Casinos” at <http://www.ipa.org.au/publications/1387/class-and-casinos>, accessed 18 November 2009.

While problem gambling causes serious impacts for those it affects, a myopic, ‘pokie-centric’ view can paint those impacts as being worse than they really are relative to other harms. This is the track record of Charles Livingstone, the anti-poker machine activist and campaigner, fuelled by his academic work.

ClubsAustralia cautions the Commission and governments in regard to the potential harm that misuse of data can cause when it comes to the public debate about gambling and any action taken by governments arising from that debate. Further discussion regarding reliability and misuse of data can be found in the Attachment (see pages 112-130 and 135-140).

### **Response to Draft Recommendation 15.2**

*Governments should publicly provide timely data on:*

- *gaming machine numbers, expenditure and tax revenue by type of venue (club, hotel, casino) and related information on other forms of gaming, such as table games*
- *wagering expenditure and tax revenue by type of wagering (racing and sports)*
- *lotteries expenditure and tax revenue*
- *self-exclusion information, such as the number of self-exclusion agreements for each year that are current, have lapsed, been revoked, or breached.*

ClubsAustralia supports improved data collection and publication, particularly in regard to analysis which disaggregates EGMs by venue type (club, hotel and casino) as we believe not-for-profit clubs are different from privately operated gaming venues.

It is ironic that the Commission recommends the release of data on tax revenue derived from gambling as well as disaggregated venue-type data, as the Draft Report makes no assessment of either of these matters. The implications of the Commission’s Draft Recommendations on tax are not stated, nor are the likely revenue/operational impacts on clubs, pubs or casinos.

While the Commission warns, at 15.9, that the “risks of inaction are high” and “proper experimentation will often be expensive,” there is no assessment of the risks of action or the costs of implementation. Although, as stated, ClubsAustralia is in favour of improved data collection, the Commission’s failure to apply an assessment of impacts is a glaring omission throughout the Draft Report.

### **Response to Draft Recommendations 15.3 and 15.4**

*15.3: To place gambling research on a sound footing nationally, Gambling Research Australia should be replaced with a national centre for gambling policy research and evaluation. The centre should initially be funded by the Australian Government and:*

- *have a charter requiring it to oversee research of direct policy relevance*
- *have a capability to perform and initiate such research itself as well as respond to requests by the Australian Government*
- *have an advisory panel, with representation from the community, industry, other experts and all governments*
- *coordinate evaluations, surveys and reviews nationally*
- *establish guidelines, methodologies and processes for research and evaluations undertaken by*

*state and territory governments*

*The Commission invites feedback on the likely merits or drawbacks of involving New Zealand in a proposed centre for gambling policy research and evaluation.*

*15.4: In the event that governments do not implement draft recommendation 15.3:*

- the Australian Government's Department of Families, Housing, Community Services and Indigenous Affairs should administer the work of Gambling Research Australia*
  - the functions of Gambling Research Australia should be made to align wherever possible with those proposed in draft recommendation 15.3*
- with particular emphasis on evaluating the effectiveness of harm minimisation measures and facilitating improved evaluation by jurisdictions.*

*The Commission seeks feedback on the suitability of different parties for evaluating and reviewing gambling programs, regulations and legislation. In particular, views are sought on ways to balance the appropriateness of reviewers and evaluators, considering both their expertise in gambling regulation and policy, and the importance of minimising any potential for conflicts of interest.*

ClubsAustralia recommends that state and territory governments, together with the Commonwealth, endorse the establishment of a new, national gambling research body. This body should replace Gambling Research Australia and ensure greater consistency of approach between jurisdictions when it comes to gambling research and analysis. This will also ensure that poker machine analysis is assessed in a similar fashion to internet gambling, wagering and other gambling forms. ClubsAustralia therefore supports recommendation 15.3 over 15.4.

### **A comment on New Zealand**

While ClubsAustralia's membership includes Clubs New Zealand, we do not believe that Australian and New Zealand gaming policy or regulation aligns. Clubs in New Zealand are typically much smaller than those in Australia (certainly on the east coast of Australia) and the gaming market is less mature. Clubs have fewer gaming machines and are therefore able to do less with the revenue. As a result gaming regulation in New Zealand, although it deals with poker machines, is vastly different to that in Australia. ClubsAustralia and Clubs New Zealand see great benefit in cross-Tasman collaboration and discussion, but the gulf between the two countries means that attempts to find correlations or implement similar regulations will have potentially unintended impacts.

### **Improving policy evaluation and a forward agenda**

Post-implementation evaluations are important, but it is also important to conduct a *pre*-implementation evaluation. The Commission's Draft Report has failed in this regard, as there has been no assessment of the likely impact on problem gambling through each of the recommendations, justifying their trial or implementation.

While the Commission claims governments have a conflict of interest on the review process (at 15.22), this ignores the fact that governments ultimately have to choose whether or not to accept the review regardless of who conducted it. This means that it is better for governments to be involved in the review process, so at least they can take responsibility for the outcomes and ensure they will be implemented, rather than feeling bullied by unaccountable academics into decisions no government could accept.



This situation is nowhere clearer than in the forward agenda for gambling research identified in the Draft Report. The Commission's suggestion that research be conducted into the structural features of machines, use of cash, note acceptors and jackpots seemingly ignores the extensive research into each of these areas already undertaken by state and territory governments.

Indeed, the Commission has been so bold as to recommend, in the Draft Report, changes to note acceptors, machine/game design (a \$1 maximum bet, for example, will affect game design) and limiting access to cash. Yet in Chapter 15.5, the Commission also recommends these areas be subject to more research. Which is it to be? Either the Commission believes more research is needed, or it is comfortable that the changes it has recommended (each of which is strongly opposed by ClubsAustralia for numerous reasons) are ready to be implemented now.

ClubsAustralia does not believe that the Commission can recommend the imposition of changes which have not, in the Commission's own view, been sufficiently analysed through research to justify implementation. ClubsAustralia therefore recommends that governments ignore each of the recommendations by the Commission which still require research.

## CHAPTER 16 – TRANSITIONS

### Response to Draft Recommendation 16.1

*As far as is reasonable and practical, regulatory changes should be introduced with advance warning, and implemented at the same time, to reduce costs to venues, gaming machine manufacturers and others.*

*The Commission has set out in very broad terms a framework for implementation of the draft recommendations. It seeks feedback on the transition and coordination issues for the Commission's consideration for the final report.*

ClubsAustralia strongly endorses the principle that any regulatory changes should be introduced with advance notice and extensive consultation as to the practicalities of implementation. We also note that while in some instances it is desirable to implement a number of changes at the same time, in other cases it negates the possibility of properly evaluating the impact of individual measures on problem gambling.

ClubsAustralia notes the timetable suggested by the Commission for the measures contained in the Draft Report, which in general span a six-year period. While this may seem a sufficient time frame for implementation and ClubsAustralia acknowledges it is significantly better than 'knee-jerk' policy decisions, a time frame for implementation is only reasonable if the changes to be implemented are reasonable.

As outlined in this submission, ClubsAustralia is of the view that the Draft Report is seriously flawed in a number of crucial areas. Without restating our position in this regard, there would be no need to – as the Commission suggests – 'monitor outcomes' after implementation, as the club industry as we know it would be so devastated in terms of lost revenues that there would be no industry to speak of left to monitor.

A \$1 maximum bet, \$20 maximum stake, shorter machine operating hours, \$250 payment by cheque, state-wide self-exclusion and universal pre-commitment – to name just a few of the measures recommended by the Commission – would, if implemented nationally, dramatically reduce club revenues. These measures are akin to requiring the Australian mining industry to operate only with hand-held shovels and buckets. The extent of the change and impact upon industry is so severe that ClubsAustralia does not envisage the majority of clubs being able to viably transition over a 20 year timeframe.

These measures would impose so unsustainable a cost and administrative burden, that the Club Movement – which now does so much for the quality of life of everyday Australians – would be no more.