This is the published version:

Hancock, Linda and O'Neil, Michael 2010, Risky business: why the Commonwealth needs to take over gambling regulation, Alfred Deakin Research Institute, Geelong, Vic.

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Risky business: Why the Commonwealth needs to take over gambling regulation

Linda Hancock and Michael O’Neil
Risky business: Why the Commonwealth needs to take over gambling regulation

Linda Hancock and Michael O’Neil

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ISSN (online) 1837-7440
ISSN (print) 1837-7432

AUGUST 2010
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National Library of Australia
Cataloguing-in-Publication data:
Hancock, L.
Risky business: Why the Commonwealth needs to take over gambling regulation

Bibliography


1. Gambling - Australia 2. Gambling - social aspects - Australia
Australia 5. Gambling - government policy - Australia.
I. Hancock, L.
II. Alfred Deakin Research Institute.
III. Title. (Series: Alfred Deakin Research Institute;
Working Paper no. 11).

339.487950994

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This is a policy paper based on an overview of the national and international evidence of the harmful impacts of gambling and a critique of current approaches to gambling governance and regulation in Australia. Gambling is licensed and regulated at state level. State and Territory governments are heavily dependent on gambling taxes, and perhaps unsurprisingly, have shown little interest in implementing appropriate reforms to protect their citizens from gambling-related harms.

After two decades of exponential growth of the gambling industry in Australia, there is wide recognition of gambling-related harms and negative consequences for individuals, families and communities. The Australian Productivity Commission (PC) reported on the industry in 1999 and again ten years later, in 2009. They released their draft final report, in October 2009; and their final report on July 23, 2010. While the Productivity Commission’s 2010 report presents valuable data on gambling and makes some strident recommendations, it is not clear on the principles and governance system that should underpin a national public health and consumer protection approach to gambling – and its implementation. The Productivity Commission is strong on problem identification but weak on an integrated national regulatory approach to remedying the problems caused by gambling and the actions needed to address State Governments’ dependence on gambling taxes. Some of the PC recommendations such as legalising online poker games and exempting online gambling providers from bans on credit card use, lack an adequate evidence base and pose a grave risk to players.
This paper critiques the prevailing addictions/informed choice model, which dominates current government and industry approaches to gambling policy. Constructing ‘the problem’ in terms of harm minimisation (as in the Productivity Commission’s terms of reference), side-steps the key issue of the mounting impact of gambling; and in particular, electronic gaming machines and casinos.

It is argued the Commonwealth needs to lead on an integrated National Action Plan on Gambling, that is squarely based on a risk and prevention strategy with new policies, institutions and financial incentives to the States and Territories. Essentially, the Commonwealth government needs to lead on gambling re-regulation.

The proposed National Action Plan for Gambling Governance and Re-Regulation outlined in this report is a whole-of-system public health approach that incorporates as crucial elements: national consumer protection product safety/regulation; national ‘license to operate’ venue responsibilities; industry obligations (host responsibility and duty of care); national regulatory oversight (data monitoring); independent research (integrity); evidence based policy; and national independent audit/monitoring of policy and venue-level interventions.

A reform agenda to wean the states off their reliance on gambling taxes needs to offer incentives. To fund these new initiatives we propose (i) a revenue-neutral reform agenda funded from a new 2 percent ‘super-profits tax’ on the gambling industry and (ii) establishment of a new National Lottery Commission. In its final report, The Productivity Commission (2010, p. 2) recognises that properly regulated, lotteries are the least harmful form of gambling. In the short term, this fund would then be used to give incentives to the States/Territories (via the Commonwealth Grants Commission) to wind back their dependence on gambling taxes. In the longer term, a National Lottery Fund could finance heritage, parks, and other sustainability and community building initiatives. This paper has been written to inform public debate on a new direction for a national approach to gambling policy and calls on the Commonwealth to take over gambling regulation.

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About the authors

Assoc. Professor Linda Hancock (Ph.D.) is a social scientist with a background in public policy, public policy and gambling research. Professional roles include: Commissioner on the Victorian Law Reform Commission and Presiding Member on the Social Security Appeals Tribunal; Director of the Public Policy Masters Program at University of Melbourne, Director of the Corporate Citizenship Research Unit at Deakin University and Interim Partnerships Manager at the Deakin University Alfred Deakin Research Institute (ADRI). From December 2007-2009 she has conducted research projects for the Responsible Gambling Fund (RGF) (formerly the Responsibility in Gambling Trust -RIGT) in the UK - the national charity responsible for commissioning research, prevention and treatment on gambling. She has conducted research in particular related to the 3 year £1m ESRC/RGF national gambling research program and a UK gambler’s help services national data system.

As Chair of the independent Gambling Research Panel (GRP) of Victoria (2000-2004), she was directly involved in the design and oversight of an extensive program of government funded gambling research up to the time that the Victorian government decided to take gambling research in-house. She has been an invited presenter (including EAGS - European Association of Gambling Studies - and Ontario Discovery conferences), has acted as an international peer reviewer and consultant to the UK, New Zealand and Canadian provincial governments, (including the casino loyalty player-tracking program developed by the Saskatchewan Gaming Authority) and the Ontario Problem Gambling Research Centre (OPGRC) and for other Canadian provincial governments. She is involved in collaborative research on gambling and community sustainability and public policy research in the UK, Canada, Australia, New Zealand and Macau and has authored numerous monographs and articles. She was the Australian writer in the Canadian Social Union Project five country study on federalism and intergovernmental relations (1997-2000); was President of the Board of VCOSS and a Governor on the national Board of the Australian Council of Social Services (ACOSS) for 5 years; and Convenor of Women’s Electoral Lobby (WEL) Victoria for 4 years and on the national board of WEL. With an interest in public policy and sustainability, she has published books on Health Policy in the Market State (Allen and Unwin); Re-Writing Rights in Europe (Ashgate); Women, Public Policy and the State (Macmillan) and has a book forthcoming: Public Policy: Power, Partnerships and Network (Allen and Unwin). She has published widely in journals and edited books and is currently working on research on Corporate Social Responsibility and Gambling, Gambling in Europe, Casino Duty of Care to Employees and the United Way Geelong Social Index.

Michael O’Neil* is the Executive Director of the South Australian Centre for Economic Studies of the Adelaide and Flinders Universities; a position he has held since January 2000. He is principally engaged as an Economic Consultant and has conducted numerous research and consultancy studies on a wide range of economic and public policy issues; including business cost comparisons, studies on the competitiveness of regional economies and industry, labour market and regional economic analysis - including the preparation of economic and social profiles and the development of indicators to monitor the quality of life at regional, state and national level. He is a participant in a major international benchmarking exercise to monitor the quality of life of cities.

In the gambling and wagering sector, Michael has authored some twenty studies, including the first national project on Definitions of Problem Gambling and A Review of Screens and Instruments for the Ministerial Research group Gambling Research Australia, An Analysis of the Impact of Electronic Gambling Machines (EGMs) on Regional Economies in South Australia, An Evaluation of the Regional Caps Policy in Victoria, A Review of Self Exclusion Programs in Victoria, studies into the Wagering Industry and several reviews including Youth and Gambling. He directed and co-authored a comparative analysis of the Community Impacts of EGMs on Communities in Victoria and Western Australia (where EGMs are not permitted outside of the Burswood Casino so that a ‘natural control group’ was compared with communities in Victoria). He has conducted large-scale reviews on the economic and social impact of the gambling industry in South Australia and Tasmania and most recently completed a report on the Social Impacts of Gambling: A Comparative Study for the Independent Gambling Authority in South Australia.

The South Australian Centre for Economic Studies has contributed to Parliamentary submissions, presentations to members of Parliament, delivered numerous conference, discussion papers and presentations (most recently in Canada and the UK) and authored reports into a diverse range of gambling related issues such as gambling and smoking, gambling and income distribution and regional dimensions of gambling.

The authors would like to thank The Australia Institute for their support on an earlier version of this paper launched by Senator Nick Xenophon at Parliament House, Canberra on April 30 2010. We would also like to thank the Alfred Deakin Research Institute and the useful comments from referees and from other readers.
### Acronyms

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<th>Description</th>
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<tr>
<td>ACC</td>
<td>Australian Crime Commission</td>
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<td>ACCC</td>
<td>Australian Consumer and Competition Commission</td>
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<td>ACOSS</td>
<td>Australian Council of Social Services</td>
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<td>ADRI</td>
<td>Alfred Deakin Research Institute</td>
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<td>AGS</td>
<td>Australian Gambling Statistics</td>
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<td>COAG</td>
<td>Council of Australian Governments</td>
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<td>CPGI</td>
<td>Canadian Problem Gambling Index</td>
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<td>CFD</td>
<td>Contract for Difference</td>
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<td>CMS</td>
<td>Central Management System (data)</td>
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<tr>
<td>DSMIV</td>
<td>Diagnostic and Statistical Manual of Mental Disorders</td>
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<tr>
<td>EGM</td>
<td>Electronic Gaming Machines (or Pokies)</td>
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<tr>
<td>FaHCSIA</td>
<td>Department of Family Housing, Community Services and Indigenous Affairs</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<tr>
<td>IPART</td>
<td>Independent Pricing and Regulatory Tribunal</td>
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<tr>
<td>LGA</td>
<td>Local Government Area</td>
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<tr>
<td>MCCA</td>
<td>Ministerial Council on Consumer Affairs</td>
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<tr>
<td>NGR</td>
<td>Net Gambling Revenue (player losses)</td>
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<tr>
<td>PC</td>
<td>Australian Productivity Commission</td>
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<td>SACES</td>
<td>South Australian Centre for Economic Studies</td>
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<tr>
<td>SEIFA</td>
<td>Socio-Economic Index for Areas</td>
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<td>SOGS</td>
<td>South Oaks Gambling Screen</td>
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<td>TAB</td>
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Forward

As one who has been raising his voice about problem gambling for the best part of fifteen years, I would welcome being able to retire from this field. This report by Associate Professor Linda Hancock and Michael O’Neil gives me some hope of doing that.

The problem is well known. The protagonists for gambling income being entrenched are well known. They are twofold: state governments who depend on topping up consolidated revenue from the losses from all forms of gambling, and the captains of the gaming industry who have enjoyed massive profits from what are, after all, public licenses.

The antagonists are well known. We cannot ignore the election of South Australian MP Nick Xenophon to the Senate – with the highest number of votes of any independent in federal Parliamentary history – on a platform of no pokies.

What is not known is how to go beyond the rhetoric to a rational and appropriate reregulation of the gaming industry.

I had some say in the commissioning a Productivity Commission report in 1999. My brother as Treasurer took that decision and the subsequent report was groundbreaking. Apart from many extraordinary findings, perhaps the most breathtaking was that Australia had 20.4 per cent of all the world’s poker machines. In addition, it uncovered that 42.3 per cent of every dollar going through a poker machine was coming from a problem gambler.

Despite these shocking revelations, nothing really changed in reregulating gambling in Australia. No national plan for gambling governance emerged.

In 2007, the previous Prime Minister Kevin Rudd upped the ante of rhetoric even beyond that of his predecessor John Howard, and emerged in pre-election campaigning to say that he “hates pokies”.

Now in 2010, we have seen another Productivity Commission report. Some ten years on, we find borne out the same issues. Indeed, we find a greater level of dependence by the states on gambling revenues, and little real action to deal with the social consequences.

The Federal government has shown determination to confront the states to push reform of the health sector. It is now time for reforms to curb the destructive impacts of gambling, and to wean the States from their addiction to gambling industry revenue.

We remain a nation without a gambling governance plan. This is why I commend the report by Linda Hancock and Michael O’Neil. It gives me hope that one day I can retire from this topic.

Tim Costello, Melbourne
CEO World Vision
July 2010
Executive Summary

Introduction

Thousands of Australians gamble. Indeed, it is estimated that there is now one electronic gaming machine or poker machine for every 110 people in Australia, with Australia having the eighth-highest total number of gaming machines in the world\(^2\). Australians lose over $19 billion a year on gambling; and conservatively, 40 per cent (and as high as 60 per cent) of this comes from problem gamblers (Productivity Commission, 2010, p. 16).

What families and communities see as ‘problem gamblers’ the gambling industry sees as their best customers. Indeed, research shows that regular gamblers contribute approximately 92 per cent of poker machine revenue\(^3\); and Australian data confirms ‘the bulk of gaming revenue is from regular gamblers’ (Productivity Commission, 2010, Appendix C, p.20-21).

Australian communities have been vocal in their opposition to the growth of gambling. For example a study undertaken by the Australian National University of the attitudes of Victorians in 2004 found that:

- 85 per cent of Victorians agreed that ‘Gambling is a serious social problem in Victoria’;
- 90 per cent agreed that ‘the Victorian government should reduce the number of poker machines’;
- 76 per cent agreed that ‘gambling is too widely accessible in Victoria’;
- 74 per cent agreed that ‘the number of poker machines in Victoria should be reduced’\(^4\).

The adverse community impacts of gambling are now well-recognised and documented in terms of crime, family break up, financial ruin and bankruptcy, suicide and self harm. Indeed, in the lead up to the 2007 election the then Opposition leader, Kevin Rudd, said:

_I hate poker machines and I know something of their impact on families. This is a matter of continued policy interest to me. I think the social impact is significant, hard to quantify but it's significant. It's of sufficient concern to me for this not to just drop off the radar._\(^5\)

But despite the concerns of the previous Prime Minister, Kevin Rudd, with poker machines, and despite the findings of the recent Productivity Commission inquiry which found that there are around 115,000 people categorised as ‘problem gamblers’ in Australia, and an additional estimated 280,000 at ‘moderate risk’\(^6\), the issue of problem gambling does indeed appear to have dropped off the Federal government agenda.

State governments are addicted to problem gamblers

The State and Territory governments are heavily dependent on gambling taxes, which we show now account for an average 10 per cent of their revenues and higher in States such as Victoria (13 per cent), South Australia (13 per cent) and Northern Territory (17 per cent). Perhaps unsurprisingly, State and Territory governments have shown little interest in adequately protecting their citizens from gambling-related harms. Despite so-called ‘harm minimisation’ measures, gambling losses continue to rise.
In recent times the Commonwealth government has shown itself willing to intervene in a wide range of areas that have historically been the preserve of the States including energy regulation, consumer protection and, most recently, health reform. Given the apparent indifference of State and Territory governments, it seems clear that if substantial reforms aimed at protecting problem gamblers, their families and our communities from the harms of gambling are to be introduced, then those reforms will need to be led by the Commonwealth.

**What needs to be done?**

There are two main problems with the gambling industry in Australia. The industry is under-taxed and under-regulated. In order to transform the gambling industry into a recreational rather than the today’s clearly harmful activity, significant reforms need to be made. Such reforms, if implemented, would raise significant amounts of revenue, reduce the enormous harm that gambling imposes on a significant percentage of the population and help build more resilient and inclusive communities.

In short, Australia needs a new, tough independent gambling regulator and a *National Action Plan for Gambling Governance and Re-Regulation*, to wean States off their current reliance on gambling revenue.

This is a policy paper based on a scoping of the evidence, both national and international, on harmful gambling impacts and on current governance and regulation of gambling in Australia. Gambling harm prevention needs to be a central plank in the Commonwealth government’s health plan, underpinned by a strong public health Action Plan as summarised in Figure E.1.

*A National Action Plan for Gambling Governance and Re-Regulation* is a whole-of-system public health approach, squarely based on a risk and prevention strategy that incorporates:

- product (safety/regulation);
- venue (responsibility);
- industry obligations (host responsibility and duty of care);
- regulatory oversight (data monitoring);
- independent research (integrity);
- evidence based policy; and
- independent audit/monitoring of policy and venue-level interventions.

**R1: We recommend the establishment of a National Gambling Fund to be financed by a 2 per cent levy on the gambling industry and a new national lottery.**

A reform agenda to wean the states off their reliance on gambling taxes needs to fund incentives. In the current fiscal climate, new sources of funds need to be tapped. The introduction of a new Commonwealth tax of 2 per cent of net gambling revenue would raise an estimated $378 million annually. The Australia gambling industry is under-taxed. Currently, the gambling industry benefits from numerous State and Commonwealth tax concessions such as the casino high roller exemptions from GST and tax and other concessions granted to casinos and clubs. A 2 per cent levy on the gambling industry across all forms of gambling should be in addition to the universal gross revenue levy on the racing industry recommended by the Productivity Commission.
The establishment of a new National Australian Lotteries Commission. Lotteries have been shown to be one of the least harmful forms of gambling. Successful models of government-operated lotteries can be found in the United Kingdom and Western Australia and we propose that such a model be developed for Australia. This would help raise the revenue needed to provide incentives to the States to wean themselves off other, more harmful forms of gambling revenue. In the longer term, funds could be used to finance heritage, parks, community-building and sustainability initiatives.

In addition to these two major funding reforms to finance a National Gambling Fund, a range of other reforms are needed to address the incentives the states currently have to raise revenue from gambling and to provide greater protections for consumers.

**R2:** We recommend modifying the funding formula used by the Commonwealth Grants Commission to ensure that state governments have an incentive to reduce their reliance on revenue from gambling related sources.

**R3:** We recommend new national consumer protection and product safety standards.

A new national system of consumer protection would be advanced through modifying the national consumer protection laws to implement the Productivity Commission’s recommendations for a new national generic consumer law (outlined in its *Review of Australia’s Consumer Policy Framework* (Fitzgerald et al 2008) and a national universal player tracking/monitoring system that would be used to monitor policy as well as venue-level interventions. This would use technology already available and used for protective interventions elsewhere internationally.

**R4:** We recommend the introduction of a range of new product safety standards that go further than the current Productivity Commission (2010) recommendations, to ensure that gambling consumers are protected from dangerous machines in the same way that automotive consumers are protected from dangerous vehicles. In particular these new standards should include changes both to gaming machines, gaming venues and regulatory oversight systems:

- banning note acceptors on gaming machines;
- banning ATMs in gaming venues;
- reviewing venue hours (mandatory 8 hour break/shut-down in clubs and hotels; 6 hours for casinos);
- introducing compulsory smart cards (or form of universal ID) linked to independent Central Monitoring System;
- slowing down the machines to a maximum loss of $100 per hour;
- introducing a compulsory 10 minute cooling off period after 1 hour of continuous gambling;
- re-regulating casinos via mandated codes of practice (e.g., using central monitoring system (CMS) for independent monitoring and player protection interventions); and
- Putting in place indicators that measure the costs of gambling impacts-suicide, crime, debt in the community, bankruptcy etc.
A national system of consumer protection and new product safety standards need to be supported by reforms at the venue level, bans on credit for gambling and controls on interactive gambling.

**R5:** We recommend reforms to the provision of gambling provider’s *license to operate* to ensure that gambling providers have both a duty of care to their customers and a duty of care to their employees.

Further, as part of a new money laundering and fraud prevention strategy, gaming licensees should be required to demonstrate that they have taken adequate steps to ascertain the probity of any funds being gambled.

**R6:** We recommend the ban on interactive gambling should be maintained and the National Finance Regulations used to ban ATMs and access to finance (cash or credit) within any gambling venue including casinos.

**R7:** We recommend the establishment of a new Independent National Gambling Research and Probity Commission funded by the National Gambling Fund.

The Commonwealth should take the lead in introducing a *national player tracking system* to identify abnormal or ‘risky’ playing patterns for all forms of gambling. Such a player tracking system would enable individual player protections as well as providing a new source of data to monitor the extent of problem gambling. Such data would assist in both policy development and fraud detection as well as assessment of interventions aimed at player protection.

The Independent National Gambling Research and Probity Commission should be responsible for the new national anti-fraud and anti-money laundering strategies including, *inter alia*, analysis of the data collected from the proposed national player tracking system.

**Independent research** is essential to monitor reforms to the industry, for nationally consistent policy and to keep abreast of developments in the industry and consumer protections.

**R8:** We recommend an MOU between the Australian Crime Commission and the (new) Independent National Gambling Research and Probity Commission regarding the use of a *player tracking database* to detect instances of money laundering and other ‘signs’ of criminal activity.

The Commission should have a Memorandum of Understanding (MOU) with the Australian Crime Commission to ensure that gambling data is utilised in the fight against organised crime.

Figure E.1 draws together these recommendations under a *National Action Plan for Gambling Governance and Re-Regulation*. 
Figure E.1
National Action Plan for Gambling Governance and Re-Regulation

OBJECTIVES

New Grants Commission formula: fund states to reduce gambling tax dependency
National consumer protection and product safety standards
Commonwealth corporations power (governance and re-regulation)
National research and probity

NEW REFORMS

2 per cent levy on gambling industry
New generic national consumer laws*
National player tracking system re-regulation licence to operate**
Independent research and probity audits***

INSTITUTIONAL ARCHITECTURE

Incentives for states 3 years
Paid by National Gambling Fund
New National Lottery Commission
ACCC consumer protection regulation
ACC: Australian Crime Commission
New Independent Gambling Research and Probity Commission

Gambling consumer access to remedy for harm

Notes:
* Recommended by Productivity Commission 2009.
** Re-regulation would include licence to operate, mandated industry codes of practice, employee duty of care, host responsibility.
*** Incorporate data from national player tracker system, new Commission to set research agenda, publication of research and publication of audit reports.
**** National Gambling Fund run as an independent charity.
Overview

Our central argument

Australia did without gaming machines until their exponential growth in the mid 1980s when States/Territories legislated to establish casinos followed by the expansion of electronic gaming machines (EGMs) into hotels and clubs throughout the community. It was not long before States became addicted to the revenue. Now the Commonwealth needs to play a new, leading role in winding back gambling thereby protecting communities and the integrity of Australian culture from gambling saturation. The current impasse is driven by government and corporate/transnational gambling industry vested interests. The global gambling complex has turned State/Territory governments into complicit co-producers of harmful impacts from gambling and in particular, EGMs (or poker machines), casino-expansion and new technology forms of gambling including automated table games, automated racing machines, internet casino games, poker games, poker machines, wagering, sports betting and contract for difference (the latter is regulated under Financial Services).

This policy paper overviews the evidence, explains ‘what’s the problem’ and articulates a solution. With States so beholden to protecting their regressive gambling tax revenue flows, and with so little action over the last decade, this solution needs to be strongly and emphatically driven by the Commonwealth, to achieve public interest protections from gambling-related harms, as part of the National Health Reform Plan.

The Commonwealth needs to lead on an integrated National Action Plan for Gambling Governance and Re-Regulation with new policies and institutions and financial incentives to the states to wind back their dependence on gambling taxes. Compared to other ‘dangerous consumptions’ such as alcohol and tobacco, which incur public costs, the gambling industry is currently under-taxed. A 2% levy on the industry and a new National Lottery Commission would fund a National Gambling Fund. This Fund would finance Commonwealth incentives to the States/Territories (via the Grants Commission) to downscale their dependence on gambling revenue. At a national level, the fund would be used to finance new governance arrangements including an Independent National Gambling Research and Probity Commission that would conduct research, oversee a National Player Tracking Data System and fund probity audits of gambling industry performance on mandated industry codes of practice. A tough new national regulator (within the ACCC) would oversee mandated codes of gambling industry practices on host responsibility and employer duty or care linking license to operate and probity auditing on ‘avoidable harms’ caused by gambling. This system would guarantee much-needed transparency, good governance and probity of consumer protection-driven regulation at a national level.

For the first time, this National Action Plan spells out the integrated reform agenda for revenue-neutral national re-regulation of gambling. This focus on prevention from gambling-related harm needs to be a central element of the Commonwealth government’s National Health Reform Plan.

What’s the problem?

After two decades of exponential growth of the gambling industry in Australia, there is wide recognition of the harms and negative consequences associated with gambling; and in particular, electronic gaming machines (EGMs) and gambling in Australia’s 13 casinos.
As outlined by Productivity Commission Chairman Gary Banks in 2004, 2007, the October 2009 Productivity Draft Report and the final report (delivered to the government on February 26 and released on July 23, 2010), and in countless submissions to the recent inquiry, little of real import has happened since the landmark 1999 Productivity Commission Inquiry raised a raft of issues and recommended urgent reforms. The Productivity Commission gives numerous examples of how harm minimisation measures introduced by various States/Territories ‘lack “bite”’. In the meantime, the problems caused by gambling have widened and deepened and gambler losses are in excess of $19 billion annually.

While the Productivity Commission’s 2010 report presents valuable data on gambling and makes some strident recommendations (particularly on pre-commitment strategies and reducing the intensity of gaming machines), it is not clear on the principles and governance system that should underpin a national public health and consumer protection approach to gambling. The Productivity Commission is strong on problem identification but weak on an integrated national approach to remedying the problems caused by gambling and actions to address State Government’s dependence on gambling taxes. Many of the Commission’s recommendations call on State Governments to act – when the last decade of inaction has established this is unlikely to happen.

The Productivity Commission’s emphasis on ‘cost-benefit trade-offs’ and its about-turn on online gaming lack an adequate evidence base. Its recommendations to ‘amend the Interactive Gambling Act to allow online poker games, subject to a strict regime of consumer protection’ and to ‘exempt online gambling providers from bans on credit cards’ are concerning (Productivity Commission, 2010, p. 36, 23). The PC puts exactly the same set of arguments (i.e., to better to legalise/regulate, to ‘protect players’, prevent crime and to raise tax revenue) that were previously used by State governments to roll out gaming machines in the 1990s.

We need to ask whether Australians want a proliferation of casino and poker machine games on their computers and in their homes accessible to minors and people who are vulnerable.

Rather than further legalising online gambling current prohibitions need to be maintained and there needs to be a review of the adequacy of consumer protection in currently legalised telephone and internet wagering, sports betting, spread betting and contract for difference.

Despite its commitment to a public health approach, the Productivity Commission is not clear on how this would look operationally, the principles that should underpin a genuine public health and consumer protection approach to gambling, and how their report links with their earlier call for a consistent, single, national, generic consumer law; as set out in their 2008 report, “Review of Australia’s Consumer Policy Framework” (Fitzgerald et al. 2008).

This paper argues:

\section*{Section 1: What’s the problem? The evidence}

We argue there is strong evidence both in Australia and internationally, which recognises the harms caused by EGMs as they are currently configured. Communities recognise this and object in particular, to the concentration of poker machines in areas of socioeconomic disadvantage. The research evidence on harms from EGMs, and State/Territory inaction, supports the need for Commonwealth intervention. Gambling has taken hold, inserting a cultural redirection into communities that the majority of citizens resent. This is evident particularly in disadvantaged suburbs, green fields-new suburbs and Indigenous communities and in regional cities. The imperative for a new framework is clearly illustrated by the time-
bomb awaiting Victoria as the state-wide ratio of ten machines per 1,000 people will likely be used, post 2012, to re-locate machines into heavily mortgaged, urban fringe, greenfields markets.

Section 2: Regulatory failure and vested interest
We cannot expect State/Territory governments to intervene because they have demonstrated they are too dependent on gambling tax revenue to want to change things. In fact, State gambling policy and program agendas are in the main, barriers to the protection of consumers. The States are at the same time the provider of machines, the regulator of the gaming industry and the beneficiary of gambling taxes. This has proven to be an impossible conflict of interest and a barrier to reform.

Section 3: The need for a new public health framework
The prevailing addictions/informed choice or individual pathology approach to gambling policy needs to be replaced by a public health consumer Risk and Protection Strategy underpinned by public health and consumer protection principles. Constructing ‘the problem’ in terms of harm minimisation to address problem gambling (as for example in the Productivity Commission’s terms of reference), side-steps the key issue of the impact of gambling, and EGMs in particular, on the social and economic sustainability and cultural autonomy of communities.

There is a need for a national approach that ensures consumer protection and community sustainability with cultural autonomy (letting communities determine local leisure opportunities). In this section we outline what a new National Gambling Risk and Protection Model would look like. This model would encompass a national universal database across all forms of gambling overseen by an Independent National Gambling Research and Probity Commission, with audit and performance targets to:

- protect communities from gambling saturation;
- monitor a national player tracking data base across all forms of gambling;
- protect vulnerable consumers and youth from gambling;
- render gambling precincts and systems safe from gambling-induced harms, violence, extortion and crime under threat of closure;
- monitor gambling venue/provider responsibilities under mandated codes of practice; and
- protect gambling industry employees from higher than average rates of problem gambling.

Section 4: The need for Commonwealth intervention
The Commonwealth needs to intervene on matters of consumer protection, financial probity of the gambling industry and it needs to provide incentives to reduce States/Territories’ reliance on gambling revenue. These reforms are consistent with the transfer of funds under Section 96 of the Australian Constitution; recent High Court rulings on Commonwealth corporations powers, recent discussion on the need for Commonwealth leadership in other policy areas and COAG’s (Council of Australian Government) undertakings on a new form of federalism that is ‘regulatory, conditional and prescriptive in nature, at least in the formulation of performance goals and reporting requirements’ (Griffith 2009, p. i).

We argue incentives need to be made available to the states via the Grants Commission formula, with a range of possible measures or key performance indicators for States and Territories reducing gambling revenue in real terms; with the baseline set at financial year
2009/10 to be achieved within three years. This is in tandem with other initiatives we recommend within the Commonwealth jurisdiction under consumer, financial services, Australian Consumer and Competition Commission (ACCC), Australian Crime Commission (ACC) and Corporations laws.

Section 5: Policy Initiatives and Recommendations

This section outlines a three year revenue-neutral plan for Commonwealth funding to reward states that decrease their reliance on gambling revenue. Crucial elements of the Action Plan include establishing a new National Gambling Fund, new national policies and institutions to ensure consumer protection, gambling product safety, fraud-prevention, a national player-tracking system and independent national research.
1. What’s the problem?

1.1 The evidence

Given the focus of this policy paper on solutions, we give a brief summary of ‘What’s the problem with gambling’. This has been articulated long and clear by researchers and community interest advocates over the last two decades; by numerous submissions to the Productivity Commission inquiries in 1999 and 2009, by public hearing testimonials; and is seen repeatedly in media reports of gambling-related fraud, crime, suicide, the impact on families and communities and money laundering. The Productivity Commission, 2010 final report collates much of the evidence.

Figure 1.1
A multifaceted industry, with a ‘hidden’ side

Source: The Productivity Commission (2010, p. 2.5)

Of the $19 billion gambling industry in Australia poker machines in hotels and clubs constitute 55.0 per cent and in casinos an additional 7.2 per cent (Productivity Commission 2010 p. 7). Australia has one of the highest per capita densities of poker machines in the world14 (1 per 110 persons), some of the highest per capita losses and some of the highest government dependencies on gambling as a source of state budget funding. With the
exception of New South Wales (where gaming machines were introduced from the mid 1950s) and Western Australia (which has held out against community gaming machines and has not expanded gaming outside the Burswood casino), other States and Territories underwent an exponential expansion of casino and community-based gaming since the mid 1990s.

In many States, gambling began in clubs, and spread later into more commercialised hotels from about the mid 1990s. Clubs were licensed for gambling and given lower tax rates than hotels on the grounds of supposed ‘community benefit’. This expansion of gambling was motivated principally by state governments seeking to augment State-generated revenues in the context of reduced Commonwealth sources of revenue. Consequently, State governments have become willing ‘co-producers’ in an expansion of the gambling industry, driven by powerful hotel, gambling and liquor industry lobbyists. Overnight, casinos were allowed to build in prime city locations with guaranteed people-flows. Previously struggling hotels with new gaming licenses fetched millions on the property market, and private entrepreneurs pocketed millions in newly made profit made from the gaming machines.

Figure 1.2
A Chronology of Liberalisation

Clubs, and then the more intensive revenue from hotels and licensed premises, have resulted in revenues to State and Territory governments, based on gaming losses, outstripping expectations. Today, it is concerning that State and Territory governments are reliant on poker machines for significant and growing amounts of own-sourced revenue; approximately $5 billion in state taxes was collected in 2008-09 (Productivity Commission, 2010, p. 6.33).

The 1999 Productivity Commission report was a watershed. It was thorough, independent and attracted international attention. The key findings of the 1999 Productivity Commission Report included:

- gambling is a large and growing industry;
- it has substantial benefit to consumers;
• the social costs are ‘also large and could exceed benefits’ e.g., 130,000 severe problem gamblers;
• problem gamblers accounted for a large share of total expenditure (2.1 per cent of the population account for an estimated 33 per cent\(^{15}\) of industry revenue);
• gaming machines (pokies) are ‘the biggest reform issue’; and
• ‘poor industry practices and poor government regulation contributed to poor outcomes’ (Banks 2007, p. 8).

Since that report, gambling expenditure has continued to climb, albeit, at slower rates of growth than the expansionist 1990s.

**Figure 1.3**

Total Real Gambling Expenditure 1980/81 to 2005/06

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As argued by Banks, the growth in gaming expenditure ‘has been entirely due to poker machines’ (Banks, 2007, p. 15).

This is still largely true, as electronic machines in clubs and hotels have grown from 29 per cent to 55 per cent between 1986/87 and 2008/09. But at the same time, casino revenue (comprising principally table games and machine gambling) has also grown from 9 to 18 per cent; and accordingly, lotteries and wagering have decreased their percentage share of gambling revenue (Productivity Commission, 2010, p. 2.9).
Gaming machines have continued to expand as a proportion of total gambling expenditure as shown in Figure 1.5 (Productivity Commission 2010, p. 6). Moreover, the per capita expenditure on gaming machines has continued to rise\(^\text{16}\) (although expenditure per participant is a more valid indicator for examining increases in personal expenditure). Even these figures hide the real extent of the proportion of gambling expenditure, which derives from gaming machines, as the figures for casinos are frequently not included in the gaming machine total. A recent study into the Economic and Social Impact of Gambling in Tasmania (SACES 2008) reported that gaming machines “accounted for 14 per cent of total expenditure in the two casinos in 1987/88 to now account for 92 per cent in 2006/07”.

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**Figure 1.4**

Growth in Gaming Expenditure 1990/91 to 2004/05

![Growth in Gaming Expenditure 1990/91 to 2004/05](source: Banks 2007, p. 15)

**Figure 1.5**

Gaming Machines and Total Gaming Expenditure 1990/91 to 2004/05

![Gaming Machines and Total Gaming Expenditure 1990/91 to 2004/05](source: Banks, 2007, p. 16.)
But this revenue is unevenly spread across States/Territories (see Figure 1.6). Northern Territory figures are distorted by its internet sports betting from outside the Territory and Western Australia does not have EGMs outside Burswood Casino. In its assessment of the evidence, the Productivity Commission 2010 report highlights some important findings:

- ‘The risks of problem gambling are low for people who only play lotteries and scratchies, but rise steeply with the frequency of gambling on table games, wagering and, especially, gaming machines.
- Most policy interest centres on people playing regularly on the ‘pokies’. Around 600,000 Australians (4 per cent of the adult population) play at least weekly.
- While survey results vary, around 15 per cent of these regular players (95,000) are ‘problem gamblers’. And their share of total spending on machines is estimated to range around 40 per cent.
- The significant social cost of problem gambling — estimated to be at least $4.7 billion a year — means that even policy measures with modest efficacy in reducing harm will often be worthwhile (Productivity Commission’, 2010, p. 2).

The Productivity Commission recognises the need for better, more effective regulation:

The need for regulation and other policy measures has not waned, but such measures need to be part of an effective and coherent package — one that recognises that the technologies for the delivery of gambling services are changing rapidly (Productivity Commission, 2010, p. 20).

But, disappointing from a consumer protection point of view, are the Productivity Commission’s back-down on a proposal for a statutory duty of care since the 2009 draft final report; its recommendation for a ‘staged liberalisation’ of on-line gaming (commencing with online poker (card) games (PC 2010, p. 22); its recommendation to exempt online gambling providers from bans on credit cards (p. 23); its emphasis on an opt-in precommitment model; and its focus on cost-benefit trade-offs where it is difficult to quantify personal losses such as depression, suicide, marital breakdown and loss of trust caused by gambling-related deception.
Moreover, leaving reforms to the states or to the gambling Ministerial Council comprised of state/territory Gaming Ministers, will drown in delay and compromise; as currently illustrated by the delays in even mild reforms and the stalemates on national research\textsuperscript{17}.

1.2 Impact on communities

What no one was really saying was how the machines are designed to encourage continuous play and how targeted marketing and product placement have impacted on particular communities. Industry and government regulators would contest the statement that gaming machines have been strategically placed in disadvantaged communities. That is true, this was not always the case, but rather they were most often simply \textit{made available on the basis of an application} by virtually any hotel or club; and then perfect knowledge on turnover and player spend soon indicated which games and which venues yielded the most revenue.

Informed by years of research conducted in the United States, and since the 1950s in Australia, the industry knows its markets. The Australian hotel and club industry learnt very quickly that certain Local Government Areas (LGAs) were more susceptible to participation on gaming machines. An application for either the transfer of machines from one location to another or from one venue to another venue almost always invariably involved a movement from a higher-ranking socioeconomic area to a lower ranking area. This form of predatory behaviour in the marketplace forced governments to reluctantly consider State-wide caps on machine numbers and regional caps across the spatial economy. But these have been imposed ‘after the horse has bolted’ i.e., when the saturation of machines may have reached toxic levels; and where caps make little difference in terms of protecting communities or reducing harms.

While thoroughbred racing entices the upper classes, the industry knows the main market for gaming machines is lower middle and middle class communities – young men on average weekly wages, lonely older citizens, people who are recently divorced or bereaved, ethnic groups from cultures where gambling is restricted and women looking for somewhere safe and warm to socialise. Like any product, gambling has its segmented markets and marketing strategies. Games are designed to attract \textit{action} and \textit{escape} gamblers younger and older, different ethnicities, working and not working, women and men.

There is an unequivocal inverse relationship between net gaming revenue (NGR: that is the amount lost by gamblers on gaming machines) and average incomes by Local Government Area (LGA) for States including Victoria, South Australian and Tasmania and a direct relationship between NGR and the average ranking on the Socio-economic Index for Areas (SEIFA Index). \textit{Put simply, those in high income areas tend not to gamble on gaming machines while those in low income areas gamble, and sometimes excessively.} Placement of machines becomes crucial to local accessibility. The Victorian gambling prevalence survey found that 57 per cent of Victorians travelled less than 5 kilometres to access participate in gambling (ANU 2004, p. 81).

The harmful impacts on communities are now well recognised – even if governments have not systematically collected impact statistics. The Canadian Socio-Economic Indicators of Gambling (SEIG) project has developed a framework for measuring the social and economic impacts of gambling in Canada (Manitoba Gaming Control Commission 2007), and the comparative Western Australia-Victoria scoping community impact study funded by the Victorian Gambling Research Panel (SACES 2005) compared the impact on communities in

There is significant community opposition to gambling. ‘Gambling has been imposed throughout Australia against the wishes of the majority of people and is a supply-led rather than a demand-led industry. In 1957, a year after poker machines were legalised in New South Wales, a study found that 65 per cent of people disapproved of them. In 1999, the National Gambling Survey found that 75 per cent of respondents thought gambling did more harm than good, and 92 per cent wanted no more poker machines’ (Harrison 2000).

Communities are vocal in their opposition to gambling. In Victoria in 2003, the Gambling Research Panel funded 2003 Community Attitudes Survey (ANU 2004, p. 129) reported;

- 85 per cent of Victorians agreed that ‘Gambling is a serious social problem in Victoria;
- 90 per cent agreed that ‘The Victorian government should reduce the number of poker machines’
- 76 per cent agreed that ‘Gambling is too widely accessible in Victoria’;
- 74 per cent agreed that ‘The number of poker machines in Victoria should be reduced’;
- 91 per cent agreed ‘There should be more clubs and hotels without poker machines’; and
- 87 per cent agreed ‘Banknote acceptors should be removed from EGMs’.

1.3 Gambling taxes are regressive

On all measures of income (i.e., derived from holding of assets, investments and savings) including receipt of imputation credits from investment in the share market, the proportion of adults receiving interest income and adults with net capital gains, a clear inverse relationship is observable. That is to say, the wealthy and those in high-income areas tend not to gamble on electronic gaming machines. To ignore this relationship in the design of gambling policy and public policy more generally is an abrogation of responsibility by government. Imagine if this relationship between income and health or income and education were ignored in the setting of health and education policy? In fact it never is; witness the use of postcode data to determine socio-economic status as a basis of funding provided to schools.

A further sobering statistic, again by Local Government Area, is that the average gaming machine earns four times the average median monthly income of an individual worker, and this relationship is again most strongly observed in lower socioeconomic areas relative to higher income areas and across all states. For example, in the Playford LGA in South Victoria and Western Australia. (See Doughney 2002, 2007 and Australian Institute for Primary Care 2006 and Livingston and Woolley 2008 on the impact of gaming machine games and features.)
Australia in 2008, the average machine made $9,600 per month while the median monthly income was $1,477.

Relying on gambling expenditure-derived taxes is, therefore, highly regressive i.e., where poor people are taxed more heavily as a proportion of their incomes than the better off. Moreover activities financed by gambling tend to largely benefit the middle class (e.g., funding operas and the arts).

### 1.4 The harms of gambling

Research on the harms of EGMs as they are currently configured reinforces the need to reassess the proliferation of EGMs in casinos and community settings throughout Australia.

There is now a substantial evidence base to confirm the increasing harms from gambling, and in particular electronic gaming machines, since the 1999 Productivity Commission report. In that report the Productivity Commission grouped the costs and personal harms into five categories: financial costs, effects on productivity and employment, crime and court related costs, personal and family impacts and treatment costs. The costs and impacts on problem gamblers and their families are the most direct costs.

**Individual prevalence rates and localised harm**

The population prevalence rate of problem gambling (over the whole population) indicates that a significant number of Australians each year become problem gamblers or are at risk of becoming problem gamblers (see Productivity Commission 1999; Banks 2002, Banks 2007, Productivity Commission 2009, 2010). More particularly, we need to be concerned about the exposure of regular players to the risk of problem gambling- given that about 20 to 30 per cent of Australian adults do not gamble at all, only about one third (or less) of Australians play gaming machines in any particular year (PC, 2010, p. 5.22) and that only about 15 per cent of adults gamble weekly or more on non-lotto forms of gambling (Productivity Commission 2009, 4.26). Here we have a form of consumption where regular exposure to the product is a risk factor for harm.

Prevalence estimates still equate to approximately 400,000 Australians (with higher rates in particularly vulnerable sub-populations) who have problems or are at moderate risk of problems with gambling. Taking the Wood and Williams definition of problem gambling, the PC (2009, p. 4.23) estimated ‘around 410,000 moderate to severe problem gamblers’ which equates to about 2.5 per cent of the Australian population, noting that only 0.15 of the same population are admitted to hospital each year due to road accidents) – with many more ‘at risk’. Added to the impact on individuals themselves, the social impacts on others (their families and communities) are appreciable (Productivity Commission 2010, p. 6.32; Delfabbro 2009).

This means that the net widening impacts of gambling are substantial. So using the Productivity Commission’s 1999 analysis, the social costs still loom large relative to the benefits – and the ‘evidence’ provides no basis for complacency by government or the industry.

Research confirms that regular gamblers contribute approximately 92 per cent of EGM revenue (in the Canadian context Schellinck and Schrans, 2004; 2007), and that people cycle
in and out of problem and risk behaviour. The gambling industry clearly asserts the ‘80-20 rule’, that 80 per cent of revenue (gamblers’ losses) derives from 20 per cent of EGM users (Tabcorp senior executive Tricia Wunsch cited by Doughney 2007, p. 316). Australian economist Julie Smith gives a similar figure arguing the ‘heaviest 20-30 per cent of gamblers typically account for some 80 per cent or more of total gambling expenditure’ and that Australian data suggest around 90 per cent of reported gambling expenditure derives from the heaviest 10 per cent of gamblers’ (Smith 2000, p. 131). On revenue data reported by the Productivity Commission (2009) for EGM players this would mean that 6.5 per cent of these EGM gamblers contributed $10.65 billion of the total gambling take of $18.19 billion.

Localised access means that harm is exacerbated by the ‘suburbanisation’ of EGMs in local clubs and hotels (e.g., Productivity Commission 1999; Banks 2002; Doughney 2002, 2007; SACES 2008). There are approximately 5,600 local venues with gaming machines in Australia (excluding casinos) with some 200,000 machines. Based on prevalence estimates of problem gambling, including moderate and severe gamblers there are 410,000 adults who gamble excessively. This implies as a “picture into the personal harms”, on average, that:

- each machine is responsible for the creation of two problem gamblers; and
- that each local venue is responsible for 71 moderate and severe problem gamblers.

EGMs are concentrated in areas of socioeconomic disadvantage (e.g., Australian Institute of Primary Care 2006, Livingston and Woolley 2008; Doughney 2002, 2007; and similarly in the United Kingdom, May-Chahal et al 2007). In short there are more machines, more venues and greater accessibility to gaming in lower socio-economic status areas. It is the accessibility and concentration of gaming opportunities which contributes to higher rates of gambling and higher rates of problem gambling (SACES, 2005).

Australian and international research also confirms the Productivity Commission (1999) finding that 42.3 per cent of net gaming machine revenue comes from gambling by problem gamblers and that, since every problem gambler affects an estimated 5-10 other people, there is significant community impact. Problem gamblers clearly demonstrate that people behave in less rational ways than orthodox economists assume that they do, which is why the Productivity Commission discounts a fair portion of the consumer surplus (pleasure) that problem gamblers derive from their gambling habit. Nevertheless, the ostensible policy proposals to assist problem and severe to moderate gamblers, are based on models of rational choice/rational behaviour and virtually ignore the gambler ‘loss of control’ literature (in particular, Dickerson 2004).

Problem gamblers and those at risk are common in venues in terms of both money and time spent gambling and are in need of protective interventions. It is inappropriate to represent tradeoffs on this priority to balance the needs of recreational gamblers, since recreational gamblers are exposed to risks less frequently and may only gamble sporadically. Protective measures put in place will in any case, both assist those with problems and prevent the slide into problems as recreational gamblers adopt more regular patterns of play. As the Productivity Commission found:

…people may not even be aware about the extent to which the environment in which they gamble may affect their decision-making, especially when that is combined with common faulty cognitions, vulnerability and poor recall of actual losses (chapter 4 and appendix B)…. Around 70 per cent of EGM players report that they at least sometimes exceed their spending limits, with 12 per cent doing so often or always. Higher risk gamblers exceed limits more frequently and report greater harm from doing so. Players reported greater problems limiting expenditure on EGMs compared to
other recreational activities, like consuming alcohol, spending on tobacco and
entertainment/leisure activities …

As shown in chapter 4, while lower risk gamblers have a small probability of
having control problems, there are so many low-risk players that the absolute
number affected is large (Productivity Commission, 2010, 10.5-10.6).

Signalling the importance of a generalist consumer protection approach, it is entirely
appropriate to target all gamblers with protective measures as patterns of progression into
problem play differ, and preventive mechanisms need to be put in place up-stream – not once
the problems occur. This is in line with an authentic public health model based on the
precautionary principle emphasising harm avoidance.

Loss of control over expenditure and time spent gambling results in EGM-related harms.
Evidence shows that 85-90 per cent of regular EGM gamblers experience loss of control
during play – indicating that gambling-related harm is currently grossly under-estimated
(Dickerson 2004). This highlights the need for the public policy agenda to consider product
safety and consumer protection measures for all consumers (not just problem gamblers),
especially in the light of evidence of lack of product safety by researchers such as Livingston
and Woolley (2008 and Australian Institute of Primary Care 2006).

Concerns about product safety and consumer protection need to be addressed from a
Commonwealth perspective. Gaming is conducted in a very different context today than
twenty years ago. Technological changes have substantially changed gaming products,
进一步强调需要对产品安全和消费者保护措施进行更多干预性监管
(Productivity Commission 2010 as recognised in the gaming
machine reforms recommended).

The harms associated with EGM gambling put it alongside tobacco and alcohol in terms of
the need for special laws and regulations and for duty of care obligations on providers/hosts as
a condition of license to operate. Some of the externalities of gambling (those often
unforeseen and longer term negative costs or effects) are acknowledged in the funding of
 Gambler’s help counselling and other ‘ambulance at the bottom of the cliff’ treatment and
support services for those impacted by problem gambling (Blaszczynski and Farrell 1998;
Harrison in the United Kingdom 2007;21 Productivity Commission 1999; SACES 2005; Stitt
et al. 2001; Thompson et al. 1999); but such provisions have weak impact on preventing
harms and minimising risks in the first place.

Industry knowledge of harms
In terms of good governance, ‘information asymmetry’ prevails – where government and
industry lack transparency and keep crucial information from public knowledge (e.g., recent
Crown Casino deal with the Victorian government to increase the number of tables and
introduce a new gaming machine tax regime). The gambling industry and government know
about the harms caused by gaming machines, but keep from public scrutiny crucial
information on venue losses and the addictive qualities of specific gaming machine games and
features (Australian Institute for Primary Care 2006; Livingstone and Woolley 2008). A 2002
leaked Tattersall’s document with data on a card-based loyalty membership scheme tested
across 13 venues in 2002 based on internal industry data and reported by Doughney (2006, p.
353) showed:
‘Tattersall’s regards members of its trial scheme as a reasonable approximation of poker machine users in general (Tattersall’s 2002, p. 42). The data thus let us make informed judgements about poker machine activity in general.

Tattersall’s make it plain that it is fearful about regulations that might force it to reveal such internal data to the public (2002, p. 7).

The ‘advantage’ scheme explicitly targets already ‘high turnover’ or heavier users. It does this by offering ‘rewards’ designed to keep them at the machines for longer periods (2002, p. 45).

The report designates women as main the target market, because about two-thirds of revenue comes from women. Therefore, it says, ‘promotions should generally not be based on the preferences of male customers’ (2002, p. 26).

Users are mainly in the older age groups, especially in the high loss 46-55 cohort (2002, p. 43). Daytime users lose an equal, if not greater amount, than do night-time users (2002, p. 44). This fits with the female and older user profile, but it undermines the image that ‘a harmless night out at the pokies’ is the main source of the industry’s revenue.

In summary, the document stated: ‘[W]e derive enormous value’ – 57 per cent of total revenue – ‘from a very small group of customers’, namely the 15 per cent who lose ‘$100 plus per visit’. Moreover ‘those 34 per cent of members who spend [i.e. lose] greater than $50 per visit contribute over 82 per cent of value’. It also revealed that 15 per cent spend an average of 153 minutes ‘playtime’ per visit, visit more than once per month and visit more than one venue (2002, p. 45). That is, approximately 60 per cent of total losses derive from 15 per cent of users who lose more than $100 each two hours and 33 minutes at the machines. These, of course, are heavy users by any standard’ (Doughney 2006 p. 353).

It is true that individual harm are difficult to aggregate, they may not always be able to be attributed to gaming and accurate measures of individual, family and community impacts/harms may be difficult to measure. However, what is well known is that accessibility and suburbanisation of gaming and the number of local venues elevate the participation rate and the potential risks for all gamblers. It is well known that continuous forms of gambling are higher risk. Analysis from the macro perspective – economic, geographical, regional data, per capita losses and play – and the micro perspective about individual behaviour documented in prevalence studies, when combined confirm the high public safety risks of continuous play on EGMs for problem gamblers, regular and moderate gamblers and even recreational gamblers.

As the Productivity Commission (2010) concludes after analysing the risks of developing problems on different forms of gambling:

... playing gambling machines (at all frequencies) had between 7 and 17 fold higher risk of problem gambling (using the CPGI 8+ rating) than lotteries. (PC, p. 5.28)

Because gaming machines are associated with greater problem gambling risks and the adverse community impacts of gambling are well documented a new reform agenda is necessary. That the addiction of States to gambling revenue creates an obvious conflict of interest and barriers to consumer protection simply strengthens the case to act.
1.5 Conclusion

What we now know about the impact of gambling and continuous forms of gambling, such as gaming machines, table games and mechanised games, should compel policy makers to implement substantive changes to the way gambling is distributed (in terms of location and accessibility), what products gain approval and how they are regulated.

The national and international\(^ {22} \) evidence points to the conclusion that gambling risk and problems are related to potentially harmful products and to location and accessibility of gambling – resulting in concentrations of unsustainable gambling among those who can least afford it. Most recent evidence comes from Storer et al (2009) with a review of problem gambling prevalence and the concentration of electric gaming machines, where it was concluded that:

*Strong statistically meaningful relationships were found for an increase in prevalence with increasing per capita density of EGMs, consistent with the access hypothesis and supported by no evidence of plateauing of prevalence with increasing density of EGMs (Storer et al 2009, p225)*

Gambling needs to be seen as globalised products that are currently defying regulation. Problem gamblers are not pathological individuals but ordinary people exposed regularly to gaming products that are designed to entrap i.e., that as currently configured, are dangerous and cause harm when played on a regular basis. United Kingdom researcher Professor Jim Orford (2009, np) came to the same conclusion: ‘Gambling more than once a week and/or gambling on several different activities, and/or with more money, puts people at risk’.

Problem gambling has community-wide effects – but the social and economic impacts are not being tracked and it is noticeable that State and Territory governments have progressively withdrawn research funds for these important studies.

*Given this evidence, we need to ask: What level of evidence is needed to compel government to implement a stronger regulatory response? Where are the seat belts and airbags needed if legalised gambling is to be ‘safe’?*
2. Regulatory Failure and Vested Interest

2.1 Inertia from fiscal benefits

State governments thought they could balance the fiscal benefits of electronic gaming machines (EGMs) against the known risk of harms. The roll out of EGMs in the 1990s in Victoria, New South Wales, South Australia, Tasmania, Queensland, Northern Territory and ACT, was invariably justified on State governments promising to manage the risk/benefit ratio. The known harms are what justified the need for government regulation of gambling to protect and they are what categorises gambling along with alcohol and tobacco as ‘dangerous consumptions’ (Orford 2009).

Politicians such as former Victorian Premier John Cain could see the potential harms and steadfastly refused the machines.

Under pressure from the collapse of financial institutions Pyramid and Tricontinental in Victoria, the impact of the 1990 recession, Premier Joan Kirner capitulated and she was quickly followed by Premier Jeff Kennett who embraced the revenue from gaming machines and the Crown Casino monopoly in Victoria. It is interesting to note that upon leaving office those two individuals and ex-Premier’s of Queensland and South Australia and the previous owner of the Crown Casino (Mr Lloyd Williams) have all expressed some regret regarding the introduction of EGMs into local communities, admitting that they did not anticipate the harms caused by this form of gambling and its roll-out into casinos and clubs and pubs in the community.

Nor did they or successive governments that have enabled further expansion of the industry, including increasing the number of EGMs and tables at casinos, anticipate the on-going gains to State budget coffers brought by EGMs or States’ growing dependency on gambling tax revenue. Even if growth has slowed, expenditure (gaming losses) continues to rise.

We are now in a position where State governments are themselves so dependent on gambling revenues, that regulatory efforts to address the harms reported in the media on a daily basis, fall on deaf ears at State/Territory government level. Far from being ‘one of the most regulated industries’, much of the regulation is ineffective in reducing or preventing known harms. This is because reducing harms would reduce revenue because revenue relies disproportionately on problem gamblers. As an illustration, if casino, club and hotel EGMs account for 62.2 per cent of $19 billion of gambling revenue, this equates to $11.82 billion on 2008-09 figures. Based on the conservative estimate adopted by the Productivity Commission in 1999 and reiterated in its latest report (2010, p. B.25) that problem gamblers contribute 42.3 per cent of this revenue, this equates to $4.9 billion that is derived from EGM problem gamblers - a sum that governments and the industry are loathe to risk losing.

While governments are so distracted by the need to protect budget revenues, the gambling industry has secured access to the political process at the highest levels and such light touch regulation, that expansion of gambling has persisted basically unchallenged.

State-level initiatives are pitched to protect and even expand revenue from gambling. One example is Victoria’s auctioning of EGMs prior to 2012 when the Tattersall’s/Tabcorp duopoly comes to an end; amidst its declaration of the publicly meaningless but potentially lethal standard of 10 EGMs per 1,000 persons. This seemingly benign distributional rule (decided as an outcome of a state review of regional caps on the number of electronic gaming machines), will assist the gambling industry to relocate post-2012 into greenfields suburban...
locales that meet their marketing segment analysis. Gambling will infiltrate outer fringes of capital cities where families are heavily leveraged in terms of household dept and vulnerable to the costs of peak oil and rising interest rates. The 10 per 1,000 rule will make it difficult and expensive for local councils to oppose applications.

State government pollsters know that even though electorates want governments to do something about gambling – other issues like health, education and jobs, determine votes. (Election of Nick Xenophon as an Independent to the Upper House in South Australia on a ‘no pokies’ platform and to the Senate in 2007, are the exception.) State/Territory governments say they listen, but they know they will invariably not be punished at the ballot box exclusively on a gambling policy vote. So they maintain the dual standard of rhetorical concerns and commitments to ‘harm minimisation’ or ‘responsible gambling’ policies – as long as these make no dint on gaming tax revenue. Examples of ineffective ‘harm minimisation’ measures include the introduction of clocks, lights, regional caps on machine numbers, variations to opening hours – except the ban on smoking in venues; which in any case was introduced as a public health measure23.

State/Territory governments are aware that gambling and in particular EGMs, target disadvantaged communities, result in multiple harms and threaten social, cultural and economic community sustainability. They know that gambling products and practices threaten consumer safety; especially with the way that Australian EGMs are configured (i.e., with multiple lines of play, note acceptors and near-by ATMs located in gambling venues and the capacity for gamblers to spend in excess of $12,000 in one hour) (Productivity Commission, 2010, p. 20).

The pragmatics of state government politics put the three or four-year electoral cycle above longer-term national sustainability, public health and consumer protection issues.

States by their ‘light touch’ approach to regulation, industry monitoring and reporting have enabled the industry to grow and prosper, largely immune from public scrutiny. The gambling industry has had access to commercial information that has enabled it to position and test products in high yield markets with little regard for adverse community impacts or harm reduction interventions.

Those outside the industry have been in a position of information deficit, with regard to venue-based data on gambling losses that could then be correlated with localised detrimental community impacts and low levels of localised community benefits (other than wages for employees) going to local communities.

Some of the most disadvantaged areas in Australia according to the SEIFA index are also those with the highest per capita gambling losses and the highest density of EGMs (see earlier comments and Australian Institute of Primary Care 2006).

In the decade to 2000 in Victoria, gambling increased 143.6 per cent. The Victorian local government area (LGA) of the City of Greater Dandenong is a case in point, as one of the most disadvantaged areas in Australia on the SEIFA and other indexes (see Case Study 1). In the second example, three other Victorian LGAs, one urban disadvantaged (Hume), and two from disadvantaged rural communities: La Trobe and the City of Greater Bendigo, illustrate the extent of gambling losses since the roll out of localised gaming machines in 1992/3 and the current high per capita expenditures, which continue unabated (Hancock 2009).
2.2 Case Study 1: City of Greater Dandenong (Victoria)

In Victoria, the Gaming Machine Control Act permitting the introduction of electronic gambling machines (EGMs), was proclaimed in 1991, and in June 1992 the first gambling machines commenced operation. In the succeeding nine years, the number of gambling machines in Victoria increased to almost 30,000 (including Crown Casino); while in Melbourne’s City of Greater Dandenong, their number rose to a peak of 1,184 in 2000, before declining to the level of 1,078 in 2006/07.

In 2008/2009, $121 million was lost to electronic gambling machines in the 16 gaming venues in Greater Dandenong – equivalent to $1189 per adult (and an increase from $1,093 per adult in 2006/7). This is nearly eight times the rate of gambling losses of $152 per head in wealthy local government area, Boroondara, As Pointed out by Dandenong City Council: ‘Where gambling losses are considered in terms of average weekly income in the localities where they are incurred, this disparity becomes even more stark. Average gambling losses per adult in the wealthier suburb of Boroondara were the equivalent of just over one working day’s income for the average resident of that city, while losses in Greater Dandenong were equivalent to the income earned in nearly sixteen days by the average resident. Since gaming machines were introduced into Dandenong in 1992/3, $33,000 per household totalling over $200 million has been lost (City of Greater Dandenong 2007, 2010).’

This case could readily be replicated in all other States in Australia (excluding Western Australia) with lower socio-economic areas having the highest number and density of gaming machines, the highest losses per capita and thereby paying higher rates of tax to state Treasury’s than wealthier areas.

2.3 Case Study 2: Hume, La Trobe (Valley) and the City of Greater Bendigo Local Government Areas (LGAs) (Victoria)

All three LGAs feature high on both disadvantage indexes (SEIFA) and on EGM revenue.

The cumulative losses to gambling in these areas since 1992/3 is astounding: $995m in Hume, $618m in the La Trobe Valley and $521m in Bendigo. These funds have come out of vulnerable communities and flow into the pockets of the gaming operators Tattersall’s, Tabcorp, hotel owners, clubs, the broader gambling industry and the Victorian government.

The average losses per adult in 2007 ($887 in Hume, $861 in La Trobe and $581 in Bendigo) are in themselves reprehensible and conceal the magnitude of losses of individual problem gamblers and the unmeasured impact on families, children and the community. Between them, these three areas have over 500 EGM machines. Each machine in Hume earned $117,000 per year (with those in Bendigo earning about $87,000 and in La Trobe $70,000). Clearly these revenue figures establish the flow of funds out of vulnerable and disadvantaged communities. This points to the need for intervention to redirect leisure and recreational opportunities in ways which do not put household finances of low income areas at risk and that build community cohesion and reward enterprise.
Table 2.1
EGM gambling impact in selected disadvantaged areas

<table>
<thead>
<tr>
<th>Venues: 2007</th>
<th>Hume City</th>
<th>La Trobe City</th>
<th>Greater Bendigo City</th>
</tr>
</thead>
<tbody>
<tr>
<td>EGMs: 2007</td>
<td>14</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>EGMs per 1000 Adults: 2006/2007</td>
<td>7.3</td>
<td>11.1</td>
<td>6.7</td>
</tr>
<tr>
<td>EGM Gaming Losses 2006/2007</td>
<td>$98.1m</td>
<td>$45.9m</td>
<td>$43.5m</td>
</tr>
<tr>
<td>Losses per Adult 2006/2007</td>
<td>$887</td>
<td>$861</td>
<td>$581</td>
</tr>
<tr>
<td>Cumulative Losses since 1992/3 (2007 dollars)</td>
<td>$995m</td>
<td>$618m</td>
<td>$521m</td>
</tr>
<tr>
<td>Cumulative Losses per Adult since 1992/3 (2007 $)</td>
<td>$8,998</td>
<td>$11,598</td>
<td>$6,966</td>
</tr>
<tr>
<td>Percentage Change in Losses in year 2006/2007</td>
<td>3.7</td>
<td>4.9</td>
<td>1.9</td>
</tr>
<tr>
<td>Percentage Change in Losses - adjusted for Inflation</td>
<td>1.7</td>
<td>2.9</td>
<td>-0.1</td>
</tr>
</tbody>
</table>


Gambling research demonstrates that gambling has infiltrated communities and has leached billions of dollars out of some of the most vulnerable and disadvantaged communities, where gaming machines outside casinos tend to be concentrated. Those billions flow out of communities to private corporate interests and to governments.

2.4 Casinos have been under-researched

While the community accessibility of gambling and in particular poker machines, is a major source of negative community reaction, Australia’s 13 casinos also need scrutiny on issues of secretive deals with State governments, incentives offered under loyalty schemes, community reach and marketing to potentially vulnerable groups (subsidised bus tours and promotional activities to attract senior citizens and country people) and problems associated with excessive drinking and gambling and 24 hour opening. Casinos’ 24 hour accessibility has brought with it problems associated with violence, crime, money laundering and calls to emergency assistance, now being reported on a regular basis. Controversially, the Productivity Commission (2010, p. 23) has recommended that casinos should keep their current exemptions from certain cash restrictions and should be exempt from the recommended daily limit of $250 on ATM/EFTPOS withdrawals; and exempt from the requirement that payouts over $300 be made by cheque.

Governments use gambling revenue to fund the arts, sport, hospitals and community building – which amounts to a redistribution from the most disadvantaged to middle Australia. This is one reason why gambling has for a long time, been seen as a regressive tax. After almost 20 years of intensified gambling – especially poker machines and casinos – the harms of gambling and the unfairness of governments using regressive forms of taxation, are now widely recognised. Despite this, State governments have opted for “business as usual”, because they cannot see past their dependence on gambling revenue. This dependence renders them ‘co-producers’ with the gambling industry deriving mutual benefit from gambling expenditure. The amount lost annually by players (net gambling expenditure) in Australia is over $19 billion. This exceeds the level of household savings. If we lost less money on gambling or diverted a significant proportion of expenditure to consumer durables including expenditure on household items, on children and families, industry sector multipliers confirm that this would generate far more jobs.
3. The need for a new model

3.1 A national approach to ensure consumer protection and community sustainability

This section contrasts the informed choice ‘business as usual’ model with the Public health/consumer protection model and proposes a new National Gambling Risk and Protection Model.

3.2 Critiquing the dominant model

This paper proposes an alternative model to the dominant ‘informed choice’ model that is commonly applied to gambling by policy makers. The informed choice model focuses on the individual and misrepresents problem gamblers as minority exceptions who are weak addicts who lack will-power – rather than as citizens in need of consumer protection from products that are harmful. It implies that people who gamble choose to do so and that they must bear the consequences of their actions. Individualising “the problem” diverts attention from government’s responsibility to re-regulate gambling and to view gambling within its broader systemic context (Hancock 2009).

The informed choice model argues “Responsible gambling” is based on giving gamblers information, assisting them with pre-commitment (players setting limits on their gambling) and offering counselling/treatment for those who develop gambling-related problems. The focus on giving information to consumers ignores questions of who produces the information, why it is produced and whether it is in fact helpful in preventing or mitigating harm. The informed choice model overlooks the fact that clear guidelines are needed on the type and quality of consumer information that must be produced and supplied.

As in the recent Productivity Commission (2010) report on Gambling, this approach sometimes acknowledges harmful product design and the need to modify gaming machines. But the focus on individual choice and opt-in precommitment, is at odds with the need to examine gambling products and environments that are harmful; thus pointing to the need for re-regulation of gambling environments and products; alongside player monitoring as recommended in this report.

More critically, the informed choice model is a “hybrid” public health model that draws on the communicable diseases model of public health, which leaves out crucial elements of a genuine public health and consumer protection approach (Hancock 2009). This is epitomised by the focus on “harm minimization” rather than “harm elimination and prevention”. We are advised to accept a balance of risks, weighed against the claimed benefits under a blinkered economic model of “net community benefit”. There is a search for one-stop answers – the Productivity Commission says if pre-commitment (players setting limits) is successful, we may not need their recommended brakes and safety measures on gaming machines.

Governments and the gambling industry promote the informed choice model because it implies all that is needed for “responsible gambling” is to inform and educate individual players to be more responsible. Players will be the ones responsible for modifying their behaviour – rather than limits and re-regulation of gambling products, environments, supply chains, access to cash and credit, gambling platforms and new technologies. The industry proposes a similar strategy to address binge drinking and the violence that often results from
such behaviour. But neither government nor the community accepts that simply efforts to modify behaviour, while necessary, will be sufficient.

Under the informed choice business as usual model it is assumed that:

- individuals choose to gamble but need more appropriate information- hence, once informed, they are assumed to make an ‘informed choice’ to spend time and money gambling;
- reflecting medical model approaches, problem gamblers are defined as individuals who are “sick or ill”;
- the chief focus is the individual pathology of problem gamblers as measured by DSMIV, SOGS, the CPGI or other problem gambling screens;
- gambling is legitimate entertainment for the vast majority and there is only a small number of problem gamblers;
- typical interventions focus on problem gamblers’ treatment and counselling services;
- treatment and prevention target problem gamblers but lack identification of risk groups or population prevention;
- this model approximates a “hybrid public health” model in that it does not adequately prevent or circumvent harms and neglects re-regulation of venues, gambling environments and harmful design features of gambling products; and
- in terms of regulatory models, government is co-producer of gambling (co dependent with the industry on revenue) leading to “light touch regulation”, which is concentrated on game probity, return to player within the approved range, individual and premises licensing and gambling tax returns to government – which essentially amount to “business as usual” (Hancock 2009).

An example of an ineffective harm minimisation strategy (and therefore irresponsible policy setting designed to have virtually no impact on revenue), is the introduction of gaming machine shut downs for a certain number of hours, which have been implemented in the hours of the morning when hotels and clubs are either closed or patronage is non-existent (e.g., 4.00 am until 8.00 am).

The Informed Choice Model is consistent with the industry-promoted Reno model. This model, promoted by the gaming industry body, The Australian Gaming Council, proposes that responsible gambling ‘rests upon two fundamental principles: (1) the ultimate decision to gamble resides with the individual and represents a choice, and (2) to properly make this decision, individuals must have the opportunity to be informed’.

The Reno model extols a diverse range of interventions designed to promote consumer protection, community/consumer awareness and education, and access to treatment, with the emphasis on assisting those gamblers who already have gambling-related problems (Blaszczynski, Ladouceur and Shaffer (2004, p. 311).

The shift to market models emphasising personal or individual responsibility and “choice” – the model of informed choice – implies a level playing field that frequently overlooks the barriers to exercising choice for some people, whose structural disadvantage puts up barriers to choice. Sometimes the triggers for problem gambling constitute vulnerabilities that put people at risk of harm: divorce/separation, loneliness, recent bereavement, lack of social supports, limited local recreational outlets, retirement, relocation, workplace stress, shiftwork, job loss/unemployment and mental health issues.
Former Deputy Prime Minister Brian Howe (2007, p. 19-20), in the book, *Weighing Up Australian Values: balancing transitions and risks*, observes that ‘(s)structural changes in our society have made it easier for people to become isolated and excluded’ … ‘transitions’, to use Schmid’s term, carry an element of risk both for individuals being affected by change and for society as a whole. … social policy should be about working with people to anticipate ‘risk’, so that they can manage periods of change in their lives more effectively.’ Howe argues that investing in transitions will help peoples’ lives be more productive, rewarding and satisfying. Underpinning this investment is prevention and the public health precautionary principle.

*We need to move on from the informed choice ‘business as usual’ model to a model that current research/evidence points to in order to achieve adequate public protection from risk and harms.*

### 3.3 A public health model

Government needs to champion an alternative *National Gambling Risk and Protection Framework*, grounded in public health and consumer protection – within a broader social ecology or ‘whole of system’ model. Previous efforts at developing a public health model for gambling have fallen short (Korn 2000; Korn, Gibbins and Azmier 2003; Korn and Shaffer 1999). A public health model reinforces the need to reduce accessibility and environmental exposure to products that are designed to entrap the vulnerable. It reinforces the responsibility of governments - local, state and especially the Commonwealth – to intervene to protect consumers, citizens and communities from the harmful effects of gambling as it is currently configured.

This model is underpinned by a commitment to good governance – transparency, accountability, community involvement in decision-making, monitoring/audit/review, consumer redress and independent research. Under this model, there is a clear role for the Commonwealth government to use the evidence we now have on the harms of gambling and to intervene with laws and regulations that protect Australians from known harms.

Under a Public Health/Consumer Protection model, the focus is shifted ‘to the entire spectrum of gambling behaviour and not just on those with difficulties’ (May-Chahal 2007, p. 48).

When attention shifts to the group, the faulty mechanism is seen to lie, not in the individual but in the arrangements and structures to which they are subject. Attention is focused on common factors linking behaviour to social arrangements. A public health policy approach to gambling provision and the community-wide impacts of gambling needs to be:

- Population based;
- Concerned with social and economic organisation;
- Multi-factorial and multi-causal;
- Recognise dynamic relationships which change over time;
- Concerned with promoting health as well as treating disease;
- Identify activities or provisions that promote or dissipate problems;
- Identify preventative strategies which minimise harm (May-Chahal et al 2007, p. 48).
Under a public health approach, consumer protection is a priority driven by questions about product safety, the regulation of gambling venues and the protective measures taken. Government “re-regulates” in favour of consumer protection regulation.

A genuine public health model emphasises research and action on the social determinants of health and well-being, gambling impact monitoring and evaluation. This model is underpinned by the precautionary principle, emphasising risk avoidance and risk reduction (prevention); with government as public interest protector.

An over-arching risk and prevention strategy locates the entire population along a continuum of gambling risk, with appropriate interventions differing for different levels of risk/problem, thus differentiating “risk” from “problem gambling”. It offers prevention and treatment on a continuum from brief interventions (for example in primary care or community counselling settings) to intensive intervention (treatment).

This model takes a Population Approach to risk avoidance and risk reduction (i.e., targets all gamblers and not just those identified as having problems). The public health approach engages with all potential and actual interests to act up-stream to prevent risk and harm.

Under this model, a whole-of-system approach is needed that embraces:

- product (safety/regulation);
- venue (responsibility);
- industry obligations (host responsibility and duty of care);
- regulatory oversight (data monitoring);
- independent research (integrity);
- evidence based policy; and
- independent audit/monitoring.

**Figure 3.1**

Problem Gambling Pathway

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Source: Ontario Problem Gambling Research Centre (OPGRC) Problem Gambling Pathways and Protective Factors Model (www.gamblingresearch.org)
As shown in Figure 3.1 a public health approach emphasises risk avoidance and risk reduction rather than focusing just on those who are already harmed. This involves:

- upstream (prevention) and downstream measures;
- protection of consumers from social and economic harms caused by unsafe gambling; and
- impact analysis and social determinants of health, e.g. Nova Scotia smart card pilot.

As shown in Figure 3.2, player vulnerabilities exist on a continuum from risk factors (erroneous cognitions, risky practices, preoccupation with gambling), to harms that come from impaired control, negative consequences of gambling and persistence. Risk is categorically different from harms and requires different strategies and interventions.

**Figure 3.2**

The Public Health Model

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As shown in Figure 3.1 a public health approach emphasises risk avoidance and risk reduction rather than focusing just on those who are already harmed. This involves:

- upstream (prevention) and downstream measures;
- protection of consumers from social and economic harms caused by unsafe gambling; and
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**Figure 3.2**

The Public Health Model

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This ‘whole of system’ focus embraces gambling products, individual, community, industry, and government influences; gambling products in interaction with players; responsible regulation with onus of proof on product safety, upstream and downstream measures, the need for protection of consumers from social and economic harms, the need for impact analysis and collection of evidence on the social determinants of health. This could be done via player tracking systems monitored by an independent consumer protection authority. Drawing on Dickerson’s (2004) work, this constitutes an “impaired control” model (not an addictions or informed consent model).

### 3.4 Using re-regulation to reinforce a public health approach

Currently State and Territory regulation constitutes ‘light touch regulation’ concentrating principally on:

- licensing-venues, persons, operators-‘routine regulation’;
monitoring ‘abnormal’ events;
monitoring return to player (89-91 per cent) i.e., legal compliance;
revenue/tax monitoring;
the use of CMS central monitoring system to account for, collect and distribute gambling revenue; and
the use by industry of CMS data on venue, machine, game, locality, platform and loyalty tracking data (mainly casinos) for EGM/market refinement for maximal returns.

The regulation of the gaming industry is essentially process-driven rather than impact-driven. In a comparative study of the social impacts of gambling, SACES (2009) reported that once certain process requirements were met, a decision by the regulator to approve an application or licence tended to be based on subjective assessments. They concluded that “the definition of social impacts, the measurement of social impact and the tests applied to gaining licence applications relating to social impacts are subject to a high degree of subjectivity” (SACES, 2009, p. v).

In contrast, responsible re-regulation based on a public health model would focus on:
- adopting the precautionary principle with new re-regulation and legislation;
- promoting socially responsible gambling by using legislated conditions of licence to operate strategically to protect consumers and gaming industry employees from risk and harm;
- mandated codes of practice (sanctions for the equivalent of ‘serving the product to intoxicated persons’);
- impact analysis – location and accessibility to gambling matter;
  - mapping geospatial patterns of gambling (losses and help-seeking),
  - tracking of particular product impacts via CMS system;
- adopting the Australian Institute of Health and Welfare (AIHW) framework, based on a public health model that comprises determinants of health, health status and health system performance (where ‘health system’ takes on a broad meaning).

A new National Gambling Risk and Protection Model would encompass a national universal database across all forms of gambling overseen by an Independent National Gambling Research and Probity Commission, with audit and performance targets for States/Territories to:
- protect communities from gambling saturation;
- protect vulnerable consumers and youth from gambling;
- monitor a national player tracking data base across all forms of gambling;
- render gambling precincts and systems safe from gambling-induced harms, violence, extortion and crime under threat of closure;
- monitor gambling venue/provider responsibilities under mandated codes of practice;
- protect gambling industry employees from higher than average rates of problem gambling; and
- reduce State treasuries’ proportionate reliance on gambling revenue.
4. The need for Commonwealth intervention

4.1 What is the Commonwealth’s role in gambling?

Governments have two major policy levers with regard to gambling: taxation and regulation (Smith 2000). To date, there has been little Commonwealth role in gambling taxation and regulation -except to return GST revenues to the states and control over spread betting and online gambling.

The operation of gambling has been largely a State/Territory jurisdictional matter, while the expansion of gambling has taken different forms, with some States adopting a more contested market and others like Victoria, imposing a State-sanctioned duopoly between two providers; Tattersall’s and Tabcorp within a State-wide limit on the number of gaming machines.

The Commonwealth Treasury benefits from the gambling industry in terms of personal income tax paid by those employed in the gambling industry; corporate taxation on machine producers (e.g., Aristocrat) and suppliers of gambling (e.g., TAB, Tabcorp), through regulation of internet gambling (excluding currently outlawed pokie and casino games) and through general taxes. All gambling-derived GST is transferred back to the States; minus costs to the Commonwealth.

The Commonwealth policy reform role has been restricted to the Productivity Commission (PC) 1999 Inquiry, the current 2009/10 (more limited) Inquiry, some ATM initiatives; and recent national reforms to protect minors under 18.28

The small advances and the failures of the “harm minimization” efforts of the last decade are well documented by Banks (2002, 2007) and the Productivity Commission final Report (2010) and in submissions to the PC Inquiry.

The lack of action since the 1999 Productivity Commission Inquiry and State’s reluctance to “bite the hand that feeds them”, reinforce the need for the Commonwealth to lead a national (not a fragmented State/Territory) approach to reform. Setting up a national framework and expecting States to follow has not resulted in effective change since the last inquiry and there is little to demonstrate the current; fence-sitting’ inquiry will impact significantly on the States.

As argued by Australian economist Julie Smith (2000, p. 121) ‘it may be difficult to identify in whose interests governments are acting when they regulate gambling’, with some regulation serving to protect state revenues and to enlarge gambling markets ‘through active promotion and marketing’. Smith notes “there are a number of reasons why governments will be drawn into promoting gambling by their fiscal stake in the industry, bringing out the intrinsic conflict with their role as ‘social guardians’” (2000, p. 121).

4.2 The nub of the problem is states’ dependence on gambling-related revenue – a regressive tax

Cutbacks in federal funding to the states during the Hawke and Keating governments forced state and local governments into heavier reliance on own-source revenue – rising from 20 per cent of national taxation in the 1970s and 1980s to 24 per cent in 1997/98 with a 27 per cent fall in the real value of general revenue grants since the mid 1980s (Smith 2000, p. 123-124).
The ‘high watermark’ Engineers’ case\textsuperscript{29} effectively closed off major revenue options for the States’ which coincided with changes to indirect taxation (Williams 1999, p. 16). With limited sources of revenue apart from Commonwealth grants, States have had a constrained choice to rely on gambling and other property taxes, payroll and motor vehicle taxes (Williams 1999).

Jurisdictionally, gambling has been seen as a matter for States to determine. The Commonwealth government-commissioned report by the Productivity Commission (1999) exposed many of the inter-state anomalies and raised important questions at a national level concerning the net (dis)benefit of gambling; especially following the roll-out since the 1990s of electronic gaming machines.

Table 4.1 shows the proportionate reliance of States/Territories on gambling taxes; averaging nationally 10.6 per cent in 2008-09, with some States much higher.

Table 4.1
Proportion of revenue coming from gambling taxes, 2008/09

<table>
<thead>
<tr>
<th>State</th>
<th>Tax revenue $m</th>
<th>Average gambling tax revenue per adult</th>
<th>Tax revenue as proportion of total own-state tax revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>1 610</td>
<td>297</td>
<td>9</td>
</tr>
<tr>
<td>Victoria</td>
<td>1 625</td>
<td>391</td>
<td>13</td>
</tr>
<tr>
<td>Queensland</td>
<td>931</td>
<td>283</td>
<td>11</td>
</tr>
<tr>
<td>South Australia</td>
<td>393</td>
<td>312</td>
<td>11</td>
</tr>
<tr>
<td>Western Australia</td>
<td>237</td>
<td>141</td>
<td>4</td>
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<td>Tasmania</td>
<td>92</td>
<td>241</td>
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<tr>
<td>Northern Territory</td>
<td>74</td>
<td>460</td>
<td>12</td>
</tr>
<tr>
<td>ACT</td>
<td>52</td>
<td>191</td>
<td>5</td>
</tr>
<tr>
<td>All states</td>
<td>5 014</td>
<td>302</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: Productivity Commission (2010, p. 2.11)
\textsuperscript{a} Total state tax revenue does not include local government tax revenue or goods and services tax (GST) revenue.
Sources: State and territory budget papers; ABS (Population by Age and Sex, Australian States and Territories, June 2009, Cat. no. 3201.0).

State governments have become increasingly reliant on gaming machine revenue (player losses) for substantial proportions of their revenue; with Victoria relying on gambling taxation (player losses) for 13 per cent of its revenue, Northern Territory 12 per cent, Queensland and South Australia each 11 per cent and New South Wales for 9 per cent according to the Productivity Commission (Table 4.1, above).\textsuperscript{30}

A review of Australian Gambling Statistics data (to 2005/06) revealed that real per capita gaming expenditure (where gaming refers to EGMs, lotteries, games of chance) as a proportion of total per capita gambling expenditure (includes racing) increased in the twenty year period 1986/87 to 2005/06 from 62.9 per cent to 86.8 per cent. On 2005/06 figures, for the $17.5 billion losses from all sources of gambling, gaming accounted for $15.3 billion. In the same period expenditure per capita on racing declined from 37.1 to 12.2 per cent in 2005/06 (Office of Economic and Statistical Research 2008). The growth in total gambling is dependent on real per capita increases in expenditure on gaming machines as shown in Figure 4.1. This is well recognised by each State Treasury and the gambling industry, so that both parties are reluctant to initiate measures that would effectively reduce the number of machines, reduce potential hours of play, restrict large note denominations that are able to be
inserted into machines, restrict ATMs in gaming venues, or any initiatives that might reduce the aggregate turnover and hence gaming machine losses.

**Figure 4.1**
**Gambling Expenditure: Australia - Total Real Expenditure Per Capita**

![Gambling Expenditure: Australia - Total Real Expenditure Per Capita](source)

*Source:* Australian Gambling Statistics (AGS), 2005/06 (Office of Economic and Statistical Research 2008).

**Figure 4.2**
**Gambling Revenue: Australia - Real Total Government Revenue**

![Gambling Revenue: Australia - Real Total Government Revenue](source)


Government revenue from all forms of gambling follows a very similar path and illustrates the real challenge faced by state governments in reducing their reliance on gaming revenue. In that same twenty year period (1986/87 to 2005/06) real total government revenue from all
gambling doubled to total $4.69 billion, and the contribution from gaming increased from 64.8 per cent to 91.8 per cent (see Figure 4.2). The share contributed from racing declined from 35.2 per cent to only 7.9 per cent (AGS 2005/06). To the extent that participants who gamble at and/or on the races are different to those who play gaming machines, then there has been a shift (expenditure and tax mix shift) in the source of revenue ‘from the punter to the gamer’.

The share of government revenue collected by each state from all gambling has also changed in the 20-year period. The monopoly on gaming machines previously enjoyed by New South Wales was obviously eroded with the roll out of gaming machines in other States so that New South Wales' share of total government gambling revenue declined; from 48.7 per cent to 32.4 per cent, Victoria increased its share of total government gambling revenue from 26.5 per cent to 31.1 per cent, South Australia from 5.2 per cent to 8.7 per cent and Queensland from 10.3 per cent to 17.8 per cent (Office of Economic and Statistical Research 2008).

The reliance on gambling taxes and in particular revenue from EGMs is cause for concern at a national level. It is cause for concern because so much of the revenue is derived from problem gamblers and derived from those who are more economically and socially vulnerable, including communities that have the least economic resources and highest levels of disadvantage. It is reasonable to ask whether such reliance has reached a tipping point.

4.3 Justification and precedents for Commonwealth intervention

At the Commonwealth government level, the previous Howard government showed little interest in addressing gambling issues, apart from commissioning the Productivity Commission inquiry in 1999. More positively, the Rudd Labor government came to the 2007 election with a commitment to wean State Treasuries off their addictions to gambling revenue and initiated the current Productivity Commission inquiry. The previous Prime Minister Kevin Rudd has described pokies taxes as “fools’ gold” and has stated: ‘I know we have a problem and I know that in partnership with States and Territories we can work through an agreed analysis on the social impact and what to do about it’ (Corbett 2008).

In the Senate, Independent Senator Nick Xenophon, The Greens and Family First, have also pledged to address gambling problems and some Coalition members express concerns; such as Barnaby Joyce former Shadow Minister for Finance and Debt Reduction.

State-initiated harm minimization measures have not worked. State governments have claimed social benefits for various forms of restriction on gambling markets, such as more recently, caps on the number of gaming machines at State and at regional or local government levels; but these claimed benefits remain unproven. In fact State-wide or local/regional caps are ineffective policy levers because most areas are over-supplied with machines, while machines are able to be used more intensively (as in Victoria, where the duopoly providers have been able to move high tech machines into disadvantaged areas, resulting in increased machine revenue – losses – despite local regional caps on the number of machines). The removal of a few machines or even hundreds (as has occurred in South Australia where removal will not be completed for another 20 years at the current rate) has no impact on the continued growth in revenue. The simple reasons for this are: (a) existing over-supply, and (b) machines are currently used to only 25 to 30 per cent of their capacity, rendering communities vulnerable to marketing aimed at increasing the number of players and time spent on machines.
Despite a long list of “harm minimization” measures implemented by the States over the last decade, net gambling expenditure (player losses) continues to rise. Much of this revenue flowing into State Treasuries and the gambling industry as profits, comes from areas of low socioeconomic status and from people who can ill-afford these high levels of expenditure on gambling. Gambling may appeal to certain demographics but this does not mean they ask for it or that high stake, high density gambling is beneficial to those communities.

We argue there are opportunities available at the national level, which now need to be invoked to pull back the harms caused by gambling to individuals, families and communities, and ultimately to protect Australia’s cultural integrity and social sustainability from a “normalization” of gambling. By this we mean that gambling has edged out other leisure pursuits from local venues such as shifting music out of hotels to make room for EGMs, changing the ethos of local cultural hubs. Similarly, if women find clubs with EGMs safe, warm and welcoming, then this precludes development of safer places with similar attributes.

*There are precedents for Commonwealth intervention.* As in numerous areas of public policy, the justification for Commonwealth intervention is found in the disparate approaches adopted by different States/Territories, where leaving it to the States/Territories does not work, and in cases where there is national benefit of a co-ordinated and consistent approach. Council of Australian Governments (COAG) has adopted a national coordinating role in an increasing number of policy areas and the High Court in the *Work Choices* case held that the Commonwealth could validly use the corporations power to drive a national policy agenda in an area previously held as a State government jurisdiction. This was hailed as a decisive ruling that sets a clear precedent for the Commonwealth government to use these powers in different areas (Stewart and Williams 2007).

### 4.4 State differences in level of taxation

There may also be a cogent argument in terms of State/Territory differences in the level of taxation of gambling and ‘under-taxation’ of the industry, given its profit levels and the now-acknowledged indirect and cost-shifting impacts of gambling harms onto government services and communities. The Productivity Commission final report on Gambling (2010) documents differences between the States/Territories. States vary in the amount of taxation levied on gaming machines. For example, in South Australia, machines are taxed at 75 per cent, which has resulted in operators ‘farming’ the machines more intensively. In contrast, Victorian tax concessions granted to clubs and exploited recently by the expansion of EGM applications from sporting and AFL clubs, and of hotel proprietors transferring licenses to clubs, has granted an 8.3 per cent reduction on State gambling taxes on the assumption of the ‘community benefit’ of such operations. As pointed out in the Productivity Commission report at Appendix E, on Tax Concessions, the lack of reporting and lack of available data on the income and expenditure of not for profits makes estimates of the cost of concessions difficult: (costed at $518 million for New South Wales; $77 million for Victoria; $121 million for Queensland and $8 million for South Australia and not withstanding other concessions on land tax and payroll tax granted to not for profits (Productivity Commission 2009, E-9)). (See also Appendix 1 of this report)
### 4.5 The “under-taxation” of gambling as a justification for a new national gambling tax

Historically, Smith argued that ‘a degree of under-performance in the amount of tax collected by states from gambling was limited by interstate rivalry for gambling revenues (including Totalisator Agency Board (TAB) betting and ‘junket’ casino gamblers or where new forms of gambling reduce revenue of existing forms (Smith 2000, p. 124-5). She further argued this under-collection is rarely quantified yet represents a budgetary cost to State government tax revenue. She argued this amounts to “a substantial tax subsidy to some operators in the gambling industry”, for example the public ‘cost’ of tax breaks given to casino high rollers by State governments eager to entice business.32

Gambling compares poorly to other forms of excise: on 1995-97 figures, gambling ad valorem rates of taxation stood at 51 per cent compared with 89 per cent on beer, 234 per cent on spirits and 212 per cent on tobacco; and 120-130 per cent on cars and petrol (Smith 2000, p. 134).

Smith also contends that the level of taxation from gambling (‘assessed by comparing total gambling tax revenue with gambling tax activity’) has decreased from a peak in the mid 1980s of 7 per cent (or 44 per cent of expenditure) to 4-5 per cent on turnover and 34 per cent on expenditure in 1995/96 (2000 p. 127-8). Smith estimates gambling revenues would be about $80 million or 2 to 3 per cent higher if 1986/87 taxation rates had been applied in 1996/97 (p. 128) and attributes this to the shift from higher taxed lotteries to lower taxed casinos and gambling machines. This, she argues, constitutes a situation of States’ regulatory policies resulting in ‘diminishing marginal returns to revenue from the recent expansion of gambling activity, even if total revenues are increasing’ (Smith 2000, p. 128). A further example of foregone revenue to the states is the deal on GST, which defines rebates on losses by casino high roller’s as ‘winnings’ and exempt from GST (Smith 2000, p. 132).

Smith’s analysis thus calls into question current levels of gambling tax (given its community costs) and the exemptions and tax concessions granted to the gambling industry by State governments. It also calls into question the assumption that gambling taxes, as a “voluntary tax” on discretionary recreational spending, are equitable or “fair” or whether they constitute a form of ‘tax reform avoidance’ and a ‘tax-shifting strategy by the middle class’, away from more progressive but fairer sources of state tax revenue. It has been accepted for some time that gambling taxes are regressive (Williams 1999) and that they rely on a continuing supply of a relatively small number of high spending (high losing) customers, frequently from low income groups in particular geographic locations. Hence, the argument that one third to one half of gambling revenue is contributed by the gambling of about 200,000 gamblers and their families (also argued by Smith, 2000, p. 131). Nor do States redistribute gambling revenue back into the communities from whence it came. Small amounts are siphoned into community support funds and gamblers help and other treatment but the majority of funds go into general revenue for other expenditures; and even disbursement of Community Support Funds lacks transparency as in Victoria.33

As Chapman et al (1997) observed “[t]he rates of taxation on gambling machines, agreed to be most addictive and producing the highest rates of problem gambling, are relatively low”. (cited by Smith 2000, p. 135). Thus there is potential for gambling taxes to be restructured and for the tax rates to reflect better the real or underlying costs – but to acknowledge that such reforms are unlikely from State governments. Nor has state government regulation been
effective in curbing the most damaging forms of gambling and regulators are seen as too close to industry and too limited in their activities.

4.6 Cost-shifting to the Commonwealth to service the costs of gambling

Another consideration is the need to address considerable cost shifting from State governments (which allow unsustainable levels of EGM losses) and costs incurred by the Commonwealth in treating the impact of gambling, for example in the area of Medicare subsidised GP visits. A survey conducted by SACES as part of the Western Australia-Victoria community impact study found that Victorian GPs are four times more likely to identify patients who present with issues associated with problem gambling than their counterparts in Western Australia (i.e., Victoria 17.7 per cent compared with Western Australia 4.3 per cent) (SACES 2005, pp. 116-120). As part of this comparison it is important to note that EGMs in Western Australia are restricted to the casino and that problem gambling as reflected in prevalence rates is lower in Western Australia (0.7 per cent) than Victoria (2.14 per cent) (Productivity Commission 1999). Cost shifting via Medicare-funded general practitioner visits of this magnitude indicates considerable costs to the Commonwealth.

There are other examples of States cost-shifting to the Commonwealth in relation to gambling impacts such as expenditures on Indigenous financial counselling (given considerable Indigenous involvement in problem gambling in the Northern Territory) and the costs of gambling-related divorce; another Commonwealth jurisdiction. The SACES study found that ‘the proportion of clients with gambling problems attending financial counselling was 34 per cent in the “EGM state” of Victoria and South Australia compared to 20 per cent in Western Australia’ (SACES 2005, p. v).

While trends in discretionary expenditure are not related to “cost-shifting” they nevertheless give rise to concern at the fiscal stimulus level, that is, the individual and household level. The Commonwealth is aware of the frequent “spikes” in gambling losses following the economic stimulus grants to households by the current government, and under the Howard Government similar “spikes” followed tax rebates, tax cuts, and hand-outs (family tax benefit, baby bonus) and one-off hand outs to pensioners prior to several elections. That significant amounts of these grants and handouts were spent on gambling is ultimately the choice of individuals. However, the intent of government is that funds would have been spent on retail goods, food, household or children’s items that benefit the individual, the family and the community providing much larger economic multipliers.

It is well documented that gambling is a very low employment generator per million dollars spent (SACES 2008: approximately 3.2 jobs compared to retail of 6.3 jobs per million of turnover). This confirms overseas evidence on the displacement effect of gambling and the longer term public costs it brings. US economist Professor John Kindt, of the University of Illinois argues for every job casinos create, 1.5 jobs are lost and that every $1 contributed to taxation by gambling, costs the taxpayer $3 to address the socio-economic costs of gambling to society (Kindt 2005). It is important to know whether similar estimates are reliable and applicable to the casino industry in Australian States, but this is precisely the type of research, which is not funded by State gambling regulators.
4.7 Commonwealth as a driver of the missing national picture

Measurement and monitoring of the social and economic costs of gambling needs to be addressed at a national level including:

- **EGM machine numbers:** The national impact of 198,300 machines in Australia (PC, 2010, p. 6) and the ramped up losses from those machines is considerable and one of the highest in the world. The Commonwealth government should be concerned to reduce the number of EGMs in Australia and to determine where they are causing most harm and most need to be removed/reduced.

- **State governments’ reliance on gaming tax (losses) revenue and the inefficacy of harm minimisation measures** as demonstrated by growth in revenue (losses) despite ‘harm minimisation’ and ‘responsible gambling’ approaches announced by governments.

- **The impact of current state-based licensing arrangements on detrimental social and economic community impacts of gambling,** especially the concentration of machines in disadvantaged areas and regional cities and towns and the lack of sustainability of current gaming industry/government arrangements.

- **Safety concerns with gaming products as they are currently configured.** The type of machines being used and their features that lack adequate consumer protection (see in particular Livingston and Woolley 2008).

- **The lack of national venue-specific monitoring data** (and transparency of same) on gaming losses by socio-economic area and by venue (see in particular Livingston and Woolley 2008) and in respect of such data, the need for an independent national institute to collect, monitor and report on such data.

- **The need for a national approach to the issue of Industry duty of care and host responsibility issues as part of the ‘license to operate’** and the lack of transparency of industry information e.g., venue based revenues and expenditures, changes in stake etc.

- **The lack of a national plan to down-scale the number of gaming machines and to regulate their effects on poor and disadvantaged communities.** In the event of a down-scaling of community based machines, the need to consider issues related to the need for community clubs in particular, to identify new more sustainable revenue raising strategies.

A key question is whether 10 per cent national average reliance of State Treasuries on gambling taxes (and more in some states) is unsustainable because this is based on taking revenues from disadvantaged communities and vulnerable people via platforms, products and venues by/which they are not afforded adequate protections. A frequent observation in regard to various state taxes and charges is that near to election time, state land taxes and taxes on second properties are reduced in response to the urgings of a vocal minority while the rate of gambling taxes remain unchanged. This only serves to increase the regressivity of gambling taxes overall, and because gambling taxes are not hypothecated, but go into general revenue, it is difficult to see how it can be claimed that disadvantaged communities receive proportionate benefits in return.
5. Policy initiatives and recommendations

5.1 An action plan for Australian national gambling governance and re-regulation

This paper argues that it is important for the Commonwealth government to take a stronger leadership role on gambling reform. We argue Australia needs new policy and institutional architecture and an integrated National Action Plan for Gambling Governance and Re-Regulation. This should be underpinned by a commitment to public health, prevention and early intervention. The Action Plan draws on international best practice and on Australian gambling research evidence established over the last decade.

The reform agenda should encompass re-regulation by the national regulator, the Australian Consumer and Competition Commission (ACCC), implementing new consumer protection and license-to-operate mandatory codes of practice for the gambling industry and with the ACCC liaising with the Australian Crime Commission (ACC) in relation to fraud and money laundering. The Productivity Commission (PC) has gone some of the way with its recommendations on gaming machines, pre-commitment and its acknowledgment of a greater role for the Commonwealth. But the PC report has overly long time frames for reforms (for example, waiting six years for universal pre-commitment phase-in appears overly sympathetic to the industry), it lacks an integrated national plan and does not address the politics of gambling reform. With 10 years of inaction since the 1999 Productivity Commission report, it is time for the Commonwealth to act.

The Commonwealth needs to drive this agenda because State/Territory governments have proven they are too reliant on gambling taxes to institute reforms that will tackle the harms caused by gambling. The States have become too reliant on funds that are generated by vulnerable groups and individuals, by unsafe gambling products and gambling industry practices that need to be reined in. Gambling has become a structural issue that urgently needs a national policy and program response.

In setting out a National Action Plan for Gambling Governance and Re-Regulation, we consider both the powers of the Commonwealth and the scope for intervention to achieve national standards in consumer protection and product safety, industry re-regulation, probity monitoring and nationally coordinated research.

In Figure 5.1 (shown earlier as E-1) we summarise the proposed Commonwealth National Action Plan. This outlines the objectives of reforms, the key actions and the new/reformed institutional architecture for Commonwealth gambling governance and re-regulation.

How might this re-direction in policy be funded?

Other calls on State/Territory and Commonwealth funding (health, education, defence) and State’s reliance on gambling revenue, have contributed to the inertia on gambling reforms. What is innovative about this paper is that we argue the national gambling reform agenda can be revenue-neutral. Funding can be sourced from gambling itself – to finance new initiatives that assist states to re-structure their tax-revenue streams, that are safer and that help protect Australians from gambling-related harms. In broad principle, this entails a wind-back in the more harmful gaming machine and casino forms of gambling; to the point where it may again be considered truly recreational – as claimed by the gambling industry.
Figure 5.1
National Action Plan for Gambling Governance and Re-Regulation

Commonwealth Government National Action Plan

**OBJECTIVES**

- New Grants Commission formula: fund states to reduce gambling tax dependency
- National consumer protection and product safety standards
- Commonwealth corporations power (governance and re-regulation)
- National research and probity

2 per cent levy on gambling industry

- 2 per cent levy on gambling industry
- New generic national consumer laws*
- National player tracking system re-regulation licence to operate**
- Independent research and probity audits***

**NEW REFORMS**

- Incentives for states 3 years
- New National Lottery Commission
- ACCC consumer protection regulation
- ACC: Australian Crime Commission

- New Independent Gambling Research and Probity Commission

Gambling consumer access to remedy for harm

**INSTITUTIONAL ARCHITECTURE**

- Incentives for states 3 years
- New National Lottery Commission
- Profits paid to National Gambling Fund

- New National Gambling Commission
- ACCC consumer protection regulation
- Gambling consumer access to remedy for harm

**Notes:**

* Recommended by Productivity Commission 2009.
** Re-regulation would include licence to operate, mandated industry codes of practice, employee duty of care, host responsibility.
*** Incorporate data from national player tracker system, new Commission to set research agenda, publication of research and publication of audit reports.
**** National Gambling Fund run as an independent charity.
R1: We recommend the establishment of a National Gambling Fund to be financed by 2 per cent levy on the gambling industry and a new national lottery.

These two components of a National Gambling Fund are set out below.

1. Revenue from a new Commonwealth tax of 2 per cent of net gambling revenue on the grounds of the under-taxation of the industry

Set at 2 per cent of net gambling revenue, a national levy on net gambling revenue would yield approximately $378 million annually (or 2 per cent of $19 billion player losses or profit on 2008/09 figures cited by the Productivity Commission, 2010, p. 7)\textsuperscript{35}.

A range of arguments can be put to justify increased taxation of the gambling industry at a national level. With public discussion focused on the principle of the Commonwealth levying super-profits taxes, we argue the gambling industry has profited exponentially and should be subjected to a new national tax that will be used to render gambling safer and to wind-back states’ reliance on regressive forms of taxation.

The history of exponential growth in gambling industry profits over the past 20 years demonstrates the moral and ethical justification for the new tax as a form of super profits tax. Currently, the gambling industry has exacted numerous tax and other concessions from State governments (and from the Commonwealth with for example, casino high roller exemptions from GST and tax concessions granted to clubs), with the public bearing the opportunity cost of such lost revenues. The reality of tax foregone provides an added economic justification for a new tax.

The Productivity Commission (2009) drew attention to the different tax treatment of casinos and clubs. The Commission posed the question of whether such concessions are merited:

*The Commission seeks views on the practicability of exempting casinos from draft recommendation 9.1 in relation to their high rollers and international visitors (Productivity Commission 2009, p. XLIX).*

The Allen Consulting (2009) report on “Casinos and the Australian Economy”, commissioned by the Australian Casino Association, draws attention to a range of inconsistencies in States’ taxation of gambling. It illustrates the potential for arguing the casino industry is under-taxed and suggests the opportunity costs of concessions given to high rollers and international VIPs are in need of review. Their report also observes that: “The casino tax rates imposed in Macau are higher than those average taxes faced by Australian casinos” (Allen Consulting, 2009, p. 91), the implication being that compared to a liberal gambling regime like Macau, Australia is losing out on casino tax.

With regard to State tax breaks given to clubs, the data on community benefit casts doubt on the tax concessions given to clubs and the overall low level of tax levied on gaming in clubs and hotels\textsuperscript{36}. With regard to clubs, there is an argument that state tax concessions are not necessarily justified (Livingston 2007) and that hotel and club claims to community benefit from gambling need to be re-examined; on the basis that their main claim to such benefit is employment. Employment should be regarded as a standard business cost rather than a special benefit to the community. With regard to jobs generated from gambling, we previously argued that gambling is a less efficient generator of job compared with retail and hospitality.
There is also the argument that because the public bears the costs of gambling-related harms, the gambling industry is under-taxed in terms of contributing to these costs. Public access to evidence on the gambling industry is thin on the ground; and a full cost analysis of taxation of gambling compared to other ‘dangerous consumptions’ such as alcohol and tobacco is lacking. The Allen Consulting (2009, p. 63) study concedes that gambling tax invites such comparisons37. As noted by the PC, on 1997/98 figures cited in its 1999 report, rates of taxation for gambling services were ‘lower than for tobacco, alcohol and petrol’ (PC 2009, p. 2.13). Clearly, taxes on dangerous consumptions such as these acknowledge the cumulative public costs of the harms that accompany legal access to such products. To date, the longer term costs of gambling-related harms to governments and the community, have largely remained hidden and unquantified. A full-cost recovery approach to gambling would justify an across-the-board additional national tax of 2 per cent.

2. Funding derived from establishment of a new National Australian Lotteries Commission

The second source of new revenue for the Commonwealth is via establishment of a new National Australian Lotteries Commission.

Lotteries have been shown to be one of the lesser harmful forms of gambling (PC, 2010, p. 2). They have a more effective tax rate than other forms of gambling (i.e., higher tax for a smaller amount of expenditure), and they are more efficient when owned by the government (Productivity Commission, 2009, p. 2.10). Even though lotteries have higher rates of participation, they feature much less frequently than EGMs or casino gambling in terms of per capita gambling losses and problem gambling. To illustrate this argument, the Victorian 2003 prevalence study (Australian National University 2004, p. 53) found that 60 per cent of Victorians took a lottery ticket and 43.5 per cent played at 1-3 times a week and 65 per cent played at least monthly. In comparison there are much lower participation rates for EGMs – 8.5 per cent played at least weekly and 30.5 per cent played at least monthly. However, in terms of expenditure the average expenditure on lotteries is less ($107 per capita in 2005/6) compared with much higher average per capita expenditure on EGMs (at $663 in 2005/6). (Australian Gaming Council 2008, p. 2). Moreover 84 per cent of problem gamblers in the Victorian survey nominated EGMs as their favourite form of gambling; and lotteries did not figure (ANU 2004, p. 92); data that is consistent with the findings of the Productivity Commission in 2010.

We therefore argue that revenue from a national lottery would be a more ‘sustainable’ form of gambling in terms of household expenditure.

A national lottery can be run on the model of other government-run lotteries. Successful models of government-operated lotteries can be found in the United Kingdom, where the National Lottery Commission38, funds community, heritage and parks initiatives from lottery revenue and Western Australia (an Australian model of a government-run lottery where all proceeds after costs go to community causes39). We propose that such a model be developed for Australia. This would help raise the revenue needed to assist the States in weaning themselves off other forms of gambling revenue.

It is proposed the first three years of revenue from both the new national gambling levy and new national lottery revenue be ear-marked for State gambling reliance reduction incentive payments from the National Gambling Fund, after which they could be re-directed to other public expenditure. This would entail using one less harmful form of gambling (i.e., lotteries) to down-scale state fiscal dependence on other, much more harmful forms (i.e., casino and
Risky business: why the Commonwealth needs to take over gambling regulation

EGM gambling). Such a scheme would assist in the transition for states to re-structure their revenue sources – but it would not be appropriate to compensate industry. In addition to these two major funding reforms to finance a National Gambling Fund, a range of other reforms are needed to address the incentives the States currently have to raise revenue from gambling and to provide greater protections to consumers.

In particular,

R2: We recommend modifying the funding formula used by the Commonwealth Grants Commission to ensure that state governments have an incentive to reduce their reliance on revenue from gambling related sources.

Section 96 of the Australian Constitution allows the Commonwealth Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’. The principle of Commonwealth transfers to the States is well established in view of Australia’s “vertical fiscal imbalance” whereby the Commonwealth collects more from Commonwealth taxation than it directly needs; and the States raise less than what they need. So the Commonwealth has considerable financial power over the states and has a number of fiscal equalisation measures for redistributing funds to the States/Territories – a matter of much vexation to states over the years. Section 109 also gives Commonwealth laws priority over state laws where they overlap.

The Commonwealth makes three broad types of payments to the States (based on 2009/10 figures):

- National Specific Purpose Payments (SPPs) ($25.8 billion);
- Three types of National Partnership Payments – project payments, facilitation payments and reward payments ($24.3 billion); and
- General Revenue Assistance, consisting mainly of GST payments ($41.8 billion).40

It is the last category, General Revenue Assistance which would be the source of adjustments to the Commonwealth Grants Commission formula for distribution of GST sourced payments to States/Territories (to be funded from the National Gambling Fund).

Such Commonwealth intervention would be consistent with the line of reasoning confirmed in the Work Choices High Court decision41 which reinforced a trend to Commonwealth intervention in national interest matters, and more generally, Australia’s ‘managerial federalism’.42

It is also consistent with the trend towards more directive interventions from the Commonwealth in line with ‘conditional federalism’.

The result is growing support for a modern form of the federation which might be described as ‘conditional federalism’. ‘Conditional’ in the sense that it should be maintained as a system of government so long as it meets the conditions necessary for an efficient national economy; also, because its operation should be regulated by ‘conditions’ imposed by the central government (Griffith 2009, p. 2 citing Anderson).

There is a role for COAG in the reform agenda, where it should be recognised that the Ministerial Council that deals with Gambling (and the ‘thin’ national research agenda) has not been effective in addressing issues of consumer protection or the reduction of harms from gambling. The COAG Reform Council, established in 2007, which reports to the Prime
Minister as Chair of COAG, could play a role in driving the Commonwealth vision on gambling.

The Council’s stated aims are to strengthen accountability for the achievement of results through independent and evidenced-based monitoring, assessment and reporting of the performance of all governments. (Griffith, 2009 p. 14).

The COAG website outlines a relevant task of the Council whereby it could be a vehicle for mediating the settings on State’s performance on gambling revenue reliance reduction and the compensation payments paid to the States. The Council could:

- independently assess whether milestones and performance benchmarks have been achieved by governments, under various National Partnerships, before an incentive payment is made to reward nationally significant reforms or service delivery improvements (the Council is responsible for assessments under six National Partnerships in the health and education sectors; and under the National Partnership Agreement to Deliver a Seamless National Economy, which includes 36 streams of business regulation and competition reform) (cited by Griffith, 2009, p.14).43

This would entail the Commonwealth initiating changes to the Grants Commission formula adding incentives for State governments to reduce their reliance on gambling taxes or suffer reductions in Commonwealth grants.44

The formula used by the Commonwealth Grants Commission to distribute pooled funds, is based on the previous five years data on movements in the relative revenue raising capacities of the States and the relative costs of providing services.45 For example, strong growth in the Western Australian and Queensland economies due to mining and resources resulted in those States being assessed as requiring less than average per capita distribution from the national pool of funds (Commonwealth Grants Commission 2008). The pool ($49 billion in 2006/07) is important to State budgets; constituting 71 per cent of funds provided to states by the Australian Government.47

The formula is re-assessed every five years, with the next reassessment due in 2010. To date, the formula for redistribution of funds has focused on measures of relative age, Indigeneity, wealth, degree of urbanisation and total population of states and the relative cost of providing services. New data has been incorporated on road length to accommodate costs of rural arterial roads.

There is potential for the formula to put a punitive weighting on state revenue derived from gambling as currently the formula includes both sources of revenue that might be considered progressive (stamp duty on conveyances, land revenue and payroll tax) and regressive taxation such as gambling. In the current formula, there is no consideration that regressive revenue such as gambling taxes rely for an estimated 40-60 per cent on losses from problem gamblers and generate increased use of hospital and medical (GP and other) services which involve a high degree of cost shifting to the Commonwealth.

How might funds be apportioned to the States?

Proxy measures of States’ progress in reducing the harms from gambling could include a formula based on a range of measures. These could include:

- reduction in the number of gaming machines at a State-level;
- reduction in gaming machine intensity (bet limits and hourly loss rate);
- reduction in State average per capita gaming and casino gambling losses;
• reduction in revenue evaluated as a result of harm reduction strategies (given that problem gamblers contribute an estimated 42.7 per cent of revenue);
• reduction in proportionate state-dependency on gambling-derived taxes (this could include Commonwealth limits on permitted revenue from different gambling types) and would cover the situation of the Northern Territory where internet betting agencies located in the Territory inflate total gambling figures.

R3: We recommend new national consumer protection and product safety standards.
A new national system of consumer protection would be advanced through modifying the national consumer protection laws to implement the Productivity Commission’s recommendations for a new national generic consumer law and a national universal player tracking/monitoring system used to monitor policy as well as venue-level interventions.

The Commonwealth needs to lead on:
• implementing a national generic consumer law in line with the Productivity Commission (2008) recommendations;
• declaring gambling a ‘nationally significant issue’ with regard to a new role for the ACCC as a tough, impartial, national regulator of gambling focused on applying the consumer provisions in the Trade Practices Act;
• having the MCCA (Ministerial Council on Consumer Affairs) implement a new national framework specifically directed to strengthening consumer protection in ‘dangerous consumptions’ products (alcohol, tobacco, gambling); addressing hours of availability, accessibility, licensing conditions, host responsibility to customers and duty of care to employees; and
• initiating a national inquiry into the hours of operation of non-casino gambling venues with mandatory 8 hour shut down and mandatory 6 hour shut down of casinos as a violence/alcohol harm reduction strategy; and to implement smoking bans in all areas including international high roller precincts as a public health provision. (This could be justified under the Productivity Commission 2008 consumer Policy Framework recommendations to use COAG as the mechanism for industry-specific consumer regulation) (2008. p. 3).

Currently, consumer protections in gambling are weak, easily circumvented and unenforced. Of relevance to gambling, the 2008 Productivity Commission Consumer Policy Review highlighted:
• ‘the perception in some quarters that consumer policy has been a low priority for the Australian Government’ (p. 32);
• the need to improve the consumer policy framework to assist and empower consumers, including disadvantaged and vulnerable consumers (p. vii), who may have increased in number (due to increased product complexity and demographic changes such as population ageing (p. 6);
• problems with the current system that point to the need for the Australian Government, through the Australian Competition and Consumer Commission (ACCC) to ‘be responsible for enforcing the product safety provisions nationally’ (p. 2);
• ‘The new law should include a provision voiding ‘unfair’ contract terms that have caused consumer detriment’ (p. 2);
‘Responsibility for regulating the provision of consumer credit and related advice by finance brokers and other intermediaries should also be transferred to the Australian Government as soon as practicable, with ASIC as the primary regulator’ (p. 3);

‘The consumer policy framework should efficiently and effectively aim to: ensure consumers are sufficiently well-informed’… , ‘ensure that goods and services are safe and fit for purpose’, ‘prevent practices that are unfair or contrary to good faith’, ‘meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage’, ‘provide accessible and timely redress where consumer detriment has occurred’ and ‘promote proportionate, risk-based enforcement’ (p. 13);

Differences across jurisdictions include where ‘catering for Indigenous consumers will be a greater issue’ (this is of relevance to the vulnerability of Indigenous people in casino gambling in the NT) (p. 13);

‘the intrinsic case for introducing a single national generic consumer law applying across Australia is therefore compelling’ a ‘first step in developing a regulatory regime that better matches the increasingly national nature of consumer markets and commercial arrangements generally’ (p. 19);

promotion of ‘a one regulator model’ (p. 20); where for nationally significant issues ‘intrinsically, there is no reason why an appropriately tasked and resourced national regulator could not effectively apply the new law at the local level’ (p. 21);

the need to review ‘unfair contract terms that cause material detriment to consumers’ (p. 35) and review unconscionability provisions in generic consumer law (p. 34), and redress mechanisms, as applied to gambling; and

generally, the need to address consumer redress mechanisms, better consumer information and education and enhanced consumer input into policy making (Fitzgerald et al 2008).

R4 We recommend the introduction of a range of new product safety standards to ensure that gambling consumers are protected from dangerous machines in the same way that automotive consumers are protected from dangerous vehicles.

The recent Productivity Commission Gambling Inquiry submissions 48 point to particular problems with poker machines. But as other forms of gambling approximate the platform for success in revenue-generation – continuous forms of mechanised gambling – then questions about consumer safety are also raised by racing, sports betting, some lottery products and contract for difference, which has escaped definition as gambling and is regulated under the Financial Services legislation.

The Productivity Commission final Gambling report (2010, p. 11.29-11.30) is strong on acknowledging the need to reduce the toxicity of gaming machines as currently configured and their recommendations include:

• a maximum bet of $1 per button push (or $120 per hour) for all machines (although the PC approves of exemption to machines in high roller rooms and in VIP rooms at casinos);

• a lower ($20) cash input (with high roller and VIP exemptions) (PC, 2010, p. 11.1);

Worryingly, it assumes that such reforms would be implemented by state governments; although past inaction casts doubt on this. Much of the discussion on new protective machine features is tentative.
Re-regulating poker machines to make a difference should go further than the Productivity Commission recommendations to include both machine and venue reforms:

- Banning note acceptors on gaming machines;
- Banning ATMs in gaming venues;
- Reviewing venue hours (mandatory 8 hour break/shut-down in clubs and hotels; 6 hours for casinos);
- Introducing compulsory smart cards (or form of universal ID) linked to independent Central Monitoring System; and restricting gaming machine use to pre-registered users;
- Slowing down the machines to a maximum loss of $100 per day;
- Introducing a compulsory 10 minute cooling off period after 1 hour of continuous gambling;
- Re-regulating casinos via mandated codes of practice (e.g., use CMS system for independent monitoring and player protection interventions); and
- Putting in place indicators that measure the costs of gambling impacts-suicide, crime, debt in the community etc.

A national system of consumer protection and new product safety standards need to be supported by reforms at the venue level and controls on interactive gambling.

R5: We recommend reform to the provision of gambling provider’s license to operate to ensure that gambling providers have both a duty of care to their customers and a duty of care to their employees. And, as part of a new money laundering and fraud prevention strategy, gaming licensees should be required to demonstrate that they have taken adequate steps to ascertain the probity of any funds being gambled.

Legislating Codes of Practice entails amending Commonwealth legislation to embrace operator license-to-operate to host responsibility to patrons and employer duty of care to gambling industry employees who are at high risk themselves for gambling problems.

This would entail using corporations law to re-regulate gambling services provider’s license-to-operate and duty of care to both customers (host responsibility) and employees (duty of care to employees wellbeing and safety).

Corporate Social Responsibility (CSR) has been the focus of several Australian parliamentary enquiries (e.g., the Parliamentary Joint Committee on Corporations and Financial Services 2006) and has come to encapsulate companies’ obligations to a wider range of stakeholders than shareholders. The community demands this and so the challenge of regulation is to respond to community expectations and avoid capture by vested interests. The Commonwealth needs to consider incorporating CSR reporting on duty of care and host responsibility into mandated legal corporate reporting obligations of gaming operators under national requirements including casinos and gambling in clubs and hotels.

Overseas jurisdictions have adopted CSR regulatory approaches aimed at consumer protection as part of corporate social responsibility, mandated codes of conduct and licence to operate.

Switzerland, as part of their licensing requirements has required casinos to actively identify and prevent problem gambling since 2000. Recently, New Zealand has taken proactive
steps incorporated into legislation. In New Zealand, statutory requirements under the Gambling Act 2003 (section 3) which took effect from 1 July 2004, require gambling providers to develop a policy for identifying problem gamblers and ‘take all reasonable steps’ to implement the policy to identify actual or potential problem gamblers, provide information and advice, issue exclusion orders (even to those who do not identify themselves as problem gamblers but about whom staff continue to have concerns and refuse to permit excluded persons into gambling areas during the period of the exclusion’ (Gambling Commission New Zealand 2007). Under New Zealand Operating Procedures, three means of identifying actual or potential problem gamblers include: casino staff’s use of the ‘casino signs’ for problem gambling’, third party notifications and self identification (Department of Internal Affairs 2007). Moreover the Gambling Commission (regulator) independently assesses casino Host Responsibility codes and audits compliance.

In Britain, the 2005 Gambling Act and Code of Practice operative from 1 September, 2007, (Section 2.3) requires licensees (hosts) to ‘take all reasonable steps to provide information on how to gamble responsibly and help for problem gamblers ’ (Gamling Commission 2007). Section 2.4 requires Licensees to ‘put into effect policies and procedures intended to promote socially responsible gambling’, which must include specific policies and procedures in relation to ‘a commitment to and how they will contribute to research into prevention and treatment of problem gambling’, ‘to public education on the risks of gambling and how to gamble safely’ and ‘how they will contribute to the identification and treatment of problem gamblers’ (Gambling Commission 2007, 27).

Holland Casino, the sole national government casino operator in The Netherlands, has implemented a Visitor Registration System, an Incident Registration System (with prompt detection of possible problem gamblers based on frequency of visits and on the floor observation) and a CCTV system of up to 250 cameras per casino (Holland Casino 2007).

International research has clarified the efficacy of venue managers adopting host responsibility and practical ways of identifying problem and at risk gamblers and of intervening as part of host responsibility expectations of a licence to operate (Alcock 2002; Delfabbro et al 2007; Kalajdzic 2007; Sasso and Kalajdzic 2007; Schellinck and Schrans 2004; 2005; 2007; Hancock, Schrans and Schellinck 2008).

R6: We recommend the ban on interactive gambling should be maintained and the National Finance Regulations used to ban ATMs and access to finance (cash or credit) within any gambling venue including casinos. The Financial Services Act should be used to address problem gambling concerns with the rising popularity of ‘Contract for Difference’.

The Commonwealth government should:

- use National Finance Regulations to continue the ban on interactive (internet casino, poker gaming and gaming machine) gambling until player protection systems are proven;
- ban ATMs and access to finance (cash or credit) within any gambling venue including casinos; and
- address problem gambling concerns with regard to on-line player safety with Contract for Difference (sometimes referred to as spread betting) regulated under the Financial Services Act).
Internet gambling is still a relatively small proportion of net gambling expenditure; with online gambling accounting for approximately 6 per cent (Productivity Commission 2009, 2.12). Although estimates are difficult to make, they suggest that about 4 percent of the population (around 700,000 Australians) played online casino games in 2008 (Productivity Commission, 2010, p. 15.16). The Productivity Commission has made the surprise recommendation to liberalise interactive gambling on the argument that it is happening anyway (Australians are accessing internet gaming sites) and that legalisation would afford players with more protection and prevent crime/fraud (curiously, the same arguments used previously when gaming machines were introduced). Moreover, they argue on ‘cost-benefit grounds’ there are ‘persuasive arguments to exempt online gambling providers from bans on credit cards’ (Productivity Commission 2010, p. 23). The Commission argues that pre-commitment and measures used to offer safety for telephone betting and internet wagering could be used for gambling more generally; but did not provide cogent evidence of how current systems deliver consumer safety.

With regard to international competition rules, Australia has the capacity to restrict interactive gambling. With regard to Australia’s obligations under the General Agreement on Trade in Services (GATT):

> Australia has not made any market access or national treatment commitments on gambling services under the General Agreement on Trade in Services (GATS). In other words, Australia has retained the capacity to restrict the access of foreign suppliers of gambling services, or to discriminate against them in favour of domestic suppliers. The only obligation of the Australian Government under GATS is that it must extend most-favoured nation treatment to any World Trade Organisation (WTO) Member (with the exception of New Zealand) (National Office for the Information Economy (NOIE) 2001, p. 33).

Overturning Australia’s internet gambling ban could put consumers at risk. It would seem prudent to establish first, the effectiveness of player protection systems on other gambling modes and on forms of gambling currently permitted by internet, before changing the current arrangements. One such provision is to adopt the UK Lottery Commission player protections of monitoring of patterns of play (e.g., detecting chasing losses) and placing limits on time and wallet load limits spent gambling on the internet.

**R7:** We recommend the establishment of a new Independent National Gambling Research and Probity Commission funded by the National Gambling Fund.

The Commonwealth should take the lead in introducing a national player tracking system to identify abnormal playing patterns for all forms of gambling. Such a player tracking system would enable individual player protections as well as providing a new source of data to monitor the extent of problem gambling. Such data would assist in both policy development and fraud detection.

In Australia, patterns of player activity on different forms of gambling is currently only available for casino and other loyalty tracking systems which are corporately owned, voluntary, largely confined to individual states and hidden from outside scrutiny. What is needed is a national player tracking data system which enables individual player protections and which can be used to monitor location, gambling type, amounts being gambling for construction of geo-spatial gambling data (e.g., showing the amount gambled in disadvantaged areas and on what forms of gambling) for feed-back to regulators and policy makers and for use in fraud detection.
The proposal for a national player tracking system goes further than the Productivity Commission’s recommendation for ‘a universal player commitment scheme for gaming machines’,\textsuperscript{51} which in our view, should be extended to all forms of gambling and all platforms.

Some Australian States have implemented trials of card-based play offering various player protection features. Canada has advanced this technology and the Saskatchewan Gaming Corporation has implemented player protection intervention strategies based on player tracking systems, with interventions for identified problem and ‘at risk’ players (see Techlink 2009). Nova Scotia has led the world in its 2006 pilot of universal player tracking technology paired with opt-in pre-commitment, self exclusion and other provisions – currently under independent evaluation.\textsuperscript{52} The on-line networking of all EGMs in New Zealand was not prohibitively expensive and had the unexpected by-product of increasing revenue by one third.

The Independent National Gambling Research and Probity Commission should be responsible for the new national anti-fraud and anti-money laundering strategies including, \textit{inter alia}, analysis of the data collected from the proposed national player tracking system. The Commission should have a Memorandum of Understanding (MOU) with the Australian Crime Commission to ensure that gambling data is utilised in the fight against organised crime.

National anti-fraud and anti-money laundering provisions should include:

\begin{itemize}
  \item[i)] capacity to link consumer protection surveillance of national universal ID based national gambling machine and player tracking monitoring system across all forms of gambling, to be housed by an Independent National Gambling Research Commission;
  \item[ii)] enforceable links to national mandated codes of conduct related to venue obligations to ascertain the probity of funds being gambled; and
  \item[iii)] Use of player tracking data to detect crime and money laundering
\end{itemize}

\textbf{Independent research} is essential to monitor reforms to the industry, for nationally consistent policy and to keep abreast of developments in the industry and consumer protections.

Specifically, in regard to gambling research, the need for well-resourced, independent gambling research was emphasised in the Productivity Commission 1999 report and the lack of action on this recommendation was criticised in Chairman Gary Banks’ two updates (2002, 2007). The Commission’s 2010 final report reiterated these criticisms and was critical of the research agenda of Gambling Research Australia (PC, 2010, p. 39).

The state and national research agenda lacks independence\textsuperscript{53}, and research effort and funding has increasingly been directed towards non-contentious issues. State regulators control the National Gambling Research Strategy agenda and they control state research programs as well, so they are able to influence both state and national research. In short, the national research agenda has become impoverished and lacking in independence and relevance.

On the principle of independent oversight, the Canadian researchers Smith and Rubenstein (2009, p. 4-5) reinforce:

\begin{quote}
  In view of the complications related to offering commercial gambling, an independent commission with powers akin to those of an Ombudsman or Provincial Auditor seems a
\end{quote}
suitable way to administer a gambling regulatory regime that is free of conflicting objectives and interests; open, consultative and informed by empirical research; and conducted in the public interest (Smith and Rubenstein, 2009, p. 4-5).

R8: We recommend an MOU between the Australian Crime Commission and the (new) Independent National Gambling Research and Probity Commission regarding the use of player tracking database to detect instances of money laundering and other ‘signs’ of criminal activity.

According to the Parliamentary Joint Committee on the Australian Crime Commission (2009), this would appear to be good practice:

(1)ntelligence has become a crucial law enforcement tool. Mr Neil Jenson, CEO of AUSTRAC, highlighted the importance of financial intelligence: financial intelligence is critical to the fight against organised and serious crime. It is valuable for both operational and strategic purposes. Information assists law enforcement to uncover previously undetected criminal activity and connections among crime groups as well as to identify emerging patterns and threats.

AUSTRAC plays a vital role in supporting the ACC and other law enforcement and security agencies through supplying the financial intelligence expertise needed for this approach. AUSTRAC’s ability to link financial data and cross-match information assists in detecting suspicious activity as it is evolving (Parliamentary Joint Committee on the Australian Crime Commission (2009. 5.93).

With land-based venues, staff can observe patrons and log details or potential ‘signs’ of money laundering. Given the comments above from the Crimes Commission, liberalising internet gambling may put consumers further at risk; rather than as claimed, making it easier to protect them.

Current AUSTRAC notification requirements for reporting of transactions over $10,000 may also need review as might the reported capacity of note acceptors on some mechanised baccarat machines to define each note as a separate bet (thus enabling untracked amounts of cash to be fed into machines).

With the increasing sophistication of technology, liberalising interactive gambling may put people more, rather than less at risk. As stated by the Australian Crime Commission (ACC) (2009) report on Organised Crime in Australia:

- Money laundering is a diverse and complex criminal activity used to disguise the origin of criminal profits. It involves the placement of illicit profits into the legitimate economy to conceal its origins. It is a major component of virtually all criminal activity and affects the Australian community in numerous ways (p. 8).
- Money laundering can include processes involving transfers to financial institutions in countries where Australian law enforcement has limited visibility, transfers to other asset types which cannot be easily traced, gambling and the use of money remitters. The ability to effectively and discreetly launder money is a key capability for criminal networks. In Australia, only a small proportion of the estimated proceeds of crime are currently detected, restrained and recovered. More and more organised crime groups are becoming involved in money laundering, either directly or by employing the services of facilitators with specialist knowledge (p. 9).
- A wide range of techniques are used by criminal groups within Australia to launder illicit funds. ... Other money laundering methods involve professionals who are employed by criminals to work around the regulations and controls in the regulated financial sector. These facilitators use their specialist knowledge and expertise to exploit legal loopholes or find opportunities for criminals. Other criminals may use a number of people to carry out small transactions or cash smuggling to avoid attracting law enforcement attention (p. 9).
• Many serious and organized criminals are increasingly using new technologies to support their activities. Communications technology helps provide new targets and improved security for criminals (p. 10).

• Technology and fraud technology can underpin a range of organized criminal activities. It can be used to disguise communication between criminals, create false identities or mask a criminal’s true identity. This can facilitate frauds through the collection of key

• Identity or banking details by persuading people anywhere in the world to provide financial details, or to carry out financial transactions on behalf of criminals. It can also be used to seek illicit profits directly through computer hacking or via other communication devices. Computer vandalism and viruses may also be used to disrupt business. Rapid changes in how people use communications devices are creating numerous opportunities for criminals. This sets an ongoing challenge for law enforcement to maintain and develop the skills and expertise needed to effectively counter technology-enabled criminal activities. Second Life, MySpace, YouTube, Facebook as well as increased use of internet banking and wireless technologies are changing how people communicate, and creating opportunities for criminals to infiltrate and influence vulnerable members of society (p. 10).

• The use of legitimate activities by organized crime groups may disguise criminal activity and making it difficult for law enforcement, government and industry to identify the criminal component (Australian Crime Commission. 2009. p. 14-15).

5.2 Conclusion

In the context of the global financial crisis, significant household debt, rising interest rates, significant unemployment and financial hardship impacting on Australian communities, there is a need for Commonwealth intervention to protect vulnerable Australians from the harms caused by gambling and to institute new obligations on venues and licensees/operators as a matter of national priority. But there are political, economic and structural barriers to reform.

We argue gambling needs to be treated as a special consumer ‘dangerous consumption’, in view of the harms it potentially causes and the mounting national evidence of harms and their avoidability – given appropriate regulation. While the States and Territories have control of gambling, the costs to the community will continue to grow.

Gambling has become a structural adjustment issue where Australia’s federalist structure and the divisions of responsibilities between the Commonwealth and the States/Territories has become a sticking point, and a barrier to reform. This publication is about why the Commonwealth should act – because the States have their hands in the till.

This paper proposes an alternative, that the Commonwealth lead a brave, new approach to addressing the harms caused by gambling and that this can be done via adoption of a National Action Plan on Gambling Governance and Re-Regulation underpinned by a public health risk and prevention strategy. This would use levers within the Commonwealth jurisdiction including fiscal incentives to reduce State/Territory reliance on regressive gambling taxes. The Commonwealth needs to lead on re-regulating gambling nationally via changes to consumer protection laws and use of Commonwealth financial, ACCC, Australian Crimes Commission and corporations legislation; and giving incentives to the States via the Grants Commission.

The Commonwealth could introduce a renewed national-Commonwealth-led approach through the Council of Australian Governments (COAG). COAG has committed State and Federal governments to a united commitment to social inclusion and improving outcomes for
disadvantaged (and all Australians) in education, literacy and numeracy, health, housing, jobs and social infrastructure. Other initiatives include the National Partnership on Early Childhood Education Reform, National Partnership on Literacy and Numeracy (NAPLAN), National Partnership on Low Socio-Economic School Communities, and the 2008 COAG agreement to six ambitious targets for Closing the Gap between Indigenous and non-Indigenous people.

There is a strong argument for using COAG to drive national compliance within a new national consumer protection National Action Plan for Gambling Governance and Re-Regulation. A Commonwealth regulator could respond to local issues from a national perspective (the Productivity Commission commented on the ‘capacity of national dispute resolution services – such as the Banking and Financial Services Ombudsman – to deal with local issues’ (Fitzgerald et al 2008, p. 21).

We argue the Commonwealth government needs to intervene to protect the ‘common-wealth’ or public interest by using its overarching powers and by exercising its jurisdictional responsibility in consumer protection, corporations powers, longer-term fiscal sustainability, health and well being, and reduced costs of gambling harms to governments and the community. There is wide recognition that Australia’s federalist structure (where gambling has been seen as a state responsibility), has led to States doing little that would jeopardise their reliance on gambling taxes.

In setting out a National Action Plan for Gambling Governance and Re-Regulation, we consider both the powers of the Commonwealth and the scope for intervention to achieve national standards in consumer protection and product safety, industry re-regulation, fraud and money laundering reduction, probity monitoring and nationally coordinated research.
References


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Appendix 1

Evidence of under-taxation of the gambling industry

A range of arguments can be put to justify increased taxation of the gambling industry.

The Productivity Commission 1999 report argued that in 1997/98 rates of taxation for gambling services were lower than for tobacco, alcohol and petrol. Public access to evidence on the gambling industry is thin on the ground and a full cost analysis of taxation of gambling compared to other ‘dangerous consumptions’ such as alcohol and tobacco is lacking. But even the Allen Consulting (2009) study commissioned by the Australian Casino Association concedes that gambling tax invites such comparison. There is some emerging evidence of the lack of inter-state consistency in gambling taxation, that taxes have decreased for some forms of gambling and there are grounds for arguing that the opportunity costs (i.e., lost revenue) from concessions to the gambling industry need to be examined.

The Productivity Commission describes how clubs and casinos are treated differently in terms of taxation:

- ‘in NSW, clubs do not pay revenue taxes on the first $1 million of EGM revenue and are refunded their GST contributions for up to $200 000 of EGM revenue. (Productivity Commission 2009, p. 2.22)

- Clubs generally face lower gambling taxes than hotels, and often have greater entitlements to EGMs. A possible rationale for the treatment of clubs is that they are not for profit, ‘member-owned’ bodies that might have stronger incentives to address consumer problems associated with gambling than for-profit businesses.

The Commission also received many submissions from clubs — or those supported by club gambling revenue, stressing their role in sustaining local communities — through sponsorship of local community and sports groups.

However, the arguments for the present concessional treatment of clubs are not straightforward, because these concessions involve forgone tax revenue.

Government could have used this forgone revenue to fund services valued by the whole community and not just those selected by club management, a point also made by McMillen (sub. 223, pp. 13–14).

- Casinos are also subject to varying rules in relation to taxation and machine caps— but they represent a much smaller share of aggregate spending, are more often aimed at different customers (high-rollers and tourists) and, due to their destination nature, are not as ubiquitous as hotels and clubs (Productivity Commission 2009, 3.12).

Working from Victorian data published on the Department of Justice website, Livingston argued on the basis of analysis of 559 statements representing 523 hotel and club venues on 2005/06 data that:

It is clear that the category ‘employment expenses’ represents by far the single greatest area of expenditure, providing 67.7 per cent of hotel claims, 58.8 per cent of club claims, and 62.8 per cent of all claims. For clubs, the second most significant area of claimed expenditure was for fixed assets (13.8 per cent), and for hotels the second largest category by proportion was that of ‘direct and indirect costs’ (16 per cent). The third largest category for clubs was ‘direct and indirect costs’ (10.9 per cent) and for hotels ‘fixed assets’ (14.7 per cent). For clubs, the combined categories of ‘gifts of funds’, ‘sponsorships’ and ‘gifts of goods’ amounted to 4.1 per cent of the amounts claimed, and for hotels, 0.7 per cent. Overall these categories amounted to 2.6 per cent of the amounts claimed. The categories of ‘voluntary services’ and ‘volunteer expenses’ totalled 7.4 per cent of claimed club community benefit expenditure and effectively 0 per cent of hotel claims. Overall these categories accounted for 4.2 per cent of claimed community benefit. (Livingston 2007, p. 4)
The categories of ‘employment expenses’, ‘fixed assets’, ‘subsidised activities’ and ‘direct and indirect costs’ amounted to 88.1 per cent of club community benefit claims, 99.2 per cent of hotel claims and 93.2 per cent of all claims (Livingston 2007, p. 4).

In Victoria, EGM tax is set at one third of net revenue (including the GST component); with hotels paying an extra 8.3 per cent contributing to the Community Support Fund (which clubs are exempt from on the assumption of benefits to members and the community). The data on community benefit casts doubt on the tax concessions given to the industry and the level of tax.

As pointed out in the Productivity Commission report at Appendix E, on Tax Concessions, the lack of reporting and of available data on the income and expenditure of not for profits makes estimates of the cost of concessions difficult: (costed at $518 million for New South Wales; $77 million for Victoria; $121 million for Queensland and $8 million for South Australia and not withstanding other concessions on land tax and payroll tax granted to not for profits (Productivity Commission 2009, E-9).

With regard to clubs, there is an argument that state tax concessions are not necessarily justified (Australian Broadcasting Commission 2010; Campbell 2010; Livingston 2007; Saulwick 2010) and that hotel and club claims to community benefit from gambling need to be re-examined.

In Victoria, reports of a joint venture between Australian Leisure and Hospitality Group (ALH) and Woolworths has exposed deals to operate over 660 poker machines in 10 venues registered as clubs; thus gaining the lower club tax rate of 25 per cent rather than the 33.3 per cent tax rate for commercial operations. ‘Under the deals, ALH owns the venues and leases out the pokies area to the clubs. It then charges the clubs rent and a management fee to operate the machines. But Victorian Commission for Gambling Regulation documents, which are publicly available, indicate the lion's share of the revenue goes to ALH. But in many cases the detailed accounts of rent, management fees and dividends paid to the clubs, as they relate to pokies revenues, are not available or are kept secret by ALH and the VCGR (Campbell 2010).’

In New South Wales, Lateline (ABC 2010) focused on the $3.3b New South Wales poker machine clubs industry and questioned whether the $1.2b of claimed national social contribution or ‘social work’ by clubs is exaggerated. With New South Wales clubs’ claims based on figures it put to IPART (the Independent Pricing and Regulatory Tribunal), the CEO of IPART argued that ‘around 90 per cent of that figure would be hard-pressed to qualify as social work’.

Paul Benhet argued clubs spend on marketing three to four times the amount donated to community causes. The program queried whether the claimed New South Wales clubs’ claimed community benefits of $811 million a year are justified when upon examination, $676 million is for goods and services provided to club patrons, such as discounted food and drink, sporting facilities and room hire. More realistically, $44 million was estimated as the value of volunteer hours provided by club members and staff and only $91 million of the total was directly donated to charities and sporting groups in 2007. Betty Con Walker, a former senior New South Wales Treasury official argued the $91 million the clubs say they give to charity ‘needs closer scrutiny’ and is closer to $30 million. She argued on the basis of government budget papers, that the costing of the club industry concession at $600 million for
this financial year is a cost to government of revenue foregone for expenditure on areas like health and education.

Not for profit organisations, registered as clubs gain exemption from income tax earned on revenue from members. The Henry Tax Review is said to be raising concerns about the income tax concessions given to clubs; resulting in unfair competition between clubs and local private firms. ‘Clubs, many of which have developed multimillion-dollar property portfolios and recreational facilities, do not pay income tax on money earned from members. Sports clubs are also exempt for income from non-members’ (Saulwick, 2010).

The Allen Consulting (2009) report on *Casinos and the Australian Economy*, draws attention to a range of inconsistencies in States’ taxation of gambling and also illustrates the potential for arguing the casino industry is under-taxed, and that the opportunity cost of concessions given to high rollers and international VIPs is in need of review.

Casinos represent 17 per cent of total gambling expenditure and ‘in 2007/08, gaming activities comprised 78.2 per cent of total revenue, followed by food and beverage sales’ (Allen Consulting, 2009, p. 9). In 2007/08, revenues from EGMs comprised 41 per cent of total casino gaming revenue ($1299 million). Table gaming revenue made up 40 per cent of casinos gaming revenue ($1271 million) and international VIP program players comprised 18 per cent of revenue (Allen Consulting, 2009, p. 11). ‘Gaming expenditures by international VIP program players totalled $553 million in 2007/08. It is estimated that casinos spent a further $65 million to attract these players and their entourages, who are estimated to have spent $121 million in Australia on non-casino goods and services’ (Allen Consulting 2009, p. 14).

Their report made the following points:

- **Casinos in Victoria, Queensland, ACT, Western Australian and the Northern Territory (SkyCity Darwin only) 7 are subject to a flat tax according to player characteristics. These jurisdictions charge a higher tax rate on gaming revenues from regular players than on revenues from international VIP program players (p. 76).**

- **South Australia, Tasmania and the Northern Territory (Lasseters Casino only) apply a flat tax to table gaming. In South Australia and the Northern Territory the tax revenue base is gross revenue from table gaming. In Tasmania the revenue base is specified as gross profit, however the definition specified in the Gaming Control Act 1993 (Tasmania) is the same as gross revenue56 (p. 76)**

- **As with table gaming tax, States and Territories differ in their approaches to EGM tax. Western Australia, Queensland and the ACT impose EGM tax according to player characteristics, charging higher rates for regular players than international VIP program players. In 2007/08, taxes on international VIP program players collected $56.2 million (p. 76).**

- **Victoria imposes a super tax on table gaming revenue, with different rates applying according to player characteristics. Crown Melbourne is subject to a super tax of 1 per cent per each $20 million of gaming revenue from regular players above $500 million up to a maximum of 20 per cent on player loss over $880 million. For international VIP program players, the casino is required to pay a super tax of 1 per cent for each $20 million of gaming revenues over $160 million, up to a maximum of 12.25 per cent on gaming revenues over $380 million (p. 77).**
In the majority of states, EGM gaming revenues are subject to the highest tax rates in hotels, followed by clubs, and then by casinos. However in most jurisdictions, the EGM tax rates imposed on hotels and clubs are marginal progressive tax rates based on gaming revenues such that some venues will pay lower rates of tax than casinos (p. 77)\(^5^7\).

Some States and Territories impose other taxes on gaming in casinos that are not categorised in the previous sections. These include the reintroduction of the New South Wales high roller program, and taxes on international VIP program players in the Northern Territory and the ACT. Star City’s international VIP program was reactivated on 1 January 2006 after having ceased in 2001 due to its risky nature. Under an agreement with the New South Wales Government, a non-refundable instalment of $3 million is paid in January and July of each year, and an additional 10 per cent duty applies to gross gaming revenue in excess of $60 million (p. 77).

However, the regressive elements of the GST remain in casino programs such as high roller rebates, which are outside the scope of the GST. Further, other taxes specific to casinos that may increase the burden on gamblers have not been lifted to compensate for the introduction of the GST (p. 84).

Currently, EGMs are taxed at 20 per cent of gaming revenue and table games and keno are taxed at 18 per cent of gaming revenue. This year the Queensland Government announced an increase in taxes from July 2009 on EGMs in casinos only. The tax rates for gaming machines in Conrad Treasury and Conrad Jupiters Gold Coast will increase to 30 per cent (from 20 per cent) and to 20 per cent (from 10 per cent) for gaming machines in Jupiters Townsville and Reef Hotel Casino (Allan Consulting Group 2009).

The Allen Consulting report also draws attention to a number of casino tax changes since 1999.

**Changes to State and Territory tax arrangements**

There have been a number of significant changes to State and Territory government gaming tax arrangements since the 1999 PC inquiry, with the key changes identified below.

**Western Australia**

In 1999 Western Australia’s Burswood Entertainment Complex was taxed at 15 per cent of gaming revenues. Currently, EGMs are taxed at 20 per cent of gaming revenue and table games and keno are taxed at 18 per cent of gaming revenue.

**Queensland**

This year the Queensland Government announced an increase in taxes from July 2009 on EGMs in casinos only. The tax rates for gaming machines in Conrad Treasury and Conrad Jupiters Gold Coast will increase to 30 per cent (from 20 per cent) and to 20 per cent (from 10 per cent) for gaming machines in Jupiters Townsville and Reef Hotel Casino.

**Tasmania**

In Tasmania, future changes to the casino tax arrangements will see a single flat tax rate of 25.88 per cent applied to gross revenues from casino-based EGMs from 1 July 2013.
New South Wales

New South Wales introduced a single marginal tax rate scale in July 2008. This tax rate applies to both table and electronic casino gaming and is calculated according to gaming revenue. In 2008/09 the base rate is 24.13 per cent (for revenues between $0 and $600 000), with a top marginal rate of 47.13 per cent (for revenues greater than $720 million), with rates to increase annually to 2012/13. In 2012/13 the base rate in New South Wales will be 25.50 per cent (for revenues between $0 and $675,000), with the top rate to be 50 per cent (for revenues greater than $810.6 million). From 1 July 2013 the New South Wales tax rates will stay constant, with the bands to increase annually in line with CPI. New South Wales is the only jurisdiction with a marginal tax scale on table gaming (Allen Consulting 2009, p. 74).

The report also makes the observation that ‘The casino tax rates imposed in Macau are higher than those average taxes faced by Australian casinos’ (Allen Consulting, 2009, p. 91).

In its report, the Productivity Commission posed the question of whether continuing concessions are merited

The Commission seeks views on the practicability of exempting casinos from draft recommendation 9.1 in relation to their high rollers and international visitors (Productivity Commission 2009, p. XLIX).

To add to these arguments of under-taxation, there is also the moral argument of the exponential profits enjoyed over the last 20 years by the gambling industry; while the public and community costs of gambling are not factored into the costs of industry license-to-operate.

On the basis of the arguments above, we argue there is justification for increasing taxation on the gambling industry. We emphasise the argument with regard to hotels, that they ‘farm’ machines more intensively and generate substantial harms which need to be paid for, that clubs and hotels have benefited from a range of tax and other concessions in the past that have enabled them to build up infrastructure and member facilities and that the harms caused by gambling and the costs to the community merit tougher taxation. With regard to casinos, the intensity of operations and lack of transparency over government-granted concessions, mean they should be included in arguments for a new across-the-board tax on the gambling industry as proposed in the Action Plan.
End Notes

1. This study, while embodying the best efforts of the investigators is but an expression of the issues considered most relevant, and neither the SA Centre for Economic Studies, Michael O’Neil, nor the Adelaide or Flinders Universities and neither the Alfred Deakin Research Institute, Linda Hancock nor Deakin University can be held responsible for any consequences that ensue from the use of the information in this report. Neither the SA Centre for Economic Studies, Michael O’Neil, nor the Adelaide or Flinders Universities; nor the Alfred Deakin Research Institute, Linda Hancock nor Deakin University, make any warranty or guarantee regarding the contents of the report, and any warranty or guarantee is disavowed except to the extent that statute makes it unavoidable.

2. See Peatling (2010). The Productivity Commission reports ‘There were 198 300 electronic gaming machines (EGMs) in Australia in 2009, with 97 065 machines in NSW alone, and only 1750 in Western Australia’ (2010, p. 6).


5. See Franklin (2007).

6. See Productivity Commission (2010, p. 2)

7. The Productivity Commission (2010, p. 2) found: ‘The risks of problem gambling are low for people who only play lotteries and scratchies, but rise steeply with the frequency of gambling on table games, wagering and, especially, gaming machines’.

8. The global gambling complex draws on Galbraith’s (New Industrial State) analysis of the military-industrial complex, which summarised the mix of corporate, military and government interests during the Vietnam War. The global gambling complex refers to the cosy cabal of interests that unites government, gambling providers (clubs/hotels/casinos), the gaming industry and transnational gambling industry corporations.

9. Dunn describes ‘contract for difference’ (CFD), as ‘an equity derivative that represents a theoretical order to buy or sell a certain number of shares. The price of a CFD is derived from the spread – the highest buying price (offer) and lowest selling price (bid) that is quoted on the Australian Stock Exchange (ASX) – so the value of the CFD mirrors the share price.’

‘An investor buying a “long” CFD benefits from a rise in the share price, while a “short” CFD gains its benefit from a fall in the share price. The investor’s profit or loss is determined by the difference between the opening and closing price, with the difference paid in cash at the close of the contract. ….. CFDs are offered on more than 400 companies listed on the ASX, but they are not a listed product or an ASX product….. The punter doesn’t transact on the ASX: the bet is made with the bookmaker. The bookie’s spread will be based on the current selling quote and a future buying price that it determines…..’

‘The investor uses this price to bet on the direction of the share price or index value. If he thinks the price will rise, he makes an up bet from the quoted offer (the selling price); if he thinks the price will fall, he makes a down bet from the quoted bid (the buying price). …. Spread betting allows investors to back their judgement in financial markets, without having to buy or sell the shares. You can place a “bet” on which way the price will move. You never actually own the shares: you’re only interested in the price movement. Clients can bet on shares going up as well as down…. The Australian Taxation Office says that the issue of the tax status of spread betting is “still being looked at” ‘(Dunn 2007, np).

10. As Noted by the Productivity Commission:

‘Policy measures often lack ‘bite’. Governments have introduced many measures to address the harms associated with gambling machines, but the effectiveness of many of these is questionable. This includes requirements for:

- short periods of machine shutdowns. These typically occur in the early hours of the morning. They allow premises to be cleaned and maintained, but produce few obvious harm minimisation benefits.'
• lowering the maximum bet limit from $10 to $5. If played at the fastest allowed rate, that means that the value of bets laid per hour will have fallen from $12 000 to $6000 (and expected losses down to $600 from $1200 an hour, which remains very high). Some jurisdictions have maintained the limit at $10.

• reducing the value of notes that gamblers can insert at any one time into a machine from $100 to $50 — but retaining the capacity to insert note after note

• reduced cash input levels, such as from $10 000 to $1000. In this case, a player could still insert twenty $50 notes consecutively into the machine. (Again, some jurisdictions have retained the $10 000 limit.)

• ATM withdrawal limits of $200 per transaction — but problem gamblers can go back time after time, subject to the normal arrangements they have with their banks

• mandatory clocks on machine displays, so people do not lose track of time. But most people have watches and they typically concentrate on the game.’


Under the Interactive Gambling Act 2001 Australia has adopted a fence-sitting approach whereby certain forms of gambling by internet are legalised. This includes online wagering (racing, sports betting, and outcome of events) and lotteries and keno; with online gaming (poker, blackjack, baccarat, roulette and virtual EGMs prohibited) (PC, 2009, p. 12.3) Online contract for difference is also permitted but is regulated under financial services legislation.

‘Gambling services prohibited under the IGA include:

• online casino games, like roulette, blackjack and all forms of online poker

• online versions of electronic gaming machines

• online bingo’ (Productivity Commission, 2010, p. 15.6 citing the Interactive Gambling Act 2001.

The High Court in the Work Choices case held that the Commonwealth could validly use the corporations power. See New South Wales v Commonwealth [2006] HCA 52.

In Australia’s federalist system, recent discussions on Commonwealth leadership include an expanding range of policy areas: health policy, water management, child protection and school curricula.

In 1999 the Australian Productivity Commission reported that Australia had nearly 180,000 poker machines, more than half of which were in New South Wales. This figure represented 21 per cent of all the gambling machines in the world, and on a per capita basis, Australia had roughly five times as many gaming machines as the United States. Sourced at: http://en.wikipedia.org/wiki/Slot_machine. Australia had 198,300 poker machines in 2009 (Productivity Commission 2010, p. 6).

Estimates put this on average, at 40 per cent of gambling expenditure.

As pointed out by the Productivity Commission (2010, p.2.21): ‘While a smaller proportion of the population are playing EGMs than in the 1990s, the average EGM player today is spending more than was the case ten years ago (table 2.10). For instance, the average EGM player in Victoria was estimated to have spent around $1750 in 1999 (in today’s dollars), compared to $3100 in 2008.’.

The uncoordinated and ineffective research across jurisdictions was noted by the Productivity Commission (2010, p. 39); as was its ‘general concern in the lack of transparency of decision-making, inadequate consultation, and the tardy (or non) dissemination of information and research findings’.

The Productivity Commission (2009, p. 4.25) gave estimates within a range: ‘There are estimated to be between 90 000 and 170 000 Australian adults suffering significant problems from their gambling in a year (0.5 to 1.0 per cent of adults), and between 230 000 and 350 000 people with moderate risks that may make them vulnerable to problem gambling (1.4 to 2.1 per cent of adults)’. Whereas the final report estimated those categorised as ‘problem gamblers’ at around 115,000 people and those at ‘moderate risk’ at around 280,000 (Productivity Commission, 2010, p. 2)
Similar findings internationally are confirmed by Williams and Wood (2007) on Ontario data and in Nova Scotia where regular VLT players accounted for 94 per cent of revenue (Focal Research 2007, p. iii.).

As argued in the Productivity Commission Consumer Policy Framework report, there are ethical, social and fairness dimensions of consumer policy – ‘policies commonly put a premium on the interests of vulnerable and disadvantaged consumers even if this imposes some costs on other consumers’ (Fitzgerald et al 2008, p. 7).

Some of the ‘downside’ impacts related to community impact listed by IPPR in the UK (Harrison 2007, 1) include ‘increased problem gambling, mixed employment effects, displacement of existing businesses and spending, and damage to a city’s image’; the other studies cited above examine impacts including financial problems, family breakdown, suicide, crime, health system costs, work performance and so on.

Thomas et al (2009) (in Australia) found that ‘geo-temporal accessibility and a retreat from problems may encourage excessive gambling in some individuals’ and that accessibility is multi-dimensional and includes: ‘geo-temporal accessibility’ ‘(where ‘people preferred venues which were open long hours and located close to home, work or regular routes’, ‘social and personal accessibility’ ‘(where venues are seen as ‘safe, social, easy entertainment experiences’ in addition to ‘ accessible retreat from life issues’ and ‘financial accessibility’.

In New Zealand Pearce et al (2008) found that ‘Neighbourhood access to opportunities for gambling is related to gambling and problem gambling behaviour, and contributes substantially to neighbourhood inequalities in gambling over and above individual level characteristics’.

This was recognised by the Productivity Commission (2010, p. 39): ‘Too weak a focus on consumer outcomes has led to the introduction of harm minimisation measures with little bite’.

http://www.greaterdandenong.com/Documents.asp?ID=1225&Title=Gambling+


UnitingCare (2009, p. 51) ‘Gambling taxation is highly regressive in incidence, because lower income people generally gamble at greater rates than higher income people and so pay more gambling tax’.

This model builds on the work of the Ontario Problem Gambling Research Centre (OPGRC) Problem Gambling Pathways and Protective Factors Model (www.gamblingresearch.org) and work conducted by Hancock and Hanrahan in the UK (2009).

The recent initiative led by Nick Xenophon and Pokies Watch, which requires EGM venues to restrict the sound and sight of machines in clubs and hotels from minors i.e., to protect vulnerable youth from sensitisation to gaming machines. ‘The ‘Don’t Gamble with your Kids’ campaign was designed to outlaw all advertising, promotions and play areas aimed at attracting children to gambling venues and called for venues to be radically redesigned to ensure children were not exposed to the sights or sounds of poker machine gambling.’ (Xenophon, 2010, at http://www.nickxenophon.com.au/media.php?id=88)

The Amalgamated Society of Engineers v The Adelaide Steamship Company Limited and Ors, 1920. 28 CLR 129; 1920 HCA, 54.

While the Productivity Commission estimates that gambling taxes ‘still amount to around 10 per cent of state and territory own tax revenue’ (2010, p.6), any decline in reliance on gambling taxes is principally due to higher revenues from land and property taxes and not as a result of a conscious policy decision to reduce gambling tax revenue.

Back in 1999 the Productivity Commission clearly set out a range of negative impacts caused by gambling: The PC outlined some of the dimensions of problem gambling and these are worthy of reiteration. They include:

- ‘Personal and psychological – control of spending, anxiety, depression, guilt, suicidal thoughts, escapism
• Gambling behaviour per se – chasing losses, excessive spending, excessive time
• Interpersonal problems – family breakdown, loss of friends, loss of time with family
• Job or study problems – work or study performance, absenteeism, loss of employment or failure to progress in studies
• Financial impacts – bankruptcy, debt, financial hardship
• Legal problems, including criminal activity and its consequences’ (PC, 1999: 6.4).

One example was the NSW Tax Task Force 1988 estimate that ‘$75 million of New South Wales tax expenditures in 1986/87 were attributable to gambling tax concessions, equal to 13 per cent of gambling revenues that year’, mainly attributable to tax concessions to bookmakers costing $69.8 million; a cost which if applied nationally would have amounted to about $400 million in 1995/96. (Smith 2000, p. 125)

It would seem inappropriate for such a fund, intentioned for community benefits such as neighbourhood houses and gambler’s help services, to fund international delegates to a Victorian tourism conference (personal communication from committee Secretariat 2004).

To address this issue of intensity of play on EGMs, the Productivity Commission has recommended a bet limit of $1 per ‘button push’ on poker machines and a $20 maximum feed-in credit (being the amount of credit that can be inserted into a poker machine at any one time (currently up to $10,000) (PC 2010, p. 2)

Such a levy, across all forms of gambling, would be in addition to a single levy on racing, universally paid on a gross revenue basis which the Productivity Commission recommended should go towards funding the wagering industry; which has historically received support via special taxation arrangements. The PC report notes ‘tax revenue from racing is considerably lower than it was ten years ago’ (PC, 2010, p. 2.9).

In Victoria, EGM tax is set at one third of net revenue (including the GST component); with hotels paying an extra 8.3 per cent contributing to the Community Support Fund (from which clubs are exempt on the assumption of benefits to members and the community).

Allen Consulting (2009, p. 63), ‘Few industries pay as much of their revenues in taxation, with the possible exception of tobacco, alcohol and luxury cars’.

The UK National Lottery Commission is a ‘a non-departmental Public Body, sponsored by the Department for Culture, Media and Sport’, responsible for licensing, regulating and protecting the integrity of the National Lottery; protecting players; and maximising funds to good causes. To that end, the breakdown of funds for every £1 of sales is: ‘50p paid to winners in prizes; 28p given to good causes; 12p goes to the Government in Lottery duty; 5p paid to National Lottery retailers on all National Lottery tickets sold; and 5p retained by the operator to meet costs and returns to shareholders’. Available at: http://www.natlotcomm.gov.uk/CLIENT/content.ASP?ContentId=20.

It should be noted that the UK National Lottery operates not just in Britain but also in Northern Ireland and the Isle of Man; and must be distinguished from lotteries regulated by the Gambling Commission which are essentially small scale and local and apply only to England, Scotland and Wales. They do not pay tax and must pay 20p in every £1 to charity. There are also restrictions over the amount that can be offered as prizes and the amount that can be raised in a given year. ‘There is very good reason why small-scale lotteries are very limited in scope and scale in Great Britain. Lotteries are a peculiar form of pari mutuel betting by which it is potentially very easy to cheat people. The reason is that unlike betting with a bookie or in a casino it is quite impossible for players to check on the fairness for themselves’ (author communication with National Lottery Commission). These latter types of lottery are not the model recommended for a national Australian lottery; given that such lotteries make it difficult for the public to check on probity; they raise lower government taxes and lack the rigorous national monitoring afforded by the National Lottery Commission model.

Lottery West in Western Australia, funds a range of community initiatives: extending the capacity of not-for-profits; strengthening community service delivery; participation in
community life; community development initiatives and valuing the state’s heritage. Available at: www.lotterywest.gov.au

Griffith, 2009, p. 18 in reference to payments for the 2009-10 financial year.

The High Court of Australia, by a 5-2 majority, upheld the Commonwealth’s reliance on the corporations power. See: www.hcourt.gov.au/media/WorkChoicesdecision.pdf

‘This is defined to be administrative in its mode of operation, pragmatic in orientation, concerned with the effective and rational management of human and other resources, and rich in policy goals and objectives. The States play a creative and proactive part but are, to a substantial degree, service providers whose performance is subject to continuous scrutiny and oversight. Typically, the financially dominant Commonwealth Government plays the manager’s role.’ (Griffith, 2009, p.i ).

‘(M)anagerial federalism”, where the financial power of the Commonwealth is used to guide and control the States toward what are considered to be non-ideological goals associated primarily with the effective management of resources. This is not to deny that the States remain significant players, in policy development as in other areas. Nor is to deny that the COAG process involves much needed and important reforms. It is only to state the obvious point that the underlying reality of Australian federalism remains the fiscal relationship between the Commonwealth and the States’ (Griffith, 2009, p. 28).

As reported by Griffith (2009, p. 15), the council has monitored progress against milestones agreed by COAG in 2007 on seven areas of competition and regulatory reform.

This would demand a change in the current principle that: ‘Each State’s share is calculated on the assumption that it and all the other States apply average policies and practices in delivering services and that they all make the same effort to raise revenue’ (Commonwealth Grants Commission 2008, p. 26).

‘Overall, differences in the use and cost of State services have a bigger impact on the distribution of the pool than do differences in the capacity to raise revenue. The demographic, geographic and economic circumstances of each State drive the differences in revenue raising capacity and costs of providing services’ (Commonwealth Grants Commission, 2008, p. 5).

‘The main drivers of differences in revenue raising capacity are mineral wealth, turnover in property markets, payrolls of medium and large businesses and land values. The main drivers of cost differences are Indigeneity, wage levels, scale of operation, population dispersion and other population characteristics’ (Commonwealth Grants Commission, 2008, p. 6).

The Commission undertakes to advise Treasury on the distribution of the Goods and Services Tax (GST) revenue and health care grants (HCGs) which constitute ‘the pool’ (Commonwealth Grants Commission 2008, p. 2).

‘The pool also provided 41 per cent of State budget revenues, with the percentages for individual States varying from 33 per cent for Western Australia to 74 per cent for the Northern Territory’ (Commonwealth Grants Commission 2008, p. 24).

On April 1, 2000, a new Federal Law on Games of Chance and Casinos (Bundesgesetz über Glücksspiele und Spielbanken, 1998) came into effect in Switzerland. This was aimed at improving the regulation and management of casino operations across the country. The new law required active participation by casinos in the identification and prevention of problem gambling (Article 27), and required them to contribute to support services designed for the identification of and assistance to those involved in excessive gambling (Article 28) (Dombrowski 2002). (Also see http://www.admin.ch/ for information on Swiss legislation).

The New Zealand Gambling Act 2003 sections 308-312 imposes specific requirements on gambling providers in relation to identifying problem gamblers under Exclusion Standard Operating Procedures. Three means of identifying actual or potential problem gamblers include: casino staff’s use of the ‘casino signs’ for problem gambling’, third party notifications and self identification (Department of Internal Affairs 2007).

The Productivity Commission recommended (2010, p. 3) ‘There should be a progressive move over the next six years to full ‘pre-commitment’ systems that allow players to set
binding limits on their losses.
– Under a full system, there would be ‘safe’ default settings, with players able to choose other limits (including no limit).
– In the interim, a partial system with non-binding limits would still yield benefits, and provide lessons for implementing full pre-commitment.’.

In 2009, Nova Scotia Gaming Corporation installed player tracking devices on 3000 gaming machines; enabling testing on real time player data. See: www.nsgc.ca/

Apart from South Australia’s Independent Gambling Authority, Victoria was the only state to implement the Productivity Commission’s 1999 recommendation on the need for independent research. Appointed by the Minister for Gambling, the 3-member Victorian Gambling Research Panel (GRP) was set up in 2000 with the brief of commissioning research on the social and economic impact of gambling and publicising research outcomes. Over its 3 years it commissioned some challenging research on EGM’s, regional caps, community impact, and the efficacy of self exclusion. It was abolished in December 2004 when the government took gambling research in-house and ministerially-approved ready-to-tender research to the value of approximately $1m, was abandoned.

Allen Consulting (2009, p. 63), ‘Few industries pay as much of their revenues in taxation, with the possible exception of tobacco, alcohol and luxury cars’.

The Productivity Commission argues that cuts to gambling taxation were brokered to offset introduction of the GST; tax rates have been cut in the race wagering sector ‘such that tax revenue from racing is considerably lower than it was ten years ago’ (Productivity Commission, 2010, p. 2.9).

‘Overall average casino rates are 24.1 per cent in the 2008 financial year, 24.5 per cent in the 2010 financial year, 36.5 per cent in the 2012 financial year and 27.5 per cent in the 2017 financial year. These averages assume normalised net revenue of $541.4 million in the 2007 financial year and no indexation of the tax bands’ (Tabcorp Holdings Limited 2007a cited by Allen Consulting 2009, p. 66).

However Allen Consulting (2009, p. 77) argues ‘Comparisons between casinos and other gambling modes should not be made solely on the basis of tax rates. Rather, comparisons should consider the full range of financial transfers from casinos to government, including taxes, licence fees and community benefit levies’.