

SPRINGVALE LEGAL SERVICE INC.

**EXTENSION AND MONITORING OF MEASURES
TO LIMIT THE CONSEQUENCES OF PROBLEM
GAMBLING IN AUSTRALIA**

**SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO
AUSTRALIA'S GAMBLING INDUSTRIES**



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PREAMBLE

This legal service, and many other similar community organisations have witnessed first hand the plight of many of the victims of gambling. This submission arises out of our reaction to their suffering, and is intended to suggest that the Commission can actively assert the interests of *problem* gamblers by recommending a shift in emphasis - within the regulatory regime - away from purely prudential issues and towards credible regulation of *problem* gambling and enforcement.

The current prudential focus of the Victorian Casino and Gaming Authority - for which there are understandable historical reasons - is now patently inadequate to protect the community from irresponsible gambling. While the legislative role of the Authority is of course a restricted one, we can see no reason why the recommendations in this submission should not become the subject of public discussion and private entreaty by the Commission to all governments, including the Victorian government.

INTRODUCTION

"... It seems likely ... any such action to expand legal gambling will increase the state's moral obligation to address itself to the problems of compulsive gambling¹."

Australia has always been a gambling nation². The first European settlers took a serious gamble in making an unknown land their home. With the passing of time, gambling became a common Australian leisure pursuit³, culminating every November with the Melbourne Cup. However gambling has always attracted criticism because of its social costs, placing a responsibility on its promoters to - often unwillingly - address them. The recent establishment of legalised casinos in most of Australia's major cities, along with growing public perceptions of governmental obsessions with profit, have resulted in many calls for law reform in this area. This submission discusses this new 'casino culture' and possible reforms to existing laws.

Until the 1970's, Australia's state governments took the view that gambling should be legalised both to control the illegal gambling market and to raise funds for social programmes and community services⁴. At this time Australia only had one casino, Hobart's Wrest Point, and the phenomena of problem-gambling was restricted to a few isolated cases. By 1997, there was a casino in every Australian capital city - Australia is the only country to allow this⁵ - and the public were inundated with reports of gambling's social costs. One poll showed that 48% of participants believed that casinos were harmful because of their resulting social damage and 41% believed that the

¹ *The New Jersey Gambling Study Commission Report* (1973), cited by H. Brown, *Some Unresolved Issues in the Study of Gambling-Related Problems* (Morwell, 1995) 39.

² K. Legge, *Jackpot Society*, in M. Cathcart & K. Darian-Smith (eds.), *Place Your Bets - Gambling in Victoria* (1996) 104.

³ Caldwell (1974) cited in J. McMillan, *Gambling as an Industry*, in M. Cathcart & K. Darian-Smith (eds.), *Place Your Bets - Gambling in Victoria* (1996) 49.

⁴ J. McMillan, *Gambling as an Industry*, in M. Cathcart & K. Darian-Smith (eds.), *Place Your Bets - Gambling in Victoria* (1996) 49.

⁵ T. Emerson, 'Fool's Gold' (1995) *The Bulletin*. 64.

Government did not place enough restrictions on them⁶. This “Casino-culture” has, in a period of six years, swamped Victoria. The Kennett Government has tried to convince Victorians that the casino operates as a revenue raising enterprise for the benefit of all citizens of the state. The Government itself may be the only one on a winner because gambling provides revenue without the need to raise taxes, under the guise of “entertainment”⁷. In fact, gaming is Victoria’s third largest source of revenue at 15%⁸ and a very attractive one at that - in 1994/5 Victorian gamblers lost \$2.4 billion on gaming⁹.

The reality is that the Casino is less and less likely to financially benefit Victoria in the long-term. Many of the jobs Crown created were short-term, particularly in relation to its construction, and others were filled by non-Victorians imported by Crown.

Furthermore, many of Melbourne’s small businesses have struggled to compete with Crown’s twenty-four hour, seven day a week trading and face ruin because up to 50% of their customers have gone to Crown, attracted by its dazzling multitude of activities¹⁰. With its almost manic promotion of Crown, the public cannot be blamed for questioning how the Kennett Government can effectively regulate gambling when so much of its revenue relies on people gambling (and losing). The Victorian Government has shown that it is unwilling to effectively acknowledge many of the social problems related to gambling, perhaps because in doing so it may turn patrons away.

Under Section 115(2) of the *Casino Control Act 1991* (Vic), Crown keeps 13% of all money wagered by the players of gaming machines. The various table games available are also valuable contributors to the profitability of Crown. In order to ensure that they remain so, Crown has demonstrated a willingness to change the rules and availability of the games where appropriate. This has been demonstrated by recent changes to the rules of Blackjack, and the recent withdrawal of the game of Dicertrack. The reality is that the odds are in the Casino’s favour - if they were not, no casino would remain open¹¹. The Government’s reliance on gaming profits cannot be highlighted with greater clarity than by the various governmental statements announcing that many public projects have been funded by gambling revenue. This context provides the financial reasons for Government reluctance to address the direct victims of its policy - those who cannot restrain themselves to moderate gambling, and their suffering families.

⁶ *The Bulletin-Morgan Poll* 17-18 July 1996. Five hundred and eighty four Australians were interviewed by telephone.

⁷ B. Schwartz, *Presentation to Public Hearings on Social Impact of Gambling*, in *Gambling in Victoria - People Together Project Shaping Victoria’s Future Public Hearings: Shaping a major investigation into the social impact of gambling in the State of Victoria* (1996) 2.

⁸ T. Costello & E. Campbell, ‘Making Money’ (1997) 22 *Alternative Law Journal* 265.

⁹ R. Wootton, *Is Gambling a Winner in Victoria*, in M. Cathcart & K. Darian-Smith (eds.) *Place Your Bets - Gambling in Victoria* (1996) 72.

¹⁰ Costello & Campbell, *op cit.* 266.

¹¹ E. McHugh, ‘Lucky Breaks’, *The Australian Magazine*, 1-2 April 1995, p. 44.

THE NEED FOR A SERIOUS FOCUS ON PROBLEM GAMBLING

For about 97% of gamblers, gambling probably occurs only a few times a year. It is no more than a chance to try their luck, coupled with an acceptance that they probably will lose their money¹². However, for that other 3%¹³, gambling is a diabolical curse in the form of an activity that they cannot afford in any sense, that may destroy their relationships, financial situation or lead them to suicide¹⁴, as they lose huge amounts of money in their quest to beat the house or chase their losses¹⁵. As many as 85% of these people may commit crimes to finance their gambling¹⁶. Such gamblers are collectively known as problem gamblers, although the precise term can vary according to the cause of the problem. There is no precise profile of such a person, although evidence tends to suggest that they will probably have low self-esteem, be blue-collared workers with an income of less than \$20,000 per year or be unemployed¹⁷.

Problem gambling is classified as a mental disorder by DSM-IV and is akin to an addiction : gamblers can feel restless or irritable if they cannot gamble¹⁸, although some experts do not agree with this classification¹⁹. Various services exist in Victoria to help such people, including counselling provided by Break Even, which is funded by 8.33% of revenue from hotel gaming machines²⁰. Another association, the Victorian Council on Compulsive Gambling, was effectively forced to fold in 1997. As you may know, the Government terminated its funding, essentially because of its criticisms of the Government²¹. Our view however, is that the injection of funds into support services is not a sufficient answer to problem gambling.

POSSIBLE LAW REFORMS.

There are various pieces of Victorian legislation to control and regulate the Casino and Gaming Industry, such as the *Casino Control Act 1991* (Vic) and the *Gaming Machine Control Act 1991* (Vic). Whilst this legislation may, to a great extent, regulate some aspects of the industry sufficiently, time has now shown that it needs to be reviewed, significantly improved and amended. We consider that the following comments and recommendations, while

¹² R. Wootton, *Gambling in Victoria*, in *Taking Care - Some joint approaches to problem gambling by government, industry and community* (Tasmanian Council of Social Services Inc) (1995) 33.

¹³ AGB McNair Survey (1995), cited in Wootton, *op. cit.* 34; Emerson, *op. cit.* 68. The reader should be aware that 3% is a conservative estimate taken from gamblers who seek treatment. The real figure may be higher.

¹⁴ Break Even Northern Problem Gambling Service, *Gambling in Victoria - Student Resource Kit* (1996) 15.

¹⁵ T. Costello, *The Casino and the Quest for Grace*, in M. Cathcart & K. Darian-Smith (eds). *Place Your Bets - Gambling in Victoria* (1996) 87.

¹⁶ N. Andrew, K. Asimacopolous, D. Dimovski & D. Hayden, 'Who's Holding the Aces' (1997) 22 *Alternative Law Journal* 268.

¹⁷ R. Wootton (1996), *op. cit.* 73; Australian Council of Social Service, *Young People, Gambling and the Internet - Paper No. 88*, (1997) 86.

¹⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed., 1994) para. 312.31.

¹⁹ S. Andrew, *National Gambling Conference*, in Northern Problem Gambling Service, *When the Chips are Down* (Issue 2 - Autumn 1998) 3.

²⁰ Wootton (1995) *op. cit.* 39.

²¹ Costello & Campbell, *op. cit.* 266.

necessarily focussed on Victoria and on its Casino and Gaming Authority, are in principle, applicable across Australia.

Possible reforms include:

1. “Self-Exclusion Kit” -

Under s 72(2A) of the *Casino Control Act 1991* (Vic) a person can apply for an order to exclude themselves from Crown Casino, as an incentive not to gamble. The Act provides that if an exclusion order is breached, a \$2000 fine may be incurred²². Exclusion can also be sought from hotels and other gaming venues, although this is not as yet covered by legislation. At present an application for an order (otherwise available only through the Casino) has been put into the form of a “Self-Exclusion Kit” produced by this Legal Service. A copy is enclosed. We have printed over 2000 copies and have only about 30 left. Neither Crown nor the Casino and Gaming Authority have thought it sufficiently important to produce or distribute such a kit. In the early stages of development, Crown impeded our efforts in that task.

A study of the success or failure of our kit has not been done as it has only been in place since August 1997. Such a study is desirable in the near future. A recent newspaper article has suggested that these exclusion orders may not be as effective as intended and it seems possible that lack of credible monitoring of the exclusion process (by the Authority) is responsible. The patron mentioned in this article was allowed to regularly enter the casino and gamble whilst an order was in place²³. Although he was eventually charged after repeatedly entering the casino in breach of his order, this case indicates that the orders may be less effective than was expected because enforcement depends on the discretion only of the casino.

A further indication of the potential ineffectiveness of exclusion orders recently came to the attention of the Melbourne County Court²⁴. The defendant in the matter was charged by the DPP with thirteen breaches of Casino exclusion orders. His Honour Judge Mullally questioned why the breaches were allowed to continue, and received no answer from the DPP. His Honour also questioned the appropriateness of the DPP’s involvement in the prosecution of these matters. The apparent suggestion of His Honour is that the Casino should be much more focused on preventing breaches before they occur, rather than merely instructing the DPP to prosecute breaches after they have occurred.

It must be remembered, however, that without a proper study, no real conclusions can be drawn or suggestions for improvements made. Regulatory authorities are the proper organisations to conduct this study and we consider that the Commission is in a very good position to recommend same in the strongest possible terms.

²² *Casino Control Act 1991* (Vic), s 77.

²³ S. Butcher, ‘Spuds turn into chips in lengthy ‘career’’, *Age*, 20 March 1998, p. 4.

²⁴ Before His Honour Judge Mullally, County Court, on 22 June 1998

Recommendation One:

Regulatory authorities should conduct a study to gauge the effectiveness of the Self-Exclusion process and determine whether any reforms need to be made to legislation, and to regulatory practices, to increase the effectiveness of self-exclusion.

2. Policing Venues:

A real criticism of the exclusion process is that there is an inherent difficulty in policing every individual who walks into any gaming venue. This will be exacerbated if individuals choose to disguise themselves in order to gain entry. If policing entry is neglected, what will be the extent and nature of the liability on the part of the venues? This question has many implications. A Queensland Supreme Court ruling late in 1997 established a duty of care of a hotel towards an intoxicated patron who left the premises and was subsequently hit by a car²⁵. The hotel was found to be 25% liable and the patron 45% liable for the outcome. It is understood, as a result of this, that the hotel insurers plan to have a clause inserted in their policies in relation to the duty of care to reduce their exposure²⁶. We speculate that if a Court is prepared to find a venue responsible for the direct consequences of an alcohol addiction, it is also possible that the consequences of addictive gambling will also be brought home to venues unless self exclusion is enforced in a realistic and technologically sophisticated manner and venues adopt serious measures to discourage problem gamblers.

Recommendation Two:

Governments and regulatory authorities ought to move to amend legislation and regulations to set out the extent and nature of liability of venues when problem gamblers are allowed access. Insurance companies should be encouraged to place pressure on venue owners to take initiatives that will mitigate loss. These initiatives could include

- *the clear display of posters informing patrons of access to help groups and the self-exclusion process, and*
- *Modifying EGM's to insert digital time reminders and electronic voice challenges to 'continuous' gamblers.*²⁷

Section 77 of the *Casino Control Act 1991* (Vic) imposes a \$2000 fine on excluded patrons who breach their order and enter a gaming venue. Is it right to penalise people for breaching the order by fining them? Such people inevitably have enough financial pressures and constraints, even when paying a fine by instalments. A common reason cited for gambling is to escape financial constraints and similar pressures in life. A fine is very likely to be counterproductive, to the extent that it may cause the person to gamble more to pay it off.

Recommendation Three:

²⁵ *Johns v Cosgrove & Ors* (Unreported) 12th December 1997, Queensland Supreme Court.

²⁶ Adrian Evans, Co-ordinator, SLS Inc.

²⁷ A suggestion of Mark Dickerson, Chair, Institute of Gambling Studies, University of Western Sydney.

Legislation ought to set out an alternative “penalty” to a fine, such as a community based order (CBO), with an emphasis on a defendant participating in programmes that assist others with their problem gambling. The practice of converting fines to CBO’s is regularly employed in courts in relation to other matters when offenders are unable to pay a fine due to their financial circumstances.

3. Defining Underlying Addictions

Is gambling behaviour a symptom of another condition or fulfilling some other unsatisfied need? If so, is there an alternative activity that would satisfy that need? A psychology-based approach such as this has value. Problem gambling has been recognised as a mental disorder by DSM-IV²⁸.

Moody (1995) recognised that if there is to be any success in treating problem gamblers, we must understand what precise satisfaction is sought from gambling²⁹. As yet, the underlying “need” has not been identified, but as with other addictions, it may have a psychological or biological basis (or a combination of both) and may differ between sufferers. Until such a cause or causes are identified, “curing” a gambling addiction may not be that successful because the “satisfaction” that Moody referred to cannot be quenched. As it is, many treatment programmes have only about a 15% success-rate, which shows much work is yet to be done³⁰. Gambling regulators has the overall public interest to consider and not just a ‘prudential issues’ emphasis. They ought to be in the forefront of research into the psychology of gambling.

Recommendation Four

Venues must be levied, or the (gambling financed) community support funds tapped to provide money for comprehensive psycho-social and medical research into the satisfaction sought within compulsive gambling, focussed on prevention strategies. Regulatory authorities ought to begin major ‘Quit’ campaigns focussed upon problem gamblers (similar to those targeting addictive smokers) by taking leadership on the issue of gambling addiction and not leave this public interest field entirely to non-regulators.

4. Identification of patrons entering venues -

One way of controlling entry to venues could be through the use of identification using a drivers licence or passport. If all patrons were required to show identification, rather than just those that look under the legal age of 18, staff could easily identify, from a generally available list, any patrons that were excluded from the venue.

Most patrons carry, or could carry, one of these forms of identification with them without great inconvenience. In light of the fact that many venues are

²⁸ American Psychiatric Association, *op. cit.* para. 312.31.

²⁹ Moody (1995) cited in Brown, *op. cit.* 40.

³⁰ Synavel Business Services, *Reducing Problem Gambling through Education and Prevention*, in *Gambling in Victoria - People Together Project Shaping Victoria’s Future Public Hearings: Shaping a major investigation into the social impact of gambling in the State of Victoria* (1996) 60; In a conversation with the Gambling Research Unit (part of G-line), we were informed that without continual assistance, it is very possible to have a relapse and return to old gambling habits.

extensively monitored by video, such a requirement of patrons could not reasonably be regarded as an invasion of privacy.

Recommendation Five:

There is a need for regulators to adopt and enforce monitoring entry to venues if compulsive gamblers and their families are to be protected. Compulsory checking of some form of identification such as drivers licences may sufficiently deter individuals seeking to avoid detection.

Recommendation Six:

The United Kingdom 'Mandrake' software technology ought to be added to all EGM's to scan the faces of players and refuse access to those who have been excluded from venues.

Recommendation Seven:

Legislation needs to be amended so as to make provision in one State for prohibiting persons excluded from casinos and gaming venues in other Australian States and Territories. Without such legislation, the purpose of those exclusion orders is defeated and venues may open themselves to liability for allowing an excluded person to gamble.

5. Education -

There appears to be a growing need for education programmes and advertising that will reach people and make an impression on them. With the apparently poor rate of success of treatment programmes, it appears that prevention may be the best approach. Whilst the Victorian Government's recent announcement of \$5 million allocated over the next three years for education and publicity is commendable, a consistent, integrated state and nationwide gambling curriculum is needed to sufficiently address the issue.

Recommendation Eight:

Regulators ought to seek a balance between controlling gambling and promoting education and awareness of the problems associated with it. Any school-based programmes probably need to be presented by people close to the students' own age and in a form that relates to them. There also needs to be a greater emphasis in mathematics classes of probability theories and how they relate to gambling.

In order for advertising to be effective (and realistic), advertising standards will need to be changed because current adverts do not show that the "house" always has the advantage³¹. Current adverts are often not hard-hitting enough in relation to the true negative effects of gambling. This change may help to curb the number of problem gamblers.

Recommendation Nine:

Regulators should seek to change advertising standards to make advertising more realistic, by displaying the true odds of gambling. Adverts should be

³¹ D. Maxwell, *Gambling and its effect on families*, in *Gambling in Victoria*, op. cit. 134.

aired more often and at times when there is a maximum audience. In particular adverts should highlight the fact that the house always has the advantage, as well as indicating the true odds for winning. Inducements to gamble in adverts, such as free meals, prizes and 'pokie' vouchers, should be reduced or banned.

Recommendation Ten:

All electronic gaming machines should be required by law to display the odds of winning in a prominent position on the machine.

6. Involuntary Exclusion -

Although Involuntary Exclusion is anachronistic because it assumes that others know what is best for the gambler and that the gambler should have no input to their own treatment, it is worthy of serious research. A more satisfactory alternative may be to compel them to go to counselling - but this option may fail because the problem gambler resents the intrusion into their life and lead to them disguising themselves to gain entry at venues. However, if it is shown through research that problem gambling is causing damage to the *wider* community, the situation may be analogous to drink driving cases, where drivers are involuntarily prevented from driving.

Recommendation Eleven:

Regulators ought to commission research into the statistical relationship (if any) between the behaviour of compulsive gamblers and harm to the wider community.

7. Establishing a statutory self-exclusion process for non-casino venues

Under the Victorian Licensed Venue Operators Code of Practice, venue operators agree to support 'local' venue self-exclusion programs³². However, the concept of self-exclusion from non-casino venues is not prescribed by legislation. There is no logical reason for self-exclusion to be required by legislation in one type of venue but not in others, particularly when, as in Victoria, the other venues number in the hundreds. These venues do *not* prominently display anti-addiction information, or relevant telephone assistance lines. Staff are *not in practice* required to enforce the Code of Practice! Their conflict of interest is monumental and at present is of complete unimportance to the Victorian Government. We will suggest to the Casino and Gaming Authority that it assert a new agenda and argue publicly and privately for legislated ethical standards that avoid conflicts of interest in this industry.

Recommendation Twelve:

Exclusion possibilities for non-casino ('local') venues must be legislated so that orders and penalties can be monitored and enforced by regulators.

8. Changing bankruptcy laws in relation to people who declare themselves bankrupt on the grounds of gambling -

³² Licensed Venue Operators Code of Practice (Vic).

Under s 271 of the *Bankruptcy Act 1966* (Cth), a person who declares themselves bankrupt due to gambling is guilty of an offence punishable by up to one year's imprisonment. This is unjust and anachronistic because it serves to punish and not treat or rehabilitate. It disguises possible statistical links between gambling and bankruptcy. Imprisonment is unlikely to offer any rehabilitation options and so serve little effective purpose other than to keep gamblers out of venues. This section clearly fails to recognise that some gamblers gamble because they have an uncontrollable addiction which will probably recur once they are released from prison.

Recommendation Thirteen:

The Commission ought to recommend to the Commonwealth that it amend section 271 of the Bankruptcy Act 1966 (Cth) so that a gambler who declares bankruptcy on the grounds of gambling does not face criminal sanctions.

9. Other recommendations in relation to gaming venues -

These recommendations relate to the gaming venue itself (regardless of size) and its conduct in relation to patrons³³:

Recommendation Fourteen:

Gaming venues should have windows and where these already exist, venues should not be required to take these out for the purpose of gaming.

Recommendation Fifteen:

That gamblers who have a "large win" (over \$1000) be required to participate in a "cooling off" period before collecting these winnings and be given a cheque of credit redeemable at a bank or place other than a gaming venue.³⁴

Recommendation Sixteen:

That ATMs be located away from gaming venues.

Recommendation Seventeen :

That all gaming venue staff have a gaming endorsed 'Licence', similar to the Victorian initiative and sufficient to provide gaming venue workers with information regarding the specialised obligations of staff who are a part of the gaming industry.

Conclusion

The gaming industry will continue to attract opposition and criticism whilst it shows itself relatively indifferent to the victimisation of problem gamblers and their families. The Victorian regulator has operated for some time under a legislative regime controlled by a Government that has seen the growth of gambling only in the context of economic recovery in Victoria. Blandishments by State Ministers to the effect that the Victorian Government is concerned for problem gamblers have not been supported by sufficient action.

³³ The recommendations in this section come from a presentation by Neil Mellor: *Submission to People Working Together Project - The Terms of Reference Hearing on the Social Impact of Gambling in Victoria* in *Presentation to Public Hearings on Social Impact of Gambling, in Gambling in Victoria, op. cit.* 170.

³⁴ Licensed Venue Operators Code of Practice (Vic).

Governments come and go. New governments will be tempted to support existing policy for pragmatic reasons. Victims remain however and community awareness of their pain is now spreading. Regulators are of course constrained by their legislation and by the 'jobs creation' rhetoric, but they can seize the chance to adopt a more independent stance. If they do, they may be remembered years from now, not as the gaming industry equivalent of the cigarette manufacturer, but as the first regulators anywhere prepared to seriously support the interests of our compulsive gamblers and their families.

We ask that the Commission give consideration to allowing a public presentation of this submission at the hearing in Melbourne on 23 November 1998 and would be pleased to discuss same.

Please contact **Adrian Evans** at SLS on 03 9562 3144.

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