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# **National Competition Policy**

## **Review of the NSW Gaming Machines Act 2001**

**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 gaming machine laws, according to National Competition Policy (NCP) principles.

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

The review sought submissions from interested stakeholders, and a wide range of views was expressed. There was general agreement in submissions made to the review that the gaming machine laws and the licensing process are essential to achieving the public interest.

During the course of the review, all submissions were considered – as were submissions made in response to parallel consultation processes on proposed responsible gambling legislation. 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.

This review began as a review of the gaming machine laws contained in the *Liquor Act 1982* and the *Registered Clubs 1976*. These laws were repealed during the life of the review. The laws were re-enacted, with modification, into the *Gaming Machines Act 2001*. The new laws commenced operation in April 2002.

The reform process that preceded the Gaming Machines Act was undertaken with NCP principles in mind. In view of the acknowledged harm that can be caused by gambling, the Government considered, and accepted, that there are substantial public benefits from this legislation.

The Gaming Machines Act contains policy objectives, including an objective directed to the minimisation of gambling-related harm. The review considered that the objectives are appropriate.

This Act introduced new pro-competitive effects. For example, the legislation established a new market consisting of a tradeable rights scheme that gives clubs and hotels added flexibility in the 'entitlement' to operate gaming machines, and a potential new source of income as a result.

Also, the Act simplified and streamlined the regulatory structure for gaming machines, benefiting all involved as it is now a less complex system.

The review found that the gaming machine legislation contains significant barriers to entry and other constraints on competition. The review concluded that the restrictions are considered necessary to achieve the objects of the legislation.

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 concluded in favour of the continuation of a comprehensive licensing system and related entry barriers. However, the review recommends that existing processes around occupational licensing should continue to be examined with a view to streamlining them by moving progressively to a more administrative system.

The review noted the requirement of the legislation itself that a separate review be undertaken in 2007 to determine whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives. This review, when conducted, may provide an opportunity to re-consider the merits of any residual competitive restrictions in the gaming machine legislation.

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## 1. Background to the review

### 1.1 Review of laws restricting competition

- 1.1.1 The NSW Government is committed to reviewing 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-governmental 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 Subsequently the Government compiled a list of legislation that contains restrictions that potentially impede competition. The list included the gaming machine laws in the *Liquor Act 1982* and the *Registered Clubs Act 1976*.
- 1.1.7 In 2002, the gaming machine laws were removed from these two Acts. The laws were re-enacted, with modification and reduced complexity, into the *Gaming Machines Act 2001*. This Act came into force on 2 April 2002.

### 1.2 The review process

- 1.2.1 In mid-1999, the NSW Minister for Gaming and Racing requested the Department of Gaming and Racing to conduct a review of the gaming machine provisions contained in the *Liquor Act* and the *Registered Clubs Act*, according to the Competition Principles Agreement.
- 1.2.2 It is NSW 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.
- 1.2.3 The review of the gaming machine laws proceeded according to this policy. Terms of reference were framed for the review, and these are set out in Appendix 1.
- 1.2.4 A Steering Committee, chaired by the Department, and comprising representatives from NSW Treasury and The Cabinet Office, was established to guide the review process.
- 1.2.5 The review commenced in August 1999 with the publication of newspaper advertisements announcing the review and calling for submissions from interested individuals or organisations by September 1999.

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

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

- 1.2.6 A general information sheet was released at that time. Information about the review was also forwarded directly to key stakeholders and other interested persons or groups, including the peak gaming machine industry bodies, Members of Parliament, and NSW Government agencies.
- 1.2.7 Submissions were invited. Appendix 2 lists those who made submissions to the review. These submissions were considered.
- 1.2.8 In February and March 2000, the Steering Committee conducted a series of interviews with key industry stakeholders. This provided an opportunity for discussion about the licensing environment and reform options.
- 1.2.9 The review also considered the views expressed in submissions that were made in response to public consultation that the Department undertook in 1999, 2000 and 2002 on proposed responsible gambling legislation.
- 1.2.10 The review also had regard to the agreement of the Council of Australian Governments (COAG) that NCP reviews of gambling legislation should take appropriate account of the potential public detriment arising from increased competitive pressures in the gambling market.<sup>3</sup>
- 1.2.11 The Department completed the review. The Cabinet Office and the NSW Treasury provided support and assistance.
- 1.2.12 During the course of the review, the National Competition Council (NCC) – which is responsible for overseeing government compliance with NCP obligations – noted the policy reforms in the Gaming Machines Act.
- 1.2.13 The NCC indicated that the harm minimisation reforms – including the requirement for gaming machine venues to establish linkages with gambling-related counselling services, restrictions on advertising and restrictions on hours of opening – fell within the range of measures endorsed by the Productivity Commission and COAG, and therefore met the clause 5 test.
- 1.2.14 The NCC acknowledged that NSW was preparing a report on the public benefit arguments for these and other restrictions in the legislation.<sup>4</sup>

### **1.3 The final report**

- 1.3.1 This report has been prepared for consideration by the NSW 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>5</sup>
- 1.3.3 The report has also considered the guidance that COAG, the NCC and the Productivity Commission provided to governments about the conduct of gambling legislation reviews.

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

<sup>4</sup> National Competition Council (2002) *2002 NCP assessment*, p12.50

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

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## 2. Profile of the gaming machine market

### 2.1 Existence of the market

- 2.1.1 For broken periods during the 1920s and 1930s, so-called fruit machines were available in some not-for-profit venues in NSW as a form of entertainment for patrons and as a source of club trading income. Authorities subsequently rescinded the decisions to allow these machines, and the law against possession and use of gaming machines applied again.
- 2.1.2 During the early 1950s, modest consumer demand for poker machine play and an obliging supply source began to emerge, even though the legal position had not changed. Responding to these influences, the NSW Parliament removed the prohibition in 1956 and replaced it with legislation that allowed the operation of gaming machines in not-for-profit clubs. By December of that year, regulatory approval had been given for the operation of about 800 poker machines in clubs.
- 2.1.3 The market developed from these tentative beginnings to achieve the community acceptance and commercial maturity visible today, in less than five decades. Growth spurts in the number of gaming machines and, to a lesser extent, the number of gaming machine venues occurred during the 1980s (clubs mainly) and the late 1990s (hotels mainly). By 20 June 2003, there were 99,413 gaming machines permitted in 3,186 clubs and hotels in NSW.<sup>6</sup>
- 2.1.4 The market expansion was influenced by numerous factors. Principal among them were good economic conditions for businesses and consumers, changes in consumer spending preferences, increased leisure opportunities for some consumers, ready accessibility to gaming machines, more attractive product as a result of technological advances, and a receptive regulatory posture.
- 2.1.5 The NSW experience was consistent with trends in other Australian jurisdictions that had liberalised gaming machine markets. This situation reflected the apparent Australian enthusiasm for gambling, and a consumer preference for gaming machines in particular.
- 2.1.6 Gambling has long been, and remains, a popular form of entertainment for Australians. Much gambling activity takes place in clubs and hotels, where gaming machines are the most prominent gambling product. Other gambling activity in NSW includes expenditure on lottery products, on wagering products and in a casino, against which clubs and hotels compete for the gambling dollar.

### 2.2 Size and composition of the market

#### National market

- 2.2.1 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>7</sup>
- 2.2.2 The major generator of net expenditure was gaming machine play, at \$8.7 billion. Of this sum, gaming machines in clubs contributed \$4.4 billion; gaming machines in hotels contributed \$3.3 billion; and gaming machines in casinos contributed \$1.0 billion.<sup>8</sup>

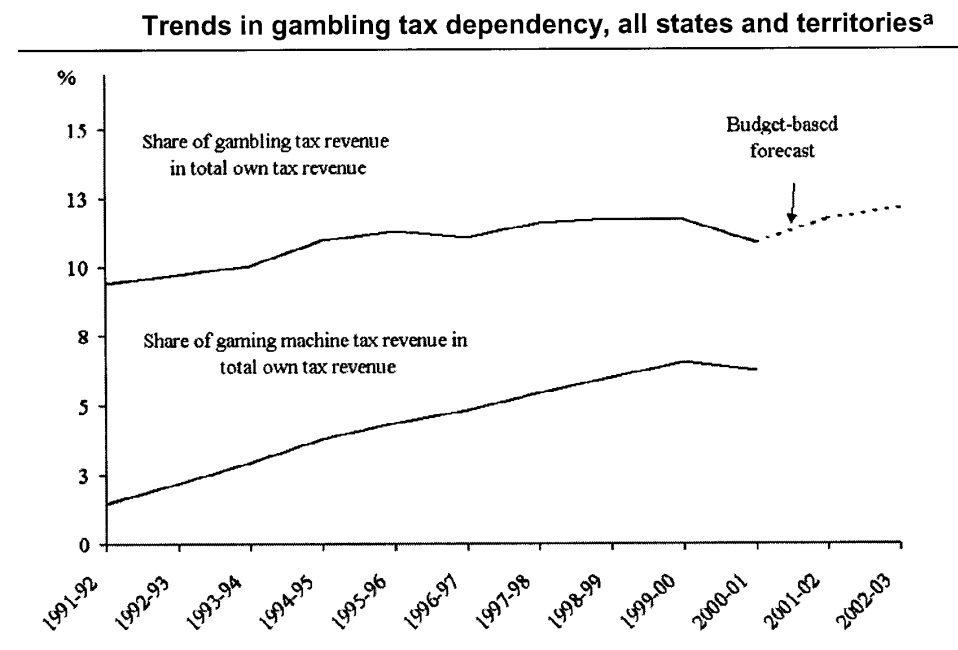
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<sup>6</sup> Department of Gaming and Racing data

<sup>7</sup> Australian Bureau of Statistics (2002) *Gambling Industries Australia 2000-01*, p6

<sup>8</sup> *Ibid*, p6

- 2.2.3 After 1997-98, the structure of gambling activity underwent a change. Net gaming machine expenditure increased from 57% of total net expenditure in 1997-98, to 63% in 2000-01.<sup>9</sup>
- 2.2.4 However, gambling expenditure growth in Australia has begun to slow, largely because of restrained gaming machine expenditure. Based on the Australian estimated resident adult population at 30 June 2001, the total net gambling expenditure of \$13.8 billion represented expenditure of \$944 per head of adult population. This was a 21% increase on per capita expenditure in 1997-98.
- 2.2.5 However, ABS surveys estimate the net expenditure that Australian gambling businesses received from overseas bettors at \$635 million. When overseas bettors are excluded, expenditure on gambling per head of Australian adult population was \$901.<sup>10</sup>
- 2.2.6 In 2000-01, the average net expenditure per gaming machine in Australia was \$47,200. For clubs, the average was \$37,800 and, for hotels, the average was \$58,900.<sup>11</sup>
- 2.2.7 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>12</sup>
- 2.2.8 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%).
- 2.2.9 Trends in gaming machine tax revenues, as a proportion of overall gambling tax revenues, are shown here in Figure 1:<sup>13</sup>



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

<sup>9</sup> Australian Bureau of Statistics (2002) *Gambling Industries Australia 2000-01*, p6

<sup>10</sup> Ibid, p7

<sup>11</sup> Ibid, p7

<sup>12</sup> Ibid, p7

<sup>13</sup> Copyright Commonwealth of Australia, reproduced with permission. Source: Productivity Commission (2002) *The Productivity Commission's Gambling Inquiry: 3 Years On*, p16



- 2.2.10 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>14</sup>
- 2.2.11 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). Although hotels and clubs grew by 25% only, net proceeds from gambling increased by 86% during this period.<sup>15</sup>
- 2.2.12 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>16</sup>

#### NSW market

- 2.2.13 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>17</sup> It represented expenditure of \$1,101 per head of adult population in NSW (after excluding overseas bettors).
- 2.2.14 Total gambling expenditure in NSW increased significantly over the past two decades, mainly because of growth in gaming machine expenditure. However, in 2000-01, gaming machine expenditure began to plateau.
- 2.2.15 The NSW trend has been attributed to a maturation (or possible saturation) of the gaming machine market – "the typical market growth pattern for any new good or service is one of relatively rapidly rising expenditure initially, while consumers 'come on board', followed in time by a slowing and then levelling out of expenditure (or proportionate expenditure) as demand becomes satisfied".<sup>18</sup>
- 2.2.16 In NSW, government revenue from gambling taxes and levies totalled \$1.1 billion in 2001-02.<sup>19</sup> Club and hotel gaming machines were the largest tax source, at \$720.5 million. This represented 67.7% of total gambling taxes and levies for NSW in 2001-02. This result is consistent with the observation that gaming machines are the favoured mode of gambling in NSW.<sup>20</sup>
- 2.2.17 An ABS survey estimated that there were 2,924 businesses engaged in gambling activity in NSW at 30 June 2001.<sup>21</sup> This survey relied on sampling, and has produced an underestimate. According to regulatory records, there were 3,225 clubs and hotels that were authorised to operate gaming machines at 30 June 2001.<sup>22</sup>

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<sup>14</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p2.15

<sup>15</sup> Australian Bureau of Statistics (2002) *Retail Trade Australia*, p4

<sup>16</sup> *Ibid*, p4

<sup>17</sup> Australian Bureau of Statistics (2002) *Gambling Industries Australia 2000-01*, p6

<sup>18</sup> Productivity Commission (2002) *The Productivity Commission's Gambling Inquiry: 3 Years On*, p13

<sup>19</sup> Department of Gaming and Racing (2002) *Annual Report 2001-02*, p1

<sup>20</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p5

<sup>21</sup> Australian Bureau of Statistics (2002) *Gambling Industries Australia 2000-01*, p8

<sup>22</sup> Department of Gaming and Racing (2001) *Annual Report 2000-01*, p1

- 2.2.18 Other NSW gambling businesses at that date included 324 bookmakers, one totalizator operator, two lottery operators and one casino operator. In addition, there are businesses involved in the manufacture, testing, selling and servicing of gaming machines, and in providing advisory and financial services to gaming machine venues.
- 2.2.19 Regulatory information suggests that there were at least 1,500 businesses of this kind at 30 June 2001. Collectively, the number of licensed businesses in the NSW gaming machine market was close to 5,200 at 30 June 2001.<sup>23</sup>
- 2.2.20 Many other types of business trade with gaming machine industry participants. As examples, gaming machine venues engage professional advisers such as lawyers, accountants and social researchers to provide opinion and other assistance in aspects of the regulatory process; rely on banks and other lenders to finance the acquisition of gaming machines; and use contractors for constructing or improving gaming machine areas in a venue.
- 2.2.21 Gaming machine manufacturers use other businesses for ancillary support including product design, component supply and product testing. Transport businesses are used extensively for the shipping and delivery of product throughout NSW.
- 2.2.22 The average number of gaming machines in a club and a hotel was 55 and 14, respectively, at 30 June 2002.
- 2.2.23 In that financial year, gaming machine turnover in clubs was estimated at \$30 billion. The estimate for hotel gaming machine turnover was \$12 billion and the estimate for gaming machine turnover in the casino was \$0.2 billion.
- 2.2.24 In the gaming machine market, clubs hold the largest market share, even though fewer clubs (at 1,388) than hotels (at 1,828) contain gaming machines.<sup>24</sup>
- 2.2.25 Another element of the NSW gaming machine industry is the employment provided to thousands of workers.
- 2.2.26 In 1996, using a direct estimation method, researchers calculated direct employment in the NSW gaming machine industry as 5,520 full-time equivalent (FTE) jobs. Indirect employment was assessed at 2,792 FTE jobs.<sup>25</sup> That study utilised 1994 data. At that time in NSW, there were 71,000 gaming machines in clubs and hotels.
- 2.2.27 The study was repeated in 1997.<sup>26</sup> Applying the estimation method used in the earlier study, the new study reported that direct employment in the NSW gaming machine industry was 18,125 FTE jobs. Indirect employment was assessed at 7,692 FTE jobs. At 30 June in that year, there were 86,680 gaming machines in NSW clubs and hotels.
- 2.2.28 As the overall number of gaming machines is now in the vicinity of 100,000, the employment and other economic impacts today are likely to be greater than the assessments drawn in the 1997 study.

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<sup>23</sup> Department of Gaming and Racing data

<sup>24</sup> Department of Gaming and Racing (2002) *Annual Report 2001-02*, p1

<sup>25</sup> University of Western Sydney (1996) *An examination of the socio-economic effects of gambling on individuals, families and the community, including research into the costs of problem gambling in New South Wales*, p25

<sup>26</sup> University of Western Sydney (1998) *An examination of the socio-economic effects of gambling on individuals, families and the community, including research into the costs of problem gambling in New South Wales – the 1997 Study 2 Update*, p17

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## 2.3 Demand for gambling

2.3.1 The gambling market, including the market for gaming machines, would not exist without consumer demand.

2.3.2 Common reasons for gambling participation include a:<sup>27</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>28</sup>

2.3.4 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.

2.3.5 The determinants include:<sup>29</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;
- 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.

2.3.6 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.

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<sup>27</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p3

<sup>28</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p3.11

<sup>29</sup> *Ibid*, p3.12

- 2.3.7 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>30</sup>
- 2.3.8 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>31</sup>

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<sup>30</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p3

<sup>31</sup> Australian Bureau of Statistics (2002) *Retail Trade Australia*, p6

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### **3. Regulation of the gaming machine industry**

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

- 3.1.1 There is an established pattern of regulating the gaming machine market in Australia. Governments have intervened by using a variety of regulatory techniques – including venue and personnel licensing, venue supervision, venue auditing, setting compliance standards for venues and 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 In NSW, gaming machine regulation stems from 1956 when legislation was enacted to allow not-for-profit clubs to install gaming machines.
  - 3.1.4 The initial regulatory scheme was simple. So long as a club held a licence under the liquor licensing system in use at that time, the club was free to acquire, keep and operate an unlimited number of gaming machines.
  - 3.1.5 Under this regulatory scheme, a gaming machine manufacturer was free to purvey a particular make/model of machine provided the machine fell within established guidelines. It emerged in the mid-1970s, however, that not every gaming machine conformed to the guidelines in use. Also by this time, an increasing variety of reel-style gaming machine product was being developed for the NSW market.
  - 3.1.6 In light of these events, legislation imposed an obligation on gaming machine manufacturers to obtain regulatory approval before a new make/model of gaming machine could be sold to clubs.
  - 3.1.7 The 1956 legislation was displaced in 1976, when new legislation was enacted to establish the present-day concept of a registered club. Under this legislation, a registered club is a not-for-profit organisation that is permitted to sell/supply liquor and to provide gaming machines as a 'natural consequence' of holding a registration certificate. Each club remained free to acquire, keep and operate an unlimited number of gaming machines provided each machine was authorised in advance of installation.
  - 3.1.8 The new legislation imposed a requirement for the first time that a manufacturer obtain approval for each gaming machine model that it intended to sell. This provided an opportunity for the regulatory authority to ensure that any gaming machine proposed for installation in a club aligned with guidelines that had been established by the authority.
  - 3.1.9 Legislation prohibited hotels (i.e. 'for profit' businesses) from operating any form of gaming machine. However, by the early 1980s, gaming machines using video technology began to appear in hotels. It was thought that as many as 8,000 of these gaming machines, which displayed a form of five-card draw poker, were available in venues at that time, despite the prohibition.
  - 3.1.10 In 1984, in response to industry submissions and apparent public acceptance of the presence of this product in hotels, legislation was enacted to enable a hotel to operate this type of gaming machine. Each hotel could install up to five such machines, provided approvals were granted by the regulatory authority.
  - 3.1.11 Two years later, legislation was enacted to require that persons involved in the manufacture, sale and repair of gaming machines be licensed. This decision was part of a heightened strategy to exclude undesirable elements from the gaming machine industry.
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3.1.12 Again in response to industry submissions, and as a reaction to growing consumer demand, each hotel was permitted in 1988 to install up to 10 video draw poker gaming machines, provided pre-installation authorisations were obtained from the regulatory authority.

### **3.2 The environment in the 1990s**

3.2.1 The gaming machine environment changed significantly in the 1990s. Steps were taken to legislate for a casino in Sydney. In this process, it was decided that the casino could operate gaming machines, as well as table games and other gambling products.

3.2.2 At 30 June 1995, there were 62,439 reel-style gaming machines in 1,446 clubs and 11,609 video draw poker gaming machines in 1,820 hotels.

3.2.3 A temporary casino containing 500 club-style gaming machines commenced trading in September 1995. Meanwhile, a permanent casino with capacity for 1,500 club-style gaming machines was under construction, for opening in late 1997.

3.2.4 Also in 1997, the established exclusivity over 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.

3.2.5 Another feature of the 1997 set of decisions was removal of the 'cap of 10'. Now each hotel was allowed to install up to 30 gaming machines, so long as the number of club-style gaming machines did not exceed the number of video draw poker machines.

3.2.6 This nexus was removed in 1998. As a result, each hotel was permitted to operate up to 30 gaming machines, of whatever type, so long as the usual pre-requisite approvals were obtained from the regulatory authority.

3.2.7 The number of gaming machines and gaming machine activity levels increased thereafter. At 30 June 1997, there were 66,042 gaming machines in 1,427 clubs and 20,638 gaming machines in 1,783 hotels.<sup>32</sup>

3.2.8 By 30 June 1998, there were 66,342 gaming machines in 1,407 clubs and 23,756 gaming machines in 1,803 hotels.<sup>33</sup> At the same date in the following year, there were 70,406 gaming machines in 1,438 clubs and 23,874 gaming machines in 1,823 hotels.<sup>34</sup>

3.2.9 Turnover also increased over this period, most noticeably in hotels. At 30 June 1997, gaming machine turnover in clubs was estimated at \$24 billion and gaming machine turnover in hotels was estimated at \$2.6 billion.<sup>35</sup>

3.2.10 By 30 June 1998, club gaming machine turnover was estimated at \$24.7 billion and hotel gaming machine turnover was estimated at \$5.5 billion.<sup>36</sup> At 30 June 1999, club gaming machine turnover was estimated at \$25 billion and hotel gaming machine turnover was estimated at \$6 billion.<sup>37</sup>

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<sup>32</sup> Department of Gaming and Racing (1997) *Annual Report 1996-97*, p1

<sup>33</sup> Department of Gaming and Racing (1998) *Annual Report 1997-98*, p1

<sup>34</sup> Department of Gaming and Racing (1999) *Annual Report 1998-99*, p1

<sup>35</sup> Department of Gaming and Racing (1997) *Annual Report 1996-97*, p1

<sup>36</sup> Department of Gaming and Racing (1998) *Annual Report 1997-98*, p1

<sup>37</sup> Department of Gaming and Racing (1999) *Annual Report 1998-99*, p1

- 3.2.11 Emerging community concerns at the growth in gambling, which were reflected in Parliamentary debate, led to the establishment of a Government inquiry into gaming.<sup>38</sup> This inquiry was appointed to examine the framework for the regulation of gaming and the social impacts of gaming in NSW.<sup>39</sup> Meanwhile, the Government imposed a 'pause' on the introduction of new gambling products.
- 3.2.12 The Federal Government also conducted an inquiry into the national gambling environment.<sup>40</sup> This step coincided with the introduction of landmark legislation for responsible gambling in NSW.<sup>41</sup> In respect of the gaming machine laws in force at that time, the responsible gambling legislation:
- inserted for the first time as an object of the legislation "the minimisation of harm associated with the misuse and abuse of gambling activities, and the fostering of responsible conduct of gambling activities";<sup>42</sup>
  - required regulatory authorities and all other persons exercising functions under the legislation to have regard to the need for gambling harm minimisation and fostering responsible conduct;
  - required the responsible Minister to approve of industry codes of practice that provide practical guidance for the promotion of responsible gambling practices in gaming machine venues;
  - prohibited gaming machine venues from providing patrons with credit for gambling, and from representing a credit card transaction as payment for a good/service where the purpose of the transaction was to provide funds for gambling;
  - provided a gaming machine venue with legal protection if the venue conducts a scheme allowing gamblers to self-exclude; and
  - authorised subordinate legislation to govern promotions and advertising conducted by gaming machine venues; the offer of inducements to patrons of gaming machine venues; the information and signage that gaming machine venues must display for the assistance of gamblers, including notices about the availability of counselling services; dealings in patrons' cheques; the placement of cash dispensing facilities such as ATM and EFTPOS in gaming machine venues; other standards that gaming machine venues must observe for the conduct of responsible gambling activities; and the training that gaming machine venue staff must undergo in order to promote responsible gambling practices.
- 3.2.13 To support these amendments, a raft of regulations was introduced progressively in 2000. These regulations gave effect to the objectives of minimising gambling-related harm and fostering responsible conduct by gaming machine venues.

### 3.3 Other regulatory developments

- 3.3.1 The release of the two inquiry reports, coupled with experience from the 'pause', led to the imposition of a snap freeze on the number of gaming machines in clubs.<sup>43</sup> The freeze also addressed concerns that some clubs were stockpiling gaming machines in anticipation of a more permanent freeze arrangement.

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<sup>38</sup> NSW Parliament Hansard (6 May 1998) *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Bill 1998*, p4476

<sup>39</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*

<sup>40</sup> Productivity Commission (1999) *Australia's Gambling Industries*

<sup>41</sup> NSW Parliament (1999) *Gambling Legislation Amendment (Responsible Gambling) Act 1999*

<sup>42</sup> *Ibid*, p6 and p21

<sup>43</sup> NSW Parliament (2000) *Gambling Legislation Amendment (Gaming Machine Restrictions) Act 2000*

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- 3.3.2 The club freeze applied from 28 March 2000. Under the freeze, a club was prevented from increasing its gaming machine holdings – unless an increase was justified because of demonstrated hardship, such as where the cost of building works in progress at the date of the freeze was dependent on revenue from extra gaming machines – until the end of the freeze. No date was set for cessation of the club freeze.
- 3.3.3 A freeze on the number of hotel gaming machines was imposed on 19 April 2001.<sup>44</sup> Under this freeze, a hotel was prevented from increasing its gaming machine holdings beyond the number held at the date of the freeze. No end date was set for this freeze.
- 3.3.4 The freezes curtailed growth in the number of gaming machines in clubs and hotels while broader policy reforms were formulated and prepared for enactment as legislation. The Government announced its reform measures on 26 July 2001.

### 3.4 Contemporary regulation

- 3.4.1 The policy reforms were legislated into the *Gaming Machines Act 2001* in December of that year. This Act and the subordinate *Gaming Machines Regulation 2002* establish the contemporary regulatory structure.
- 3.4.2 The Act consolidated the gaming machine laws formerly located in the *Liquor Act 1982* (for gaming machines in hotels) and the *Registered Clubs Act 1976* (for gaming machines in clubs). The legislation was simplified in the course of this process.
- 3.4.3 The Gaming Machines Act provides a single regime for the control, regulation and management of gaming machines in clubs and hotels.
- 3.4.4 This Act also provides for the control and regulation of related industry participants – including manufacturers of gaming machines, facilities for the testing of gaming machines, sellers of gaming machines, and those involved in the technical servicing and repair of gaming machines.
- 3.4.5 The Act and the Regulation commenced operation on 2 April 2002.
- 3.4.6 The main features of the Act include:
- the clear expression of “gambling harm minimisation ... and the fostering of responsible conduct in relation to gambling” as the primary object of the legislation;<sup>45</sup>
  - the requirement that regulatory authorities and others who exercise functions under the legislation have regard to gambling harm minimisation and fostering responsible conduct when exercising those functions;
  - imposition of an overall State cap of 104,000 gaming machines, comprising a ‘club pool’ cap of 78,020 gaming machines and a ‘hotel pool’ cap of 25,980 gaming machines;
  - imposition of a general cap of 450 gaming machines for a club, and introduction of a strategy for reducing over 5 years the number of gaming machines in the 18 large-scale clubs that had more than 450 gaming machines at 28 March 2000 (i.e. the club freeze date);
  - retention of the cap, set in 1997, of 30 gaming machines for a hotel;

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<sup>44</sup> *Liquor Amendment (Approved Gaming Devices) Regulation 2001, Liquor Further Amendment (Approved Gaming Devices) Regulation 2001 and Liquor Amendment (Gaming Machine Restrictions) Act 2001*

<sup>45</sup> *Gaming Machines Act 2001*, section 3(1)

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- the introduction of the concept of tradeable gaming machine entitlements, together with the capacity for gaming machine entitlements to be transferred from a club to another club, and from a hotel to another hotel, in blocks of 2 or 3 provided one entitlement is forfeited to the Government as part of a re-distribution or retirement strategy;
- a strengthened social impact assessment (SIA) process whenever a venue proposes to seek approval for an increase in the number of gaming machines permitted;
- the introduction of a requirement that each club and hotel shutdown its gaming machine operations for a specified 3-hour period each day, and later a specified 6-hour period each day;
- the imposition of bans on the advertising of gaming machines and on the display of gaming machine signage on the exterior of clubs and hotels;
- a requirement that gaming machine venues enter into arrangements for the provision of gambling-related counselling services to their patrons; and
- the retention of the responsible gambling measures introduced by the legislation of 1999.<sup>46</sup>

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

- annual quotas applicable to the large-scale clubs that are required to reduce their gaming machine numbers over a 5-year period;
- circumstances where a hotel must locate its gaming machines in a dedicated room;
- requirements for the payment of prizes won on a gaming machine;
- nature of the player information and signage materials that a gaming machine venue must display or otherwise make available;
- limitations on dealing with patrons' cheques, and requirements about the placement of cash dispensing facilities such as ATMs, in gaming machine venues;
- circumstances in which a 'basic' SIA will suffice, the social and economic information that must be included in 'basic' and other SIAs, and the bodies that a proponent club or hotel must provide an SIA to;
- requirements for providing player activity statements to participants in a player reward scheme;
- persons who are authorised to provide gambling-related counselling services to patrons of a gaming machine venue;
- requirements for the training of venue personnel in responsible gambling practices;
- minimum requirements for a gaming machine venue's self-exclusion scheme;
- inducements that a gaming machine venue cannot provide to a patron;
- arrangements for the effective functioning of the scheme for licensing gaming machine industry participants such as product manufacturers and service or repair technicians;
- fees payable by applicants for, and holders of, these licences; and
- requirements for the operation of particular types of gaming machines.

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<sup>46</sup> NSW Parliament (1999) *Gambling Legislation Amendment (Responsible Gambling) Act 1999*

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- 3.4.8 The appropriateness of the objectives in the legislation is assessed in chapter 4 of this report.
- 3.4.9 The competition implications of restrictions in the Act and the Regulation are assessed in chapter 5.
- 3.4.10 The authorities involved in the operation of the regulatory scheme include the Licensing Court of NSW, the Liquor Administration Board and the responsible Minister. The Court and the Board are constituted by the *Liquor Act 1982*, which is subject to a separate NCP review process.
- 3.4.11 The imposition of the club and hotel freezes, and the subsequent introduction of caps and the tradeable entitlement scheme, has stemmed growth in the number of gaming machines.
- 3.4.12 Changes in the overall number of gaming machines in clubs and hotels, and adjustments to the distribution of those gaming machines, will continue into 2003 and beyond. These changes will flow partly from the obligation that the 18 largest clubs in NSW progressively reduce their gaming machine holdings over the next 5 years.
- 3.4.13 Changes will also flow gradually from the tradeable entitlement scheme, whereby blocks of two or three gaming machine entitlements may be transferred from club-to-club and from hotel-to-hotel, provided one entitlement per transfer block is forfeited to the State.
- 3.4.14 It is expected that these measures will be effective in addressing the social harms from gambling. The harms affect an estimated 1% of the Australian adult population who have severe gambling problems, and an additional estimated 1.1% of the Australian adult population who have moderate gambling problems.<sup>47</sup>
- 3.4.15 The costs of gambling include financial and emotional impacts on gamblers themselves and on others, with on average at least five other people being affected to varying degrees.<sup>48</sup>
- 3.4.16 These impacts emphasise the importance of gaming machine industry policy that can effectively contain, and ultimately reduce, the costs of gambling.
- 3.4.17 A review is being undertaken to establish which gambling harm minimisation measures are the most effective. The outcome of the review will identify those measures that have been successful and those that have not.
- 3.4.18 The Government is committed to having in place a comprehensive, evidence-based decision-making process to deal with gambling according to harm minimisation principles.
- 3.4.19 In addition, the Ministerial Council on Gambling has approved agreed priority areas for research into gambling-related issues, including problem gambling and harm minimisation measures. The Council has oversighted the establishment of mechanisms to monitor the progress of this research program.

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<sup>47</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p2

<sup>48</sup> *Ibid*, p2

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## 4. Objectives of the 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 most objective manner, business competitiveness and the productivity of the economy may be impaired, thereby undermining the achievement of regulatory goals.<sup>49</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>50</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>51</sup> The guidelines suggest that the risk analysis 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>52</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.

<sup>49</sup> Centre for International Economics (1997) *A Framework for National Competition Policy Reviews of Gaming Legislation*

<sup>50</sup> Council of Australian Governments (1991) *Report of the Task Force on Other Issues in the Reform of Government Trading Enterprises*, p22

<sup>51</sup> Council of Australian Governments (1997) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies*

<sup>52</sup> New Zealand Ministry of Economic Development (1999) *Policy Framework for Occupational Regulation: A Guide for Government Agencies Involved in Regulating Occupations*

### 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>53</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>54</sup> This 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) and conducted in accordance with regulation;
  - players should know what to expect and be confident that they will get it and should not be exploited; and
  - 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>55</sup>

### 4.4 Intervention in the NSW gaming machine market

- 4.4.1 Applying the New Zealand risk assessment framework to the NSW gaming machine 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. gaming machine players), 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>56</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 gaming machine play 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 gaming machine play is low. Significant harm is most likely to be experienced by consumers who are already in a vulnerable position (i.e. problem gamblers).                                                                                                                                                |

<sup>53</sup> Centre for International Economics (1997) *A Framework for National Competition Policy Reviews of Gaming Legislation*

<sup>54</sup> Independent Pricing and Regulatory Tribunal (1998) *Report to Government: Inquiry into Gaming in NSW*, p25

<sup>55</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p12.1

<sup>56</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p2

- 4.4.2 From this risk assessment, the review considers that there is a case for government intervention in the gaming machine 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 legislation, beginning with the stated object 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 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 exposure of minors to those parts of licensed venues in which gaming machine activity occurs.
- 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 gambling in a responsible manner and in a way that minimises local amenity impacts. There is a requirement that gaming machine operations be shutdown for a specified period during the morning of each day.
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4.4.13 The legislation also includes public interest provisions that allow local councils, local community services, area health services and the Department of Community Services – as representatives for or agents of local community well-being – to have a say about proposals for moderate or substantial increases in the number of gaming machines in a licensed venue in their locality.

#### Ensuring probity

4.4.14 An implicit objective of the legislation is to ensure probity within the gaming machine industry, and to ensure the appropriate ownership and management of industry 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.

4.4.15 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>57</sup>

4.4.16 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>58</sup>

### **4.5 Stated objectives of the NSW gaming machine legislation**

4.5.1 As noted in chapter 3, there has been government intervention in the NSW gaming machine market for a very long time. The effect of the initial intervention was to ban gaming machines altogether.

4.5.2 Liberalisation began in 1956. For many years thereafter, the purpose of the regulatory intervention was not expressed in the authorising legislation. The objectives had to be implied.

4.5.3 This changed in 1999, when a gambling harm minimisation object was inserted into the Liquor Act and the Registered Clubs Act, as the legislation governing gaming machine operations at that time.

4.5.4 The gaming machine laws were removed from that legislation in April 2002, when the Gaming Machines Act commenced operation. This Act contains explicit objects. The primary objects are stated to be:

- gambling harm minimisation, which is the minimisation of harm associated with the misuse and abuse of gambling activities; and
- the fostering of responsible conduct in relation to gambling.<sup>59</sup>

4.5.5 This Act also states that the judicial, regulatory and other bodies or officials involved in exercising functions under the Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling, when exercising their functions.

4.5.6 The objects provision of this Act also makes clear that decision-makers must give appropriate regard to gambling harm minimisation when considering, for the purposes of the Act, what is in the public interest or what is not in the public interest.

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<sup>57</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p16.89

<sup>58</sup> NSW Government (1991) *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, p96

<sup>59</sup> *Gaming Machines Act 2001*, section 3

## 4.6 Relevance of objectives

- 4.6.1 The review of the Gaming Machines 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 gaming machines in NSW.
- 4.6.2 The review noted that the objectives of the gaming machines 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>60</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 short life of the legislation that suggested any inherent contradictions or shortcomings in the objectives.
- 4.6.5 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.
- 4.6.6 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>61</sup>

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<sup>60</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p12.1

<sup>61</sup> Productivity Commission (1999) *Australia's Gambling Industries*, p12.18

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## **5. Impact of the gaming machine 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 The gaming machine legislation**

- 5.3.1 The NSW gaming machine 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 gambling and a requirement for application of harm minimisation principles.
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- 5.3.3 Second, there are laws that restrict competition in the gaming machine manufacturing, retailing and associated markets by limiting the entry of potential operators. These laws can impose significant business costs or other impediments.
- 5.3.4 Third, there are laws that restrict competition in the gaming machine manufacturing, retailing and associated markets by constraining market conduct by existing operators. These laws can also impose significant business 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 It is also NSW Government policy that NCP reviews take into account the full range of public benefits and costs, as well as stakeholder views.
- 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 gaming machine legislation 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;
  - summarises the submissions made to the review in relation to the restrictions;
  - 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>62</sup>

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<sup>62</sup> Council of Australian Governments (2000) *Communiqué 3 November 2000*

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| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b> |                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Restriction</b>                                                                                                 | <b>Objective</b>                                                                   | <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                               | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Submissions</b>                                                          | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Recommendation</b>                                                                                                                                                                                                    |
| <b>RESTRICTIONS THAT SUPPORT THE COMMUNITY'S SOCIAL STANDARDS</b>                                                  |                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                          |
| Requirement for application of harm minimisation principles in gaming machine venues                               | Minimise gaming machine-related harm to individuals and the community as a whole.  | <p>Clubs and hotels are denied the opportunity to profit from problem gamblers who the community expects not to be able to access gaming machines with impunity.</p> <p>Places burdens on clubs and hotels thereby resulting in them 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 costs) to individuals and the community is minimised by encouraging the responsible operation of gaming machines, and responsible conduct of gaming machine venues – through measures such as player information materials, linkages with counselling services, and self-exclusion arrangements.</p> <p>Local amenity is enhanced.</p> <p>Members of the public can gamble in a more informed environment, and make use of 'safety net' services where desired.</p> | Submissions generally supported restrictions directed to harm minimisation. | <p>The review considers that the community would strongly oppose the removal or weakening of harm minimisation restrictions, and that the likely impact on competition of these restrictions is 'contained' because they must be observed by all gaming machine venues, thus ensuring parity.</p> <p>The review considers that the benefits associated with these restrictions very much outweigh the costs, and therefore concluded that the restriction should continue.</p>                       | Existing principles of responsible conduct of gaming machine operations and harm minimisation continue to apply to persons involved in the manufacture, sale, supply, servicing and operation of gaming machines in NSW. |
| Prohibition on minors accessing the gaming machine areas of licensed venues, and on playing gaming machines        | Minimise gambling-related harm to minors, and minors' exposure to gaming machines. | <p>Clubs and hotels are denied the opportunity to profit from gaming machine use by minors.</p> <p>Clubs and hotels are denied the capacity to employ minors in gaming machine 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 licensed venues for the purpose of playing gaming machines.</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 to 'walk through' a gaming machine area, in the presence of a responsible adult, to access other areas such as dining or sporting facilities.</p>                                                                           | Submissions strongly supported the continuation of these restrictions.      | <p>The review considers that the community would strongly oppose the removal or weakening of these restrictions.</p> <p>The review also considers that the likely impact on competition of these restrictions is contained because the restrictions must be observed by all gaming machine venues, thus achieving competitive neutrality.</p> <p>The review concluded that the benefits associated with these restrictions very much outweigh the costs, and therefore recommends they continue.</p> | Existing restrictions on under 18s accessing gaming machine areas and playing gaming machines continue to apply in NSW.                                                                                                  |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b>                      |                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                 |
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| <b>Restriction</b>                                                                                                                      | <b>Objective</b>                                                                                                                                                                                                                                                                                                                                                                        | <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Submissions</b>                                                                                                                                                                                                                                                                                                                                             | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Recommendation</b>                                                                                           |
| <b>RESTRICTIONS THAT SUPPORT THE COMMUNITY'S SOCIAL STANDARDS</b>                                                                       |                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                 |
| Prohibition on the availability of gaming machines in venues other than a club, hotel and casino                                        | <p>Minimise gambling-related harm to individuals and the community as a whole.</p> <p>Influence the number and distribution of gaming machines in the community.</p>                                                                                                                                                                                                                    | <p>Venues other than clubs, hotels and casino are denied the opportunity to profit from providing a legal product.</p> <p>Members of the public are denied the opportunity to access gaming machines in any business.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>Gambling-related harm (and its associated costs) to individuals and the community is minimised by limiting gaming machine availability to specified, controlled outlets.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>Submissions strongly supported the continuation of this restriction.</p>                                                                                                                                                                                                                                                                                    | <p>The review considers that the community would oppose the removal or weakening of this restriction.</p> <p>The review concluded that the benefits of this restriction outweigh the costs, and therefore recommends it continue.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Existing restrictions that confine gaming machines to a club, hotel and casino continue to apply in NSW.</p> |
| Social impact assessment pre-requisite for any proposed increase in the number of gaming machines in a club or hotel within a community | <p>Influence the number and location of gaming machines in clubs and hotels in a neighbourhood.</p> <p>Ensure that large numbers of extra gaming machines are not placed in communities that are considered vulnerable to gambling-related problems.</p> <p>Enable social and economic indicators and costs/benefits are taken into account as part of the decision making process.</p> | <p>Significant costs incurred by proponents when engaging professional advisers to prepare comprehensive reports for consideration by decision makers.</p> <p>Delays in dealing with major applications because of the proponent's obligation to provide the social impact assessment to community interest bodies for comment.</p> <p>Delays in dealing with major applications because of the complexity of information to be weighed by the decision maker.</p> <p>Existing operators protected from potential competition while assessment is in progress, and thereafter if the application is not approved.</p> <p>Consumers have fewer club or hotel gaming machines and/or gaming machine venues to choose from.</p> | <p>Community interest bodies are consulted before decisions are made.</p> <p>Relevant social and economic indicators are taken into account as part of the requirements for preparing an assessment report.</p> <p>Community views and relevant social and economic indicators are taken into account as part of the decision making process.</p> <p>Links between accessibility and social problems are explored and are taken into account.</p> <p>Number and extent of clubs or hotels associated with potential gambling-related problems in a community are reduced.</p> <p>Regulatory scheme imposes a lesser onus on proponents seeking small-scale increases in gaming machines (up to 4), while subjecting proposals for larger increases to greater scrutiny.</p> | <p>Submissions generally acknowledged the capacity of social impact assessments to influence the distribution of gaming machines.</p> <p>Industry submissions proposed refinements to regulatory aspects of the social impact assessment scheme – these suggestions were accommodated during the formulation of the relevant regulations in 2002 and 2003.</p> | <p>The review considers that the restriction could work to protect the market share of existing operators in a locality.</p> <p>The review also considers that the restriction is an effective harm minimisation measure, as it requires relevant social and economic indicators and the views of welfare bodies and local stakeholders to be considered by the proponent, as well as by the decision maker.</p> <p>The concept of weighing the costs and benefits of a proposal to increase gaming machine numbers in a community received strong support from the Productivity Commission inquiry.</p> <p>The review considers that the benefits from the social impact assessment requirement greatly outweigh the costs associated with the requirement.</p> | <p>Existing restrictions associated with social impact assessments continue to apply in NSW.</p>                |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION   |                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                           |                                                                                                                                                                                                                                               |                                                                                                                                   |
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| Restriction                                                                                                   | Objective                                                                                            | Costs                                                                                                                                                                                                                                                                                                                                                                                                                          | Benefits                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Submissions                                                                                                                                               | Analysis                                                                                                                                                                                                                                      | Recommendation                                                                                                                    |
| <b>RESTRICTIONS THAT SUPPORT THE COMMUNITY'S SOCIAL STANDARDS</b>                                             |                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                           |                                                                                                                                                                                                                                               |                                                                                                                                   |
| Restrictions requiring clubs and hotels to shutdown gaming machine operations for a specified period each day | <p>Minimise gambling-related harm to the community.</p> <p>Protect amenity of local communities.</p> | <p>Consumers are offered a restricted range of recreational times generally.</p> <p>Clubs and hotels are denied the opportunity to profit from gaming machines during the shutdown period.</p> <p>The shutdown hours fixed by the legislation may not coincide with those desired by individual licensees on commercial or convenience grounds.</p> <p>Competitive neutrality does not operate for casino gaming machines.</p> | <p>Gambling-related harms, and particularly social harms from gaming machines, are minimised from the reduced accessibility.</p> <p>The amenity of the local community is protected, particularly during the early hours of the morning when most members of the community are at home.</p> <p>Enforcement of the law is easier with a generally standardised shutdown period.</p> <p>Fewer community resources are required to supervise venues.</p> <p>The restriction has flexibility to enable venues to be given regulatory approval for a different or reduced shutdown period for genuine 'early openers', and for all venues on the busier trading days.</p> <p>Restriction (initially 3 hours per day, later 6 hours per day) introduced on a phased basis to enable venues to adjust to the new trading environment.</p> <p>Distinction for casino stems from a longstanding contractual commitment that, if breached, would lead to compensation and loss of confidence in government's preparedness to honour signed commercial arrangements.</p> | <p>Submissions generally supported restrictions directed to harm minimisation.</p> <p>However, shutdown concept strongly opposed by clubs and hotels.</p> | <p>The review considers that the benefits to the community of a restriction on the trading hours for gaming machine operations in clubs and hotels greatly outweigh the costs, and concluded that limited hours should continue to apply.</p> | <p>Restrictions requiring the shutdown of gaming machine operations for a specified period each day continue to apply in NSW.</p> |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b> |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                             |
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| <b>Restriction</b>                                                                                                 | <b>Objective</b>                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Submissions</b>                                                                                                                                                        | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Recommendation</b>                                                                                                                                                                                                                                                                                       |
| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                             |
| Licensing system for gaming machine industry participants (other than venues)                                      | <p>Ensure that persons involved in the manufacture, testing, supply and servicing of gaming machines meet and/or comply with specified integrity and conduct standards.</p> <p>Provide a basis for sanctions against industry participants who do not meet specified conduct standards.</p> <p>Ensure there is a public record of persons and venues authorised to manufacture, test, supply and service gaming machines.</p> | <p>Competition is restricted as operators cannot freely enter the market.</p> <p>Entry to market is denied to persons of questionable background, and persons not prepared to undergo scrutiny by licensing authorities.</p> <p>Restrictions apply to how and where gaming machine businesses may operate, resulting in increased compliance costs and/or lost business opportunity.</p> <p>Additional costs associated with having to apply for and operate under a licence, as well as costs associated with a regulatory-based regime.</p> <p>Licensing decisions are made in a judicial environment that can introduce rigidity and uncertainty, create delay and add to costs.</p> | <p>Enhances integrity of industry overall, and industry participants in particular, by ensuring that persons of questionable background can be excluded.</p> <p>Gaming machine industry is accustomed to a licensing regime in NSW, elsewhere in Australia and in overseas jurisdictions.</p> <p>More 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 tenured judicial officers, and are made in an open, arms' length and reviewable process – which attract 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>Submissions strongly supported the continuation of some form of a licensing system as best serving the interests of the community and the gaming machine industry.</p> | <p>The review notes that the application and approval process was streamlined by integrating the former two pieces of legislation into one Act in 2001.</p> <p>The review also notes that most gaming machine-related 'licensing' decisions now repose in an administrative body (Liquor Administration Board) rather than a court (Licensing Court).</p> <p>The review considers that there is industry and community acceptance of the streamlined model.</p> <p>The review considers that a licensing system is essential in order to achieve the objectives of the legislation.</p> <p>The review considers 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 review also considers that existing processes around occupational licensing in the gaming machine environment should continue to be examined with a view to streamlining them by moving progressively to an administrative system.</p> | <p>A comprehensive gaming machine licensing system continue to apply in NSW.</p> <p>Existing processes around occupational licensing in the gaming machine environment should continue to be examined with a view to streamlining them by moving progressively to a more administratively-based system.</p> |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b>                   |                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                   |
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| <b>Restriction</b>                                                                                                                   | <b>Objective</b>                                                           | <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Submissions</b>                                                                                                                                                                                                                                                                         | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Recommendation</b>                                                                                                                                                                                                                                                                             |
| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                                  |                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                   |
| Cost of applications associated with current licence application system for gaming machine industry participants (other than venues) | Consequence of the current licensing regime (as outlined on previous page) | <p>Current licence application process involves complexity and may limit innovation and 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, where interim work permits are not available.</p> <p>Resources that could be used to improve standards and service for consumers must instead be allocated to the application process.</p> | <p>Thorough gaming machine licensing regime in which the public has a high level of trust and comfort.</p> <p>Enhanced stability and integrity of industry operators.</p> <p>For manufacturers, cost is offset by the potential for the sale of gaming machines to generate substantial business income.</p> <p>For other 'occupational' licensees, cost is offset by the capacity for a work permit to be issued while the licensing review process is undertaken – thus enabling the applicant to commence work and acquire/apply skills during the interim period.</p> | Submissions made by representatives of existing operators tended to support the existing system as being an appropriate means of supporting the objectives of the legislation, helping to maintain stability and certainty in the market, and ensuring gambling-related harm is minimised. | <p>The review notes that the application and approval process was streamlined by integrating the former two pieces of legislation into one Act in 2001.</p> <p>The review also notes that most gaming machine-related 'licensing' decisions now repose in an administrative body (Liquor Administration Board) rather than a court (Licensing Court).</p> <p>The review considers that there is industry and community acceptance of the streamlined model, and that the overall benefits of the licence-linked application costs outweigh the costs of the scheme overall.</p> <p>The review also considers that existing processes around occupational licensing in the gaming machine environment should continue to be examined with a view to reducing the costs involved.</p> | <p>The current gaming machine licensing system continue to apply in NSW.</p> <p>Existing processes around occupational licensing in the gaming machine environment should continue to be examined with a view to reducing the costs involved for industry entrants and the broader community.</p> |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b> |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                  |
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| <b>Restriction</b>                                                                                                 | <b>Objective</b>                                                                                                                                                  | <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                               | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Submissions</b>            | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Recommendation</b>                                                            |
| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                  |
| Imposition of a cap or ceiling on the total number of gaming machines in NSW clubs and hotels                      | Address community perceptions of unchecked growth in gambling, specifically community concern at saturation in the number of gaming machines in clubs and hotels. | <p>Business freedom, flexibility and efficiency are impeded.</p> <p>Innovation may be stifled.</p> <p>Market and employment opportunities for product suppliers and technicians are reduced.</p> <p>Market entry may be prevented or made more difficult for clubs and hotels.</p> <p>Accessibility to gaming machine services limited for gamblers, especially recreational gamblers.</p> | <p>Community sentiment is taken into account and acted on.</p> <p>Social harm from gaming machines is addressed, especially for problem gamblers.</p> <p>Cap was set at 104,000, which was not less than the size of club and hotel gaming machine market at the time the decision was taken, thus maintaining pre-existing 'entitlements'.</p> <p>Consumers are adequately catered for by accessibility to 104,000 gaming machines in clubs and hotels; 1,500 gaming machines in a casino; and other gambling products in NSW.</p> <p>Market is capable of adjusting to and functioning in an environment where caps apply.</p> | Not addressed in submissions. | <p>The review noted the Productivity Commission's ambivalent view that – on the one hand – quantity restrictions are one possible tool for reducing the social risks of gambling while – on the other – this type of cap would not be likely to reduce problem gambling, would have adverse effects on recreational gamblers, and therefore other policies should be preferred.</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 considers that, even with the other consumer protection measures in place in NSW, a policy of capping the total number of gaming machines in clubs and hotels can help to control consumer demand.</p> <p>The review also considers that the restriction should not be removed and 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> | Current NSW cap on the total number of gaming machines continue to apply in NSW. |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                        |
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| Restriction                                                                                                 | Objective                                                                                                                                                         | Costs                                                                                                                                                                                                                                                                                                                                                                                      | Benefits                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Submissions                   | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Recommendation                                                                                         |
| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                         |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                        |
| Imposition of a cap on the number of gaming machines in an individual club and hotel                        | Address community perceptions of unchecked growth in gambling, specifically community concern at saturation in the number of gaming machines in clubs and hotels. | <p>Business freedom, flexibility and efficiency are impeded.</p> <p>Innovation may be stifled.</p> <p>Market and employment opportunities for product suppliers and technicians are reduced.</p> <p>Market entry may be prevented or made more difficult for clubs and hotels.</p> <p>Accessibility to gaming machine services limited for gamblers, especially recreational gamblers.</p> | <p>Community sentiment is taken into account and acted on.</p> <p>Social harm from gaming machines is addressed, especially for problem gamblers.</p> <p>Consumers are adequately catered for by accessibility to 104,000 gaming machines in clubs and hotels; 1,500 gaming machines in a casino; and other gambling products in NSW.</p> <p>Market is capable of adjusting to and functioning in an environment where caps apply.</p> <p>Club cap of 450, and associated downsizing requirement for clubs with more than 450 gaming machines, requires excess gaming machine entitlements to be retired from the market or re-allocated to start-up venues in developing areas.</p> | Not addressed in submissions. | <p>The review noted the Productivity Commission's view that venue-based caps, as a quantity restriction, can play a role in addressing the accessibility drivers of problem gambling.</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 considers that, even with the other consumer protection measures in place in NSW, a policy of capping the number of gaming machines in individual venues can help to control consumer demand.</p> <p>The review considers that the restriction should not be removed.</p> <p>The review also considers 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> | Current cap on the number of gaming machines in an individual club and hotel continue to apply in NSW. |



| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION                 |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                |
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| Restriction                                                                                                                 | Objective                                                                                                                                                         | Costs                                                                                                                                                                                                                                                                                                                                                                                                                        | Benefits                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Submissions                                                                                                                       | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Recommendation                                                                                                 |
| <b>RESTRICTIONS ON MARKET ENTRY</b>                                                                                         |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                |
| Imposition of differential caps on the number of gaming machines in a club (450) and a hotel (30)                           | Address community perceptions of unchecked growth in gambling, specifically community concern at saturation in the number of gaming machines in clubs and hotels. | <p>Hotel business freedom, flexibility and efficiency are impeded, as against clubs.</p> <p>Hotel business opportunities for input suppliers are reduced, as against clubs.</p> <p>Market entry may be prevented or made more difficult for hotel entrepreneurs, as against clubs.</p> <p>Accessibility to gaming machine services limited for hotel patrons, especially recreational gamblers, as against club patrons.</p> | <p>Community is better served by ensuring that the majority of gaming machines are located in venues (clubs) where principles of mutuality and co-operation apply.</p> <p>Gaming machine profits from the club sector more likely to be returned to the community, due to the not-for-profit nature of clubs.</p> <p>Higher spend levels by hotel gamblers are addressed.</p> <p>Gambling levels are lower than would be the case if hotels had the same cap as clubs.</p> | Not addressed in submissions.                                                                                                     | <p>The review noted the Productivity Commission's view that venue caps, as a quantity restriction, can play a role in addressing the accessibility drivers of problem gambling.</p> <p>The review considers that, even with the other consumer protection measures in place in NSW, a policy of differential capping can help to control consumer demand.</p> <p>The review considers that the restriction should not be removed and 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> | Current differential cap on the number of gaming machines in clubs and hotels continue to apply in NSW.        |
| Restrictions requiring gaming machine venue 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 venues 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>                                                                                                                                                       | Submissions generally supported restrictions directed to harm minimisation, including the requirement for occupational training.' | <p>The review noted IPART's view that mandatory training for gaming-related staff in venues has the capacity to foster responsible gambling.</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 in NSW. |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b> |                                                                                                                                   |                                                                                                                                                                                                                                                            |                                                                                                                                                                              |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                      |
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| <b>Restriction</b>                                                                                                 | <b>Objective</b>                                                                                                                  | <b>Costs</b>                                                                                                                                                                                                                                               | <b>Benefits</b>                                                                                                                                                              | <b>Submissions</b>            | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Recommendation</b>                                                                                                                                                                                                                                                |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                                  |                                                                                                                                   |                                                                                                                                                                                                                                                            |                                                                                                                                                                              |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                      |
| Restrictions on the transfer of poker machine entitlements from rural NSW to metropolitan NSW                      | Protect businesses and consumers in rural and regional NSW from the threat of a sudden reduction in gaming machine accessibility. | <p>Operation of the market for gaming machine entitlements is fettered because a potential supply source is restricted.</p> <p>Enterprising activity is impeded.</p> <p>Specified business assets cannot be traded as freely as other business assets.</p> | <p>Service accessibility enjoyed by rural and regional consumers is maintained.</p> <p>Transition to the new gaming machine environment is managed in an orderly manner.</p> | Not addressed in submissions. | <p>The review noted regulatory experience that hotel licences are seen as valuable commodities, and had given rise to a practices where licences were transferred from rural communities to more prosperous localities, leading to the sudden withdrawal of a service for country consumers.</p> <p>The review agreed that, where necessary, a phased transfer of services would be more acceptable to rural consumers.</p> <p>The review therefore considers that the benefits of this restriction outweigh the costs.</p> <p>The review noted the Government commitment to review the impact of the restriction on small country hotels and on potential start-up hotels in developing areas.</p> | <p>Current restriction on country-to-metropolitan transfer of poker machine entitlements continue.</p> <p>Impact of the restriction be monitored to assess effect on small country hotels and communities, and on potential start-up hotels in developing areas.</p> |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION           |                                                                                                     |                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                 |
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| Restriction                                                                                                           | Objective                                                                                           | Costs                                                                                                                                                                                                                                                                                                                           | Benefits                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Submissions                                                                                                                                                                                                                               | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Recommendation                                                                                                                                  |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                                     |                                                                                                     |                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                 |
| Restrictions on the advertising of gaming machines, and on gaming machine signage on the exterior of clubs and hotels | <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 gaming machine services 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 gaming machine product or services.</p> <p>Most consumers already know where to access gaming machines.</p> <p>Local amenity is protected from the presence of gaudy advertisements and signage.</p> <p>Regulatory scheme permits exemptions from the advertising restriction – exemptions apply to advertising in trade journals and at trade conventions; advertising as part of a Government campaign to counter gambling problems; an accidental or incidental accompaniment to news media; and for established corporate logos.</p> | <p>Industry submissions contended that restrictions on advertising are not justified.</p> <p>However, industry has generally accepted and adjusted to the imposition of restrictions because of their relevance to harm minimisation.</p> | <p>The review considers that, because a purpose of advertising is to heighten product appeal and ultimately increase product demand, strong restrictions on gaming machine 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.</p> <p>The review considers that this restriction is necessary to minimise the social harms from gaming machines.</p> <p>The review concluded that the benefits of this restriction outweigh the costs, and recommends that the restriction should continue.</p> | Existing restrictions on the advertising of gaming machines, and on signage on the exterior of gaming machine venues, continue to apply in NSW. |

| <b>ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION</b>         |                                                                                                                           |                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                           |
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| <b>Restriction</b>                                                                                                         | <b>Objective</b>                                                                                                          | <b>Costs</b>                                                                                                                                                                                                                                                                                                                             | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Submissions</b>                                                                                                      | <b>Analysis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Recommendation</b>                                                                                                     |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                                          |                                                                                                                           |                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                           |
| Restrictions requiring venues to provide gambling patrons with information about gaming machine play 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>Clubs and hotels incur 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> | Submissions generally supported restrictions directed to harm minimisation, including the concept of 'informed choice'. | <p>The review considers that the concept of 'informed choice' is an important one 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.</p> <p>The review considers that this restriction is necessary to minimise the social harms from gaming machines.</p> <p>The review concluded that the benefits of this restriction outweigh the costs, and recommends that the restriction should continue.</p> | Existing restrictions requiring the provision of consumer information to gaming machine players continue to apply in NSW. |

| ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE NSW GAMING MACHINE LEGISLATION |                                                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                             |                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                 |
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| Restriction                                                                                                 | Objective                                                           | Costs                                                                                                                                                                                                                            | Benefits                                                                                                                                                                    | Submissions                                                                 | Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Recommendation                                                                                  |
| <b>RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT</b>                                                           |                                                                     |                                                                                                                                                                                                                                  |                                                                                                                                                                             |                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                 |
| 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 gaming machine venues 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> | Submissions generally supported restrictions directed to harm minimisation. | <p>The review noted that, as most problem gamblers will borrow money to gamble,<sup>63</sup> a restriction on cashing cheques is as important as a restriction on credit.</p> <p>The review recognised that, if cheques are cashed freely, some of the advantages of a credit restriction are lost - if there is no money to cover a cheque, in practical terms credit will have been given.</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 considers that this restriction is necessary to minimise the personal and social harms from gaming machines.</p> <p>The review concluded that the benefits of this restriction outweigh the costs, and recommends that the restriction should continue.</p> | Existing restrictions on the cashing of cheques for gambling purposes continue to apply in NSW. |

<sup>63</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 GAMING MACHINE LEGISLATION</b> |                                                                     |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                              |                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                         |
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| <b>Restriction</b>                                                                                                 | <b>Objective</b>                                                    | <b>Costs</b>                                                                                                                                                                                                                                                                                                      | <b>Benefits</b>                                                                                                                                              | <b>Submissions</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 gaming machine venues       | Minimise gambling-related harm to the community and to individuals. | Business freedom and flexibility are impeded.<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>Social harms are reduced.<br>Consumer inconvenience would be low to moderate, and ready substitutes are available. | Submissions generally supported restrictions directed to harm minimisation. | 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 considers that this restriction is necessary to minimise the personal and social harms from gaming machines.<br><br>The review concluded that the benefits of this restriction outweigh the costs, and recommends that the restriction should continue. | Existing restrictions on the placement of cash dispensing facilities in gaming machine venues continue to apply in NSW. |
| Restrictions on the capacity of venues 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>Business freedom and flexibility are impeded.<br>Business viability may be affected adversely.<br>Consumer choice is reduced - accessibility to gaming machine services limited for patrons, especially for recreational gamblers. | Harm to 'at risk' gamblers is reduced.<br>Social harms are reduced.                                                                                          | Submissions generally supported restrictions directed to harm minimisation. | 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 considers that this and related restrictions on inducements are necessary to minimise the personal and social harms from gaming machines.<br><br>The review concluded that the benefits of this restriction outweigh the costs, and recommends that the restriction should continue.                                                                                                                                                  | Existing restrictions on the provision of gaming machine inducements continue to apply in NSW.                          |

## **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 have been 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 their character or financial standing for example, 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.
  - 6.3.3 However, given the nature of the gaming machine industry (i.e. a large industry with a wide variety of businesses competing in an uncertain 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.
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- 6.3.4 Practical difficulties and varying intra-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 gaming machine venues are 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. The current practice of involving various peak bodies in supporting these sorts of initiatives is encouraged.
- 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.
- 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.
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- 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 gaming machine 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. The opinion was put forward in most submissions to the review that, while a licensing system restricts competition, it is the only valid way of achieving the objectives of the legislation. It provides a robust and consistent framework for regulation of the gaming machine industry and an instrument for enforcing that regulation.
  - 6.6.2 All Australian and other developed jurisdictions require the licensing of gaming machine venue operators, as well as gaming machine manufacturers, sellers, and service or repair technicians, although the specifics of those licensing regimes differ in some respects.
  - 6.6.3 On balance, the evidence suggests that the greatest net public benefit would arise from a comprehensive licensing model.
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## **7. Conclusion**

- 7.1.1 The review observed the existing gaming machine 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.
- 7.1.2 The review found that the restrictions are required to effectively support the objectives of the legislation. 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 of market participants.
- 7.1.3 The review concluded that the legislation in its current form generates a net public benefit.
- 7.1.4 The review also observed that the legislation has pro-competitive effects. For example, the legislation incorporates a market-based approach to the transfer of gaming machine entitlements from club-to-club and hotel-to-hotel, in line with NCP principles.
- 7.1.5 The transferable entitlement scheme uses the market to give clubs and hotels more flexibility in asset management and a new potential for income generation.
- 7.1.6 In addition, the review noted that the legislation simplified and streamlined the regulatory structure for gaming machines, benefiting all involved as it is now less complex than the system in force until April 2002, when two Acts of Parliament and two intersecting Regulations applied.
- 7.1.7 The review has acknowledged the need for continued refinement of the gaming machine legislation. Specifically, the review has recommended that existing processes around occupational licensing should continue to be examined with a view to streamlining them by moving progressively to a more administrative system.
- 7.1.8 This review noted the requirement of the legislation itself that a separate review be undertaken in 2007 to determine whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives.
- 7.1.9 This review, when conducted, may provide an opportunity to re-consider the merits of any residual competitive restrictions in the gaming machine legislation.
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## Appendix 1

### Terms of reference for the review

1. To conduct the review of the legislative provisions concerning gaming machines contained in the *Gaming Machines Act 2001* (formerly in the *Liquor Act 1982* and the *Registered Clubs Act 1976*) in accordance with the terms for legislation reviews set out in the Competition Principles Agreement. The guiding principles of the review are that 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.
  2. Without limiting the scope of the review, the working party shall:
    - (a) clarify the objectives of the legislation;
    - (b) identify the nature of the restrictive effects on competition;
    - (c) analyse the likely effect of any identified restriction on competition on the economy generally;
    - (d) assess and balance the costs and benefits of the restrictions identified; and
    - (e) consider alternative means for achieving the same result, including non-legislative approaches.
  3. In the course of the review, the working party should:
    - (a) identify any issues of market failure which need to be, or are being addressed by the legislation; and
    - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the Trade Practices Act 1974 (Commonwealth) and Competition Codes of each jurisdiction.
  4. The working party shall consult with and take submissions from consumers, producers and other interested parties.
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## **Appendix 2**

### **Submissions made to the review**

- 1 Australian Hotels Association
- 2 Mr D Barr MP, Member for Manly
- 3 Blue Line Cruises
- 4 ClubsNSW
- 5 Department of Aboriginal Affairs
- 6 Department of Community Services
- 7 Department for Women
- 8 Gaming Device Industry Agents' Association
- 9 Liquor Administration Board
- 10 NSW Police
- 11 Regional Communities Consultative Council
- 12 TAB Limited