
National Competition Policy

Review of the NSW Casino Control Act 1992

June 2003



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Executive summary

This report presents the process and outcomes of the New South Wales Government's review of the State's casino gaming laws, according to National Competition Policy (NCP) principles.

The review was undertaken in accordance with the Competition Principles Agreement, to which the NSW Government is a signatory.

The review also had regard to the agreement of the Council of Australian Governments that NCP reviews of gambling legislation should take appropriate account of the potential public detriment arising from increased competitive pressures in the gambling market.

The review observed that the *Casino Control Act 1992* contains policy objectives, including an objective directed to the minimisation of gambling-related harm. The review considered that the objectives are appropriate.

The review also observed that the casino legislation contains significant barriers to entry and other constraints on market conduct. The review concluded that the restrictions are considered necessary to achieve the objects of the legislation, and are otherwise in the public interest.

In respect of community social standards, the review provides support for the maintenance of existing harm minimisation and responsible conduct of gambling principles (including the competition restrictions inherent in those principles), and the retention of existing restrictions relating to minors. The review concluded that there is a net public benefit in these restrictions.

In regard to restrictions on market entry, the review found that the main restriction on competition in the NSW casino market is the statutory provision allowing only one casino licence in the State, and the contractual arrangement reinforcing this provision.

The review noted that the passage of the legislation and the signing of the exclusivity agreement occurred prior to the execution of the Competition Principles Agreement in April 1995.

The review considers that there is no compelling reason to liberalise the casino market at this point of time. Under current arrangements, there is no feasible (or less restrictive) option available to the NSW Government given the existence of the exclusivity agreement, the legislative environment and prevailing community attitudes to a major expansion of gambling.

The review considers that the requirement for the Government to make large compensation payments to the incumbent licence holder would outweigh any perceived benefits from revoking these arrangements prior to the contract date.

In addition, the review considers that the compensation provision also precludes consideration of the Productivity Commission's proposal that governments introduce measures to shorten the contracted period of licence exclusivity (e.g. by encouraging casino operators to relinquish their exclusive licences earlier than the specified contract date through targeted taxation incentives).

This review report assesses the costs and benefits associated with casino gambling, including the rationale for a single licence arrangement, as required by the Competition Principles Agreement.

The report also provides the public benefit arguments supporting the Government's favoured approaches to probity, consumer protection and harm minimisation.

To this end, the report sets out the following case to justify the decision to allow one casino only and to enter into an exclusivity agreement:

- the decision to restrict the casino market to a single licence was made after considerable public consultation and review. The Parliament of the day adjudged that a gradual introduction of legalised casino gaming was warranted because of concerns about the possible social and economic consequences of open competition in the largely unknown casino market, and the potential impact on other gambling markets in NSW;
- the right to operate a casino in NSW was decided on a competitive basis after all probity and commercial requirements were satisfied. This process ensured that competition for these markets, through the bidding process, reduced the potential for monopoly abuse;
- the community has benefited significantly from the capture of economic rents through an up-front fee for the single licence and ongoing gaming duty revenues levied on a progressive basis;
- the community has also benefited because the Star City casino generates substantial direct and indirect employment in the NSW economy;
- in comparison to the benefits, the costs associated with having a single casino operation are relatively minor. While not all NSW residents would have ready access to the Sydney casino facility, there is a variety of other legal gambling opportunities available throughout the State; and
- NSW taxpayers would be liable for a compensation claim equal to the amount of all damages, costs, expenses and foregone profits suffered or incurred by the licence holder if the terms of the exclusivity agreement were not maintained with Star City.

The review proposes that the Government consider the case for liberalising the casino gaming market as the expiry date of the exclusivity agreement approaches.

At that time, there should be more reliable and complete information on the costs and benefits of open competition in the casino gaming market. Also by that time, information should be available to assess the impact of recent moves towards common ownership of the Sydney casino and some casinos in Queensland.

Consideration would also be given to the National Competition Council's (NCC) general findings relating to licensing arrangements that would meet the Competition Principles Agreement clause 5 obligations.

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## 1. Background to the review

### 1.1. National Competition Policy review of laws restricting competition

- 1.1.1. The NSW Government is committed to review all legislation that restricts competition. This commitment emanates from inter-governmental agreements signed on 11 April 1995.
- 1.1.2. The inter-governmental agreements are the genesis for National Competition Policy (NCP). This is a policy to promote competition in order to increase economic efficiency and community welfare in the Australian marketplace, while continuing to provide for consumer protection.
- 1.1.3. The object of NCP is to “accelerate the microeconomic reform process, recognising the benefits from sustained economic and employment growth”.<sup>1</sup>
- 1.1.4. One of the inter-government agreements is the Competition Principles Agreement. This Agreement “places the onus of proof on governments to demonstrate a public interest case for the enactment or retention of statutory restrictions”.<sup>2</sup>
- 1.1.5. Clause 5 of the Competition Principles Agreement states that, as a guiding principle, legislation should not restrict competition unless it can be demonstrated that:
  - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - (b) the objectives of the legislation can only be achieved by restricting competition.
- 1.1.6. As a result, the Government compiled a list of legislation that contains restrictions that potentially impede competition. The *Casino Control Act 1992* was not included in the original list of legislation for review. Subsequently, the Government agreed to undertake a review of the legislation according to NCP principles.
- 1.1.7. During the course of the review, the Council of Australian Governments (COAG) agreed that future National Competition Policy reviews of gambling legislation should require reviewers to take appropriate account of the potential public detriment arising from increased competitive pressures in the gambling market.<sup>3</sup>

### 1.2. The review process

- 1.2.1. It is Government policy that NCP reviews take into account the full range of public benefits and costs, and that all views are thoroughly considered, before any reforms are proposed. The review of the Casino Control Act was conducted according to this policy.
- 1.2.2. A team of officers drawn from the Treasury, the Department of Gaming and Racing and the Casino Control Authority conducted the review.
- 1.2.3. The review commenced in 1997-98. A preliminary review report was submitted to and considered by the Government in December 1998. The Government supported in-principle the review’s recommendations, but referred the report for revision of statistical and related information.
- 1.2.4. Subsequently the NCC indicated that, for the 2002 assessment, the Government needed to provide the public benefit arguments supporting its favoured approaches to probity, consumer protection and harm minimisation. This report addresses these expectations.

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<sup>1</sup> National Competition Council (1998) *Compendium of National Competition Policy Agreements*, p11

<sup>2</sup> Government of NSW (1996) *NCP Guidelines for Legislation Review*, Sydney

<sup>3</sup> Council of Australian Governments (2000) *Communiqué 3 November 2000*

### **1.3. The final report**

- 1.3.1. This report has been prepared for consideration by the Government to satisfy the review requirements under the Competition Principles Agreement.
- 1.3.2. The report addresses the fundamental requirements for NCP reviews, which are to:
  - clarify the objectives of the legislation;
  - identify the nature of restrictions on competition;
  - analyse the likely effect of restrictions on competition, and on the economy generally;
  - assess and balance the costs and benefits of restrictions; and
  - consider alternative means for achieving the same result, including non-legislative approaches.<sup>4</sup>
- 1.3.3. The report also has regard to guidance that the COAG, the NCC and the Productivity Commission have provided to governments about the conduct of gambling legislation reviews.

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<sup>4</sup> Council of Australian Governments (1995) *Competition Principles Agreement*, clause 5(9)

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## 2. Profile of the casino market

### 2.1. The existence of the market

- 2.1.1. NSW did not have a casino until 1995. NSW was the last of the 8 Australian States/Territories to allow the establishment of a casino in their respective jurisdiction.
- 2.1.2. In Australia, casinos were universally prohibited by government until relatively recently. For generations, no appreciable public demand for casinos was evident.
- 2.1.3. However, from the 1970s onwards, Federal, State and Territory governments gradually adopted a favourable attitude to removing the stigma of illegality in properly conducted casinos.
- 2.1.4. Governments responded to changing economic circumstances and to developing community demand. They recognised that casinos had a significant economic purpose, particularly as a generator of business activity associated with hospitality and tourism.
- 2.1.5. The success of the early casinos – in Tasmania and the Northern Territory, and later in Western Australia and Queensland – demonstrated the value of a casino as an economic and tourist driver.
- 2.1.6. The early casinos also demonstrated that, in an Australian regulatory setting, the benefits could be achieved without the stain of corruption and criminal involvement.
- 2.1.7. The introduction of these casinos met with little apparent effective public opposition. This led former NSW Chief Justice Sir Laurence Street, who conducted a public inquiry into the desirability of establishing casinos in NSW, to report that:
- Plainly, the public demand exists. Indeed, the developing demand has been corroborated after the event as the local population in almost every location provides the greatest patronage.<sup>5</sup>
- 2.1.8. So it has proven in NSW. For the year ended 30 June 2002, around 7.56 million persons visited the Sydney casino. It is estimated that, of this number of visitors, about 80% were drawn from the local population.<sup>6</sup>
- 2.1.9. This proportion is consistent with experience nationally. ACIL Tasman, in a survey for the Australian Casino Association, estimated that 81.2% of casino visitors emanate from the local region.<sup>7</sup>
- 2.1.10. The Street inquiry influenced the NSW Parliament to enact casino legislation in 1992. The inquiry report listed positive considerations in favour of casinos being granted a lawful place in the NSW gambling environment.
- 2.1.11. The stated benefits are discussed in chapter 5 of this report.

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<sup>5</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p30

<sup>6</sup> Department of Gaming and Racing estimate compiled from regulatory information

<sup>7</sup> ACIL Tasman (2002) *Casino Industry Survey 2001-02: Summary of Results*, p8

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## 2.2. The size and composition of the market

### National market

- 2.2.1. For Australians, gambling is a popular form of entertainment. For Australia as a whole, total net expenditure on gambling (i.e. 'player loss') during 2000-01 was \$13.8 billion. This represented a 26% increase on expenditure in 1997-98.<sup>8</sup>
- 2.2.2. Gambling expenditure in Australia has risen markedly over the past decade, although there are emerging signs that the rate of growth has begun to slow.
- 2.2.3. Based on the Australian estimated resident adult population at 30 June 2001, the \$13,839 million net takings represented an expenditure of \$944 per head of adult population. This is an increase of 21% since 1997-98.
- 2.2.4. However, ABS surveys estimate that the net takings from overseas bettors received by these Australian gambling businesses was \$635 million. By excluding overseas bettors, a truer expenditure of gambling per head of Australian adult population was \$901.<sup>9</sup>
- 2.2.5. Much gambling activity takes place in clubs and hotels, where gaming machines are the most popular gambling product. Other gambling activity includes expenditure on lottery products, on wagering products and, in some jurisdictions, on on-line gambling products.
- 2.2.6. Casinos are also popular places for gambling. There are 13 casinos in Australia, including the Sydney casino. In these casinos, gambling activity includes expenditure on table games, gaming machines (except one casino), keno, betting on racing events, sports betting and two-up.
- 2.2.7. Significant non-gambling expenditure also occurs at casinos – mainly on food and beverage services, entertainment and accommodation. It has been estimated that there were 38.5 million visits made to Australia's 13 casinos in 2001-02.<sup>10</sup>
- 2.2.8. The casino industry generated \$3,137 million in 2000-01, a 90% increase on the 1999-00 figure of \$1,648 million. Takings from gambling contributed \$2,504 million, and were the most significant source of income for casinos, representing 80% of total income. Takings from casino gambling in 2000-01 increased 4% on 1999-00.<sup>11</sup>
- 2.2.9. Total casino industry expenses during 2000-01 were \$2,599 million, which was a slight increase on 1999-00. Labour costs were the most significant expense, accounting for \$842 million (or 32%) of total expenses.
- 2.2.10. Gambling taxes and levies, at \$503 million, were the next most significant expense for casinos, and represented 19% of total expenses.<sup>12</sup>
- 2.2.11. In 2000-01, the 13 casinos reported operating profit before tax of \$537 million. This represented a 19% increase over the operating profit before tax of \$452 million, recorded in 1999-00.
- 2.2.12. The 'value added' component of the casino industry increased from \$1,238 million in 1999-00 to \$1,564 million in 2000-01 and to \$1,648 million in 2001-02, increases of 26% and 5% respectively.<sup>13</sup>

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<sup>8</sup> Australian Bureau of Statistics (2002) *Gambling Industries Australia 2000-01*, p6

<sup>9</sup> Ibid, p7

<sup>10</sup> ACIL Tasman (2002) *Casino Industry Survey 2001-02: Summary of Results*, p7

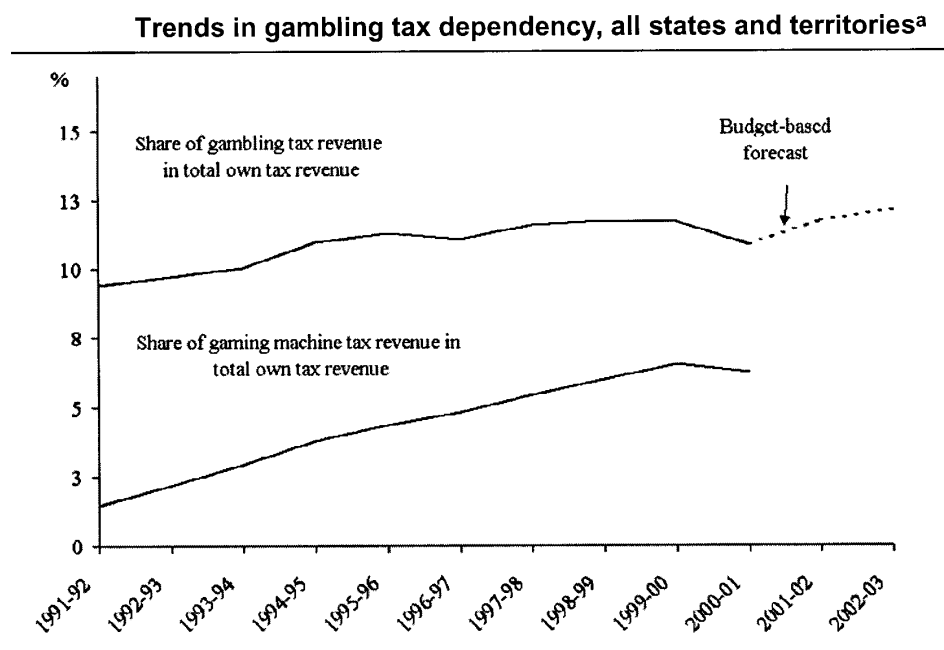
<sup>11</sup> Australian Bureau of Statistics (2001) *Casinos Australia 2000-01*, p1

<sup>12</sup> Ibid, p1

<sup>13</sup> Ibid, p1



- 2.2.13. As noted above, casinos are a component of a much larger gambling market in Australia. The 13 casinos were among the 6,012 employing businesses involved in the provision of gambling services at 30 June 2001. Of this total, 2,924 were businesses, including clubs and hotels, operating in NSW.<sup>14</sup>
- 2.2.14. Total net takings from gambling during 2000-01 were \$13,839 million, up 26% since 1997-98. The major source of net takings was gaming machines, at \$8,752 million (63%). Of this figure, gaming machines in hospitality clubs contributed \$4,238 million; gaming machines in pubs, taverns and bars contributed \$3,280 million; and gaming machines in casinos contributed \$1,021 million. Casino gaming tables contributed \$1,464 million to total net takings.<sup>15</sup>
- 2.2.15. Australia-wide, government revenue from gambling taxes and levies was \$4.4 billion in 2000-01. This represented 32% of businesses' net takings from gambling, and was a 19% increase overall since 1997-98.<sup>16</sup>
- 2.2.16. The largest source was club and hotel gaming machines, which accounted for 55% of total gambling taxes and levies. Other major sources of gambling taxes and levies were lottery games (19%), casinos (11%) and totalisator operations (10%).
- 2.2.17. Trends in overall gambling tax revenues are shown in the graph below:<sup>17</sup>



Data source: ABS commissioned data; state and territory budget papers for 2002-03; Commission estimates.

<sup>14</sup> Australian Bureau of Statistics (2001) *Casinos Australia 2000-01*, cat 8683.0, p5

<sup>15</sup> *Ibid*, p6

<sup>16</sup> *Ibid*, p7

<sup>17</sup> Copyright Commonwealth of Australia, reproduced with permission. Source: Productivity Commission (2002) *The Productivity Commission's Gambling Inquiry: 3 Years On*, p16

- 2.2.18. There were 1,111 gaming tables and 10,853 gaming machines in the 13 Australian casinos at 30 June 2001.<sup>18</sup> The Sydney casino operated 210 gaming tables and 1,500 gaming machines at that date. Also at the same date, clubs and hotels in NSW operated 100,162 gaming machines.<sup>19</sup>
- 2.2.19. Employment in Australia's gambling industries is significant. For 1996-97, employment was estimated at over 107,000 persons. This number exceeded employment in the mining sector, or employment in the energy services sector.<sup>20</sup>
- 2.2.20. At 30 June 2001, the Australian casino industry employed 20,413 persons, a small decrease from the 20,497 employed at the same date in 2000, but up slightly on the 1999 figure of 20,342. The majority (12,319, or 60%) was employed on a permanent full-time basis. There were 4,485 casual employees and 3,609 permanent part-time employees at 30 June 2001.<sup>21</sup> These proportions were very similar to those at the end of June 1998.<sup>22</sup>
- 2.2.21. Gambling also makes a contribution to retail and hospitality sector spending. From the September 1996 quarter to the June 2002 quarter, the retail and hospitality/services turnover series grew by 33% (seasonally adjusted). Net proceeds from gambling increased by 86% during this period.<sup>23</sup>
- 2.2.22. Over that six-year period, net proceeds from gambling rose from about 2.5% of the retail and hospitality/services turnover series to about 3.5%. During the same period, net proceeds from gambling increased from about 25% of hotel/club turnover, to about 36%. Both increases occurred gradually.<sup>24</sup>

#### NSW market

- 2.2.23. Total net takings from gambling businesses operating in NSW in 2001-02 were \$5.7 billion. This represented 41.3% of expenditure in Australia, and is higher than the NSW proportion of Australia's estimated adult population, which is 34%.<sup>25</sup> It represented expenditure of \$1,101 per head of adult population in NSW (after excluding overseas bettors).
- 2.2.24. Total gambling expenditure in NSW increased significantly over the past two decades, mainly because of gaming machine expenditure, but growth in this area has begun to taper.
- 2.2.25. Revenue from NSW gambling taxes and levies totalled \$1.3 billion in 2001-02.<sup>26</sup> Club and hotel gaming machines were the single largest tax source, at \$720.5 million, which represented 56% of total gambling taxes and levies for NSW in that year. Casino taxation revenue totalled \$80.0 million in that year, which represented 6.2% of total gambling taxes and levies.

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<sup>18</sup> Australian Bureau of Statistics (2001) *Casinos Australia 2000-01*, cat 8683.0, p2

<sup>19</sup> Department of Gaming and Racing (2001) *Annual Report 2000-01*

<sup>20</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p2.15

<sup>21</sup> *Ibid*, p2

<sup>22</sup> Australian Bureau of Statistics (2002), *Gambling Industries Australia 2000-01*, cat 8684.0, p11

<sup>23</sup> Australian Bureau of Statistics (2002) *Retail Trade Australia*, p4

<sup>24</sup> *Ibid*, p4

<sup>25</sup> Australian Bureau of Statistics (2002) *Gambling Industries Australia 2000-01*, p6

<sup>26</sup> Department of Gaming and Racing (2002) *Annual Report 2001-02*, p1

- 2.2.26. Many types of business trade with gambling industry participants, including the Sydney casino operator. As examples, the casino engages professional advisers such as lawyers, accountants and social researchers to provide opinion and other assistance in aspects of the regulatory process; relies on banks and other lenders to service aspects of casino operations; and turns to suppliers to provide a wide range of input goods and services to a functioning casino business.
- 2.2.27. Another element of the NSW casino industry is the employment provided to thousands of workers.
- 2.2.28. In NSW, the casino market has seen the creation of casino jobs for over 3,000 persons, mostly young people looking to establish careers in the leisure and hospitality industry. In the year ended 30 June 2002, the NSW casino operator (Star City Pty Limited) paid salaries and wages in excess of \$100 million to these staff. Star City spends up to \$90 million every year on the acquisition of other goods and services, indirectly employing many thousands of people.<sup>27</sup>

### **2.3. Demand for gambling**

- 2.3.1. The gambling market, including the market for casino services, would not exist without consumer demand.
- 2.3.2. Common reasons for gambling participation include a:<sup>28</sup>
- way of passing time in a pleasant social environment;
  - form of entertainment or an escape from reality;
  - means of achieving excitement, a thrill or an adrenalin rush;
  - hobby used as a method to relax;
  - chance of achieving the dream of financial security; and
  - medium to assist in meeting people.
- 2.3.3. A national survey found that the main motivation in gambling was social contact and the dream of winning.<sup>29</sup> For some gamblers, specific motivations are much more important than the impulses felt by other gamblers. Demand for gambling is affected by a range of influences. The determinants include:<sup>30</sup>
- the price of the product, as some gambling products are more sensitive to price than others – for example, gaming machine demand is likely to be price sensitive because prices (i.e. losses) are easily observable;
  - the odds of winning can influence a consumer's decision on whether to gamble, how much to gamble and which product to choose;
  - the size of the gambling prize is a significant determinant of demand for jackpot gambling products – including linked gaming machines, on which it has been observed that expenditure increases as the jackpot approaches its upper limit;

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<sup>27</sup> Tabcorp Holdings Limited (2003) submission to NSW Government, p3

<sup>28</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p3

<sup>29</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p3.11

<sup>30</sup> Ibid, p3.12

- the extent to which the gambling odds can be changed by skill;
- accessibility of the gambling product, which has lowered the cost of gambling and generated higher levels of demand for gambling products;
- the availability of other (non-gambling) services at a gambling venue, such as dining and entertainment facilities, and the appeal of the venue as a whole;
- social acceptability of the gambling activity; and
- the reliability of the gambling activity, as consumers prefer gambling products that are free from fraud and malfunction.

2.3.4. One study has suggested that increases in gambling expenditure, compared to other areas of consumption, provide an indicator of the value that consumers place on participation in gambling. The study noted that the proportion of household disposable income spent on gaming in NSW had risen from 2.12% to 2.79% over two recent decades.<sup>31</sup>

2.3.5. It has been estimated that, for the June 2002 quarter, net gambling as a proportion of retail and hospitality/services turnover in NSW was 6.5%, as against the national average of 3.5%. For the September 1998 quarter, the NSW proportion was 5.7%. The increase over the six-year period was gradual – except for the June 2002 quarter, which rose 0.5 percentage points.<sup>32</sup>

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<sup>31</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p3

<sup>32</sup> Australian Bureau of Statistics (2002) *Retail Trade Australia*, p6

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### **3. Regulation of the casino industry**

#### **3.1. Industry regulation – historical perspective**

- 3.1.1. There is an established pattern of regulating the casino market in Australia. Governments have used a variety of regulatory techniques – including casino and personnel licensing, casino supervision, casino auditing, setting compliance standards for casinos and their personnel, imposing sanctions for non-compliance, conferring product exclusivity, and fixing limits on accessibility – to achieve public interest objectives.
  - 3.1.2. Customarily, a legislative framework has been introduced to establish specific regulatory tools and facilitate their operation.
  - 3.1.3. With some early Australian casinos, governments facilitated the establishment of the casino not only as legislator, but also through participation as owner and/or operator.
  - 3.1.4. Progressively, the governments moved away from an owner/operator role. The governments saw this role as one for the private sector – from which investment, managerial skills and other resources would be best obtained.
  - 3.1.5. This approach left governments free to formulate the casino regulatory environment. It also enabled governments to more freely influence the business climate in which a casino would operate.
  - 3.1.6. The need for a casino in NSW had been debated since the 1970s, when Australia's first casino was established in Tasmania.
  - 3.1.7. Advocates of casino gaming pointed to the economic benefits that a casino could generate. Community groups and religious organisations expressed concern about the possible social costs. Debate in the political and public arena reflected the range of views.
  - 3.1.8. Through the years, the Government commissioned a number of reports to assess the case for legalised casino gambling.
  - 3.1.9. These reports all found in favour of legalised casino gambling, although the range of proposed regulatory restrictions varied. It was not until 1992, after the release of the report of the Street inquiry, that a Government determined to proceed and introduced the present legislation to allow the lawful operation of a casino in NSW.
  - 3.1.10. The Street inquiry had been appointed to consider a proposal for establishing casinos in NSW under terms of reference broadly covering the following areas:
    - the social impact upon individuals and families;
    - the impact upon tourism, employment and economic development;
    - the process for the establishment of casinos; and
    - the measures necessary to ensure the integrity of casino gaming.
  - 3.1.11. The inquiry was also required to examine the adequacy of draft legislation to give effect to these broad objectives. This required that an assessment be made of the proposed regulatory arrangements in the draft legislation.
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3.1.12. Street concluded that there were overall positive considerations in favour of allowing casinos in NSW. The factors were:<sup>33</sup>

- the successful applicant could be required to build substantial amenities of a cultural, community or recreational nature;
- the casino would add to the 'menu' of tourist facilities in Sydney;
- many individuals in the community would support the introduction of casinos as a recreational amenity;
- there is a public benefit in the contribution to public funds from tax revenue; and
- a Casino Community Benefit Fund would be created, using a funding stream generated from casino revenues, to support charitable and benevolent activities.

3.1.13. Street examined the regulatory arrangements in the draft casino legislation from a criminological perspective. He reported his professional view that "the principles of the draft Bill, the provisions contained in it and the mechanisms and controls that can be implemented under it, combine to create a fabric in which the casinos can be protected from criminal influence and exploitation, kept free from money laundering and maintained as places of honest gaming".<sup>34</sup>

3.1.14. In reaching this view, Street had observed that strong and effective regulation was a notable feature of the casino environment elsewhere in Australia. He reported that:<sup>35</sup>

Legalisation of casinos has proceeded in Australia within a strict regulatory framework. Rather than exercising control through ownership, governments have preferred to exercise control by regulation... The result has been, broadly speaking, the development of a distinctively Australian casino system. There are some differences of approach to casino control and regulatory systems reflecting the different political and economic situations amongst the States, as well as the period in which each State's casino policy was developed. Yet there are many common features. Casinos are usually part of a tourist/entertainment complex, with a range of associated amenities. Governments have granted a degree of exclusivity to casinos, protecting the operator from geographic competition in return for revenue contributions which are high by international standards. Again broadly speaking, a primary objective of the Australian regulatory system is to ensure the casino industry operates honestly and free from criminal influence. Mechanisms adopted include the licensing of casino operators and staff, comprehensive regulations which control both activity at the gaming table and the movement of chips and cash, surveillance and monitoring of compliance with those regulations and imposition of sanctions should breaches occur. A key feature is the permanent on-site presence of government inspectors to supervise gambling and detect violations. This system has created what is arguably the most stringent casino control system in the world.

3.1.15. The NSW regulatory structure was developed with these sentiments in mind. NSW drew upon a system utilised in New Jersey USA, where casinos had operated for decades. The system featured checks and balances to minimise the potential for corruption in casino regulation.<sup>36</sup>

3.1.16. The *Casino Control Act 1992* was therefore enacted to establish the regulatory framework for a casino in NSW.

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<sup>33</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p8

<sup>34</sup> *Ibid*, p13

<sup>35</sup> *Ibid*, p30

<sup>36</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p16

### 3.2. The regulatory environment in the 1990s

- 3.2.1. As the concept of casino gaming in NSW attracted community acceptance and developed momentum, the gambling environment was changing in other respects.
- 3.2.2. Up to that point, the gambling environment was dominated by the presence of a variety of lottery products and gaming machines.
- 3.2.3. Lottery products had been available since the 1920s. They could be purchased direct from the lottery operator (a Government-owned business) or from its appointed agents, most being newsagency businesses.
- 3.2.4. Machine gaming was first permitted in 1956, when legislation was enacted to allow not-for-profit clubs to install gaming machines. By the early 1980s, clubs had installed about 49,208 gaming machines.<sup>37</sup>
- 3.2.5. In 1984, legislation was enacted to enable a hotel to operate a specified form of gaming machine. Initially each hotel could install up to 5 machines. Within 5 years, the upper limit had been increased to 10 gaming machines per hotel.
- 3.2.6. Thereafter, the number of gaming machines in clubs and hotels began to rise markedly. By 30 June 1990, there were 60,882 gaming machines in 3,204 clubs and hotels.<sup>38</sup>
- 3.2.7. At 30 June 1995, shortly before a licensed casino opened in Sydney, there were about 74,000 gaming machines in 3,266 clubs and hotels.<sup>39</sup>
- 3.2.8. A temporary casino containing 500 gaming machines and 150 gaming tables commenced trading in September 1995. Meanwhile, a permanent casino with capacity for 1,500 gaming machines and 200 gaming tables was under construction, for opening in late 1997.
- 3.2.9. Also in 1997, the decade-old exclusivity over available gaming machine types was brought to an end. For the first time, hotels were permitted to install the reel-style gaming machine that had proven very popular in clubs. Conversely, clubs and the casino were allowed to install the video-style draw poker gaming machine that had been the preserve of hotels since 1984. Through these decisions, a level playing field in relation to gaming machine product was established. The competitive neutrality principle was considered, and applied.
- 3.2.10. In 1998, each hotel was permitted to operate up to 30 gaming machines, of whatever type. The total number of gaming machines, and gaming machine activity levels, increased rapidly thereafter.
- 3.2.11. By 30 June 1998, there were 90,098 gaming machines in 3,210 clubs and hotels.<sup>40</sup> There were also 1,500 gaming machines in the casino. At the same date in the following year, there were 94,280 gaming machines in 3,261 clubs and hotels<sup>41</sup> and 1,500 casino gaming machines.
- 3.2.12. Gambling turnover increased as a result of a rise in the number of gaming machines and the establishment of a casino. At 30 June 1999, club and hotel gaming machine turnover was estimated at \$31 billion.<sup>42</sup> At the same date, casino gaming turnover was around \$350 million.<sup>43</sup>

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<sup>37</sup> Department of Gaming and Racing data at 30 June 1981

<sup>38</sup> Department of Gaming and Racing data

<sup>39</sup> Ibid

<sup>40</sup> Department of Gaming and Racing (1998) *Annual Report 1997-98*, p1

<sup>41</sup> Department of Gaming and Racing (1999) *Annual Report 1998-99*, p1

<sup>42</sup> Department of Gaming and Racing (1999) *Annual Report 1998-99*, p1

<sup>43</sup> Department of Gaming and Racing data

- 3.2.13. In 1998, emerging community concerns at the growth in gambling, which were reflected in Parliamentary debate, led to the establishment of a NSW Government inquiry into gaming.<sup>44</sup>
- 3.2.14. This inquiry was appointed to examine the framework for the regulation of gaming and the social impacts of gaming.<sup>45</sup> Meanwhile, the NSW Government imposed a 'pause' on the introduction of new gambling products.
- 3.2.15. The Federal Government also conducted an inquiry into the national gambling environment.<sup>46</sup> This step coincided with the NSW Government's introduction of landmark legislation for responsible gambling.<sup>47</sup> In respect of the casino laws in force at that time, which already had a responsible gambling emphasis, the legislation:
- empowered the Casino Control Authority to approve of training courses, to be undertaken by casino gaming employees, that focus specifically on responsible practices associated with gambling activities;
  - authorised a court, that finds that an excluded person re-entered a casino in contravention of the exclusion order, to postpone its imposition of a penalty if the person agrees to undergo gambling-related counselling; and
  - enabled a court to order that a casino operator or casino employee take remedial action, such as a training course targeted to responsible practices associated with gambling activities, as an alternative or in addition to imposing a penalty for a specified offence.
- 3.2.16. To support these amendments, various regulatory measures were introduced in 2000. These regulations focussed on promotions and some forms of advertising conducted by a casino; the offer of inducements to casino patrons; and the information and signage that a casino must display for the assistance of its patrons, including notices about the availability of counselling services.

### 3.3. Contemporary regulation

- 3.3.1. The *Casino Control Act 1992* provides a single regime for the control, regulation and management of casino gaming in NSW. This Act, the subordinate *Casino Control Regulation 2001* and related contractual arrangements establish the contemporary regulatory structure.
- 3.3.2. The purpose of the Act is to provide for the establishment of one casino in NSW; to provide for the control of casino operations; to constitute the Casino Control Authority as the government regulatory agency; and for related purposes.
- 3.3.3. The main features of the Act include:
- an upfront statement that a primary object of the Act is "containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families";<sup>48</sup>

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<sup>44</sup> NSW Parliament Hansard (6 May 1998) *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Bill 1998*, p4476

<sup>45</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*

<sup>46</sup> Productivity Commission (1999) *Australia's Gambling Industries*

<sup>47</sup> NSW Parliament (1999) *Gambling Legislation Amendment (Responsible Gambling) Act 1999*

<sup>48</sup> *Casino Control Act 1992*, section 4A(1)(c)



- an upfront statement that other primary objects of the Act are “ensuring that the management and operation of a casino remain free from criminal influence and exploitation”<sup>49</sup> and “ensuring that gaming in a casino is conducted honestly”,<sup>50</sup>
- a requirement that regulatory authorities and others who exercise functions under the legislation must have regard to these objects when exercising such functions;<sup>51</sup>
- a capacity for Ministerial directions or guidelines to be issued to protect the integrity of casino gaming or to achieve other public interest purposes;<sup>52</sup>
- a stipulation that there may be only one casino licence in force at any particular time, and a related stipulation that a casino licence permits one casino only;<sup>53</sup>
- a capacity for Ministerial directions to be issued to determine the location of a casino, the size and style of a casino (including the number of gaming tables and gaming machines that may be operated in a casino), and the nature of the facilities that a casino complex can include;<sup>54</sup>
- a scheme for the licensing of a casino, including provisions requiring a public invitation for expressions of interest or applications for the grant of a casino licence, and other provisions indicating the matters to be taken into account when determining an application for a casino licence;<sup>55</sup>
- a scheme allowing disciplinary action to be taken against the holder of a casino licence;<sup>56</sup>
- a scheme for the supervision and control of the holder of a casino licence, including a requirement that the casino operator provide specified information to the regulatory authority, a requirement that the casino operator’s suitability be reviewed periodically, and a requirement that contracts for the supply of goods and services to a casino be reviewed for suitability;<sup>57</sup>
- a scheme for the licensing of employees of the casino operator, including provisions allowing disciplinary action to be taken against a licensed casino employee;<sup>58</sup>
- a scheme for the supervision of casino operations, including requirements affecting gaming activities and equipment, advertising, trading hours, assistance to patrons, credit and other financial services for patrons, junkets and inducements, and exclusion of patrons;<sup>59</sup>
- the establishment of the Casino Control Authority as the Government agency responsible for the control and supervision of casino operations, the conferral of functions on the Authority, and a statement of the Authority’s objects which are “to maintain and administer systems for the licensing and supervision of a casino for the purpose of (inter alia) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families;<sup>60</sup>
- controls over access to a casino by persons under 18 years of age;<sup>61</sup>

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<sup>49</sup> *Casino Control Act 1992*, section 4A(1)(b)

<sup>50</sup> *Ibid*, section 4A(1)(a)

<sup>51</sup> *Ibid*, section 4A(2)

<sup>52</sup> *Ibid*, section 5

<sup>53</sup> *Ibid*, section 6

<sup>54</sup> *Ibid*, sections 7 and 8

<sup>55</sup> *Ibid*, sections 9 to 22

<sup>56</sup> *Ibid*, sections 23 to 26

<sup>57</sup> *Ibid*, sections 29 to 42

<sup>58</sup> *Ibid*, sections 43 to 64

<sup>59</sup> *Ibid*, sections 65 to 90

<sup>60</sup> *Ibid*, sections 133 to 141

<sup>61</sup> *Ibid*, sections 91 to 101

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- capacity for the Authority to enter into binding agreements with a casino operator for any purpose associated with the establishment and operation of a casino, provided prior Ministerial approval is obtained (as any agreement entered into is made on behalf of the State of NSW);<sup>62</sup> and
- restrictions on current and former regulatory officials gambling in a licensed NSW casino, and restrictions on having employment with or receiving financial benefits from an association with a casino operator or its suppliers.<sup>63</sup>

3.3.4. The purpose of the Regulation is to spell out requirements that must support the proper and effective operation of the Act. The Regulation includes provisions that specify the:

- type of regulatory information that a casino operator and casino employees are to provide to the Authority, and the type of casino employees who do not need to be licensed;<sup>64</sup>
- details about the nature of supply contracts that are subject to review, and requirements about the form of such contracts;<sup>65</sup>
- specific controls governing junket operations, and the type of gambling inducements that a casino operator is prohibited from offering;<sup>66</sup>
- type of player information that a casino operator must make available to patrons or signpost for the assistance of patrons;<sup>67</sup>
- specific restrictions on the manner in which prizes may be paid to prizewinners;<sup>68</sup>
- specific requirements for player activity statements used in player reward schemes;<sup>69</sup>
- specific restrictions on gambling-related advertising and external signage;<sup>70</sup>
- requirements for the provision of gambling-related counselling services;<sup>71</sup> and
- detailed provisions governing the sale and supply of liquor in the casino complex.<sup>72</sup>

3.3.5. In addition, there is a legal agreement that provided the Sydney casino operator with time-limited exclusivity to conduct table games at the temporary casino site initially, and later at the permanent casino site.

3.3.6. The agreement states that if, during the 12-year period that commenced on 15 September 1995, the NSW Parliament passes a law allowing more than one casino licence, or if the Government allows another licensed casino to open at any new location, the Government is liable to pay compensation (including compensation for loss of profits) to the casino operator as a result of such an occurrence.

3.3.7. The appropriateness of the objectives in the legislation is assessed in chapter 4 of this report.

3.3.8. The implications of the restrictions in the Act and the Regulation, and the implications of the exclusive arrangement, from a competition viewpoint are assessed in chapter 5.

<sup>62</sup> *Casino Control Act 1992*, section 142

<sup>63</sup> *Ibid*, sections 86, 146 and 147

<sup>64</sup> *Casino Control Regulation 2001*, clauses 5 to 9

<sup>65</sup> *Ibid*, clauses 10 to 14

<sup>66</sup> *Ibid*, clauses 15 to 23

<sup>67</sup> *Ibid*, clauses 24 to 30

<sup>68</sup> *Ibid*, clause 32

<sup>69</sup> *Ibid*, clauses 32A to 32B

<sup>70</sup> *Ibid*, clauses 33 and 33A

<sup>71</sup> *Ibid*, clause 34A

<sup>72</sup> *Ibid*, clause 35 and Schedule 6

## 4. Objectives of the casino legislation

### 4.1. Regulatory objectives of government

- 4.1.1. Government regulation may be used to achieve many valuable economic and social objectives.
- 4.1.2. Yet, unless the objectives are clearly identified and are achieved in the least restrictive manner, business competitiveness and the productivity of the economy may be impaired, thereby undermining the achievement of regulatory goals.<sup>73</sup>
- 4.1.3. NCP therefore requires that reviews clarify the objectives of the legislation under review, and assess the effectiveness of the legislation against achieving those objectives.
- 4.1.4. Regulatory legislation also needs to be considered in the context of government regulatory objectives generally.
- 4.1.5. COAG determined as a principle that government intervention in markets should generally be restricted to situations of market failure, and that each regulatory regime should be targeted at the market failure(s) involved.<sup>74</sup>
- 4.1.6. The NCC later identified various types of market failure that may warrant legislative intervention by government. One type is where market transactions have negative impacts on third parties, and where pricing mechanisms do not exist to allow the affected parties to charge for costs incurred or pay for benefits received.

### 4.2. When is market intervention justified?

- 4.2.1. COAG guidelines for regulatory action state that, as the first step in determining whether or not to regulate, a risk analysis should be undertaken.<sup>75</sup> The guidelines suggest that the risk analysis should consider:
  - societal and individual risk;
  - whether the risk is avoidable (i.e. voluntary or involuntary), and whether there is adequate information about the consequences of the risk;
  - the probability of harm occurring.
- 4.2.2. A New Zealand Government agency identified four elements in a framework for assessing risk, in order to determine whether or not to regulate.<sup>76</sup> The elements are:
  - significance of the harm caused;
  - whether or not the harm is reversible;
  - whether assumption of the risk is voluntary; and
  - the probability of the harm occurring.

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<sup>73</sup> Centre for International Economics (1997) *A Framework for National Competition Policy Reviews of Gaming Legislation*

<sup>74</sup> Council of Australian Governments (1991) *Report of the Task Force on Other Issues in the Reform of Government Trading Enterprises*, p22

<sup>75</sup> Council of Australian Governments (1997) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies*

<sup>76</sup> New Zealand Ministry of Economic Development (1999) *Policy Framework for Occupational Regulation: A Guide for Government Agencies Involved in Regulating Occupations*

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### 4.3. Regulatory objectives in the gambling market

- 4.3.1. The objectives of gambling regulation were summarised in a study undertaken for the Government of Victoria.<sup>77</sup> The study identified the following five objectives in government regulation of gambling activities – control over social costs (problem gambling, underage gambling, social disruption); consumer protection (in terms of quality); security of tax revenue; economic development and employment; and the prevention of crime relating to gambling (money laundering and hidden ownership in the gambling industry).
- 4.3.2. Similar observations were noted in the IPART report.<sup>78</sup> The report commented that all developed countries regulate gambling, on criminal and social policy grounds, with three common objectives:
- permitted forms of gambling should be crime-free (both in terms of those who operate them and the players they attract) conducted in accordance with regulation;
  - players should know what to expect and be confident that they will get it and should not be exploited;
  - there should be some protection for children and vulnerable persons.
- 4.3.3. The Productivity Commission, while acknowledging the importance of consumer sovereignty and choice in the gambling market, concluded that the two objectives providing the strongest rationale for special policies – or intervention – in this market are probity assurance and a reduction in adverse social impacts.<sup>79</sup>

### 4.4. Intervention in the NSW casino market

- 4.4.1. Applying the New Zealand risk assessment framework to the NSW casino environment, the potential risks were assessed as follows:

|                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Potential for significant harm to individuals or moderate harm to a large number | For most consumers (i.e. casino gamblers), the risks could generally be regarded as moderate. However, some consumers have suffered significant harm as a result of problems that developed from their gambling behaviour. The proportion of consumers who experience severe gambling problems has been assessed in the order of 1% of the adult population, or about 130,000 adults. <sup>80</sup> |
| Is the harm reversible?                                                          | In most situations, the harm is relatively small and/or potentially reversible, as the consumer may cease or modify the gambling behaviour causing concern. For some consumers, the consequences of the harm are not reversible or retrievable because of the loss of assets, employment, family and/or friends.                                                                                    |
| Is the risk voluntary?                                                           | The risks in casino gambling will be voluntary for most consumers. For problem gamblers, and also for uninformed consumers, the risks could be considered to be involuntary.                                                                                                                                                                                                                        |
| Is there a high probability of the harm occurring?                               | For the majority of consumers, the probability of experiencing significant harm as a result of casino gambling is low. Significant harm is most likely to be experienced by consumers who are already in a vulnerable position (i.e. problem gamblers).                                                                                                                                             |

<sup>77</sup> Centre for International Economics (1997) *A Framework for National Competition Policy Reviews of Gaming Legislation*

<sup>78</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p25

<sup>79</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p12.1

<sup>80</sup> Ibid, p2

- 4.4.2. From this risk assessment, the review considers that there is a case for regulatory intervention in the casino market. Supporting information follows.

Minimising gambling-related harm – adults and minors

- 4.4.3. For the vast majority of adults, gambling is considered an acceptable form of relaxation and social entertainment. However, for some people, gambling can have a devastating effect on individuals, their families and friends. Serious impacts on society in general can follow.
- 4.4.4. Historically, both in Australia and elsewhere, governments have taken the position that the conduct of gambling and participation in gambling should not be left exclusively to market forces. In fact, all developed countries have gambling laws in place on social policy grounds. They recognise that gambling can have a range of harmful effects, and must therefore be regulated.
- 4.4.5. A harm minimisation approach – with emphasis on responsible participation in gambling and responsible operation of gambling venues – is justified on public health and safety grounds. This harm minimisation purpose pervades the NSW casino legislation, beginning with the stated objects of the Act.
- 4.4.6. The object is expressed in appropriately broad terms so as to encompass harm to the health and well-being of casino gambling consumers, as well as the risk of ‘spill overs’ or impacts on third parties from harm associated with the misuse and abuse of gambling.
- 4.4.7. When considering gambling policy, a balance must be struck between achieving a fair, simple regulatory system on the one hand; and consideration of the impact of gambling on individuals, families, local communities, and societal health on the other.
- 4.4.8. The harm minimisation objective of the Act also envisages the potential for harm to children and young people through participation in gambling. In that regard, the Act takes a prohibition approach to the involvement of minors in gambling. Also, the Act limits minors’ access to those parts of the casino in which gambling occurs, while allowing minors to have access to other parts of a casino complex, such as theatres and restaurants.
- 4.4.9. All jurisdictions in Australia, as well as governments in many other westernised countries, strictly control the access that children and young persons can have to gambling. These controls have been put in place over many decades in response to community concerns about the potential impact of gambling on the health and behaviour of under-aged persons, who have not matured mentally and socially to make informed decisions about the risks involved in gambling.

Protection of local amenity

- 4.4.10. The harm minimisation approach also embraces the risk of ‘spillover effects’ or impacts on social amenity.
- 4.4.11. The legislation therefore seeks to safeguard the interests of local communities, including the protection and improvement of local amenity. In this regard, relevant issues include the satisfaction residents and visitors derive from an area, including the natural and built environment, as well as the features, facilities and services that are available in the area.
- 4.4.12. The legislation contains a range of provisions to promote business practices that are responsible and that minimise local amenity impacts. There are, for example, provisions that enable residents to lodge complaints against any noise and other adverse impacts associated with liquor-selling premises in the casino complex.
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### Ensuring probity

- 4.4.13. An implicit objective of the legislation is to ensure probity within the casino industry, and to ensure the appropriate ownership and management of casino enterprises. This is important given the potential for gambling venues to generate large cash flows and therefore be attractive to persons and organisations with criminal intent.
- 4.4.14. This objective is a common theme across all gambling modes, in view of the large amount of cash at stake and the concern to allay fears of the involvement of criminal elements.<sup>81</sup>
- 4.4.15. This objective is a cornerstone for ensuring the selection of gambling operators whose integrity and commitment to preserving a crime-free environment in, and in relation to, gambling venues.<sup>82</sup>

## **4.5. Stated objectives of the NSW casino legislation**

- 4.5.1. As noted in chapter 3, there has been government intervention in the NSW casino market for a very long time. For generations, the effect of the intervention was to ban casino gaming altogether.
- 4.5.2. Liberalisation occurred in 1992, when the *Casino Control Act 1992* was enacted. The Act in its original form did not express the purpose of the regulatory intervention. The objective(s) had to be implied.
- 4.5.3. Explicit objects were inserted into the Act on 1 July 2001, partly as a response to NCP review requirements.
- 4.5.4. The primary objects of the Act include:<sup>83</sup>
- ensuring that the management and operation of a casino remain free from criminal influence or exploitation;
  - ensuring that gaming in a casino is conducted honestly; and
  - containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.
- 4.5.5. The Act also lists objects for the Casino Control Authority, as the Government's regulatory agency for casino gaming. The objects of the Authority are to maintain and administer systems for the licensing, supervision and control of a casino for the purposes of:<sup>84</sup>
- ensuring that the management and operation of a casino remain free from criminal influence or exploitation;
  - ensuring that gaming in a casino is conducted honestly; and
  - containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.
- 4.5.6. It can be seen that the objects for the Authority, and the objects for the Act as a whole, are substantially the same.

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<sup>81</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p16.89

<sup>82</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p96

<sup>83</sup> *Casino Control Act 1992*, section 4A

<sup>84</sup> *Ibid*, section 140

#### 4.6. Relevance of the objectives

- 4.6.1. The review of the Casino Control Act has confirmed the appropriateness of the stated objectives. The minimisation of harm to individuals and society, and the fostering of a healthy gambling environment, have been identified as important considerations associated with the availability of casino gaming in NSW.
- 4.6.2. The review noted that the objectives of the casino legislation are rooted in addressing the social costs of gambling, and in ensuring integrity standards, product fairness and consumer confidence.
- 4.6.3. The review found that the stated objectives of the Act are clear, concise and appropriate. The review considers that the objectives are consistent with the fundamental principle of maximising net community benefits.<sup>85</sup>
- 4.6.4. The review noted that the objectives appear to be functioning effectively. The review was not made aware of any instance during the life of the legislation that suggested any inherent contradictions or shortcomings in the objectives.
- 4.6.5. The review also noted that there was fundamental consistency between the objects of the Act and the objects of the Authority.
- 4.6.6. The review considers that NSW, by including express objects in the Act, and by using the terms indicated, has met the NCP review requirement in an appropriate manner.
- 4.6.7. The review also considers that the objectives, as stated, meet the Productivity Commission's call that the objectives and rationales for gambling legislation be abundantly clear and transparent.<sup>86</sup>

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<sup>85</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p12.1

<sup>86</sup> *Ibid*, p12.18

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## **5. Impact of the casino legislation on competition**

### **5.1. What is competition**

- 5.1.1. Competition is the rivalry between sellers or potential sellers in a market to procure the business of buyers.
- 5.1.2. NCP presumes that competition best serves the public interest because competition makes a business use resources (more) efficiently and act (more) responsively to consumer choice.
- 5.1.3. Competition therefore acts as a spur for better service provision, better product quality, and lower prices.

### **5.2. How legislation may limit competition**

- 5.2.1. Legislation can restrict competition dynamics in various ways, either directly or indirectly, by changing the structure and composition of the market or the behaviour of market participants.
- 5.2.2. Some common examples of restrictions on competition are:
  - rules on business ownership;
  - conditions or restrictions on market entry or exit;
  - prescribed fees or charges;
  - prescribed professional and ethical standards, and related disciplinary procedures;
  - controls on production levels or prices;
  - controls on the type of inputs used in the production process;
  - limitations on the quality, level or location of goods and services available;
  - limitations on consumers' access to facilities;
  - limitations on advertising and promotional activities.
- 5.2.3. An NCP review may observe that legislative provisions that restrict competition are not necessarily bad or in some way flawed. It may be that constraints are necessary to meet public policy objectives.
- 5.2.4. The purpose of the NCP review process is to assess whether identified legislative restrictions on competition are anti-competitive, whether they generate a net public benefit, and whether they do so in a manner that least restricts competition.
- 5.2.5. NCP reviews are required to consider whether any restrictions on competition imposed by the legislation are reasonable, in light of the costs and benefits assessed.

### **5.3. Competition restrictions in the casino legislation**

- 5.3.1. The NSW casino laws establish three general categories of restrictions.
  - 5.3.2. First, there are restrictions that support the community's social standards – such as a legal minimum age for casino gambling, and a requirement for application of harm minimisation principles in the casino gambling environment.
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- 5.3.3. Second, there are laws that restrict competition in the casino provider market by preventing the entry of more than one operator. It is often said that market entry restrictions can impose significant business costs or other impediments.
- 5.3.4. Third, there are laws that restrict competition in the casino market by constraining market conduct by a licensed casino operator, licensed casino employees and regulatory officials. These laws can also impose significant costs or other impediments.
- 5.3.5. To comply with the Competition Principles Agreement, NSW needs to demonstrate that these restrictions provide a net public benefit and could not be achieved through other less intrusive means.
- 5.3.6. The NCP public benefit test, as set out in clause 1(3) of the Agreement, allows all relevant factors to be considered when deciding whether restrictions on competition are warranted.
- 5.3.7. Also, it is Government policy that NCP reviews take into account the full range of public benefits and costs.
- 5.3.8. Although a quantitative assessment of benefits and costs is not always necessary, the task for government is to make judgments on the importance of each factor in a public benefit assessment.
- 5.3.9. In determining where the public interest lies, social and environmental matters are as important as economic considerations.

#### **5.4. Analysis of costs and benefits of current restrictions on competition**

- 5.4.1. A public benefit assessment of restrictions in the casino legislation and the associated regulatory environment follows.
- 5.4.2. The assessment is presented in the form of a table that:
- expresses the objective of the restriction;
  - provides a description of the costs and benefits of the restrictions in qualitative terms;
  - analyses the information presented; and
  - states conclusions and recommendations.
- 5.4.3. The assessment also reflects the concern of Australian governments to avoid public detriment from increased competitive pressures in the gambling market.<sup>87</sup>

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<sup>87</sup> Council of Australian Governments (2000) *Communiqué 3 November 2000*

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| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION |                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Restriction                                                                                         | Objective                                                                        | Costs                                                                                                                                                                                                                                                                                                                                                                                                 | Benefits                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Recommendation                                                                                                                                                                                                                          |
| <b>RESTRICTIONS THAT SUPPORT THE COMMUNITY'S SOCIAL STANDARDS</b>                                   |                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                         |
| Requirement for application of harm minimisation principles in a casino                             | Minimise gambling-related harm to individuals and the community as a whole.      | <p>A casino operator is denied the opportunity to profit from a proportion of the gambling population, i.e. problem gamblers.</p> <p>Burdens are placed on a casino operator, thereby resulting in the operator having to adjust business practices and possibly incur costs.</p> <p>Members of the public are denied the opportunity to behave in a certain way.</p>                                 | <p>Gambling-related harm and its associated impact on the community are minimised by encouraging the responsible operation of casino gaming facilities, and responsible conduct of a casino.</p> <p>Gambling-related harm and its associated impact on individuals are minimised by assisting problem gamblers who the community expects not to be able to access casino gaming facilities with impunity.</p> <p>Members of the public can gamble in a more informed environment, and make use of 'safety net' services.</p>                    | <p>The review considered that the community would strongly oppose the removal or weakening of harm minimisation restrictions.</p> <p>The review also considered that the likely impact on competition of these restrictions is 'contained' because they must be observed by all gambling venues, thus ensuring parity.</p> <p>The review concluded that the benefits associated with these restrictions very much outweigh the costs.</p>                                                                                                                                          | Existing principles of responsible conduct of casino gaming operations and harm minimisation continue to apply to persons involved in the management and operation of a casino, and to persons who are exercising regulatory functions. |
| Prohibition on minors accessing the gaming areas of a casino, and on playing casino games           | Minimise gambling-related harm to minors, and minors' exposure to casino gaming. | <p>A casino operator is denied access to a potential pool of customers (i.e. minors) and therefore the opportunity to profit from minors' gambling.</p> <p>A casino operator is denied the capacity to employ minors in casino operations, and may therefore face higher labour costs than would otherwise be the case.</p> <p>Young people have fewer employment and recreational opportunities.</p> | <p>Under-aged persons are discouraged from being in a licensed casino for the purpose of playing casino games.</p> <p>Gambling-related harm to minors is avoided or minimised.</p> <p>Local amenity is enhanced.</p> <p>Regulatory scheme has in-built flexibility to enable minors who are apprentices or trainees to undertake supervised work in a casino environment.</p> <p>Regulatory scheme also has in-built flexibility to enable minors to access non-gaming areas of a casino complex, such as restaurant or theatre facilities.</p> | <p>The review noted the established Australian policy of not allowing under 18s to access the gaming areas of a casinos</p> <p>The review considered that the community would strongly oppose the removal or weakening of this restriction.</p> <p>The review also considered that the likely impact on competition of the restriction is contained because the restriction must be observed by all casino and gaming machine venues, thus achieving competitive neutrality.</p> <p>The review concluded that the benefits associated with the restriction outweigh the costs.</p> | Existing restrictions on under 18s accessing casino gaming areas and playing casino games continue to apply.                                                                                                                            |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION                                                                                          |                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                                                                                          |                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Prohibition on the establishment of more than one casino, prohibition on the establishment of more than one casino per licence, and the provision of a 12-year exclusive licence arrangement | <p>Influence the number and location of casino gaming facilities in NSW.</p> <p>Ensure that casino gaming facilities are not placed in localities or communities that are considered vulnerable to gambling-related problems and other adverse casino-related impacts.</p> | <p>Existing operator is protected from competition while a single licence arrangement is in place.</p> <p>Consumers have only one casino gaming facility to choose from.</p> <p>Some current or potential consumers face high travel-related costs due to the geographical limit on access to one casino in Sydney.</p> | <p>There was open and robust competition for the right to be the single casino operator.</p> <p>The competitive bid process enabled the community to receive a significant up-front licence fee.</p> <p>Economic rents not delivered by the competitive bid process are captured by the sliding tax scale.</p> <p>Links between accessibility and social problems are taken into account.</p> <p>Number and extent of adverse impacts from a casino are reduced.</p> <p>Liability for a substantial compensation payout is avoided while the current exclusivity arrangement is maintained.</p> <p>The reputation of the NSW economy as an attractive location for business investment is untarnished by the spectre of broken pledges.</p> | <p>The review noted that the Parliament's decision to allow only one casino licence was made after extensive public consultation and review. The Parliament judged that there was considerable uncertainty and community anxiety about the impacts of open competition in an emerging casino market, and was therefore uneasy about the effects of unrestricted competition on overall social welfare and on established forms of gambling.</p> <p>The review observed that the restriction works to protect the market share of the existing operator in the casino market.</p> <p>The review noted that, while competition in the casino market is restricted, there was vigorous competition from business ventures for the rights to the licence and the exclusivity arrangement. This was consistent with the judicial principle that a process of calling for tenders for an exclusive licence is likely to have a pro-competitive effect in an environment where a market is limited.<sup>88</sup></p> <p>The review also noted that any economic rents not captured in the bid process are captured in the sliding tax scale applying to casino gaming revenues.</p> <p style="text-align: right;"><i>continued next column</i></p> | <p>Existing prohibition on the establishment of more than one casino continue to apply in NSW.</p> <p>Further consideration be given to liberalising the casino gaming market as the 2007 expiry date for the current exclusivity arrangement approaches.</p> <p style="text-align: center;">_____</p> <p><i>from previous column</i></p> <p>Further, the review noted that the presence of many close substitutes for a casino overcomes the impact of geographical access difficulties for most consumers.</p> <p>The review considered that the restriction serves as an effective harm minimisation measure. The review also considers that the exclusive licence arrangement poses a reasonable approach to the gradual liberalisation of the gambling market in an environment of discernible community apprehension about possible social costs.</p> <p>The review therefore concluded that the benefits from the single casino licence arrangement greatly outweigh the costs associated with the restriction. The review also concluded that there are no feasible alternatives to the single licence arrangement at the present time.</p> |

<sup>88</sup> Federal Court of Australia (2000) *Stirling Harbour Services Pty Limited v Bunbury Port Authority*, paras 25, 32 and 73

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION                 |                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                |
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| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                 |                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                |
| Prohibition on accessibility to casino gaming facilities (other than gaming machines) in venues other than a casino | <p>Minimise gambling-related harm to individuals and the community as a whole.</p> <p>Influence the number and distribution of casino gaming facilities in the community.</p>                                                                                     | <p>Venues other than a casino are denied the opportunity to profit from providing a legal product.</p> <p>Members of the public are denied the opportunity to access casino gaming facilities in any business, including businesses located closer to them.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Gambling-related harm to individuals and the community is minimised by limiting casino gaming availability to specified, controlled outlets.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>The review observed that the community would oppose the removal or weakening of this restriction. The review also observed that the presence of close substitutes in other venues diminished the impact of the restriction.</p> <p>The review concluded that the benefits of this restriction outweigh the costs.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Existing restrictions that confine casino gaming facilities (other than gaming machines) to a casino continue to apply.</p> |
| Initial licensing requirement for casino operator, and periodic review of licensee's suitability                    | <p>Ensure that persons involved in the management and operation of a casino meet and/or comply with specified integrity and conduct standards.</p> <p>Provide a basis for sanctions against a casino operator that does not meet specified conduct standards.</p> | <p>Competition is restricted as operators cannot freely enter the market.</p> <p>Market entry is available only to persons prepared to undergo scrutiny by licensing authorities.</p> <p>Licensing processes and expectations may result in increased business costs and/or lost business opportunity.</p> <p>Licensing application process involves complexity, thus deterring some participants and limiting responsiveness.</p> <p>Applicants can incur significant legal and other processing costs, and there may be lengthy application periods during which an opportunity cost can be incurred.</p> <p>Resources that could be used to improve standards and service for consumers must instead be allocated to the application process.</p> <p>Licensing decisions, made in a non-public arena, could introduce uncertainty, create delay and add to costs.</p> | <p>Thorough casino licensing regime in which the public has a high level of trust and comfort, leading to enhanced stability and integrity of industry operators.</p> <p>Effective action can be taken in cases of inappropriate performance or failure to meet conduct standards.</p> <p>Licensing and disciplinary decisions are carried out by independent and skilled officers, and are made on an arms' length basis – which attracts industry and public confidence.</p> <p>A licensing scheme is supported by the community provided administration of the scheme demonstrates regulatory reasonableness – whereby regulators strike a balance between industry conduct and community standards of acceptable behaviour.</p> | <p>The review noted that there is industry and community acceptance of a licensing model in the casino environment. The review also noted that casino licence applicants do not see licensing requirements as onerous, because similar processes apply in most casino jurisdictions.</p> <p>The review found that, because of the single licence provision, the licensing requirement had to be satisfied only once, which was in 1994.</p> <p>The review considered that a licensing model best secured the public policy objective that those operating a casino be persons of sound reputation who have the financial capacity and managerial skills to conduct a casino, in keeping with proper business practices and other public expectations.</p> <p>The review concluded that the benefits of a licensing system to the community as a whole outweigh the costs involved, and a net public benefit therefore exists.</p> | <p>The current comprehensive licensing system for a casino operator continue to apply.</p>                                     |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION</b> |                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                    |
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| <b>Restriction</b>                                                                                         | <b>Objective</b>                                                                                                                                                                                                                                   | <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Recommendation</b>                                                              |
| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                        |                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                    |
| Licensing requirement for casino employees                                                                 | <p>Ensure that persons involved in the operation of a casino meet and/or comply with specified integrity and conduct standards.</p> <p>Provide a basis for sanctions against a casino employee that does not meet specified conduct standards.</p> | <p>Competition is restricted as workers cannot freely enter the market.</p> <p>Market entry is available only to persons prepared to undergo scrutiny by licensing authorities.</p> <p>Licensing processes and expectations may result in increased personal costs and/or lost opportunity.</p> <p>Licensing application process involves complexity, thus deterring some participants and limiting responsiveness.</p> <p>Applicants can incur significant processing costs, and there may be lengthy application periods during which an opportunity cost can be incurred.</p> <p>Resources that could be used to improve standards and service for consumers must instead be allocated to the application process.</p> <p>Licensing decisions, made in a non-public arena could introduce uncertainty, create delay and add to personal costs.</p> | <p>Thorough casino licensing regime in which the public has a high level of trust and comfort.</p> <p>Integrity and competence of industry workers is enhanced.</p> <p>Effective action can be taken if conduct standards are not met.</p> <p>Licensing-related decisions are carried out by independent and skilled officers, and are made on an arms' length basis – which attracts industry and public confidence.</p> <p>A licensing scheme is supported by the community provided administration of the scheme demonstrates regulatory reasonableness – whereby regulators strike a balance between industry conduct and community standards of acceptable behaviour.</p> <p>Framework enables exclusion of employees in low-risk positions from the licensing requirement.</p> | <p>The review noted that there is industry and community acceptance of a licensing model in the casino environment.</p> <p>The review also noted that applicants for casino employee licences do not see licensing requirements as onerous, because similar processes apply in most casino jurisdictions.</p> <p>The review considered that a licensing model secured the policy objective that those working in a casino environment be persons of sound reputation who have aptitude for the work involved and appreciate that consumer protection measures can address patrons at risk.</p> <p>The review also considered that the capacity in the legislation to exclude low-risk categories of employee from the licensing requirement should continue to be used, wherever feasible.</p> <p>The review concluded that the benefits of an employee licensing system to the community as a whole outweigh the costs involved, and a net public benefit therefore exists.</p> | The current comprehensive licensing system for casino employees continue to apply. |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION                                                                        |                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                      |
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| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                                                                        |                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                      |
| Requirement that a casino operator and casino employees notify the regulator of changes to licensing-related information, and at other times upon request by the regulator | Ensure that persons involved in the management and/or operation of a casino continue to meet and/or comply with specified integrity and conduct standards.                                                                                             | <p>A burden is imposed on the casino business that generally does not arise in other areas of commerce.</p> <p>Impediments exist to the introduction of other parties into a casino business, eg in a merger scenario.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>The policy objective that a casino operator maintain the reputable standard established when its casino licence was granted is accommodated.</p> <p>Existence of these requirements serves to maintain, and if necessary restore, confidence in a casino operation.</p>                                                                                                                                                                                                                                                                                                                                                                                                        | <p>The review noted that there is industry and community acceptance of a licensing model in the casino environment.</p> <p>The review concluded that the benefits of a regular reporting requirement outweigh the costs involved, and a net public benefit therefore exists.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | The current 'continuous disclosure' and 'on request' requirements continue to apply. |
| Oversight of contracts for the supply of goods and services to a casino                                                                                                    | <p>Ensure that arrangements for the supply of goods and services to a casino meet and/or comply with specified integrity and conduct standards.</p> <p>Provide a basis for intervention where supply arrangements do not meet specified standards.</p> | <p>Competition is restricted as suppliers cannot freely enter the market.</p> <p>Market entry is available only to persons prepared to undergo scrutiny by the regulatory authority.</p> <p>Regulatory processes and expectations may result in increased business costs and/or lost business opportunity.</p> <p>Regulatory processes involve complexity, thus deterring some participants and limiting responsiveness.</p> <p>Resources that could be used to improve standards and service for consumers must instead be allocated to the contract vetting process.</p> <p>Regulator is able to intervene in normal commercial activities by ordering the termination of a contract on public interest grounds, thus introducing business risk and uncertainty.</p> | <p>Thorough casino licensing regime in which the public has a high level of trust and comfort.</p> <p>Enhanced integrity and competence of casino industry suppliers.</p> <p>Regulator can monitor for inappropriate pricing structures that may point to undesirable conduct on the part of the casino operator or suppliers.</p> <p>Effective action can be taken in cases of inappropriate supply arrangements.</p> <p>A licensing-style scheme is supported by the community provided administration of the scheme demonstrates regulatory reasonableness – whereby regulators strike a balance between industry conduct and community standards of acceptable behaviour.</p> | <p>The review noted that there is industry and community acceptance of a licensing-style model in the casino environment.</p> <p>The review also noted that casino suppliers do not see the licensing-style requirements as onerous, because similar processes apply in other casino jurisdictions.</p> <p>The review considered that a licensing model secured the public policy objective that those supplying goods and services to a casino operator be persons of sound integrity.</p> <p>The review also considered that the in-built capacity in the legislation to exclude low-risk categories of supply sources/products from the licensing-style requirement should continue to be used, wherever feasible.</p> <p>The review concluded that the benefits of a contract supply regime to the community as a whole outweigh the costs involved, and a net public benefit therefore exists.</p> | The current system for overseeing casino supply contracts continue to apply          |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION |                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                           |
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| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                   |                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                           |
| Imposition of a cap on the number of casino gaming tables and gaming machines in a casino           | Address community concerns at unchecked growth in casino gambling, specifically concern at potential market saturation. | <p>Production levels are controlled, with the potential to limit accessibility and increase price.</p> <p>Accessibility to casino gaming facilities is limited for gamblers, especially for recreational gamblers.</p> <p>Business freedom, flexibility and efficiency are impeded.</p> <p>Innovation may be stifled.</p> <p>Market and employment opportunities for casino management and workers are reduced.</p> <p>Competitive neutrality among the gaming machine caps placed on other venues may not apply.</p> | <p>Community sentiment is taken into account and acted on.</p> <p>Social harm from casino gaming facilities is addressed, especially for problem gamblers.</p> <p>Consumers are adequately catered for by accessibility to 200 casino gaming tables; 1,500 gaming machines in a casino; 104,000 gaming machines in clubs and hotels; and other gambling products in NSW.</p> <p>Market is capable of adjusting to and functioning in an environment where venue caps apply.</p> <p>The cap on casino gaming machines (1,500) is less restrictive than the caps on club gaming machines (450) and hotel gaming machines (30).</p> | <p>The review noted the Productivity Commission's view that venue-based caps, as a quantity restriction, can play a role in moderating the accessibility drivers of problem gambling.<sup>89</sup></p> <p>The review also noted the Commission's ultimate conclusion that, while caps can potentially serve a failsafe role, there is a need over time to reduce reliance on caps as more targeted measures prove their worth.</p> <p>The review considered that, even with the other consumer protection measures in place in NSW, a policy of capping the number of gaming facilities in individual venues can serve appropriately to control consumer demand.</p> <p>The review also considered that research should continue into the efficacy of individual and collective harm minimisation measures.</p> <p>The review therefore concluded that the benefits of this restriction outweigh the costs.</p> | A cap on the number of casino gaming tables and casino gaming machines continue to apply. |

<sup>89</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p3

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION</b>    |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                         |
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| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                             |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                         |
| Restrictions requiring casino personnel to undergo training in responsible gambling obligations and practices | <p>Minimise gambling-related harm to the community.</p> <p>Protect amenity of local communities.</p>                                                                                        | <p>Business freedom to engage labour is constrained.</p> <p>Business may have to bear the cost of training, which could adversely affect viability.</p> <p>The capacity for job seekers to take up employment is impeded, unless job seekers have completed requisite training.</p>                                                                                                                                                                                                                                                                                                     | <p>Harm to 'at risk' gamblers is potentially reduced.</p> <p>Social harms are potentially reduced.</p> <p>Commercial incentives for a casino to ignore gambling problems or engage in unethical conduct are countered.</p> <p>Workforce skills are enhanced to the advantage of business, employees and consumers.</p>                                                                                                                                             | <p>The review noted IPART's view that mandatory training for gaming-related staff in venues has the capacity to foster a responsible gambling environment.</p> <p>The review considers that the restriction should not be removed.</p> <p>The review therefore concluded that the benefits of this restriction outweigh the costs.</p>                                                                                                                                                                                                          | Current requirement for occupational training in the responsible conduct of gambling continue to apply. |
| Restrictions on the conduct of junket operations                                                              | <p>Minimise gambling-related harm to the community.</p> <p>Ensure that persons involved in the operation of a casino meet and/or comply with specified integrity and conduct standards.</p> | <p>Business freedom, flexibility and efficiency are impeded.</p> <p>Innovation may be stifled.</p> <p>Competition is restricted as junket operators cannot freely enter the market.</p> <p>Market entry is available only to persons prepared to undergo scrutiny by licensing authorities.</p> <p>Licensing-style processes and expectations may result in increased business costs and/or lost business opportunity.</p> <p>Risk of reduced competitiveness in the NSW junket market, compared to junket markets in other jurisdictions where the same restrictions do not apply.</p> | <p>Thorough casino licensing regime in which the public has a high level of trust and comfort.</p> <p>Enhanced integrity of the casino environment.</p> <p>Enhanced competence of industry workers.</p> <p>A licensing-style scheme is supported by the community provided administration of the scheme demonstrates regulatory reasonableness – whereby regulators strike a balance between industry conduct and community standards of acceptable behaviour.</p> | <p>The review noted the casino industry custom of regulating junket operators and their authorised representatives in order that junkets do not impact negatively on the integrity of casino operations, especially in a segment of the casino gaming market that can be lucrative.</p> <p>The review also noted that regulatory experience tended to confirm the need to monitor junkets closely and subject them to special requirements.</p> <p>The review therefore concluded that the benefits of this restriction outweigh the costs.</p> | Current requirement for supervision of junket operations continue to apply.                             |



| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION |                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                               |
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| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                   |                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                               |
| Restrictions on casino access by persons excluded from a casino                                     | <p>Minimise gambling-related harm to the community.</p> <p>Ensure that persons involved in the operation of a casino meet and/or comply with specified conduct standards.</p> | <p>A casino operator is denied the opportunity to profit from a proportion of the gambling population, i.e. problem gamblers.</p> <p>The burden of monitoring the identity of casino patrons is placed on a casino operator, thereby resulting in the operator having to adjust business practices and possibly incur costs.</p> <p>Members of the public are denied the opportunity to behave in a certain way.</p> | <p>Gambling-related harm and its associated impact on the community are minimised by encouraging the responsible operation of casino gaming facilities, and responsible conduct of a casino.</p> <p>Gambling-related harm and its associated impact on individuals are minimised by assisting problem gamblers who the community expects not to be able to access casino gaming facilities with impunity.</p> <p>Any potential for criminal elements to be attracted to the casino environment is addressed by the ability of the casino operator, the police and the casino regulator to exclude persons associated with such elements.</p> | <p>The review noted the Productivity Commission's view that exclusion schemes are an important harm reduction measure.<sup>90</sup></p> <p>The review also noted the observation that the scheme in the NSW legislation is wide enough to permit exclusion orders to be made against gamblers who are gambling in an uncontrolled manner.<sup>91</sup></p> <p>The review considered that the community would strongly oppose the removal or weakening of a restriction directed to harm reduction.</p> <p>The review considered that the community would also strongly oppose the removal or weakening of a restriction directed to a reduction in crime.</p> <p>The review considers that the benefits associated with this restriction very much outweigh the costs.</p> | Existing restrictions on casino access by excluded persons continue to apply. |

<sup>90</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p16.65

<sup>91</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p68

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION                    |                                                                                                     |                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                             |
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| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                                      |                                                                                                     |                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                             |
| Restrictions on the advertising of casino gaming facilities, and on gaming machine signage on the exterior of a casino | <p>Minimise gambling-related harm to the community.</p> <p>Protect amenity of local communities</p> | <p>Opportunities for market promotion and penetration are reduced or prevented.</p> <p>Business freedom and flexibility are impeded.</p> <p>Business viability may be affected adversely.</p> <p>Accessibility to casino gaming facilities may be made more difficult, as consumers may not know where to find the services.</p> | <p>Social harms from gaming machines are minimised.</p> <p>Businesses may still use other means to promote their casino gaming product or services.</p> <p>Most consumers already know where to access casino gaming facilities.</p> <p>Local amenity is protected from the presence of gaudy advertisements and signage.</p> <p>Regulatory scheme shows reasonableness by only restricting casino advertising that:</p> <ul style="list-style-type: none"> <li>• encourages breaches of the law;</li> <li>• includes children;</li> <li>• is false, misleading or deceptive;</li> <li>• is not conducted in accordance with decency, dignity and good taste;</li> <li>• suggests that winning a prize is a likely outcome of gambling;</li> <li>• suggests that gambling is likely to improve a person's social standing or financial prospects;</li> <li>• suggests that a player's skill can influence the outcome of a game that is purely a game of chance; or</li> <li>• depicts or promotes the consumption of alcohol while gambling.</li> </ul> | <p>The review considered that, because a purpose of advertising is to heighten product appeal and ultimately increase product demand, strong restrictions on casino advertising would serve the public interest.</p> <p>The review drew support from the Productivity Commission's view that there are grounds for tight control on gambling advertising, where it is felt that information provided by a gambling operator would reinforce inherently false beliefs about the odds of winning or about the way that gambling technologies work.<sup>92</sup></p> <p>The review considered that this restriction is necessary to minimise the social harms from casino gaming.</p> <p>The review concluded that the benefits of this restriction outweigh the costs.</p> | <p>Existing restrictions on the advertising of casino gaming facilities, and on signage on the exterior of a casino, continue to apply.</p> |

<sup>92</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p16.38

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION                            |                                                                                                                           |                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                            |
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| Restriction                                                                                                                    | Objective                                                                                                                 | Costs                                                                                                                                                                                                                                                                                                                                    | Benefits                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Recommendation                                                                                             |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                                              |                                                                                                                           |                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                            |
| Restrictions requiring a casino operator to provide gambling patrons with information about casino games and help-line sources | Minimise gambling-related harm to the community and to individuals by protecting consumers against information asymmetry. | <p>Business freedom and flexibility are impeded.</p> <p>Casino operator incurs business costs in procuring, affixing and otherwise supplying specified information and signage.</p> <p>Resources that could be used to improve standards and service for consumers must instead be allocated to satisfying a regulatory requirement.</p> | <p>Consumers can make gambling-related decisions on an 'informed choice' basis which may moderate 'at risk' gambling behaviour.</p> <p>False perceptions of how games work may be overcome.</p> <p>Problem gamblers and other consumers are made aware of sources of help.</p> <p>Cost of information materials is offset by the potential for gaming machines to generate substantial business income.</p> <p>Cost of some information materials has been absorbed by government.</p> | <p>The review observed that the concept of 'informed choice' is important for gamblers because of the potential risks.</p> <p>The review drew support from the Productivity Commission's view that consumer information is essential to the operation of the 'informed choice' concept.<sup>93</sup></p> <p>The review considers that this restriction is necessary to minimise the social harms from casino gaming.</p> <p>The review concluded that the benefits of this restriction outweigh the costs.</p>                        | Existing restrictions requiring the provision of consumer information to casino patrons continue to apply. |
| Restrictions on the cashing of cheques for gambling purposes                                                                   | Minimise gambling-related harm to the community and to individuals.                                                       | <p>Business freedom and flexibility are impeded.</p> <p>Consumer convenience is inhibited because accessibility to financial services in a casino is made more difficult, especially for recreational gamblers.</p>                                                                                                                      | <p>Harm to 'at risk' gamblers is reduced.</p> <p>Social harms are reduced.</p> <p>Consumer inconvenience would be low to moderate, and ready substitutes are available.</p>                                                                                                                                                                                                                                                                                                            | <p>The review noted that, as problem gamblers will borrow money to gamble,<sup>94</sup> a restriction on cashing cheques is important as a restriction on credit.</p> <p>The review drew support from the Productivity Commission's view that, in principle, cheques should not be cashed in gambling venues.</p> <p>The review considered that this restriction is necessary to minimise the personal and social harms from casino gaming.</p> <p>The review concluded that the benefits of this restriction outweigh the costs.</p> | Existing restrictions on the cashing of cheques for casino gambling purposes continue to apply.            |

<sup>93</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p16.21

<sup>94</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p66

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION</b> |                                                                     |                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                     |
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| <b>Restriction</b>                                                                                         | <b>Objective</b>                                                    | <b>Costs</b>                                                                                                                                                                                                                                                                                                                   | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Recommendation</b>                                                                               |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                          |                                                                     |                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                     |
| Restrictions on the placement of cash dispensing facilities such as ATMs and EFTPOS in a casino            | Minimise gambling-related harm to the community and to individuals. | Business freedom and flexibility are impeded.<br><br>Consumer convenience is inhibited because accessibility to financial services in gaming machine venues is made more difficult, especially for recreational gamblers.                                                                                                      | Harm to 'at risk' gamblers is reduced.<br><br>Social harms are reduced.<br><br>Consumer inconvenience would be low to moderate, and ready substitutes are available.<br><br>Cash dispensing facilities such as ATMs are permissible in the non-gaming areas of a casino.                                                                                                                                                                                 | The review noted the findings of numerous government inquiries that it is reasonable to impose restrictions on the location of cash dispensing facilities in gambling venues.<br><br>The inquiries were consistent in the view that any gains through the credit and cheque-cashing restriction are likely to be lost if ATMs are permitted in gambling areas.<br><br>The review also noted that, as identical restrictions apply to clubs and hotels, competitive neutrality operates.<br><br>The review considered that this restriction is necessary to minimise the personal and social harms from casino gambling.<br><br>The review concluded that the benefits of this restriction outweigh the costs. | Existing restrictions on the placement of cash dispensing facilities in a casino continue to apply. |
| Restrictions on the capacity of a casino to provide inducements for gambling purposes                      | Minimise gambling-related harm to the community and to individuals. | Opportunities for market promotion or penetration are reduced or prevented.<br><br>Business freedom and flexibility are impeded.<br><br>Business viability may be affected adversely.<br><br>Consumer choice is reduced – accessibility to casino gambling products limited for patrons, especially for recreational gamblers. | Harm to 'at risk' gamblers is reduced by safeguarding casino patrons from being induced into consuming liquor in a manner that could lead to irresponsible gambling and other inappropriate behaviour.<br><br>Harm to 'at risk' gamblers is also reduced by safeguarding casino patrons, who may be problem gamblers, from receiving unsolicited mail packages containing offers to play gaming machines at the casino.<br><br>Social harms are reduced. | The review noted expressed views and limited research evidence to the effect that the provision of alcoholic drinks to patrons may impair judgment when playing gaming machines.<br><br>The review also noted that, as identical restrictions apply to clubs and hotels, competitive neutrality operates.<br><br>The review considers that this restriction is necessary to minimise the personal and social harms from casino gambling.<br><br>The review concluded that the benefits of this restriction outweigh the costs.                                                                                                                                                                                | Existing restrictions on the provision of casino gambling inducements continue to apply.            |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION</b> |                                                                                            |                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                          |
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| <b>Restriction</b>                                                                                         | <b>Objective</b>                                                                           | <b>Costs</b>                                                                                                                                            | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                            | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Recommendation</b>                                                                                    |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                          |                                                                                            |                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                          |
| Restrictions on current and former regulatory officials gambling in a casino                               | Ensure public confidence in the integrity and independence of casino regulatory officials. | <p>A casino's customer base is inhibited.</p> <p>The range of leisure activities available to casino employees and regulatory officials is limited.</p> | <p>The reported view that employees of gambling venues have been known to develop gambling problems within their place of employment, and even to fraudulently abuse their positions to gamble using venue funds, is addressed.<sup>95</sup></p> <p>Public confidence in the rectitude of the casino gambling environment is catered for and promoted.</p> | <p>The review noted the findings of various government inquiries that the risk of collusion and susceptibility to problem gaming by employees of gambling venues can necessitate that employees be banned from gaming on their employers' premises.</p> <p>The review considered that this restriction is necessary to minimise the personal and social harms from casino gambling, and to maximise the integrity of casino gaming.</p> <p>The review concluded that the benefits of this restriction outweigh the costs.</p> | Existing restrictions on current and former regulatory officials gambling in a casino continue to apply. |

<sup>95</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p54

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW CASINO LEGISLATION                                |                                                                                            |                                                                                                                                                                                  |                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                |
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| Restriction                                                                                                                        | Objective                                                                                  | Costs                                                                                                                                                                            | Benefits                                                                                           | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Recommendation                                                                                                                                                 |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                                                  |                                                                                            |                                                                                                                                                                                  |                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                |
| Restrictions on current and former regulatory officials securing employment of having business associations with a casino operator | Ensure public confidence in the integrity and independence of casino regulatory officials. | <p>A casino's customer and workforce base is inhibited.</p> <p>The range of employment and business activities available to past or present regulatory officials is limited.</p> | Public confidence in the rectitude of the casino gambling environment is catered for and promoted. | <p>The review noted that the restrictions may present a restraint on trade for regulatory personnel, especially where they possess special skills in regulatory operations that a casino operator could use (eg, for business advantage).</p> <p>The review also noted the reported view that these restrictions are of significance "in avoiding the temptation to mould individual behaviour with a view to future advantages as well as draw on past associations to secure present advantages".<sup>96</sup></p> <p>The review noted the suggestion that, although these restrictions do not generally apply in other jurisdictions, the "readily identifiable risks in the liquor, gaming and casino industries have made post employment restrictions acceptable to the community" of NSW.<sup>97</sup></p> <p>The review considered these restrictions as necessary to minimise the harms from casino gaming, and to maximise casino integrity.</p> <p>The review concluded that the benefits of these restrictions outweigh the costs.</p> | Existing restrictions on current and former regulatory officials securing employment or having business associations with a casino operator continue to apply. |

<sup>96</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p107

<sup>97</sup> Independent Commission Against Corruption (1997) *Managing Post Separation Employment: Discussion Paper*, p25

## **6. Alternative approaches**

### **6.1. Background**

- 6.1.1. The Competition Principles Agreement requires the Government to demonstrate that the least restrictive form of intervention is being used to achieve the objectives of the legislation under review.
- 6.1.2. The most common alternatives to comprehensive government licensing of an industry are deregulation, self-regulation, co-regulation and negative licensing.
- 6.1.3. These alternatives were explored by the review, and the review's findings are presented below.

### **6.2. Deregulation**

- 6.2.1. This alternative involves the removal of licensing altogether, with the result that any person or business, irrespective of (say) their character or financial standing, would be able to provide gaming machine services to any consumer or group of consumers.
- 6.2.2. The performance and conduct of service providers would be determined by market forces, and also by general consumer and land use legislation. Sources for consumer redress would include common law remedies, and remedies conferred by the Fair Trading Act 1987 and other trade practice legislation.
- 6.2.3. Removal of the licensing system would increase competition within the industry and provide business opportunities for new entrants into the market.
- 6.2.4. However deregulation is not an appropriate policy alternative. The review considers that the costs to the community as a whole from total deregulation would outweigh the benefits that may accrue to individuals. The potential costs arising from deregulation would include a very significant increase in gambling-related harm and a lessening of local amenity.
- 6.2.5. There is a strong community expectation that the advances achieved so far by government, industry bodies and consumer advocates, in terms of the responsible conduct of gambling and all related forms of harm minimisation, must be preserved.
- 6.2.6. These gains would be threatened by the absence of some form of regulation that compels those involved with the provision of gaming machine services to act responsibly and in the public interest (rather than purely in their own commercial interests), and which allows effective sanctions to be applied where that does not occur.

### **6.3. Self-regulation**

- 6.3.1. Self-regulation can take place when an industry association or body assumes responsibility for setting standards and supervising the conduct of persons involved in an industry, rather than the industry being regulated by government.
  - 6.3.2. Self-regulation could increase competition within the industry and business opportunities for new entrants into the market. It can be an efficient means of regulation, and can help to achieve and maintain a perception of an industry that is responsive to community attitudes and needs.
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- 6.3.3. However, given the nature of the casino industry (i.e. a large industry with a wide variety of supply businesses competing in a competitive market), and the harm that can be associated with gambling, the level of control available from a self-regulatory system would not satisfy industry, community and government expectations.
- 6.3.4. Practical difficulties, coupled with varying intra-sector and inter-sector interests, would make it difficult to determine a single industry association or body that should or could assume responsibility for standards and policing. There would be significant difficulties in ensuring compliance with standards and proper supervision of the industry on a day-to-day basis.
- 6.3.5. The potential costs to the community from a lessening of regulation would include significantly increased harm to individuals and communities, as well as lower standards of conduct and operation.

#### **6.4. Co-regulation**

- 6.4.1. A more advanced form of self-regulation is co-regulation, whereby the standards, codes of practice and other arrangements used to 'regulate' businesses are developed through industry, consumer and government liaison.
- 6.4.2. Generally, co-regulation would involve the industry in an open and competitive structure with a reduced level of government regulation.
- 6.4.3. There are a number of ways in which co-regulatory options could be implemented. There may be substantial or total devolution of regulatory options to an industry association, requiring that body to take responsibility for enforcing its own code of practice. Government could seek to retain the power to invoke regulatory tools in the event that an industry association is unable to satisfactorily manage its members.
- 6.4.4. In other co-regulatory models, there may be some transfer of government control to the co-regulatory body but there still must be a legislative base to enable prosecutions. There would need to be a parallel government regulatory body for non-affiliated operators and for an appeal mechanism from the industry body.
- 6.4.5. It can be argued that the casino operator is already subject to a form of co-regulation and that important initiatives (e.g. the development and adoption of industry codes of practice) have been achieved through collaboration.
- 6.4.6. However, for much the same reasons as detailed in chapter 6.3, it is probable that co-regulation alone would not achieve comprehensive industry coverage and deliver outcomes that are acceptable to the community. This is particularly so in terms of ensuring compliance with standards and proper supervision of the industry on a day-to-day basis.

#### **6.5. Negative licensing**

- 6.5.1. Negative licensing is a regulatory regime whereby government establishes (through legislation) a set of core requirements for entry and continuation within an industry, but where there is no review or approval process prior to entry.
  - 6.5.2. The term 'negative' refers to a disciplinary process that results in the exclusion or banning of an individual or entity from a particular area or marketplace. It is often an alternative to a licensing regime.
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- 6.5.3. There is no restriction on entry but, where the legislative provisions governing conduct in an area of activity have been breached, one disciplinary option is to ban the offending party from operating in that area again.
- 6.5.4. Under this approach, there is no restriction on industry entry, other than for persons excluded for non-compliance with the legislation. Therefore regulatory resources can be shifted away from the up-front licensing system to education, monitoring and enforcement effort.
- 6.5.5. A viable complaints and disciplinary framework is paramount for the proper operation of a negative licensing scheme. Reporting, investigation and audit systems are required to effectively identify non-compliance.
- 6.5.6. It is possible that this approach could include a significant degree of co-regulation with industry establishing the control, audit and performance review processes supported by a regulatory regime that allows action to be taken based on industry-verified evidence.
- 6.5.7. By cutting red tape, this approach is likely to impose fewer costs on the industry and new entrants. However, negative licensing would not achieve the objectives of the gaming machine legislation.
- 6.5.8. For example, there would be no screening process to preclude from the industry those persons considered an inappropriate risk to consumers and detrimental to law abiding operators, such as persons who exhibit fraud or dishonesty. It would also be difficult to ascertain exactly who is participating in the industry.
- 6.5.9. Further, there would be no consideration of specific harm minimisation measures that may need to be put in place for a licensed venue to provide a responsible casino environment. This would result in a reactive regulatory system that could be subject to significant public criticism.

## **6.6. Comprehensive licensing system**

- 6.6.1. Comprehensive licensing is currently in place in the casino environment. Although a licensing system restricts competition, it is the only valid way of achieving the objectives of the legislation.
  - 6.6.2. It provides a robust and consistent framework for regulation of the casino industry and an instrument for enforcing that regulation.
  - 6.6.3. All Australian and other developed jurisdictions require the licensing of casino operators. Many of these jurisdictions also undertake regulatory oversight of goods and services suppliers to their casino operators, although the specifics of oversight regimes differ in some respects.
  - 6.6.4. On balance, the evidence suggests that the greatest net public benefit would arise from a comprehensive licensing model.
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## 7. Conclusions and recommendations

### 7.1. Conclusions

- 7.1.1. The review observed the existing NSW casino laws contain restrictions that support community social standards.
- 7.1.2. The review also observed that the casino laws contain significant restrictions in the form of barriers to market entry and constraints on market conduct. The laws therefore impose significant compliance costs on businesses and workers.
- 7.1.3. The review found that the restrictions are required to effectively support the objectives of the legislation.
- 7.1.4. It also found that the restrictions provide very significant benefits to the community as a whole in terms of minimising gambling-related harm, protecting local amenity, and ensuring the integrity and proper conduct of market participants.
- 7.1.5. Overall, the review concluded that the legislation in its current form generates a net public benefit.
- 7.1.6. The review identified, as the major restriction on competition in the casino environment, the 'one casino licence' provision in section 6 of the Act, which is backed by a contractually binding 12-year exclusivity period.
- 7.1.7. The review noted, however, that the Sydney casino licence was awarded on the basis of a competitive bid where the bidders were made fully aware of all conditions attached to the licence, including the tax schedule that would apply to gaming revenue for a specified period of time, and the exclusivity arrangement.
- 7.1.8. The review acknowledged that economic theory tends to regard competition for the market, undertaken as an alternative to continuing and open competition in the market, as a second best outcome. At the same time, the review recognised that, where the size of a market is limited and constitutes a natural monopoly (i.e. a market which could realistically support only one supplier of a service), the second best option is in reality the best outcome.
- 7.1.9. The review drew support from a judgment of the Federal Court of Australia, which considered whether entry into an exclusive licence arrangement with a tenderer for port towage services had the purpose, or was likely to have the effect, of substantially lessening competition. The Court concluded that the competitive outcomes created by a tender process are not substantially less than could result from the free operation of the market. In coming to this position, the Court commented:

An exclusive licensee will be insulated from competitive pressures for the period of the licence, subject to any pressures associated with the extension or renewal of the terms of the licence. There will be a shift from a natural monopoly to a legally enforced and controlled monopoly, but the market behaviour of the successful tenderer will be regulated by the terms of the agreement which results from the competition for the market brought about by the tender process. The tender process creates competition between rivals for the opportunity to supply ... services ... on the basis that the prices will be capped. Competitive outcomes are prescribed or sought within the contract entered into as a result of the bidding process, rather than through the operation of market forces during the term of the contract.

The competitive effect of the tender process endures for the term of the licence, notwithstanding the fact that rivals are prevented from entering during the term, because the successful tenderer is bound to continue to supply at prices and conditions set under the influence of the disciplining mechanism of competing tenders.<sup>98</sup>

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<sup>98</sup> Federal Court of Australia (2000) *Stirling Harbour Services Pty Limited v Bunbury Port Authority*, para 25

7.1.10. The Court's judgment in this case has established the market principle that a process of calling for tenders for an exclusive licence is likely to have a pro-competitive effect in an environment where a market is limited (e.g. a natural monopoly):

The grant of the exclusive licence is not to prevent entry, eliminate or damage a competitor or prevent competitive conduct. The purpose of the tender process is to create competition for the market of a kind that allows all interested parties to participate.<sup>99</sup>

7.1.11. The judgment has confirmed that a competitive tender process is a suitable means of harnessing the best prices and other terms in natural monopoly conditions:

Competition is the process by which market participants are forced to offer products on the best prices and terms possible. Competition is both the mechanism for discovery of the manner in which goods may be supplied in the cheapest way possible, and the mechanism of enforcement producing the "peril" of business failure for those who fail to supply goods at prices and on terms that match their rivals ... There is a real "peril" for a tenderer which does not put in its best bid, and ... the discipline flowing from the tender process endures throughout the licence term.<sup>100</sup>

7.1.12. In this light, the review found that the bidding process for the Sydney casino licence, including a specified number of gaming tables and gaming machines, ensured that substantial competitive forces were brought to bear in the process of awarding the licence. This process effectively captured the expected economic rents associated with having exclusivity over casino operations in NSW. In other words, the process of allocating the casino licence closely reflected the requirement and conditions for an efficient market outcome.

7.1.13. The review considers that it would have been difficult to justify the current arrangements on net public benefit grounds if the casino licence had been awarded on a non-competitive basis. The bidding arrangement followed by NSW ensured that the public captured the benefits from having a restricted supply of casino gaming services.

7.1.14. In addition, the review noted that the successful casino bid delivered a range of cultural and community facilities, such as the prestigious lyric theatre, showroom theatre, restaurants and retail outlets, that also benefit the wider community, including an influx of residents into the revitalised Pyrmont/Ultimo peninsula. The progressive tax scale ensures that the community continues to capture its share of any excess returns from the casino operation.

7.1.15. The crucial point identified by the review is that, while there may not be day-to-day competition in the market for casino table games, there was vigorous competition in the initial stage of selecting a successful bidder and there is vigorous competition in the market for gaming machines. The review noted that the Swan inquiry into the impact of casino gaming machines on the club and hotel industries reported that the casino would compete in the one gambling market in NSW:

Competition is a two-way street. Just as registered clubs and hotels fear competition from the proposed casino, the casino will have to compete with over one thousand registered clubs, many of which are well run and quite entrepreneurial. If the casino is to succeed it must not simply duplicate the ambience, surroundings and clientele of existing registered clubs and hotels. It will probably want to choose dress rules, layout, skill mix of tables and slots, more favourable odds to gamblers and both food and beverages, including their price structure, to appeal to a new clientele which is not being served by either clubs or hotels.<sup>101</sup>

<sup>99</sup> Federal Court of Australia (2000) *Stirling Harbour Services Pty Limited v Bunbury Port Authority*, para 73

<sup>100</sup> *Ibid*, para 32

<sup>101</sup> Professor Peter Swan (1992) *Report on the Likely Effect of Slot Machines in a Casino on the Operations and Viability of the Registered Club and Hotel Industries*, p62

- 7.1.16. The depth and diversity of the NSW and Australian gaming market would strongly suggest that there are numerous close substitutes for the gaming services offered by Star City casino. It is therefore likely that the potential social and private costs of the single licence restriction have been mitigated by the scale and scope of competition in the broader gambling market.
- 7.1.17. Ultimately, the single casino licence was the best competitive outcome on net public benefit grounds.
- 7.1.18. Moreover, the nature of the exclusivity contract precludes consideration of alternatives at this stage, because of the provision entitling the casino operator to damages for a breach of the contract.
- 7.1.19. The review considers that the requirement that the Government make large compensation payments to the incumbent licence holder, in the event of a breach of the exclusivity arrangement, would outweigh any perceived benefits from revoking these arrangements prior to the contract date.
- 7.1.20. The review also considers that forecast budgetary constraints preclude consideration of the Productivity Commission's proposal that governments introduce measures that would shorten the contracted period of exclusivity (e.g. encouraging casino operators to relinquish their exclusive licences earlier than the specified contract date through targeted taxation incentives).
- 7.1.21. The review recognised the NCC's indication that the winding back of exclusive licences does not represent a tenable option for jurisdictions given the potential compensation issues involved. The NCC proposed that jurisdictions should instead focus on what arrangements should be applied when such exclusive licences expire. The review provides support for this approach in respect of the Sydney casino licence.
- 7.1.22. The review concluded that there are no feasible alternatives to the single licence arrangement at the present time. This position is based on the following considerations:
- the casino licence and the exclusivity arrangement were granted to the current casino operator, in good faith, before the Competition Principles Agreement was formulated and endorsed;
  - the Government would be liable for a substantial compensation payout if the current exclusivity arrangement was to be altered;
  - any move to default on this contractual arrangement could tarnish the reputation of the NSW economy as an attractive location for business investment with a perception of sovereign risk, if the Government failed to comply with the arrangement;
  - the exclusive licence arrangement represents a reasonable approach to the gradual liberalisation of the gaming market in an environment of discernible community apprehension about possible social costs;
  - although there may not be full competition in the casino market, there was open and robust competition for the right to be the single casino operator; and
  - the single licence provision was subjected to intensive debate in the NSW Parliament and was supported by both major political parties.
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## **7.2. Recommendations**

- 7.2.1. The review recommends that the Government consider the case for liberalising the casino gaming market as the year 2007 expiry date for the exclusivity agreement is approached.
- 7.2.2. At that time there should be more reliable and complete information on the costs and benefits of open competition in casino gaming markets. Also by that time, information should be available to assess the impact of recent moves towards common ownership of the Sydney casino and some casinos in Queensland.
- 7.2.3. Consideration would be given to the NCC's general findings relating to casino licensing arrangements that would meet the obligations in clause 5 of the Competition Principles Agreement. These findings include:
- providing no new exclusive casino licences;
  - not renewing existing exclusive licences on expiry; and/or
  - removing any other legislative barriers that forestall new entry into the casino gaming market and/or favour incumbents.
- 7.2.4. Another option could include consideration of an increase in the number of licences, and the framing of suitable legislation for Parliament, on the condition that such licensing arrangements would meet the clause 5 obligations.
- 7.2.5. Such a review, when conducted, may provide an opportunity to re-consider the merits of any other competitive restrictions in the casino legislation.
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