

# Australia's Gambling Industries

## A Response to the Productivity Commission's Draft Report

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Prepared by



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## **Foreword**

This Submission was prepared independently by ACIL Consulting Pty Ltd. The assignment was funded by a group of six gambling service providers — Crown Limited, Jupiters Limited, Star City Casino, TABCORP Holdings Limited, TAB Limited and Tattersall's. They support the policy principles enunciated in the Submission but do not necessarily agree with some of the conclusions drawn by ACIL from their application.



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## Findings in the Draft Report: Summary of Responses

Draft Report Finding	Summary of Response
Australia has 21 per cent of the world's electronic gaming machines.	<ul style="list-style-type: none"> <li>▪ The PC's figure is wrong and has seriously misled the public debate.               <ul style="list-style-type: none"> <li>– The correct figure is about 2 per cent</li> </ul> </li> </ul>
Australians are the heaviest gamblers in the world.	<ul style="list-style-type: none"> <li>▪ Such simplistic comparisons are also highly misleading;               <ul style="list-style-type: none"> <li>– they do not recognise the fact that access to gambling in Europe and North America is generally far more restricted than it is in Australia;</li> <li>– Australia has almost no football pools gambling; in Europe it is an important outlet; and</li> <li>– in products where the restrictions are broadly similar (eg: lotteries), spending per head in Australia is comparable to that in other countries.</li> </ul> </li> </ul>
Gambling is a 'questionable pleasure' and this makes the industry 'special' for the purposes of government policy.	<ul style="list-style-type: none"> <li>▪ The Draft Report relies purely on surveys of respondents' perceptions of gambling.               <ul style="list-style-type: none"> <li>– It did not draw on any analysis of the ethical issues associated with gambling.</li> <li>– The surveys sought no answers on the degree to which governments as distinct from civil society ought to be concerned with gambling issues;</li> </ul> </li> <li>▪ the Draft makes no effort to consider the merits of:               <ul style="list-style-type: none"> <li>– leaving ethical issues to the family and the other voluntary groupings that make up civil society; and</li> <li>– limiting the role of government in addressing such issues.</li> </ul> </li> </ul>
The 'production-side' benefits of having a gambling industry 'are largely illusory.'	<ul style="list-style-type: none"> <li>▪ The Draft Report ignores the industry's contribution measures of activity which appear in the national accounts published by the Australian Bureau of Statistics;               <ul style="list-style-type: none"> <li>– last year the ABS showed the industry generated \$6 billion in gross domestic product and some 135,000 jobs; and</li> <li>– if governments were to treat the industry more like other industries, its GDP and job contribution would be bigger than these figures suggest.</li> </ul> </li> </ul>
Some 2.3 per cent of adults have significant problems caused by their gambling.	<ul style="list-style-type: none"> <li>▪ The Draft Report exaggerates the extent of problem gambling due to the way it was estimated.</li> <li>▪ There are serious flaws in the surveys used by the PC to collect the data used to make the estimates:               <ul style="list-style-type: none"> <li>– self-assessments by gamblers of the cause and effect of problems associated with their gambling were not independently validated;</li> <li>– there were biases in the selection of respondents and the questions they were asked;</li> <li>– the surveys used the outdated SOGS to identify problem gamblers; and</li> <li>– no effort was made to check whether non-gamblers, non-regular gamblers and regular gamblers would respond differently to the SOGS questions.</li> </ul> </li> </ul>
Problem gamblers lose an average of nearly \$12,000 a year on their gambling.	<ul style="list-style-type: none"> <li>▪ The Draft Report exaggerates how much problem gamblers spend:               <ul style="list-style-type: none"> <li>– the survey results on spending by problem gamblers were arbitrarily increased to correct for apparent under-reporting to at least double the degree they should have been;</li> <li>– the proportionate correction was far bigger for problem gamblers than for non-problem gamblers. There are reasons for thinking the proportionate increase for problem gamblers should have been less than average (given that people in counselling would be facing up to the magnitude of their problems).</li> </ul> </li> </ul>

Draft Report Finding	Summary of Response
Problem gamblers account for about one-third of the total expenditure on gambling each year.	<ul style="list-style-type: none"> <li>▪ This is a very substantial exaggeration (perhaps a doubling) of the share of gambling expenditure contributed by problem gamblers.               <ul style="list-style-type: none"> <li>– It is the product of the previous two estimates that were each exaggerated.</li> </ul> </li> </ul>
All gamblers are at risk of becoming a problem gambler.	<ul style="list-style-type: none"> <li>▪ The PC's figures show the risks of becoming a problem gambler are very low.               <ul style="list-style-type: none"> <li>– Over 80 per cent of adults' gamble, but only 2.3 per cent develop a significant problem.</li> </ul> </li> </ul>
The impacts associated with problem gambling are largely attributable to gambling.	<ul style="list-style-type: none"> <li>▪ This finding is based on self-assessments by gamblers:               <ul style="list-style-type: none"> <li>– they have an interest in portraying themselves in the best light rather than to tell the truth; and</li> <li>– they were only asked about the negative impacts of gambling and not about the beneficial impacts.</li> </ul> </li> <li>▪ The PC did not independently validate the self-assessments,               <ul style="list-style-type: none"> <li>– despite clear evidence of error in the survey responses on spending on gambling, responses on all other impacts were accepted at face value.</li> </ul> </li> </ul>
The benefits to the community from gambling (the consumer surplus) is between \$5.4 billion and \$6.3 billion a year.	<ul style="list-style-type: none"> <li>▪ If the PC had treated problem gamblers like other consumers,               <ul style="list-style-type: none"> <li>– its estimate of consumer surplus would be \$8.0 to \$11.3 billion a year</li> </ul> </li> <li>▪ The PC makes the highly arbitrary and controversial assumption that problem gamblers do not benefit from any expenditure in excess of \$1,250 a year;               <ul style="list-style-type: none"> <li>– the Draft Report provides no empirical evidence for this assumption</li> <li>– this assumption implies that problem gamblers know what they are doing up to \$1,250 but not beyond that figure; and</li> <li>– the Draft Report does not explain how such an inconsistency could occur in practice.</li> </ul> </li> </ul>
The costs to the community from problem gambling are between \$1.1 billion and \$5.2 billion a year.	<ul style="list-style-type: none"> <li>▪ The cost estimates in the Draft Report have many serious flaws:               <ul style="list-style-type: none"> <li>– they assume the impacts in question are solely due to gambling. Elsewhere, the Draft Report suggests in one place that they are 'largely' caused by gambling. In another place it professes not to know one way or the other;</li> <li>– they wrongly assume that those affected by a problem gambler (eg: his family or his employer) can do nothing to change the gambler's behaviour or reduce its impacts on them; and</li> <li>– the costing of emotional pain and suffering is based upon highly dubious compensation rates for victims of crime. Most States do not provide such compensation and the rates used by the PC have been repealed by the State in question (Victoria).</li> </ul> </li> <li>▪ The estimates include the cost of depression as well as the cost of some of its symptoms (eg: thinking about suicide). This is double counting.</li> </ul>
The net benefits from gambling are between \$150 million and \$5.2 billion a year.	<ul style="list-style-type: none"> <li>▪ The Draft Report considerably under-estimates the net benefits to the community from gambling;               <ul style="list-style-type: none"> <li>– correcting for its arbitrary and controversial benefit estimate alone would make the net benefits \$2.8 to \$10.2 billion a year.</li> </ul> </li> <li>▪ The huge range of the Draft Report estimates of net benefits underlines how speculative they are.</li> </ul>

Draft Report Finding	Summary of Response
<p>The Draft Report seeks reactions of participants to replace the existing self-regulatory arrangements with:</p> <ul style="list-style-type: none"> <li>▪ A statutory duty of care</li> <li>▪ Legislated codes of practice</li> <li>▪ New rules on: <ul style="list-style-type: none"> <li>– consumer information</li> <li>– advertising controls</li> <li>– ATM access and availability of credit</li> <li>– Self-exclusion arrangements.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ These proposals could involve substantial additional costs to non-problem gamblers and/or the gambling industry, <ul style="list-style-type: none"> <li>– for a very uncertain benefit.</li> </ul> </li> <li>▪ In any event, the Draft Report has not evaluated the existing arrangements to any significant degree. They include: <ul style="list-style-type: none"> <li>– consumer protection provisions of the <i>Trade Practices Act</i> and fair trading laws;</li> <li>– the common law duty of care; and</li> <li>– the voluntary codes of practice being used by gambling industry.</li> </ul> </li> <li>▪ The evaluation needs to: <ul style="list-style-type: none"> <li>– estimate the costs and benefits of each option; and</li> <li>– assess the feasible range of options, including the non-legislative alternatives.</li> </ul> </li> </ul>
<p>Did not find a strong or an unambiguous case for significant reductions in gambling taxation.</p>	<ul style="list-style-type: none"> <li>▪ The economic modelling commissioned by the PC found significant economic efficiency benefits from lower and more uniform taxes: <ul style="list-style-type: none"> <li>– the removal of gambling taxes is said to generate gains of \$477 million to \$735 million a year to consumers; and</li> <li>– figures like this mean that each dollar of gambling revenue costs \$1.12 to \$1.19 to raise.</li> </ul> </li> <li>▪ Lowering taxes would not increase the risk of creating new problem gamblers <ul style="list-style-type: none"> <li>– the Draft Report's study of the link between access and risk uses the wrong proxy for 'access' and according to our statistical expert, can be accused of data dredging,</li> <li>– just as the Draft finds with entry controls and EGM caps, the burden of higher taxes fall disproportionately fall on problem gamblers (because they have the least cost-sensitive demand);</li> <li>– economic modelling commissioned by the PC found tax cuts lead to <i>reduced</i> expenditure by gamblers. This is not consistent with the idea of problem gambling growing; and</li> <li>– in any event, blanket taxes on gambling are an inefficient way to address problem gambling as vast majority of people are not at risk</li> </ul> </li> </ul>

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## 1. General Comments on the Draft Report

### 1.1 What are the main defects of the Draft Report?

The biggest surprise in the Draft Report's is the switch in onus of proof.

In brief, in this report, the PC has taken a 180-degree about-face on the 'benefit-of-the-doubt' that it and its predecessors have traditionally given to economic freedom — that is, to allow voluntary arrangements and 'market' activity to proceed without government interference. This presumption has reflected the fact that economic freedom has consistently delivered superior living standards to any of the alternatives that have been tried, at least since the Industrial Revolution.

This time around, promoters of voluntary arrangements and market outcomes have become the defendants and the onus of proof has been placed on those arguing against the current heavy taxation and regulation of an industry. The approach is in direct conflict with the way onus of proof is being handled in the National Competition Policy.

On top of this, the Draft looks as if it wishes to portray the industry in the worst possible light. In elitist fashion, it persistently challenges the worth of the gambling activity that is undertaken by millions of ordinary Australians. It shows no real understanding of these people. The inquiry process to date has betrayed a similar attitude — whereas liaison with the welfare lobby has been open ended, industry consultation has been the minimum required for appearances.

It may be no coincidence that the Draft Report is the first to use such polemical language, as it has been the first to have been promoted to the tabloid media with 'one liners' containing false and misleading claims. The alleged degree of Australia's obsession with gambling and its alleged net costs to society are good examples of such claims in the Draft Report.

These biases are part of what leads the Draft Report to a 'business-as-usual' result. It puts forward some economically liberal proposals for some easing of operator entry conditions and poker machine caps. But high taxes would remain and a raft of new highly detailed and prescriptive regulations would be introduced — all in the name of containing problem gambling. Finally there would be more earmarking of industry taxes for programs to nurture problem gamblers.

To get to these conclusions, the Draft Report makes two heroic leaps of faith:

- (1) **Several of the effects of gambling are incorrectly passed off as 'externalities.'**
  - Gamblers' misconceptions about the risks, gamblers' regrets after the event, and gambling spillover costs — but strangely not the spillover benefits — within households and neighbourhoods are all counted as externalities. Though false — and internally inconsistent — arguments, this becomes the formal excuse for the paternalistic measures subsequently proposed.
- (2) To justify blanket tax and regulatory measures that inconvenience all gamblers to help a tiny minority of problem gamblers, **the PC asserts that all of us are at risk of becoming problem gamblers.**
  - The statistical analysis of access and risks cited in support of this is fraudulent (see later).
  - Moreover, it does not fit with the mounting medical evidence that compulsive gambling, in common with other obsessive behaviours, is brought on by rare conditions (and events) which few people encounter.
  - The contradiction is made worse because, by the Draft's own admission, heavy taxes, entry controls and machine caps raise costs for existing problem gamblers and push some gamblers who might otherwise be close to having a problem over the threshold.

Paternalism is nominally rejected in the Draft Report, but we are convinced that this is the real purpose of the blanket measures proposed. Consumer sovereignty takes a beating.

The extent and depth of problem gambling and its net social costs are considerably exaggerated by the Draft in an attempt to portray it as a huge public health issue. Survey figures are selectively inflated and, on the back of the faulty externality diagnoses mentioned above, private costs are counted as social costs to obtain ridiculously high figures of the cost of problem gambling to the community.

In addition to these economic and statistical transgressions, the Draft Report gives no thought to the danger of the state straying in this way into the traditional domain of civil society. There is a compelling case for the state to leave the management of the ethical consequences associated with gambling to civil society but the Draft Report has not bothered to consider the case let alone analyse it in a serious fashion. It has proceeded on the presumption that political solutions are, in principle, appropriate for ethical problems and that the only limit is a technical one of the effectiveness of their implementation.

It is ironic that some religious groups are so keen to encourage this level of intrusion given the inherent risk it poses to the role of the churches and other institutions of civil society, and to the ethical foundations of a healthy democracy. To entrust such responsibilities to government is to forget the crucial distinction between civil society and government in a free society. As the American protestant theologian, the Reverend Richard John Neuhaus reminds us:

“... democratic government is limited government. It is limited in the claims it makes and in the power it seeks to exercise...limited government means that a clear distinction is made between the state and the society. Other institutions — notably the family, the Church, educational, economic and cultural enterprises — are at least equally important actors in the society. They do not exist or act by sufferance of the state. Rather, these spheres have their own peculiar sovereignty which must be respected by the state.” (Neuhaus 1984)

The Draft Report acknowledges the challenges by leading economic thinkers to the psychologists’ view that compulsive consumers require paternalistic care, but these are rejected on the basis of an irrelevant pretext about externalities — an issue separate from whether compulsive actions are a reasonable expression of consumer sovereignty. In doing so, the Draft Report side steps another reason for respecting consumer sovereignty.

Overall the Draft Report contains some useful economic insights but it is a ‘curate’s egg’. Our assessment is that the inquiry is badly off-track. An outline of our main complaints and suggested remedies is presented below.

## 1.2 Points of agreement

Notwithstanding our general disappointment with the Draft Report, some things in the Draft are *not* in dispute. In particular we are happy to recognise that:

- some people have serious personal problems;
- some of their problems may be caused or aggravated by gambling;
- many people see it as their duty to provide moral, emotional and practical assistance to such people; and
- the industry shares this ethical responsibility with the rest of civil society.

In addition, although the Draft Report does not articulate them explicitly, there are a number of other points on which the PC and ourselves ought to agree. Some of the things that *ought not* to be in dispute include the following:

- for some people with problems, gambling is a useful distraction;
- the *Trade Practices Act* and the fair trading laws of the States and Territories protect all consumers, including gamblers;
- looking after their customers generally makes good commercial sense for gambling providers;
- the social security system has provisions to assist the poor and vulnerable, regardless of cause;
- all citizens, their families and the rest of civil society share responsibility for seeing that gambling is conducted within ethically acceptable limits;
- there is a powerful argument for the separation of ethical, business and government responsibilities in a free society;
- not all problems are worth fixing; and
- government is not necessarily best placed to fix all the problems that are worth fixing.

These are all pertinent to the two key questions facing the inquiry about problem gamblers, viz:

- Who is best placed to help?
- How is help best provided?

In our view these are not the only important policy issues confronting the inquiry but we agree that robust answers to these questions have to be clearly visible in the PC's Final Report.

### 1.3 What needs to be corrected

The areas where we consider the PC needs to revise the Draft Report are outlined below. The issues are taken up in greater detail in subsequent Chapters of this Submission.

#### **The PC needs to reposition itself as a neutral commentator**

The Draft Report gets some things right. For example:

- it opposes different treatment of different outlets which have long given the clubs an unwarranted competitive advantage over pubs.
- it opposes in general restrictions on competition in gaming; and
- on balance it comes down against caps on the number of machines.

But more generally, the Draft Report is ambivalent about the value of economic freedom and it takes a contrary position on the worth of the industry's output.

The Draft reads as if the PC has decided to cast itself in the role of an adversary to the gambling industry. There are a great many instances where, after the style of an advocate in a bitter family law case, the PC



has presented statistics and used forms of analysis and language which appear intended to portray the industry in the worst possible light.

The PC's charter requires it to run its inquiries with a view to discover more of the truth about an issue, not to win an argument.

**The PC's most important job during the remainder of this Inquiry will be to reposition itself as a neutral commentator.**

#### **There is a lack of balance in the Draft Report.**

The Draft Report concentrates on problem gambling to the neglect of other policy issues (for example, taxation, the efficiency of regulation and the productivity of the industry). Thus the vast bulk of the report is about a problem that only affects 2 per cent of the population. The issues that are important for the remaining 98 per cent get relatively short shrift. At the same time, the Draft Report assumes an undue social importance for gambling. The threat which gambling poses to our national integrity are overplayed. It should be remembered that for the vast bulk of gamblers, gambling remains a very modest expenditure item. It would probably come as a surprise to many who have read the Draft Report that the \$11 billion spent last year on gambling represents just one-fifth of the \$54.6 billion turnover of Australia's food retailing industry in 1997-98, for example.

No thought appears to have been given to placing the policy response to the risks of problem gambling into some perspective with the policy responses to the risks associated with 'excess' consumption of other goods and services. Fatty food, salt, video games, television, adventure sports, prescription drugs and tobacco are examples of just a few.

While we are also certain that the PC's figures for the costs of problem gambling are highly exaggerated, it might be helpful if the Final Report included figures for Australia analogous to the following comparative data, which appear in the recent study by the National Opinion Research Centre at the University of Chicago. Such figures would, at least, provide a sense of perspective on the relative priorities for public policy development effort.

**Table 1:** Costs of problem gambling compared to health problems

Type of problem	Annual cost (\$bn)	Prevalence (\$m)	Annual cost per person (\$)
Problem gambling	5	5.4	900
Drug abuse	110	6.7	10,000
Alcohol abuse	166	13.8	7,000
Motor vehicle crashes	71	19	3,600
Smoking	72	46	1,500

**The PC's final report ought to contain a less sensationalist portrayal of the size of problem gambling and of the significance of gambling consumption in overall expenditure in Australia.**

Another imbalance in the Draft Report is that it seems preoccupied with options for direct government intervention and it tends to ignore or slight any non-legislative alternatives. The Draft's trivialisation of the efforts of the industry to look after its customers and of the role of competition in ensuring that suppliers remain attentive to consumers' needs, are specific examples of this shortcoming.

**There is insufficient in the Draft Report on the costs to efficiency of the heavy and complex regulation & taxation of gambling. These need to be exposed and the advantages of turning where possible to voluntary industry-based approaches to consumer welfare ought to be explained.**

The broad statements in the Draft comparing Australia's gambling with that overseas are often unbalanced. They ignore the fact that access to gambling in Europe and North America is generally far more restricted than it is in Australia. And the product mix is different. Football pools are prevalent in Europe but are hardly seen here. In products where restrictions are broadly similar, such as lotteries, spending per head in Australia is comparable to that in other countries.

**Populist comparisons — such as those in the Draft Report suggesting Australians are the world's heaviest gamblers — are highly misleading. Accurate comparisons should be included in the final report and they should be properly qualified with background facts.**

#### **There are many inconsistencies in the Draft Report.**

On the PC's own figures, the risks of becoming a problem gambler are low — over 80 per cent of adults gamble but less than 3 per cent develop a significant problem. Despite the low risk, the Draft Report proposes to maintain the heavy taxation of gambling and to extend its already highly intrusive regulation.

There is extensive treatment of the adverse impacts of gambling on the gambler's friends and family, but nothing on the beneficial impacts of gambling on them. The one eyed concentration on spillover costs is one example. Applying a 'multiplier' of 10 to the numbers of people negatively impacted by problem gambling without an equivalent consideration of the positive repercussions of ordinary gambling is another example.

The Draft Report concludes that reduced taxation would pose too much of a problem gambling risk. Yet it concedes that both existing problem

gamblers and 'incipient' problem gamblers are harmed by high taxation. The proposition that these costs are outweighed by the risk that cheaper gambling will attract problem gambling recruits is not persuasive. For one thing, the Draft overstates PC's findings on the link between access and gambling risks; the statistical methodology is flawed. For another thing, the economic modelling commissioned by the PC shows that reduced taxation will not cause extra expenditure.

A massive correction is made to survey responses about gambling expenditure to make the results fit the known facts (although as noted elsewhere, the details remain unclear). However, no consideration is given to the implications of corrections of that scale for the reliability of the other survey responses obtained (for example, for divorce, depression, employment, etc). In several places, the Draft conveys the impression that the survey results will only be accepted if they fit the PC's (negative) preconceptions of gambling, gamblers and the gambling industry.

In a quite unbalanced way, the PC in one part of its report represents the industry as being pretty useful on the consumption side, but of virtually no account on the production side. The assessment is made on the basis that, if gambling were abolished, in the long run its resources would locate elsewhere. This is, of course, a point one could make of virtually any activity, particularly those in the non-traded goods and services sector of the economy.

**All of these inconsistencies in policy approach adopted by the Draft Report need to be corrected in the final report.**

The PC's surveys are fundamentally flawed. Two of the surveys undertaken for the Draft Report drew upon the South Oaks Gambling Screen (SOGS). SOGS was developed in the US to serve as a first step in a professional diagnosis as to whether patients are problem gamblers. Even for its stated purpose, SOGS is regarded in the US as outdated (notwithstanding the Draft's denial of this in one of its footnotes). Accordingly, it has no serious credentials as a basis for intervention by government. The survey questionnaires, and the SOGS elements in them, are based on self-assessment by the respondent of the causes and consequences of their misfortunes. Self-assessment is not a disinterested test. Problem gamblers' responses may have been biased, perhaps even unconsciously.

On the face of it, the sample surveyed in the PC's National Gambling Survey was biased towards 'stay-at-homes' and people with time to spare. Those contacted mostly consisted of people who were at home at around 6pm during the week or at weekends, and who had time to talk to the interviewer for up to an hour. Some of the approaches were made during Easter and the school holidays when a significant proportion of the population are away on leave. Significantly, only about two thirds of the phone numbers originally tried were answered. Some 16 per cent of

those remaining were rejected for one reason or another (for example, business number, hearing problem). Of the people left, nearly half refused to take part. The people who ended up taking part are unlikely to have been a normal group. Moreover the direction of bias is certainly not towards less involvement in gambling. The PC conducted no serious check for non-response bias.

Equally serious problems attend the other surveys.

In addition, arbitrary and controversial assumptions mean figures in the Draft Report are not conservative as PC claims. One clear example is the assumption that problem gamblers get no net benefit (consumer surplus) for their spending beyond \$1,250 a year. Another is the use of discontinued compensation rates to value the emotional pain and suffering of problem gambling.

**The PC needs to be more honest about the flaws inherent in its surveys and its arbitrary assumptions (most of which seem biased against gambling). Unjustifiable interpretations of survey results and statistical studies are used to support most of the Draft's negative findings. A more balanced approach is required in the Final Report.**

#### **The Draft Report contains serious gaps in its analysis.**

The Draft Report pretends to reflect community values. Yet its handling of the ethical issues is as sloppy as its handling of the economics and statistics. The Draft turns its back on the contribution that civil society (the voluntary sector) can make in the handling of the ethical issues surrounding gambling.

In particular, no attempt is made to test the validity of all survey answers about the causes and consequences of the respondent's gambling. A *priori*, self-assessments of those surveyed could be expected to be misleading.

Big picture issues such as vertical fiscal imbalance, the federal/state allocation of tax instruments and tax reform generally are evidently considered 'off-limits'. This is a dereliction of duty by the PC, given the inquiry's terms of reference.

There is no consideration of compliance and administration costs of the existing gambling regulation and their effects on the efficiency of the industry.

It seems the PC's method of correcting for understatement includes some significant biases towards overstatement of the severity of losses by problem gamblers (the lower the uplift factor applied to non-problem gamblers, the higher the proportion of total spending that is inferred to problem gamblers).

The discussion of regulation is naive, incomplete and fails to approach the issue using the commonly accepted and widely used economic framework for analysing regulations. This is surprising given the approach adopted by the PC and its predecessors in assessing regulation and those being applied under National Competition Policy guidelines. The efforts of the PC in this area fall far short of what is normally expected from public agencies in reviews of this type.

**All of the errors of omission identified in this Submission need to be fixed in the Final Report.**

**The Draft Report contains serious factual errors in sensitive areas**

Their publication has seriously prejudiced the standing of the industry in the eyes of the community.

The claim that Australia has 21 per cent of the world's gaming machines is patently incorrect — the correct figure is closer to 2 per cent. Even a cursory reading of the international gambling literature would have exposed this error. For example, the European Union has more than 1 million low payout machines (plus casino style EGMs) alone — rather more than the 58,895 claimed in the Draft. Even the Draft itself contradicts this figure in the appendix describing regulatory regimes.

The description of the Black Rhino is misleading. It fails to adequately reflect the laws of probability and an understanding of random number generation. In talking about the alleged number of times a player would need to press the button to win, the PC contradicts its earlier claim that the odds of winning are the same for every push of the button.

There are errors of fact about the industry. To name just one, it is wrongly claimed that Australian casinos are required to have entertainment and hotel facilities in addition to their casino facilities.

**There are serious errors in the Draft Report that have contributed materially to creating an atmosphere prejudicial to the gambling industry. They need to be admitted and corrected in the Final Report.**

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## 2. Nature of Gambling

The Draft Report defines gambling as "... staking money on uncertain events driven by chance" (p. XVI). As the Draft Report notes, this definition encompasses many risky financial activities, including speculation in commodity and financial markets.

At the same time, the Draft Report attempts to suggest that gambling is fundamentally different from other risky financial activities, such as day trading of shares and buying and selling financial derivatives and commodity futures. For instance, throughout the Draft Report there are numerous assertions that purport to establish such a distinction. Some of these are as follows:

"... gambling retains the distinguishing feature that, as a group, gamblers inevitably lose over time — it is more like consumption than investment." (p. XVI)

"Investments, even risky ones, can realistically be expected to offer a positive rate of return ... even after tax and the commissions of the providers. This is true for investors as a group and also typically for each individual investor." (p. 5.3)

The position adopted by the Draft Report displays a fundamental misunderstanding about the nature of gambling on the one hand, and of investment and speculation on the other. Accordingly the distinction that the Draft Report seeks to make between these activities is both false and misleading. The portrayal of ordinary gambling activity this way helps the Draft Report establish the need to 'save people from themselves'. It becomes part of the innuendo that is used to support the PC's preference for extensive regulation and heavy taxation of gambling.

**The Draft Report misunderstands the nature of gambling and makes a false and misleading distinction between gambling and other risky financial activities.**

### 2.1 Gambling is not unique

The Draft Report is broadly correct when it states — in Section 5.2 — that gambling is a form of entertainment where a major element of the entertainment is the chance of winning some money.

However, it is more conceptually accurate to describe gambling as a service that combines two separate elements — an entertainment element (consumption) and a chance to win some money (highly risky investment

and/or speculation). Neither of them differs in any fundamental way from other services of the same type. The entertainment element is just like many other entertainments where uncertainty is a key element of the enjoyment — such as a sporting event or a live entertainment — and where disappointment at the final outcome is a common result. The investment element is similar to many highly uncertain financial services — day trading, financial derivatives and commodity futures are good examples. Of course, gambling products exhibit these two elements in varying combinations — lotteries and electronic gaming machines are more at the entertainment end of the spectrum and games, such as blackjack, that allow scope for skill to influence the odds of winning can be more at the investment end of it.

### **2.1.1 Benefits determined by utility to gamblers**

The benefit to the gambler of the entertainment is dependent upon the nature of the game being played and how the particular event plays on the day. The benefit to the gambler of the chance to win the prize-money simply depends on the size of the bet and the odds of winning. In the case of the entertainment element, the benefit may outlast the conduct of the event whereas the benefit of the chance is exhausted once the outcome of the event in question has been decided.

The important point to note is that the overall benefit to the gambler is determined by the sum of the utility, to the gambler, of each of these elements. This overall benefit is not equivalent to the financial return that might be expected statistically by the consumer at the time that the bet is placed.<sup>1</sup> The Draft Report is wrong in suggesting that it is and, by doing so, shows a lack of understanding of how risk affects investment behaviour.

The expected financial return is only one of the variables that enters into an individual's estimation of the utility of the transaction. It is not even the most important variable to the gambler. The Draft Report, for example, admits the size of the prize-money "is a significant determinant of demand" for some forms of gambling — especially electronic gaming machines and lotteries (p. 3.12). Another important determinant can be the distribution of the individual prizes.

In this respect, gamblers are not fundamentally different to other investors. Rational investors may be influenced by anything that can affect either the size or the distribution of the range of possible returns associated with an investment proposal. The expected level of the returns is only one perspective on these possibilities. There are others that can be

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<sup>1</sup> The expected financial return is equal to the size of the prize-money times the probability of winning it.

important to a rational assessment of the risks and rewards of an investment proposal.

**Gamblers are not fundamentally different to other people who engage in risky financial activities.**

### 2.1.2 Gambling similar to risky financial services

Contrary to what the above quotes from the Draft Report imply, the economics of insurance and financial derivatives — such as futures and options contracts — are very similar to the economics of gambling. For example, those who enter a futures contract — to buy or sell a specified financial asset at specified time in the future — are collectively guaranteed to lose money. Any financial gain to one party is matched by a financial loss to another and there are transactions costs associated with creating, exchanging and settling these contracts.

Collectively the buyers and sellers of a specified futures contract know that they will be *financially* poorer from exchanging the contract in question. Notwithstanding this fact, every buyer and every seller estimates that he or she is better off from entering the contract in question. Both sides of the transaction gain because the buyer and the seller have different attitudes to the risk that is involved with holding the underlying financial asset. The futures contract allows the parties to share that risk between them in different ways.<sup>2</sup>

It is the utility of that risk sharing to each party that determines the mutual benefits of the transaction. The financial flows merely represent the costs of the transaction to the parties. The same is true for insurance and gambling.

The Draft Report displays a disturbing naivety about the realities of investment and risk. In the real world, no group of investors are guaranteed a positive rate of return, and whether they have a realistic prospect of doing so — as the Draft Report asserts — is purely a matter of conjecture.

The fact that those who have invested in particular types of assets have received a positive return on their money in the past, does not mean that that they are certain of doing so in the future, either individually or collectively. Even a casual acquaintance with economic history would have revealed to the PC the fact that most financial assets have not consistently produced a positive rate of return and that the value of many types of assets have been wiped out completely. Indeed for extended

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<sup>2</sup> Indeed if someone fully hedges their exposure there is no risk of an individual financial loss beyond the transaction costs that are involved in such contracts.



periods of time returns on some assets have been negative. For example, between 1966 and 1981 the annual average return to investors in the US stock market — the largest in the world — was negative, after allowing for the effects of inflation.<sup>3</sup>

**Draft Report displays a naïve understanding of investment generally as no group of investors is guaranteed a positive rate of return and disappointment at the end result is commonplace.**

## 2.2 Perceptions mean little

The Draft Report tries to paint gamblers as being “ambivalent” about their gambling (p. 5.5). This conclusion was based on the fact that the majority of respondents in the PC’s national survey said that their gambling over the previous twelve months had not made their life more enjoyable.

If, as is highly likely, these respondents had not won a major prize, such responses are not in the least surprising. However, they do not establish the ambivalence asserted by the Draft Report. To do so the Draft Report needed to show that the respondents would have been better off, in their own estimation, by not spending what they did spend on gambling in that period. The Draft Report does not do this.

### 2.2.1 Perceptions may raise ethical questions

The Draft Report also asserts that the reason for this ambivalence is because gambling is seen as a “questionable” pleasure by both the public and policy makers” (p. 4.12). In so doing the Draft Report points to surveys — including its own national survey — that reveal negative community attitudes about gambling and the extent of its availability.

In doing so, the Draft Report notes that the current restrictions on the availability of gambling are very tight compared to the treatment of what it terms ‘normalised’ goods. It also notes that it has not found anyone — including the gambling industry — that is lobbying for their complete removal. The Draft Report sees these as corroborating the questionable character of gambling.

There is no doubt that gambling is associated with a number of significant ethical issues. These ethical issues certainly underlie many of the negative perceptions revealed by the surveys that are referred to by the Draft Report. Given their importance in the debate, these ethical issues will be addressed in the next Chapter.

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<sup>3</sup> The total return includes both the effect of dividends and capital appreciation; see Siegel 1998, p. 13.

## 2.2.2 Perceptions a poor basis for policy

In the meantime it is worth noting that the Draft Report is quite wrong to imply that such surveys establish that gambling is in fact a questionable activity. They cannot and do not. At best, all that such surveys can do is to show what *perceptions* people have of gambling. They do not demonstrate that these perceptions are either based upon an informed understanding of the issues or that they are logically consistent. Such perceptions — even when they are widespread or strongly felt — do not provide a sound basis for public policy as they do not necessarily reflect the true interests of the community as a whole. As Edmund Burke, the Eighteenth Century British statesman, once observed to the voters in his Bristol electorate:

“Your representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion.” (Jay 1996, p. 63)

Elsewhere, the Draft Report underlines this very point when it admits there is:

“... a lack of reliable ... analysis about the economic and social impacts of the expansion of gambling. The dearth of quality information has also been an obstacle to good public policy, ... which [has] contributed to community concerns [about gambling].” (p. XV)

Despite acknowledging that ignorance has contributed to the public perceptions about gambling, the Draft Report appears to have no qualms about taking such perceptions at face value. In Chapter 15, the Report proposes that governments should intervene to correct the misperceptions it believes gamblers have about the games they play and the odds that are involved. In other words, in one case the Draft Report accepts such misperceptions without qualification but in another case, it insists that they must be corrected. This is a major inconsistency that substantially detracts from the credibility of the Draft Report.

The Draft Report is also wrong to imply that all values in the community can be faithfully expressed in polls and surveys, and that agreement or disagreement about the ‘worth’ of different activities is an appropriate basis for policy action. Some aspects of life ought to remain outside the political process. Constitutional scholars are especially wary of the politicisation of ethical questions. Poll or no poll, there is no objective basis for a State to become involved in such matters. Every week the majority of adults who gamble are voting in favour of gambling in the most emphatic way possible — with their own money, money that they could have used for many other good and services. The Draft Report ignores the fact that such economic activism is a clear and authentic expression of the value that individual consumers place on their consumption. It has the clear advantage over political activism of

providing a more accurate indication of both the breadth and the strength of people's views.

The Draft Report also fails to acknowledge that most people are clearly uninterested in participating in much political activity such as lobbying or demonstrations — as they do not see that it is an effective use of their time and energy in advancing their own interests.

**The surveys of community attitudes to gambling that are referred to by the Draft Report *do not* establish that gambling is a questionable activity. Such surveys can only show the *perceptions* people have of gambling.**

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### 3. Ethics, Gambling & Government

As discussed in the previous section, much is made in the Draft Report of the “questionable” nature of gambling. The Draft Report points to the fact that the financial gains by those who win are paid for by the financial losses of those who lose. It observes that these financial losses can cause “distress”, and even “financial and personal ruin” for a minority of gamblers (p. XXII).

The Draft Report asserts that “... all societies have ethical and social norms, some strongly enshrined in legislation...” (p. 4.11). It adds that such norms reflect what the community at large thinks is right. In the case of gambling, the Draft Report sees such norms in the fact that in Australia, the law does not allow children to gamble at all and heavily restricts gambling by adults. In the view of the Draft Report, these restrictions confirm that gambling is ethically questionable in the mind of the community and it concludes that:

“... it is legitimate to gauge the social acceptability of differing regulatory approaches to gambling.” (p. 4.13)

As far as the PC is concerned, this is apparently the end of the matter. Regrettably, the Draft Report does not include any kind of survey of the literature on ethics and moral philosophy to extract any guidance for public policy in addressing ethical issues generally. It did not try to examine critically the ethical issues that are popularly associated with gambling. And finally, it did not set out to develop a framework with which to address such issues in a public policy context.

The PC has not addressed these issues in its previous inquiries. In the circumstances, therefore, it would have been preferable for the PC to spell out its approach to these issues in the Draft Report in some detail. We would urge the PC to correct its omission in its Final Report.

The only possible explanation for the failure of the PC to undertake a comprehensive analysis of the ethical issues in gambling is that it saw that such an analysis was outside its task. Once the appropriate ethical norms were identified, the PC apparently saw its job as being confined to a technical assessment of the benefits and costs of the different government interventions to implement those norms. It seems to have implicitly concluded that it was for others to decide the content of the norms. In doing so, the PC apparently did not think to ask *whose* norms should determine the outcomes that were to be sought and how any conflicts over that issue should be resolved.

**The Draft Report does not critically examine the ethical issues associated with gambling.**

### 3.1 No analysis of ethical issues

This approach assumes that public opinion and/or the legislature determine what is ethically acceptable and what is not. Such an approach shows no appreciation of either ethical principles or of the inherent capacity for human beings to do wrong. The implication that the ethics of slavery, racial discrimination or genocide turn on whether a majority in the community support them. This shows how flawed the PC's approach is.

The contention in the Draft Report that gambling is fundamentally different to other economic activities rests upon two assumptions.

- The first is that the ethical issues associated with gambling are qualitatively different to those involved in the enjoyment of other economic activities.
- The second is that ethical problems require fundamentally different policy solutions to economic problems.

Both of these assumptions may be strongly challenged and a comprehensive examination of the ethical issues would have highlighted the risk posed by these assumptions. This compounds the error of the Report's omission in not undertaking such an analysis.

Had the PC gone beyond the superficial, *vox populi* approach of the Draft Report, it could well have reached different conclusions on how government policy may best to deal with the ethical dimension of gambling. At the very least, the PC should recognise and respond to the strong case on ethical grounds that has been developed by moral philosophers and theologians in favour of personal freedom and limited intervention by government — including in the economic area.

**The PC must consider the strong case on ethical grounds in favour of personal freedom and limited intervention by government in all areas of activity.**

### 3.2 Has not shown role for government

We agree with the Report's implicit assertion that ethical standards are fundamental to the proper functioning of a free economy and a free society. Nevertheless, it does not necessarily follow that intervention by government is the best way of establishing and maintaining such standards.

The case for government intervention in this area is far less clear-cut than is implied in the Draft Report.

- In the first place, the PC needs to acknowledge the critical role played by civil society in the ethical life of the community. Civil society consists of the family and the free associations of individuals in the community. It includes the churches, universities, schools, unions, the professions, the arts, charities and other “not-for-profit” associations.
- In the second place, the PC needs to address the strong case developed by moral philosophers and theologians for civil society — rather than government — to set and enforce the ethical standards in the community. This case holds even in relation to activities such as gambling that may be seen as being ethically questionable. Government intervention, if any is justified, should be indirect. Government may need to support civil society in performing this role but it should not attempt to displace it.

For its Final Report, we believe that the PC must correct the imbalance in its treatment of the ethical issues associated with gambling. To assist the PC in doing so, the following sections of this submission briefly outline the key arguments.

**The PC needs to acknowledge the critical role played by civil society in setting and supporting the ethical standards in the community.**

### 3.3 Ethical basis of the free economy

Over the past forty years, theologians and moral philosophers of all creeds and denominations have tended to view the free economy in negative terms (Gregg 1999). However, contemporary religious thinkers are increasingly challenging this negative view. In recent years, religious thinkers lead by the US theologian Michael Novak have conducted what is arguably the first serious and open inquiry by their profession about the nature of modern capitalism (Novak 1991, Novak 1993).

The cross-currents of opinion of these matters are evident in Australian writings too. Novak has visited Australia. One of the most important local commentators has been Archbishop George Pell, whose views can be seen, for example, in an address to a policy forum of Sydney’s Centre for Independent Studies (Pell, 1999).

This body of work has led them to strongly affirm, on ethical grounds, the combination of the free economy, limited government and the free society. Their analysis and conclusions have entered the mainstream of religious thinking on these issues. For example, they have been explicitly

endorsed by Pope John Paul II in his social encyclical, *Centesimus Annus*.<sup>4</sup>

In *Centesimus Annus*, Pope John Paul II addresses the question as to whether capitalism should be the goal of countries that are rebuilding their economies and societies in the wake of the collapse of Communism. The answer that the Pope gave was the following:

“If by ‘capitalism’ is meant an economic system which recognises the fundamental and positive role of business, the market, private property, and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a “business economy”, “market economy” or simply “free economy”.” (John Paul II 1991, paragraph 42)

The case for the free economy — or democratic capitalism to use Novak’s term for it — rests on both its practical and ethical advantages, as articulated by Novak and his colleagues.

The practical case for the free economy relies on the fact that no other economic system that has been tried to date has been as successful in raising living standards across the board.

“In the long competition of the last 100 years, neither socialist nor Third world experiments have performed as well in improving the lot of common people, paid higher wages, and more broadly multiplied liberties and opportunities.” (Novak 1999, p. 70)

This is not to suggest that poverty has been eliminated in such societies or that people should not be doing what they can to reduce it but rather that everyone stands to gain from economic freedom and the poor have gained more than the rich. The combination of the free society, limited government and the free economy is emerging as part of the explanation of superior economic performance around the world.

**Religious thinkers have strongly affirmed, on ethical grounds, the combination of the free economy, limited government and the free society.**

### 3.3.1 Freedom of conscience & the free economy

The ethical case for economic freedom is founded on the inalienable right of each person to choose freely between right and wrong. Alexis de

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<sup>4</sup> An encyclical is a papal letter sent to all the bishops in the Catholic Church. In matters of faith and morals, encyclicals are binding on all members of the Church.

Toqueville, the French historian and politician who wrote the definitive analysis of American democracy, expressed it thus:

“Freedom is, in truth, a sacred thing. There is only one thing else that better deserves the name: virtue. But then what is virtue if not the free choice of what is good?” (Sirico 1999b)

In the Jewish and Christian traditions, the freedom to choose between right and wrong is fundamental — it determines whether the individual will be redeemed in the next life. To the opportunity provided by free choice, Christianity has added the fire of conscience — or the obligation to make the ethically correct choice. The complementary nature of conscience and free choice has been well articulated by Lord Acton, the Nineteenth Century British historian:

“The Christian notion of conscience imperatively demands a corresponding measure of person liberty. The feeling of duty to God is the only arbiter of a Christian’s actions. With this no human authority can be permitted to interfere. We are bound to extend to the utmost, and to guard from every encroachment, the sphere in which we can act in obedience to the sole voice of conscience, regardless of any other considerations.” (Acton 1988, p. 491)

This freedom to choose has to extend to the right to personal initiative in economic matters as it is inseparable from it — in the Jewish and Christian traditions, God created each person to be creative and inventive. This creativity and inventiveness is the very essence of the free economy and the increase in wealth that it has brought forth. It is for this reason that there is a strong case on ethical grounds for freedom of choice in economic matters. As Pope John Paul has noted:

“Not only is it wrong from the ethical point of view to disregard human nature, which is made for freedom, but in practice it is impossible to do so. Where society is so organised as to reduce arbitrarily or even suppress the sphere in which freedom is legitimately exercised, the result is that the life of the society becomes progressively disorganised and goes into decline.” (John Paul II 1991, paragraph 22)

The ethical strength of the free economy is that it focuses its citizens on the creation of wealth rather than the pursuit of power. The free economy therefore needs and encourages the rule of law. It also needs and encourages voluntary cooperation and association. In doing so it promotes self-interest in both its narrow and its high minded forms. Both forms of self-interest promote the common good of the society.



### 3.4 Support for ethical standards

The Jewish and Christian traditions regard human beings as inherently imperfect when they come to exercise their freedom to choose, and say they will be confronted by the possibility of a conflict between what they might like to do and what they consider they should do. Such ethical dilemmas mean that no choice is, or can be, made in a moral vacuum. This is not only true in the economic sphere but also in every other sphere of activity.

In other words, economic freedom is not licence to do what one likes, regardless of the consequences for oneself or for others in the community. Citizens who cannot be trusted to conduct themselves surely cannot be trusted with self-government and without democratic government economic freedoms are in jeopardy.

#### 3.4.1 Role of civil society

In a free society, economic freedom must be subject to a system of checks and balances. The economic system is checked and regulated by two other sets of institutions — democratic government and civil society. Each of these different institutions is a necessary part of the system of checks and balances that maintain the fundamental basis of the free society. Each has to be independent of the other two to be able to perform effectively in its role of pointing out the failings in one of the other institutions and holding it to account.

Of the three, civil society is by far the most important because it provides the ideas and ethical foundations that underpin both the economy and the system of government. While it is common to speak of the power of individual self-interest, the potential power of ideas is actually far greater — as the histories of political revolution and the great religions have repeatedly shown. For this reason civil society plays the vital role in defining and supporting ethical standards throughout society but especially in both business and government.

Civil society is best placed to perform this role because of its relationship to the individual. As rule, the individual has closer and more personal relationships with the institutions of civil society than is possible with a government agency. The closeness of these relationships is generally most pronounced with the individual's family, friends, co-workers, colleagues and the associations in which the individual is involved such as church, school, sports, etc. Such relationships provide civil society with the means, the opportunity and the motivation to guide and support the individual in his or her dealing with a range of personal and ethical issues. In each of these respects civil society is better placed to deal with these issues than a government agency is.

In the real world, civil society restrains business behaviour through the common law, codes of behaviour, ethical rules and public opinion, as well as through common law. These influences are more comprehensive and more pervasive than government regulation. Michael Novak has well described how voluntary action among individuals encourages effective rules and traditions that bolster virtue and social cohesion. He has written that:

“In every culture, and in every market within it, there are special rules and traditions, sometimes tacit, which an apprentice needs time to learn. Such rules govern the range of bargaining discretion; the legitimate range of ‘mark-up’; the proper limits of disclosure; the acceptable standard of quality; the manner of conduct suitable to the transaction; considerations of time; systems of accounting; rights to return goods; arrangements for credit; and every other aspect of trade.” (Novak 1989, p. 104)

Novak and his peers argues persuasively that a “separation of powers” between civil society, business and government is necessary because all organisations are prone to tyranny — whether it is the risk of the ‘soft despotism’ of majority rule or of the ‘hard despotism’ of totalitarian societies. This risk is clearly most pronounced in the case of government, since government is the only institution that can legally sanction the use of force — the economy and civil society rely on the voluntary cooperation of the citizens. In the absence of constitutional limitations, the incentives in democratic political systems tend to encourage government to assume progressively greater control over both the economy and civil society. That assumption is potentially damaging to the free society because government has the power to use compulsion to achieve its ends.

The principles underlying the “separation of powers” in a free society described above, have received broad endorsement across the Christian Churches. For example, they have been proposed in *Centesimus Annus* as well as in the writings of Abraham Kuyper, a leading Reformed theologian and former Prime Minister of the Netherlands. Kuyper is considered to be the leading thinker on Calvinist social teaching (Gronbacher 1999).

This “separation of powers” ensures that the risks to the rights and liberties of the individual are minimised by dispersing power in the community and limiting its use.<sup>5</sup> Separation is based on a realistic appreciation of the strength and weaknesses of human beings and a sober

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<sup>5</sup> It is the extension of the explicit constitutional separation of church and state, as well as of the branches of government that is a key feature of the US, and to a lesser extent, the Australian constitutions.

assessment of the historical record of the performance of organisations, especially political ones. It is consistent with Calvin's doctrine of total depravity — namely, that human sinfulness entails suspicion of those who hold power because power affords sinful persons the opportunity to fulfil sinful desires (Gronbacher 1999). As John Paul II has pointed out:

“... no political society ... can ever be confused with the Kingdom of God.” (John Paul II 1991, paragraph 25)

Nevertheless, ultimately individual rights and liberties are not protected by laws. They are sustained by the moral strength and capacities of the individuals who make up civil society. If individuals in a society lack the required moral strength and capacities, no amount of law making can fill the gap — government cannot coerce conscience or force citizens to develop qualities they do not wish to acquire.

**A “separation of powers” between civil society, business and government is necessary because all organisations are prone to tyranny — this risk is most pronounced for government.**

### 3.4.2 Role of government

This should lead us to canvass the role of government in ethical issues generally and in those activities — such as gambling — that may be considered to be ethically questionable. That may be thought by some sections of society.

When government regulates certain behaviour because it considers that the behaviour in question is ethically questionable, it assumes certain moral categories. It implies that the regulated behaviour is less ethically justified than other (unregulated) behaviour.

#### **Government intervention can confuse ethical issues**

This confuses rather than clarifies the ethical issues. All actions have consequences for those beyond the individual who undertakes them. A father who works excessively long hours may have less time to spend with his family so that his children's upbringing may suffer. A mother who smokes or eats to excess may die prematurely thereby imposing a heavy emotional burden on her family. Even actions that do not affect any other person may run foul of the ethical standards of some religions. Accordingly, there are ethical responsibilities attached to all actions regardless of whether the government sees fit to regulate them or not.

In the gambling context, the implication of the approach in the Draft Report is that there are no ethical issues outside of those associated with problem or compulsive gambling. This is simply wrong. There are no grounds for supposing that ethical issues do not arise with 'normal' gambling just as there can be with any other activity. Excessive use is

only one dimension of ethical conduct and is not necessarily the most important one. For example, a gambler may emotionally neglect his or her family without detracting from their material welfare one iota. From an ethical point of view, emotional neglect can be far more serious than the material variety.

### **Coercion can compromise ethical ends**

The key policy questions are how should unethical behaviour be discouraged and who should be responsible for doing so — government or civil society. Which of these two institutions is best placed to instruct individuals in their ethical responsibilities and to enforce those duties.

Clearly, government intervention in a democracy should reflect broadly agreed ethical principles. For this reason, among others, a democratic government needs to establish the rule of law and to punish crimes against the person and property where the net benefits to the community of the government doing so are clear-cut and widely acknowledged. Nevertheless, it is by no means clear that any, or all, ethical standards are best set and enforced through the coercive power of the state to tax or regulate.

Given the nature of democratic politics, the further government intrudes into the ethical life of the community the more likely that it will want to go further. Interest groups will increasingly urge their political representatives to implement ethical restrictions that suit their particular beliefs and values, under the cloak of the public interest. In the absence of effective constitutional limitations on government, the evidence of history is that government will progressively succumb, thereby undermining the very qualities in the individual that are essential to a healthy democracy.

In this way, government will be progressively drawn into developing a comprehensive plan as to what behaviour is acceptable and what is not. Any such plan by the government would not necessarily, of course, accord with the values of all of its citizens. Indeed a significant minority would be likely to oppose it, some quite strongly, on ethical grounds. Recent debates over intervention by government into the morality of sex and sexuality dramatically illustrate the potential for never-ending and divisive arguments over ethically contentious issues.

Father Robert Sirico, a US theologian, refers to such government as the Pastoral State (Sirico 1999a). The pastor is responsible for the spiritual well being of his or her flock. To carry out these spiritual responsibilities, the pastor must provide spiritual counselling to his flock and must be willing and able to offer moral guidance, even when it is not sought. The Pastoral State assumes those responsibilities to itself but is not in a position to carry them out in full, let alone properly.

These matters have come into sharp focus in clerical and theological circles since the demise of the Soviet Union and the need of the church to clarify its meaning on the matters of justice and value in commerce. Much of the thinking in this area has emphasised to entrust such responsibilities to government is to forget the crucial distinction between civil society and government in a free society that was made earlier. To quote Neuhaus:

“... democratic government is limited government. It is limited in the claims it makes and in the power it seeks to exercise ... limited government means that a clear distinction is made between the state and the society. Other institutions — notably the family, the Church, educational, economic and cultural enterprises — are at least equally important actors in the society. They do not exist or act by sufferance of the state. Rather, these spheres have their own peculiar sovereignty which must be respected by the state.” (Neuhaus 1984, p. x)

This is a distinction the Draft Report does not seem to have recognised even implicitly, let alone to have appreciated. The PC seems to have assumed that all the issues thrown up by the gambling inquiry require a political decision and all decisions involve the use of the powers of government.

In the case of some activities that are held to be sinful, government both taxes and regulates the activity in question. For example, gambling in Australia falls into this category — it is both heavily regulated and heavily taxed in all jurisdictions. This heavy-handed approach disadvantages those on lower incomes — as they tend to gamble relatively more than the rest of the community — but it does little to discourage those who are compulsive gamblers. The net result is that the government gains handsomely from the very behaviour that it officially disapproves of while it makes the poor bear the costs associated with its taxation and regulation of the ‘sin’.

As Father Sirico has observed, this is a corruption of the role of the pastor and destroys the basis of any moral authority the Pastoral State might have had:

“When this occurred at the time of the Reformation [trafficking in indulgences], it was soundly and rightly denounced as a corrupt act. The enforcer of right, and sanctioner of goodness, should not at the same time be profiting from occurrence of sin. The priest should not profit from the penance of his parishioners.” (Sirico 1999a)

When it comes to public policy, the option for government to tax and/or regulate ‘sins’ such as gambling, needs to be weighed up against the alternative of leaving civil society to deal with the issue. As far as possible, the preferred method of regulating the behaviour of problem

gamblers and helping them to manage the consequences should be left to slow and deliberate persuasion and voluntary action, especially via the family, churches, schools.

Father James Gillis, the renowned editor of the US publication, *Catholic World*, strongly opposed the use of alcohol but was greatly upset by attempts to outlaw its use in the US. Of the US experience with prohibition Fr Gillis has written that:

“It is my conviction ... that the prohibition law was the greatest blow ever given to the temperance movement. ... Before prohibition, the people at large were becoming more and more sober. ... Under the Volstead Law, drinking became a popular sport. The passage of the law was a psychological blunder, and a moral calamity. ... The only way to make a nation sober is to persuade individual citizens, one by one, to be sober.”  
(Finley 1958, p. 182)

There is no reason for supposing that gambling is any different.

### 3.5 Conclusions

In conclusion, the Draft Report has stigmatised gambling by using dubious polling techniques to label it as “questionable”. This has been done without any serious intellectual analysis of the ethical issues associated with gambling.

Had the PC undertaken any competent analysis of these issues, it would have had to confront the fact that respected moral philosophers and theologians have developed a powerful case for leaving ethical issues to civil society. In doing so they have argued that:

- civil society is best placed to develop and enforce ethical standards in the community;
- government should avoid intervening to develop and enforce ethical standards;
- if governments do intervene to require particular ethical standards, they run the risk of have perverse effects on the observance of ethical standards; and
- any role for government should be confined to supporting civil society.

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## 4. Benefits of Gambling

### 4.1 PC concedes there are benefits

The Draft Report's handling of the benefits of gambling starts off well.

The discussion of the benefits of gambling in Section 4.3 of the Draft Report (and related parts of the Summary and Overview) contain some valid points that are often missed by critics of gambling. In particular, it makes a point obvious to modern economists that the vast majority of consumers gain more satisfaction from engaging in gambling than they pay for it in terms of time, money and other consumption choices foregone. This consumer surplus concept is elaborated in Chapter 5 and Attachment C.

The Introduction of Chapter 4 also contains a disclaimer that the devotion of more space in the Draft Report to the costs than the benefits

“... should not be taken to imply that the benefits are less important, simply that in some respects they are conceptually less complex than the costs.” (p. 4.1)

Whether or not they are truly less complex conceptually we will come to in a moment. But, in view of some of the ridiculous claims made in submissions to the inquiry, it is good to have the Draft Report defend the existence and the importance of gambling's benefits.

There is also merit in the Draft Report's debunking on pages 4.8-4.9 of arguments that structural changes that occur in response to new opportunities are in themselves bad.

The pity is that these correct, if obvious, 'introductory' comments in the Draft Report become a kind of Trojan horse (or tethered goat) for the presentation to readers of a number of theoretically clothed but mistaken points. As a result, the overall treatment of benefits in the Draft Report is unbalanced and this creates a jaundiced view of gambling's benefits.

**The treatment of the nature and the extent of the benefits to the community from gambling in the Draft Report is unbalanced.**

### 4.2 Unbalanced treatment of external benefits and costs

The treatment of externalities is a primary example of imbalance in the Draft Report in relation to benefits. Notwithstanding the claimed appreciation of the importance of the benefits, every effort seems to be

made in the Draft Report's handling of externalities to minimise their size relative to the costs. In fact in places on this subject, notably in Section 4.2, the Draft Report reads like the testimony of a TV cop attempting to 'verbal' a defendant.

First, the Draft Report pretends the 'rationality' of gamblers' decisions about their gambling was one of ACIL's reasons for rejecting problem gambling as an external cost (pp. 4.3-4.4). It was not. Rationality in consumers' decision-making has nothing to do with whether they produce externalities, and we have never suggested otherwise.

Second, the Draft Report offers no credible analysis of the actual and stated reason why ACIL said the externality case for intervention is unconvincing. Our reasoning was that the spillover costs of problem gamblers' activities are predominantly confined within their families and households. In these domains one would expect any such impacts to be covered by implicit contracts with the gambler which would internalise them. Indeed it is very difficult to imagine a family or household where the spillovers were not substantial or where there were not mutual agreement on the sharing of the costs and benefits between those involved. Incidentally, it was for these reasons that, in our March 1999 Submission, we added the following comment to our point about the presence of such implicit contracts:

“... (and indeed this may be a useful economic definition of a household)” (p. 90).

This phrase was left off the end of the passage from ACIL's Submission quoted in the Draft Report on this matter — and with none of the usual punctuation to show that the last sentence of the quote had been truncated. That is selective quotation at its worst.

The Draft Report asserts that ignorance and lack of foresight mean that such implicit contracts cannot exist so that there is no mechanism to internalise spillovers within the family. It puts forward the absence of full knowledge on the part of family members as a sufficient condition to establish the existence of the subsequent externality.

This is like saying that a contractor whose truck unexpectedly breaks down causing the late delivery of a load of bricks imposes an externality on the builder. He does not. Unforeseen outcomes are the norm in most personal and commercial relationships. Conventionally, a clear path for retribution by the 'buyer' (or the expression of remorse by the 'seller') exists. Thus, internalisation can readily occur, and in a much more effective and economical way than if some regulation to enforce a particular response were introduced.

Third and most importantly, the Draft Report's approach in Section 4.2 is the exact opposite of the way it approaches the spillover *benefits* of gambling to family members of gamblers.



Advisedly, in our view, the happiness gained by the family members of the great number of satisfied, relaxed and fulfilled gambling customers is not counted in the Draft Report as an extra benefit of gambling. This is sensible, but quite different to the way the Draft Report handles spillover costs. Its handling of spillover benefits view households as a group of people who *are* covered by implicit contracts whereas its view of spillover costs presumes that *no* contracts exist.

The selective desire to count negative spillovers as net costs also does not square very well with the Draft Report's enthusiastic embrace — in Section 4.3 — of ACIL's warning against counting multiplier effects as industry benefits. Interestingly, the full text of ACIL's description of the famous "broken window fallacy" is included in the Draft Report (p. 4.15) to illustrate the point.

The Draft Report's handling of problem gambler spillovers also sits oddly with an observation made in the Report during a discussion of the discomfort that some people feel about the very existence of gambling:

"Externalities based on intangibles are all around us, but most are not considered relevant to policy because too few people are affected, they are hard to identify and the transactions costs of correcting them are too high." (p. 4.8).

This comes at least half way to our preferred position that neighbourhood effects are readily misdiagnosed as externalities because of a strong tendency to overestimate the transactions cost in internalising them. Nonetheless, true to form, the commentary concludes with the one-sided remark:

"Even so, the concept of a negative externality stemming from the widespread visibility of gambling has some validity." (p. 4.8).

The equally possible validity of some form of intangible benefits that would offset such negatives is not acknowledged.

**The Draft Report is too quick to claim externalities and has been inconsistent in its treatment of them in an apparent effort to play down the net benefits to the community from gambling.**

### 4.3 Consumer ignorance overplayed as a reason for intervention

An important defect of the Draft Report is that it exaggerates imperfect knowledge on the part of consumers as a reason for thinking that consumers of gambling services need government help and that producers need to be taxed and regulated. The overstatement occurs throughout the report to different degrees in different places. (For example, as noted above, it is put forward as the explanation as to why implicit contracts are

supposed not to exist amongst household members (see p. 4.4)). Such overstatements arise in the Draft in five forms:

- the naive representation of perfect knowledge as an efficient information policy benchmark (a quite impractical ideal, given that some things are unknowable and becoming better informed costs time and money);
- the neglect of aspects of investment analysis which explain the positive value which some individuals rightly see in including some high risk components in their investment portfolios;
- the exaggeration of people's information wants (for example, apart from information costs, it will often be irrelevant to gamblers whether or not they know the precise odds);
- the exaggeration of the scope for governments to cost-effectively inform consumers (whether by directly furnishing relevant information or by using regulations to require others to provide it); and
- an unsupported presumption of a strong association between lack of consumer knowledge and the risk of problem gambling (heavy gamblers *are* relatively well informed).

Although these problems turn up mostly in the Draft Report's discussion of the *costs* of gambling, they can also be regarded as factors that destroy the Report's analysis of the *benefits* of gambling. They play a big part in the Draft Report's flawed policy conclusions about the extent to which consumer sovereignty ought to be relied upon to produce a socially optimal result. At base, they seem to reflect the PC's unwarranted pessimism about:

- a) the consumer's ability to correctly perceive the benefits to themselves of gambling activity; and
- b) the incentives on gambling service providers to produce what consumers truly want.

If we apply the benchmark of perfect information to consumer decisions about other entertainment we can see how much the PC has exaggerated the issue. Most of us go to the cinema, a live entertainment or a sporting event uncertain as to whether we will come away satisfied with the outcome. At the end of a performance or event, some will probably be very disappointed with the outcome — few Carlton and St George-Illawarra fans were happy on 27 September 1999.

**Imperfect knowledge on the part of consumers is exaggerated in the Draft Report to justify the continued taxation and regulation of producers.**

### 4.3.1 Perfect information is an utopian ideal

The use of perfect information as the policy ideal (listed in the first of the dot points above) was pilloried by Demsetz as utopian in a commonsense but influential critique of work by Arrow in 1969 (Demsetz 1969). The article has served as an important reminder to informed policy makers ever since.

Demsetz's bottom line is captured in the following extracts:

“... the relevant choice is between alternative real institutional arrangements. In practice, those who adopt the nirvana viewpoint seek to discover discrepancies between the ideal and the real and if discrepancies are found, they deduce that the real is inefficient. Users of the comparative institution approach attempt to assess which alternative real institutional arrangement seems best able to cope with the economic problem...”  
(Demsetz 1969, p. 1)

“The nirvana approach is much more susceptible than is the comparative institution approach to committing three logical fallacies—the grass is greener fallacy, the fallacy of the free lunch and the people could be different fallacy.” (Demsetz 1969, p. 2) [emphasis as in original]

In the present context, Demsetz's message boils down to the following. If you define market failure as a divergence of the observed outcome from a supposed ideal — where all outcomes are predictable, all information is free and people are better natured — corrective regulations will nearly always seem attractive, even if they are way off the mark in a real efficiency sense. Thirty years on, Demsetz's message has not taken hold at the PC.

In a number of places, the Draft Report's prognosis suffers from application of the approach Demsetz criticised.

For example, in practical terms, Box 5.2 on page 5.3 contains a narrow-minded description of gambling versus investment. Besides ignoring the recreational aspects of gambling (which if intended, is not stated), it has no regard to the good reasons why some investors might want an investment with a negative expected rate of return. The high *potential* pay-off of such investment can make it attractive to include some of it in a wider portfolio of investments whose expected pay off, on-average, is positive. Such risk taking is the lynchpin of an entrepreneurial business culture and an active venture capital market — both of which governments are keen to foster.

The principles of utility and portfolio theory which explain such things were referred to in Chapter 2 of ACIL's March 1999 Submission. A key implication is that what one person might regard as a poor investment could be regarded quite validly as a good investment by another. It all

depends on people's personal circumstances and preferences. This consequence should dissuade policy makers from being quick to assume they know how they can protect gamblers from themselves. Box 5.2 will mislead readers if it is not expanded to cover such points.

A more accurate discussion of the information issue is in Box 10.4. It defines internal or private costs as follows:

“If a cost is borne by a rational individual who makes a decision in full knowledge of the costs and benefits involved (and the degree of risk) it is reasonable to presume that any cost is covered by the benefit obtained from the decision. Even if an individual decision turns out to be a ‘bad’ one, with the costs exceeding the benefits this is just part of the gains and losses inherent in any activity involving risk. The presumption is that over time, these balance out. In other words, outlays voluntarily made by an individual are not usually considered to be costs for the community.” (p. 10.7)

This is a more general model than the previous one, but also is potentially misleading because it does not allow for the reality that affordable knowledge rather than full knowledge is the practical optimum. A simple point, but it has powerful implications for policy.

**The Draft Report errs in not accepting that affordable knowledge, rather than full knowledge, defines the practical benchmark for economic efficiency.**

#### 4.3.2 Cost and utility of extra information are key issues

As we will mention again later, the Draft Report comes to strong conclusions about the need for governments and suppliers to:

- provide more information about odds (pp. 15.12-15.25);
- provide more information about Internet gambling (p. 17.30);
- introduce tighter advertising controls (pp. 15.33-15.34); and
- redesign EGMs to ensure informed consent (for example, p. 15.58)

It would be better if these findings were tempered by practical cost considerations and an acknowledgment that consumers have very different information wants. The irrelevance of detailed odds information to many gamblers, whether from an investment or an entertainment point of view, should also be better recognised. For games with long odds but low value wagers, even a very large relative change in those odds will only produce a small absolute change in the expected cost of playing the game — lotteries, Keno and Powerball are good examples. In such cases, many gamblers will be far more concerned about the size of the prize on offer.

As for the poor performance of governments in seeking to supplement information, nothing illustrates the point better than the Draft Report's misleading presentation of the circumstances facing users of the Black Rhino machine (p. 5.15). The matter is discussed further in Attachment 1. People familiar with food labelling regulations (which are already governed by a special statutory authority with strong powers plus the Australian Competition and Consumer Commission) can give numerous similar examples, and can name the several obstacles which such regulations place on product development. Already the multi-layered prudential regulation of the gambling industry has a life of its own. Our fear is that adoption of the Draft's proposals for regulation of gambling information would produce a new bureaucratic like that seen in relation to labelling in the food industry.

Finally, the Draft Report's apparent presumption that problem gamblers are those who would benefit most from more information is not formally supported. Moreover this presumption is not backed by the perception most of us have that heavy gamblers are often the only ones who can understand what the complex games are about. It is possible that many people enjoy gambling because they enjoy testing and perhaps even displaying their acuity or machismo in this regard. In such instances, is it possible that supplying more information could backfire (as it is alleged the warning labels have with regard to young smokers)?

#### 4.4 Production-side benefits are trivialised

The Draft Report contains differing treatments of the industry's *consumer-side benefits* (presented in annual benefit terms) and its *producer-side benefits* (presented in terms of the long term implications for national income if the industry did not exist). The differences trivialise gambling service providers' contribution to the economy. The Report's assumptions about who bears the burden of gambling taxation are also a little unfair. In its final report, the PC should strive for a more balanced treatment.

On the basis of some general equilibrium modelling results, the Draft Report more or less says that *if the gambling industry did not exist*, after 10 years Australia would hardly miss its contributions to employment and gross domestic product (GDP).

This sounds like a big statement. But it is not a very enlightening observation and indeed could be made about most industries, or even the PC itself. Certainly it is not grounds for the implication the Draft Report draws - that the economic benefits of the producer-side of the gambling industry are "largely illusory".

The PC's final report should contain an even-handed statement of the production side's current *material* significance.

#### 4.4.1 Why deny the industry's big GDP and job contributions

In presenting the producer-side perspective the way it has, the PC has turned its back on the traditional method by which the Commonwealth Statistician estimates the annual economic contributions of industries (in terms of 'value added') and adds them to give an estimate of the nation's GDP.

This is the common international standard for determining the contribution of an industry to a national economy. Admittedly it is not a measure of producer surplus; but it is used for good reason by most national governments as well as OECD, the World Bank, IMF and other respected international agencies.

The annual contribution to GDP of the gambling industry may be smaller than the annual net consumer benefits measured in terms of consumer surplus, **However it certainly is not illusory.**

To illustrate, a valid interpretation of the Commonwealth Statistician's figures is that last year the industry generated **\$6 billion in GDP** and some **135,000 jobs**. This GDP figure is at 'market prices' (as distinct from at 'factor cost') and is based on an approach that includes all indirect taxes as part of the industry's value added.<sup>6</sup>

**The Draft Report ignores the contribution to gross domestic product by the gambling industry — it certainly is *not* illusory.**

#### 4.4.2 Gambling industry's producer surplus also significant

A lesser, but still impressive picture of the production side of the industry as a contributor to the economy will emerge if an analogous estimate is made of the producer surplus which the industry generates each year.

Revenue from product taxation is sometimes not regarded as part of producer surplus (or consumer surplus). Yet here taxation is very high, and unquestionably producers bear a proportion of it. Their burden depends on the tax rate and the ratio of the supply and demand elasticities.

Assume for illustrative purposes a supply elasticity of 2.5, a demand elasticity of -0.7 (which is the lower bound of the PC's preferred range of demand elasticities), and a tax rate of 40 per cent. Of the total of almost

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<sup>6</sup> Official GDP figures have well known limitations. One is that industry shares of annual GDP are taken by the Commonwealth Statistician at face value: they are not adjusted for the artificial effects on the nominal value of inputs and outputs of taxes, subsidies and regulations. In the case of gambling, high taxation causes the industry to appear smaller in national accounting terms than if the real contribution of each industry to GDP were measured.

\$4 billion in gambling taxes collected last year, the producers' share of the taxation burden would be one-seventh, or \$0.6 billion.<sup>7</sup>

This figure would represent a lower bound of the producer surplus measured according to our preferred methodology. First, the total tax estimate excludes the annualised equivalent of the substantial lump sum licence fees that have been paid by most operators. Second, to reflect traditional producer surplus, any earnings above cost earned by producers (such as those with special skills, or sites) should be added.

In our Submissions of March 1999 and June 1999, we suggested that annual producer surplus was around \$5 billion a year. (In a rough and ready way we included all the tax, not just the burden producers alone bear). This was undoubtedly an over estimate but the matter is of no policy importance. In any case, we now think an annual figure closer to \$1 billion would be more realistic. Our point and our only point is that the material significance of the industry is beyond question — the PC must upgrade its description of the nature of the benefits of the industry to the economy in its final report.

## 4.5 'Courageous' treatment of consumer surplus

By and large, the Draft Report's introductory comments on consumer surplus are sound and may be helpful in correcting misconceptions in some circles about the worth of the industry.

<sup>7</sup> The standard formula which explains the approximate sharing of an ad valorem tax between consumers and suppliers is:

$$\left| \frac{dp}{ds} \right| = \left| \frac{p^1}{s^1} \right| = \frac{e_s}{e_d} \frac{1}{1-t}$$

where:

- $\left| \frac{dp}{ds} \right|$  is the absolute value of the ratio of the price increase borne by consumers and suppliers;
- the ratio of  $p^1$  to  $s^1$  is the absolute value of the first ratio of derivatives of  $p(q)$  and  $s(q)$ , the demand-price and supply-price functions for the product in question;
- $e_s$  and  $e_d$  are price elasticities of supply and demand; and
- $t$  is the ad valorem equivalent of the tax rate, and the expression  $\frac{1}{1-t}$  scales the tax.

Thus with gambling, if price elasticities of demand and supply for gambling are -0.7 and 2.5 respectively, and taxes average 40 per cent ad valorem, the approximate ratio of shares becomes  $\left( \frac{2.5}{0.7} \cdot \frac{1}{0.6} \right) = 6$ .

What this figure would imply is that taxes are borne about 6 times as heavily by consumers as by suppliers. For suppliers, the net 'price' (that is, the price received after the tax, compared with that before the tax) would drop by about 6 per cent, while for consumers the price increase would be about 34 per cent.

The estimated producer burden is even more significant if the upper limit of PC's preferred elasticity range (-1.2) is used. Including this in the above formula gives a multiple of 3.5, which implies producers' taxation burden last year would have been nearly \$0.9 billion.

However, the treatment of the issues and the facts becomes less balanced as the analysis proceeds.

#### 4.5.1 Conceptual flaws

In the first place, the Draft Report has four conceptual defects that need to be corrected in its estimation of consumer surplus:

- The estimate has a scaling error that sees the entire \$3.8 billion burden of gambling taxes last year (rather than the \$3.3 billion or so dictated by market conditions) credited to consumers. As noted above, producers also bear a proportion of the tax burden.
- It includes a 'courageous' (and arbitrary) separation of the demand for gambling into that by ordinary gamblers and that by problem gamblers. None of these distinctions appear to have much foundation.
- The estimate is based upon a 'courageous' (and arbitrary) assumption that any consumer surplus attached to the spending by problem gamblers beyond \$1,250 a year should not be counted.
- The estimate confounds social and private costs. Because of the subtraction of both from consumer surplus, this leads to a much lower net consumer benefit figure (and presumably, more adverse policy findings for gambling) than should be the case.

#### 4.5.2 Errors of estimation

In the second place, as with other parts of the report, estimation errors are introduced into the treatment of consumer surplus by:

- the unbalanced use of survey information (such as via the partly explained assumptions used to determine the average spending of problem gamblers); and
- the degree of faith placed in survey information as a whole (especially the assumed causality link between gambling and certain 'symptoms').

Benefits to consumers consist of the market value of their gambling and the consumer surplus attached to it. In ACIL's March 1999 Submission, we suggested that consumer surplus from gambling was more than \$5 billion in 1996-97, although we acknowledged that this was no more than a rough estimate.

As the approach taken in the Draft Report reminds us, we could have added to consumer surplus the consumer share of the tax burden that is paid into state treasuries. A larger figure is needed to account for the approximately \$3.4 billion or so of the \$4 billion total tax which is the



consumer share, could be added to our figure. The ACIL estimate would then be “in excess of \$8½ billion”.

Using its own elasticity assumptions and incorporating gambling taxes in consumer surplus, the Draft Report estimates consumer surplus at between \$8.0 and \$11.3 billion, before ‘adjustments’ to account for problem gambling. As noted, it is these adjustments and especially those discussed on pages 5.14-5.16 with which we take greatest issue. This is the point in the report that displays its greatest break with the orthodox treatment of consumer sovereignty in economic policy analysis.

The manipulation of the data is revolutionary even if the survey figures are to be believed. (As is noted in Attachment 1, there are good reasons for thinking that the average outlay of problem gamblers is not even half the \$11,800 per year the Draft Report claims.) The Draft Report never properly explains why we should be expected to imagine that the consumer surplus on only 10.6 per cent of the spending of these adults is worth counting. As expressed on page 5.15, the outcome of its manipulation is that:

“The consumer surplus for this group thus becomes negative — estimated to be a shortfall [on a \$3.8 billion outlay] of \$1.1 to 1.9 billion each year...”

This is a very dismissive treatment of consumers and is remarkable for a Draft Report which elsewhere contains the following admission:

“It is also important to consider the extent to which any adverse consequences can be attributed to the gambling problem. In some instances, problem gambling itself can be a symptom of more deep-seated problems, or may be the result of other dependencies (such as alcohol). In such situations, it may be inappropriate to say that gambling is the cause of the problems observed, though it may contribute to their severity. The Commission has not made any adjustment for the effect of other conditions on the costs attributed to problem gambling. To the extent that these other problems contribute to the costs, the estimates would be overstated.” (p. 10.8)

Thus, whereas the Draft is stranded on the causality issue, it does its calculations of the net benefits as if gambling was the source of all evil.

**The Draft Report never explains why only spending of less than \$1,250 a year by problem gamblers is counted as consumer surplus. Correcting for this arbitrary and controversial adjustment means that the benefits from gambling are at least \$8.0 billion to \$11.3 billion a year.**

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## 5. Costs of Gambling

### 5.1 Overview

The Draft Report devotes considerable attention to the costs of problem gambling. Estimation of the costs draws heavily on the three surveys carried out by the PC. In addition, the estimated number of problem gamblers and the effects of problem gambling are also derived from the surveys. Finally, the surveys also play an important part in the Draft Report's attempts to establish causality — without proof of causality the various costs estimated for the Draft Report cannot be attributed to problem gambling.

The PC goes to great lengths to describe and try to validate what it has done in its surveys. In fact, the analysis of problem gambling and the surveys forms the centrepiece of the Draft Report. As part of the process of establishing the credentials of its own survey, the PC dismisses industry surveys as not being adequately constructed. Not surprisingly, this approach has found favour with opponents of gambling and those wishing to restrict consumer rights. For example, the Interchurch Gambling Taskforce said in response to the Draft Report:

“The Interchurch Gambling Taskforce wishes to congratulate the Productivity Commission on the substantial research findings which are contained in the draft report. It is a very timely and much needed work, and it is encouraging to observe many of the beliefs and understandings of the Taskforce being supported and explained with the extensive qualitative and quantitative research contained in the report.” (IGTF 1999, p. 1)

But the survey methodology reported in the Draft Report is seriously flawed. Consequently the Report's findings on the frequency of problem gambling, its effects and its costs, and the policy conclusions to deal with them, lack credibility.

#### 5.1.1 No role for ABS

It is surprising that the Australian Bureau of Statistics (ABS) was not more involved in the design of the surveys given their importance and the fact that they were conducted by a government agency. The ABS was not represented on the roundtable set up by the PC to advise it on

methodology and the conduct of the surveys. In relation to the Survey of Counselling Services, we are told that the PC

“... sought and gained approval to conduct the survey from the Commonwealth Government Statistical Clearance House at the ABS.” (p. L.3),

This was presumably because government agencies are required to do so when conducting business surveys. However, for the Survey of Clients of Counselling Agencies, the only reference to any involvement of the ABS is to the fact that the PC

“... obtained advice from the Australian Bureau of Statistics regarding questions which may have self-incriminated the client...” (p. G.1).

For the major survey, the National Gambling Survey, it appears that the ABS had no direct role at all.<sup>8</sup>

### 5.1.2 Limitations of self-assessments

The main general criticism of the surveys is their reliance on self-assessment. Self-assessment can only reveal something about the perceptions of the respondents, as it is not a disinterested test. Problem gamblers' responses in particular may have been biased. Independent corroboration of the results has not been provided in the Draft Report

The use of self-assessment by the PC differs to the approach adopted by others, including the ABS, to the identification of mental health and other related problems. The ABS for example, identifies depression through a series of questions that focus on the potential symptoms of mental health problems (ABS 1998, p.2).

In contrast, the PC simply asked respondents to indicate whether they have “ever suffered from depression from your gambling”. In other words, gamblers were asked to conduct a *self-diagnosis*, using their own definition of ‘depression’, and their answers were accepted as fact. Perhaps the kindest thing that can be said about this kind of approach is that it is bad science.

The following discussion of the surveys and gambling costs draws partly on ACIL's own analysis but also partly and more heavily on an independent report prepared for ACIL by one of Australia's leading

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<sup>8</sup> The PC says that it used population proportions from the ABS census to stratify the sample.

statisticians, Dr Terry O'Neill. Dr O'Neill's full report is attached to this submission and is discussed further in Section 5.3.<sup>9</sup>

**The surveys conducted by the PC for the inquiry rely on self-assessment — this only reveals information about perceptions as respondents are not disinterested observers of their own gambling. The PC has not provided independent corroboration of the responses.**

## 5.2 Causality

The Draft Report attempts to establish a causal link between gambling and various problems and costs. Part of that process includes the use of the surveys to collect data on these matters and of regression analysis to test relationships between them.

As discussed below, the surveys have major problems and in reality, do not shed much light on the issue of causality. Causality is not the same as association and regressions do not prove causality.

### 5.2.1 Self-assessments cannot establish causality

The Draft Report essentially asserts causation based on the 'fact' that people in a self-assessed survey are knowledgeable and will answer truthfully. Self-assessment might be useful for assessing perceptions, but little else. The PC appears to have been aware of this general problem and has applied certain corrective measures, but has applied them in a highly selective fashion. It appears to be very willing to accept at face value what people said about the effects of gambling in the surveys, but was not prepared, for example, to accept the stated level of spending reported by gamblers. The PC cannot have it both ways.

Gambling was the only option available for survey respondents to nominate as a causal factor for various emotional and other problems. In addition, problem gamblers were not asked if they were also compulsive drinkers, smokers, eaters, mountain climbers, etc. or suffered from clinical depression. Finally, there was no reality check on their responses — the same questions were not put to non-gamblers and non-regular gamblers to ensure that gamblers' responses were statistically different from those of these other two groups.

A number of reasons/theories are put forward by the PC about causality, but it is just as easy to postulate alternative explanations.

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<sup>9</sup> Dr O'Neill is Head of the Department of Statistics and Econometrics, The Australian National University. The report by Dr O'Neill focuses on the three surveys and complements an earlier report by Dr O'Neill on the use of the South Oaks Gambling Screen (SOGS) prepared for ACIL. Dr O'Neill's earlier report was submitted to the PC in May 1999 and is described in the Draft Report.

**Survey respondents who participated in the National Gambling Survey and the Survey of Clients of Gambling Agencies were only able to nominate gambling as a causal factor for emotional and other problems.**

### 5.2.2 Use of anecdotes misleading and unbalanced

In addition to using the survey results, anecdotes are used throughout the Draft Report to illustrate the effects of gambling.

These anecdotes have no statistical merit whatsoever and appear to be included to bolster views about causality and the costs of gambling. They appear to be designed to appeal to those with little or no statistical training and who have firm views about the alleged evils of gambling.

As virtually all of the anecdotes used portray gambling in an unfavourable light, they cannot be said to represent a balanced perspective on the issue. The imbalance is illustrated by the fact that the Draft Report concedes that there are net benefits to the community from gambling.

**The anecdotes used in the Draft Report place gambling in a consistently unfavourable light, and are therefore unbalanced and lack scientific validity.**

### 5.2.3 Findings are inconsistent

The Summary of the report contains a relatively strong statement about causation:

*“Having considered the evidence and analysis, the Commission considers that the impacts associated with problem gambling are largely attributable to gambling itself.”* (Emphasis in the original). (p. XXXIII)

But on page 10.8 the PC says:

“It is also important to consider the *extent* to which any adverse consequences can be attributed to the gambling problem. In some instances, problem gambling itself can be a symptom of more deepseated problems, or may be the result of other dependencies (such as alcohol). In such situations, it may be inappropriate to say that gambling is the cause of the problems observed, though it may contribute to their severity. The Commission has not made any adjustment for the effect of other conditions on the costs attributed to problem gambling. To the extent that these other problems contribute to the costs, the estimates would be overstated”.

Moreover, in reference to a study by Blaszczynski and Farrell the Draft Report states that:

“Unfortunately, it was not clear how many of the suicides related to legally sanctioned gambling compared to illegal games. Nor, given the presence of significant co-morbidities, is the causality absolutely clearcut.” (p. 7.14)

And, on the same page:

“It is probable that a proportion of suicides of problem gamblers reflect wider problems, and may have occurred anyway.”

Though admitting to the difficulty in detecting increased suicide rates due to gambling, the Draft Report then dismisses more formal studies and the clear problems in trying to identify causality in favour of the preferred approach of closely examining

“... the characteristics of those who said they had tried to commit suicide” (p. 7.16).

Leaving aside the ever-present problem of taking at face value the responses, the PC sees its way clear to conclude

“... there is little doubt that there are suicides linked to gambling...” (p. 7.17).

Note that it has not actually said that suicides are caused by gambling, but that is the impression that is conveyed.

The Draft Report attempts to establish the link in question on the basis of some estimated correlations (which cannot prove causation) and does not provide any other details.

Problems with causation are not confined to suicides. Appendix H deals with problem gambling and criminal activity, but there is very little scientific evidence presented to justify any causal link (see Attachment 1 for more details).

The Draft Report states that there is a spectrum of different crimes among the general population that demonstrates causation between problem gambling and crime. All this might be showing is that people who undertake certain types of crime also like to gamble. Some qualifications to the causality link are discussed, but only anecdotal ‘evidence’ is introduced (on page H.13).

In any case, the Draft Report appears to have dismissed concerns over the validity of the causal links, because the costs of problem gambling-related crime (and other costs of problem gambling) are presented without qualms or qualification in the Summary (Table 5 and Box 7).

**The Draft Report’s cost conclusions are not justified and are not excused by the qualifications hidden in the text.**

### 5.2.4 Ignores experts who disagree

Such attempts to establish causal links between problem gambling and various outcomes and costs seem to be out of step with emerging thinking about the issue.

Some of the leading researchers on gambling and problems are taking an alternative view about causation, focusing on people with problems who gamble. In a submission by the Australian Institute of Gambling Research to the Independent Pricing and Regulation Tribunal of NSW, Professor Jan McMillen noted that:

“Emerging research however, has begun to raise questions about the complex relationship between gambling and other social issues such as unemployment, depression, family tensions, alcoholism etc. Gambling is often just one of a complexity of factors which create problems for some people — and the question of cause and effect requires more investigation. It may be that gambling is merely a symptom, even an escape, from more serious social or serious problems.” (AIGR 1998, p. 19).

This report has not even been referenced by the PC.

### 5.2.5 Conclusion

In light of the above comments, it appears that the Draft Report does not address the issue of causality adequately. The surveys used as evidence, and the anecdotal evidence used, are not an adequate basis at all for establishing causality.

## 5.3 The surveys

### 5.3.1 The national gambling survey

Even before the release of the Draft Report, ACIL felt that there were strong grounds to be concerned at the use of any survey methodology that drew upon the South Oaks Gambling Screen (SOGS) that has been developed in the US to identify problem gamblers.

In the light of such concerns, ACIL engaged Dr Terry O’Neill, Head of the Department of Statistics and Econometrics at the Australian National University, as an independent expert to advise us on statistical issues that may be raised by the inquiry. Dr O’Neill prepared two reports for ACIL. The first was submitted to the OC in May 1999 and his second report is at Attachment 1.

### **SOGS is flawed**

Dr O'Neill's initial report confirms warnings previously given by Dr Mark Dickerson and others that the use of the SOGS in Australia is fundamentally flawed.

- There is *no* agreed definition of 'problem' gambling in Australia. The definition that is most widely used in Australia was developed by what is now the Victorian Department of Human Services (DHS).
- The SOGS was developed in the US to identify individuals with gambling-related problems, as defined by the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III)* published by the American Psychiatric Association. In contrast to the US, the medical profession in Australia does *not* accept 'problem' gambling as a mental disease.
- No relationship has been shown to exist between the results that have been obtained with the SOGS in Australia and the definition of 'problem' gambling developed by the Victorian DHS. In other words, there is no basis for knowing whether the SOGS is capable of assessing people against the DHS definition of 'problem' gambling.
- Because of the imprecise and subjective nature of the definition of 'problem' gambling developed by the Victorian DHS, it is unlikely that a satisfactory link could be established between the SOGS results and the DHS definition.
- The SOGS is *not* well suited to being used on the general population. In the only clinical trial conducted with it, the original version of the SOGS in the US could only detect about half of the people who met the DSM-III definition of 'problem' gamblers. This raises profound concerns about the usefulness of the SOGS as a screening device even in the US context.
- In Australia, the SOGS has been modified to determine the risks of a respondent developing gambling-related problems. The risks have been estimated from a sample of the clients of a specialist problem gambling clinic. The risks have *not* been estimated for the Australian population as a whole.
- There is *no* evidence that results gained with the modified SOGS in Australia are either reliable or able to be reproduced. Acceptable levels of reliability and reproducibility are essential requirements for any test or screen.
- The use of SOGS is declining in the US. SOGS is *no longer* the screen of choice in that country having been replaced by other screens that are based upon the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* of the American Psychiatric Association.



These are damaging criticisms of the SOGS yet the PC has based its assessment of problem gamblers on it.

No accepted definition of problem gambling is offered by the Draft Report yet the survey, through the SOGS, claims to measure it. Even to a casual observer, the notion of trying to measure something that is not defined would seem strange. In a formal statistical framework, it makes little sense.

**No accepted definition of problem gambling is offered yet the PC's surveys, through the SOGS, claim to measure it.**

### **SOGS is outdated**

In footnote 7 on page 6.15 the Draft Report attacks the criticism of SOGS put forward by ACIL that SOGS is based on the outdated DSM-III rather than the DSM-IV. (This criticism did not originate with ACIL but is the view of researchers elsewhere.) The Draft Report argues that ACIL's criticism

“... is a particularly weak one, since the DSM-III and DSM-IV are nearly identical.” (p. 6.15)

This rebuke is inaccurate. Indeed in the very next footnote, the Draft Report contradicts itself and supports the ACIL argument. Footnote 8 says that questions 1 to 5 in the SOGS have no counterpart in the DSM-IV, nor do other parts of SOGS.

It is as if two strangers have written footnotes 7 and 8, but the important point is that, if anything, by naming the differences between DSM III and DSM IV, the Draft strengthens rather than weakens our charge that any SOGS-based survey is an intellectually empty exercise.

The PC does not appear to have examined very closely the recent US gaming study by the National Gaming Impact Study Commission (NGISC *et al* 1999). The authors of the this study did not use the SOGS because they had major reservations about its validity:

“... the DSM-IV criteria are very different from the diagnostic criteria adopted in the DSM-III in 1980 (American Psychiatric Association)”. (p. 15)

Again, on page 17 they stated that:

“This meant that the SOGS could not be used, since this instrument is based on the outdated DSM-III criteria”.

**US National Gaming Impact Study Commission did not use the SOGS because they had major reservations about its validity.**

### Problems with use of SOGS in survey

As well as the underlying problems in using the SOGS, there are problems with the way it has been applied in the National Gambling Survey.

First, in the National Survey questionnaire the SOGS is only one part of what was a very long telephone interview. It cannot be assumed that this approach is equivalent to administering the SOGS by itself. The responses to the SOGS might have been biased by the questions and responses that came earlier in the interview.

Second, the SOGS was not administered to the full sample, only to those who were screened out as being regular gamblers. In the context of a scientific experiment, this is equivalent to leaving out the control group — and constitutes a clear violation of the scientific method. The correct approach would have been to apply the SOGS to all groups. This would have allowed the survey to test if there were statistically significant differences in the responses of regular gamblers, non-regular gamblers and non-gamblers.

**The National Gambling survey failed to test whether there were statistically significant differences in the responses of regular gamblers, non-regular gamblers and non-gamblers. This could be expected to exaggerate the estimate in the Draft Report of the number of people suffering from gambling problems.**

### Problems with choice of people for interview

The Draft Report repeatedly refers to a sample of 10,500 respondents, but this is not strictly correct. The actual sample consists of less than 4,000 people, in which only a subset of people from each group — non-gamblers, non-regular gamblers and regular gamblers — was included. It was only this smaller group that was given the full survey questionnaire — the others only completed the screener. More important is the nature of the sample of '10,500' people. This is all that were left after starting with 31,886 telephone calls:

- of that, only 22,166 contacts were made, and
- of that number, just 10,525 completed the screener (47 per cent).

The 10,500-person sample was self-selected and there is no reason to believe that it any way represents the Australian population.

The PC might try to think of all sorts of ways to rationalise this. Nevertheless, this will not alter the fact that the respondents are a group of people who do not mind answering detailed questions posed by a stranger on the telephone, about their personal and private lives! Many ordinary citizens would be inclined not to participate in such a long and detailed survey that was so intrusive. It is a very shaky foundation for obtaining statistically valid results.

**The selection of respondents for the surveys is likely to be biased in favour of people who do not mind participating in such a long, detailed and intrusive survey. This could be expected to exaggerate the estimate in the Draft Report of the number of people suffering from gambling problems.**

### **Estimates of spending by problem gamblers**

In addition to the estimate of 330,000 problem gamblers, the Draft Report claims to have identified, through the National Gambling Survey, problem gambler's average spend (loss) of \$12,000 each per year.

Apart from the fact that this estimate is derived from data obtained from a questionable survey, the logic behind the estimate is not totally transparent. Following the logic is made more difficult because the sequence of important supporting material presented in the Draft Report seems to run in reverse.

On page 7.39, the issue of the understatement of gambling expenditure is discussed. Reference is made to the ABS Household Expenditure Survey (HES) and other surveys of gambling expenditure. The Draft Report acknowledges the understatement and concedes that its survey understates spending by about 25 per cent. Not only does this appear to contradict earlier analysis, there is no reason to believe that any understatement would be uniform across population groups.

Table 7.11 on page 7.32 describes gambling expenditure by problem gamblers and non-problem gamblers. The estimates are derived from the data collected by the National Gambling Survey. This table shows that average net spending per year for each problem gambler is \$5,513 and for non-problem gamblers, \$479. Assuming a uniform understatement of 25 per cent then the estimates could be scaled up to \$7,350 and \$639 respectively.

Moving towards the beginning of the Draft Report, we find in Table 5.2 on page 5.10, a reference to the annual expenditure figure of \$12,000 per problem gambler (actually \$11,792) which has been given such prominence, and \$624 a year for non-problem gamblers.

The PC says in a footnote in the table that the National Gambling Survey understates spending on gambling. To try and get at the 'true' figure, the shares of spending derived from the Survey are applied to the Tasmanian Gaming Commission spending figures, which are generally accepted as being accurate.

The net result is that the spending by problem gamblers is scaled up by about 115 per cent to around \$12,000 a year and spending by non-problem gamblers is scaled up by about 30 per cent to \$624 a year. This is equivalent to saying that problem gambling spending in the survey was

understated by nearly 55 per cent and spending by non-problem gamblers by around 25 per cent.

Some observations can be made about the above methodology.

First, there is an obvious question over why the actual spending figure in the Survey is discredited in the Draft Report, while the *share* estimate is held as valid. In addition, an inconsistency arises in that the Draft Report accepts at face value what the supposed impacts of problem gambling are from the Survey (even though it does not believe what problem gamblers tell them about their spending). The approach is inconsistent, and, in view of the implications later drawn, the direction of the inconsistency is loaded against gambling.

Second, no clear explanation is given as to why the “scale-up factor” could be expected to differ in this way between different types of gamblers.

Third, the estimates in Table 5.2 use shares by mode of gambling but the Draft Report warns that:

“Caution should be exercised, however, in drawing conclusions from data for individual types of gambling.” (p. 5.10)

Yet it is somehow acceptable to use and quote the aggregate figure which is apparently a weighted average of the six suspect estimates.

Fourth, it is unclear why the individual mode shares in Table 5.2 are used rather than the share across all gambling, especially given the above cautionary note.

Fifth, and perhaps most importantly, there is every reason to believe that problem gamblers will be more aware of what they spend on gambling than recreational gamblers. This is particularly true if they have been or are in counselling — being constantly reminded by family and friends of how much they are spending or just being more conscious of spending large amounts of money. For example, it is hard not to notice several thousand dollars missing from your annual income.

Again, if the PC believes that respondents have answered the survey questions truthfully, it is unclear why the spending figures for problem gamblers have been rejected. The survey estimate of \$5,513 a year for problem gamblers might be closer to the truth than is admitted in the Draft Report.

**The PC accepts the responses in its surveys about the impacts of problem gambling, but does not believe what their respondents tell them about their spending on gambling. This approach to the validity of the survey responses is inconsistent.**

### Other odd estimates

The Draft Report is littered with many other strange results from the survey and interesting interpretations, of which there are too many to discuss here.

One example is in Table 7.14 on page 7.37. This gives shares of gambling expenditure by problem gamblers by type of gambling. Surprisingly, problem gamblers are estimated to have a 43.5 per cent share of wagering expenditure.

These shares for the source of problem gambling are then adjusted using methods that the PC admits are “somewhat arbitrary”. In the case of wagering this adjustment increases the share to 48 per cent (Table 7.6, p. 7.38).

Even the PC is forced to admit that

“... the wagering figure is very (and possibly unrealistically) high.”

The figures are dubious, yet the shares are used in Table 5.2 to derive the figure of annual losses of \$12,000 per problem gambler! While various attempts can be made to try and rationalise what look to be unbelievable estimates, the simple answer might reflect the fact that all are derived from a poor quality survey — ‘garbage in, garbage out’.

### 5.3.2 The survey of clients of counselling agencies

This survey has little if any statistical merit and, consequently, so does the estimates and conclusions that are drawn from it.

#### Problems with selection of the interviewees

Little information is given about the precise way in which this survey was carried out. The Draft Report indicates that the counsellors conducting the survey were asked to select clients in a particular way for interview. However, there is no evidence presented to suggest that the sample selected conformed to any predetermined format, and therefore, if it was truly representative of clients. Did the PC check to see if it was done correctly?

Moreover, there is no reason believe that the sample (or indeed the population of clients) is representative of problem gamblers in general. There is considerable scope for bias in the selection process — some counsellors may have had an incentive to make sure that the worst cases were reported.

The use of counsellors in this way is at odds with the generally accepted scientific approach applied to properly constructed surveys. For example, it would not be an acceptable approach in medical research. Discretion in the selection of clients for the survey is left to the counsellor. The

statistician responsible for the overall survey should have controlled the selection and interview process.

**There is no reason believe the selection of the sample for the Survey of Clients of Counselling Agencies is representative of problem gamblers in general — the approach used would not be acceptable in medical research.**

### **Problems with conduct of the interviews**

The Draft Report should have provided more information about how the surveys were conducted. For example, were similar conditions provided for all those completing the form and does the PC have any information on whether people were helped to complete the questionnaire?

In addition, no useful information is provided on how people's responses were affected by the time spent in counselling — time spent in counselling is likely to have an important impact on how they respond.

The survey is a prime example of how loaded questions can be used to elicit certain types of responses, intentionally or otherwise. For example, the survey form begins with the statement:

“Please help us find out more about the impacts of gambling on people in Australia. The survey will be analysed as part of the Productivity Commission's national inquiry into gambling, and will be used to provide information about the social impacts of problem gambling and what might be done about it.”  
(p. G.8)

This approach could easily affect the responses of people interviewed, more so if the selection of the 'sample' was biased from the outset towards the worst cases. Those being interviewed might be encouraged to answer in a certain way in the belief that they are helping solve the 'problem' (if the survey was to have any kind of credibility, no reference to 'problem' should have been made).

There are other serious methodological shortcomings with the survey. Of particular concern is the way Part B was administered only to those who identify gaming machines as a problem. The questions should have been administered to others in the survey to test if there are differences between the EGM group and others. This must cast considerable doubt on the validity of the results and the conclusions drawn from them.

**No information is provided on the time respondents in the Survey of Clients of Counselling Agencies had spent in counselling — this might have an important impact on how they responded.**

### **Inferences from survey may not be valid**

As with the National Gambling Survey, the Survey of Clients of Counselling Agencies has been used to derive estimates and draw conclusions that may not be valid — but are used without much qualification.

One example is the presentation and discussion of the ‘affordability’ of gambling for problem gamblers in counselling (Figure 7.8, p. 7.41).

The first point to note is that these estimates are taken from a survey which appears to have little statistical merit. But more importantly, ‘affordability’ is a concept that requires a benchmark. Saying that someone spends a certain amount of money on something as a proportion of income tells us nothing about how affordable that activity is.

A good example of this is housing affordability. Estimates of housing affordability are regularly calculated by banks and industry associations and published widely. Housing affordability measures do not just give the proportion of income spent on servicing a mortgage, they also relate mortgage servicing costs to interest rates, house prices, bank lending criteria and income, and the test is whether a person has sufficient money to service a loan for a median priced house.

Figure 7.8 gives no indication of the ability of people to service their gambling behaviour. One, among many, omissions is that there are no questions on the stock of wealth held by gamblers. We doubt that there is any completely satisfactory way of objectively defining gambling ‘affordability’ for various people, including problem gamblers. That said, the results from the Survey of Clients of Counselling Agencies do not throw any light on the issue.

The consequences of this for the Draft’s findings and policy conclusions are serious. Most people would accept that notions of affordability should be at the heart of any definition of problem gambling. But it is plain to see that whatever problems there may be in clarifying affordability in a survey, clearly this one does not do it.

**The surveys do not include any reference to a benchmark of affordability. Such a benchmark should be the key to any definition of problem gambling.**

### **5.3.3 The survey of counselling services**

There is little that can be said about this survey as the PC has postponed a detailed analysis of this survey until the Final Report.

Unfortunately this means that others will not be in a position to provide comments on the detailed findings. This is a breach of the procedures intended to expose the PC’s findings to public scrutiny.

On the basis of what has been provided in the Draft Report, some preliminary observations can be made:

- the response rate was low and no information is provided as to why this might be so; and
- it appears that there is little or no independent and objective information to validate the survey results, which means that it is very difficult to determine how accurate the responses might be.

**The postponement of the analysis of the results of the survey of counselling services breaches the spirit of the procedures that are intended to expose the PC's findings to public scrutiny.**

### 5.3.4 Other statistical analysis lacks transparency

The Draft Report contains a range of other supporting statistical material, notably reports on regression analyses.

ACIL has already made some comments on this approach in the context of the survey results. However, the Draft Report contains limited information on these regressions. For example, on page 7.42 the last dot point cites a logistic regression that purports to show the probability of people with particular levels of debt committing a crime. No details are given, not even about the nature of the regressions, let alone the statistical properties of them.

Footnote 3 on page 15.11 outlines the estimation of a logit model that is claimed to show a link between language spoken, income and education and the probability of gambling in lotteries. But no information is provided which would allow the validity of that estimation to be tested.

Again, on page 17.8 there is a footnote which 'describes' another logistic regression, this time looking at the probability of people being Internet gamblers and again insufficient information is provided. The presentation of statistical material in this selective way runs counter to accepted scientific and professional practice.

## 5.4 Costs of gambling

### 5.4.1 The PC's calculation of costs

The estimates of cost are derived from responses to the surveys, which are largely assumptions and/or assertions about causality and a variety of supporting material such as the unit costs of particular effects.

Assumptions about some of the key unit costs of problem gambling are both arbitrary and controversial. For example, the cost of psychic pain and suffering is based on rates of compensation which applied, *before the relevant legislation was repealed*, to Victorian victims of crime.



The Draft Report actually expresses some reservations about various cost estimates and causality. This is appropriate given the tenuous basis on which some of the estimates are based. But these confessions do not prevent the PC from presenting its preferred estimates of the numbers of people affected and associated costs in a confident way in various tables, especially in the Summary.

The media and opponents of gambling have readily accepted these estimates, largely without question, as 'facts'. Table 5 on page XXXII and Box 7 on page XXXVIII summarise the main results. It can be seen that, according to the PC, problem gambling produces large costs. The major components are employment (productivity loss and job change), divorce and separation and, depression and suicide.

Some comments on these components are presented below.

**The rates of compensation used by the PC to calculate the cost of psychic pain and suffering is based on *repealed* legislation. This raises a serious question mark over the validity of the rates.**

### **Employment**

The estimates of employment are likely to be considerably overstated.

Lost wages are private costs (see below) and job loss impacts on employers are also likely to be private costs. This is because there is every reason to expect that employers will take the expected costs of absenteeism, inattentiveness and so on (whether associated with gambling or anything else) into account when they agree on or adjust the terms of employment (including wage rates and prospects for promotion) for the workers in question. In these circumstances, both parties might be getting exactly what they bargained for and no social costs would enter the picture.

Gross employment costs are, in any case, likely to be smaller than portrayed in the Draft Report. For example, even according to the PC's own estimate, problem gamblers only represent a very small proportion of the population and presumably the workforce. Therefore, in all but the smallest organisations workdays lost due to gambling are likely to be made up relatively easily by others, perhaps through working overtime.

For both reasons, the Draft Report's assessment of the social costs of gambling on the employment side is unrealistically high. Our view is that they are likely to be insignificant and the PC has certainly not demonstrated otherwise.

**Employers would be expected take into account the expected costs associated with problem gambling among their employees when they agree on, or adjust, the terms of employment.**

### Divorce and separation

The Draft Report identifies divorce and separation as the largest source of problem gambling costs.

The PC estimates that problem gambling causes 29,000 divorces and separations per year, and is associated with highest problem gambling costs. This is equivalent to more than half of all divorces in Australia (ABS 1999b). Admittedly, this estimate includes separations as well as divorces (but there is good reason to believe that many legal separations end up in divorce at a later date so it may just be a timing issue). Nevertheless, the figure still looks too high to be believable. Even the Draft Report expresses some concern:

“... the Commission has estimated that, of the annual relationship breakups, 29,000 lead to divorce or separation in the last 12 months. While the number includes separations as well as divorce, this estimate seems high when compared to a total of 51,000 divorces each year from all causes in Australia.”  
(p. J.24)

It is even more of a problem than the PC concedes. Whatever happened to adultery, violence, incompatibility, boredom or money as causes?

None of this stops the PC from using the 29,000 estimate to derive costs and attribute them all to gambling.

The ABS data also shows that the divorce rate has moved little over 20 years (ABS 1999b). In 1978 the divorce rate was 2.8 per 1,000 population — it was 2.7 per 1,000 in 1998. If there is a causal relationship between problem gambling and divorce of the size the Draft Report postulates, we might have expected to see an acceleration in the divorce rate over the period of the rapid expansion in gambling in Australia. In fact, between 1996 and 1998, the divorce rate actually declined in Australia.

The ABS points out that the Australian divorce rate is less than in the US (4.3 per 1,000) and about the same as in Canada and the UK (2.6 and 2.9 per 1,000). Given that the PC is so sure that gambling is much more prevalent in Australia and that the causal relations are claimed to be so strong, we could expect to see Australia with a much higher divorce rate than countries where gambling is less of a ‘problem’ (like the US, Canada and the UK).

The ABS figures reveal some other interesting facts. For example Western Australia has the second highest divorce rate (after Queensland) at 2.9 per 1,000, yet it has no EGMs outside of the casino, which are a major factor in problem gambling according to the Draft Report.

Clearly, the causality and orders of magnitude presented in the Draft Report are grossly overstated. Divorce is a very complex issue and plausible arguments can be made in the opposite direction to those put

forward in the Draft Report — divorce can lead to problem gambling, among other things.

In June 1998, the 'Andrews Report' was released by the House of Representatives Standing Committee on Legal and Constitutional Affairs (see ABS 1999b). The Committee indicated that the causes of marriage breakdown are complex, diverse and interactive, and that no single factor could be isolated as the most important reason for marriage breakdown. The Andrews Report identified the most common themes for marriage breakdown including:

- unemployment and work-related problems;
- addictive behaviours, chronic illness or death of a child;
- blended families;
- marriage relationship breakdown in the family of origin;
- a redefinition of gender roles and the feminist agenda of equality;
- ambivalent or negative attitudes towards marriage;
- the growth of individualism;
- poor communication skills;
- poor parenting skills;
- domestic violence;
- pre-marital cohabitation;
- ease of divorce;
- geographical and social isolation of the family; and
- migration issues.

So within the framework set out in the Andrews Report, problem gambling can be classified within one of 14 sub-groups — addictive behaviour etc. Even then, it is only one of a number of things that might be classified as so-called addictive behaviour (for example, alcohol, drugs, sex, chocolate, exercise, restoring old cars, jogging, collecting stamps, bush-walking, etc).

Finally, the Draft Report has ignored the economic and social benefits that might arise from divorce. Although divorce does cause distress for those involved, the community has agreed that, on balance, it is better to let couples divorce in certain circumstances than force them to remain in a dysfunctional relationship. The decision to allow couples to divorce may be considered an exercise in cost minimisation. Economists would define the reduction in these costs as the benefit that might arise from divorce compared to staying in an unhappy relationship. Viewed in this way, a divorce could generate, on balance, a net social benefit.

**The recent decline in the divorce rate is inconsistent with the PC's claim that a very strong causal relationship exists between problem gambling and divorce. Moreover the results of the Andrews Report suggest that no single factor is the cause of marriage breakdown.**

### Depression and suicide

Asking problem gamblers to self-assess their depression and its causes cannot be expected to give robust answers.

In any case, the PC has double counted some costs of depression and thoughts about suicide. For example, in counting the costs of the pain and suffering due to the depression suffered by problem gamblers, the PC has added the costs of depression itself to one of the key *symptoms* of depression, such as thinking about suicide.

As discussed in the earlier section in this Submission on causality, the PC goes to some effort to try and establish a causal link between gambling and suicides, and admits difficulties in doing so. Yet the difficulties did not stop the PC from concluding that:

“In summary, there is little doubt that there are suicides linked to gambling, but the number is inevitably hard to pinpoint – *it probably lies somewhere between 40 to 400 a year.*” (Emphasis added) (p. 7.17)

Any cost estimates that span a 900 per cent range from lowest to highest cannot be anything but suspect — it is tantamount to saying “we don't know”. More seriously, as with divorce, suicide is a complex subject which the Draft Report's approach trivialises.

### 5.4.2 Private costs and social costs

There are serious concerns over the validity of the numerical estimates of the claimed costs associated with gambling. However, there is an equally serious concern — whether certain costs should be counted at all and, consequently, whether they represent a valid basis for government intervention. This is the issue of private versus social costs.

The discussion of private (internal) costs, transfers and social costs in the Draft Report starts off in a promising way. It recognises that private costs are directly borne by the consumer (in exchange for benefits from consumption) and that transfers do not affect the net position of society (losses by some are matched by gains to others). In addition, it correctly observes that:

“... only the category of external costs represents an unambiguous cost to society” (p. 10.6).

However, in Box 10 on page 10.7, a more detailed attempt is made at defining the various costs. Some stringent conditions are placed on what

is a private costs — individuals must be “rational” (whatever that means) and make decisions

“... in full knowledge of the costs and benefits involved (and the degree of risk)”.

It is then goes on to state that,

“... in this report, many of the private costs of problem gambling have been included with the social costs of gambling. This is because of serious reservations about the extent to which problem gamblers are aware of the true costs and benefits of gambling ...” (p. 10.7)

This means that costs that might otherwise be considered private costs have been included in the estimates in the Draft Report. If this approach to the treatment of full information and private costs is accepted, it leads to the conclusion that there are virtually no private costs at all.

Accordingly, there is justification for governments to intervene in almost every aspect of our personal and private lives. Many people would agree that this is impossible to achieve but dangerous and ultimately, silly to attempt. The fact is that people do not have full information about most activities they engage in — uncertainty and risk are everywhere. Moreover they have more information at their disposal in making decisions that affect them than would the government were it to take on these responsibilities.

**The PC’s contention that costs are only internalised when consumers have full information flies in the face of reality. In the real world of less than full information it would mean that there are no private costs and governments would be justified in intervening in every aspect of people’s lives.**

### **Imperfect information does not create social costs**

Our concern, as we express several times elsewhere in this submission, is that to assume that all shortfalls from a ‘nirvana’ standard of informed decision-making represent a case for intervention is to virtually abandon *any* limitation on government intervention at all.

The fatuousness of the Draft Report’s position on this can be illustrated with reference to the choices that Australia’s world 500cc motor cycle champion, Mick Doohan has chosen to make. He faces considerable risk and uncertainty every time he races. He can take every precaution within his control but can still make mistakes and can be affected by other riders, the state of the track and so on. He has had numerous crashes and suffered quite severe injuries but the costs of those injuries are sheeted home to him — they are essentially a private cost and he keeps returning to racing. Those who cannot appreciate what he gets out of racing may well think he is ‘obsessed’ with it.

Another example concerns obesity. The Draft Report suggests obesity is a public health issue in the same way that problem gambling is. After all it has been implicated as a risk factor in a number of diseases — including coronary heart disease and diabetes — that are held to be responsible for many deaths and much loss of quality of life. Now it is quite certain that those who eat out in restaurants have only the haziest idea as to how much fat there was in any meal that they might order. On the PC's argument, this means that there is extensive market failure in the provision of restaurant meals and the government is justified in intervening to force restaurant proprietors to disclose fully on their menus the nature and quantity of all ingredients that might contribute to obesity. Such an example illustrates the nonsense of the proposition.

The PC's logic would have the government intervening to prevent him from hurting himself. Most reasonable people would be prepared to accept that if he chooses to do it, knowing that it is highly risky (without knowing the precise risks), then it is his business and he pays for it.

In terms of costs to be counted — and as a basis for intervention — the Draft Report overstates what economics has to say about consumer information and what governments should do in the face of less than perfect information. Information is costly to collect and disseminate, so some ignorance and uncertainty are the norm for anyone making a decision about anything. This certainly includes governments. Moreover, it is impossible to ensure that the information that is provided will be read and understood by all at whom it is targeted.

The policy issue is whether governments can make a cost-effective supplement to the information that producers, reviewers, advisers and consumers themselves will generate. A perfect information 'nirvana' is not the relevant objective, as Harold Demsetz pointed out in a well-known contribution in 1969.

As a practical matter, those in government are likely to have access to far less relevant information than are individual consumers and producers who are constantly operating in the market place. Moreover, most gambling involves a relatively large number of transactions with small amounts of money so gamblers get plenty of opportunity to discover the nature of the game and its odds by repeated experiment.

**Information is costly collect and disseminate, thus some uncertainty is the norm. The key issue is; are governments able to make a cost-effective supplement to information the market will generate?**

### **Transactions costs are the key to social costs**

It seems incredible that there is no explicit consideration in the Draft Report of the work of the most important thinker this century on externalities and social costs: Nobel Laureate, Ronald Coase, Emeritus Professor of Economics, University of Chicago.

Among professional economists, Coase's analysis of social cost has become the standard. His major contribution to modern thinking about externalities focuses on the potential for voluntary arrangements to cope with spillovers involving negative or beneficial impacts by some individuals on others.

There are two main mechanisms which often prove flexible enough to reduce, if not eliminate, market failure (unpriced spillovers). They involve co-operation among the relevant parties or the negotiation of formal or informal contractual arrangements between them (for example gambling self-exclusion programs). Their scope to do so is only limited by the extent of the transactions costs of the arrangements in question.

The ability of individuals and businesses to form co-operative arrangements and contracts to reduce or remove potentially unpriced spillover effects should not be underestimated. These activities occur regularly in day-to-day life, without any government intervention, and often as implicit contracts. Simple examples include people avoiding each other as the walk down a crowded street, or cars attempting to leave at the same time, in an orderly fashion, a full car park with just one entrance.

The Draft Report's lack of consideration of these issues is a major deficiency. Some of the costs the PC wants to count (and which, strictly speaking, sometimes are not even private costs) will already have been dealt with in other ways and should not form part of the equation.

This is particularly the case for family related issues. The important role of contracts within the family and the role of the churches and counselling services acting as contractual brokers to deal with what might be thought to be unpriced spillovers has not been considered. This means that its cost estimates will be overstated.

**The PC does not consider the ability of individuals and businesses to form co-operative arrangements and contracts to internalise potential spillover effects — this is a major deficiency.**

### 5.4.3 Summary

In summary, the attempts to measure the costs of problem gambling presented in the Draft Report suffer from five major defects:

- the basis for the estimates is a seriously flawed survey methodology giving unreliable results;
- causality has not been established — an essential factor if costs are to be directly attributed to problem gambling;
- the measurement of costs is suspect and overstated;

- the purely private costs should not be counted, and unrealistic requirements on the definition of private costs is used in the Report; and
- the role of contracts and informal arrangements in dealing with spillovers have not been recognised in the Draft Report.

The net result is that the costs identified in the Draft Report are likely to be overstated, rather than conservative as claimed.



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## 6. Approach to Policy

### 6.1 Key defects of the Draft Report's approach

The Draft Report's approach to policy is self-contradictory in that its diagnoses and prescriptions are out of step. On the one hand it diagnoses "government failure" as the root cause of current regulatory failure on gambling, while on the other hand it proposes "more of the same" in terms of regulation and taxation.

In particular, the Draft Report:

- says it considers entry controls to be an unnecessarily clumsy way to approach concerns about probity and compulsive gamblers;
- acknowledges the risks in government paternalism; and
- identifies "federal fiscal imbalance" as a cause of the extreme and uneven taxation of the industry.

Nevertheless, the Draft Report lays the ground for a "business as usual" approach with a policy mix which would retain most of the diagnosed causes of "government failure". It tops this off with the possibility of a major intensification of gambling regulation and its extension into the consumer protection arena.

A number of analytical shortcomings can be seen to contribute to this contradiction.

The absence of an explicit analysis of the appropriate roles of the individual, government and civil society, both from an economic and an ethical standpoint, is probably the greatest contributor.

It is particularly evident in the way in which the ethical and economic virtues of consumer sovereignty are abandoned in a sloppy (and sometimes dishonest) analysis of the social costs of gambling. This analysis leads to its portrayal as an activity to be discouraged in the name of the public interest — as it is at present by heavy-handed tax and regulation.

The inadequacies of the Draft Report in this regard are as follows:

- The Draft Report does not define any practical boundary between consumer sovereignty (for the 98 per cent unaffected by gambling) and government paternalism (for problem gamblers).
- It ignores the realities of life by assuming that imperfect information and regrets by some gamblers create genuine 'externalities' and that

these must be addressed with new 'labelling' laws and other information initiatives.

- It presumes a case exists for containing problem gambling due to the spillover costs imposed by gamblers on others. This presumes a certain view of the household which the Draft Report then refutes when it counts the benefits of gambling (see Chapter 4 of this submission).
- Psychiatric notions of a loss of self-control and "bounded rationality" are used in the Draft Report to describe the mental state of compulsive gamblers. Although this is presented as part of the externality case for intervention, it sounds much the same as saying that the tastes of problem gamblers are unstable, or that problem gamblers are mentally or emotionally incompetent (the traditional excuse for paternalism);
- The PC seems to be in denial about the fact that economists have found apparently unstable tastes — associated with a range of compulsive activities, including gambling — to be quite rational and to result from the reasonable expression of consumer sovereignty. This is, of course, a direct challenge to paternalistic prescriptions.
- In its discussion of whether gamblers' tastes are stable, the Draft Report acknowledges the risks of paternalistic prescriptions (p. 5.13). However, it then ignores those risks in assessing the implications of denying consumer sovereignty to the 98 per cent of the population who are not problem gamblers.
- In its Summary and Outline statements, the PC only pretends it understands the causes of the trauma that compulsive gamblers suffer. The same applies to its claims about the extent to which gambling per se is the cause — as distinct from being the result or an accompaniment — of several associated conditions. In particular, and for no good reason, the PC turns its back on the possibility that problem gambling is the expression of certain mental or emotional incapacities or traumatic events. In the case of at least some sufferers, these factors may mean that the person in question would find more damaging activities to engage in, if their access to gambling were to be denied. This type of scenario is all the more plausible given recent advances in the understanding of the common biochemical and microbial bases of some compulsive and obsessive behaviours. We note the PC's expressed uncertainty on this point at various places in the main text of the Draft (for example, second dot point, p. 4.6 and the last para, p. 10.8). We also note that in neither the US nor Australia is problem gambling regarded by psychologists as a "personality disorder" as such, suggesting it is seen as a derived complaint.

Thus in the Draft Report, consumer sovereignty is crucified by a series of misrepresentations of both the psychologists' and economists' perceptions of compulsive activities.

Certainly, the Draft Report is too quick to jump to a paternalistic policy package. The package would compromise the consumer sovereignty of the vast majority of gamblers and provide no more than speculative value to the tiny minority of problem gamblers in whose name it is proposed. The Draft Report's argument that such sweeping measures are necessary because everyone is at risk of becoming a problem gambler simply does not ring true. Its attempt to show that reducing the cost of access would aggravate problem gambling is quite unconvincing.

As if to avoid putting the counter-intuitive flavour of its conclusions to the test, the Draft Report contains no serious analysis of the expected benefits and costs of the intrusive policy measures it suggests or the alternatives to them. (In this regard the PC does not even conform to its own requirements for the preparation of regulatory impact statements by government — see pp. LXXII and LXIV). For example, it does not even discuss the reduction in the risk of problem gambling it expects will result from its preferred measures.

Meanwhile, the Draft Report downplays the results of the modelling work the PC commissioned. This work shows that there would be increased consumer welfare from reduced gambling taxation — the one exception is an obscure reference in a box on page 18.18. Indeed, more interesting still, no mention is made of the modelling result that outlays on gambling (and presumably, financial burdens on problem gamblers) would *fall* if gambling taxes were 'normalised'.

These issues will be teased out further in the remainder of this Chapter which addresses the policy prescriptions that are floated the Draft Report.

**In the Draft Report, consumer sovereignty is crucified by a series of misrepresentations of both the psychologists' and economists' perceptions of compulsive activities.**

## 6.2 Regulating access

### 6.2.1 In general: many useful points, but reticent

The Draft Report's opening statement in its Chapter on regulating access, that the "... only justifiable policy rationale for regulating access is to limit social harms or to meet community norms" (Box 14.1, p. 14.1) is unexceptionable. So is the Draft's recognition that clubs do not deserve privileged treatment. And it is hard to object to the Draft's general suggestion that any changes in restrictions in place "...proceed gradually so that their social and economic impacts can be gauged" (p. 14.30)

Finally, much of the Draft's analysis of the ill effects of EGM caps is sound.

However, for the same reasons as we find the Draft's reticence on taxation unsatisfactory, we consider its reluctance to come out point blank against EGM caps (because of what it sees as a problem gambling risk) to be misplaced. As we see it, EGM caps (like high gambling taxes) aggravate problem gambling. They also inconvenience ordinary gamblers, who comprise the majority of consumers.

**The PC's reluctance to oppose EGM caps is misplaced, given its analysis of the ill effects of the caps on the community as a whole.**

### 6.2.2 Opinion polls vs the facts

The PC's discussion of access is one of those areas which shows how selective the PC is in using its National Gambling Survey results. While we do not disagree with the PC's commonsense recognition of the equivalence of the services offered by clubs and casinos, we are struck by its readiness to take issue with the survey figures.

The PC confesses in Chapter 13 of its Draft that survey perceptions that clubs are "safer ... may well be ill-founded" (p. 13.26). The question begged here is what basis the PC has to be confident of any of its survey results. What was the national survey for? Are its results material or not? On all questions, respondents' answers will have reflected respondents' perceptions at best. Indeed, respondents' answers on some matters, including the clubs issue, may have been 'strategic'. The impression the Draft Report conveys, here as elsewhere, is that the PC knows the survey findings are unreliable but is happy to invoke or reject them depending on whether they agree or disagree with its preconceptions.

Although respondents' views on the relative safety of clubs are rejected, respondents' answers on whether EGMs should be limited — for example, the South Australian respondent figures on p. 14.3 — are written up enthusiastically. There is a lame qualification about community attitudes by themselves not being strong grounds for caps because they might not hit their target as well as people think. That is the least of the reasons why responses obtained in this survey are no basis for policy. The PC would do well to recall the advice of Edmund Burke, reported earlier in section 2.2.2.

### 6.2.3 Current access rules already wide-ranging

The Draft Report has characterised the current access regulations as narrow:

"... regulatory controls are focused narrowly..."  
(p. 14.2).

This sits very oddly with the discussion in Chapter 12 (pp. 12.1-12.49) and the comprehensive eight dot point list presented in Chapter 14 itself (p. 14.2). ACIL's impression is that current access rules are detailed, intrusive and comprehensive — for example minors, those who exclude themselves, those who are disorderly or intoxicated, prostitutes and persons of ill-repute are currently barred from entering a casino.

#### **6.2.4 Beyond EGMs?**

It might also be regarded as odd that the focus of the discussion in Chapter 14 (as in the Draft overall) is on gaming machines, despite evidence that more problem gambling (which is the Draft's stated concern) is said elsewhere to be associated with race gambling. Chapters 15 and 21 briefly cover access other types of gambling and municipality limits respectively.

#### **6.2.5 Enough evidence to repeal caps now**

The Draft's discussion of the role of EGM limits in containing problem gambling is reminiscent of the discussion elsewhere in the draft of tax and problem gambling (or rather, the allegation that reducing tax rates would pose an unacceptable problem gambling risk).

Problem gambling is a problem primarily because it is expensive. The puzzle as we see it, is how do EGM limits help problem gamblers. After all, this is the group that the PC agrees is least responsive to changes in the costs of gambling to the consumer. Accordingly how does this group gain by making gambling even dearer in per hour, per machine, per push, or per dollar wagered terms — all of which the Draft concedes are likely outcomes of EGM limits?

The Draft never really sorts out this puzzle. It floats the idea that dearer gambling will dissuade recruits to problem gambling, the proposition being that:

“By limiting the number of machines and making them more expensive, fewer people would play, thus reducing exposure to the risk of problem gambling.”  
(p. 14.11)

The unstated assumption here is that recruitment rates to problem gambling will be dampened by the extra cost of getting started that is imposed by access rules. This is conjectural, and clearly did not work with attempts to restrict alcohol usage by tightly restricting opening hours of hotels and clubs. It seems to be based on some questionable links between access and problem gambling drawn in Chapter 8.

There are a number of difficulties with the Chapter 8 material — in addition to the several identified by the PC itself. Apart from the wider problem of relying on SOGS as a measure of problem gambling — which

was dealt with in the previous Chapter of this submission — these problems include the following:

- in Figure 8.3, Table 8.2 and related text from page 8.7, “gambling expenditure” is used as an proxy for access. In fact, the relationship between expenditure and access is one of the key things to be investigated, not assumed;
- contrary to the impression given in the text relating to Table 8.2, properly measured, the  $R^2$  is about 30 per cent and the coefficient of determination is about 20 per cent, both quite unremarkable;
- a specific problem of a general type the PC admits on page 8.13, is that the reason help services seem to be used more in high accessibility (expenditure) areas could easily be increased awareness of counselling rather than increased accessibility. (This would not be surprising given that their availability is advertised by providers.);
- Figure 8.8 page 8.17, a graph showing the gambling interest of counselling clients, is unfathomable because it begins before EGM’s were introduced;
- Section 8.6 (pp. 8.18-8.19) argues that the parallel growth of regular and problem gamblers shows access is causing problem gambling; a plausible alternative explanation is that advertising working on both; and
- Figure 8.9 from a 34 study meta-analysis by Schaffer, Hall and Vander Bilt (1997) which purports to show a link between the growth in gambling opportunities and problems over the last 20 years, could just as feasibly be reflective of income effects.

Similar uncertainties appear to afflict material presented in Chapter 14 on the relationship between machine and venue numbers and revenue. Box 14.4, for example, which reports the PC’s own analysis of Queensland data, ends with a warning that the prediction value of the work is probably undermined by missing demand variables (p. 14.23).

Underlining these doubts about what attracts recruits, the Draft admits in Chapter 14 that the extra margins able to be taken by suppliers when limits apply could have perverse effects on existing problem gamblers. Moreover some gamblers who are close to having a problem (termed “incipient” problem gamblers) could be pushed over “the threshold”. Gallantly the Draft says the way around this risk is the introduction of binding pay-out rate restrictions, or ‘price caps’ (by which it means insisting on a higher pay-out floor than the venue would choose commercially). This it says, would create queues, and crowd out problem gamblers who have less time to spare than some people.

This seems a bit naïve. Strangely, nothing is said about what the commercial responses of venue managers would be in the face of excess demand for their machines. Our guess is that prices of complementary

products would be raised, so that the effective cost of access to EGMs became a market rate with no queues. After some adjustment period, we would expect the EGM limit to result in a higher cost for problem gamblers and incipient problem gamblers, in much the same way as it would without a higher EGM pay-out floor.

The Chapter goes on to discuss EGM caps on venues, regions and so on. It shows the mixed evidence on a number of factors such as the role of small venues and the degree to which problem gamblers crave anonymity. Curiously it uses the example of measures applying to road safety (themselves subject to much controversy) as a way of introducing the idea of a different approach.

Eventually Chapter 14 concludes ambivalently by expressing an apparent preference for keeping the status quo for the meantime. Admittedly, a set of control measures that the PC says could be put in place of caps is later proposed (for example, on page 15.19). However the Draft's reluctance to bite the bullet on the case for repealing caps given their likely cost impact on problem gamblers, incipient problem gamblers and all other gamblers, seems contrived.

As with the case for reducing gambling taxation, the Final Report should be more forthright on access and have the courage to conclude that on the basis of their costs to the *community as a whole*, they should be repealed.

**On the basis of the costs of EGM caps to the *community as a whole*, the Final Report should conclude that they be repealed.**

### 6.3 Consumer protection

Despite the complete lack of critical assessment or analysis on its part, the Draft Report feels justified in seeking public reactions for draft 'recommendations' to mandate a range of measures to ensure that the informed consent of consumers is obtained by gambling venues before they are allowed to gamble.

The measures include the following:

- a duty of care for gambling venues; and
- codes of practice specific to gambling to replace the existing voluntary codes.

These proposals and the issues that they raise are discussed further in the succeeding sections

#### 6.3.1 Wrong information benchmark

Most of the Draft Report's conclusions seem linked to the views that inefficiencies plague the market for information about gambling odds and the risks of gambling addiction. The argument then proceeds that the

state needs to intervene to see that consumers know more, and to forbid them from obtaining any gambling product for which a state-approved information pack is not provided to them beforehand.

In ACIL's opinion, in several important respects these views are greatly mistaken. They seem to be based on a utopian (or nirvana) type efficiency standard which assumes that; all outcomes are knowable (and worth knowing); information is free; and government administrators are both benevolent and blessed with perfect foresight. By comparison with this dream-world standard, virtually all human activities would be seen to require a centrally tailored information pack.

A dream-world standard is an unrealistic basis for policy. Its attempted application would lead to massive intrusion in people's daily lives. Goods and services would become standardised. Individuals and firms would duck responsibilities and shift them to the state. The adaptability of the economy to changing economic conditions would be impaired. Cynicism would grow, as the futility of the experiment became clear. At the limit, the danger is that there would be a virtual re-creation of the failed system of centralised economic planning and control with all the sacrifices to liberty and material well being that would accompany it.

No doubt this is a great overstatement of the Draft Report's *modus operandi* and of the PC's intentions. However key elements of the recipe the Draft puts forward for involvement of the state in enforcing 'labelling' laws for suppliers and nurturing problem gamblers, which have these qualities. If taken seriously by policy makers, they could lead at once to a both a cut in productivity and a gratuitous erosion of consumer sovereignty.

**The Draft Report's conclusions are based on the unrealistic expectations that all outcomes are knowable, information is free and administrators are both benevolent and blessed with perfect foresight.**

### 6.3.2 Implications of benchmark for benefits and costs

In the Chapters 4 and 5 of this Submission, some ways in which faulty thinking has marred the PC's analysis of benefits and costs were outlined. In both Chapters, brief reference has been made to the importance of the insights Demsetz put forward in 1969 and, in particular, his refutation of the nirvana approach. It has become a landmark reference in policy analysis and we would urge the PC to consider its message carefully when finalising the report.

A disappointing ignorance of these principles is displayed in Box 10 on page 10.7, of the Draft Report The Box attempts to categorise costs into private and public costs. Some stringent conditions are placed on what is a private cost: individuals must be "rational" (whatever that means) and



make decisions "... in full knowledge of the costs and benefits involved (and the degree of risk)". It is then confessed that,

"... in this report, many of the private costs of problem gambling have been included with the social costs of gambling. This is because of serious reservations about the extent to which problem gamblers are aware of the true costs and benefits of gambling..." (p. 10.7)

This means that costs that might otherwise be considered private costs have been included in these estimates. If this approach to the treatment of full information and private costs is accepted, it will lead to the conclusion that there are virtually no private costs at all. Many people would agree that this is impossible, dangerous and ultimately, silly. The fact is that people do not have full information about most activities they engage in — uncertainty and risk are everywhere.

**The PC's approach to full information and private costs implies that there are no private costs at all.**

### 6.3.3 Limits of useful intervention need to be considered

Well before the PC embarked on its present task, research on risk management had indicated that consumers have systematic misconceptions about some risks.<sup>10</sup> People systematically overestimate the risks of high profile events such as natural disasters, terrorist attacks and recently discovered carcinogens, while systematically underestimating more common risks such as heart disease, cancer and stroke. Moreover, survey data show that people tend to overvalue *increases* in risk and to overvalue *movements to zero* risk relative to intermediate changes in risk. Presumably these tendencies permeate the behaviour of people at gambling venues. Why not search out these out and tackle them too?

The difficulty in turning these kinds of insights into policy prescriptions in a gambling or any other setting is that nobody has a monopoly on logic. Apparently inconsistent differences in the level of risk which people tolerate between one activity and another may make good sense to them in portfolio terms.

The other common assumption with information is that an "asymmetry of information" between producers and consumers is a sufficient condition

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<sup>10</sup> See for example three items by Professor W. Kip Viscusi:

- "Risk-Risk Analysis" *Journal of Risk and Uncertainty*, 8(1) 1994 pp. 157-269.
- "Mortality Effects of Regulatory Costs and Policy Evaluation Criteria", *Rand Journal of Economics*, 25(1) 1994, pp. .95-109.
- *Fatal Tradeoffs: Public and Private Responsibilities for Risk*, Oxford University Press, New York, 1992.

for market failure of the type that should be tackled centrally, through regulation. Here the issue is not misconceptions of risk (discussed briefly above), but rather the relative ignorance of one set of parties to a deal, a slightly different idea.

The efficiency case for measures to address the asymmetry of information turns, not on what is fair, but rather on whether governments can cost-effectively reduce transactions costs to make commercial solutions easier for consumers and suppliers to achieve. Possibilities include the development, promotion and perhaps even mandating of industry and product performance standards or codes — which could reduce signalling costs. Another class of possible initiatives under this heading is minimum disclosure rules. A third is rearrangement of liability rules (as applied in courts, or more generally), to enhance the ability of tort law to resolve damage claims and simultaneously to sharpen the incentives for care. We are not convinced that the PC has systematically worked over these options, including the possibility of leaving the issue to the Trade Practices Act. This issue is taken up later.

But our main fear is that voluntary initiatives have been summarily discounted. Consumers can vote with their feet and share search costs such as by forming consumer ‘clubs’, or ‘buying’ advice on the subject from broadcast media and journals such as *Choice*. Equally, amongst producers there are many ways in which trust may become the focus of competition, such as through competitive branding and guarantees whereby producers put their names on the line. The Draft Report shows no signs of a serious evaluation of these opportunities.

The disincentive effects of interventions on the incentives for taking up such opportunities need to be taken into account. One effect of disclosure laws, for example, is that they undermine producers’ incentives to build reputations on the basis of providing better information. Another effect is that they crowd-out expert reviewers who might otherwise have provided services to newspapers and other media on the true properties of products. Yet another is that, with the government ostensibly doing the job, consumers will become complacent and do less checking themselves. Finally, compliance with such laws can become a shield for less trustworthy producers.

Our concern, as we also express several times elsewhere in this Submission, is that to assume that all shortfalls from a nirvana standard of information represent a case for intervention is to virtually abandon *any* limitation on government intervention at all.

#### **6.3.4 PC ignores consumer protection laws**

The Commonwealth *Trade Practices Act* and various State laws seek to protect consumers in their everyday dealings with companies that supply them with goods and services. The Act includes provisions to deal with

unconscionable conduct, false and misleading claims, harassment and coercion, and deceptive and misleading behaviour by suppliers. The fair trading laws of the States and Territories generally extend the protection provided by the Act to unincorporated suppliers.

In enforcing the consumer protection provisions of the *Trade Practices Act* the Australian Competition and Consumer Commission (ACCC) focuses on industry-wide conduct and conduct that affects large numbers of consumers, to achieve outcomes that make the most effective use of its resources.

Apart from a passing reference to this body of consumer protection law (p. 15.3), the Draft Report merely recorded the views of the different participants in the inquiry. It does not discuss how these provisions have fared in addressing problem gambling let alone assess how well they have performed in that task. As we shall see shortly, this is most surprising, as everything else in the Draft Report has been looked at from such a perspective.

**The Draft Report does not evaluate how the *Trade Practices Act* and the fair trading laws have fared in addressing problem gambling.**

### 6.3.5 PC ignores benefits of competition

The Draft Report has ignores the role that competition can, and does, play in protecting gambling consumers.

In our March 1999 Submission we pointed out that in a competitive market, businesses have strong incentives to protect their customers. These incentives are independent of any consumer protection legislation that might exist. Businesses rely on being seen to treat fairly all those with whom they deal — including their customers, employees and suppliers. Those that do not suffer a reputation that can have severe financial impacts on their business — existing customers, employees and suppliers will tend to go elsewhere and replacements are harder to attract.

In the case of gambling, a widespread perception that a gambling venue was exploiting some of its customers by preying on their emotional weaknesses would be likely to damage the business in question. In the first place, the venue's existing customers would tend to go elsewhere to gamble. The adverse effects of any loss of patronage would be likely to be amplified by any adverse publicity that might be given to the practice by the media and others. Given the generally negative publicity given to gambling in Australia, such coverage is highly likely and once it occurs is likely to be damaging the particular operator in the eyes of public opinion.

Despite acknowledging the scope and justification for greater competition in gambling, the Draft Report spent relatively little time identifying or

evaluating ways to increase competition or the benefits to consumers from doing so. Indeed after looking at a number of the existing regulatory restrictions on competition, the Draft Report ended up favouring of their retention.

The Draft Report evaluated liberalisation of these restrictions primarily on the basis of how it would affect problem gambling and harm minimisation. For example after evaluating exclusive operator licensing, perhaps one of the most important policy issues in the whole inquiry, all that the Draft Report could conclude was that exclusive licensing:

- had not "... reduced the accessibility drivers [sic] of problem gambling"; and
- offered "... no significant advantages for harm minimisation".  
(p. 13.8)

In essence the Draft Report decided a significant competition policy issue primarily on the basis of what it would do for a very small percentage of the adult population and not for what it would do for the population as a whole. The Draft Report does not even examine whether the legislative restrictions in question were essential to the achievement of the objectives of the legislation.

These omissions mean that the Draft Report fails to conform to the key requirements of the Competition Principles Agreement upon which it is meant to be based.

**The Draft Report has not examined whether the legislative restrictions on competition in gambling in the jurisdictions are essential in achieving the objectives of the legislation in question.**

### 6.3.6 Common law duty of care not evaluated

In Section 15.6, the Draft Report observes that the common law "duty of care" encourages gambling providers to protect their customers from harm. It also noted that the common law "duty of care has numerous advantages over what it termed 'prescriptive regulation'" (p. 15.36). Unfortunately, the Draft Report does not define what it meant by this term. We assume that it is referring to regulation that specifies, often in considerable detail, the inputs or processes that are to be used in meeting a regulatory objective.

Although the Draft Report acknowledges that, in theory, existing tort law created strong incentives for gambling operators to minimise any harm that gamblers may suffer from their use of the operators' services, it concluded that, in practice, the incentives were insufficient. (p. 15.36). The Draft Report is able to reach this conclusion without the benefit of *any* analysis of the issues. For example, the Draft Report does not

- provide any support for its assertion that the common law duty of care is “narrow and vague” (p. 15.36);
- give any indication that it appreciates the complex nature of tort law;
- examine the case law to show how the common law duty of care has performed in dealing with gambling-related harms;
- examine the economics of the various rules and doctrines in tort law;
- provide any evidence or analysis for its assertion that tort litigation is costly in the case of gambling (p. 15.36); nor
- provide any evidence or analysis for its assertion that the results of tort litigation have not reflected the strong evidence of the adverse health impacts of tobacco consumption (p. 15.36)

In short the Draft Report fails to demonstrate a case for moving away from the common law to deal with harms associated with gambling. Indeed the Draft Report implies that one of the rationales for proposing such a move is that “it is hard to prove causal connections” in problem gambling litigation. (p. 15.36).

This actually suggests that the evidence of causality in problem gambling is unlikely to pass the evidentiary test applied by tort law. If so the evidence of causality is fundamentally weak and not a sound basis for either moving away from the common law or for any other public policy intervention to address problem gambling.

**The Draft Report fails to demonstrate a sound case for not using the common law to deal with any harms associated with gambling.**

### **6.3.7 Framework to evaluate codifying a duty of care not provided**

The Draft Report seeks the views of inquiry participants about:

- prescribing a duty of care for gambling venues in legislation; and
- placing greater reliance on regulation, rather than voluntary codes of practice, to specify how gambling venues will address problem gambling (p. 15.41).

Before seeking public comment, the Draft Report has provided readers with very little to go on that it did not conduct a serious analysis of these options. In particular, the Draft Report did not:

- evaluate the economic costs and benefits to the community of either option for addressing problem gambling;
- show that the net benefits of its suggestions are likely to exceed the net benefits from maintaining the status quo;
- try to identify, let alone evaluate, other feasible options for addressing problem gambling; nor

- even bother to review the experience from other areas where a duty of care has already been codified, for example, in occupational health and safety.

Presumably part of the reason that the Draft Report did not carry out a comprehensive analysis of its draft 'recommendations' is that it did not specify these ideas in sufficient detail to allow a complete analysis to be carried out. Indeed the lack of definition and the open-ended nature of the draft 'recommendations' mean that it is simply not practical to respond to all the issues that are raised by them.

Some of the questions that are raised but not adequately answered by the draft 'recommendations' are set out below.

### **What harm would the duty seek to prevent?**

In both the common law and the existing statutory versions of the duty of care, the harm in question is defined in material or physical. The harms in question are unintended consequence of other activities and such consequences are unambiguously harmful to their victims. Accordingly there is no doubt about what has to be managed by the duty holder. Interestingly both the common law and the statutory forms of the duty of care exclude psychiatric and psychological harm.

In contrast, the risk of financial loss in gambling is not only unavoidable but is *essential* to the pleasure that gamblers obtain from gambling. It is also an unremarkable feature of virtually any expenditure habit, whether that is hang gliding, shopping, bushwalking or collecting French clocks. It makes no economic sense to require gambling operators to reduce the losses of all their customers — that would simply reduce their business and the service that they provide to their customers, 98 per cent of who do not have a problem gambling.

The Draft Report, of course, contends that beyond some point, gambling causes psychiatric and psychological harm. However, as noted earlier, the medical, psychiatric and sociology professions have yet to agree on the nature of the harm that is caused or on the point at which it occurs. Although the Draft Report has contributed to the controversy, it has added little by way of understanding to the debate.

As only the gamblers in question can determine whether they suffer from problem gambling, the condition is impossible for others to identify or measure independently of the problem gamblers with any confidence or consistency. Problem gambling is an entirely individual reaction to a set of gambling experiences. Only the gambler in question would be able to determine at what point his or her gambling had become a problem. Each person's reactions to a given gambling experience could be expected to be different, no two being the same.

### **To whom would the duty apply?**

The Draft Report does not specify to whom the codified duty of care should apply. From its discussion, it appears that the PC has in mind applying the duty to operators of gambling venues, owners of such venues or to both groups. It is not clear why any or all of these groups should be singled out.

For its part, the common law duty of care is universal — it applies to anyone whose actions could prevent or reduce harm that might otherwise be caused to another. At the same time, the common law admits a number of defences to tort actions, including the doctrine of contributory negligence. This doctrine absolves the injurer from all liability where the victim can be shown to have failed to take reasonable steps to protect himself from the harm that he suffered. It is based upon the recognition that both injurer and victim can influence the extent of the harm that may befall the victim.

In areas where a codified duty of care applies, the duty is also universal. For example in the regulation of occupational health and safety, the duty applies to everyone whose actions could be reasonably expected to harm another person, regardless as to whether the harm is direct or indirect. It applies to those whose actions influence or could influence the harm that could be reasonably occasioned by the actions of a third party. There is a duty of care for employers, their landlords, those who supply them with plant, equipment and materials, *as well as to their employees*. In other words those who are being protected are also meant to reasonably contribute to their own health and safety, as well as to the protection of their colleagues and any visitors to their workplace.

In the present context it would be difficult, in principle, to justify applying a duty of care to a venue operator but not to any others who may be able to influence the harm caused by gambling. Indeed to exempt gamblers from such a duty would tend to encourage them to expose themselves to the risk of developing into problem gamblers — such an approach would be neither efficient nor equitable. For example it is difficult in principle to see why gamblers should not have a duty of care to their dependents and others may be adversely affected by their gambling.

### **What would the duty require?**

The inherent subjectivity of the assessment of problem gambling means that identification of the factors that contribute to it remains highly uncertain and contentious. There are, therefore, grave doubts that the risk factors in problem gambling are practical targets for venue management. What cannot be measured, will not be managed.

In the light of these considerations, there is no way that the gambling operator could objectively anticipate the onset of problem gambling or the path that it could be expected to take once it has been identified.

To even begin to make a judgement about this, the venue operators would need to have extensive personal information about each and every gambler that enters their premises. The sort of information would include such things as the gambler's wealth, income, fixed expenditure commitments, marital status and family circumstances.

This is not the sort of information that we could reasonably expect venue operators to have on its customers. Indeed it is doubtful if this information could be assembled without the consent of each and every gambler, given the requirements of the existing laws on privacy. Moreover, its assembly would be costly and would undoubtedly be seen as requiring another yet layer of regulation of its disclosure or use by the venue operators. Indeed one has only to recall the debates over the credit reference legislation to appreciate the point.

Just as the assessment of problem gambling is highly subjective, so must be its prevention or amelioration. For the foreseeable future, this will continue to be so. Even if an agreement could be reached today on what the problem gambling condition actually is, in all likelihood it would be some years before sufficient data had been collected and sufficient statistical tests had been conducted to enable gambling service suppliers to accurately predict when it was about to occur. To suggest a change in the law that requires suppliers to determine *a priori* how they should manage an undefined problem is ludicrous.

#### **What other legislative changes would accompany codification?**

As our March 1999 Submission showed, the gambling industry is currently constrained by the sheer weight of highly detailed, complex and prescriptive regulation of gambling services. At a practical level, the severity and complexity of existing gambling regulation is likely to reduce the ability of operators to respond to problem gambling in novel or innovative ways.

The major potential advantage of principle-based regulation — such as a duty of care — is the flexibility it can give to duty holders to determine how they should fulfil their legal obligation. In the absence of a substantial winding back of existing regulation, this potential advantage would not be realised. Indeed the scope to realise this potential would be further reduced by the suggestion of further highly prescriptive and detailed regulation to replace the existing voluntary codes of practice in the gambling industry.

On the other hand there would be a potentially significant increase in the administration and compliance costs due to the introduction of a duty of



care. The net result would be a reduction in the net benefits — or more realistically, an increase in the net costs — of gambling regulation.

### **Mandating codes of practice**

The suggested move towards greater use of “...prescriptive and mandatory regulations rather than voluntary codes of practices...” on page 15.41 is a cause of particular concern.

The Draft Report did not include a comprehensive evaluation of the existing voluntary codes of practice that have been developed to date by various gambling operators to promote responsible gambling. The Report simply referred to one unsubstantiated criticism of the existing voluntary codes of practice and alluded to possible enforcement difficulties with a duty of care.

The voluntary nature of the existing codes of practice is not the source of these enforcement difficulties. The difficulties are, in fact, a function of the inherent weaknesses in the evidence of the nature of problem gambling and its causes.

The appropriate response to such difficulties is not to introduce more rules as the Draft Report suggests. This looks too much like an attempt to increase the probability of being able to get a conviction rather than a well thought-out approach to a clearly defined but manageable problem.

All in all, it is clear that the PC has not looked far enough into the regulatory philosophy behind codification of a duty of care combined with voluntary codes of practice. It does not seem to appreciate the risks and costs inherent in the approach that it is proposing. The 1995 report of the Industry Commission inquiry into occupational health and safety is a useful reference for guidance on both of these issues.

As argued elsewhere in the Draft Report, the harm from gambling is a function of many variables which vary from gambling venue to gambling venue. On this basis the effective management of the harm associated with gambling will also vary from venue to venue. Any attempt by government to prescribe how harm is to be managed will involve selecting one of these approaches — or a small number of them — but without the benefit of knowing what works and what does not at each particular site. This information is simply impractical for government to collect.

Accordingly, in the vast majority of cases the selected approach for a venue will not be the one that maximises the net benefits to the community that the venue could generate — even with the PC’s controversial method of measuring the costs and benefits. This ‘one-size-fits-all’ approach encourages the selection of an approach that most, if not all venues can live with — in other words the lowest common denominator.

The consistent experience with this sort of regulation in other areas is that over time the approach selected inevitably falls further behind “best practice” management. It proves to be near impossible for the regulator to keep the regulation up to date with best practice, especially in areas such as gambling that are characterised by high rates of technological or structural change.

This type of regulation is rigid and its inflexibility discourages those who are regulated from taking a pro-active approach to the management of the issue in question. The regulated managers tend to adopt a passive approach to their legal responsibilities and leave innovation in management practice to the regulator. As the regulator is constrained by what approach can be accommodated by incumbents, competition is dampened and there is generally little innovation.

For all these reasons the economic costs associated with the detailed and prescriptive regulation of inputs or processes to be used to manage a complex issue such as problem gambling are generally high. Perhaps more to the point, these costs of such regulation are usually much higher than most of the other forms of regulation — particularly regulating the principles to be applied to the management of an issue or the broad outcomes to be achieved. As a result the PC’s predecessors have long argued for governments to minimise the use of such regulation as far as possible.

**The PC did not evaluate sufficiently the voluntary codes of practice developed by gambling operators. The PC also ignored the economic costs associated with detailed and prescriptive regulation, which are much higher than for most other forms of regulation.**

## 6.4 Tax

### 6.4.1 Gaps in Draft’s treatment of tax

The Draft Report acknowledges that the method of distributing Commonwealth funding to the States and Territories reinforces the pressure on them to tax gambling and to increase progressively the proportion of their revenue that is obtained from this source (p 18.9). It concedes that the taxation of gambling by the States and Territories has evolved in an *ad hoc* way and that it is unlikely that the tax rates are appropriate (p. 18.31).

Despite these considerations, the Draft Report goes on to state that:

“... the Commission has not found a strong, or an unambiguous, case for significant reductions in gambling taxes.” (p. 18.31).

These statements have to describe what is one of the most serious failures in the Draft Report.

Gambling taxation is probably the most important policy issues to be addressed by the inquiry. Even the Draft Report seems to agree. For example, the Draft Report concludes that gambling taxation is the key reason for its diagnosis that government policies on gambling are complex, fragmented and often inconsistent.

“The most fundamental of these [causes] has been the incentive to exploit gambling as a source of taxation revenue, in the context of increasing dependence on Commonwealth revenue and a perceived lack of alternative state taxes.” (p. XL)

Despite the importance of the taxation issue and the fact that it knows there is a case for reducing tax rates out ‘there somewhere’, the PC seems to be saying that just cannot seem to find it. The key question is — did the PC look hard enough? Given the time and effort that the PC has so far devoted to problem gambling compared to that spent on other issues such as taxation, we suspect the answer is in the negative. The following examples emphatically illustrate the inadequacy of its taxation analysis.

- As the above quote demonstrates, the Draft Report has diagnosed vertical fiscal imbalance in the financial relations between the Commonwealth and the States as a fundamental source of the policy failure on gambling. Yet the Draft Report does not even bother to discuss options for correcting the imbalance.
- The Draft Report concludes that high rates of gambling taxation are creating perverse incentives for policy towards gambling and, as a result, policy “lacks coherence” (p. XXXIX). Yet the Draft Report is unable to define the reduction in taxes that would be justified.

This ‘gravity-defying’ conclusion appears to be a consequence of the implicit criteria that the PC has used to evaluate policy change in the area of gambling.

- The first criterion appears to be that any policy change has to reduce the extent of the expected consequences of problem gambling. In other words, for the PC to support a proposed change, it had to be shown that the change would *reduce* the incidence of problem gambling or its severity.
- The second criterion appears to be that the “onus of proof” is placed on being able to demonstrate with absolute certainty the *extent* of the net benefit to the community from the proposed change. If there was any doubt about the extent of the net benefit, then, it seems, the PC would not support the change in question even if there was little doubt that there was a net benefit.

This is not the approach that the Draft Report *claims* to have used. In Chapter 11, the Draft Report defines — rightly — the overall objective of

government policy towards gambling as being: to equate the marginal costs to the community with the marginal benefits to the community from gambling (p. 11.17). In other words, the key thing is to set the preconditions for the delivery of an expected net benefit.

The Draft Report gives three rationalisations for its conclusion to maintain the *status quo* on gambling taxation:

- economic efficiency;
- impacts on problem gambling; and
- distributional equity.

We will now look at each of these in turn.

**While the vertical fiscal imbalance between the Commonwealth and States is identified as a key source of policy failure on gambling, the Draft Report does not seek to analyse or correct the imbalance.**

## 6.4.2 Economic efficiency aspects mishandled

### GST lessons

The Draft Report states —correctly— that so-called ‘Ramsey taxation’ of goods and services is economically sound in principle but is totally impractical (p. 18.15).<sup>11</sup> It then goes on to acknowledge that uniform tax rates do not cause losses in economic efficiency because they do not change relative prices (p. 18.18).

This is the essence of the economic case for levying a single rate of tax on all goods and services in the economy. For many years, the PC and its predecessors have been strong proponents of moves to reform the current incoherent collection of indirect taxes — that taxed only some goods and services but with widely differing tax rates — by replacing them with a broadly-based, single rate of tax (for example, see PC 1996, p. 113). It is now widely recognised that it is the *variations* in tax rates that are the cause of a major part of the efficiency losses that are associated with such indirect tax systems.<sup>12</sup> Other things being equal the larger the variations in tax rates, the greater will be the efficiency losses associated with the indirect tax system.

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<sup>11</sup> Under Ramsay taxation of goods and services, the tax rate on a commodity varies inversely with the sensitivity of the demand for the commodity in question to changes in its price—the less responsive is the demand for a commodity, the higher will be its rate of tax. In theory, Ramsay taxation will minimise the efficiency losses from the taxation system. It is impossible for government to obtain all the information that would be necessary to estimate the tax rates required for it to realise its theoretical potential.

<sup>12</sup> This insight owes much to the body of research that was undertaken by the Tariff Board and some of its successor organisations—notably the Industries Assistance Commission and the Industry Commission—on the losses in economic efficiency associated with variations in tariff rates.

The moves to reform the indirect tax system have now culminated in the passage of the GST legislation. This will impose a single rate tax of 10 per cent on the majority of goods and services and abolish a range of indirect taxes, including the Wholesale Sales Tax.

The GST package has established a presumption that all goods and services should be taxed at the standard rate of 10 per cent unless a case to vary that approach can clearly be demonstrated. To preserve the overall efficiency benefits of the GST package, the onus of proof must rest with a case-by-case examination of proposed departures from the standard approach—either for exempting an item from the tax base or for applying some other tax rate to an item.

### **Draft Report discards logic of tax reform**

Despite its strong and sustained support for indirect tax reform built around conversion to a single rate of tax on a broad base, the PC has failed to extend the logic underlying the reform package to gambling taxation. After looking at the issues in the context of the taxation of gambling, the Draft Report comes to the conclusion that:

“Overall the Commission does not consider a case has been made for significantly reducing gambling taxes on efficiency grounds.” (p. 18.19)

Moreover it goes on to add that:

“... there *may* be little efficiency gain from greater uniformity of tax rates.” (p. 18.30) [emphasis added]

On this point the Draft Report fails even on a basic test of transparency. It does not bother to say how *likely* it is that the efficiency gains will be small. Moreover the Draft Report it does not tell us how *probable* or how *big* the PC considers these gains have to be before policy-makers should attempt to realise them. Given the importance of what turns on these questions, the PC needs to make explicit all the benchmarks that it has used in coming to its conclusions.

In coming to its conclusions, the PC seems to rely on the fact that the demand for most forms of gambling forms

“... *appears* to be relatively insensitive to price changes...there *may* not be *significant* efficiency gains from reducing rates of tax.” [emphasis added] (p. 18.30)

In other words, the implication of this is that PC will not ‘recommend’ a change in tax rates unless the expected efficiency gains from it are large or where there is any possibility, no matter how small, that the gains may be small. Such approaches to the development of public policy are neither defensible nor logical.

Uncertainty about the sensitivity of the demand of different forms of gambling means there is uncertainty about the *size* of the efficiency gains not the *existence* of such gains. The Tariff Board, the Industries Assistance Commission and the Industry Commission were never able to estimate the true extent of the sensitivity of demand for any of the commodities that they examined over the years. Nevertheless each of those organisations was able to recommend the direction that tariff reform should take—simultaneously lowering the average tariff rate and reducing the variations in tariff rates.<sup>13</sup> The same is true for gambling taxation.

**While the actual *size* of the efficiency gains of cuts to gambling taxes may be uncertain, there is no doubt about the *existence* of such gains.**

### **There are efficiency gains from tax cuts**

The Draft Report reports the results of three econometric analyses of the efficiency gains from changing gambling tax rates. Each one was carried out with a different general equilibrium model of the Australian economy. One of the three — that by Econtech — was commissioned by the PC for the inquiry. ACIL had one of the others undertaken as part our March 1999 submission to the inquiry.

Although each of the modelling analyses was premised on the assumption that the demand gambling was relatively insensitive to price changes, the Draft Report apparently found it hard to draw conclusions from the three analyses

“... about the appropriate level of gambling taxes, even from a narrow efficiency perspective.” (p. 18.18)

The mere fact that the Draft Report characterises economic efficiency as a narrow concept is telling. In fact economic efficiency comprehends anything and everything that affects the welfare of the community as a whole — it is hardly a narrow perspective. The Draft Report’s characterisation suggests that the PC has some other objective in mind and considers that this other objective is more important than economic efficiency. This is an issue to which we will return in the subsequent section on problem gambling.

The other telling factor is the apparent unwillingness of the PC to point out that all three modelling analyses reported in the Draft Report agree that there are efficiency gains from reducing gambling taxes. Moreover the gains that they find are entirely consistent with both economic theory

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<sup>13</sup> Moreover, in due course their consistent support for simultaneously lowering the average tariff rate and reducing the variations in tariff rates has come to be accepted as the conventional wisdom in industry policy. The last of the true believers in what Paul Kelly termed the ‘Deakinite Settlement’ — the combination of the White Australia Policy, Industry Protection, Wage Arbitration, State Paternalism and Imperial Benevolence — are apparently moving on to other debates, such as gambling (see Paul Kelly 1992, p. 1-2).

and practice in the tax area. The failure of the Draft Report to report these facts is a major omission that casts doubt on the reliability of the report as a whole.

It is true that each of the modelling analyses came up with different estimates of the size of these efficiency gains. This fact does not, in any way, undermine the reliability of the conclusion that there are positive efficiency gains from reducing gambling taxes, and/or making them more even. This is especially true given the poor excuse the PC gives for turning its back on the detailed analysis of tax which it commissioned from Econtech.

**The PC ignores the efficiency gains from reducing taxes shown by all the economic modelling work reported in the Draft Report — this is a major omission.**

### **PC's modelling shows biggest efficiency gains of all**

Of the three econometric analyses reported by the Draft Report, the largest gains in efficiency were obtained by Econtech. As the Econtech work was commissioned by the PC, we may presume that it was prepared to the PC's own specifications. Moreover, this work was undertaken by Chris Murphy who is, arguably, the leading macroeconomic modeller in the country.

Murphy estimated that there would be annual welfare gains of between \$477 million and \$735 million from reducing gambling taxes to the GST rate of 10 per cent and replacing the lost revenue through income tax.

Regardless of what the Draft Report says, gains of this magnitude are significant from a policy perspective. To put them into context, they mean that every \$100 that is raised in gambling tax revenue reduces the net welfare of the community by between \$12 and \$19. Any suggestion that such losses are insignificant is false and misleading (and unfair to those that might benefit). Few people would agree that losing 19 per cent of every tax dollar was a minor problem or that it was not worth fixing.

If the PC had any concerns about the quality of the Econtech analysis — and it is very hard to see how it could — it should have done something about fixing the problem. At the very least the PC should have disclosed its concerns in the Draft Report.

The PC has made no comment in this regard. We are therefore entitled to ask why the PC these results are buried in an obscure box at the back of a 1,000 page report.

**The econometric modelling work commissioned by the PC shows that every \$100 of gambling tax revenue reduces community welfare by between \$12 and \$19 — any suggestion such losses are insignificant is false and misleading.**

### 6.4.3 Problem gambling reason perverse

The very first reason that the Draft Report lists for not supporting reductions in gambling taxes is that:

“...it is not clear that tax is a useful instrument for assisting [problem gamblers] or preventing new problem gamblers.” (p. 18.30)

The Draft Report explains its indecision is because lower taxes might help existing problem gamblers but, at the same time, might encourage more gamblers to become problem gamblers. The uncertainty about the relative extent of these two effects meant that the PC stayed with the *status quo*.

Frankly this concern, although understandable, obscures the key issues. They are that:

- the risk of tax cuts recruiting problem gamblers is negligible; and
- in any event, is an ineffective and inefficient measure to address problem gambling

Each of these is dealt with in turn.

#### **Negligible risk of new problem gamblers**

The risk for a non-problem gambler becoming a problem gambler is clearly very low. On the figures in the Draft Report only 2.4 per cent of the population becomes a problem gambler.

Therefore even a large increase in gambling expenditure is not likely to produce large numbers of new problem gamblers. In any event, economists generally agree that gambling expenditure is relatively insensitive to changes in its ‘price’ — that is, to the odds of the game being played.

It is for this reason that reductions in tax rates, at ‘worst’, are only going to produce small increases in the implicit ‘volume’ of gambling. Indeed the Econtech modelling results referred to earlier show that the cut in tax rates is likely to be the dominant effect on expenditure. Econtech analysis shows the overall expenditure on gambling declines due to the tax cuts despite the fact that gamblers are placing more bets.

For its part, the Draft Report concludes that reductions in tax rates will induce only very small changes in the expenditure on gambling (p. 18.19).<sup>14</sup> The PC cannot have it both ways. If the increased expenditure on gambling is very small then the number of new problem

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<sup>14</sup> So small in fact the Draft Report concludes that there is no case for reducing tax rates on economic efficiency grounds. This aspect of the issue was discussed in section 6.4.1 of this submission.



gamblers has to be negligible, as the risk of becoming a problem gambler from a given level of gambling expenditure is low.

**The modelling work commissioned by the PC implies that the risk for problem gambling from cuts in gambling taxes are very small or non-existent. Moreover the PC's attempt to link reduced prices with more problem gambling is statistically flawed.**

### **Tax is the wrong instrument to fix problem gambling**

Given the very low risk of becoming a problem gambler, a policy of heavily taxing all gamblers to is an inherently inefficient way of reducing the risk. Moreover tax changes will have little effect on gambling expenditure. So much is agreed by the Draft Report but it stops short of pointing out the key implication—that tax levels can be set without regard to the issue of problem gambling.

Such a conclusion would lead to a 'recommendation' to reduce tax levels. The Draft Report seems to be reluctant to commit itself to such a 'recommendation' because it would not *reduce* problem gambling.

“... it is not clear that tax is a useful instrument for assisting them [problem gamblers] or preventing new problem gamblers.” (p. 18.30)

In fact, for most gamblers, the tax burden is likely to be far in excess of the expected costs of their becoming a problem gambler. This is because their risk of becoming a problem gambler is generally so low. In many cases, this risk will be negligible. The Draft Report itself has stated that that the risk factors associated with problem gambling are not uniform but vary significantly across the population (p. 6.51).

A tax on gambling is therefore unable to reflect the variation in these risks. This is true if the authorities knew what those risks were, which they clearly do not. The Draft Report readily admits that our current knowledge in this respect is very incomplete. However, the extensive and detailed nature of the information that would be required for a complete understanding means that it is unlikely that the authorities would ever be able to obtain such information economically.

The Draft Report goes some way to accepting the above analysis. For example it agrees that:

“... at best, using taxes in this way [to reduce the level of problem gambling] is a blunt instrument.” (p. 18.21)

However, the Draft Report then goes on to contradict this by concluding that:

“Overall, until more is known about the behaviour of problem gamblers, it is not clear that taxes — either high or low — have a role to play in preventing problem gambling.” (p. 18.24)

Needless to say the response of problem gamblers to gambling taxes is largely irrelevant. Gambling taxes are ineffective and inefficient in dealing with problem gambling for two simple reasons.

- First, the large majority of the people that they hit are not likely to become problem gamblers but they are discouraged from doing something that causes no significant problem to themselves or anyone else.
- Second, for that very small minority of gamblers who are likely to become problem gamblers, the size of the tax burden imposed on them does not bear any relation to the cost of the problems that the gambler is expected to cause.

Indeed, on the latter issue, the Draft Report gives a specific example that illustrates the point forcefully.

“... there is no evidence that lotteries are a significant contributor to problem gambling yet they are the highest taxed activity.” (p. 18.24)

**As the risk of becoming a problem gambler is low, heavily taxing all gamblers is an inherently inefficient way of reducing the risk.**

#### **6.4.4 Distributional equity not considered**

The Draft Report admits that the incidence of gambling taxes on incomes is regressive overall and concludes that such taxes are ‘less attractive’ on equity grounds (p. 18.31). In doing so, the Draft Report does not say what its basis of comparison is.

The Draft Report accepts that, in principle, reducing gambling taxes would reduce the regressive effects that they have on the distribution of income. However, it goes on to express concern that ‘effective equity’ *may* not be improved by tax cuts. The Report considers that were the lower taxes to be reflected in higher prize money, the distribution of the benefit of the tax cut would be highly skewed.

“The few winners would benefit quite a lot, but the majority of players would not benefit.” (p. 18.28)

#### **Tax cuts do improve equity**

The reasoning in the Draft Report illustrates the failure of the PC to come to terms with the nature of gambling and to understand the utility that gamblers get from it. This problem is discussed at greater length earlier in this submission.

The bottom line is that the Draft Report is wrong in its conclusion that the distributional benefits of tax reform turn on how the benefits are returned to gamblers. The size of the distributional gains may vary but there are, nevertheless, gains in all cases.

The PC seems to be saying that if a tax cut is reflected in the cost to the punter of the 'unit bet' then equity is improved. On the other hand if the cost of the unit bet remains the same but the prize-money is increased then each punter is no better off and only the winners gain.

If the prize-money is greater than it was before the tax cut, then the value of each chance to win that prize-money has been increased. Since each punter is, by definition, paying the same amount as previously for a chance in a bigger prize pool then the value of each chance must have been increased by the tax cut. In other words the benefit of the tax cut is being taken by each punter in the form of an increase in the quality of the gambling service rather than as a cut in cost of the service.

Other things being equal, the *distribution* of the benefits to the non-winners in the two scenarios are the same. The sum of the value of the benefits to all the non-winners may well be different between the two scenarios.<sup>15</sup> This does not affect the fact that all the non-winners gain from the tax cut under either scenario.

**The distributional benefits of tax reform are not dependent on how the benefits are returned to gamblers — the size of the gains may vary, but there *are* gains in all cases.**

## 6.5 Internet

Despite some reservations, the PC has adopted a relatively liberal approach to the issue of Internet gambling — “managed liberalisation”. ACIL agrees in-principle with this broad-brush approach adopted in the Draft Report, but residual concerns remain about how ‘managed’ it might be. The model put forward in the Draft Report has not been formally tested against existing arrangements, nor has it been formally tested against the competitive market solution. This latter point reflects in general the reluctance of the PC to consider the possible outcomes and benefits flowing from the market being freer to develop products and find solutions in the gambling industries. “Managed liberalisation” must not be used as an excuse to implement repressive regulatory regimes to the detriment of consumers and producers.

While the PC acknowledges the developments in technology underway, and makes a brave attempt to look into the future, the fact is that Internet and related technology is developing at a rate which surpasses the ability of regulators to keep up. It is commonly observed for a wide range of industries and activities that regulators will always be at least one step behind the market. The more regulations and road blocks that are put in

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<sup>15</sup> As will the benefits to the winners.

the way, the greater the incentive for some to find new ways of doing things and capture any rents, at least for a while. The Internet is no different. Already we have seen how operators of some adult sites have shifted offshore and are implementing new technology to stay in business.

The fact is that ultimately Australian Governments can do little about the proliferating number of Internet gambling sites around the world. Attempts to make Internet gambling in Australia illegal will simply keep responsible operators out of the market, especially those with well-established brand names to protect, to the detriment of consumers.

Tax and regulation are discussed elsewhere in this Submission but there are some Internet-specific issues which warrant more attention by the PC. Legalised Internet gambling is already available in some states and territories. In others, legislation has either passed or is being considered. Internet gambling is a fact of life in Australia.

It is important that governments allow competitive neutrality between Internet gambling, whether it is sports betting or casino games, or more traditional location-based forms of gambling. This means that tax and regulatory regimes introduced for Internet gambling do not give an edge to new entrants (nor to incumbents for that matter). Current legislation which is based on the Draft Model Code attempts to keep tax rates in line with existing games and services, although provision is made for higher tax rates for games which do not exist in participating jurisdictions.

There is also the more general point that gambling is too highly taxed already in Australia, and this principle should also apply to Internet gambling. With Internet gambling being a truly global industry, tax competition may force a lowering of tax rates (or the industry might become less competitive in Australia) and in the spirit of competitive neutrality, this should apply to location-based providers.

On page 17.16, the Draft Report concludes:

“...(without harm minimisation measures and appropriate regulation) online gambling will pose significant new risks for problem gambling.”

Problem gambling is discussed elsewhere in this report. The point is that, potentially, it is easier to control who plays online and to enforce self-exclusion than at some more traditional sites. The PC itself recognises this issue but the point is a powerful one and could be given more emphasis. More importantly, in relation to these matters, effective harm minimisation and regulations are already in place and seem to be working well. Is the PC implying that current arrangements are ineffective? If so, what evidence is there?

**ACIL agrees with the general approach adopted toward regulation of Internet gambling, but is concerned about how ‘managed’ the regulation might be.**

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Attachment 1      Report by Dr Terry O'Neill



# THE AUSTRALIAN NATIONAL UNIVERSITY

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**Wednesday, September 22, 1999**

**Dr Robert Campbell**

Principal Consultant  
ACIL Consulting Pty Ltd  
GPO Box 1322  
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Ref.3204/rc

**Dear Robert**

Thankyou for your letter of 9 August asking me to review of the Draft Report of the Productivity Commission on Australia's Gambling Industry. I have divided my comments into the four specific areas that you identified.

All of the matters which I discuss in the review lead me to the overall view of the statistical analysis and presentation in the Draft Report of the Productivity Commission on Australia's gambling industry which I relate in the summary.

Yours sincerely

Terence J O'Neill  
Head of Department



# THE AUSTRALIAN NATIONAL UNIVERSITY

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## Comments on the Productivity Commission Draft Report on Australia's Gambling Industries

### Summary

In my opinion, the statistical analysis presented in the Draft Report of the Productivity Commission has many flaws and the strong claims made by the Commission are not borne out in many instances. My major concerns are:

1. I feel that there are problems with the design of the National Gambling Survey and questionnaire. Although it might be argued that there was no point in administering the whole questionnaire to everyone in the sample, the opportunity to calibrate SOGS against the whole population was lost. Respondent bias was not tested.
2. The method used to correct for understatement of spending by the survey respondents is not appropriate. The increases applied to problem gamblers are double what they should be.
3. It is asserted that gambling causes a number of personal problems but causation has not been demonstrated. The report does not attempt to use statistical techniques which address and compensate for possible confounding
4. The National Gambling Survey used the South Oaks Gambling Screen (SOGS). The most recent comparable survey in the US rejected the SOGS in favour of more modern instruments. There is no agreement on the definition of the underlying condition to be detected by the SOGS. The number of positive responses required to have the ailment varies through the report and an ad hoc adjustment is made to inflate the number of severe cases.
5. The conclusions on access and problem gambling are questionable. Very little information on access is actually presented. Most of the data is on expenditure which is not the same as access.

Further concerns are:

- The lack of detail concerning the statistical analyses often makes it very difficult to assess claims and to judge the validity of the methods. This is particularly so for the regressions which are often described in brief footnotes.
- Summary statistics are not used in a consistent manner in the report.
- The use of anecdotes to bolster the data analysis is not scientific.

## Surveys undertaken and the resulting inferences

### Overall comments

The overall impression however is that there is a lack of balance in the analysis of the surveys. Criteria are changed at will to suit the particular context and to emphasise the effect of gambling. The analysis would be more convincing if the Commission used consistent criteria throughout the report. For example the definition of a problem gambler changes repeatedly from SOGS5+, SOGS6+, SOGS10+, and various proportions of SOGS categories between 5 and 10. Another major concern is that SOGS was only administered to regular gamblers, thereby losing the opportunity to calibrate the screening instrument against those who did not gamble or who were not regular gamblers.

I have some concern about the overall climate in which the survey was conducted. There has been considerable publicity in the press about the issue of problem gambling and the resulting inquiry of the Productivity Commission. The surveys begin by calling the respondent's attention to the link to the government which may have caused biases. The respondents may have been sensitised to the view that gambling is a problem.

All of the data is based on answers from the respondents. There is no independent objective information collected on the respondents. There are many strategies, such as randomised responses, that can be employed when collecting sensitive information. These are used to great effect when collecting information on such matters as drug usage and sexual behaviour.

Comprehensive tabulations of the survey outcomes are not presented. Some selected glimpses are given but it would be very useful to get access or a more complete picture of the survey results.

### National Gambling Survey

A national survey was conducted of some 10 500 persons, looking at gambling preferences and spending, attitudes and impacts. Note that the report repeatedly refers to 10 500. However the survey size is actually only 983 non-gamblers, 1 290 non-regular gamblers and 1 225 regular gamblers, or 3 498 in all. The report consistently gives the impression that the sample size was 10 500.

**Page 3.13 (Chap 3.4):** A brief outline of the results of the NGS is given, principally demographic information about gamblers. Not enough detail concerning the results of the survey is given.

**Page 5.3:** This page backs up survey results (Table 5.1) with a submission or anecdote from the Vietnamese society (Box 5.3). This use of display boxes is of great concern and has no place in a statistical analysis. The subjects in the display boxes could be replaced with Lotto winners, in which case the report would have a very different feel and the same inferential footing.

**Page 5.10 Table 5.2:** The logic used to arrive at an expenditure for problem gamblers may be of concern.

Firstly, the responses which identify the individual as a problem gambler are taken at face value. However, the amount of expenditure is not believed. Instead the assumption is made that all individuals under-report to the same extent, so the amount expended is taken as the overall expenditure multiplied by the proportion of reported income for problem gamblers. Other scenarios that are not mentioned are perhaps that problem gamblers report accurately because they have undergone counselling to recognize and acknowledge their gambling losses, while non problem gamblers may under-report. This plausible scenario would imply a substantial overestimation of losses by problem gamblers.



The main point is that without other data, it is not possible to distinguish between these alternatives and so the average expenditure estimates should be regarded with great caution. On page XLVII it is stated that the national expenditure is estimated by the survey as \$3 billion. This compares to about \$10.8 billion (page 3.2) reported by the industry. Yet on page 7.39, it is asserted that the Productivity Commission's national survey underestimates by 25 percent. These can't both be right! It is worthwhile to track the reasons for this apparent inconsistency! It turns out that the 25 percent underestimate is based on an approach using means whereas the \$3 billion or 70 percent underestimate is based on medians.

First, looking at page 5.10, we find that regular gamblers spend \$11 327-\$3 790 = \$7 250 million. We are also told that regular gamblers spend \$624 per capita on this page. So the number of regular gamblers is

$$\$7\,250\,000\,000/\$624 = 12.0513 \text{ million.}$$

Next, on page 6.41, we are told that the number of problem gamblers (SOGS 5+) is 328 802.

Now turn to page 7.32. Using medians first, the total reported expenditure is

$$12\,051\,300 \times \$180 + 328\,802 \times \$3\,278 = \$3.25 \text{ billion.}$$

This understates the expenditure of \$10.8 billion so multiply stated expenditures by 10.8/3.25 to get 'truthful' expenditures. This gives per annum figures \$597 for regular gamblers and \$10 883 for problem gamblers. These figures do not quite agree with the Commission's figures on page 5.10 but they performed this type of analysis within each gambling type and then added them up. I believe that there is insufficient data in the report to repeat their analysis, but it would be fairly close in any case.

Of course one could do the same calculation with means. The reported expenditure is then

$$12\,051\,300 \times \$479 + 328\,802 \times \$5\,513 = \$7.585 \text{ billion.}$$

The multiplier now becomes 10.8/7.585 which gives "truthful" or adjusted responses of \$682 for regular gamblers and \$7 850 for problem gamblers.

So the issue is which is a better figure, \$7 800 or \$10 900? In my opinion, it is totally inappropriate to use medians in this calculation, since the scaling is based on the total which, after all, is the mean multiplied by the population size. Medians cannot be adjusted by overall population totals.

So expenditures of \$682 and \$7 900 are much more reflective of the data. The use of medians when the aim is to estimate the total expenditure in different groups is not appropriate. Medians are more relevant as a measure of central tendency. The aim here is to obtain an average figure which will be scaled up to the total for the whole population. This example is somewhat unusual in that it is the 'control' or non-problem gambler group whose distribution has the longer tail. So the effect of taking medians is to increase the difference between the two groups.

**Appendix F: Page F.9 Footnote:** Why does the coding of 'can't say' as 99999 in response to expenditure questions imply that filter 3 failed? Surely 99999 could be re-coded as 'can't say'?

**Page F.18:** Participation rates for the survey are given. However, the issue of participation bias has not been properly considered. What type of individuals did not participate and has their non response biased the results?

**Page F.20, Table F.3:** Different groups get different questions when they do the full interview.

The most serious defect is that SOGS is only administered to regular gamblers and is not given to either non-regular gamblers or non-gamblers. The responses for the other screened groups cannot be simply assumed. A similar approach in a scientific experiment would be to leave out the control group, which

would be an anathema. The correct method would have been to administer SOGS to all three groups. Then the SOGS could have been calibrated against the other responses to see what it actually means in relation to the other questions.

The same comment applies to the selective administration of other components of the questionnaire.

### **General comments about the questionnaire**

The questionnaire does not have a 'don't know' category in response to many questions. Instead it appears that the interviewer is told to insist on answer. Is this correct? If so, it potentially weakens the results of the survey.

SOGS questions are embedded in a long interview. This cannot be assumed to be equivalent to administering SOGS by itself. The responses to SOGS could have been affected by the responses which came earlier.

## **Survey of Clients of Counselling Agencies**

A survey of problem gamblers who attend a counselling agency, to see who they are, examine the problems they face and the means they use to address the problem.

### **General Comments:**

There seems to be almost no detail about the source of clients for this survey. All we are told is that counsellors are used and they select a number of their clients in order of presentation. How many counsellors are involved? This method wouldn't be satisfactory in a medical trial.

The statistician should be responsible for the selection of the cases. The practice in this survey allows discretion in selection to the counsellor. Did they have to report on their selection method. We are also not told how the counsellors are selected. The counsellors administer the form. Was there any attempt to provide similar conditions for all individuals completing the form? Is there information on whether the individuals were unaided in completing the form? Did the analysis include looking for a counsellor effect?

**Page G.2 Preliminary Aspects:** We are told that the subjects are asked to respond concerning the time when they are problem gamblers. It is very important whether subjects are new to counselling, that is are they just embarking on the counselling process. It is very likely that the counselling process will have a profound effect on the responses of subjects. Ideally the survey should have been stratified on the basis of being a new or existing client. In any case any analysis would need to be conditional on the responses to E1 and E2.

**Page G.8:** The form begins with the sentence '... to provide information about the social impacts of problem gambling and what might be done about it.' – This may prejudice the responses of the subjects – by answering in a certain way they may be helping solve the 'problem.'

Part B is only administered to clients who identify gaming machines as their major problem. The questions should also have been administered to the other subjects to see how this group is different to the rest.

## Survey of Counselling Services

A survey of counselling agencies, asking about their funding, caseload, methods of approach and outcomes.

**Page L.3:** The survey was the only one of the three which was vetted by the Australian Bureau of Statistics (ABS). It was passed through the Commonwealth Government Statistical Clearing House at the ABS. It would have been desirable to seek comment from the ABS on the other two studies.

**Page L.4:** The response rate is a little low and no information is presented on reasons for non-response. Comment is limited since the commission has postponed a detailed analysis until the final report.

It seems that there is little or no objective independent information to validate the survey data. It is not certain how accurately the counselling services respond.

### **General points about some conclusions based on the survey data:**

**Page XXIII:** Question is stated as “gambling does more good than harm”. Disagreeing is interpreted as disapproving of gambling. However disagreeing with this question could simply indicate that the respondent is neutral to gambling rather than disapproves. Why not simply ask the direct question ‘do you approve of gambling?’

**Page XXXV:** What evidence suggests that at least 5 other people will be affected by each problem gambler? On page 7.26, the report uses data from the Survey of Clients of Counselling Agencies which gives 7.4 affected. The relationship of this group to the overall population is not clear. Also clients who have been in counselling for some time will clearly answer differently about the number of people affected by their gambling.

**Page XXXVIII:** Where do the numbers in Box 7 come from? Words like ‘using this and other information about impacts, and drawing on various sources in valuing them, the Commission came up with the following cost ranges’ makes it impossible to assess the merits of the estimates. What is the range, is it a 95% confidence interval?

## The issue of causality

### **Overall Comment:**

In the context of this study, causality refers to the occurrence of an adverse effect as the direct result of problem gambling. The Commission makes a considerable effort to convince readers that causal link between problem gambling and various adverse social effects has been demonstrated. However, the numerical work at best justifies a conclusion concerning correlations rather than causal links. The Commission offers several *ad hoc* theories to bolster the numerical work. In most cases, it is easy to offer alternative theories for the observed associations which do not depend on a causal link to problem gambling.

In seeking to determine if the Commission’s conclusions concerning causation are appropriate, it is necessary to consider the prevailing definition of causation and the statistical methods that are available to test for causation.

A recent useful discussion of causation is given in:

Greenland, S. Robbins, J. M. and Pearl, J. (1999) 'Confounding and Collapsibility in Causal Inference', *Statistical Science*, **14**, 29-46.

The article credits Neyman in 1923 with the first formal statistical approach to causation. Neyman considered  $K$  treatments and a placebo. The response of a single unit  $i$  with respect to a treatment  $x_k$  was denoted  $y_{ik}$ . The causal effect of  $x_k$  is  $y_{ik} - y_{i0}$ , where the 0 subscript denotes the placebo. The main complication is that it is not normally possible to observe more than one of the  $y_{ik}$  on a given individual and the rest of the treatment variables remain latent or 'potential'.

The most desirable way to attempt to assess causation is to adopt the experimental approach. Units, which are as similar as possible are assigned at random to treatments. The randomization guards against unanticipated differences between the experimental units which alter the response to the treatments of interest. If, as is common, it is not possible to conduct experiments, then the protection of randomization is no longer available. Treatment effects may be confounded with differences in the units receiving each of the treatments. For clarity consider only a single treatment, subsequently called the treatment, and the placebo. Suppose that the experimental units for the treatment and placebo come from populations  $P$  and  $Q$  which are the target or index population and the control or reference population respectively and that  $m$  denotes a population mean. Then the statistical analysis will estimate the association parameter  $m_P - m_Q$  rather than the causal parameter  $m_P - m_P$ . If  $m_Q \neq m_P$ , then the association parameter is said to be confounded, or in other words the two parameters are not equal. The association parameter can be decomposed as  $m_P - m_Q = (m_P - m_P) + (m_P - m_Q)$ , or the sum of the causal parameter and a bias term. If the populations differ with respect to a covariate which influences  $m$  and causes confounding, then the covariate is said to be a confounder. Models, such as multiple regression, are readily incorporated using  $m = f(x, b)$ , where  $x$  is the treatment variable and  $b$  is the treatment parameter which may differ between the target and reference population.

Having resolved the definition of causation and confounding, there remains the issue of how to control for confounding and demonstrate causation in the real world. The most straightforward way is to obtain a control population  $Q$  which has  $m_Q = m_P$  in which case  $Q$  is called exchangeable with  $P$ . In practice, it is usually very difficult to obtain such a control population. The device that is usually used is to allow for other variables which may influence  $m$ . One method, called restriction, eliminates such variables from consideration by only allowing them to take one value in the two populations. For example, if the sex of an individual was thought to influence the outcome, a study might only include males. An alternative approach is called matching. Individuals who receive the treatment are matched to other individuals who did not receive the treatment but who are otherwise identical in all other variables which are thought to influence the outcome. A third approach is randomization where individuals from the target population are randomly assigned to the treatment or control group. A final approach argues that in a regression context, the effect of the null treatment ( $x = 0$ ) is a random variable with the same mean across all populations, and that the deviations are uncorrelated with the treatments. The assumptions underlying this final approach are in some sense the most difficult to verify in practice. Each of these methods is very effective in demonstrating causation in a prospective study which uses the above design strategies.

Inevitably, in many situations because of cost, ethical and time constraints, it is impossible to use prospective studies. Various strategies are available at the analysis stage to eliminate the effect of variables which are potential confounders. If the inferential technique uses stratification based on the potentially confounding variables, then the effect of those variables is minimized. For example comparisons can be made within age groups, sex and other potentially confounding variables. Of course too much stratification

can result in very sparse cells. A mitigating fact is that it is sufficient that a covariate is balanced within a strata or not associated with the treatment within the strata. The overriding condition is whether  $m_Q = m_P$  within each stratum. A key aim in many causal analyses is to determine a minimal set of stratifying variables so that the condition is satisfied. Causal graphs or path diagrams are often utilized to aid in checking whether a potential set of stratifying variables is sufficient. However it is important to remember that there is an underlying set of assumptions for a causal diagram which may or may not be true. Related technical issues are the collapsibility in contingency tables and regression where certain covariates or factors can be omitted from the analysis leaving the treatment parameters unchanged.

In summary, the study of causation is a highly technical issue which involves the consideration of all covariates and factors which may influence the response in addition to the treatment effect of interest. Designs are used to eliminate the effect of covariates or various techniques similar to stratification are used at the analysis stage.

We now turn to the analysis in the Commission's report to see if the above inferential procedures have been used in the causal analyses conducted by the Commission. It is very difficult to see evidence of any serious attempt to use the usual statistical procedures. In Appendix H which is titled "Problem gambling and crime", there is no evidence of any matching, either of problem gamblers with non-problem gamblers or of criminals with non criminals. It may be that a well founded causal analysis would be too expensive in respect of the question 'does problem gambling cause crime?'. If so, the report should simply present a correlation analysis and not claim any causal findings.

## Specific comments

Some specific concerns about the treatment of causality in the Draft Report are as follows:

**Page XXXIII:** The Commission considers that impacts associated with gambling are largely attributable to gambling itself. It is misleading to quote this conclusion in the introduction when the evidence presented later in the report is weak. Note the inclusion of anecdotes at key places, for example Box 6 on this page. Anecdotes do not have a place in any serious statistical analysis and can distract from a serious consideration of the data. Figure 6 is a diagram showing causal pathways between gambling and crime. However drawing a diagram does not establish causality.

**Appendix H:** This appendix considers the evidence for a causal link between problem gambling and criminal activity. There is very little scientific evidence in this appendix. Some theories are postulated, but very little data is presented. It is worthwhile remembering that the odds of an event A given an event B is the same as the odds of event B given event A. So the same set of data can be regarded as evidence of B causing A or vice versa.

It is very difficult to infer causation. The main data in this appendix relates to criminal activity given that the subject has presented for counselling. Phrases like 'illegal acts to finance their gambling' are used. However this does not demonstrate causation. They may be using the money to finance other aspects of their life as well. Since they are attending gambling counselling, they may be more likely to say that crime follows gambling. The quoted studies on prisoners do not demonstrate causation. They simply look at the prevalence of 'gambling related' crimes among prisoners.

The doorknock surveys which yield very small samples of 22 and 14 problem gamblers (page H.8) can only show association. The same comments can be made concerning the national gambling survey results on page H.9.

The mindset shown at the end of the paragraph where the authors argue that the 9 people who admitted to having committed an illegal activity and scored negative on the SOGS are likely to be false negatives is disturbing. Presumably, the logic is that if you commit a crime then you must be a problem gambler. This approach is apparently continued on page H.10 when these same 9 are used to get the crime rate among non help seeking problem gamblers up to 14 per cent (or  $100 \times (10+9)/(127+9)$ ) from the 7.9 per cent (or  $100 \times 10/127$ ) it would have otherwise been.

**Page H.11:** The assertion is made that subjects who had committed offences had gambled for an appreciably longer period of time than those who had not committed an offence thereby demonstrating that the gambling causes the crime.

Suppose there are two unrelated processes occurring, one of which is the length of time in a certain state and the other the occurrence of an event. We can split the state data according to whether or not the event has occurred while the individual was in the state. Then probabilistic arguments show that the group with the event will spend longer times in the state than the group without even though the two mechanisms are unrelated.

Similar conclusions apply when you have two types of crimes, A and B say. Suppose A, which is gambling related, can only occur when the individual is in the gambling state and B which can occur at any time. The time intervals between each type of crime could be identical but the clock can't start for the gambling related crime A until the person becomes a gambler. Under these assumptions the observed waiting time to events A among gamblers will be longer than for events B, even though there may be no underlying difference. The argument that the waiting time for a gambling related crime being longer than for a non gambling related crime demonstrates causality is not sustainable.

**Page H.12:** It is difficult to see how the different spectrum of crimes among non-gamblers demonstrates causation. It may just say that people who tend to do a certain type of crime also like to gamble.

**Page H.12:** The section 'qualifications to a causal link' gives some alternative explanations to a causal link between gambling and crime.

**Page 7.3:** The Commission asserts causation. The primary justification is the self-assessment approach. If survey respondents answer truthfully, then they claim that a 'good perspective on causality' can be obtained. However it really still only demonstrates association rather than causation. Also regressions do not demonstrate causation in the absence of serious consideration of possible confounding.

**Page 7.42:** On this page in the final dot point, the Commission states that logistic regression is used to estimate the chance that a gambler of a certain profile commits a crime. On the limited details presented, it is impossible to comment on the validity of the regression.

## Critiques of South Oaks Gambling Screen and the response of the Productivity Commission

### General comments:

The Commission goes to great lengths to justify its primary use of SOGS. The discussion ignores the recent focus in the US on the deficiencies of the SOGS. A previous submission has considered at length the suitability of the SOGS screening instrument in the Australian context. Since the concerns raised in that submission still remain after the release of the Commission's Draft Report, it is necessary to repeat them briefly in this document.

The primary problem in the Australian context is that there is no agreed definition of what constitutes a problem gambler. There are a variety of possible definitions such as the prevailing view in the US which regards the condition as a psychiatric disorder. Consequently, screening instruments cannot be subjected to the usual tests of performance such as sensitivity or specificity. A widely used local definition, which originates from the Department of Human Services in Victoria, is

'A problem gambler can be defined as a person who is spending time and money gambling in a way that may be harmful to them, and potentially, to those around them'.

The relationship between the SOGS questionnaire and this definition has not been and is unlikely to be established.

The SOGS screen was designed to screen for individuals who were likely to satisfy the criteria of the third edition of Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-III) for pathological gambling. Since the mental disorder approach is not well accepted in Australia, this motivation is not particularly relevant. It is fairly well accepted that the SOGS screen is not particularly well suited to the general population.

Some other worrying aspects of the SOGS screen in the Australian context were detailed in the earlier submission.

The recent release of a comprehensive report by the National Opinion Research Center at the University of Chicago raised further questions about the use of the SOGS screen. The report suggested that the use of SOGS has declined in the US and identifies four possible alternative screens:

- the Fisher DSM-IV Screen;
- the Diagnostic Interview Schedule;
- the Diagnostic Interview for Gambling Severity; and
- their own proposal, the NORC DSM Screen for Gambling Problems (NODS).

All of these screens are based on the criteria in the latest (fourth) edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-IV). By contrast the rationale and validation for the SOGS instrument is based on the 'outdated' DSM-III criteria. The validity of these new instruments in the Australian context remains to be established. Since their rationale depends on the mental disorder paradigm, the same comments apply as for the SOGS. In any case, it is clear that SOGS is no longer the default screening instrument in the US.

The primary question which remains about large-scale use of the SOGS instrument in the general population in Australia is the lack of consensus about a definition of problem gambling. Unless there is an

objective definition against which the sensitivity and specificity of the screen can be assessed, it is not clear what the screen is actually detecting. One approach may be to say that problem gambling is defined as a positive response to the SOGS screen. However it would presumably be preferable to establish a link between the instrument and the social issues which are of concern.

## Specific comments

Having reiterated my concerns with the SOGS instrument, I now turn to specific issues in the Commission's Draft Report.

**Page XXVI: Box 4** illustrates the lack of consensus concerning the definition of a problem gambler. Until there is a consensus, statements about prevalence are not well founded.

**Page XXVIII:** A rationale for the adoption of SOGS is given. However, it is a fact that the most recent US study did not use SOGS for reasons given in their report. It is very unfortunate that the Australian survey did not use more modern instruments which would have allowed comparison to the most recent US results rather than more dated comparisons.

Another possible problem is that the Australian survey embedded SOGS into a much larger interview which asked many other questions concerning gambling. Given the sensitive nature of the interview, it may be that the responses to SOGS will be affected by the questioning that has gone before thereby calling the results of the SOGS into question. It cannot be assumed that the responses elicited in this instrument would be the same as if only SOGS have been administered.

Another major concern is that there is no control group on SOGS – how do we know how non-regular gamblers would answer. This survey does not allow determination of sensitivity and specificity. Of course without a definition of the complaint, it would be impossible in any case.

**Page XXX:** Here, the Commission claims that they are underestimating the extent of problem gambling since respondents are likely to understate their problems. The only evidence they point to are the responses from gamblers in counselling. Whether gamblers in counselling can give an accurate prediction about how they would have behaved in the absence of counselling is not established. Also, a degree of confounding amongst the conditions named (eg depression, considered suicide) is obvious.

**Appendix Page G.3:** On this page, comments are made on the known high false positive rate of SOGS in the general population. They give a reference to Dickerson (1997). This is more evidence on the deficiencies of SOGS.

**Page 6.1 Box 6.1:** Statements are made here that the Commission uses a triangulation approach to identify problem gamblers – SOGS, self-assessment questions and other indicators of harm. Mostly through the text, a consistent definition of problem gambling is not used. Instead various definitions are used depending on the circumstances.

**Page 6.15: Footnote 7** dismisses my previous comment on the fact that the SOGS is based on the outdated DSM-III and calls the criticism particularly weak. The Commission's confidence in the SOGS is not supported by the University of Chicago report as shown by the following quotes from their report:

- Page 15: "the DSM-IV criteria are very different from the diagnostic criteria adopted in the DSM-III in 1980 (American Psychiatric Association 1994)"
- Page 17: "This meant that the SOGS could not be used, since this instrument is based on the outdated DSM-III criteria".



- Page 14: Section titled “The eclipse of the South Oaks Gambling Screen”.
- Page 15: “What led to the growing dissatisfaction with the South Oaks Gambling Screen”.

It seems that the Commission’s argument that there is little difference between DSM-III and DSM-IV is not tenable. The researchers in the NORC study did not use the SOGS because of major reservations about its appropriateness.

**Page 6.25:** What are the linear regressions in the footnotes on this page – what is being regressed? It appears that column 4 of Table 3 is being regressed on column 3. If so, it is a very strange statistical analysis.

**Page 6.27:** Once again what is being done in the footnote? What is being regressed and what is the percent variance explained? It seems that the percentages reported who answer yes to a SOGS item for the HARM group is being regressed on the percentages for the SOGS 5+. This is a very curious way to proceed and not well-founded if that is what has been done. The analysis should have been done at the unit level. Look at the groupings which the two instruments impose on the survey population – for example, consider the two by two table of when they agree and disagree on classifying an individual.

**Page 6.30:** I have difficulty with the title and footnotes for Table 6.6. Footnote (a) says that the 2<sup>nd</sup> and 3<sup>rd</sup> columns are the percentage of SOGS 5+ and SOGS 10+ respectively who scored positively on each SOGS item. Yet in every case the SOGS 10+ proportion is substantially less than the SOGS 5+. It is difficult to see how the 10+ is answering yes less often for every item and yet still score more positive responses overall than the 5+ group. Columns 5 and 6 present the proportions of SOGS 5+ and SOGS 10+ who report particular adverse effects. In every case the SOGS 10+ proportion is lower implying that they are a happier group. It is also difficult to reconcile the fact that 100 per cent of the SOGS 5+ group compared to only 52.76 per cent of the SOGS 10+ group have obtained money illegally. Since the 10+ group is a subset of the SOGS 5+ group, should not a 100 per cent response on the larger group imply a 100 per cent response on the subset?

**Page 6.32:** On this page, the number of severe gamblers is redefined. The decision is made to count some of the lower SOGS as severe gamblers by reclassifying 20 per cent of those who score 5 or 6 and 50 per cent of those who score 7 to 9 as severe gamblers. This is a very *ad hoc* method of elevating the number of severe problem gamblers. Once again it highlights the lack of definition of a problem gambler. This adjustment is derived from Dickerson (1997). The justification for the method given in Dickerson (1997) is that ‘in the 1995 NSW study, the use of a modified SOGS (ie a cutoff  $\geq 10$ ) was consolidated by using data from a sample of client problem gamblers at a specialist clinic.’ Dickerson cites a personal communication from A Balszczyński in 1995 as the source of this information. It appears that there is nothing in the literature to justify this ad-hoc adjustment. It seems extraordinary that an *ad hoc* procedure which was presented without substantive justification in 1997 is used without critical comment in the draft report. The effect of the method in the report is very substantial.

**Page 6.33:** On this page, reasons are given why heavy gamblers may be missed in a telephone survey. There are lots of other reasons for people to be out. It does not necessarily follow that they are under-represented. Are gamblers more likely to have the phone cut-off – where’s the data. Is the refusal rate any different for gamblers? The footnote plugs in some numbers to supposedly demonstrate that the prevalence of severe gamblers could be twice as large as observed. Other assumptions such as non-severe gamblers identifying themselves as problem gamblers could bias the results the other way. There is no a-priori reason for assuming that it is only problem gamblers who fail to tell the truth.

**Page 6.38:** This page asserts that there is minimal difference between the SOGS and the NORC. However that is not the view of the US researchers – they believe the SOGS is outdated and the NORC will be the instrument of choice.

**Page 6.39:** Note the use of the Dickerson method to increase the number of severe gamblers from 49 837 to 137 049 in Table 6.10. I have previously commented on the *ad hoc* nature of this adjustment.

## The access and problem gambling correlation study and associated inferences

### General comments

The main reservation concerning this section is that the bulk of the section does not consider access. It is misleading to claim that most of the results are directly relevant to the access issue.

### Specific comments

**Page 8.9 and Figure 8.4:** The plot is of gambling expenditure per adult against problem gambling prevalence rate. Then gambling expenditure per adult is equated to accessibility. Why is this done? Why should it be considered to be a proxy for accessibility? It is possible to have very high accessibility and, if no one uses the gambling medium, very low gambling expenditure, and vice versa. It is wrong to equate the two. Worse, it *assumes* what it apparently sets out to test!

**Pages 8.10, 8.11 and Table 8.2:** On these pages it is asserted that ‘gambling intensity can explain a significant proportion of the variation in the prevalence of problem gambling. For example, about 57 percent of the variation in the prevalence of problem gambling across Australian jurisdictions (using the SOGS 6+ definition) is explained by the varying intensity of gambling across those jurisdictions.’ This statement bears closer examination.

The following paragraph uses the data given in Table 6.11, which generates slightly different results to the Table 8.2. The regression using SOGS10+ has an  $R^2$  of 34.4 per cent and  $R^2$  (adj) of 21.3 4 per cent. If the observation for South Australia is included, then the results are an  $R^2$  of 0 per cent and  $R^2$  (adj) of 0 per cent. The SOGS5+ results are  $R^2$  of 31.3 per cent and  $R^2$  (adj) of 19.9 per cent. Log models, particularly at SOGS6+, give higher values of  $R^2$  as is often the case when initial fits are not good.

Disregarding for the moment the above comments about expenditure, how should one react to the 57 per cent presented in the paper? The report has selected the largest  $R^2$  out of sixteen. Engaging in this type of data dredging weakens the significance of the resulting statistic. The problem of multiple comparisons arises. For example in hypothesis testing, the probability of finding a significant result when there is no true difference is usually set to one in 20. If you conduct the test sixteen times and pick the largest test statistic, then the probability of a significant result goes up to 64 per cent. So when the test is done sixteen times there almost a two-thirds chance of finding a significant result even though there is no difference. If you give yourself enough tosses of the coin you will ultimately get a significant result.

Since the report has focused on the SOGS5+ and the SOGS 10+, the correct procedure would be to report the  $R^2$  for those measures. In any case, given the small number of sample points it would be more usual to

use the adjusted  $R^2$  which is commonly called the coefficient of determination adjusted for degrees of freedom. In either case the values are considerably lower than those in the commission's 57 per cent. It is clear that a more relevant number to the text of the report is an  $R^2$  of just over 30 per cent and a coefficient of determination adjusted for degrees of freedom of about 20 per cent. Neither quantity is particularly noteworthy.

However it is worth repeating that what is being looked at here is not the connection between accessibility and problem gambling (or SOGS), but the relationship between average expenditure and SOGS.

**Section 8.4 (Page 8.12):** This section does some projections based on some regional Victorian data. The problem with this section, as noted by the commission, is that the effect could be due to many other factors. The data is based on the clients of counselling services. If there is more promotion of the services in areas of high accessibility, then increased awareness of counselling could explain the regression.

**Figure 8.8 (Page 8.17):** What is one to make of this picture? Gaming machines have been available from February 1992, and the data runs from 1993 to 1999. The introduction took place prior to the beginning of the data. Unless some further mechanism is proposed about the rate of uptake, it means nothing.

**Section 8.6:** This section relies on an argument given in Box 8.4 which goes along the lines that since the proportion of problem gaming machines players is positively correlated with the number of regular gaming machine players, access is causing problem gambling. However this does not refute the constant numbers of problem gamblers in the population model. If the overall population splits naturally into a fixed number of non-problem gamblers and problem gamblers, then the positive correlation can simply be a reflection of the success of advertising in both groups, rather than any relationship between accessibility and problem gambling.

**Figure 8.9:** There are many other mechanisms which can explain Figure 8.9. The period from 91 on has been a time of steady increase in prosperity in the US with more money for recreational purposes.

**Page 14.23:** Once again a regression is presented with limited information. In this case however there are some interesting insights. The model predicts that Loss increases with the number of machines. However Loss decreases with the number of Clubs and Hotels which have gambling machines. This is a curious outcome. One wonders whether the analysis took adequate account of the collinearity of the independent variables or whether interaction terms were included in the model. However, without the details it is difficult to make an informed judgement.

**Page 17.8:** On this page the issue of accessing gambling on the internet is discussed. Logistic regression is again cited, but once again there are insufficient details concerning data sets, models and testing etc.

All of the above matters lead me to the overall view of the statistical analysis and presentation in the Draft Report of the Productivity Commission on Australia's gambling industries which I related in the summary.

Terence J O'Neill  
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Tuesday, September 28, 1999

## Attachment 2 Specific Responses to the Draft Report

### Summary

Reference in Draft Report	Response
"The dearth of quality information has been an obstacle to good public policy..." p. XV	<ul style="list-style-type: none"> <li>▪ The lack of quality information on the economic and social impacts of gambling does not stop the PC from accepting surveys of community attitudes to gambling at face value (for example those reported in Box 3, p. XXIII).</li> </ul>
"The Commission was not asked to make formal recommendations..." p.XV	<ul style="list-style-type: none"> <li>▪ This Commission is being disingenuous in suggesting it has not made policy recommendations</li> </ul>
"... gambling retains the distinguishing feature that, as a group, gamblers inevitably lose over time — it is more like consumption than investment." p. XVI	<ul style="list-style-type: none"> <li>▪ Gambling is not the only financial transaction where the group as a whole loses. See Chapter 2 of this submission.</li> <li>▪ Nevertheless, if gambling is consumption, then gamblers cannot be said to lose in the short or long term — they are <i>consuming</i>, thus must be <i>gaining</i> something. <ul style="list-style-type: none"> <li>– The PC also says 98 per cent are engaging, with no significant problems, in voluntary transactions for which they pay for and receive greater value in return — <i>otherwise they would spend their money elsewhere!</i></li> <li>– The PC should make more clearly the point that gambling is a legitimate and controlled expression of preferences for the vast majority of consumers.</li> <li>– This leads to the fact that gambling is no different from other goods and services for the vast majority (98 per cent) of the population.</li> </ul> </li> </ul>
'Australia has ...21 per cent of the total number of electronic gaming machines in the world. p. XX	<ul style="list-style-type: none"> <li>▪ Australia does not have 21 per cent of the world's gaming machines. This figure is wrong. It is about 10 times too big.</li> <li>▪ Australia has about 2 per cent of the world's machines if you count Pachinko machines in Japan where player can receive prizes instead of money. <ul style="list-style-type: none"> <li>– The figure is 6 per cent if you do not include Pachinko — still a lot less than 21 per cent!</li> <li>– These figures are calculated by international gambling regulators and are backed up by industry estimates — they are not hard to obtain.</li> </ul> </li> <li>▪ The reaction to the PC's figure has been prejudicial to the inquiry outcomes and calls into question the PC's motives and professional competence.</li> <li>▪ And anyway, if Australian's do gamble proportionally more than others, so what? Other countries consume disproportionate amounts of wine, fish, motor vehicles, the internet, curry, etc.</li> </ul>
Australians are ...'the heaviest gamblers in the world' p.XXI	<ul style="list-style-type: none"> <li>▪ This is misleading. Access to gambling in Europe and most parts of North America is more restricted than in Australia. <ul style="list-style-type: none"> <li>– Hence relatively higher expenditure in Australia says more about the more restrictive approach in those countries than it does about the behaviour of Australians.</li> </ul> </li> </ul>
'...gambling was seen as a "questionable pleasure".' p. XXII.	<ul style="list-style-type: none"> <li>▪ See Chapter 2 of this submission.</li> </ul>

<p>"The Commission's national survey ...found widespread community concern..." p. XXIII</p>	<ul style="list-style-type: none"> <li>▪ Given the comment on p. XV, this is likely to reflect considerable ignorance about the issues.</li> </ul>
<p>"The task for government policy ... is to regulate [gambling] in ways in which, by taking account of their special characteristics, will help to bring the greatest net benefits to society." p. XXIII</p>	<ul style="list-style-type: none"> <li>▪ Government is only justified to intervene in the lives of individuals and businesses where there is a clear and pressing need to do so. <ul style="list-style-type: none"> <li>– Government policy toward gambling is too paternalistic.</li> <li>– This is has not been the approach of the PC's predecessors.</li> </ul> </li> </ul>
<p>"... 'production-side' benefits, ... are largely illusory. ... In short, the modelling indicates that changes in the size of the industry would have little impact on Australia's GDP, consumption levels or labour market outcomes over the long term.." p. XXV</p>	<ul style="list-style-type: none"> <li>▪ This statement (one could, of course, make this very point about the PC itself.) will come as a shock to the Commonwealth Statistician. <ul style="list-style-type: none"> <li>– By the ABS figures, last year the industry generated \$6 billion in GDP and some 135,000 jobs.</li> <li>– This is called national accounting and it is governed by international standards for determining the contribution of industries to the national economy.</li> <li>– By turning its back on this approach, the PC has as much as decided that the methodology endorsed by the OECD, World Bank, IMF and other respected international agencies and most of the countries of the world, is not worthy of consideration.</li> <li>– Indeed, if government policy treated gambling like a normal activity, the gambling industry's contribution to the economy would be even bigger than the Commonwealth Statistician's figures suggest.</li> </ul> </li> </ul>
<p>Most emphasise ...a lack of control by the gambler p. XXVII</p>	<ul style="list-style-type: none"> <li>▪ The PC needs to explain how this loss of self-control arises as it sees it as critical to the concept and pathology of problem gambling. <ul style="list-style-type: none"> <li>– Is it spontaneous or is it caused by something factor or factors.</li> <li>– If so what might they be?</li> </ul> </li> </ul>
<p>The primary source of the problems...is the financial loss p. XXVII</p>	<ul style="list-style-type: none"> <li>▪ What are the other sources of the problems and how significant are they?</li> </ul>
<p>"The Commission's judgement is that its estimates are more likely to <i>understate</i> than overstate the number ... with severe gambling problems." p. XXX</p>	<ul style="list-style-type: none"> <li>▪ This is only one of the biases.</li> <li>▪ There are other biases that would <i>overstate</i> the problem, eg: <ul style="list-style-type: none"> <li>– desire to blame 'something';</li> <li>– ignorance of all of the facts; etc.</li> </ul> </li> </ul>
<p>"Having considered the evidence and analysis, the Commission considers that the impacts associated with problem gambling are largely attributable to gambling itself." (emphasis as in original) p. XXXIII</p>	<ul style="list-style-type: none"> <li>▪ However, on page 10.8 the Draft Report states that: <p>"It is also important to consider the <i>extent</i> to which any adverse consequences can be attributed to the gambling problem. In some instances, problem gambling itself can be a symptom of more deepseated problems, or may be the result of other dependencies (such as alcohol). In such situations, it may be inappropriate to say that gambling is the cause of the problems observed, though it may contribute to their severity. The Commission has not made any adjustment for the effect of other conditions on the costs attributed to problem gambling. To the extent that these other problems contribute to the costs, the estimates would be overstated."</p> </li> </ul>
<p>It does not accord with the way problem gamblers describe their problems and is not consistent with the way they attempt to stop gambling p. XXXIV</p>	<ul style="list-style-type: none"> <li>▪ What is the evidence that these self-assessments are accurate and reliable? <ul style="list-style-type: none"> <li>– The people in question have a clear interest in portraying their gambling in a way that serves their own interests.</li> <li>– If someone commits a crime and attempts to claim extenuating circumstances due to a 'temporary loss of self-control', the person in question has to corroborate the claim and have the evidence tested to the satisfaction of the court.</li> <li>– The PC has not subjected the self-assessments it has used to such corroboration and validation.</li> </ul> </li> <li>▪ The fact that a person gets pleasure from an activity does not mean that he or</li> </ul>

	<p>she believes it is appropriate to engage in the activity at any time or to any degree.</p> <ul style="list-style-type: none"> <li>– The ethical dimension of a person's gambling may lead them to have themselves excluded from a gambling venue voluntarily.</li> <li>– The rationality of doing so can only be determined by the individual in question at the time the choice is made.</li> </ul>
While a link between the extent of problem gambling and the accessibility might seem self-evident...p. XLIII	<ul style="list-style-type: none"> <li>▪ The link is not self-evident, gambling expenditure is not a measure of accessibility and the significance of the association posited between expenditure and problem gambling is questionable <ul style="list-style-type: none"> <li>– (see Chapter 5 of this submission).</li> </ul> </li> </ul>
Erroneous beliefs...in gambling are legion...psychologists see false perceptions as major contributors to problem gambling (see table 7). P. XLVI	<ul style="list-style-type: none"> <li>▪ Erroneous beliefs are common in most areas of knowledge. <ul style="list-style-type: none"> <li>– One only has to recall the persistent popular acceptance of such things as UFOs, astrology, the 'resurrection' of Elvis Presley, superstitions, reincarnation, and parapsychology.</li> <li>– Erroneous beliefs are particularly evident in financial markets and economics, as the PC should know.</li> <li>– Erroneous beliefs about risk and uncertainty are not confined to problem gamblers (as Table 7 confirms)</li> </ul> </li> <li>▪ The more relevant issue is this: are erroneous beliefs more prevalent in gambling than in other risky activities. This has not been examined by the PC let alone established by it.</li> </ul>
Information of this kind [to correct erroneous beliefs about gambling] ...could be made readily available... and could be incorporated in public education, including within schools. P. XLVI-XLVII	<ul style="list-style-type: none"> <li>▪ No doubt such information <i>could</i> do so but is this in fact a likely outcome? <ul style="list-style-type: none"> <li>– Given the ingrained nature of beliefs generally, one would have to be sceptical that these 'suggestions' would be effective let alone efficient ways of addressing erroneous beliefs about risk and uncertainty.</li> <li>– Support for this scepticism may be found in the fact that popular erroneous beliefs (see previous comment) persist in spite of decades of universal primary and secondary education.</li> </ul> </li> </ul>
"Many gamblers have poor awareness (or biased recollections) of their losses relative to their wins." p. XLVII	<ul style="list-style-type: none"> <li>▪ This can be said about most people and most of their experiences. <ul style="list-style-type: none"> <li>– People tend to recall the good outcomes and to forget the bad ones.</li> <li>– It seems to be human nature</li> </ul> </li> </ul>
As box 10 illustrates, the warnings are rarely as explicit as in other areas of public health. P. XLVIII	<ul style="list-style-type: none"> <li>▪ The nature of the hazards are quite different. <ul style="list-style-type: none"> <li>– The risks to life and limb posed by physical hazards (such as hot water or speed) are far more clear cut and their consequences are far more measurable and predictable.</li> <li>– Those posed by gambling are psychic in nature and are therefore difficult to define, measure and predict as the Draft Report and the debate on it shows.</li> </ul> </li> </ul>
"... lowering taxes could simultaneously have the effect of encouraging the development of <i>new</i> problem gamblers. This ... have led the Commission to conclude that taxation is too blunt an instrument for reducing the social costs of gambling." p. LVIII	<ul style="list-style-type: none"> <li>▪ This is at odds with the results of the economic modelling the PC commissioned <ul style="list-style-type: none"> <li>– The PC had Chris Murphy of Econtech, one of Australia's leading economic modellers, look at what happens when gambling taxes are cut.</li> <li>– The Econtech analysis shows that when you remove gambling taxes, consumer spending on gambling stays the same while consumer benefits rise by \$400 million a year because they get more for their money— that is, more gambling, cheaper price.</li> <li>– This result cuts right across the PC's assertion that you could not cut gambling taxes because it might cause more problem gamblers. It shows the PC's ideas are all mixed up.</li> </ul> </li> </ul>

<p>"Earmarking of gambling revenue...is appropriate, since gambling creates the need for such services." p. LXII</p>	<ul style="list-style-type: none"> <li>▪ Hypothecation is just a form of random number generation. <ul style="list-style-type: none"> <li>– The revenue generated bears no relation to <i>either</i> the cost of providing the services in question <i>or</i> the public expenditure priorities that should apply to such expenditures.</li> </ul> </li> <li>▪ The PC has not assessed the claims for hypothecation for these expenditures against those of other areas of public spending. <ul style="list-style-type: none"> <li>– Nor has it assessed the costs of hypothecation, particularly in terms of the loss of budgetary flexibility by governments.</li> </ul> </li> </ul>
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## Chapter 2: An overview of Australia's Gambling Industries

Reference in Draft Report	Response
<p>"Internationally, Australia is second only to North America in the number of gaming machines in operation, accounting for one-fifth of machines world-wide (table 2.1)." p. 2.9</p>	<ul style="list-style-type: none"> <li>▪ Australia does not have 21 per cent of the world's gaming machines. This figure is wrong. It is about 10 times too big.</li> <li>▪ Australia has about 2 per cent of the world's machines if you count Pachinko machines in Japan where player can receive prizes instead of money. <ul style="list-style-type: none"> <li>– The figure is 6 per cent if you do not include Pachinko — still a lot less than 21 per cent!</li> <li>– These figures are calculated by international gambling regulators and are backed up by industry estimates — they are not hard to obtain.</li> </ul> </li> <li>▪ The reaction to the PC's figure has been prejudicial to the inquiry outcomes and calls into question the PC's motives and professional competence.</li> <li>▪ And anyway, if Australian's do gamble proportionally more than others, so what? Other countries consume disproportionate amounts of wine, fish, motor vehicles, the Internet, curry, etc.</li> </ul>

## Chapter 3: Consumption of gambling

Reference in Draft Report	Response
<p>"In 1997-98, Australians lost about \$11 billion on gambling." p. 3.1</p>	<ul style="list-style-type: none"> <li>▪ This sets a very negative tone to the chapter.</li> <li>▪ Why not say 80 per cent of Australian's enjoy gambling?</li> </ul>
<p>"For gambling services, the more meaningful measure of price is thus the net outlay." p. 3.7</p>	<ul style="list-style-type: none"> <li>▪ But this will vary considerably across different forms of gambling. <ul style="list-style-type: none"> <li>– eg: casino gaming. PC describes net outlay as the ratio of expenditure to turnover. But, casino turnover is the 'handle', which underestimates the turnover. Thus, the net outlay for casinos will be overestimated.</li> <li>– The PC even alludes to this.</li> </ul> </li> <li>▪ In addition, this assumes that the size of the individual wager and the prize are irrelevant, which they are not as the Draft Report itself shows in the discussion on pp3.11-3.13..</li> </ul>
<p>"Gambling is absorbing an increasing share of household income." p. 3.8</p>	<ul style="list-style-type: none"> <li>▪ Such statements need to be put into perspective and compared to consumption changes/sizes of other goods and services. <ul style="list-style-type: none"> <li>– The consumption shift compared with other goods and services is unremarkable — in addition, the relative size of gambling consumption is not great.</li> <li>– The PC should refer to Chapter 4.2 of ACIL's March submission.</li> </ul> </li> </ul>

#### Chapter 4: Impacts of gambling — a framework for assessment

Reference in Draft Report	Response
[Rational addiction] would still leave scope for measures which [sic] reduce the costs of problem gambling, such as public good research.... Footnote 2, p. 4.4.	<ul style="list-style-type: none"> <li>▪ It does not follow that there <i>would</i> be any 'public good' research that could be cost-effectively undertaken by government.</li> </ul>
"A final argument against problem gambling put forward by some industry representatives is that it is a concept that has been constructed and inflated by self-interest groups ..." p. 4.5	<ul style="list-style-type: none"> <li>▪ ACIL and the industry did not suggest that problem gambling exists because of anti-gambling groups, but made the reasonable point that if you make an activity such as social research cost-free, you'll tend to encourage it, which may well exaggerate the apparent importance of the problem. <ul style="list-style-type: none"> <li>– The industry is not in denial</li> </ul> </li> <li>▪ There is plenty of evidence in the health sector that there is considerable scope for supplier-induced demand.</li> </ul>
"... the concept of a negative externality stemming from the widespread visibility of gambling has some validity." p. 4.8	<ul style="list-style-type: none"> <li>▪ However, the equally possible validity of some form of intangible benefits that would offset such negatives is not even acknowledged.</li> <li>▪ A major issue with such phenomena is the difficulty of valuing them and the scope for strategic behaviour to bias the valuation process.</li> </ul>
But for the majority of lower income gamblers, it is plausible to see them making rational choices...p. 4.11	<ul style="list-style-type: none"> <li>▪ This comment is condescending and elitist. Unfortunately it seems to be reflected in a number of the comments by the PC and some inquiry participants (eg the quote on p. 5.4). <ul style="list-style-type: none"> <li>– It implies that the PC is prepared to entertain the possibility that lower income people may be less able to make rational decisions than those who are on higher incomes. We would be interested to know the evidence for this.</li> </ul> </li> </ul>
"This issue of tax regressivity is an important impact of the <i>combination</i> of growing liberalisation of gambling and the taxation regime." p. 4.11	<ul style="list-style-type: none"> <li>▪ The tax is regressive regardless of what level of access is allowed by regulation. <ul style="list-style-type: none"> <li>– In other words liberalisation of access has not affected whether the tax is regressive or not.</li> <li>– The restrictions on access are an additional <i>implicit</i> tax that is higher (and more regressive) than the explicit tax.</li> </ul> </li> </ul>
All societies have ethical and social norms, some strongly enshrined in legislation... p. 4.11	<ul style="list-style-type: none"> <li>▪ See Chapter 3 of this submission.</li> <li>▪ Only a few ethical norms are enshrined in legislation and most would be impossible to legislate and/or enforce. <ul style="list-style-type: none"> <li>– A number of those that are legally enforceable have not been legislated but are part of the common law</li> </ul> </li> </ul>
"... it is legitimate to gauge the social acceptability of differing regulatory approaches to gambling." p. 4.13	<ul style="list-style-type: none"> <li>▪ See Chapter 3.</li> <li>▪ The Draft Report sees gambling as ethically 'questionable' in the mind of the community because the law does not allow children to gamble at all and heavily restricts gambling by adults. <ul style="list-style-type: none"> <li>– However, the Draft Report does not include any kind of survey of the literature on ethics and moral philosophy to extract any guidance for public policy in addressing ethical issues generally.</li> <li>– Using legislation to impose ethical norms raises ethical dilemmas as it involves the use of coercion to take away a person's free choice in deciding ethical issues and (wrongly) presumes that government is the most appropriate arbiter of ethical issues.</li> </ul> </li> </ul>



<p>"These other 'benefits' to the economy from additional gambling activity are likely to be largely illusory." p. 4.14</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 4.</li> <li>▪ It is interesting that when this statement is transferred to the Summary (to p. XXV) the word 'likely' is omitted. This transformation is quite common in the Draft Report: the Summary is generally more definite about its findings than is the case with the body of the report.</li> <li>▪ In taking this approach, the PC has turned its back on the traditional method by which the Commonwealth Statistician estimates the annual economic contributions of industries (in terms of 'value added') and adds them to give an estimate of the nation's gross domestic product (GDP).</li> <li>▪ This is the common international standard for determining the contribution of an industry to a national economy.</li> <li>▪ The annual contribution to GDP of the gambling industry may be smaller than the annual net consumer benefits measured in terms of consumer surplus, but it is certainly <i>not illusory</i>.</li> <li>▪ See Section 4.4.1 for more information.</li> </ul>
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### Chapter 5: The benefits

Reference in Draft Report	Response
<p>Gambling is not a form of investment...Investments even, risky ones, can realistically be expected to offer a positive rate of return. p. 5.2-5.3</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 2.</li> </ul>
<p>"The Commission's national survey asked regular gamblers to rate their gambling experience on the basis of the degree to which it made their life more enjoyable. The survey results indicated that most (67 per cent) considered that it made no difference...These responses highlight the ambivalent status of gambling..." p. 5.5</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 2.</li> <li>▪ How valid is this result when you consider that 67 per cent of people engaged in a <i>voluntary activity</i> consider that it makes no difference in their lives?</li> <li>▪ The PC does not establish the ambivalence asserted by the Draft Report. <ul style="list-style-type: none"> <li>– To do so the Draft Report needed to show that the respondents would have been better off, in their own estimation, by not spending what they did spend on gambling in that period.</li> </ul> </li> </ul>
<p>Table 5.2, p. 5.10</p>	<ul style="list-style-type: none"> <li>▪ The footnote to the Table indicates that the PC accepts that gamblers do not respond accurately in surveys about what they spend on gambling <ul style="list-style-type: none"> <li>– In the light of this admission, how is the Commission able to accept, at face value, the accuracy of the survey responses by gamblers about the causes and effects of their gambling.</li> </ul> </li> <li>▪ The footnote implies that the extent of under-reporting of spending by problem gamblers is far less than for non-problem gamblers. <ul style="list-style-type: none"> <li>– However, the PC gives no evidence for the extent of the difference between the two groups.</li> </ul> </li> </ul>
<p>The implications...are problematic...The danger is that a range of, at best paternalistic, and at worst intolerant and authoritarian, restrictions could evolve. Box 5.7, p. 5.13</p>	<ul style="list-style-type: none"> <li>▪ The implications drawn for policy are correct <ul style="list-style-type: none"> <li>– But they have far wider application than the narrow context of the discussion in the box of unstable tastes</li> </ul> </li> <li>▪ Conceptually there is little practical distinction to be made between 'unstable tastes' and the 'loss of self-control' that the PC uses to define problem gambling. <ul style="list-style-type: none"> <li>– Intervention to correct for loss of self-control runs exactly the same risks as that to correct for 'unstable tastes.'</li> </ul> </li> </ul>

<p>"... the Commission has conservatively estimated the potential 'discount' to consumer surplus by looking at the surplus that would be generated if problem gamblers ... each spent \$1250. On this basis, problem gamblers would be spending \$401 million a year on gambling activities, rather than their current expenditure of some \$3.8 billion. ... The 'consumer surplus' for this group thus becomes negative — estimated to be a shortfall of \$1.1 to \$1.9 billion each year ..." p. 5.14-5.15</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 4.</li> <li>▪ This assumption that problem gamblers generate no consumer surplus when spend above \$1,250 per year (which is under \$25 a week) is highly arbitrary, and the PC presents no evidence to justify this. <ul style="list-style-type: none"> <li>– It does not take into account the income levels or relative spending levels of the gambler.</li> <li>– This assumption is used to discount the estimate of the benefits in the Draft Report by \$1.1 to \$1.9 billion per year.</li> </ul> </li> <li>▪ This is a very dismissive treatment of consumers and is remarkable for a Draft Report which elsewhere contains the following admission: <p>"It is also important to consider the extent to which any adverse consequences can be attributed to the gambling problem. In some instances, problem gambling itself can be a symptom of more deep-seated problems, or may be the result of other dependencies (such as alcohol). In such situations, it may be inappropriate to say that gambling is the cause of the problems observed, though it may contribute to their severity. The Commission has not made any adjustment for the effect of other conditions on the costs attributed to problem gambling. To the extent that these other problems contribute to the costs, the estimates would be overstated." (p. 10.8)</p> </li> </ul>
<p>The gains in employment and activity [from the gambling industries] are small. ...While the growth in the gambling industries is largely offset ...there are nonetheless gains available...While such gains may be small for any individual industry, it is the continual pursuit of marginally better outcomes that underlies the growth in Australia's living standards. p. 5.24</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 4.</li> <li>▪ This statement is completely at odds with the statement in the Summary (p. XXV) that the 'production-side benefits are largely illusionary'. <ul style="list-style-type: none"> <li>– The inconsistent treatment reflects the clear bias against the industry that is to be found in most parts of the Draft Report.</li> <li>– In those parts of the Draft Report the PC gives the impression that small gains in economic activity and performance are not worth having.</li> </ul> </li> </ul>

## Chapter 6: What is problem gambling?

Reference in Draft Report	Response
<p>There are a variety of definitions of problem gambling... p. 6.2</p>	<ul style="list-style-type: none"> <li>▪ There are but the Draft Report has not told us which one, of the many referred to, the PC is using. <ul style="list-style-type: none"> <li>– The use of the South Oaks Gambling Screen in the PC's surveys implies that the definition used there is that in the third edition of the Diagnostic and Statistical Manual of the American Psychiatric Association.</li> </ul> </li> </ul>
<p>...the conceptual framework in which these problems [problem gambling] are to be addressed remains somewhat elusive. There remain disagreements over its causes, definition and framework. p. 6.5</p>	<ul style="list-style-type: none"> <li>▪ Given the nature and the extent of these disagreements, how can the PC justify its finding that <ul style="list-style-type: none"> <li>– '...the impacts of problem gambling are largely attributable to gambling itself.' (p. XXXIII)</li> </ul> </li> <li>▪ The extent of the uncertainty is so great <ul style="list-style-type: none"> <li>– that problem gambling is a poor basis on which to justify intervention by government.</li> <li>– In such circumstances, the risk of government failure is likely to be substantial</li> </ul> </li> </ul>

<p>The bulk of the literature ...takes a sociological, psychological or a psychiatric approach...based on observations...and see problem gambling behaviour as clearly adverse for the individual affected. p. 6.9</p>	<ul style="list-style-type: none"> <li>▪ Such assessments can only reflect the perspective of the observer, no matter how well-intentioned they are. <ul style="list-style-type: none"> <li>– At the end of the day it is difficult , if not impossible, to see how they could possibly reflect the true preferences of the gamblers in question.</li> <li>– They provide a very dubious basis on which to construct public policy that involves the regulation or taxation of the activity in question.</li> <li>– It would be more honest to admit the subjectivity and paternalism involved in this approach and stop pretending otherwise.</li> </ul> </li> </ul>
<p>People are boundedly rational... p. 6.11</p>	<ul style="list-style-type: none"> <li>▪ If 'bounded rationality' is to become a basis for public policy it needs to be defined and its boundaries delineated by the PC <ul style="list-style-type: none"> <li>– In particular the PC needs to show what determines which decisions fall on each side of the 'boundary' and how that is determined.</li> </ul> </li> </ul>
<p>While people are forward looking, they do not have perfect information about the risks of problem gambling or the harms that it can involve. P. 6.11</p>	<ul style="list-style-type: none"> <li>▪ This would apply to every decision that a consumer, businessman or government official ever makes. <ul style="list-style-type: none"> <li>– It does not help public policy in any way. unless we accept in a centrally directed society and economy.</li> </ul> </li> </ul>
<p>The use of personal anecdotes...provide scientifically useful information about problem gambling. P. 6.13</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 5 of this submission. <ul style="list-style-type: none"> <li>– Personal anecdotes may provide useful hypotheses to test. That is the limit of their contribution to scientific understanding.</li> </ul> </li> </ul>
<p>...the threshold for direct public health intervention should be based on evidence, rather than arbitrarily selected. p. 6.19</p>	<ul style="list-style-type: none"> <li>▪ Self-assessment as used to identify problem gamblers is arbitrary. <ul style="list-style-type: none"> <li>– Respondents are not even given a definition to assess themselves against.</li> </ul> </li> </ul>
<p>"... around 330,000 adults ( or 2.3 per cent of the adult Australian population) have significant problems associated with gambling ..." p. 6.40</p>	<ul style="list-style-type: none"> <li>▪ See Chapter 5 and the report by Dr Terry O'Neill attached to this submission.</li> <li>▪ This estimate exaggerates the prevalence of problem gambling <ul style="list-style-type: none"> <li>– Nevertheless the estimate does underline the fact that the risks of becoming a problem gambler are low.</li> <li>– That is, over 80 per cent of adults gamble, but less than 3 per cent develop a significant problem.</li> </ul> </li> <li>▪ Despite the low risk, the PC proposes continuing, and indeed extending, the heavy-handed regulation and taxation of gamblers at large.</li> </ul>
<p>"... the Commission also examined the prevalence of gambling problems using some self-assessment questions posed to adult Australians:</p> <ul style="list-style-type: none"> <li>▪ around 5.7 per cent ... indicated that they had some sort of problem ...</li> <li>▪ about 0.8 per cent of adults (111,000 adults) said they wanted help ..." p. 6.41</li> </ul>	<ul style="list-style-type: none"> <li>▪ Not only were the people interviewed by telephone unrepresentative of the population at large, but they were asked to make their own assessment of any problem they might have had, their impacts on them and their families, and their causes. <ul style="list-style-type: none"> <li>– The PC did not undertake any independent assessment of their answers.</li> <li>– At best self-assessment helps to establish an individual's perception of what may have happened but in no way is it a scientifically valid method of establishing the facts of a case. Self-assessment is equivalent to a court deciding a dispute on the basis of the evidence of one witness, and without cross-examination.</li> </ul> </li> </ul>

## Chapter 7: The impacts of problem gambling

Reference in Draft Report	Response
...for many gamblers pre-existing problems do not appear to precipitate problem gambling. p. 7.5t	<ul style="list-style-type: none"> <li>▪ Since the PC is not sure how can it justify its definite finding in the Summary that it does (on p. XXXIII).</li> </ul>
"... while some factors pre-dispose a person to gambling, there is little evidence that problem gamblers share common personality traits, which suggests in turn, that anyone can, ... become a problem gambler." p. 7.5	<ul style="list-style-type: none"> <li>– The PC's assertion that everyone is at risk of becoming a problem gambler is sensationalist and irresponsible.</li> <li>– On the PC's own figures, over 97 per cent of the population are able to gamble without developing a problem.</li> </ul>
...those for whom prior problems or disorders are a precipitating factor, gambling appears to exacerbate their prior problems... p. 7.6	<ul style="list-style-type: none"> <li>▪ Since the PC is not sure how can it justify its definite finding that all the costs of these impacts are attributable to gambling.</li> </ul>
"... there is little question that problem gambling behaviours ... play a central and, therefore, policy relevant role." p. 7.8	<ul style="list-style-type: none"> <li>▪ However, the fact that problem gambling is a central issue <i>does not</i> imply that it is policy relevant!</li> </ul>
...if respondents answer honestly, the self-assessment approach can provide a good perspective on causality... p. 7.9	<ul style="list-style-type: none"> <li>▪ The PC presents no evidence that they do answer honestly or accurately for that matter. <ul style="list-style-type: none"> <li>– In fact the PC admits that respondent answers on expenditure The only evidence in the d</li> </ul> </li> </ul>
"... the Commission considers that ... problem gambling will tend to exacerbate any pre-existing problems. Moreover, ... many of the harms experienced by problem gamblers can be traced to gambling and not other life events or personality features of the gambler." p. 7.9	<ul style="list-style-type: none"> <li>▪ The PC's draft is written entirely from the point of view that gambling is the cause of any problems which people who gamble happen to have. <ul style="list-style-type: none"> <li>– In most cases there is every chance there is no causal link, and in some cases a causal link (eg with divorce, workplace problems, depression, etc) could just as plausibly go the other way.</li> <li>– Anyway, an individual must gamble in the first place, and there must be some cause for that!</li> <li>– It pretends to have tested for causality, but professional statisticians can see that it has not.</li> </ul> </li> </ul>
"... there is little doubt that there are suicides linked to gambling, but the number is inevitably hard to pinpoint — it probably lies somewhere between 40 to 400 a year." p. 7.17	<ul style="list-style-type: none"> <li>▪ Although admitting causality is virtually unknown, the PC infers a wild range of up to 400 suicides linked to gambling! <ul style="list-style-type: none"> <li>– Should this issue be treated in such a cavalier way, given its importance?</li> </ul> </li> <li>▪ On p. 7.15, PC admits that the 400 estimate of suicides associated with problem gambling "... is likely to be a significant overestimate."</li> </ul>
"... relationship breakdown affects about one in ten problem gamblers and this typically leads to divorce or separation (table 7.6). Divorce or separation affects around one in four problem gamblers in counselling." p. 7.20	<ul style="list-style-type: none"> <li>▪ This, and the results shown in table 5 of the summary show that less than 3 per cent of the people are responsible for more than half of the divorces each year <ul style="list-style-type: none"> <li>– This would mean that the 2.4 per cent of adults who are supposed to be problem gamblers are responsible for 55 per cent of the divorces that occur each year in Australia. Such a statistic is simply not believable.</li> <li>– It appears to be arise from a badly flawed sample survey of problem gamblers.</li> </ul> </li> </ul>
"... the Commission found that the average number of people who are adversely affected by a problem gambler is 7.4." p. 7.26	<ul style="list-style-type: none"> <li>▪ The calculations in footnote 13 could lead to an exaggerated figure. <ul style="list-style-type: none"> <li>– What about the possible overlap within gambling families or groups considered?</li> <li>– Why would the parents and siblings of an adult necessarily be adversely affected?</li> </ul> </li> </ul>
"The Commission surveys ... suggested moderate effects on work performance by problem gamblers ... "... problem gamblers in counselling (the most severe category) reported, on average, a	<ul style="list-style-type: none"> <li>▪ The 'moderate effects' were not highlighted in the conclusion.</li> <li>▪ The decline in work performance of 7.3 per cent is not that significant — many other activities would have a greater impact, eg: football team in the grand final; planning a holiday; sporting or other commitments not related to work;</li> </ul>

decline in work performance of 7.3 per cent.” p. 7.28	contemplating a career change, etc.
“... problem gamblers ... spend so much more than non-problem gamblers (around 9 to 18 times more). The implication is that of the \$10.6 billion of gambling losses made by Australians in 1997-98, around \$2.9 to \$3.8 billion is accounted for by problem gamblers.” p. 7.32-7.33	<ul style="list-style-type: none"> <li>▪ This result is based on misuse of the survey results. <ul style="list-style-type: none"> <li>– To correct for the fact that most people tend to understate how much they gamble (or was it to produce a more impressive figure?) the PC arbitrarily raised the stated gambling outlay of all its respondents, including people in counselling, by 100 per cent.</li> <li>– This is how the PC gets its ‘estimate’ that 30 per cent of the total expenditure on gambling comes from the problem gamblers. You would expect people in counselling to be more likely to be able, and to want, to tell the truth about what their gambling is costing them.</li> <li>– The PC has offered no explanation for its assumption that the tendency to understate is spread evenly over the population.</li> </ul> </li> </ul>

### Chapter 8: Accessibility and problems

Reference in Draft Report	Response
“Accessibility [of gambling] to people in deprived socioeconomic circumstances is more likely to lead to increased problems (because affordability is linked to problems and because poorer people are more likely to be looking to gambling as a solution to financial problems) ...” p. 8.7	<ul style="list-style-type: none"> <li>▪ This suggests that poorer people have less common sense than those better off! <ul style="list-style-type: none"> <li>– It is just as likely that they will be more acutely aware of the penalties of excessive spending.</li> <li>– This also seems inconsistent with the average spend of the problem gambler calculated by the Commission.</li> </ul> </li> </ul>
“...the Commission considers that there is sufficient evidence ... to confirm a significant connection between greater accessibility — particularly to gaming machines — and the greater prevalence of problem gambling.” p. 8.24	<ul style="list-style-type: none"> <li>▪ The PC suggests only 2.4 per cent of people develop a significant problem as a result. <ul style="list-style-type: none"> <li>– The risk of becoming a problem gambler is therefore much less than the health risks from many other every-day activities, such as driving a car, playing contact sports or drinking alcohol.</li> </ul> </li> </ul>

### Chapter 10: Enumerating the costs and net impacts

Reference in Draft Report	Response
“... many of the private costs of problem gamblers have been included with the social costs of gambling. This is because of serious reservations about the extent to which problem gamblers are aware of the true costs and benefits of gambling ...” p. 10.7	<ul style="list-style-type: none"> <li>▪ Including private costs as social costs and the failure to adjust for the effect of other conditions on the costs attributable to problem gambling fundamentally undermines the PC’s net benefits estimates. <ul style="list-style-type: none"> <li>– Measuring the gamblers’ lack of knowledge and awareness of costs is speculative.</li> <li>– Also, this insults not only the intelligence of the gambler, but the gambler’s choice to gamble.</li> </ul> </li> </ul>
The Commission has adopted a conservative approach to assigning values to them based on the range of compensation payments made available by governments in Australia. p. 10.9	<ul style="list-style-type: none"> <li>▪ This is highly misleading. <ul style="list-style-type: none"> <li>– The selected compensation rates for emotional pain and suffering are no longer available as the State in question (Victoria) has repealed them.</li> <li>– It is not clear that the PC has applied to its estimates the same evidentiary requirements that claimants in Victoria had to meet to qualify for the compensation in question.</li> <li>– Repeal of these compensation rates suggests that the basis for the rates is dubious.</li> <li>– In the light of the above, the estimates cannot be described as conservative.</li> </ul> </li> </ul>

## Chapter 12: Regulatory arrangements

Reference in Draft Report	Response
<p>"... some participants suggested that many players do not adequately understand their chances of winning at particular games ..." p. 12.26</p>	<ul style="list-style-type: none"> <li>▪ This is likely to be an exaggeration. <ul style="list-style-type: none"> <li>– The odds are widely publicised, in the media in particular, and are widely available to gamblers.</li> <li>– This insults the intelligence of many gamblers, and also misinterprets the reasons for problem gambling. This could lead to worthless policy.</li> <li>– It is also unlikely that more detailed information would modify problem gamblers' behaviour — most are fully aware of the odds, but hope that their luck has/will change.</li> </ul> </li> <li>▪ The PC needs to document which participants they are quoting so their credibility may be judged <ul style="list-style-type: none"> <li>– The reference to 'some participants' is not acceptable from a transparency point of view.</li> </ul> </li> </ul>

## Chapter 13: Are constraints on competition justified?

Reference in Draft Report	Response
<p>"... a better approach is to institute probity checking procedures which are appropriate to the mode of gambling and venue type, and to charge the licensee accordingly." p. 13.19</p>	<ul style="list-style-type: none"> <li>▪ These additional charges are extra taxes on the industry!</li> <li>▪ This should be seen in the context of the existing high taxation on the industry.</li> </ul>
<p>"In the Commission's view, the key consideration is the effect which these arrangements have on problem gambling, and ... on the accessibility of gambling, and the implementation and effectiveness of harm minimisation practices. ... there is little to suggest that these arrangements lead to good social outcomes overall." p. 13.24</p>	<ul style="list-style-type: none"> <li>▪ But restricting accessibility must give rise to some form of exclusivity and vice versa. <ul style="list-style-type: none"> <li>– For example, the recent Victorian government announcement that there will be no more casinos in Melbourne and the cap on EGMs will remain at 27,500. Is this policy pointless?</li> </ul> </li> <li>▪ Any proposed change to exclusive arrangements needs to take into consideration the amount incumbents have paid for the right to operate under such terms, not to mention due consideration must be given to current licensing arrangements.</li> </ul>

## Chapter 15: Consumer protection

Reference in Draft Report	Response
<p>...information provision or informed consent do not impinge on the freedom of the consumer. p. 15.5</p>	<ul style="list-style-type: none"> <li>▪ In most cases they will narrow choice unless the benefits of the information to gamblers are greater than the additional costs, broadly defined, that are imposed on the consumer. <ul style="list-style-type: none"> <li>– For example they may add to the costs borne by the gambling venue. If this results in a narrower range of products on offer or lower prize-money it has the effect of increasing the effective costs to the gambler.</li> <li>– If they add to the time and effort that gamblers have to spend in gambling, the result is the same.</li> </ul> </li> </ul>
<p>It is not clear that the previous ban on gambling...as severe as those experienced in some other forms of prohibition, such as alcohol in the United States. There is anecdotal evidence of crime, corruption...but, these appeared to be relatively minor. p 15.6s</p>	<ul style="list-style-type: none"> <li>▪ This is highly misleading. <ul style="list-style-type: none"> <li>– The real issues are what were the costs and how high were they. Anecdotes do not establish the facts of the case.</li> <li>– Needless to say, the PC has not looked seriously at these issues but it does feel entitled to make sweeping statements about them without any rigorous examination of the facts.</li> </ul> </li> </ul>

<p>It is presumed that people who are more highly educated ... notion that knowledge makes people less inclined to bet on lotteries. p. 15.10</p>	<ul style="list-style-type: none"> <li>▪ This is elitist and insulting.             <ul style="list-style-type: none"> <li>– Most people with higher education do not necessarily have superior mathematical understanding of applied probability.</li> <li>– In any event a logit regression cannot establish the nature of the linkage between education and lottery consumption</li> </ul> </li> </ul>
<p>"...the Commission favours, in principle, the availability of better information about the price of playing poker machines, including: a simple system of informing consumers about loss rates on machines. But notification of machine returns is a misleading indicator of the machine price and should not be implemented; the expected duration of playing associated with any given player style and; an indication of the likelihood of any given payout on the payout tables displayed on the machines." p. 15.16-15.17</p>	<ul style="list-style-type: none"> <li>▪ There are serious reservations about the creation of simple and meaningful price information that could be conveyed via the EGM to the customer.             <ul style="list-style-type: none"> <li>– EGMs have complex prize scales that are not easily amenable to description. More importantly, machines have been designed in this way because the customer actually complex games that provide wide variety.</li> <li>– Over-simplification will defeat the purpose of consumer protection in that there is a high risk this will mislead the consumer.</li> <li>– A 'Theoretical Return to Player' could be displayed on each machine, but adequate explanation of what that means in practice is needed.</li> <li>– Could also impose a dollar measure relative to a particular EGM's cumulative loss (as for the Internet) — but what happens when players move between EGMs?</li> <li>– The fact that the Commission misunderstood the working of random number generators in describing the Black Rhino game demonstrates the difficulty of informing customers accurately of the odds.</li> </ul> </li> <li>▪ Indicators of "expected duration of play" are virtually meaningless given the nature of EGM software design and extremes that will be encountered in player returns over any realistic playing period.             <ul style="list-style-type: none"> <li>– While players preferences may be affected by frequency of jackpots, behaviour is also influenced by other factors such as the novelty of the game, features of the game including the availability and configuration of progressive links, the pay tables on the machines, whether they can smoke at the machine, promotional prizes and the proximity of the bar.</li> <li>– An alternative could be simple-to-read brochures explaining the concepts of EGM design and play and explode some of the popular myths.</li> </ul> </li> <li>▪ It is feasible to have dollar amount bets rather than credits on machines, but there will be some software considerations.</li> </ul>
<p>"...where loyalty cards are used, consumers should be provided with a periodic record of their spending ... Such records should also be provided to TAB phone betting account holders." p. 15.23</p>	<ul style="list-style-type: none"> <li>▪ Some gambling operators will find this much more complex to do than others.             <ul style="list-style-type: none"> <li>– For example, there are Currently 120,000 TAB Phone Account customers, and a large majority make daily transactions. This would require an overhaul of the current TAB computer systems.</li> <li>– For venue-based gambling, loyalty cards could be used, again at an additional (but lower than TAB) cost to the organisation.</li> </ul> </li> <li>▪ However, there are a number of considerations:             <ul style="list-style-type: none"> <li>– problem gamblers may not elect to use such a system if there is a concern that others may gain access to this information;</li> <li>– in terms of loyalty cards, software, disclosure and patron preferences must be considered; and</li> <li>– the information relating to table games in casinos is not totally accurate.</li> </ul> </li> <li>▪ Where a player requests the information and on satisfactory proof of information, some venues already provide such information. However, few gamblers have asked for such information, and those that have tend to be premium casino players wishing to check their play rating.</li> </ul>
<p>"The Commission views problem gambling — in all its dimensions — as a public or community health issue, similar to that of alcohol. ... Moreover, as in other public health areas, there is significant scope for prevention of problems by intervening in the market to reduce hazards. ... there is clearly a role for government in information provision." p. 15.25</p>	<ul style="list-style-type: none"> <li>▪ It is possible to treat problem gambling as a public health issue, although there is disagreement among experts about this.             <ul style="list-style-type: none"> <li>– However, problem gambling should be seen as very different in nature and not as severe than the list of public health issues mentioned in the Draft Report.</li> <li>– In addition, the NORC study shows that the costs of problem and pathological gambling amount to 5% of the costs of drug and alcohol</li> </ul> </li> </ul>

	problems; 15% of heart disease problems; 25% of motor vehicle crashes and 60% of smoking.
<p>"The Commission considers that there is a need for governments to provide clear information to the public about:</p> <ul style="list-style-type: none"> <li>▪ what is problem gambling;</li> <li>▪ the fact that all gamblers are potentially vulnerable;</li> <li>▪ its signs ... and self-assessment;</li> <li>▪ some of the risk factors (such as depression or stress);</li> <li>▪ its consequences (poverty, job loss, relationship breakup, depression and suicide); and</li> <li>▪ advice on where help may be obtained ...</li> </ul> <p>...Such information should be made available at gambling venues in ways that are just as visible as signs promoting gambling. They should be positioned on any nearby ATMs in venues, on gaming machines, at the cashier's and at points where people may be seeking help with other public health problems." p.15.25-15.27</p>	<ul style="list-style-type: none"> <li>▪ The industry does not have any fundamental objection to the provision of such information, provided it is realistically and reasonably assembled and conveyed.</li> <li>▪ Most operators have implemented, or about to implement, some kind of voluntary responsible gambling program.</li> <li>▪ As a result, there are already a number of signs and brochures relating to, for example, problem gambling (including avenues of help), casino boundaries, underage gambling, non-gaming facilities, and bet limits.</li> <li>▪ Additional action in this area suggested by some operators could include adopting the Victorian harm minimisation strategy slogan introduced by the Department of Human Services: "If it's no longer fun, walk away". In adopting such a strategy, the gambling facilities could: <ul style="list-style-type: none"> <li>– place signs on the bottom of table limit signs and on 'how to play' brochures;</li> <li>– appropriate signs could be included with the "Condition of Entry" signs at exits, near ATMs and at cashier counters; and</li> <li>– posters advertising help and support services placed in toilets.</li> </ul> </li> </ul>
<p>"...there are grounds for tighter controls on gambling advertising, where it is felt that the information provided by a gambling supplier would have the effect of reinforcing inherently false beliefs about the odds of winning or about the way gambling technologies work." p. 15.33</p>	<ul style="list-style-type: none"> <li>▪ Misinformation in advertising is already covered by competition law. In addition, most states have specific legislation and procedures in relation to advertising that is false, misleading or untrue.</li> <li>▪ There is already an industry Code of Ethics in relation to advertising, which includes the Independent Complaints resolution Process. To date, there have been a relatively small number of complaints made, all of which have been resolved.</li> <li>▪ Current gambling advertising is not directed at people in financial troubles, nor are there ads that suggest table games (other than blackjack) or EGMs can produce wins through skilful play.</li> <li>▪ Fact: the possibility of winning and actually winning is one of the reasons to play — it is part of the product. Is promoting the possibility of winning an unfair inducement to play?</li> </ul>
<p>"...notwithstanding existing general consumer protection measures, there are grounds for legislatively based codes specific to gambling. ... Moreover, the grounds for stricter controls on gambling advertising appear to be stronger than on other goods because consumers may have persistent misperceptions even after regular consumption of the good." p. 15.33-15.34</p>	<ul style="list-style-type: none"> <li>▪ There is a concern that legislative-based codes will not possess the necessary flexibility to provide optimum outcomes in each segment of the industry.</li> <li>▪ The 'codes' proposed here need further clarity as to how they would apply — would they be prescriptive? The concern is the subjective nature.</li> <li>▪ The reference to "ensure that gambling advertising ... does not ... target high risk groups of gamblers, for example, through complementarities or individual promotions..." is making the assumption that 'regular' gamblers are 'high risk' gamblers — but this is not always true. The subjective definition of this group is not clear.</li> </ul>
<p>"...it appears that there is a case for more prescriptive and mandatory regulations rather than voluntary codes of practise ... The Commission seeks views about the value of specifying a gambling venue duty of care and the extent to which it should include some prescriptive arrangements for that care." p. 15.41</p>	<ul style="list-style-type: none"> <li>▪ Many providers have already put in place programs of the kind mentioned in this section (and Box 15.9).</li> <li>▪ However, it has reached such a conclusion without any analysis, for example, it does not: <ul style="list-style-type: none"> <li>- provide any support for its assertion that "... the common law duty of care is relatively narrow and vague" (p. 15.36);</li> <li>- give any indication that it appreciates the complex nature of tort law;</li> <li>- examine the case law to show how the common law duty of care has performed in dealing with gambling-related harms;</li> <li>- examine the economics of the various rules and doctrines in tort law;</li> <li>- provide any evidence or analysis for its assertion that tort litigation is costly in the case of gambling (p. 15.36); and</li> <li>- provide any evidence or analysis for its assertion that the results of tort</li> </ul> </li> </ul>



	litigation have not reflected the strong evidence of the adverse health impacts of tobacco consumption (p. 15.36).
"A critical issue is the extent to which ATMs are used by problem gamblers relative to others, how much money is withdrawn, and the number of repeat transactions by a given customer. The Commission ... seeks feedback on this." p. 15.49	<ul style="list-style-type: none"> <li>▪ ATMs could be removed from gaming areas, however, withdrawal of ATMs from the venues would be inconvenient for the 97% of gamblers who do not have a problem. <ul style="list-style-type: none"> <li>- In addition, ATMs in casinos are there for the use of non-gamblers such as hotel guests, theatre-goers, diners and the general public.</li> </ul> </li> </ul>
"...cheques should not be cashed in gambling venues, even when purportedly done for non-gambling items, such as food or alcohol, with the exception of high-rollers in casinos ..." p. 15.50	<ul style="list-style-type: none"> <li>▪ Currently, cheques are only accepted in casinos.</li> <li>▪ Concern over the definition of 'high roller'.</li> <li>▪ Casino cheque cashing facilities typically involve the casino obtaining detailed information from the patron that typically includes bank reference (often takes more than 3 working days). Generally, the amounts are for no less than \$1,000.</li> <li>▪ At Crown, a 'limited cheque' can be cashed for up to \$500 (with no funds usage restriction), providing sufficient identification is provided. There may be up to 10 such transactions per day. It is not advertised or promoted to patrons in any way.</li> </ul>
"The Commission considers that there may be scope for the development of a regulated requirement for withdrawing gambling from a person whose behaviour suggests excessive gambling." p. 15.53	<ul style="list-style-type: none"> <li>▪ However, this could be dangerous — some considerations: <ul style="list-style-type: none"> <li>- experts cannot agree on what constitutes "problem gambling", thus identification will be very difficult;</li> <li>- gaming and other staff should not be put in a position in which intervention risks verbal and physical abuse and litigation, especially in a case where there is no problem; and</li> <li>- problem gambling help agencies stress the need for the gambler to recognise their problem before effective treatment can take place.</li> </ul> </li> </ul>
"...self-exclusion should take the form of a simple contract written by the problem gambler with the gambling provider, with the gambler, not the venue, being liable for violation of the contract. ... Also, ... there are grounds for mandatory signs in any gambling venue that indicate that any patron may self-exclude, and accompanying pamphlets ..." p. 15.54	<ul style="list-style-type: none"> <li>▪ A self-exclusion policy and capability will be much more costly and complex for operations with multiple locations (such as TABs, Tattersall's and Tabaret outlets) compared to the (mostly) single venue casino operators. Ongoing administrative costs also need to be considered.</li> <li>▪ There are concerns over the extent of the organisation's liability for violations. Some customers will ultimately escape detection and it is unfair for the company to be penalised for such non-intentional occurrences.</li> <li>▪ Agree with the Productivity Commission's view that "the gambler, not the venue, be liable for violation of the [self-exclusion] contract".</li> </ul>
"The Commission strongly endorses the idea that machine design should aim to maximise such informed consent." p. 15.58	<ul style="list-style-type: none"> <li>▪ No real objection to the concept, however, problems previously outlined in respect of provision of additional information are again relevant.</li> <li>▪ When is there too much information that it becomes confusing? Signage and brochures on how to play, for example, should adequately address informed consent issues.</li> <li>▪ Definition of informed consent needs to be clearer. <ul style="list-style-type: none"> <li>- Do people invest in shares knowing precisely what a company is strategically planning or the type of dilemma it faces?</li> <li>- Do you demand a refund if you dislike a movie, or read all about a movie before going to see it?</li> <li>- What about football — no control over the standard of the match played, and it is never marketed in a way that you could be disappointed (not to mention if your team loses).</li> </ul> </li> <li>▪ Machines are designed for player enjoyment. Any modifications directed towards the problem gamblers need to take into account the possible impact on others.</li> </ul>

<p>"The Commission finds good reasons for bill acceptors not being included in the design of poker machines, with any cash dispensers being located outside the gaming area." p. 15.62</p>	<ul style="list-style-type: none"> <li>▪ The benefits of removing bill acceptors to problem gamblers need to be weighed against the loss of service to the majority of gamblers. <ul style="list-style-type: none"> <li>- Bill acceptors could be removed, but at a significant cost (hardware and software). The Productivity Commission should seek such cost information from the machine manufacturers.</li> <li>- A commercial reality as part of the existing system allows customers to use the currency of the realm. Bill acceptors are a way to accommodate the use of existing currency in a manner convenient for the customer.</li> <li>- And is there any evidence that problem gamblers would benefit from such a move?</li> </ul> </li> <li>▪ Raises the question — should we also limit speed capabilities in motor vehicles, alcohol strength in liquor, fat content in food? What role does personal responsibility play in these legally available products?</li> </ul>
<p>"The Commission seeks views on whether linked jackpot machines and accelerators should be banned, and if so, whether the ban would involve significant implementation costs for existing machines." p. 15.67</p>	<ul style="list-style-type: none"> <li>▪ If linked jackpots were to be banned, then should Keno games, Jackpot lotteries and Lotto, which are all highly geared towards jackpotting, also be therefore banned?</li> <li>▪ Bans on linked jackpots are no more likely to be effective than bans on large jackpots.</li> <li>▪ Consumer demand patterns point to a preference for linked machines.</li> </ul>

## Chapter 16: Help for people affected by problem gambling

Reference in Draft Report	Response
<p>"...there is a need for a National Minimum Data set to be collected on clients of problem gambling counselling agencies, using an identical set of definitions across all jurisdictions and an approach that would allow repeat clients to be identified as well as clients who attend more than one counselling service." p. 16.26</p>	<ul style="list-style-type: none"> <li>▪ We would note the massive discrepancies between the 8,000 persons attending counselling agencies (as problem gamblers or persons affected) and: <ul style="list-style-type: none"> <li>- the Commission's 140,000 estimate of gamblers with severe problems;</li> <li>- survey results of apparently 130,000 people saying they want help and 53,000 saying they sought help; and</li> <li>- the Commission's lower bound estimate of 29,600.</li> </ul> </li> <li>▪ Also, the small sample appears to invalidate the results in Figure 16.3.</li> <li>▪ As highlighted in Draft Report, there is complete disagreement between experts of the nature of problem gambling and how to treat it.</li> </ul>
<p>"All gambling forms contribute to the need for problem gambling services and therefore should also contribute to funding. ... Gaming machine revenue should be the predominant source, and this should be regardless of venue." p. 16.44</p>	<ul style="list-style-type: none"> <li>▪ Table 16.14 highlights the massive failure rate of counselling — it appears that only about one quarter of problems are fully resolved, and about one third are totally unresolved. <ul style="list-style-type: none"> <li>- This implies there should be a serious consideration of alternative modes of treatment, or at least, realistic assessments of what are possible.</li> </ul> </li> <li>▪ Counselling research may already be over-funded. <ul style="list-style-type: none"> <li>- The Commission's discussion of the magnitude of the required assistance could also be more conclusive given the apparent under utilisation of services.</li> <li>- Extra funding where it is not needed would be wasteful and possibly induce currently non-existent demand.</li> </ul> </li> </ul>
<p>"Given the potential for competing incentives with industry-based involvement, ... the Commission sees merit in the funding of problem gambling programs being placed under the control of an independent board, established under the auspices of an independent gaming control authority." p. 16.51</p>	<ul style="list-style-type: none"> <li>▪ The industry is concerned that under this approach, there will be broad distribution of funding — ie: anyone who can attract a few clients will be eligible for funding. <ul style="list-style-type: none"> <li>- Any service that receives funds needs to be critically assessed.</li> <li>- The counselling industry does not have to pass the market test (unlike the industry), and it should, at least, have to pass the usual tests for allocation of public funds.</li> <li>- This system is likely to lead to over-provision of funding, leading to inappropriate spending. This can be seen by the numerous gambling-funded projects that have nothing to do with problem gambling. This was highlighted by the recent change in name of the NSW Casino Community Benefit Fund to the NSW Government Community Benefit Fund.</li> </ul> </li> </ul>

## Chapter 17: Policy for new technologies

Reference in Draft Report	Response
<p>"The Commission considers that some form of regulation of internet gambling, is, in principle, an important objective, and is consistent with ... consumer protection, probity and preservation of revenue." p. 17.31</p>	<ul style="list-style-type: none"> <li>▪ ACIL agrees in-principle with this broad-brush approach but has residual concerns remain about how 'managed' it might be. <ul style="list-style-type: none"> <li>- The model put forward in the Draft Report has not been formally tested against existing arrangements, nor has it been formally tested against the competitive market solution.</li> <li>- 'Managed liberalisation' must not be used as an excuse to implement repressive regulatory regimes.</li> <li>- The more regulations and roadblocks that are put in the way, the greater the incentive for some to find new ways of doing things and capture any rents, at least for a while. The Internet is no different.</li> <li>- Internet gambling is a fact of life in Australia.</li> </ul> </li> </ul>

## Chapter 18: The taxation of gambling

Reference in Draft Report	Response
<p>A number of economy-wide models have been used to assess the impact of current levels of gambling taxes on the economy, ... from the collective results it is difficult to draw conclusions about the appropriate level of gambling taxes, even from a narrow efficiency perspective." p. 18.18</p>	<ul style="list-style-type: none"> <li>▪ The mere fact that the Draft Report characterises economy efficiency as a narrow concept is telling — as economic efficiency comprehends anything and everything that affects the welfare of the community as a whole, it is hardly narrow.</li> <li>▪ The PC does not point out that all three modelling analyses agree that there are efficiency gains from reducing gambling taxes. <ul style="list-style-type: none"> <li>- Moreover, the gains that they find are entirely consistent with both economic theory and practice in the tax area.</li> </ul> </li> <li>▪ It is true that each of the modelling analyses came up with different estimates of the size of these efficiency gains. This fact does not, in any way, undermine the reliability of the conclusion that there are positive efficiency gains from reducing gambling taxes.</li> </ul>
<p>"... it is not clear that tax is a useful instrument for assisting [problem gamblers] or preventing new problem gamblers." p. 18.30</p>	<ul style="list-style-type: none"> <li>▪ The uncertainty about the relative extent of these two effects meant that the PC stayed with the status quo.</li> <li>▪ Frankly this concern, although understandable, obscures the key issues: <ul style="list-style-type: none"> <li>- the risk of tax cuts recruiting problem gamblers is negligible; and</li> <li>- in any event, is an ineffective and inefficient measure to address problem gambling (see Section 6.4.2)</li> </ul> </li> </ul>
<p>"In sum, assessed against normal taxation criteria, and given the level of available information, the Commission has not found a strong, or unambiguous, case for significant reductions in gambling taxes. Were governments to lower taxes, it may be prudent to make only small changes and observe the effects (including whether the reductions are passed on to gamblers)." p. 18.31</p>	<ul style="list-style-type: none"> <li>▪ Taxation (and regulation) of gambling is already very heavy, and arguments to retain them at this level are weak. <ul style="list-style-type: none"> <li>- This limits the freedom of choice to the more than 97 per cent of people who have no problem with gambling to protect a small minority who do.</li> <li>- Such an approach is unreasonable and unbalanced.</li> </ul> </li> <li>▪ On this point the Draft Report fails even on a basic test of transparency. <ul style="list-style-type: none"> <li>- It does not bother to say how <i>likely</i> it is that the efficiency gains will be small.</li> <li>- Moreover the Draft Report it does not tell us how <i>probable</i> or how <i>big</i> the PC considers these gains have to be before policy-makers should attempt to realise them. (see Section 6.4)</li> </ul> </li> </ul>

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## Attachment 3      References

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