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**Gaming Commissions,  
Internet Gambling and  
Responsible Gambling**

**by**

**John Wilkinson**

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## **EXECUTIVE SUMMARY**

- ▶ a general description of the nature of gambling is outlined (pp.1-4)
- ▶ the extent of gambling control in New South Wales (in relation to gambling on games of chance, for money) is described (pp.4-5)
- ▶ there have been institutional, and political, calls for the establishment of a gaming commission, in NSW (pp.5-6)
- ▶ gaming commissions have been considered, and instituted overseas (pp.6-8)
- ▶ bodies, bearing some similarity to gaming commissions, have been established in Australian jurisdictions, but their degree of control varies: two case studies are given (pp.8-15)
- ▶ there are marked differences in the American attitude to internet gambling - and the approach taken in Britain and Australia (pp.15-25)
- ▶ the NSW government's Gambling Legislation Amendment (Responsible Gambling) Bill 1999 - and some of its provisions regarding advertising, gamblers' borrowing, and problem gambling - are outlined (pp.26-32)

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## 1 THE NATURE OF GAMBLING IN GENERAL

### (a) The Odds Against People Gaining by Gambling

In the vast majority of cases, people lose by gambling. Ernest Blanche, former chief statistician in the logistics division of American Army's General Staff, commented that "the mathematical odds or probabilities in all gambling games are so determined that only the proprietor or bet-taker can win during the continued conduct of the games. This mathematical advantage runs from a minimum of 1.5 per cent to a maximum of about 90 or 95 per cent. Expressed in layman's language, that means that the operator or bet-taker devours from 1.5 per cent to 95 per cent of all the money wagered by players."<sup>1</sup> Over two hundred years ago, Adam Smith, the founder of modern-day economics, remarked that "The world neither ever saw, nor ever will see, a perfectly fair lottery. . . There is not. . . a more certain proposition in mathematics, than that the more tickets you adventure upon, the more likely you are to be a loser."<sup>2</sup>

Barbara Drury has compiled a list of the odds, in the different forms of NSW lotteries, as follows:

#### *Odds Against Winning the First Prize in NSW Lotteries*

Powerball	1 in 25 million
Ozlotto	1 in 8 million
Soccerpools	1 in 3.8 million
Lotto Strike	1 in 3.2 million
Scratchie (\$2)	1 in 480,000
Lucky 7	1 in 200,000
Jackpot Lottery (\$2)	1 in 180,000
Jackpot Lottery (\$5)	1 in 140,000 <sup>3</sup>

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<sup>1</sup> Ernest Blanche, "Gambling Odds Are Gimmicked" in the *Annals of the American Academy of Political and Social Science*, vol.269, May 1950, p.77.

<sup>2</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London, 1822), pp.164-165.

<sup>3</sup> Barbara Drury, "Unlucky Numbers - Gambling's Long Odds" in the *Sydney Morning Herald*, 7 May 1997, supplement, p.7M.

Horse race betting is another area in which the odds are, essentially, weighed against the bettor. Blanche, writing in 1949, remarked that he had analysed “the results and pay-off prices of 256 races selected at random from ten issues of *The Racing Form*. . .[an American] publication”. The results of the returns on horses considered as favourites, over the course of those 256 races, were as follows:

<i>Horse Race Placings (%age basis)</i>	
Favourites Winning	39%
Favourites Finishing Second	18%
Favourites Finishing Third	16%
Favourites Not Placed	27% <sup>4</sup>

Bookmakers, and totalisator agencies, win overall against the gambler because, as Blanche indicated, on the basis of the results of his table above, “If you had wagered \$2 on each favourite to win, you would have lost \$3.60; \$2 place betting on favourites would have set you back \$20.90”.<sup>5</sup>

Casinos, likewise, operate on the basis of gamblers, essentially, losing while the operators make a profit. Ernest Blanche also described the operation of the classic, Monte Carlo, roulette game as follows:

Let us now examine the Monte Carlo game in which the wheel has only one zero and players are permitted to wager on any number (including the zero). The casino pays off at 35 to 1 for each winning selection. If the spin happens to be zero, and there are no wagers on the zero, the house collects the bets on the other numbers; but if there is a wager on the zero, the house pays the winner 35 to 1. Thus, betting on numbers really means that the player has one chance in 37 of winning, whereas he receives only 35 to 1 when he wins. If he plays one dollar on all 36 numbers and the zero, he loses one dollar on the spin of the wheel. This is the equivalent of saying that the operator takes 2.7 per cent of all money wagered. The occurrence of the zero also permits the house to take all wagers which are at odds, other than even money. However, if there are bets on 1 to 1 selections (red, black, odd, even, high, low), when the zero turns up, the bets are shifted into what is called “prison”, and the next spin of the wheel decides whether the bank or the player is entitled to the money wagered. If the player’s selection wins on the next spin, he gets back only his wager; if the selection loses, the house takes the money. This is equivalent to

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<sup>4</sup> Ernest Blanche, *You Can’t Win: Facts and Fallacies about Gambling* (Public Affairs Press, Washington DC, 1949), p.57.

<sup>5</sup> Ibid.



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having the house take half of the wager when the zero turns up and forcing the player to wager the remaining half on the same selection for the next spin.<sup>6</sup>

Those who operate lotteries place themselves in a similarly dominant position. As far as the outcomes of lotteries in the present-day are concerned, Blanche has provided the following illustration of the essence of a lottery:

Let's examine a fairly simple lottery situation. Suppose the tickets, numbered from 1 to 10,000, sell for one dollar each. Suppose too that there are five prizes to be distributed as follows: to the first drawn ticket, \$1,000; second, \$500; third, \$250; fourth, \$100; fifth, \$50. Since there are 10,000 tickets, the chance of winning a particular one of the five prizes may be considered as one in 10,000 for all practical purposes. . . 10,000 tickets, at a dollar each, net the operators \$10,000; the total amount paid off to the five winners is \$1,900. The \$8,100 difference goes to the operators. In short, the operators get 81 per cent of all the money wagered.<sup>7</sup>

One of the first living proofs of the above principle, in Australia, was George Adams (proprietor of the Tattersall's Hotel in Sydney). John O'Hara has described how, in 1881, "Adams ran Tattersall's first public sweep on the Sydney Cup. Although this was a relatively small sweep of 2,000 tickets at £1 each, with a first prize of £900, Tattersall's business boomed quickly to the point where Adams was soon holding more than £200,000 on the Melbourne Cup".<sup>8</sup>

Operators of poker machine venues, similarly, win against those gambling on slot or "fruit" machines. Peter Swan has recently pointed out that "for each \$1 put through a poker machine the gambler can expect to lose 13 per cent".<sup>9</sup>

#### **(b) Gambling Contrasted with More Certain Forms of Wealth Increase**

Believing in the possibility of winning at gambling, is essentially believing in an illusion. As Ernest Blanche has also pointed out, in the case of the Irish Sweepstakes (tickets for which sold widely, throughout the USA, during the 1920s and 1940s), "A great deal of fanfare follows announcement of the winners, but no-one salutes the losers, of whom there are millions."<sup>10</sup>

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<sup>6</sup> Blanche, op.cit., pp.102-104.

<sup>7</sup> Ibid., p.81.

<sup>8</sup> John O'Hara, *A Mug's Game: A History of Gaming and Betting in Australia* (University of New South Wales Press, Sydney, 1988), p.99.

<sup>9</sup> Peter Swan, *Report on the Likely Effect of Slot Machines in a Casino on the Operations and Viability of the Registered Club and Hotel Industries* (Swan Consultants, Sydney, 1992), p.15.

<sup>10</sup> Blanche, op.cit., p.80.

Leeanne Bland, in a recent article in the *Sydney Morning Herald*, has illustrated the illusion behind gambling by pointing out how money invested in other areas can realise a far more certain return than gambling ever could:

if you are relying on gambling or lotteries as your main form of wealth creation, don't hold your breath until you make your fortune. . .there are more certain ways to make money - even if all you have is the per capita gambling spend of about \$1,000 a year [or \$20 a week]. . .if \$20 a week was invested in a balanced fund. . .for the past 10 years, a total of \$9,600 would be spent, and the fund balance would be close to \$20,000. . .Perpetual Investment's general manager of retail business, Gerard Dougherty, thinks of it as a choice between a one-in-55 million chance of having the dream of winning Powerball come true, versus the certainty of having . . .\$20,000. . .in ten years' time.<sup>11</sup>

## **2 REGULATING GAMBLING ON A WIDER LEVEL: BY ESTABLISHING A GAMING COMMISSION**

### **(a) Calls for the Establishment of a Commission to Supervise Gambling in NSW: the Present Extent of Gambling Control**

The essence of gambling control in NSW has been outlined in 1998, by the state's Independent Pricing and Regulatory Tribunal (IPART). In this section gambling is considered as "gaming" (where "gaming" is taken to mean gambling on games of chance for money), partly because it is in the area of "gaming" where the greatest part of the state's gambling activity takes place.<sup>12</sup> IPART's outline is as follows:

There are effectively three organisations undertaking control functions in the gaming industry. The CCA [Casino Control Authority] undertakes the control functions for the casino. The LAB [Liquor Administration Board] and the Minister carry out the control functions for the remaining segments of the gaming industry. However the LAB has no staff or budget. Work on behalf of the Minister is carried out by the DGR [Department of Gaming and Racing]. In effect it is officers of the DGR that undertake the control functions and make the recommendations to both the LAB and the Minister. Yet DGR is also responsible for enforcement, policy and gaming duty matters.<sup>13</sup>

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<sup>11</sup> Leeanne Bland, "Million Dollar Delusion" in the *Sydney Morning Herald*, supplement, 12 May 1999, p.12.

<sup>12</sup> During financial year 1997-1998 the turnover on poker machines in clubs, and the turnover on poker machines in hotels, amounted to around \$30 billion compared to the \$4½ billion gambled on racing and the \$446 million in gross revenue made by the casino in Sydney (during calendar year 1998). See Department of Gaming and Racing, *Industry Statistics at a Glance* (Department of Gaming and Racing, Sydney, 1998).

<sup>13</sup> NSW Independent Pricing and Regulatory Tribunal, *Inquiry into Gaming in New South Wales*, report (NSW Independent Pricing and Regulatory Tribunal, Sydney, 1998), pp.i,26.

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The problem with this arrangement, according to the IPART report, is that “Enforcement functions including consumers protection, fairness and harm minimisation, for the entire gaming industry, are predominantly the responsibility of DGR. . . Yet the DGR, as it is currently structured, has conflicting roles. . . Such conflicts inhibit DGR from adequately completing all of its functions and hence for a large part of the gaming industry, fulfilling its regulatory objectives.”<sup>14</sup>

A year ago, the Carr government, recognising growing concern over the extent of gambling in NSW, obtained the passage through Parliament of the *Liquor and Registered Clubs (Community Partnership) Act 1998*. This legislation required the state government to initiate an independent inquiry into the social impact of gambling. In June 1998, the NSW Independent Pricing and Regulatory Tribunal was prevailed upon to conduct such an inquiry, and to conclude its report (quoted above) before the end of the year.

In its report, presented in November 1998, the IPART recommended that “all gaming related control functions be carried out by an independent gaming commission, separate from enforcement.” The Tribunal added that it saw the duties of the proposed commission including, amongst other matters, “providing a separate report (at least annually) to parliament evaluating the effectiveness of enforcement. . . [and] consumer protection in gaming”.<sup>15</sup>

Recently, in July 1999, the NSW parliamentary leader of the Liberal Party, Kerry Chikarovski MP, has also advocated the establishment of a gaming commission. She wrote, in an article in the *Sydney Morning Herald*, that

The day-to-day management of gaming policy and regulation should be removed from the minister’s office and applied through a consistent process that is continuously fine-tuned through formal consultation with the gaming industry. The independent gaming authority we propose - a statutory authority responsible directly to parliament - would subsume the full range of activities of the Casino Control Authority, the gaming functions of the Department of Gaming and Racing, and the gaming functions of the Liquor Administration Board. The authority would have its own legislation, a board of respected representatives of both the industry and the community, and ministerial involvement would be entirely transparent. While the parliament would retain ultimate responsibility for broad policy initiatives, the authority would regulate the number and type of gaming licences in the state - well away from ministerial pressure. The authority would be able to investigate and report on specific issues relating to gaming. . . Applications for poker machines and other gaming facilities would undergo public and transparent consideration, involving a thorough investigation by the authority of the economic

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<sup>14</sup> Ibid., p.27.

<sup>15</sup> Ibid.. pp.30-36.

and social impact of any additional licences.<sup>16</sup>

**(b) Attempts to Regulate the Entire Extent of Gambling, in the Recent Past: Overseas Experience**

*USA*

Concerns over the regulation of gambling have previously induced policy makers to advocate the establishment of gambling, or “gaming”, commissions to supervise gambling in a particular jurisdiction. A notable first attempt was in Nevada, where casino gambling had been legalised as a response to the 1930s Depression, and where the Las Vegas casinos had emerged fifteen years later. Timothy O’Brien has recalled that,

the state didn’t even have a regulatory body to oversee the casinos until 1955. In that year, bad publicity surrounding the revelation that Mob boss Meyer Lansky was connected to the financing of the Thunderbird casino forced Nevada’s hand. The state subsequently shut down the Thunderbird and established a three-member Gaming Control Board to investigate applicants for casino licences and enforce gambling regulations. Four years later, as federal scrutiny and public concern continued to mount, the state passed the Gaming Control Act, which established a five-member Gaming Commission to oversee the control board. Still, for the next twenty years, the Gaming Commission was little more than a rubber stamp. . . At worst, it succumbed to bullying from those it was charged with regulating. For example, in 1965, a Desert Inn co-owner and Cleveland mobster named Ruby Kolod was accused of using cash scooped from the Desert Inn’s cage to invest in a questionable oil deal with another mobster. The Gaming Commission, pushed by then [state] governor Grant Sawyer, entered Kolod’s name in the infamous ‘Black Book’, a list of individuals forbidden to own or associate with any Nevada casino. It was an unusually tough stance for the Gaming Commission, and it didn’t last: [Moe] Dalitz [the other owner of the Desert Inn] began pressuring the commission. Just two weeks after Kolod’s name went into the Black Book, it was removed. Dalitz, Kolod and others then brought their weight to bear in the next gubernatorial campaign, donating hundreds of thousands of dollars to Sawyer’s challenger, Paul Laxalt. Laxalt won, and during his occupancy of the governor’s mansion no new names were added to the Black Book’s ranks. For good measure, Laxalt named Dalitz a ‘special assistant to the governor.’<sup>17</sup>

Other endeavours in establishing similar bodies, in other states, engendered some similar problems. G. Robert Blakey, Professor of Law at Notre Dame Law School, has recounted how, during the early 1980s in New Jersey, following the formation of the state’s Casino

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<sup>16</sup> Kerry Chikarovski, “Budgeting on the Toss of a Coin” in the Sydney Morning Herald, 21 July 1999, p.17.

<sup>17</sup> Timothy O’Brien, *Bad Bet: The Inside Story of the Glamour, Glitz and Danger of America’s Gambling Industry* (Times Books, Random House, New York, 1998), p.32.

Control Commission (1977) and the opening of the state's first casino (1978),

early experience with the regulatory scheme. . .[was] mixed. Challenges to licenses of relations to organised crime or corruption. . .[had] been made by the attorney-general in the application proceedings of Resorts International, Bally Manufacturing Corporation, Caesar's World Incorporated and Playboy. The objections of the attorney-general were overridden in the Resorts proceedings by the newly formed Casino Control Commission. After allegations surfaced involving possible payoffs to a member of the commission, the commission was reorganised by the governor.<sup>18</sup>

On an overall level the essential nature of gaming control, in the USA, has been summarised by the American National Gambling Impact Study Commission (NGISC). This body was legislatively provided for in 1996 by Frank Wolf (a Republican Party member of the American House of Representatives) and Paul Simon (Democrat Party Senator for Illinois) who co-sponsored the passage through Congress of the *National Gambling Impact Study Commission Act 1996* (Public Law 169 of the 104th Congress). This Act established the NGISC to examine gambling in the USA. It met for the first time in 1997 and delivered its report in June 1999. The commission was chaired by Kay James (dean of the Robertson School of Government at Regent University) and included William Bible (former chairman of the Nevada Gaming Control Board). In its report the commission observed that,

Two contrasting, if simplified, approaches can be identified. The first, dubbed here the 'Nevada' model, can be characterised as weighted towards viewing gambling as a business . . .Reserving to government the policing functions - ensuring the integrity of the games, combatting organised crime etc. - this approach emphasises granting gambling a relatively free hand. . .A contrasting approach, dubbed here the 'New Jersey' model, focuses on gambling's potential negatives. . .One consequence is a broader and more in-depth role for government in the making of key decisions . . .with few areas free from government oversight and approval.<sup>19</sup>

### *Britain*

Another instance, of official consideration of an extensive oversight body for gambling, occurred during 1976 - 1978 in Britain. In 1976, under the Labour Party government of James Callaghan, a Royal Commission into Gambling was established, headed by Lord Rothschild. In evidence to the commission, the then chairman of the British Gaming Board called for the formation of a gaming commission in Britain. Ernest Mitler has recalled how,

In 1978, recognising the fragmentation of gaming control agencies, the British Gaming Board, through its chairman, Sir Stanley Raymond, proposed to the [then] Royal Commission on Gambling, the creation of a consolidated gambling authority

<sup>18</sup> G. Robert Blakey, "Legal Regulation of Gambling since 1950" in the *Annals of the American Academy of Political and Social Science*, vol.474, July 1984, pp.20-21.

<sup>19</sup> National Gambling Impact Study Commission, report (National Gambling Impact Study Commission, Washington DC, 1999), p.3-5.

with powers to supervise the entire gambling field. . .Sir Stanley felt it would be more effective if there could be one overall gambling authority to supervise the diverse forms of gambling rather than each form of gambling being regulated by an independent control agency. There were many large companies which had major interests both in gambling casinos and bookmaking enterprises in Great Britain. Sir Stanley contended that the Gaming Board could not function effectively without having access to the internal operations of these major companies. Sir Stanley Raymond emphasised the inefficiency of the current system by pointing out that there. . .[were] three different agencies regulating the horse racing betting industry. In the case of casino gambling and slot machines, the regulatory powers were even more diversified.<sup>20</sup>

Sir Stanley Raymond's suggestion was, however, not adopted by the Royal Commission. As Nigel Kent-Lemon commented, "the commission appeared to accept the industry as it stood and made only some minor recommendations."<sup>21</sup>

**(c) Attempts to Regulate the Entire Extent of Gambling, in the Recent Past: Some Examples of Australian Experience**

At least two jurisdictions in Australia have established a supervisory body which has the title "gaming commission" or "office of the gaming commissioner": Western Australia and South Australia. They are thus considered at some length as case studies. The background and nature of the two institutions are as follows:

*Western Australia: W.A. Gaming Commission*

In 1981 the Court government appointed three government backbenchers to gather information from the public in relation to gambling in the state. The backbenchers' report was produced in 1982 but was not immediately released. Following the election of the ALP government, in 1983, the new premier, Brian Burke, released the report. This document advocated that "a Gaming Commission be established forthwith" and that it ought to be empowered to undertake the following duties:

- ▶ control and regulate gambling for the good of the whole community
- ▶ deal exclusively with gambling and (where practicable) have exclusive jurisdiction in this area

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<sup>20</sup> Ernest Mittler, "The Role of Gambling Regulators in the Next Decade" in William Eadington and Judy Cornelius (eds.), *Gambling and Public Policy: International Perspectives* (Institute for the Study of Gambling and Commercial Gaming, College of Business Administration, University of Nevada, Reno, 1991), p.270.

<sup>21</sup> Nigel Kent-Lemon, "Significant Influences on the United Kingdom Casino Industry since 1960" in the *Annals of the American Academy of Political and Social Science*, vol.474, July 1984, p.76. See also *Royal Commission on Gambling*, final report (Her Majesty's Stationery Office, London, 1978).

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- ▶ grant gambling permits to eligible organisations for fund raising purposes
  - ▶ approve suitable premises, gambling operators and suppliers of equipment (with a view to ensuring that the proceeds of gambling are for the benefit of the club or organisation holding the gambling permit)
  - ▶ review new forms of gambling as they appear<sup>22</sup>

Next, according to Jan McMillen, Burke established a “four-member Casino Advisory Authority, comprising senior government officers from departments responsible for police, law, tourism and gaming. . .to review the arguments for and against casinos. . .in April 1984 the government officially announced that the casino project would go ahead”. As the Burke government moved to invite companies to bid to establish the casino, it also established another inquiry into gambling in Western Australia: this time led by Perth solicitor Dan Mossenson. When the Mossenson report was released, in 1985, according to McMillen, it recommended that “large-scale gambling should be restricted to the proposed Burswood Island casino. . .[and] recommended against the entry of poker machines into the state.”

The group that subsequently successfully bid to operate the casino was composed of the Perth businessman Dallas Dempster and Genting Berhad of Malaysia. The casino opened at the end of 1985.<sup>23</sup>

In the late 1980s the Burke government obtained passage of the *Gaming Commission Act 1987* which established the Western Australian Gaming Commission. The WA Gaming Commission carries out the administration of the *Gaming Commission Act 1987*, subject to the relevant Minister. The Commission, however, is not responsible for either lotteries (the province of the WA Lotteries Commission) or horse race betting (essentially the province of the WA TAB). As outlined in the *WA Gaming Commission Act 1987*, the following are the main elements of the WA Gaming Commission’s functions:

- ▶ to administer the law relating to gaming
- ▶ to administer the law relating to betting (subject to the *WA Betting Control Act 1954* and the *WA Totalisator Agency Board Betting Act 1960*)
- ▶ to keep under review the conduct, extent and character of gaming and betting in Western Australia
- ▶ to keep under review the provision, use and location of gaming and betting

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<sup>22</sup> *Gaming in Western Australia*, report of the Government Gaming Inquiry Committee (Perth, 1984), pp.21-22.

<sup>23</sup> Jan McMillen, *Risky Business: The Political Economy of Australian Casino Development* (PhD Thesis, University of Queensland, 1993), pp.201-217.

facilities

- ▶ to formulate and implement policies for the scrutiny, control and regulation of gaming and betting, taking into account the requirements and interest of the community as a whole
- ▶ to grant - or withhold or revoke - approval in respect of premises, gaming equipment, operations and persons concerned with gaming and betting: in relation to which a permit or certificate is sought
- ▶ to inspect, examine or investigate premises, gaming equipment, operations and persons (in relation to the seeking of a permit or certificate)
- ▶ to administer all matters relating to any gaming in a casino or any casino complex, licensed casino, or casino key employee
- ▶ to be responsible for the issuing of permits and certificates relating to gaming and betting
- ▶ to be responsible for the issuing of permits and certificates in relation to casinos
- ▶ to advise the relevant Minister as to any matter relating to gaming and betting
- ▶ to make recommendations to the relevant Minister in relation to the control and supervision of gaming and betting
- ▶ to enforce the laws relating to gaming and betting
- ▶ to prosecute persons contravening the laws relating to betting and gaming<sup>24</sup>

The Gaming Commission currently, however, is essentially the determining body - but not the regulatory body - in respect to gambling (for money on games of chance) in Western Australia. As the Gaming Commission's annual report (for 1996-1997) points out,

The Gaming Commission Act does not provide for the employment of staff by the commission. Under an agreement with the Office of Racing, Gaming and Liquor, executive and other support services are provided by that agency. The majority of functions performed by the commission are carried out by the Gaming Division of the Office of Racing, Gaming and Liquor. This includes the provision of licensing,

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<sup>24</sup>

*Gaming Commission Act 1987. Sections 4,6,7.*



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inspection and audit functions in respect to casino and permitted gaming.<sup>25</sup>

*South Australia: the Gaming Supervisory Authority and the Office of the Liquor and Gaming Commissioner*

As recounted by Jan McMillen, “The Dunstan ALP government first proposed a casino for South Australia in response to an approach from John Haddad, the managing director of Federal Hotels.” Subsequently, in the late 1970s, Dunstan introduced a bill to legislate for the introduction of a casino but, according to McMillen, “The government’s Casino Bill was soundly rejected by the House of Assembly after several ALP members combined with conservative opposition parties to oppose the proposal.”<sup>26</sup> Following Dunstan’s retirement from politics in 1979, and the subsequent state election (in late 1979), the Liberal Party, under David Tonkin, gained office. In 1982 the Tonkin government decided to revisit the plan to have a casino in Adelaide and a Casino Bill was introduced into the Legislative Assembly. To distance itself from criticism over the bill, in McMillen’s words, the Tonkin government decided to subject the proposed legislation “to review by a bipartisan parliamentary committee which sought comment from the public. . .A select committee chaired by Michael Wilson, Minister of Recreation and Sport, was appointed in April 1982 to report on the legislation and the implications of casino development.” The committee’s report, as outlined by McMillen, “recommended in favour of a casino but with comprehensive controls to protect problem gamblers. . .It [also] recommended establishment of an independent tribunal, chaired by a member of the judiciary, to oversee the establishment and operation of the casino”. When the Casino Bill was finally debated, in August 1982, it was once again defeated.<sup>27</sup>

Only a month after John Bannon won the state election of November 1982, an ALP backbencher in the Legislative Council reintroduced legislation to establish a casino. In May 1983 the South Australian Legislative Council, and the SA Legislative Assembly, approved the casino legislation. Shortly after this, however, as McMillen points out, “the government. . .[passed] new legislation prohibiting poker machines only in casino premises.”<sup>28</sup>

The subsequently introduced regime for control of the casino was somewhat different from that in other states, as McMillen describes:

There. . .[were] a number of unusual features. . .which differentiate[d] the South Australian casino policy from other states. Firstly a three-member Casino Supervisory Authority (CSA) was established to conduct a public inquiry to

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<sup>25</sup> Gaming Commission of Western Australia, annual report 1996-1997 (Gaming Commission of WA, Perth, 1997), p.13.

<sup>26</sup> McMillen, op.cit., pp.218-220.

<sup>27</sup> Ibid., pp.220-224.

<sup>28</sup> Ibid., pp.225-226.

determine the premises to be licenced for a casino and the terms and conditions on which the licence should be issued. . .The casino licence was issued to the Lotteries Commission of South Australia which was required to appoint an operator approved by the CSA to manage the casino on its behalf. . .It was intended that the creation of a ‘watchdog’ CSA would diminish ministerial control over casino administration and allow parliamentary review of the effectiveness of the regulatory system.<sup>29</sup>

This initial brief of the Casino Supervisory Authority - to be a watchdog - was soon overturned by the Bannon government, as McMillen recounts:

When announcing ASER [Adelaide Station and Environs Redevelopment investment trust] as the successful applicant, the CSA requested that the government review and amend the *Casino Act* before proceeding further, arguing that the legislation was ‘inadequate in many ways’ . . .and that ‘most if not all of the important matters relating to the licensing and operation of the casino should be included in the *Casino Act* rather than the licence agreement’ . . .In its eagerness to get the project underway. . .[the Bannon] cabinet rejected this request on the basis that to return legislation to parliament would invite protracted debate by the opposition and delay the project unnecessarily. Premier and Treasurer Bannon formally requested the CSA to recommend terms and conditions for the casino ‘as soon as it is reasonably practicable’ . . .When the CSA presented its completed recommendations to cabinet they were rejected. Cabinet prepared an altered set of terms and conditions which became the guidelines and conditions for the casino licence.<sup>30</sup>

By the early 1990s, supervision of gaming in South Australia had become divided between two bodies. As McMillen explains, in relation to casino gaming, “Responsibility for review of all aspects of casino administration. . .rest[ed] with the CSA which has. . .powers of scrutiny and policy determination, replacing much of the ministerial discretion which exists in other states.” On the other hand, as she has also pointed out, “Power of routine regulation and scrutiny of casino operations. . .[was] vested in the Superintendent of Licensed Premises, who supervises a group of specialist casino inspectors appointed to fulfil functions similar to casino inspectors in other states.”<sup>31</sup>

Just before he resigned from office, Bannon obtained passage through parliament of the *Gaming Machines Act 1992*. This legislation provided for the introduction of poker machines into clubs and public houses (until then they had only been allowed in the casino) and also provided for the transformation of the office of the Superintendent of Licensed Premises into the SA Office of the Liquor and Gaming Commissioner. As outlined in a report by the Social Development Committee of the SA Parliament, the current SA Office

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<sup>29</sup> Ibid., p.228.

<sup>30</sup> Ibid., p.230.

<sup>31</sup> Ibid., p.232.

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of the Liquor and Gaming Commissioner is responsible to the Attorney-General of South Australia and its “primary responsibility is to administer the *Gaming Machines Act 1992*. Additionally, the Liquor and Gaming Commissioner authorises and approves licences. . . to ensure that all operations of the . . . [Adelaide] casino [under section 21 of the *Casino Act 1983*] and licences of all other classes under the *Gaming Machines Act 1992* (section 5) are subject to close scrutiny.”<sup>32</sup>

Following Bannon’s withdrawal from public office, and the defeat of the ALP government (led by Lynn Arnold) in the 1993 state elections, Dean Brown became premier, leading a Liberal Party government. Brown then decided to widen the role of the Casino Supervisory Authority. According to the 1997 - 1998 annual report of the subsequent Gaming Supervisory Authority, a Gaming Supervisory Authority Bill was introduced into the SA parliament in late 1994 with the following intentions:

The provisions of this bill were designed to provide the [then] gaming authority with an overarching supervisory authority for all aspects of the gaming machines industry and an overriding authority on any matters which are not the direct responsibility of the Liquor and Gaming Commissioner. . . the Liquor and Gaming Commissioner would become responsible to the Gaming Supervisory Authority for the scrutiny of the casino and all gaming machines operations, and the authority would have the overall responsibility for those matters, with the power to give directions to all licensees and to hold inquiries into any aspect of the casino or the gaming machine industry. . . The Gaming Supervisory Authority. . . came into operation on 1 July 1995.<sup>33</sup>

In all, the South Australian Office of the Liquor and Gaming Commissioner administers the *Casino Act 1983*; the *Gaming Machines Act 1992*; and the *Liquor Licensing Act 1997*. As far as *poker machines* (or “gaming” machines) are concerned, the Liquor and Gaming Commissioner is responsible the following matters:

- ▶ determination of applications for a gaming machine licence and gaming machine dealer’s licences
- ▶ approval of persons in a position of authority (regarding poker machines)
- ▶ approval of gaming machines, gaming equipment and the computerised monitoring system
- ▶ determining the number of machines per licensed premises (a gaming machine licence entitles the licensee to possess up to 40 poker machines)

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<sup>32</sup> Parliament of South Australia, Social Development Committee, *Gambling Inquiry*, report (Parliament of South Australia, Adelaide, 1998), p.30.

<sup>33</sup> SA Gaming Supervisory Authority, annual report 1997-1998 (Gaming Supervisory Authority, Adelaide, 1998), p.2.

- ▶ authorising the hours of gambling
- ▶ disciplinary action against licensees (including the power of reprimand, and the power to suspend or cancel a licence)
- ▶ review of the barring of persons by licensees<sup>34</sup>
- ▶ inspection, monitoring and scrutiny of gaming machine operations

In regard to provisions of licences - issued to operators of poker machines - are concerned, one particular feature concerns the welfare of gamblers:

- ▶ a licensee may bar a person from a gambling area if the licensee is satisfied that the welfare of the person (or the welfare of the person's dependants) is seriously at risk as a result of the person's excessive playing of poker machines

Another feature of the legislation, overseen by the Office of the Liquor and Gaming Commissioner, is the removal of borrowing facilities from areas where poker machines are located. Under the *Gaming Machines (Miscellaneous) Amendment Act 1996* it is an offence for a licensee to provide (or allow another person to provide) either an Automatic Teller Machine; an EFTPOS facility; or any other facility that could enable a person to gain access

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<sup>34</sup> This is a consideration that, instead of applying to the person of average means, rather tends to apply to some of the wealthy people that frequent casinos. Richard Lehne, writing in 1986, remarked that, "Most casinos try to attract premium gamblers by paying for their rooms, food and beverages, by reimbursing some portion of their transportation expenses, and also by making them feel especially welcome. . . companies expect the recipients to gamble heavily. . . Complimentary services. . . and credit arrangements have traditionally been sources of controversy and criminality in the casino industry." See Richard Lehne, *Casino Policy* (Rutgers University Press, New Brunswick, New Jersey, 1986), p.133. This last issue, amongst Lehne's observations, has surfaced recently in Sydney. In July 1999, Philip Cornford, writing in the *Sydney Morning Herald*, commented that "The day after the Police Commissioner, Mr. Peter Ryan, banned one of Australia's biggest heroin dealers from gambling at the Sydney Harbour Casino, two of the casino's executives took the dealer to lunch in Chinatown, canvassing ways of beating the ban." According to Cornford, the dealer was "Duong Van Ia. . . [an] ultimate Big Spender. . . [sometimes] losing \$750,000 a night." Cornford added that "Since the casino opened in 1995, it was open knowledge among police, casino staff, other gamblers and the media, that a number of the high-rollers were associated with the heroin trade. . . the casino did [not] see it as its duty to ask questions of valued clients. Neither did the major Australian banks which gave the casino guarantees for the gamblers." Philip Cornford, "Casino Scramble to Win Back Heroin High-Roller" in the *Sydney Morning Herald*, 31 July 1999, pp.1,8. Section 79 (1) of the *NSW Casino Control Act 1992* provides that "the casino operator. . . may, by order given to a person verbally or in writing, prohibit the person from entering or remaining in a casino." Section 80 (1) also provides that "A person who is given an exclusion order may apply to the [Casino Control] Authority within 28 days after the order is given for a review of the order unless the order was given at the direction of the Commissioner of Police."

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to his/her funds (or to any other form of credit).<sup>35</sup>

As far as *casinos* are concerned, the Office of the Liquor and Gaming Commissioner is responsible, under the *Casino Act 1983*, for the following matters:

- ▶ the layout of the casino
- ▶ all employees engaged at the casino
- ▶ all contractual arrangements for the provision of technical assistance (or advisory services) for gambling or security
- ▶ all contracts for the supply of goods and services over \$100,000
- ▶ all gambling surveillance and security equipment (and related systems and procedures)<sup>36</sup>

### 3 INTERNET GAMBLING

#### (a) Approaches Adopted in the USA and Britain

##### USA

In the USA politicians have tended to be wary of internet gambling. As far back as the early 1960s, during the term of office of the Kennedy Administration, the then federal Attorney General (Robert Kennedy) - as part of his endeavours against the operations of organised crime - obtained passage, through the American Congress, of the *Wire Communications Act 1961*. Because it is, of course, not illegal for an individual in the USA to place a bet, the Kennedy Administration's legislation was aimed at the operators of gambling concerns by prohibiting their use of interstate telegraph and telephone for gambling purposes. This is essentially the basic legislation, in the USA, which applies to the area of gambling conducted via the means of wire or cable.

During the 1990s, the American National Association of Attorneys-General (NAAG) - chaired by Dan Lungren (A-G, California), James Doyle (A-G, Wisconsin) and Hubert Humphrey III (A-G, Minnesota) - formed an internet working group. This group examined the following two objectives:

- ▶ amending the *Wire Communications Act 1961* to ensure that internet gambling, in any form, is illegal and that prosecutors can obtain jurisdiction over offenders.

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<sup>35</sup> Office of the Liquor and Gaming Commissioner, *Liquor Licensing and Gaming* (Office of the Liquor and Gaming Commissioner of South Australia, Adelaide, 1998), pp.33-37.

<sup>36</sup> *Ibid.*, p.41.

- ▶ developing joint enforcement strategies with the Department of Justice, the Federal Trade Commission and appropriate international police officials to stop the spread of internet gambling.<sup>37</sup>

Meanwhile, in March 1997, just before the commission began its deliberations, a Republican Senator for Arizona, Jon Kyl - on the basis of the recommendations of the internet working group of the NAAG - introduced the Internet Gambling Prohibition Bill 1997 (Senate Bill 474 of the 105th Congress). Four months later, in July 1997, it was considered at a hearing of the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information (of which Kyl was the chair). Louis Freeh, Director of the Federal Bureau of Investigation, endorsed the legislation during a Senate Judiciary Committee hearing on oversight of the FBI. A month later, in August 1997, the Subcommittee approved the bill. Subsequently, in October 1997, the bill was unanimously approved by the Senate Judiciary Committee. In July 1998 the Internet Gambling Prohibition Bill was attached as an amendment to the Commerce-Justice-State appropriations bill by a vote of 90 - 10.

In the meantime, in February and June 1998, the House of Representatives Judiciary Committee Subcommittee on Crime also held hearings on an internet gambling bill (House of Representatives Bill 2380). In September 1998 the same Subcommittee approved a revised version of the bill (House of Representatives Bill 4427) but the House of Representatives did not complete action on the bill due to the lateness of the session.<sup>38</sup>

During 1998 officials in the USA continued to take measures against internet betting. Brian Farrell and David Ford have written in 1998 that,

The [American National] Association of Attorneys General representing most of the [American] states. . .[continued to support] the 'Kyl Bill'. Individually the attorneys general of Minnesota and Missouri have launched out of state actions against internet gambling operators under their local consumer protection laws. These actions were based upon an allegedly false and misleading statement on the

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<sup>37</sup> Parliament of South Australia, Social Development Committee, *Gambling Inquiry*, report p.70.

<sup>38</sup> Information provided by Jason Alberts, Chief Clerk, Senate Judiciary Subcommittee on Technology, Terrorism and Government Information. There can be some degree of uncertainty over the status of Senator Kyl's legislation because of the employment of the term "Act" in American legislative usage. On the internet, for instance, the Kyl bill is sometimes referred to as the Internet Gambling Prohibition Act. When a bill enters the House of Representatives it is, at that stage, still referred to as a bill. However, as a House of Representatives manual states, once a bill has passed through the House - in its original or (often) amended form - "an enrolling clerk. . .prepares. . .[a] copy of the bill as passed, containing all the amendments agreed to by the House. At this point the measure ceases technically to be called a bill and is termed 'an act' signifying that is the act of one body of the Congress, even though it is still popularly referred to as a bill." See US House of Representatives, *How Our Laws Are Made* (US Government Printing Office, Washington DC).

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gambling operators' web page that betting with the operator was legal no matter where you were at the time. Earlier this year [1998] the [American] FBI [Federal Bureau of Investigation] issued warrants against fourteen persons for allegedly providing bookmaking services into the US, from off-shore locations, over the internet or telephone in contravention of. . .[the]. . .Wire Act.<sup>39</sup>

One of the areas of gambling studied by the American National Gambling Impact Study Commission was internet gambling. The Commission noted that between 1997 and 1999 the state legislatures of Louisiana, Texas and Nevada saw legislation either introduced - or introduced *and* passed - specifically prohibiting internet gambling.<sup>40</sup>

In early 1999, Senator Kyl continued his efforts to secure the passage of legislation prohibiting internet gambling. In March 1999, Senator Kyl, and Senator Richard Bryan, introduced the Internet Gambling Prohibition Bill 1999 (Senate Bill 692). It was immediately referred to the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information. In May 1999 the Subcommittee unanimously approved a revised version of Senate Bill 692 and a month later, in June 1999, the full Judiciary Committee approved the bill by 16 - 1. The bill, however, has yet to be approved by the House of Representatives. As far as American state legislation is concerned, in 1999 the 91st General Assembly of the state of Illinois, for example, approved legislation (Public Act 91 - 0257) amending the *Criminal Code 1961* by changing sections 28-1, 28-1.1 and 28-2. The relevant section of the amendment to section 28-1 is as follows:

Section 28-1. Gambling.

- (a) A person commits gambling when he:
- (1) Plays a game of chance or skill for money or any other thing of value, unless excepted in subsection (b) of this section; or
  - (2) Makes a wager upon the result of any game, contest, or any political nomination, appointment or election. . .
  - (12) Knowingly accesses the internet to engage in an act prohibited by any of the subdivisions (1) through (11) of this subsection (a). . .

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<sup>39</sup> Brian Farrell and David Ford, "Regulatory Challenges: The State Perspective", paper presented at the *Gambling, Technology and Science Conference*, May 1998, pp.6-7.

<sup>40</sup> National Gambling Impact Study Commission, report, p.5-7. In March 1999, William Moncrief, a Republican Party member of the Texas Senate, introduced a bill (Texas Senate Bill 1222) to amend the Texas Business and Commerce Code by providing that "a person who provides an interactive computer service to another person for a fee shall block access to direct links to network computers or sites that. . . (2) are regularly used to violate federal and state laws prohibiting gambling." This bill has been referred to a Texas Senate subcommittee on technology and business growth.

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Gambling under subsection (a) 12 of this section is a class A misdemeanour if the access of the internet is to engage in an act prohibited by subsection (a) (1) or (a) 2 of this section.<sup>41</sup>

In mid-1999 judgments by American judicial officers have continued to uphold the current attitude of American officials towards internet gambling, as they understand present American legislation to apply to gambling via cable or wire. In 1998 the Attorney General of New York State froze the assets of World Interactive Gaming Corporation (WIGC) for allegedly defrauding investors. WIGC is a Delaware corporation that maintains offices in New York. WIGC owns Golden Chips Casino (GCC) which is an Antiguan-based subsidiary that had, in turn, gained a licence from the government of Antigua to operate a land-based casino. GCC subsequently developed software and purchased computer servers, which were installed in Antigua to allow users in other parts of the world to gamble from their home computers. The Antiguan casino advertised on the internet and its promotions were seen by New York residents. WIGC appealed against the action of the NY Attorney-General and the case was heard in the NY Supreme Court in mid-1999 (NY v. WIGC). On 22 July 1999, Justice Charles Ramos handed down his verdict which read, in part, as follows:

The central issue here is whether the State of New York can enjoin a foreign corporation legally licensed to operate a casino offshore from offering gambling to internet users in New York. . .internet transactions shed their novelty for jurisdictional purposes. . .[in] that. . .they are all executed by and between individuals and corporate entities which are subject to a court's jurisdiction. . .the Wire [Communications] Act [1961]. . .appl[ies] despite the fact that the betting instructions are transmitted from outside the United States over the internet. . .the Wire Act's legislative history states: 'The purpose of the bill is to assist various states and the District of Columbia in the enforcement of their laws pertaining to gambling. . .by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate or foreign commerce'. . .The respondents' total activities unambiguously advance gambling in direct violation of the explicit safeguards that. . .federal laws have placed against unauthorised gambling activity.<sup>42</sup>

### *Britain*

#### Internet Betting

In Britain the situation - regarding the government's approach to internet gambling - is somewhat similar to that in Australia (as will be outlined later in this section). Certain instances of betting over the internet are legal. The Gaming Board for Great Britain, in its

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<sup>41</sup> State of Illinois, 91st General Assembly, Public Act 91 - 0257.

<sup>42</sup> Verdict of Justice Ramos (of the Supreme Court of the State of New York) in the case of the State of New York versus World Interactive Gaming Corporation. 22 July 1999.



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annual report for 1998-1999, devoted a section to internet gambling, providing the following short presentation of Britain's position on internet betting:

1.30. . .

- (i) Bookmakers have for many years have been able to accept telephone bets from clients with credit accounts. There is therefore nothing to prevent them accepting such bets by e-mail. Likewise, football pools have always been able to accept entries by post and could therefore also use e-mail.<sup>43</sup>

Tony Coles, a British lawyer specialising in gambling legislation, has written that, on the basis of Britain's *Betting Act 1963*,

A provider of commercial internet betting cannot bring himself within the legislation by conducting operations through a licensed betting office but if he operates from premises to which the public do not have access, the operator can lawfully act as a bookmaker so long as he is the holder of a Bookmaker's Permit . . .so long as the person bets with a bookmaker holding a Bookmaker's Permit. . . the use of the internet is only a communication medium and no different than using the mail or telephone. . .[can] the host's site. . .[be] established . . .[in the UK]. . . The answer is. . .'yes' if offering betting facilities by a bookmaker holding a permit.<sup>44</sup>

### Internet Casino Gambling

The basic legislation in Britain, governing casino gambling, is the *Gaming Act 1968* - approved by parliament during the term of office of Harold Wilson's Labour Party government. The Gaming Board for Great Britain, in the same annual report for 1998-1999, cited above, provided the following presentation of Britain's position on internet casino gambling:

1.30. . .

- (ii) Casino, bingo and machine gaming can only be conducted on licenced or registered premises [a provision of part 2 of the *Gaming Act 1968*] and players have to be present on the premises. Hence for instance no licence could be granted in Britain to an internet casino

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<sup>43</sup> Gaming Board for Great Britain, annual report 1998-1999 (Gaming Board for Great Britain, London, 1999), p.9. Two of the biggest bookmakers in Britain are Ladbroke's and William Hill. See David Dixon, *From Prohibition to Regulation: Bookmaking, Anti-Gambling and the Law* (Clarendon Press, Oxford, 1991), p.350.

<sup>44</sup> Tony Coles, "United Kingdom Laws and Reaction to Internet Gambling" in Anthony Cabot (ed.), *The Internet Gambling Report*, third edition (Trace Publications, Las Vegas, 1999), pp.220-224.

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and it would be illegal to operate one here.<sup>45</sup>

Although, however, it is illegal for gambling operators to attempt to establish an internet casino gambling operation in the UK, it is not illegal for British citizens and residents to gamble on sites operating from overseas. Coles poses the following three questions, with the following three responses:

- ▶ “Can a Host’s Site Lawfully be Established in the UK?”
  - The answer is ‘certainly not’ if offering gaming. . .
  
- ▶ “Is the Player Breaching UK Law if the Host’s Site Offering the Gambling is Established outside the UK?”
  - The answer is ‘probably not’. Even if the gaming or lottery is illegal under UK law only those engaged in organising and managing it are likely to have committed any offence.
  
- ▶ “Is an Internet Service Provider Committing an Offence by Providing Access for a Player to a non-UK Based Host’s Site?”
  - A risk (probably quite small) exists that the ISP is violating the restrictions on. . .advertising. . .The *Gaming Act 1968* imposes strict controls over gaming advertising. . .it is illegal to invite the public to subscribe money (or money’s worth) for use in gambling, whether in Great Britain or elsewhere. . .Thus, even if the host’s site is outside Great Britain. . .a risk exists that both the host and the service provider are, by displaying the relevant information on the internet, inviting the public to subscribe money to be used in gambling.<sup>46</sup>

## (b) Approaches Adopted in Australia

In Australia, by contrast, some jurisdictions appear to be adopting a permissive approach to internet gambling from homes. It seems that the approach is that prohibiting internet gambling might not be feasible or desirable given consumer interest. In 1996, a meeting of all ministers for gaming and racing agreed on a set of principles concerning internet gambling. The principles developed at the meeting were issued, in 1997, in the form of a

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<sup>45</sup> Gaming Board for Great Britain, *ibid.* As far as physically-based casinos, operating in Britain, are concerned, according to a report in *The Australian*, the “Rank Group. . .[is] the UK’s biggest casino operator. . .Profit in the first six months to June 30 [1999]. . .[was] £64 million”. See “Rank Spins 1.5pc Fall” in *The Australian*, 6 August 1999, p.26.

<sup>46</sup> Coles, *op.cit.*, pp.224-225.

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Draft Regulatory Model for New Forms of Interactive Home Gambling. Rather than proposing action at federal government level, this document advocated co-operation between the states and territories. The draft regulatory model proposed that future legislation should include the following approaches and objectives:

- ▶ Facilitate the offering of interactive home gambling items
- ▶ Provide a regulatory framework to ensure the probity of interactive home gambling service providers
- ▶ Provide for interactive home gambling service providers to have free access to the national market and access to the global market
- ▶ Minimise harm associated with interactive home gambling
- ▶ Allow for secrecy provisions in the legislation regarding the release of commercially sensitive information to other persons
- ▶ Avoid the development of a prescriptive national standard for the technical aspects of equipment and systems
- ▶ Lift “local” prohibitions on the advertising and marketing of approved items offered online, from other jurisdictions, by service providers licensed under the national scheme
- ▶ Prohibit online gambling operators, who maintain player accounts, from allowing those accounts to have a negative balance<sup>47</sup>

**(c) The Recent Emergence of Internet Gambling Operations in Australia: Since the Draft Regulatory Model for New Forms of Interactive Home Gambling**

*Internet Betting on Horse Races and Football Games*

In 1996 two territory jurisdictions in Australia, the Australian Capital Territory and the Northern Territory, allowed companies to set up internet gambling on horse races and football games. The ACT government issued special determinations, under its *Bookmakers Act 1985*, providing for the introduction of sports gambling over the internet. One company to obtain an ACT licence to conduct such betting was Canbet Pty Ltd. Canbet takes bets over an internet site. Those gambling with Canbet have to deposit funds with Canbet, before they can place a bet. Most of those funds are deposited via credit card.

In the Northern Territory, Centrebet, an Alice Springs company - under the terms of a licence issued by the NT government - also began internet betting operations in 1996. Centrebet accepts about 10,000 bets each week. *The Sydney Morning Herald* (SMH) has

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<sup>47</sup>

Draft National Regulatory Model for Interactive Home Gambling Products, 23 May 1997.

subsequently noted, in May 1999, that “Jupiter’s [Casino]. . .has bought Centrebet, the Australian Web-based sports betting operation.”<sup>48</sup> Jupiters, in turn, according to Sebastian Sinclair, is “20% owned by Hilton [Hotels].”<sup>49</sup> In July 1999 the SMH reported that “Centrebet has reported a betting turnover of more than \$120m for 1998-99. The . . . company said that more than half of the revenue came from overseas citizens and that soccer betting was by far and away the biggest generator of business in 1999.”<sup>50</sup>

In New South Wales, the Carr government has overseen the capacity of the TAB Ltd (formerly the NSW Totalisator Agency Board), for instance, to commence internet betting operations. Section 16 of the *Racing Administration Act 1998* states that

The Minister may, in writing, authorise a licensed bookmaker to accept or make bets:

- (a) by telephone, or
- (b) electronically by means of the internet, subscription TV or such other online communications systems as may be approved by the Minister.<sup>51</sup>

According to Sebastian Sinclair, “On June 2 (1997) Australia’s New South Wales Totalisator Agency Board. . .launched iBet, a global internet betting system that allows horseplayers all over the world to wager on Australian racing.”<sup>52</sup> Elizabeth Knight, writing in the *Sydney Morning Herald*, noted that by mid-1999 the NSW TAB “already has 8,000 existing internet users.”<sup>53</sup>

### *Internet Casino Gambling*

According to Katrina Nicholas, writing in the *Sydney Morning Herald*, “Queensland was the first state to legislate in favour of internet gambling, on October 1, 1998”.<sup>54</sup> The operation, which received an internet gambling licence, was the Queensland company Gocorp. This followed the Beattie government’s obtaining passage of its *Interactive*

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<sup>48</sup> Lauren Martin, “Rolling with Virtual Dice” in the *Sydney Morning Herald*, 4 May 1999, p.14.

<sup>49</sup> Sebastian Sinclair, “The Birth of an Industry: Gambling and the Internet” in Cabot (ed.), p.138.

<sup>50</sup> “Soccer’s a Hit” in the *Sydney Morning Herald*, 15 July 1999, p.29.

<sup>51</sup> *Racing Administration Act 1998*, section 16.

<sup>52</sup> Sinclair, op.cit., p.132.

<sup>53</sup> Elizabeth Knight, “Empires Strike Back on the Net” in the *Sydney Morning Herald*, 10 August 1999, p.21.

<sup>54</sup> Katrina Nicholas, “Worldwide Reach with the Roll of a Mouse” in the *Sydney Morning Herald*, 9 July 1999, p.25.

*Gambling (Player Protection) Act 1998*.<sup>55</sup> A year later, Gocorp, according to Nic Hopkins, “became the first online casino operator to be licensed under a national online gambling legislation model . . . developed by most mainland states and territories.”<sup>56</sup> The Queensland legislation prohibits a licence holder from accepting bets from residents in other states of Australia.

Shortly after the passage of the Beattie government’s legislation, the Northern Territory government secured passage of its *Gaming Control (Internet Gaming) Act 1998*. This provided for the second manifestation of internet gambling in Australia: the establishment, this year, of the internet gambling division of Lasseter’s Casino (based in Alice Springs). On 8 April 1999, Lasseter’s Online received permission to operate for cash gambling under the Northern Territory’s internet gambling legislation. Cash gambling was launched by the Northern Territory’s Minister for Racing, Gambling and Licensing (Tim Baldwin MLA).

As in the case of the Queensland licence for internet gambling - prohibiting the acceptance of gambling from residents of other Australian states - only residents within the area covered by Lasseter’s Casino licence (an area, of the Northern Territory, south of, and including, Tennant Creek) - and international residents - will have access to Lasseter’s online. According to a report in the *Sydney Morning Herald*, in May 1999, “Lasseter’s Online has taken more than \$1m worth of wagers in its first six weeks of operation. Lasseter’s attracted 3,000 players from 76 countries with about 70pc of registered players outside Australia.”<sup>57</sup> David Ohlsson, a manager with Lasseter’s Casino, has outlined the mechanics of online gambling, with Lasseter’s, as follows:

Players use a credit card to open their wagering account and the amount deposited is controlled by their approved credit limit. In any event, initial registrations have a deposit limit of \$500 per month. In time, a player may apply to Lasseter’s Online to increase this limit but must have achieved trusted status with the operator for it to be approved. . . Players can set their own bet limits to nominate how much they wish to spend on a daily, weekly or monthly basis.<sup>58</sup>

Avenues for gambling, offered by Lasseter’s Online, include Blackjack, Roulette, Draw Poker, Sic-Bo and Slot Machine Games. The maximum bets are Blackjack: \$500 per game; Roulette: \$200 per game; Sic-Bo: \$200 per game; Poker: \$50 per game; Slot Machine

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<sup>55</sup> Ibid.

<sup>56</sup> Nic Hopkins, “Online Casino Plans Exchange Punt” in *The Australian*, 9 July 1999, p.24. According to Geoffrey Newman, writing in *The Australian*, Navari Pty Ltd, “a company with a 20 per cent stake in Gocorp”, has shares which are owned by the sitting Queensland MP Bill D’Arcy, a past Queensland MP (Don Livingstone) and a member of the Ipswich City Council (Paul Pisasale). Newman adds that “The wives of Mr. Livingstone and Mr. D’Arcy are also directors of Navari”. See Geoffrey Newman, “Beattie Turns on Gambling Colleagues” in *The Australian*, 28 July 1999, p.8,

<sup>57</sup> *Sydney Morning Herald*, 20 May 1999, p.25.

<sup>58</sup> David Ohlson, “Lasseter’s Online: Australia’s First Regulated Internet Casino”, briefing paper presented at the *Second National Gambling Regulation Conference*, Sydney 1999.

Games: \$1 to \$5 per line.<sup>59</sup>

The Kennett government, in Victoria, has also obtained passage through parliament of its *Interactive Gambling (Player Protection) Act 1999*. In his second reading speech, the Victorian Treasurer, Alan Stockdale, stated that the Victorian legislation “simplifies and streamlines the licence approval process [to establish an internet gambling operation] by providing for a single umbrella licence for each interactive gaming business”.<sup>60</sup>

Currently, in New South Wales, sections 5 and 6 of the *Unlawful Gambling Act 1998* (which now supercedes the *Gaming and Betting Act 1912*) effectively render online gambling illegal, as follows:

5 (1) For the purposes of this Act, the following games are unlawful games. . .

(c) any game involving the use or operation of a prohibited gaming device. . .

6 (1) In this Act, prohibited gaming device means a device that. . .

(b) is designed or used for the purposes of gambling. . .<sup>61</sup>

**(d) Implications of the Kyl Bill, and the Ramos Decision, for Australian Internet Gambling**

Although Australian concerns, operating internet gambling, appear to be concentrating on the USA as a focus of their operations, American policy makers and judicial officers seem to be setting out to prevent this. On the one hand, Bill North, the managing director of Consolidated Gaming Corporation (CGC) - a concern which has just recently gained another internet gambling licence from the Northern Territory government - has said, according to a report in *The Australian*, that the fact that it is illegal for an American to run an internet based gambling operation “is a fantastic opportunity for us.”<sup>62</sup> On the other hand, Justice Ramos’s decision, in *NY v. WIGC*, upholds the validity of the *Wire Communications Act 1961*, as it applies to online gambling being offered, from overseas, to American citizens. Anthony Cabot and Kevin Doty also observe that, “Under the Kyl Bill . . . [if ultimately approved by Congress] Anyone betting over the internet would violate federal law.”<sup>63</sup>

<sup>59</sup> Ibid.

<sup>60</sup> Second Reading Speech, Interactive Gambling (Player Protection) Bill 1999. Victorian Parliamentary Debates. Legislative Assembly. 6 May 1999, pp.809-810.

<sup>61</sup> *Unlawful Gambling Act 1998*, sections 5 and 6.

<sup>62</sup> Michael McGuire, “New Outlet for Net Bets” in *The Australian*, 25 August 1999, p.26.

<sup>63</sup> Anthony Cabot and Kevin Doty, “Enforcement Responsibility and Issues in the United States” in Cabot (ed.), p.181.

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#### 4 THE GAMBLING LEGISLATION AMENDMENT (RESPONSIBLE GAMBLING) BILL 1999

##### (a) Background to the Bill

In May 1998, the Carr government obtained passage of the above-mentioned *Liquor and Registered Clubs Amendment (Community Partnership) Act 1998* which, as well providing for an inquiry into gambling, also (via section 87AA) called upon the Registered Clubs Association to put forward “an appropriately funded policy that is capable of enforcement for minimising harm caused to the public interest and to individuals and families in registered clubs.” At the same time, the Federal Treasurer, likewise in May 1998, requested the Productivity Commission to undertake an inquiry into gambling Australia-wide. Following parliament’s approval of the legislation, by July 1998 the association prepared a trial programme which was then implemented between August and October 1998. The Australian Institute of Gambling Research (AIGR), of the University of Western Sydney, assisted in the trial. The programme, however, was voluntary.<sup>64</sup>

The Carr government is presently endeavouring to introduce legislation which would have the effect of making some of those objectives mandatory, in various forms, for all gambling operators. They relate to the issues following.

##### (b) Mass Advertising

Mass advertising of gambling has long been an issue of concern. The American National Gambling Impact Study Commission has voiced its own worries over this matter, as follows:

gambling advertising is generally a controversial topic, it is even more controversial when state governments themselves actively promote gambling through advertising . . . much of it is misleading, even deceptive. . . Lottery advertising rarely explains the true odds of winning. . . Lottery advertising messages often exploit themes that conflict with the state’s role as a protector of the public good. . . concern over lottery marketing. . . [has] prompted several [American] states to place restrictions on what kind of advertising its lottery agency can do. In particular, Virginia, Minnesota, and Wisconsin ban ads designed to induce people to play.<sup>65</sup>

NSW Lotteries, for example, currently uses an array of advertising agencies to promote gambling. A recent item, in the business section of the *Sydney Morning Herald*, noted that “NSW Lotteries agency roster includes Clemenger Sydney (Lotto and Lotto Strike), Saatchi

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<sup>64</sup> For one perspective on the progress of the Carr government’s initiative, and the association’s response to it, see Jan McMillen and Michelle Toms, *The Responsible Gambling Trial Programme for NSW Registered Clubs* (Australian Institute for Gambling Research, University of Western Sydney, Sydney, 1998).

<sup>65</sup> National Gambling Impact Study Commission, op.cit., p.3-17.

and Saatchi (Powerball and OzLotto), DDB (Lucky Lotteries), Singleton Ogilvy and Mather (Instant Scratchies), and Fame Advertising (6 from 38 Pools).<sup>66</sup>

In May 1999, Nick Xenophon, the South Australian “No Pokies” Member of the Legislative Council, introduced a private member’s bill into the South Australian Parliament, the *Gambling Industry Regulation Bill 1999*, in which clause 19 states that “A gambling entity must not publish, or cause to be published, an advertisement for gambling that (a) depicts a person winning as a result of gambling; or (b) misrepresents or suggests that the chance of winning as a result of gambling is greater than the actual chance of winning.”<sup>67</sup>

In July 1999, the NSW Minister for Gaming and Racing, Richard Face MP, issued the exposure draft of legislation entitled the *Gambling Legislation Amendment (Responsible Gambling) Bill 1999* (see appendix). Rather than being prescriptive about advertising (as in the case of the Xenophon bill) this proposed legislation intends rather to create an environment in which measures to assist gamblers may be introduced. The general means for achieving this will be the amending of the *Lotteries and Art Unions Act 1901* - as well as the *Registered Clubs Act 1976*; the *Liquor Act 1982*; the *Casino Control Act 1992*; the *Public Lotteries Act 1996*; the *Totalisator Act 1997* and the *Racing Administration Act 1998* - to allow the Minister to introduce regulations establishing these measures. In regard to advertising for lotteries, schedule 4 of the bill augments the advertising restrictions of section 39 of the *Public Lotteries Act 1996*.<sup>68</sup> It amends the Act by introducing a new section 39 (1A), “Advertising of Public Lotteries”. The section states that,

A court that convicts a person of an offence under this section may, in addition, or as an alternative to any penalty that it may impose for this offence, make either or both of the following orders:

(a) an order requiring the person to publish an advertisement correcting any information contained in the public lottery advertising concerned that the court considers to be false, misleading or deceptive and giving directions (if any) that the court considers appropriate as to the time, form, extent and manner of publication. . .<sup>69</sup>

**(c) Inducement, or Facilitation, of Gamblers’ Capacity to Borrow Money for Gambling**

<sup>66</sup> “Lotteries Delays” in the *Sydney Morning Herald*, 18 March 1999, p.29.

<sup>67</sup> The Hon. Nick Xenophon MLC, Second Reading Speech. *Gambling Industry Regulation Bill 1999*. SA Parliamentary Debates, Legislative Council, 26 May 1999, pp.1182-1189.

<sup>68</sup> Section 39 of the *Public Lotteries Act 1996* provides that “(1) A licensee or other person who publishes, or causes to be published, any public lottery advertising that: (a) is false, misleading or deceptive. . .is guilty of an offence. . .(3) public lottery advertising means advertising that is directly related to the conduct of a public lottery.”

<sup>69</sup> *Gambling Legislation Amendment (Responsible Gambling) Bill 1999*, schedule 4, part 3.



A major realm of adversity, in gambling, is the gambling operators' facilitation of borrowing - by gamblers - to induce them to keep gambling. Robert Culleton, in his study of casinos in New Jersey, has pointed out that,

The history of casino compliance is pocked with scandals. . . For example, between 1978 and 1983, a series of scandalous credit abuses [at casinos in New Jersey] brought about public hearings. . . Atlantic City real estate speculator and developer David Zarin and his companion. . . wound up gambling \$13 million away which they could pay, and at the end owed an additional \$4.6 million. . . The casino obliged them with cashing personal cheques for 'non-gambling purposes' which they promptly used for rolling over their debts. . . [Another] gambler was extended a line of \$10,000 after a bank cheque showed that he had a cash balance of zero. . . In another case, the gambler was a supermarket clerk making \$18,000 a year. . . on her first visit to Bally's, she had gambled and lost her own money. The pit-boss invited her to dinner on the house and arranged \$2,000 of credit. . .<sup>70</sup>

Another cause of concern, in this respect, is the facilitation of the *means of borrowing* - by placing means of borrowing *within* gambling areas. The American National Gambling Impact Study Commission has drawn attention to the fact that "Forty to sixty per cent of the cash wagered by individuals is not physically brought on to the premises."<sup>71</sup> Even though a few restrictions have been placed on the presence of Automatic Teller Machines (ATMs), and on the use of credit cards in gambling areas, the NGISC noted that while "Many ATMs and debit cards have limits on the amount of money dispensed within a 24-hour period. . . According to *International Gaming and Wagering Business*, 'Casinos have found a way around this dilemma by utilising credit card cash advance services. . . [that] allow players to access as much cash as they want.'<sup>72</sup>

Disquiet over the proximity of ATMs near gambling devices, has similarly been voiced in New South Wales. In 1991, Sir Laurence Street, in his report into the question of establishing casinos in the state, cautioned that "There are strong grounds for prohibiting ATMs from the casinos and I recommend accordingly."<sup>73</sup> Sir Laurence's warnings were heeded, at least as far as casinos were concerned, with section 74 (3) of the *Casino Control Act 1992* providing that "It is a condition of a casino licence that an automatic teller machine or any like device is not to be installed within the boundaries of the casino."<sup>74</sup>

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<sup>70</sup> Robert Culleton, "The Implementation of the Credit Control of the 1977 New Jersey Casino Control Act" in Eadington and Cornelius, op.cit., pp.211-215.

<sup>71</sup> National Gambling Impact Study Commission, op.cit., p.7-15 citing Robyn Parets, "Cash Advances: Second Generation Money Dispensing Terminals Can Increase Casino Profits" in *International Gaming and Wagering Business*, September 1996, p.s8.

<sup>72</sup> National Gambling Impact Study Commission, op.cit., citing Parets, ibid.

<sup>73</sup> Sir Laurence Street, *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, report (NSW Government, Sydney, 1991), pp.66-67.

<sup>74</sup> *Casino Control Act 1992*, Section 74 (3).

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Registered clubs, however, were able to install ATMs.

Part of the association's voluntary trial programme, for registered clubs, was that clubs should endeavour to remove Automatic Teller Machines from areas where gambling was occurring. However, by the end of October 1998, as the AIGR subsequently reported, only "One large club moved their ATM during the trial from the gaming area to the foyer of the club."<sup>75</sup>

Concerns over this issue, in Australia, continue to lead community organisations to draw particular attention to the matter. In early 1999, TAB Limited trialed the introduction of Electronic Funds Transfer at Point of Sale (EFTPOS) machines at 14 agencies in the Sydney metropolitan area. The director of public relations at the Salvation Army, Pat Daley, declared that "This new facility, if it goes ahead, takes advantage of the vulnerable and the compulsive gambler, putting further pressure on individuals and families who are clearly marginalised and struggling to make ends meet."<sup>76</sup>

Nick Xenophon, in his 1999 bill cited above, has included particular clauses - sections 29, 34 and 47 - which provide "for mandatory reporting. . .of certain offences relating to gambling on credit. . .Clause 34 prohibits the use of a credit card or charge card for the purpose of paying for gambling. . .Clause 47 provides for EFTPOS or ATM facilities not being provided within the licensed premises."<sup>77</sup>

Registered clubs, under the provisions of the Gambling Legislation Amendment (Responsible Gambling) Bill may, in the future, be required to remove ATMs from areas where gambling takes place. The bill amends the *Registered Clubs Act 1976* by introducing a new section 44c (g) providing that:

Regulations may make provision for. . .

requiring facilities (such as ATMs and EFTPOS) for the withdrawal or transfer of money from banks and other financial institutions to be installed or located in places that are separate from places in which gambling activities are conducted.<sup>78</sup>

Public houses with poker machines, in New South Wales, may similarly be required, on the basis of the new legislation, to remove ATMs from areas where gambling is taking place. The bill amends the *Liquor Act 1982* by introducing a new section, 125D (g). This section, similar to the proposed new section 44 (c) of the Registered Clubs Act, makes the same

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<sup>75</sup> McMillen and Toms, op.cit., pp.15,49-50.

<sup>76</sup> Alex Mitchell, "Fury at EFTPOS for TAB" in the *Sun-Herald*, 21 February 1999, p.6.

<sup>77</sup> The Hon. Nick Xenophon MP, Gambling Industry Regulation Bill 1999, Second Reading Speech.

<sup>78</sup> Gambling Legislation Amendment (Responsible Gambling) Bill 1999, schedule 6, part 7.

allowances for future regulations to be issued, providing for the removal of ATMs.<sup>79</sup>

The following section in schedule 2 also amends the *Liquor Act 1982* by introducing a new section 126A, providing that “A responsible person for licensed premises must not extend, or offer to extend, a cash advance or any other form of credit to another person for the purpose of enabling the other person to gamble at the licensed premises.”<sup>80</sup>

#### **(d) Problem Gambling**

Problem gambling is an issue which has received increasing attention in recent times. The Productivity Commission, in its draft report into gambling in Australia, has estimated that there are 329,000 problem gamblers throughout the nation.<sup>81</sup> On the basis that New South Wales has approximately one-third of the population of Australia,<sup>82</sup> the Productivity Commission estimates would suggest that there are around 110,000 problem gamblers in NSW.

The *Gambling Legislation Amendment (Responsible Gambling) Bill* aims to address concerns about problem gambling, in the follow realms of gambling activity:

##### *Casino*

As far as gambling in licensed premises are concerned, the new bill amends the *Liquor Act 1982* by introducing a new section 2B which states that “Gambling harm minimisation and responsible conduct of gambling activities are the primary objects of the Act.”<sup>83</sup> It is thus intended that the principal features of a licence, issued to cover gambling on licensed premises, will be harm minimisation and the conduct of responsible gambling.

The new bill also provides for an amendment, to the present *Casino Control Act 1992*, aimed at preventing problem gamblers returning to the casino, if they have already been excluded. Section 79 of the Act, as referred to above, provides that the “casino operator . . . may, by order given to a person verbally or in writing, prohibit the person from entering or remaining in the casino.” The new bill amends the *Casino Control Act 1992* by inserting a new section 84 (2) providing that “A court that convicts a person. . . whom the court considers to be a problem gambler may. . . order the person to undergo such specified

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<sup>79</sup> Ibid., schedule 2, part 8.

<sup>80</sup> Ibid., schedule 2, section part 9.

<sup>81</sup> Productivity Commission, *Australia’s Gambling Industries*, draft report, vol.I (Productivity Commission, Melbourne, 1999), p.6.29.

<sup>82</sup> In 1996 the population of New South Wales was about 6 million, compared to a total population of 18 million. See Australian Bureau of Statistics, *Year Book Australia 1998* (Australian Bureau of Statistics, Canberra, 1998), p.134.

<sup>83</sup> Gambling Legislation Amendment (Responsible Gambling) Bill 1999, schedule 2, part 2.

counselling as the court considers beneficial”.<sup>84</sup>

### *Registered Clubs*

In the case of the registered clubs, harm minimisation and responsible gambling are also intended to become the main features of a licence dealing with gambling on licensed club premises. This to be achieved by inserting a new section 3A, in the *Registered Clubs Act 1976*, providing that “Gambling harm minimisation and responsible conduct of gambling activities are primary objects of the Act.”<sup>85</sup> Under the bill’s further amendments to the *Liquor Act 1982*, regulations could be issued to induce registered clubs to introduce voluntary self-exclusion schemes for problem gamblers. The bill thus introduces a new section 150B into the *Liquor Act* providing that,

It is lawful for a responsible person for licensed premises, using no more force than is reasonable in the circumstances. . .

To prevent a participant in an approved self-exclusion scheme from entering those parts of the premises used for gambling. . .<sup>86</sup>

An “approved self-exclusion scheme” is defined as a scheme “in which problem gamblers are prevented, at their own request, from entering or remaining on any part or parts of licensed premises used for gambling”.<sup>87</sup>

### *Public Houses or Hotels*

Licence provisions for public houses with poker machines, will similarly include the same changes as those covering licences for the casino or registered clubs. Under the same new amendment to the *Liquor Act 1982* (section 2B), “Gambling harm minimisation and responsible conduct of gambling” will become a feature of those licences.<sup>88</sup> Likewise, under the same new amendment, 150B, to the *Liquor Act*, regulations could be issued to induce public houses to introduce voluntary self-exclusion schemes for problem gamblers.

### *Bookmakers and the TAB*

Problem gambling, in the realm of horse race betting, is also addressed by the Responsible Gambling bill. Schedule 5 part 2 introduces a new section (section 37) into the *Racing Administration Act 1998* - and schedule 7 part 2 introduces a new section (section 117A) into the *Totalisator Act 1997* - which provides, in both Acts, as follows:

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<sup>84</sup> Ibid., schedule 1, part 1.

<sup>85</sup> Ibid., schedule 6, part 2.

<sup>86</sup> Ibid., schedule 2, part 10.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid., schedule 2, part 2.

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regulations may make provision for. . .

the standards to be observed for the purpose of preventing problem gambling.<sup>89</sup>

### *Lotteries*

The same possibility for regulations to be made - providing for “standards to be observed for the purpose of preventing problem gambling” - is also introduced, by the Responsible Gambling bill, into the *Public Lotteries Act 1996* (via a new section 83A).<sup>90</sup>

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<sup>89</sup> Ibid., schedule 5, part 2 and schedule 7, part 2.

<sup>90</sup> Ibid., schedule 4, part 6.