



PRODUCTIVITY COMMISSION  
DRAFT REPORT

# REPORT RESPONSE

Prepared by  
RSL Victorian Branch

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# 1. RSL VICTORIA

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This submission is prepared by the Returned & Services League (Victorian Branch) Inc on behalf of its 300 RSL Sub-Branches across the state including seventy one (71) Licensed RSL Sub-Branches which feature gaming operations. In preparing this submission, the RSL has consulted with its many stakeholders and presents here a united view responding to the Productivity Commission Draft Report dated October, 2009.

The RSL welcomes the continued implementation of proven measures that will assist in the reduction of problem gambling in Australia. In a regulatory sense, RSL Sub-Branches have always been proactive and at the forefront of best practice in harm minimisation and responsible gambling initiatives, and the Government on many occasions, has acknowledged the outstanding contribution and commitment that the RSL provides to its local communities.

In going forward, the Victorian Branch of the RSL believes responsible gaming forms a vital part of the commercial activity that will underpin the RSL's viability and effectiveness in the 21<sup>st</sup> Century. The RSL sees responsible gaming as an important part of fulfilling our organisational Charter and core objectives.

We make a significant contribution to local communities across Victoria in terms of both our veteran welfare activity and our support for the broader community. In addition to the tangible benefits, RSL Sub-Branches also provide a host of intangible benefits such as fostering social inclusion, improving the quality of life for the aged, and embracing younger generations. We are committed to education and community support and awareness, and show this in the many activities that our network of Sub-Branches undertakes each day.

For more background information on the RSL in Victoria, please refer to a copy of our Productivity Commission Issues Paper submitted in March 2009 (attached in the Appendices).

## THE RSL & GAMING: A BRIEF OVERVIEW

The core objectives of the RSL are welfare and patriotic in nature, supporting service and ex-service men and women from the Australian Defence Force, and their dependants when in necessitous circumstances.

The RSL has seen their welfare and veteran support operations expand significantly over the past 15 years through revenue from gaming activity in our Licensed Sub-Branches. Not only that, but we have been able to expand our commercial operations and build a membership base that is estimated at approximately 150,000 Victorians including some 65,000 service and affiliate members and the remaining 85,000 social RSL Sub-Branch members. We are also working towards more equitable revenue generation from all areas of our operations and this is proving to be successful.

Gaming revenue has allowed the RSL to focus on its core objectives of supporting the veteran community by providing improved facilities and services to members. With the majority of members in their later years, RSL Sub-Branches have become safe havens for many elderly people who suffer from isolation; a major issue facing the Australian community as the years pass. Many of the older community members – whether ex-service or not – use their RSL as a social hub. They eat, drink, play sport, participate in day clubs, attend organised outings/excursions and in general, see their RSL Sub-Branch as a 'home away from home'. And it is gaming revenue that has allowed this 'home away from home' to offer the services and facilities it does today.

## RECOGNITION AS CHARITIES

RSL Sub-Branches in Victoria have been recognised by the Australian Taxation Office as being charitable in their nature and all RSL Sub-Branches have the status of income tax exempt charities.

In addition to this, a significant investment is made each year by government and gaming venues alike to record the Community Benefit of gaming across the state, yet this information is never used to show what is returned to the community by gaming venues



and how those monies have been used to support other community activities. It is our belief that this type of promotion would markedly improve the image of the industry.

## INDUSTRY STIGMA

The stigma attached to the gaming industry causes us serious concerns. We see the RSL as an employer of choice within the hospitality, entertainment and gaming sector in Victoria and the continued negativity surrounding the industry as a whole is making it harder and harder to attract talented, quality staff who view the RSL as a career alternative.

As the RSL is now committing significant funds to poker machine entitlements from 2012, we harbour concerns about the ongoing viability of our commercial operations if regulation continues to tighten.

## CLUB VS HOTEL; CLUB VS RSL

It is important to outline the fundamental differences between Clubs and Hotels in the gaming industry, and to further drill down and highlight the gap between the RSL and other club operations.

There are some fundamental differences between Clubs and Hotels that have not been taken into consideration in this report:

- Clubs are not-for-profit entities
- Clubs are reliant on volunteers to take on the responsibility of overseeing commercial operations
- Many of those volunteers have limited or no experience running a business or club operation
- There are stringent liquor licensing requirements governing the access to clubs for members and visitors
- There is the 5 & 10 km radius gaming visitor rule.

The RSL is unique in the way that it can offer a cohesive, organised approach to gaming on a significant scale. The reality of 'life in the RSL' is that our members are usually very well known to our people and membership is reciprocal, so Service, Affiliate and Social members from one Sub-Branch can use their membership card to enter and receive the benefits at another Sub-Branch.

This membership card gives us enormous power to track and monitor our members and their habits whilst in our Sub-Branched:

- Universal mag swipe card with personal identification number issued to every member
- Has the capacity to limit or refuse access with the ability to track and monitor member activity and spend patterns
- Self-regulation becomes a practical reality rather than a theoretical ideology with one card across a wide network which currently operates on limited functionality
- In addition, members feel a certain sense of self-responsibility when they enter our premises as information about them is recorded and kept on record.

RSLs are not-for-profit entities:

- Sub-Branched are structured as incorporated entities in their own right
- Their core aim is the fulfilment of RSL & Welfare objectives
- All surplus earnings are distributed into the broader community
- Facility development and Sub-Branch rationalisation is a practical reality
- The RSL Sub-Branch network donated over \$6.5 million in cash and kind to community groups and initiatives unrelated to veteran welfare last year
- 1.25 million volunteers hours were recorded and audited last year
- RSL Sub-Branched employed approx 2,500 full and part time staff.

Therefore, we propose that the Victorian RSL be treated as a unique entity (similar to the Casino) in relation to gaming operations and should have some measure of additional support/leniency to ensure the long-term viability of the organisation to continue to do the invaluable community support activity currently undertaken.



## 2. AREAS FOR COMMENT

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### SECTION 4: THE PREVALENCE OF PROBLEMS WITH GAMBLING

It is interesting to note that since the 1999 Productivity Commission Report into the gaming industry, the instance of problem gambling has not increased, indeed, there is evidence to show that it has decreased.

RSL Sub-Branch memberships in Victoria have been growing steadily over the past 10 or so years and with the higher visitation that accompanies growing membership numbers, we experience a negligible amount of alcohol or gaming related issues. At present, we are unable to validate those who have sought help via the RSL network.

We place great importance on having a diverse service and product offering in our Sub-Branches and believe we have a very keen awareness of, and commitment to, acting responsibly and showing a duty of care for our patrons, members, staff and stakeholders.

We understand that evidence is showing that problem gambling is not an isolated issue; in fact it is often a symptom of other deeper issues which need to be addressed. Although this is a serious issue and warrants close, ongoing scrutiny and monitoring, the vast majority of Victorians participating in gaming do it as a recreational activity without any lasting effects, much like any other social activity undertaken.

### SECTION 5: COUNSELLING AND TREATMENT SUPPORT SERVICES

RSL Victoria has a number of initiatives in place and/or ready to proceed in relation to counselling services, promoting self-help and providing a standard of service that is above and beyond expectations.

#### RSL CODE OF CONDUCT

The RSL in Victoria has already implemented a strict code of conduct for our staff, members and visitors (see copy in Appendices).

#### RSL ASSIST

The RSL has been working with the Trauma Centre Australia (TCA) for some time on critical trauma response and, more recently, in developing the new **RSL Assist** project (see Appendices).

RSL Assist is a dedicated RSL Network helpline which will provide a private, easily accessible support service to people in need. Where an issue results in ongoing counselling with a TCA qualified psychologist, our individual Licensed Sub-Branches have undertaken to cover this cost. When a caller is not an imminent threat to themselves or others, they will be referred immediately to the most appropriate external specialist counselling service such as Gambler's Help or Alcoholics Anonymous. For callers who pose an immediate risk to themselves or others, a TCA trauma specialist will be engaged on the spot to attend to the issue at hand. The associated cost for this TCA trauma specialist will be met by the appropriate RSL Licensed Sub-Branch (i.e. the Sub-Branch where the caller came from and found out about RSL Assist).

The RSL Assist service provides staff with a qualified reference point which mitigates the need for them to act as 'off the record' counsellors when faced with a member or patron in need. They won't even have to assess that need; they can simply refer the member/patron to RSL Assist.

The RSL Assist hotline will be manned by a fully qualified counsellor and will provide RSL people with free and confidential access to counselling, advice, support services and referrals for a range of issues including:

- gambling, alcohol, drug, addiction, and related issues,
- grief, marital, relationship and family issues,
- emotional, physical and sexual abuse,
- anxiety, depression and stress issues.



In addition to providing the initial assistance for these issues, the helpline will also be able to link RSL people with specialist support and counselling agencies such as:

- Gambler's Help
- Alcoholics Anonymous
- Beyond Blue
- Lifeline and
- Salvation Army.

The aim is to provide a recognised, centralised service that reflects the core values of the RSL in a discrete and confidential manner. Once operational, RSL Assist will be able to provide quantitative and qualitative data on the issues raised by members and what, if any action was required.

## SECTION 7: PRE-COMMITMENT STRATEGIES

We believe that pre-commitment must be a 'whole-of-industry' approach. It must include everyone from the technology developers and hardware manufacturers through to venues and governmental licensing/regulatory frameworks.

RSL Victoria has offered to trial pre-commitment strategies within their network of Licensed Sub-Branches and we have attached a copy of the trial strategy for your review. To date, this offer has not been accepted by Government. It is vital that a pre-commitment system does not impinge on the use of gaming machines by recreational gamblers who account for the majority of the gambling population. Therefore any move towards a compulsory pre-commitment strategy would have serious repercussions for the commercial viability of the RSL network.

Self exclusion can be easily monitored within RSL Sub-Branches through the use of membership cards which are scanned upon entry. All relevant self exclusion information can be loaded into the membership card so that Sub-Branch staff are made aware of members who have self excluded.

Where a visitor enters an RSL Sub-Branch, sign in forms can request that each visitor declare their self-exclusion status (tick box and signature). Then Sub-Branch staff can monitor and ban entry to the gaming room for anyone who declares that they are self-excluded.

## SECTION 8: VENUE ACTIVITIES

This Submission is filed on behalf of the Returned & Services League of Australia (Victorian Branch) Inc. (the RSL) and relates to the Commission's Draft Recommendation 8.2. The Submission is in response to the Commission's request as to whether a new statutory cause of action should be established and what would be the appropriate criteria. This Submission is supplementary to the oral submissions made to the Commission by the RSL.

1. It is the RSL's submission that there should not be a statutory cause of action available to persons who have lost monies as a result of inappropriate actions by venue operator's.
2. It is the RSL's view that persons playing gaming machines ought to have a degree of responsibility for their own personal behaviour. To that end, the RSL would refer to the recent High Court decision in Scott case handed down on 10 November 2009. In particular, the Commission would be referred to the Court's views as set out in paragraphs 52-55 inclusive of the decision. It is further submitted the case also sets out the difficulties in identification concerning the matter of drunkenness. It is submitted that there are far greater difficulties in relation to the matter of gaming whereas the literature accepts there is not the same degree of overt physical signs of difficulty among a gamer as there would be in the case of somebody who was drunk.
3. It is submitted the statutory cause of action would have the following practical difficulties:
  - a. The damage suffered by a problem gamer is not over a short period of time, and in particular does not occur as a result of a single identifiable incident which is the case in relation to the consumption of alcohol.
  - b. Problem gamers are likely to game in many different venues. It may well be that a number of those venues complied with all the appropriate standards in relation to the conduct of the venue, yet they would be joined as one of a large number of defendants to any statutory cause of action. The allocation of responsibility, if any,



between the parties would raise very considerable forensic difficulties particularly in relation to the apportionment of liability. In the Scott's case and in other recent cases, the High Court has illustrated some of the difficulties associated with the application of the statutory requirements in relation to apportionment of liability and most States now have statutory requirements such as the Wrongs Act and other Acts (*Laws of Negligence Act 2003*). It is submitted the operation of that Act would further complicate the exercise.

- c. There would also be practicable difficulties in the ability for the venue operator to defend a claim that a gamer attended the premises and that various incidents took place would be difficult on a practical level particularly in relation to a hotel where there is no record kept of a person's attendance. It is noted that problem gamers are likely to attend a large number of gaming venues and the effect of the gaming is cumulative over a lengthy period of time. It is submitted that in many cases, problem gamers suffer difficulties in relation to the playing of gaming machines even in venues where there is a high standard of compliance with the modern standards in relation to the conduct of gaming venues. The separation of the possible damage suffered by the problem gamer is those venues as against venues behaving in a gross and flagrant manner would be almost impossible to allocate.
4. It is submitted that a better method to enforce the behaviour in venues is the method adopted in Victoria as contained in the *Gambling Regulation Act 2003*. That Act in Section 3.4.12A and 3.4.12B requires each venue to have a self exclusion program and a Responsible Gambling Code of Conduct. Such self exclusion program and such Gambling Code of Conduct is approved by the Victorian Commission for Gambling Regulation. The Commission has been provided with a copy of the RSL Gambling Code of Conduct. The Code of Conduct in most other venues in Victoria covers most of the matters as set out in the RSL Gambling Code of Conduct. Section 3.4.25 of the Act provides that repeated breaches of the self exclusion code or of the operator's Responsible Gambling Code of Conduct is grounds for a disciplinary action. That same Section of the Act provides that disciplinary action can include the cancellation or suspension of the venue operator's licence. These are very substantial penalties on a venue operator. The cancellation of a venue operator's licence would represent a very significant financial penalty to be measured in millions of dollars. It is submitted the use of the powers in the *Gambling Regulation Act 2003* are an appropriate penalty for gaming venues. If the existence of the cause of action is for the purposes of encouraging venues to act responsibly then the penalties provided by the Victorian Act are more effective than the statutory cause of action.
5. It is the RSL's experience that in many cases problem gamers have multiple problems and problem gaming may well only be a symptom of those underlying problems be them domestic family problems, problems with alcohol or personality difficulties. As such, gaming is more a symptom of the underlying problems than the cause of the major difficulty in a person's life. Matters such as this are matters that would be exceedingly difficult to frame in a statutory cause of action.
6. If there is a desire to provide some compensation to problem gamers, it is submitted the Commission may care to consider a recommendation to the effect that the bodies in charge of gaming in each State, for instance in the case of the State of Victoria, the Victorian Commission for Gambling Regulation be in a position as part of the disciplinary proceedings to impose a financial penalty on a venue for breaches of the Gaming Code. That part of the penalty if persons can be identified could be paid to persons who have been affected by the flagrant breaches of the Code by the venue.
7. It is submitted the introduction of a statutory cause of action would be unlikely to assist many problem gamers as only a small minority of such gamers problems would have been bought about by the flagrant or gross disregard of the appropriate Codes by venues. It is submitted the penalties provided against the venue operator by way of the disciplinary penalties set forth in Section 3.4.25 of the *Gambling Regulation Act 2003* are a more effective deterrent or a defective method of ensuring that venues conduct their activities in a responsible and diligent manner.
8. One of the characteristics of a person who is a problem gamer is that by the time the problem has developed, the problem gamer is likely to be in penurious circumstances. As such, the instigation of what on any view would be complex and expensive litigation is unlikely to be undertaken by such person. In those circumstances, the creation of such a statutory cause of action could be considered to be of an illusory benefit to persons who suffer from problem gaming as a result of the venue flagrantly breaching the relevant Codes.



## SECTION 9: ACCESS TO CASH AND CREDIT

As the Commission is aware, RSL Victoria prepared and lodged a detailed submission relating to the removal of ATMs from our premises post-2012 (see Appendices). The RSL is of the view that our members and visitors see RSL ATMs as secure, accessible facilities in a location which could very well be their only outing for a week.

The Commission's Draft Report supports those who can implement a self-regulatory system in relation to ATMs. We believe that our proposal met all critical elements relating to limiting access to cash via on-site ATMs.

Therefore, we believe that the removal of ATMs from our Sub-Branches entirely will have an adverse effect on our members, many of whom are aged, infirm and have very little outside contact besides their RSL Sub-Branch. Without the ability to access cash facilities at their Sub-Branch, these community members – many of them with limited mobility – would have to find other means of accessing an ATM.

The RSL is disappointed that the Victorian Government didn't see fit to give due consideration to our detailed submission which met their criteria, and then proceeded with a decision without awaiting the Commission's findings either.

## SECTION 15: GAMBLING POLICY RESEARCH AND EVALUATION

We support the concept of improved policy review and evaluation techniques and see the introduction of a staged implementation process for new measures as sensible and manageable.

We would like to point out that a number of the initiatives we have outlined above will further enhance any research conducted. In particular:

- RSL Code of Conduct which goes above and beyond what is required from a regulatory perspective
- RSL Assist will provide 'qualitative & quantitative' data on the prevalence of problem gambling within the largest club network in Victoria
- A pre-commitment trial within our Sub-Branches will provide invaluable data to be used in the development of future strategies
- Our generic membership system has the capacity to integrate with other system providers to enable validation and recording of member activities and transactions.

***We strongly support the strengthening of incentives for venues that have the capacity and commitment to implement harm minimisation measures.***





## 3. SUMMARY

### THE RSL & GAMING: HOSPITALITY WITH A CONSCIENCE

- The RSL should be treated as a unique entity in relation to gaming operations and should have some measure of additional support/leniency to ensure long-term viability.
- The RSL is in a unique position in Victoria and offers an unrivalled opportunity to trial harm minimisation and self regulation programs and quantitatively measure their impacts.
- RSLs are not money-making operations; there is a direct community benefit from gaming revenue in RSLs. Any surplus funds are used to improve facilities which in some instances are used by every, single local community group for meetings, sporting events and other social activities.
- RSL membership cards offer a unique opportunity to monitor and measure the movement of problem and 'at risk' gamblers within the network.
- The RSL Assist program will not only offer new data sources on problem gambling but will also directly help those at risk while identifying other potential contributing factors.
- The RSL's Code of Conduct goes above and beyond the call and shows a rigorous commitment to harm minimisation within the network.
- The RSL's offer to trail a pre-commitment program will help provide data to develop an appropriate pre-commitment system.
- The RSL is disappointed in the government's decision to remove ATMs from all gaming venues from 2012. We believe our submission, which the Commission has already seen, was not given due consideration. We do however support the Commission's draft recommendations where a self-regulatory mechanism can be implemented.

In closing we fully support the Commission's ideas about strengthening incentives for those that can self-regulate. We think as an organisation we are in a good position to be able to achieve that in consultation with industry and other stakeholders to be able to look at the outcomes and align those objectives with what governments have across the different borders.

We continue to provide welfare and community support to anyone who seeks our help; the RSL was created on the values of mateship, camaraderie and courage and maintains that focus to this day. We have certainly grown as an organisation with the introduction of gaming in the state but we have never lost sight of what our core objectives are.

We are committed to ensuring a safe, secure environment for those who chose to be our members, visitors and stakeholders, many of whom do invaluable volunteer work for the RSL in their local community. They are our lifeblood – without members, the RSL does not exist.

We fully support the introduction of the Pre-Commitment strategy that ensures equality and fairness for industry as a whole.

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