

# ***GAMING LEGISLATION***





## NATIONAL COMPETITION POLICY REVIEW

# *REPORT*

*September 2002*

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## Review Summary

### Overview

The Northern Territory Government is reviewing all business-related legislation under its jurisdiction to ensure that it provides a sound foundation for the conduct of business activity and maximisation of economic growth, consistent with National Competition Policy (NCP) objectives. Reviews are being conducted in accordance with NCP review methodologies and principles under the auspices of the National Competition Council (NCC).

This review deals with Northern Territory legislation which regulates gaming activity, a key component of the Gambling Industry, covering mainly the gaming operations of casinos, community gaming venues, lotteries and other minor gambling activities. The relevant legislation encompasses the:

- Gaming Control Act
- Gaming Control (Commission Procedures) Regulations
- Gaming Control (Community Gaming) Regulations (*Draft*)
- Gaming Control (Community Gaming) (Sweepstakes) Regulations
- Gaming Control (Internet Gaming) Regulations
- Gaming Control (Licensing) Regulations
- Gaming Control (Gaming Machine) Regulations
- Gaming Machine Act
- Gaming Machine Regulations
- Gaming Machine Rules
- Soccer Football Pools Act
- Soccer Football Pools Regulations

This review focuses on the restrictions on competition arising from the provisions directly covered by the above Acts and supporting legislation. Matters associated with fees and taxes, except as they directly relate to consideration of specific restrictive provisions identified, are not encompassed by this review.

The *Unlawful Betting Act* is also relevant in the context of gaming analysis. Consideration of NCP issues in respect of unlawful betting was included in the Racing and Betting Review.

In establishing an appropriate legislative regime for gaming, the consistent theme evident, from examination of legislative approaches elsewhere and from experiences in the Territory, is the need to achieve an appropriate balance between the complex and often competing objectives and interests of the major stakeholders, being the gambling public, gambling operators and Government.

At the same time, consideration of the significant social issues associated with problem gambling and the establishment of appropriate monitoring, control and remedial mechanisms are also key elements in the operation of the regulatory framework.

There is also a need to maintain a unified and proactive commercial focus in meeting competition from interstate and international gambling operators, particularly with the emergence of electronic gaming activities.

Unprecedented growth in both the scope of gambling activity undertaken and in market penetration is occurring. Developments in modern computing and communications

infrastructure, such as the Internet, are highly relevant against the context of the rapid globalisation now characterising the industry.

The legislative elements encompassed by this review form the framework within which the Territory industry will address these issues and, within the boundaries of the standards set for its operation, maintain its position of leadership in the Australian context.

### ***Market Failure***

Similar to other gambling activities in the Racing and Wagering areas, the principal types of market failure evident in gaming activities include information asymmetry and externalities. These conditions arise from the ability of gaming operators to control the operation of activities and information available to gamblers, to bias outcomes in their favour and from the potentially addictive nature of gaming activity.

Historically, the industry has displayed undesirable practices that can severely disadvantage particular stakeholders. These undesirable practices can include dishonesty, lack of transparency and criminal activity, such as money laundering from other criminal activities.

Government intervention through strict regulatory and independent audit controls has been found essential to offset these potential exposures. This review has found that this situation continues to prevail.

### ***Restrictive Provisions***

Concerns with probity, consumer protection and industry integrity are paramount considerations in formulating the required legislative response to consistently achieve the desired outcomes. As a consequence, in the Northern Territory and similar to other Australian jurisdictions, gambling activity is highly restricted.

Gambling is mainly controlled through limited and exclusive licensing of operators, particularly in casino activity and major lottery products, controlled and differential gaming machine allocations and machine operating arrangements between all venue types and differential community benefit contribution arrangements.

The review has found that in the main, the restrictive conditions in place for casino and community gaming activities are justified and desirable at this point in the Territory's development and should continue. The possible benefits in the longer term in easing or removing these controls is acknowledged and it has been recommended that as these arrangements mature, the Territory either eliminate them or move towards less exclusive conditions for delivery of gaming services.

In terms of major lotteries, whilst minimum benefit is expected by removal of exclusive licensing now in place for lotteries, as part of the move towards a market-driven environment, a recommendation has been made to negotiate removal of these restrictive provisions with the major provider, Tattersalls, providing no financial penalties are incurred in doing so.

As well as these major issues, there are a number of detailed minor operational and procedural matters identified within the regulatory framework, which warrant consideration for amendment at this time.

### ***Regulatory Alternatives***

The current regulatory approach involves the extensive use of specific and highly prescriptive regulation within a positive licensing framework, managed by the regulator. There is currently minimum reliance on industry involvement, such as co-regulatory or self-regulatory measures. The efficacy of the current arrangements and alternative approaches were considered during the review. An extensive overview of the possible alternative regulatory models was provided in the published Issues Paper.

The need to maintain the highest levels of probity, consumer protection and industry integrity are issues which differentiate the gaming industry from most other recreational sporting activities, which are not subject to similar or such extensive statutory regulatory control. It is considered that a firm Industry management process, with a legislative basis, is both appropriate and the most effective way to ensure that the necessary discipline is enforced to achieve the required probity and performance standards. This approach is generally consistent with all other appropriately regulated gambling jurisdictions, both nationally and internationally.

In terms of gaming management, the review therefore finds that the adoption of alternative approaches for the conduct of gaming activity, including self-regulation or negative licensing, is unlikely to result in increased net public benefit.

### ***Public Benefit***

The central theme of this review and the detailed public benefit assessments included, focus on the core regulatory principles and objectives identified.

Gaming is a key element in the broader gambling scene and is one of high public profile, involves significant financial resources and has a long history of incidents involving corrupt and/or illegal practice.

From this background has emerged a strong and highly prescriptive framework of controls at all levels of activity, designed specifically to protect the interests of industry participants and the gambling public. The need for this position is strongly supported by key stakeholders.

The concern to maintain the established standards which have emerged over time and now underpin the generally high level of public confidence which exists in the industry, is the basis for judgement of the net public interest involved, and from this review, there is clearly no net benefit in moving from the strong regulatory basis which now exists. Indeed the Territory has been at the vanguard in legislative prudence in gaming generally and has established a sound reputation on the world stage, particularly through the successful regulation of Australia's first Internet Casino some years ago.

### ***Public Consultation***

An extensive public consultation program, which directly canvassed the views of all identified stakeholders, was conducted. A detailed Issues Paper, covering relevant legislative provisions was issued, incorporating a detailed overview of the legislation as well as preliminary assessment of potential restrictions identified.

The Issues Paper also sought responses on a number of suggested amendments to address identified major issues and invited comment on the full spectrum of the legislative provisions involved.

Six (6) written submissions were received in response to the Issues Paper. Items of detail were discussed and clarified with respondees as required.

### ***Review Management***

This review has been conducted as a full public review. All comments and suggestions received have been considered by a Review Steering Committee comprising:

- Craig Graham, Principal Research Officer - Northern Territory Treasury;
- Donald Hudson, Senior Policy Officer - Department of Business, Industries and Resource Development; and
- Jim Laouris, Policy Officer - Department of Justice.

Industry members were not part of the Review Team or the Steering Committee, to ensure independence of the review process, as required under NCP Review criteria.

### ***Review Conclusions***

Overall, the controlled access to gaming products, limited licence availability, exacting licensing standards and extensive controls applied to the Industry are seen as necessary and appropriate to achieve the high standards of probity, consumer protection, business viability and consumer access levels required. A firm regulatory regime is considered the most effective way to achieve and maintain these standards.

A balanced response to the identified issues is proposed for the Territory, within a continuing regulatory framework which incorporates clear and transparent requirements and prescribed standards of business conduct, particularly for the protection of problem gamblers.

The review process has been mindful that the prime consideration is to maintain the highest level of public confidence in the overall system and to minimise the adverse social impacts of problem gambling

The review concludes that the current regulatory framework for gaming in the Territory confers net public benefits.

Accordingly, no major deviation from the present exclusive licensing, strong probity control and limitations on gaming machine operations in casinos and community venues is therefore proposed at this time. Removal of current exclusive licensing arrangements for major lottery operations does appear feasible and should be pursued. Ongoing review of other key restrictive elements should occur and where sufficient net public benefits are available by doing so at that point, an appropriate policy shift made as exclusive licence arrangements mature and as the Territory economy expands.

However, there is scope to remove a number of the more minor restrictions identified and to simplify a number of the regulatory provisions at this time. A number of the provisions are



either clearly not in the public interest, are dated, are duplicated in part and some areas are redundant and complex to interpret as a result of the progressive changes incorporated over time.

Adoption of the recommendations will require an amount of restructuring and changes to the current legislative base. As such, a full revision and redrafting of a new legislative framework is suggested as the most workable and viable approach. This is expected to improve the current position through simplification and more logical organisation of the legislative structure, improved ease of interpretation of the provisions and removal of anti-competitive provisions where justified.

## **Recommendations**

In the light of the responses received, which included comments from a number of key industry participants, consideration of the subsequent public benefit analysis conducted over the issues and the implications of existing licensing and contractual arrangements which exist, the following recommendations are made:

### ***Regulatory Directions***

- The following regulatory principles be adopted as the basis for regulation of the Gaming Industry:
  - Minimum regulatory intervention by Government
  - Maximum co-regulation between Industry and Government
  - Performance based/ risk management controls
  - Proactive and Competitive Industry Positioning
  - Long-term viability of the Industry
  - A Balanced approach to Problem Gambling

### ***Regulatory Objectives***

- The following objectives be adopted as the basis for the revised legislative framework to be developed to cover Gaming activity:
  - to promote probity and integrity in Gaming activity;
  - to maintain the probity and integrity of participants in the Gaming Industry;
  - to promote fairness, integrity and efficiency in the delivery of Gaming services to the public;
  - to promote a balanced contribution by the Gaming Industry to general community benefit and amenity; and
  - to reduce the adverse social and economic impacts of Gambling

### ***Legislative Arrangements***

- The legislative structure be further reviewed with the view to development of a new legislative framework, based on two principal sets of legislation - one covering the licensing and operations of the industry itself and the other covering the gambling control aspects.

### ***Licensing Commission***

- A detailed investigation into the current Regulatory control structure be conducted, to include consideration of the establishment of a Northern Territory Gambling Commission to assume responsibility for all gambling related activities presently controlled by the Racing Commission and Licensing Commission.
- The composition of members for the controlling regulatory body be established under minimum criteria for appointment based on a prescribed balance of regulatory, commercial and specific industry expertise.

### ***Exclusive Licences***

- Existing casino licensing arrangements continue for the duration of current licences, unless removal of anti-competitive restrictions can be effected without significant penalty to Government.
- Exclusive lottery licensing conditions in arrangements with Tattersalls be removed by negotiation with the Company.
- Regular review be undertaken of exclusive licensing arrangements, in the light of Territory economic growth and market expansion, with the view to negotiated removal as sufficient net public benefits become available.

### ***Licensing Structure***

- No change be made to the basic positive licensing approach for industry participants.
- All future gaming licences be issued as perpetual business licences.
- Standard ancillary licence operational conditions and conditions relating to operational matters in underlying Agreements, now incorporated in specific licences and specific Agreements, be set out in legislative regulations.
- Uniform probity requirements and checking procedures be adopted for all types of gaming operations.

### ***Licence Conditions***

- Permanent Operating Permits be issued for different classes of Gaming Activity
- Existing restrictive licensing conditions continue for the duration of current licences, unless removal can be effected without significant penalty to Government and sufficient net public benefits become available.
- Future gaming licences not contain anti-competitive or restrictive provisions, in respect of limitations on the business activity of competitive operators, unless clear net public benefit can be demonstrated.
- Restrictive conditions requiring that a take-away liquor licence be held by a hotel as a condition for the operation of gaming machines, be removed.

### ***Employee Licensing***

- A standard licensing approach be adopted for defined employees of Gaming operators.

### ***License Appeals***

- A Public Appeal mechanism be introduced for all licence issue.

### ***Licence Fees***

- Revised fee refund procedures be introduced.

### ***Gaming Machine Global Limits***

- Current gaming machine density control criteria to continue to apply.
- Community gaming machine global cap be fully defined in regulatory provisions.

### ***Gaming Machine Venue Limits***

- Differential gaming machine allocation limits for community gaming venue types (Hotels and Clubs) to continue.

### ***Gaming Machine Model Approvals***

- Subject to compliance with any specific operating criteria applicable to the Territory, gaming machine models approved for use in major Australian jurisdictions be automatically approved for use in the Territory.

### ***Community Benefit and Amenity***

- Following a reasonable settling in period (say 2 years) for the recent changes approved for machine allocation between venues and other operating provisions for gaming machines, a further review be undertaken into the development of a wider, more transparent and uniform approach to community benefit and amenity contributions from the various industry sectors.
- In addition to previously agreed measures to include prescriptive requirements for community amenity contribution from clubs, the accountability process be further expanded to include specific targets for community support contributions.

### ***Responsible Gambling and Problem Gambling***

- A prescriptive Industry Code of Conduct relevant to gaming activities, now under development, be completed and introduced as soon as possible. This should include requirements for clear information provision to consumers at “point of gaming”.
- Future legislation contains clear and specific harm minimisation objectives and required practice.

### ***Unlawful Gambling***

- Revised consolidated legislation be drafted to cover unlawful gambling, including gaming and wagering.

### ***Secrecy***

- Legislation be introduced to provide for uniform disclosure standards, consistent with other Australian jurisdictions.

### ***Other Forms of Gaming***

- Future legislation be structured to ensure there are no inhibitors which impose generic barriers to adoption of new gaming products or services;
- New gaming products and services be considered on their merits, subject to due consideration of all relevant probity and other public interest issues which apply: and
- A Schedule of Prohibited Gaming Activity be implemented and rational for prohibition of specific generic types of activity be promulgated.

### ***Minor Lotteries***

- The licensing of minor lotteries be discontinued in favour of pre-approval for generic organisation types and purposes for the conduct of low-value lottery activity (raffles/sweeps/competitions/bingo/trade lotteries etc less than \$5,000 total prize value), under prescribed conditions.

### ***Advertising and Promotion***

- Uniform standards be introduced for advertising and promotion of lawful gambling activity, subject to satisfactory provisions to recognise problem gambling considerations and policies, to be defined in the proposed Code of Conduct.

## Review Background

### ***Review Objectives***

NCP is based on the view that competition in a market encourages efficiency and therefore, competition is in the public interest. Competitive markets allocate the economy's productive resources to the activities most desired by consumers, produce property and services at least cost, and are responsive to changes in technology and the demands of consumers. On the other hand, regulation may be justified when markets fail, or to achieve clearly identified public benefit objectives.

NCP requires that all Acts and subordinate legislation that may inhibit competition should be reviewed and where necessary, reformed. The guidelines for review contained in the Competition Principles Agreement provide the methods and principles adopted by this review.

The guidelines require that legislation should not restrict competition unless:

- a) the benefits of restriction to the community as a whole outweigh the costs; and
- b) the agreed objectives of the legislation can only be achieved by restricting competition.

The aim of the review program is to develop a legal framework for business and industry that acknowledges these specific legislative fundamental whilst encouraging industry growth, reducing "red tape", reducing costs on industry, promoting fair competition, and streamlining administrative procedures. The intended result is a system of law that is simple, efficient and cost-effective.

At the same time, the law needs to strike an appropriate balance between stimulating economic growth and meeting community values and expectations, to preserve and protect the lifestyle of Territorians.

### ***Terms of Reference***

In accordance with the objectives above, the review process adopted included:

- c) clarification of the objectives of the legislation;
- d) identification of the nature of the restrictions on competition;
- e) analyse of the likely effect of the identified restrictions on competition and on the economy generally;
- f) assessment and balancing of the costs and benefits of the restrictions; and
- g) consideration of alternative means for achieving the same result, including non-legislative approaches.

When considering the matters referred to above, the review was also required to

- a) identify any issues of market failure which need to be, or are being addressed by the legislation, and to determine whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* and the Northern Territory Competition Code.

- b) consider the efficiency and appropriateness of the Northern Territory's system of gaming regulation, including its relationship and possible overlap with other legislation and regulatory systems that apply.
- c) take into account the relevant regulatory schemes in other Australian jurisdictions and any recent reforms or reform proposals, including those related to competition or competition policy in those jurisdictions.
- d) consult with and take submissions from those organisations and individuals with an interest in the Northern Territory Gaming Industry, including:
  - owners, operators, suppliers and other direct participants in the Gaming Industry;
  - relevant Northern Territory Government departments and agencies, including, but necessarily limited to, the NT Treasury; NT Police; and the Departments of Justice; Business Industry and Resource Development; Community Development, Sport and Cultural Affairs; and Health and Community Services;
  - organisations and agencies that provide gambling related harm minimisation services, or other relevant services to consumers; and
  - consumers and members of the wider community.

### ***Review Methodology***

The methodology used in the review was as defined in the Competition Principles Agreement, as follows:

#### ***Step 1:***

Define the objectives of the legislation.

#### ***Step 2:***

Identify the restrictions on competition that flow from the legislation.

By way of illustration, the following are examples of potentially anti-competitive legislative provisions:

- legislation that conflicts or appears to conflict with Part IV of the *Trade Practices Act* (eg. enabling price fixing, exclusive dealing and the establishment of statutory monopolies);
- legislation that creates structures that affect competition;
- legislation that restricts market entry or exit;
- legislation that creates competitive advantages or disadvantages for publicly or privately owned market participants;
- occupational and professional regulations; and
- legislation underpinning regulatory systems that reduce competition (including the imposition of significant costs), or that inhibits business innovation (eg. through technical discrimination).

Other examples of legislative provisions having anti-competitive effects are provisions that, directly or indirectly:

- control prices or production levels;
- restrict the quantity, level or location of the goods or services available;
- restrict advertising and promotional activities;
- restrict price or type of inputs used in the production process;
- are likely to confer significant costs on business; and
- provide advantages to some firms over others, (eg. by sheltering some activities from the pressure of competition or by restricting the scope of supply).

Legislative provisions must also be assessed to determine the extent that any lack of transparency in the administrative structure may affect competition. An important aspect is the extent of accountability and oversight, and provision for adequate review and appeal mechanisms.

**Step 3:**

An assessment of the costs and benefits of the restriction is then made. The factors that constitute the “public benefit” are not exhaustively defined and will turn on the facts and circumstances of each piece of legislation. Nevertheless, it is helpful to note that the Competition Principles Agreement explicitly considers the term.

The interpretation provision of the Agreement (Council of Australian Governments 1995, Competition Principles Agreement, Canberra: Cl.1), states:

*Without limiting the matters that may be taken into account, where this Agreement calls:*

- *for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or*
- *for the merits or appropriateness of a particular policy or course of action to be determined; or*
- *for an assessment of the most effective means of achieving a policy objective;*

*the following matters shall, where relevant, be taken into account:*

- *government legislation and policies relating to ecologically sustainable development;*
- *social welfare and equity considerations, including community service obligations;*
- *government legislation and policies relating to such matters as occupational health and safety, industrial relations and access and equity;*
- *economic and regional development, including employment and investment growth;*
- *the interests of consumers generally, or a class of consumers;*
- *the competitiveness of Australian business; and*
- *the efficient allocation of resources.*

**Step 4:**

The next step is to measure whether the benefits of the restrictions on competition outweigh the costs and whether the “public benefit” lies in the maintenance of the restrictions, or their modification or removal.

Step 5:

If the restriction is to be maintained, the next stage is to show whether the only practical way of attaining the objective is through the use of legislation.

The requirement to demonstrate – and not merely assert – a cost or benefit in relation to a particular proposal should be borne in mind.

Alternative regulatory models may be considered which may offer advantages in reducing “red-tape”, increasing the industry’s involvement in setting standards and promoting compliance, and reducing costs to industry and government.

Economic reform models have been omitted as outside the scope of this review and the potential application of some or all of these models will vary according to the particular area of regulation being considered.

### ***Review Approach***

The review has been conducted as a full public review, in close consultation with business, industry, gambling support organisations and the wider community. Reflecting this approach, proposals to give the relevant business sector a greater role in setting the standards and ensuring compliance were encouraged.

Alternative regulatory approaches such as Industry Codes of Practice, the use of “co-regulation” models, and “negative licensing” concepts, were outlined in the Issues Paper.

Involvement of stakeholders was facilitated through an invitation to participate in examination of the issues, the provision of comment for input in development of this report.

To achieve this, the Issues paper was circulated widely by public announcement in the Northern Territory News on 20 April 2002 and Centralian Advocate on 26 April 2002.

Written notification and an invitation to comment was also forwarded to ninety-eight (98) individual industry stakeholders, including all relevant licensed bodies, licensed individuals and gambling support organisations.

The Issues Paper was also published on the Northern Territory Treasury Internet, with source references for all subject legislation and relevant papers and comments, including those of the NCC and Productivity Commission.

The intent of the Issues Paper was to provide readers with a comprehensive overview of the legislative environment within which the Northern Territory Gaming Industry operates and some insight into developments in the wider context.

It was also intended to provide a framework for a disciplined analysis of the issues involving anti-competitive restrictions and business impediments within the Territory environment.

It that regard, it's purpose was not to provide an exhaustive analysis of every issue involved, but to give guidance into the manner in which interested parties could consider and advance suggestions for improvement.



It provided an analysis of all legislative provisions involved and preliminary proposals for reform in respect a number of major issues identified.

### ***Public Response***

Six (6) written submissions were received in response to the Issues Paper.

An overview of the public comments received is at Attachment A. Whilst responses received were generally supportive of the proposed directions and changes, the current position for exclusive licensing arrangements generally and for the allocation limitations of gaming machines between gaming venues were the subject of specific and strongly opposed views by various industry participants. These matters are commented upon in detail elsewhere in this report.

### ***Industry Positioning***

Governments have long recognised the significant impact that gambling has on the culture, history and economy of the nation.

Gambling is a major industry sector which is highly controlled, not only to ensure that the significant revenues involved are correctly received by Governments in accordance with prescribed taxation policies, but, importantly, to ensure that high standards of probity are maintained to protect community interests and that appropriate measures are in place to address problem gambling aspects.

As control of gambling, apart from the use of telecommunications involved with the recent emergence of electronic gaming, is not encompassed by Section 51 of the Australian Constitution as one of the Federal Government's nominated powers, it has remained as one of the residual powers of State Parliaments.

The involvement of Parliament in passing and maintaining legislation to control and regulate the Gambling industry is not unique to the Northern Territory and all States have established relatively complex legislative frameworks within which gambling is controlled and administered.

The current Territory legislative framework, while differing in specifics from that of other Australian jurisdictions, is not particularly unique. Similar types of legislation that currently exist here can be found in all other Australian and many international jurisdictions.

The Territory is mindful that it needs to remain competitive and responsive to developments elsewhere, particularly in the emerging electronic gaming area.

### ***Legislative Rationale***

In economic terms, the main objectives of regulation are to address issues of market failure and/or to promote social welfare objectives.

The principal types of market failure that are evident in gaming activities include unconscionable practices, information asymmetry and externalities.

## **Information Asymmetry**

The nature of gaming activity means that suppliers, in an unregulated environment, have considerable scope to manipulate the outcomes of gaming in their favour, through unfair and/or unscrupulous manipulation of both equipment and practices. Strict regulatory control and regulated audit procedures are seen as essential to offset this potential exposure.

Operators can also create environments which are conducive to increased participation levels of players. Players of gaming machines for example can be influenced to play for extended periods and at higher betting rates, through use of high value machine betting limits, high value note acceptors and lack of time awareness information. Regulatory intervention to ensure reasonable and responsible standards are adopted is seen as appropriate to control the use of such elements in the public interest.

As consumers generally do not have access to sufficient information on probable outcomes from specific gaming activities which is necessary for rational consumption decisions, gaming operators can potentially extract excessive profits at the expense of consumers, through the creation of incorrect and inflated expectations of rewards from participation in the activity. There is a strong argument for government regulation to protect consumers from exploitation and to ensure that society's economic resources are allocated to efficient uses.

A recommendation has been made to elevate requirements for minimum information provision at the "point-of -gaming" to assist improve the quality of information available to consumers.

## **Externalities**

Externalities relate to economic costs or benefits imposed on parties that are external to a transaction. Gaming has the potential to become addictive for some individuals, which means that expenditure on gaming can exceed the point where satisfaction or enjoyment is maximised. This varies across different gaming types, but is highly evident in the operation of low unit value machine gaming. Such irrational consumption patterns can impose costs on third parties in terms of crime, family breakdown, loss of employment etc.

Such costs are not necessarily reflected in the price paid for gaming products, which can lead to socially undesirable levels of gaming supply. Accordingly, regulatory measures can be necessary to ensure effective control of these aspects and provision of information to consumers. In Territory, such controls are exercised primarily by strict limitation to the amount of access to gaming products, whilst ensuring that a viable and appropriate distribution network is in place, so as not to disadvantage recreational gamblers across the relatively small and widely dispersed Territory population.

## Gaming Regulation

### *Regulatory Environment*

The Productivity Commission succinctly articulated the fundamental drivers which impact gaming regulation:

*"Governments through the ages have generally placed restrictions or outright bans on gambling activity. The gambling industries, more than many others, are creatures of government regulation. But social mores and community attitudes change over time, and gambling regulation can be expected to evolve as well."*

*"The task for government policy towards these industries, as for any others, is to regulate them in ways which, by taking account of their special characteristics, will help to bring the greatest net benefits to society. This does not mean eliminating their costs, but striking a balance such as to maximise the net benefits."*

### **National Competition Policy and the Gambling Industry**

A key conclusion of the Productivity Commission in its *Report on Australia's Gambling Industries* was

"that licensing systems which are designed to ensure probity standards and consumer protection provide a net community benefit and also meet the second part of the test – that is, restricting competition in this way is the only way of achieving these objectives."

Accordingly, a number of the provisions of the legislation to be examined, although prima facie restrictive in nature, may fall within the ambit of this view.

However the review is still required to consider whether any part of the legislation conflicts or appears to conflict with Part IV of the Trade Practices Act which prohibits a corporation and, in the Northern Territory, individuals, from engaging in certain anti-competitive practices.

In addition, the Third Tranche Assessment Framework (5 February 2001) published by the National Competition Council contained additional information relevant to the review of gambling legislation.

It provided information specific to the review of gambling that expands on, and clarifies, the methodology to be used in reviews of gambling legislation, based on findings from the above Productivity Commission Report.

It has offered useful comments on the way it will assess reviews of gambling regulation, in its paper, *"Regulating Gambling Activity: Issues in Assessing Compliance with the National Competition Policy"* (October 2000).

The PC found the two objectives providing the strongest rationales for special gambling policies are to ensure the probity of gambling and to reduce its adverse social impacts.

*"...the overarching goal should be to maximise the welfare of the community as a whole. Measures which can reduce the social harms of gambling while maintaining the benefits find particular favour under this approach." PC 12.1*

In assessing NCP compliance, the NCC stated it will take account of conclusions reached by the PC review.

*“The Council accepts that restrictions based on the application of the PC arguments satisfy NCP obligations. In particular, the PC has identified some restrictions which are aimed at harm minimisation and ensuring probity standards, which provide a net community benefit and also meet the second part of the NCP public benefit test – that is, they are the only way of achieving those restrictions.*

*The restrictions in this category relevant to this review include:*

- *Probity regulations, with appropriate risk management which is aimed at protecting consumers and allowing operators to employ their own risk management procedures, with costs borne by industry and employing a common framework across venues and between gambling operations;*
- *Requirements to provide information to consumers on the nature of the games being played and the likelihood of receiving large payouts; and;*
- *Codes of Conduct.*

*These restrictions have been shown to meet clause 5 obligations. Therefore, jurisdictions can rely on the PC arguments in support of these restrictions and the Council will require no further justification of these restrictions.” (NCC, p. 4-5)*

The Council also observed that there may be other restrictions governments wish to use to achieve these objectives. In this case, there is still a need to establish that the form of the restriction is the only way of achieving the stated objectives of the legislation.

In other words, the Council has advised that *“jurisdictions do not need to argue the rationale for the restrictions is a net public benefit, only that the restrictions are the only way of achieving the outcome.” (NCC, p.5)*

This paper outlines proposed legislative changes that fall within these categories, and this obligation to make out a case must be met under this review.

The Council identified some important competition questions that do not all fall within these categories. These need particular justification under NCP. The following is not exhaustive.

*“Restrictions on competition and market behaviour are common in gambling legislation.*

*Examples of these gambling specific restrictions include:*

- *Who can participate in the provision of the gambling activity and whether regional or state-wide;*
- *The kinds of gambling activities that may take place at a particular venue;*
- *Licences (sometimes exclusive licences) for some types of gambling operations”*

## ***Regulatory Considerations***

In analysing the Territory position, the review has been mindful of the various recent reviews and comments concerning the Industry in the wider Australian context. In particular, comments from the Productivity Commission 1999 Review of Gambling were detailed in the Issues Paper as the basis for benchmarking Territory practices.

Specific comments considered of relevance were as follows:

### **Incoherent Regulatory Environment**

"The current regulatory environment falls short of that regulatory ideal. Policies for the gambling industries lack coherence: they are complex, fragmented and often inconsistent.

For example:

- Governments are participants in and promoters of gambling activity, while also attempting to reduce the social harms from gambling.
- Governments monitor the probity of gambling to protect consumers, but neglect other important aspects of consumer protection, such as informed consent.
- Probity requirements are inconsistently applied across gambling modes and venues — being particularly stringent for casinos.
- While clubs differ in some respects from hotels, the basis for the widely differing treatment in their access to machines and in taxation is unclear, and has varied greatly over time and across jurisdictions.

These and other apparent anomalies have arisen in part because of poorly defined policy rationales and because of the uncoordinated way in which policies have been developed for the different gambling modes, compounded by the multiple jurisdictions and institutions involved.

They also reflect tensions between different policy objectives of government. The most fundamental of these has been the incentive to exploit gambling as a source of taxation revenue, in the context of the states' increasing dependence on Commonwealth revenue and a perceived lack of alternative state taxes."

### **Policy Rationale**

"Revenue raising has not only influenced approaches to taxation, but also how access to gambling services has been regulated, or de-regulated. But the key underlying rationales that should guide government regulation for these industries relate to:

- amelioration of the social costs of gambling;
- the need to ensure that consumers are adequately informed, and
- probity controls — both to protect consumers and to reduce potential criminal activity.

Other apparent government objectives in this area, such as the promotion of tourism or assisting particular groups or activities, appear not to have a strong basis.

The main features of the regulatory environments in the different states and territories include licensing criteria for operators, probity controls, technical standards, restrictions on under-age access, and taxation and community levy arrangements.

But two central aspects in all jurisdictions are restrictions on competition and the regulation of access to gambling. It is important to assess what these are achieving."

### **Competitive Constraints**

"In contrast to most other industries, the gambling industries are typically protected from competition. For example:

- Lotteries have monopolies in nearly all jurisdictions.
- TABs also have monopolies, and they can accept phone bets from interstate, but not 'solicit' them.
- Casinos have acquired exclusive licences for lengthy periods within specified market boundaries. The extensiveness of licences in some states has constrained governments' options in relation to gaming machines and Internet provision.
- Several jurisdictions have allocated the rights to own, distribute and /or monitor gaming machines to a limited number of operators.

This anti-competitive regulation is subject to scrutiny under the current legislative review program of the National Competition Policy. Some reviews have already taken place in particular jurisdictions, and more are in prospect.

The Commission has attempted to contribute a broad perspective on the key public benefit issues under consideration. A key point, with problem gambling in mind, is that restraints on competition are generally not necessary to restrict the accessibility of gambling.

- Revenue raising? Notwithstanding the states' imperatives, this is not in itself a sound rationale for restricting ownership. Governments have generally rescinded the practice of selling monopoly privileges to most goods and services, because of the costs imposed on consumers through higher prices and restricted choice. Such effects also arise in the gambling industries. The likely overall outcomes are clouded, however, by regulatory controls on prices and availability, and the presence among consumers of problem gamblers.
- Reduce social costs? In practice, ownership restrictions have not served to reduce the accessibility of gambling, other than for casino table games. And monopoly rights are unlikely to facilitate harm minimisation strategies for problem gamblers.
- Facilitate probity checks? Economies are likely to be gained with fewer operators to monitor. But the costs of probity regulation should in any case be borne by venues and this would partly determine their appropriate size.
- Some efficiency benefits? Scale is important to lotteries, but with the ability to pool across lotteries, does not necessitate exclusivity. There is a case for government intervention to address potential market failures for wagering on horse racing, but monopoly TABs do not appear necessary for this.

Competition is also constrained through restrictions on the venues permitted to provide gambling services. For example, the preferential access to gaming machines afforded to clubs over hotels is hard to justify on either harm minimisation or economic grounds. However, any regulatory change now to allow hotels equal access would have a significant impact on the availability of gaming in some jurisdictions.

*In sum, with the possible exception of casinos, current restrictions on competition within the gambling industries have little justification."*

### **Regulating Access to Gambling**

"In addition to constraints on competition, there are direct restrictions on the 'quantity' or availability of gambling. Apart from casinos, these are most evident in relation to gaming machines.

There are caps on the number of machines — at a venue level or jurisdictional level or both — in all states and territories. For example, Victoria currently has a statewide cap of 27 500 machines (excluding Crown Casino), with hotels and clubs limited to 105 machines each. In New South Wales, where legalised gambling has a much longer history, caps apply only to hotels and the casino.

Both the concept of caps and the levels at which they are set are contentious issues. In the Commission's view, supply restrictions can only be justified to the extent that they can reduce social costs sufficiently to warrant any adverse impacts on recreational consumers.

There are a number of dimensions to accessibility. They include not only the number and distribution of gambling opportunities among the population, but also opening hours and conditions of entry to venues, ease of use of a gambling form and the degree of social acceptance.

Among the major gambling forms, gaming machines and lottery products are the most accessible, followed by TABs and lastly, casinos.

While a link between the extent of problem gambling and the accessibility of gambling might seem self-evident, it is possible that most problem gambling could emerge with only limited opportunities to gamble (including 'informal' or illegal gambling) and not rise much further with increased access. Nevertheless, the evidence from Australian surveys and other sources does confirm a significant connection, other than for lotteries.

- Problem gambling rates are higher in those states where per capita expenditure on (non-lottery) gambling is higher, such as New South Wales and Victoria, and lowest where such expenditure is lowest — namely, Tasmania and Western Australia.
- Patterns of help-seeking by problem gamblers are also strongly associated with accessibility.
- There has been a sharp rise in the involvement of women in gambling, which is correlated with the increased access to poker machines.
- And survey data indicate that problem gambling rises more than proportionately with the number of regular gamblers."

### ***Probity Regulation***

"This is an area where existing regulation is highly prescriptive, although the strictness of the regulations varies considerably among the states and between modes. It is applied most stringently to casinos in all jurisdictions. The imbalance in probity regulation between casinos on the one hand and clubs and hotels on the other is difficult to justify, especially given the significant overlap in their gambling activities.

While risk management is important to cost-effective probity regulation, there is a good case for consistency of treatment according to the gambling mode as well as the venue."

### ***Approaches to Regulation***

"Regardless of what regulatory approach is taken, there are strong grounds for governments to pursue 'palliative' measures, such as provision of information about suitable sites, gambling help services, and software for exercising greater control over online gambling.

There are also good grounds for the regulation of Internet gambling along lines appropriate for other gambling forms. The Commission considers that there are ways of sufficiently inhibiting access to (foreign-sourced) unlicensed sites to make such regulation effective. It would also be considered fair and be complied with by most consumers — whereas complete prohibition may not. Moreover, prohibition would eliminate some potential benefits from the technology (including potential competitive advantages in trade).

'Managed liberalisation' — with regulation of licensed sites to ensure probity and consumer protection — has the potential to meet most concerns, provided a national approach to regulation and taxation is taken. A Commonwealth role, in cooperation with the states, could be of significant benefit to all jurisdictions by (among other things):

- allowing a single control system for blocking access to unlicensed sites;
- providing one national site for information and problem gambling referrals;
- providing a single voice when negotiating international agreements relating to consumer protection and taxation issues; and
- enabling one effective system for tax collection, revenue distribution and rate setting that would preserve the tax base."

### ***Improving Regulatory and Informational Processes***

"Many of the deficiencies in current regulations are the legacy of the way policies have been made. While some jurisdictions have done better than others, the approaches of most have at times been characterised by:

- poorly specified and sometimes conflicting objectives and rationales for regulatory decisions;
- often ad hoc decisions that have not taken into account the industry-wide implications;
- lack of rigour in assessment of the costs and benefits of alternative options;
- lack of community consultation about attitudes to and the possible social and other consequences of regulatory decisions, and
- little systematic monitoring and evaluation of the consequences of such decisions, once implemented.



Good policy-making and regulatory processes require that decision-makers have the appropriate degree of independence and control; that their objectives are clear and their decisions well-informed, and that the basis for their decisions is transparent and publicly accessible. Such features are especially important in a policy area such as gambling, which is characterised by conflicting pressures and incentives for government — and the potential for major winners and losers, within business and the community, from different regulatory outcomes.

There are several distinct functions that need to be performed in any proper regulatory environment for the gambling industries, of which three key ones are policy development, 'control', and enforcement."

### ***Northern Territory Regulatory Position***

The Territory has been at the forefront of regulatory reform in this area. Whilst the foregoing arguments detailed have merit in the broader context, in the relatively small jurisdiction of the Northern Territory, the current policy position is seen as appropriate and efficient.

This position involves regulatory control of both the level of industry participation in and the level of consumer access to specific gaming venues and products. It is seen as the most effective way in which the Territory, at this time, can achieve an appropriate balance, in terms of maintaining a continuing and viable industry with state-like service standards to the bulk of the Territory population, whilst promoting public benefits associated with minimising the adverse social implications of gambling and the probity of gaming operations.

### ***Northern Territory Regulatory Developments***

The Northern Territory has consistently focused on adopting a responsible and positive approach to gaming regulation.

In line with most other jurisdictions and consistent with achieving an appropriate level of balance in the industry, gaming legislation in the Territory has two overarching goals, which are:

- protection of the public interest; and
- revenue raising from taxes on gaming.

The Northern Territory Licensing Commission now has responsibility for regulatory matters previously dealt with by the Gaming Machine Commission and the Gaming Control Commission with effect from 14 February 2000.

On 30 November 2000, a new major gaming machine policy was released to apply to clubs and hotels in the Northern Territory. Details of the new measures have been listed previously and concern issues such as administrative arrangements, taxation rates, gaming machine operations as well as regional and venue caps on machine numbers.

An Industry Liaison Committee is in place to consider more liberal, yet very responsible, levels of gaming machines in Territory venues. The Committee is comprised of representation from the Australian Hotels Association (NT), Clubs NT and the Director of Licensing.

Internet Gaming remains highly topical with the Northern Territory being the first jurisdiction to license an online operator, Lasseters Online, on 7 April 1999. This is recognised as the first fully regulated online gaming site in the world and is growing at a very healthy rate whilst

incorporating highly sophisticated security systems to protect both players and the integrity of the site.

There is no level of exclusivity with existing Internet gaming licences and additional licences may be approved once applicants have undergone full product evaluation and probity assessments. However, the Australian Government's Interactive Gambling Act 2001 prevents licensed operators of on-line gambling sites from registering Australian residents as players.

Tax rates are negotiated on a case-by-case basis in order that the northern Territory remains competitive with other reputable licensing jurisdictions.

The Northern Territory Government is committed to maintaining the highest possible standards for Internet gaming licensing and regulation. An essential pre-requisite of any new licence application will be that player protection is adequately addressed.

The Northern Territory, along with other Australian States and Territories has released the "The AUS Model (Australian Uniform Standards) for the regulation of Interactive Gambling.

The Northern Territory Government is also currently liaising with Industry to produce a Gambling Code of Practice. It is envisaged that this code will encompass all aspects of the gambling industry including gaming, racing, TAB, casinos and lotteries.

### ***Other Jurisdictions***

Other jurisdictions, both nationally and internationally, who demand acceptable standards of probity and control over gambling related activities, maintain strong regulatory and licensing regimes.

Whilst full details of all other Australian jurisdictions NCP reviews in this area are not yet publicly available, the finding of those reviews examined identify a number similar significant issues of concern in the NCP context.

Given the very considerable interest emerging at all levels concerning problem gambling (particularly poker machines), electronic gaming developments and the maintenance of probity generally in the industry, it is expected that a degree of commonality will result in responses proposed.

One factor identified is the considerable variation in approaches to examination of the issues. These range from internal "desk-top" reviews of specific gaming areas to full public examination of the issues.

In the Territory context, despite the extensive recent examinations and policy development undertaken in a number of gaming areas, it has been concluded that the full Territory legislative base would benefit from a holistic examination by interested stakeholders, aimed specifically at the potential anti-competitive regulatory aspects involved.

The full legislative suite has therefore been included in the review, including proposed draft Regulations covering Community Gaming.

## Review Outcomes

The strictly controlled access to gaming products, limited licence availability, exacting licensing standards and extensive controls applied to the Industry, as detailed previously, are seen as appropriate and essential to achieve the high standards of probity, consumer protection, business viability and appropriate consumer access levels required. A firm regulatory regime is considered the most effective way to achieve and maintain these standards.

A balanced response to the identified issues is proposed for the Territory, within a continuing regulatory framework which incorporates clear and transparent requirements and prescribed standards of business conduct, particularly for the protection of problem gamblers.

The review process has been mindful that the prime consideration is to maintain the highest level of public confidence in the overall system.

No major move from the present exclusive licensing, strong probity control and gaming access distribution arrangements for casino and community gaming is therefore proposed at this time.

Removal of current exclusive licensing arrangements of major lottery operations does appear feasible and should be pursued. Ongoing review of other key restrictive elements should occur and an appropriate policy shift made as existing exclusive licence arrangements mature.

There is scope to remove a number of the more minor restrictions identified and to simplify a number of the regulatory provisions at this point. A number of the provisions are dated, duplication is evident and in part, and some areas are redundant and complex to interpret as a result of the progressive changes incorporated over time.

Adoption of the recommendations suggested will require an amount of restructuring and change to the current legislative base. As such, a full revision and redrafting of a new legislative framework is suggested as the most workable and viable approach.

This approach is expected to improve the current position through simplification of the legislative structure, improved ease of interpretation of the provisions and removal of anti-competitive provisions where justified, including both the items detailed in this report and the more minor issues articulated in the Issues Paper.

Whilst many *potentially* restrictive elements were identified in the subject legislation, there are a number of key issues which will have the greatest impact on the industry going forward. These key issues also cover the majority of the detailed minor issues identified and the rationale for their existence and coverage is generally consistent across the full spectrum of related items.

Where these options and alternatives also restrict or impact competition, they have been also tested to confirm their effectiveness in conferring net public benefit.

The key measures identified for consideration include removal of anti-competitive provisions or constraints on business which, in the main, are not justified for the protection of the public interest or impose unnecessary overheads on the conduct of business.

In all, some 630 separate provisions were noted for examination. The principal provisions were documented with interpretations for each provision and comment provided on potential restrictions and impacts.

The initial assessment identified 265 potentially restrictive provisions, or approximately 42% of the total legislative base.

The preliminary impact assessment was as follows:

Potential Impact on Stakeholders	Number	%
High <i>(Significant impact)</i>	115	43
Moderate <i>(Material impact)</i>	118	45
Low <i>(Minor impact)</i>	32	12
<b>Total</b>	<b>265</b>	<b>100</b>

### **Restrictive Provisions**

Concerns with probity, consumer protection and industry integrity are paramount considerations in formulating the required legislative response to consistently achieve the desired outcomes. As a consequence gambling activity is highly restricted in the Northern Territory, similar to other Australian jurisdictions,.

Gambling is mainly controlled through limited and exclusive licensing of operators, particularly in casino activity and major lottery products, divergent gaming machine allocations and machine operating arrangements between all venue types and differential community benefit contribution arrangements.

The Territory's relatively small market, its dispersed population, the need to maintain a viable gaming product distribution across a wide geographic area, the control of gaming machine density to assist moderate growth in gaming expansion to socially responsible levels and the relatively high capital costs in activities such as casinos, are factors which play a key role in achieving the net public benefits associated with these key restrictions at this time.

The possible benefits in the longer term in easing or removing these controls is acknowledged, as is the potential cost exposures for Government in doing so whilst current contractual arrangements exist, particularly in the casino and community gaming areas. It will be recommended that as these arrangements mature, the Territory either eliminate them or move towards less exclusive conditions for delivery of gaming services.

In terms of major lotteries, it is expected that market forces, particularly the high cost of maintaining a distribution network in the Territory context and the strong desire of consumers for products which provide instant and on-going participation in major Australian lottery pools, will dictate that viable lottery activities will only occur through major operators who in turn will likely create natural monopolies as a result. It is considered highly unlikely that multiple suppliers could establish viable cost structures to support the delivery of additional lottery products of the scale and type attractive to the Territory market.

As such, whilst minimum benefit is expected by removal of exclusive licensing now in place for lotteries, as part of the move towards a market-driven environment, a recommendation has

been made to negotiate removal of these restrictive provisions with the major provider, Tattersalls, providing no financial penalties are incurred in doing so.

As well as these major issues, there are a number of detailed minor operational and procedural matters identified within the regulatory framework, which warrant consideration for amendment at this time.

### ***Economic Effect of Restrictions***

The two main sources of competitive restrictions imposed under the terms of Gaming relate to conditions on market entry, allocation of gaming facilities (machines) and operational controls over gaming activity.

Restrictions on entry to gaming business activity are represented primarily by licensing requirements for all participants, including casinos, hotels and licensed clubs and major lottery operators. All participants are required to undergo character, financial capacity checks and to comply with operating conditions and conduct controls.

The effect of these restrictions is to limit the supply and accessibility to gaming products relative to the market structure that would exist if no legislation applied. Supply restrictions limit the accessibility to gaming services, which can limit potential entertainment options available and may impose costs on gamblers in seeking alternative sources of gaming facility.

Compared to a situation where gaming activities were unregulated, these particular provisions of the legislation can restrict managerial flexibility, economies of scope and imperatives to innovate in order to develop more efficient operating processes and new gaming products. These restrictions also impair the ability of gaming service providers to respond to changes in consumer demand preferences and broader technological developments. The impact of these restrictions is likely to manifest in the form of higher prices, reduced dividends for gamblers, reduced industry investment and a less accessible and diverse range of gaming products on offer.

### ***Costs Associated with Restrictions***

The most significant costs that are likely to arise from the application of the legislation relate to the economic costs arising from restrictions on competition. Because the scope for competitive practices between operators is restricted, price signals are distorted and hence society's scarce economic resources can be diverted away from more efficient uses.

Also, as restrictions are not applied uniformly across gambling venues, the restrictions can also reduce the efficiency of investment decisions for the broader hospitality industry.

Licensing requirements, which also involve ongoing probity monitoring provisions, and operational controls, also generate compliance costs for providers. These costs are passed on to consumers to some extent, either directly or indirectly.

Costs are also incurred in terms of administering and enforcing the legislation. Whilst a proportion of these costs are recovered through administrative fees and charges levied on industry, the bulk of these costs are borne by the broader community through direct government outlays.

### ***Benefits Associated with Restrictions***

A primary source of benefits associated with the legislation is the provision of entertainment or recreational services in a manner, which promotes the protection of consumers from exploitation and deception. Restricting the scope for criminal infiltration of the industry also reduces the potential for the earning of excessive profits at the expense of consumers, which represents a socially undesirable distribution of resources

These factors also generate industry-wide benefits as consumers have the confidence to patronise gaming venues in the knowledge that gaming are likely to be conducted fairly and lawfully.

Given the significance of the gaming sector to the Territory economy and the considerable degree of associated consumer surplus evident from previous inquiries into the gambling sector, it is likely that the economic benefits associated with the promotion of consumer confidence would offset the costs associated with restricting competition between gaming operators in the limited Territory marketplace.

Further social benefits are likely to occur through controlled access to community gambling products which is likely to have had a positive impact on reducing the effects of problem gambling in the Territory.

However, it is likely that the net economic benefits associated with the provisions of the legislation could be maximised through abolishing, where possible, the unduly prescriptive controls on the commercial activities of gaming operators and the introduction of further measures to ameliorate against addictive gambling behaviour. A more detailed analysis of these issues follows.

## Regulatory Administration

### *Regulatory Directions*

NCP presumes that markets should not be subject to anti-competitive restrictions, unless there is a public interest case for the retention of such restrictions.

Given the nature of the Industry, there is an inherent risk of criminal exploitation of gaming activity. The maintenance of probity and integrity in all aspects of the industry is critical to protect the interests of consumers and participants alike. The operation of an effective regulatory framework is seen as an essential element.

Underpinning the framework are a number of principles which apply to gambling overall, which are seen as relevant to take the Industry forward:

- Minimum regulatory intervention by Government
- Maximum co-regulation between Industry and Government
- Performance based/ risk management controls
- Proactive and Competitive Industry Positioning
- Long-term viability of the Industry
- A Balanced approach to Problem Gambling

These are translated through a licensing system and specific controls over all aspects of gaming activity.

### **Recommendation:**

- The recommended regulatory principles be adopted as the basis for regulation of the Gaming Industry

### *Regulatory Objectives*

The analysis and clarification of the objectives of the legislation was a fundamental aspect of the review, as it provides an indication of the rationale for government regulation of the associated economic activity.

In terms of the three (3) Acts covered by this review:

- The **Gaming Control Act** has no stated objectives. The long title of the Act describes it as an Act to control casinos and gaming, and for related purposes.
- The Gaming Machine Act has specific objectives which include:
  - to promote the responsible operation and use of gaming machines;
  - to ensure the probity and integrity of participants in the gaming industry;
  - to ensure the fairness of games, the integrity of gaming systems and the delivery of quality services to game players; and
  - to ensure that clubs holding gaming licences will improve the amenity of their neighbourhoods in order to maximise the welfare of the community as a whole.

- The **Soccer Football Pools Act** has no stated objectives. The long title of the Act describes it as an Act to provide for the promotion, conduct and operation of Soccer Football Pools.

An important contemporary social objective of gambling regulation is to promote problem gambling remedies and responsible gambling practices.

The Productivity Commission, in the 1999 Report into Australia's Gambling Industries, found that the two objectives providing the strongest rationale for special gambling policies are to ensure the probity of gambling and to reduce its adverse social impacts.

*"The overarching goal should be to maximise the welfare of the community as a whole. Measures which can reduce the social harms of gambling while maintaining the benefits find particular favour under this approach."* PC 12.1

One proposed change is to give a better legislative foundation for measures which support the combating of problem gambling through the implementation of an appropriate Industry Code of Conduct.

The following core objectives are proposed as the basis of the overall legislative framework, and these have been used as the basis for assessment of the merits of the current regulatory provisions:

- *to promote probity and integrity in Gaming activity;*
- *to maintain the probity and integrity of participants in the Gaming Industry;*
- *to promote fairness, integrity and efficiency in the delivery of Gaming services to the public;*
- *to promote a balanced contribution by the Gaming Industry to general community benefit and amenity; and*
- *to reduce the adverse social and economic impacts of Gambling*

No public objections were received to the proposed establishment of a clear statement of overarching objectives on this basis and this is recommended.

An important contemporary social objective of the legislation is to not inhibit the promotion of problem gambling remedies and responsible betting practices. The current development of an appropriate Industry Code of Conduct is noted and has been supported by Industry.

A key requirement will be to articulate a contemporary regulatory environment which will achieve these specific goals and at the same time, provide an operational framework which will encourage growth and maximise competitive positioning, to ensure long-term viability of the industry and continuing access to this key entertainment media by consumers.

#### **Recommendation:**

- The proposed objectives be adopted as the basis for the revised legislative framework to be developed to cover Gaming activity.



### **Legislative Arrangements**

There is an extensive amount of inter-related legislation which has emerged over time.

A degree of overlap and ambiguity has been identified both within and between various provisions, such as, eg, the apparent coverage of gaming machines under Part 5 of the *Gaming Control Act* and its *Regulations* as well as under the *Gaming Machine Act* and its *Regulations*. Elements of gaming are also covered in part by different Acts and subsidiary legislation eg, treatment of minors. Unlawful Gaming is covered by the *Gaming Control Act* with similar provisions to unlawful activities in the *Unlawful Betting Act*. There appears to be scope to refine the structure and clarify a number of the provisions, notwithstanding incorporation of the changes resulting from this review.

It is recommended that a revised legislative framework be adopted, comprising two principal sets of legislation - one covering the licensing and operations of the industry itself and the other covering the gambling control aspects.

It is envisaged that the redrafting process would result in removal of duplicated content and materially assist effective implementation and compliance through a clearer and logically structured set of legislative provisions.

#### **Recommendation:**

- The legislative structure be further reviewed with the view to development of a new legislative framework, based on two principal sets of legislation - one covering the licensing and operations of the industry itself and the other covering the gambling control aspects.

### **Summary Comments on Regulatory Directions and Arrangements**

<b>Public Comments</b>
The proposed principles and regulatory structure are consistent with Industry comment received.

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Simplified administrative arrangements	One-off cost to create revised legislative base
Greater clarity and ease of interpretation	
Easier future amendment	
Lower regulatory maintenance costs	
Increased flexibility for industry development	

<b>Net Public Benefit Assessment</b>
Improved efficiency of Industry regulation.

### **Licensing Commission**

The current licensing authority for gaming activity is the Northern Territory Licensing Commission.

In the Issues Paper, the review canvassed further consolidation of Northern Territory Licensing Commission responsibilities, to include all gambling related activities, an approach which

would be consistent with rationalisation of administrative arrangements and improved efficiency in overall licensing activities.

The Licensing Commission was formed to consolidate various statutory boards, Commissions and other bodies regulating business licensing. It is the licensing authority in respect of liquor, private security, escort services as well as a number of gambling related functions including casinos, gaming machines and commercial totalisators.

Given the significance of the industry to the economy and the increasing complexity of business, technical and legal issues involved, Industry also recommends that membership of the governing Commission should include a focus on appointment of experienced and expert members, with wide business experience in the industry.

Whilst there is merit, in terms of administrative efficiency, in further consolidating licensing activities, there is also merit in the proposition that the significance of the Industry warrants a dedicated, expert and focussed regulatory body. The current split regulatory position over like gambling industry activities, eg racing and TAB, as well as other gambling activities, is relevant.

Whilst not directly relevant to NCP considerations, this matter should receive further detailed analysis to establish the most appropriate and effective management structure, from both Government and Industry viewpoints. As recommended in the NCP Review of Racing and Betting legislation, one possible option which could be considered would be the establishment of a specific Gambling Commission, to assume responsibility for all related gambling activity currently undertaken by both existing Commissions. This may present a more appropriate mechanism to ensure consistency and efficiency in regulation across the total Gambling Industry. Further investigation of the relative merits of integrating the current regulatory authorities versus the establishment of a dedicated gambling authority is proposed.

**Recommendations:**

- A detailed investigation into the current regulatory control structure be conducted, to include consideration of the establishment of a Northern Territory Gambling Commission, to assume responsibility for all gambling related activities presently controlled by the Racing Commission and Licensing Commission.
- The composition of members for the controlling regulatory body be established under minimum criteria for appointment based on a prescribed balance of regulatory, commercial and specific industry expertise.

**Public Comments**

No public comment received.

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Simplified and more coordinated gambling administration	May be a slight increase in administrative costs due to higher overheads to implement more exacting and higher skill requirements for Commission members.
Higher expertise in gambling administration	
More consistent basis for decision making and licensing	
Improved speed of administrative action	

***Net Public Benefit Assessment***

Public confidence should be better maintained with an expert and dedicated control focus over all gambling issues.

## **Business Restrictions**

### **Licensing**

#### ***Exclusive Licensing***

The Northern Territory has a relatively small population which is dispersed over a large geographical area. The Territory is also physically isolated from Australia's major population centres. This results in a substantial degree of market fragmentation, which means that potential gains from reduced regulatory intervention in the gambling industry is likely to be limited.

As a result, there has been a bias towards the issue of exclusive and limited licences for many regulated activities, and this particularly applies in the conduct of gaming. Economies of scale, the need to justify relatively high levels of capital investment in areas such as casinos, and the establishment and maintenance of appropriate standards and effective distribution networks, in areas such as major lotteries, are relevant.

To the extent that this reduces competition and participation by new business operators has long been acknowledged as an acceptable trade-off to ensure that the Territory public has access to standards of such services enjoyed elsewhere in Australia.

As such, the current exclusive arrangements are seen as appropriate, until such time as population growth justifies a broadening of the business base in these specialised areas.

To move from this position at this point would also involve re-negotiation of contractual licensing obligations of Government, with likely substantial compensation payable for amendment to current arrangements.

On balance, it is considered any increased public benefit from more open competition and increased access to gaming products which may be derived from a less restrictive market would be unlikely to offset the financial imposts which would be encountered by Government. Further, reduced economic viability and stability of industry participants in the relatively "thin" market is also probable.

With regard to casinos, there are competitive elements at various levels of operation, in terms of the active contestability for high-end gambling activity from interstate casinos and at the broader hospitality level in terms of general tourism and accommodation.

At the current time and scale of activity, exclusivity also provides benefits in encouraging major investment and employment, particularly in the Territory regional context.

**Recommendation:**

- Existing casino licensing arrangements continue for the duration of current licences, unless removal of anti-competitive restrictions can be effected without significant penalty to Government.
- Exclusive lottery licensing conditions in arrangements with Tattersalls be removed by negotiation with the Company.
- Regular review be undertaken of exclusive licensing arrangements, in the light of Territory economic growth and market expansion, with the view to negotiated removal as sufficient net public benefits become available.

<b>Public Comments</b>
Existing exclusive licence holders support continuance of present arrangements.

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Recognises limited market size	Limits competition
Encourages maximum investment	Limits industry participation
Lowers product delivery costs	Limits consumer choice
Provides higher consumer returns (Larger jackpots)	Potentially higher prices
Achieves greater economies of scale	
Lowers business continuity risk	

<b>Net Public Benefit Assessment</b>
Achieves greater net public benefit in limited Territory market.

**Licensing Structure**

The gaming industry is one of the most highly regulated industries in the Australian economy.

Territory legislation encompasses a variety of “licensing” requirements designed to effect strict oversight and control of both major and minor gaming activities.

The system of positive licensing adopted for participants in the industry is similar to that in place in other Australian jurisdictions.

There appears to be justification for continuance of a firm licensing regime for all key operational elements of the industry as at present, subject to the introduction of measures which will allow more flexibility to accommodate operational requirements and industry developments, as they emerge.

There are variations in the treatment of core business licensing across different gaming activities. Current legislation requires an agreement to be entered into concurrent with the issue of each of the three major forms of licence (Casino, Mail Order Lottery and Internet

Gaming). Organisations and persons must be approved to conduct lotteries, prior to seeking individual permits to conduct specific lotteries.

Essentially, a licence has no force or effect without an underlying agreement and the term of a licence is fixed by the term of its underlying agreement.

This is an anti-competitive element and poses barriers to entry to business and influences investment and operational decisions, which in turn distort competition between gaming operators.

There is a case to consider separation of the "right to do business" by a particular party, in terms of probity and consumer protection considerations that the party is "fit and proper" to hold a licence to operate and the fees, taxes, conditions or other matters which may attach to the "operation of the business".

In addition, licences and permits for various activities between business operators may be varied at the discretion of the regulator, in terms of both conditions and duration, further impacting competitive considerations and undermining investment certainty and regulatory transparency.

A more effective and transparent approach would be to provide the option for evergreen licences which impart the right to do business and terminate in accordance with a licence condition, on surrender or as a result of a breach of the conditions of the licence or the Act. Such licences would be subject to defined annual fee levels according to licence criteria and would be variable.

This would require the enactment of regulations to cover most of the issues contained in the underlying agreements, such as taxation arrangements, auditing arrangements, confidentiality, company appointments, controls on ownership and influence, internal operating controls etc.

**Recommendation:**

- No change be made to the basic positive licensing approach for industry participants.
- All future gaming licences be issued as perpetual business licences.
- Standard ancillary licence operational conditions and conditions relating to operational matters in underlying Agreements, now incorporated in specific licences and specific Agreements, be set out in legislative regulations.
- Uniform probity requirements and checking procedures be adopted for all types of gaming operations.

**Public Comments**

Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Maintains high levels of probity	Nil identified
Maintains continuing confidence in industry	
Greater business certainty to encourage increased business investment	
Lower administrative costs	

<b>Net Public Benefit Assessment</b>
Maintains appropriate standards of gaming amenity and confidence for consumers.

**Licence Conditions**

A feature of gaming licensing is the application of differential conditions between participants in like aspects of the industry. These create significant anti-competitive issues within the industry.

Differences apply to licence conditions (hotels, taverns, bars, clubs etc), scope of activity (numbers of gaming machines), geographical exclusivity (casinos), limitation on number of licences held by clubs, non-transferability of gaming machine licences, requirement for hotels to have a take-away liquor licenses etc.

However, whilst the regulation of operators according to type of operator is in direct conflict with the ideal competitive framework envisaged under NCP, as detailed previously there are public benefit considerations in the case of the Territory for control of gaming expansion and limitation of public access to gaming facilities, whilst maintaining industry viability in the limited Territory market and reasonable access to gaming products for consumers.

This position is expected to change as the Territory population expands, but at this time, no change to the status quo is seen as warranted. This issue should be the subject of regular on-going review both in general terms and as exclusive licences mature.

Whilst the differential conditions are generally supported, the need for specific requirements for license approval, in particular the need to maintain a take-away liquor license for hotels, presents a clear detriment to some licensed operators without any discernible public benefit justification, and should be removed.

**Recommendations:**

- Permanent Operating Permits be issued for different classes of Gaming Activity
- Future gaming licences not contain anti-competitive or restrictive provisions, in respect of limitations on the business activity of competitive operators, unless clear net public benefit can be demonstrated.
- Restrictive conditions requiring that a take-away liquor licence be held by a hotel as a condition for the operation of gaming machines, be removed.

<b>Public Comments</b>
Licensing directions supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Greater business certainty	Nil identified
Reduces administrative costs	

<b>Net Public Benefit Assessment</b>
Improved standards of gaming amenity for consumers.

### **Employee Licensing**

There are a variety of legislative provisions covering different types of licensing for certain gaming industry employees in areas such as Casinos, Internet Gaming and Community Gaming.

Defined persons employed should be clearly defined as Regulated Employees and a single Gaming Industry Employee Licence introduced, based on standard probity criteria (police checks, security clearance etc)

Satisfaction of technical competence in specific functions should be left to employers to control. An extension to this could be the introduction of competency certificates for particular skills in the industry.

#### **Recommendation:**

- A standard licensing approach be adopted for defined employees of Gaming operators.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Introduces uniform probity standards and checking	Nil identified
More efficient process	
Focuses probity controls on key operatives	
Lower costs on gaming operators.	

<b>Net Public Benefit Assessment</b>
Maintains public confidence through continuing controls at appropriate level.

### **License Appeals**

In line with similar industry licensing management, the introduction of a Public Appeals mechanism for licence issue, to augment the public scrutiny of industry participants, and thus elevate transparency and overall standards, should be considered. There are strong public benefit issues, consistent with the core objectives of the regulatory regime, to recommend such an approach.

#### **Recommendations:**

- A Public Appeal mechanism be introduced for all licence issue.

<b>Public Comments</b>
Not raised in Issues Paper but supported for similar licensing in Racing and Betting areas.

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Increased transparency in licensing process.	Nil identified
Improved public accountability.	

<b>Net Public Benefit Assessment</b>
Greater public confidence with increased transparency in licensing arrangements.

### **Licence Fees**

Restrictive provisions apply for the refund of licence application fees. A refund can only be given if the Minister refuses to consider an application or if an application is withdrawn by the applicant before the application is considered by the Minister. It would be more appropriate to remove these constraints and allow the Minister to refund all or part of an application fee, in his absolute discretion, in consideration of costs actually incurred to the point of refund.

#### **Recommendation:**

- Revised fee refund procedures be introduced.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
More efficient process	Nil identified
Greater equity in refund process	

<b>Net Public Benefit Assessment</b>
Improved efficiency in administration.

## **Gaming Machine Allocation and Operations**

### **Gaming Machine Global Limit**

There is no overall gaming machine limit in the Territory, however there is regulatory provision for the prescription of an absolute limit on the total number of non-casino (community) gaming machine at any time. This limit is defined according to a population based gaming machine density ratio, with the maintenance of a relative position at 55% of the Australian average for community based machines.

This limit was fixed to ensure that the Territory will maintain a relatively responsible position in the community gaming area, compared to other jurisdictions, whilst maintaining a reasonable and controlled level of access to community gaming amenity for recreational gamblers. Casino machine numbers are unregulated and numbers are determined by casino operators, according to market forces.

Whilst this arrangement presents issues from a pure competition viewpoint, it does provide a mechanism which is considered appropriate at this stage of the Territory's development.

In the Territory circumstance this position is considered to provide a satisfactory level of net public benefit overall, with major concentration of machine gaming activity in the high control environments of casinos, compared to a likely distortion of the market towards large community clubs and larger hotels, resulting in unacceptable density levels, in an unregulated situation.



Whilst the provision is for a prescribed limit for community machines, the specific basis is not defined. This presents difficulty for the administration of the requirements by the regulatory authority and for determination of individual venue caps, which creates uncertainty and may involve excessive process for industry. This basis should be included in the regulatory provisions.

**Recommendations:**

- Current gaming machine density control criteria to continue to apply.
- Community gaming machine global cap be fully defined in regulatory provisions.

<b>Public Comments</b>
No specific comments on global caps

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Maintains relative position for Territory in terms of gaming product availability	Limits ability to meet venue demand in specific areas
Demonstrates responsible attitude to gaming expansion	Influences market behaviour
Maintains defensible public access level to gaming product	

<b>Net Public Benefit Assessment</b>
Assists maintains relative and sufficient access to gaming machine amenity to avoid community saturation.

**Gaming Machine Venue Limits**

A major issue, from an NCP perspective, is the differential arrangements for allocation of gaming machines between casinos, hotels and licensed clubs.

The current arrangements are predicated on a complex balance of gaming access control, community benefit and amenity contribution and taxation. This has been developed over a considerable period and represents a position which Government believes is appropriate to the current economic circumstances and policy outcomes required.

Different arrangements for the balance between the form and quantum of community benefit contribution in relation to the wide variation in machine number caps approved for clubs (45 units) and hotels (10 units) and in relation to casino arrangements (unregulated), are particularly of particular concern within the industry. In addition, different conditions attach to community gaming machine operations vis-à-vis casino machine operations in that note acceptors are prohibited, lower maximum bets and payouts apply and advertising is restricted.

Whilst acknowledging that all gaming venues compete generally in the same market, the current arrangements are based on the position that clubs are the primary venue for community gaming activity, operating on a non-profit basis for the general benefit of community members.

They are therefore seen to be positioned to contribute more readily to direct community amenity, in accordance with community needs. The current differential caps on gaming

machines are designed to provide the capacity for clubs to contribute effectively under this policy rationale. However, these contribution levels are not prescribed at this time..

Hotels, on the other hand, under current policy are licensed for gaming activities mainly to provide a competitive element to club gaming activity and more appropriately contribute to community benefit directly by monetary levy. To increase caps on hotels to similar levels to clubs would substantially increase access to gaming machines in the community and would likely contribute to increased problem gambling.

The restrictions on actual gaming machine operations in clubs as compared to casinos are also designed to ameliorate the level of community gaming activity undertaken in community venues.

Whilst there are issues relevant to the application of the policy which are addressed later in this review, it is considered that the object of the current arrangements, to provide a reasonable level of competition, sufficient community access and a positive community contribution from gaming, are valid in the Territory circumstances. Also, the saturation level of gaming facility and access is controlled at overall levels which allow the Territory to maintain a responsible position in regard to the amount of gaming activity available to the community and the increased adverse social consequences which could arise in a less controlled situation.

Issues of exclusive licensing and contractual arrangements are again relevant, particularly in the context of casino licensing and taxation arrangements for gaming machines and any further change at this point, to allocations or machine operations, could result in net public loss through compensatory payments to existing license holders.

**Recommendation:**

- Differential gaming machine allocation limits for community gaming venue types (Hotels and Clubs) to continue.

<b>Public Comments</b>
Not supported by community venue operators who desire higher and equal distribution to all venues.

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Prevents uncontrolled expansion.	Unbalanced competition. Distorts resource allocation.
Maintains market relativity between hotels, clubs and casinos.	Influences market behaviour.
Provides scope for clubs to provide greater community amenity.	Limits ability to meet venue demand in specific areas.
	Influences investment decision for hotels.

<b>Net Public Benefit Assessment</b>
Assists achieve required position for gaming machine activity in the community in relation to desired community amenity responsibilities.

### **Gaming Machine Model Approvals**

Current regulations require extensive approval processes for the introduction of new gaming machine models. Greater efficiency could be achieved if machine models approved for use in other major jurisdictions are automatically approved for use in the Territory. Such approval would require compliance with any specific operating criteria determined for the Territory.

#### **Recommendations:**

- Subject to compliance with any specific operating criteria applicable to the Territory, gaming machine models approved for use in major Australian jurisdictions be automatically approved for use in the Territory.

<b>Public Comments</b>
Recommended

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Simplifies administrative processes	Nil identified
Reduced costs	

<b>Net Public Benefit Assessment</b>
Improved industry efficiency.

### **Community Benefit or Amenity**

Industry concerns exist with the differential requirements between venue types for contributions from gaming revenues to community benefit funding and to community amenity generally.

At present, only hoteliers who operate gaming machines contribute to the fund, with Clubs contributing to Community Amenity under different criteria.

The Issues Paper canvassed the possibility of a wider and more transparent contribution to community amenity, to encompass all gaming licensees: casino operators, clubs, mail order lottery operators, foreign lottery operators, Internet gaming operators and bookmakers. A small contribution hypothecated from permit fees for lotteries, trade promotions and other forms of gaming permitted by the legislation was also suggested.

A core issue is the differential public benefits impacts between corporate or full business activities for Casinos and Hotels on the one hand and the "restricted community or membership" benefits in Clubs on the other.

Under the present model, not only are there significant issues with the selective restrictions used to achieve the desired policy position, but it is reported that in application, there is difficulty in assessment and management of the community amenity obligations currently imposed on Clubs. As an immediate measure, in addition to agreed measures to include prescriptive requirements for community amenity contribution from clubs, the accountability process could be further expanded to include specific monetary targets. This would clarify the current ambiguity and simplify comparative measurement of the relevant contributions from the various industry operatives.

The Community Benefit and Amenity issue is a complex balance of gaming machine allocations and arrangements, sectoral community benefit and amenity responsibilities, and taxation arrangements. A Treasury review of the arrangements was completed in May 2002 which, whilst acknowledging the benefits of a more transparent and uniform contribution process, has recommends continuance of the present approach. This is supported at this time, given other recent changes in arrangements for operation of gaming machines and market adjustments following the adoption of Alder Report recommendations. These were outlined in the Issues Paper and the recommendations and relevant report extracts are included at Appendix B.

A recommendation to monitor the issue and further assess the position once the current approved changes are fully operative has been made.

**Recommendation:**

- Following a settling in period, say 2 years, for the recent changes approved for machine allocation between venues and other operating provisions for gaming machines, a further review be undertaken into the development of a wider, more transparent and uniform approach to community benefit and amenity contributions from the various industry sectors.
- In addition to previously agreed measures to include prescriptive requirements for community amenity contribution from clubs, the accountability process be further expanded to include specific targets for community support contributions.

**Public Comments**

Strongly opposing views from various Industry sectors regarding the appropriateness and equity in current arrangements.

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Allows time for industry adjustment in light of revised gaming machine arrangements.	Differential contributions based on current assessed economic impact will continue.
	Current sectoral dissatisfaction will continue.

**Net Public Benefit Assessment**

Public confidence that Industry contribution to Community as an outcome of gaming will be maintained.

**Responsible Gambling and Problem Gambling**

In recent years, considerable focus by all Governments has been directed to the devastating effect problem gambling can have on some members of the community.

Considerable effort has been directed to this issue in the Territory, particularly in respect of gaming activity, such as poker machines.

A major deficiency in the gaming legislation is the lack of objects giving prominence to harm minimisation. Harm minimisation objects should be consistent across all legislation dealing with lawful but potentially harmful products and services.

The current legislative provisions in the subject Acts are presently limited to the limitations on certain gaming activity and prevention of certain persons from attending gaming venues. Specific obligations on licensed operators to ensure such measures are enforced also apply.

The Territory, in associated with Industry participants, is currently investigating the development of a Code of Conduct covering gaming activities.

In terms of this review, the development of additional legislative provisions and programs does not come within the direct ambit of terms of reference, but should be considered in the context of any major revision of legislation resulting from the review.

**Recommendation:**

- A prescriptive Industry Code of Conduct relevant to gaming activities, now under development, be completed and introduced as soon as possible. This should include requirements for clear information provision to consumers at point-of-gaming.
- Future legislation contains clear and specific harm minimisation objectives and principles to underpin the proposed Code of Conduct.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Improved remedial practices	Locational signage costs on operators
Specific industry commitments mandated	
Improved social outcomes	
Improved consumer awareness	

<b>Net Public Benefit Assessment</b>
Transparent performance standards and improved information should improve public confidence in Industry and assist ameliorate problem gaming.

**Unlawful Gambling**

Various provisions of gaming legislation encompass the definition of and procedures for dealing with offences, illegal and unlawful gambling activity. This should be consolidated for clarity and ease of application. Common procedures for treatment of offences, evidence etc should be applied.

Whilst there is ambiguity over responsibilities and process that currently exist, there is also a need to clarify the responsibility of the NT Police in respect of investigations conducted and to deal with cost recovery. Consistent provisions, in line with procedures prescribed in the *Totalisator Licensing and Regulation Act* could be applied uniformly across all gambling areas.

**Recommendation:**

- Revised consolidated legislation be drafted to cover all unlawful gambling, including gaming and wagering.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Greater uniformity in administrative processes	Nil identified
Consolidated reference for illegal gambling control and prosecution.	
Greater efficiency in gambling administration	

<b>Net Public Benefit Assessment</b>
A clearer administrative process.

### Secrecy

Legislation restricts full disclosure of some Territory industry activity to other States and Territories. The Act fails to provide for disclosure to New Zealand and other international agencies. This exclusion should be corrected in recognition of the international nature of gambling, in particular on-line gambling.

#### **Recommendation:**

- Legislation be introduced to provide for uniform disclosure standards, consistent with other Australian jurisdictions.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Greater accountability	Nil identified
Improved statistical base for gaming activity and impact assessment	

<b>Net Public Benefit Assessment</b>
Improved public accountability.

### Other Forms of Gaming

Current legislation is definitive in terms of approved gaming activity and does not cater for all types of activity presently conducted elsewhere. Legislation should not prohibit consideration of alternative gaming activity, however, a definitive statement of prohibited activity following consideration should be introduced.

#### **Recommendation:**

- Future legislation be structured to ensure there are no inhibitors which impose generic barriers to adoption of new gaming products or services;
- New gaming products and services be considered on their merits, subject to due consideration of all relevant probity and other public interest issues which apply: and

- A Schedule of Prohibited Gaming Activity be implemented and rational for prohibition of specific generic types of activity be promulgated.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Provides improved environment for expanded business opportunity	Nil identified
Creates open and more competitive marketplace	
Improved access to gaming products by consumers	
Increased speed and opportunity to react to market developments	

<b>Net Public Benefit Assessment</b>
Whilst there is some potential to experience increases in problem gambling from expanded activity, positive economic benefits are expected from more efficient regulatory process..

### **Minor Lotteries**

Northern Territory legislation is highly prescriptive in this area, particularly in comparison to some other jurisdictions. Most lotteries and similar activities, both large and small, require extensive approval processes, the costs of which are difficult to justify in terms of the net community benefit to be gained as a result of the heavy oversight involved. The bulk of licensing activity for lotteries is in the low value area.

The process could be simplified extensively by adopting a process of exemption for approved classes of organisations to conduct such activities to defined total prize values, say less than \$5,000, under appropriate prescribed operating and performance guidelines.

### **Recommendation:**

- The licensing of minor lotteries be discontinued in favour of pre-approval for generic organisation types and purposes for the conduct of low-value lottery activity (raffles/sweeps/competitions/bingo/trade lotteries etc less than \$5,000 total prize value), under prescribed conditions.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Reduced administrative costs	Nil identified
Less regulatory intervention	
Clearly prescribed operating requirements	
Regulatory consistency with other major jurisdictions	
Lower administrative costs for all stakeholders, particularly small community organisations.	

<b>Net Public Benefit Assessment</b>
A simpler, more efficient and less interventionist approach to regulation of minor gaming activity.

**Advertising and Promotion**

There are conflicting requirements in the legislation covering the scope of operators to advertise and promote lawful gambling.

It is proposed that, subject to consideration of policy restrictions in the public interest in respect problem gambling, uniformity in advertising of licensed lawful gambling activity be instituted.

- Recommendation:**
- Uniform standards be introduced for advertising and promotion of lawful gambling activity, subject to satisfactory provisions to recognise problem gambling considerations and policies, to be defined in the proposed Code of Conduct.

<b>Public Comments</b>
Supported

<b>Benefits (Positive Impacts)</b>	<b>Costs (Negative Impacts)</b>
Uniform operating environment for gaming operators	Reduced control over advertising
Improved competitive position	
Improved consumer information	

<b>Net Public Benefit Assessment</b>
The gaming public should benefit from a more open and contestable marketplace.



## Attachment A - Summary of Public Comments

# GAMING LEGISLATION

## PUBLIC RESPONSES TO NCP ISSUES PAPER

The following interpretations should be made of comments in the enclosed Summary:

Supported	Specific support for proposed change as detailed in <i>Issues Paper</i>
Recommended	Specific suggestion for improvement made
Blank	No comment made - support assumed for proposals in <i>Issues Paper</i> .

## Attachment B – Community Gaming Reviews

### *Extract from Public Issues Paper – April 2002*

In line with developments elsewhere, the Gambling Industry in the Northern Territory has expanded rapidly in recent years.

Growth has been strongly encouraged by Government through the establishment of a favourable policy and taxation climate and a proactive approach to the adoption and development of new gaming products, such as Sportsbetting and Internet Gaming. A number of large gaming operators have been attracted to establish in the Territory as a result.

Due to the rapid growth within an emerging policy framework, the Industry has been subjected to a process of considerable change over the period and is characterised by a relatively complex structure of licensing and differential business arrangements between operators.

A number of major reviews have been completed, particularly in areas of Community Gaming development, Gaming Machines and Electronic Gaming.

These include the 1995 Report of the Select Committee on Effects of Poker Machines in Community Venues, the Australian Institute for Gambling Research Study of Gambling in the Northern Territory in 1996/97 and the 1998 Alder Review of the Northern Territory Gaming Machine Industry.

Copies of the most recent review report (1998 Alder Review of Gaming Machine Industry) may be found at:

<http://www.nt.gov.au/nt/licensing/gaming/1alder98.shtml>

That review provides a useful backdrop for a major element (gaming machines) involved with this review of regulation and, from the decisions taken by Government on the recommendations made, an indication on current directions in that context. These issues are detailed later in this Section.

In terms of Community Gaming, prior to 1996, all gaming machines in Northern Territory clubs and hotels were classified as Draw Card machines, which were only permitted to offer prizes comprised of goods and services.

At that time, only the casinos were allowed to offer machines that paid prizes in cash. However cash-prize paying “poker machines” had become increasingly popular throughout Australia and in the early 1990’s several Australian states (Queensland, Victoria, South Australia) reversed long held opposition to gaming machines and legalised their operation in clubs and hotels.

Proponents of the introduction of gaming machines asserted that the legalisation of this form of gambling would lead to net increases in revenues and significantly contribute to improved community facilities when operated by community based organisations such as social and sporting clubs. Opponents of poker machines contested this assumption, arguing that the economic gains are often offset by funds shifting from other areas of the community, by increased regulation costs and by an increase in the number of people with gambling problems and crimes caused by the expansion in the gambling industry.

In the early 1990's the Territory Government indicated a willingness to consider the introduction of community based poker machines provided that the necessary consents could be negotiated with the casino operators who had exclusive use of these machines. The proposal received bipartisan support from Territory politicians.

In October 1994, the Legislative Assembly of the Northern Territory established the Select Committee on Effects of Poker Machines in Community Venues to examine the effects of legalising cash-paying gaming machines for the wider community. The Select Committee Report, tabled in February 1995, set out 30 recommendations that shaped the manner in which the Territory's gaming machine industry would be developed.

In May 1995, Government agreed to most of the Select Committee's recommendations and legislation implementing the policy was introduced into the Legislative Assembly in August 1995. The *Gaming Machine Act 1995*, was given assent on 22 November 1995 and came into force on 19 December 1995.

A Gaming Machine Commission was established to licence gaming venues and purchase and allocate machines. These machines were to be owned and maintained by the Northern Territory Government and operated by the community venues. The first community gaming machines commenced operation on 1 January 1996.

Gaming machines in community venues were taxed at the rate of 47% of gross profit. Hotel operators were required to pay an additional 25% levy which was paid into the Gaming Machine Community Benefit Trust Fund. This fund was to be utilised to mitigate any adverse impact arising from the introduction of gaming machines, provide a new source of funds for charitable and community benefit organisations, and to fund services to problem gamblers and research. The split of funds between social impact and social benefit was to be indicatively:

- (a) 25% to organisations, including government instrumentalities, addressing the social impact of gaming, and
- (b) 75% to organisations providing social benefit, including clubs, other community organisations etc.

In August 1998, in accordance with one of the recommendations of the Select Committee, Mr Otto Alder commenced a review of the NT Gaming Machine Industry.

The following findings from the Alder Report are relevant to establish the background in which Competition Policy issues need to be considered.

*"To some degree each gambling mode is in competition with the other. The market share of each is determined by:*

1. *locational accessibility to potential patrons,*
2. *prize structure and perceived entertainment value,*
3. *effectiveness of promotion, and*
4. *the rate of return.*

*Because the freedom of each mode is circumscribed by regulatory controls including tax rates, the extent of such controls is a primary determinant of their scale.*

*As to location, casinos are restricted to central major city sites but lotteries and lotto products are available in even the smallest of shopping centres. TABs and PubTabs have wide coverage but are not usually inviting places for the public because of detailed requirements. Bookmakers operate almost exclusively on racecourses and then only on race day (although with some phantom meetings and Auditoriums and telephone/internet betting services now allowed their activities are more accessible than they were). Gaming machines are restricted to casinos, hotels with certain kinds of liquor licence, and clubs.*

*The quantity and form of gambling is also controlled within many premises. All games within casinos and on gaming machines have to be approved, and the number of tables and gaming machines is covered by a global and by venue limit in most jurisdictions.*

*Entertainment value arises from the nature of the game and the surroundings within which it is played, the fixed or variable nature of the bet or wager result, game denomination and limits, and the frequency of results.*

*Current trends favour games with immediate results, although patrons are drawn when accumulating prizes grow very large.*

*Major gambling products can also be split into:*

- variable products, ie those that offer prizes, the level of which are not known until after the event, including lotto, TAB pools, and accumulators running as an adjunct to one of the set group; and*
- set products, ie those offering a stated return or scale of prizes on the occurrence of certain events, including Lotteries/Keno, Bookmakers, gaming machines and casino games.*

*The popularity of home based gambling is likely to favour the latter set products group as they are readily adapted to interactive form over internet links.*

*The degree to which the various modes may be promoted varies. While TABs, lottery sponsors, Keno operators and casinos can advertise without restriction, the ex-venue promotion of gaming machines in some places (including the Northern Territory) is heavily controlled.*

*The return to player proportion of amounts bet or wagered, together with any prize table (eg the prospect of winning very large prize infrequently or never, or the prospect of a succession of small prizes) bears directly on an individual's propensity to bet. It has been customary for the government to set return percentages for TAB pools, lotteries and lotto, Keno, casino games and, at least as a minimum, for gaming machines. An important aspect of the popularity of instant lotteries and gaming machines is the number of significant gambling events generated by a given stake.*

*The Northern Territory TAB has suffered a decline in turnover for the past two years. There are some special factors at work, but after discounting for these the TAB has submitted that competition from community gaming machines is a dampening influence. It is difficult to distinguish the force of this influence, if any, because the profitability of casino gaming machines has increased substantially over the same period, and the TAB itself observes that some of its outlets where gaming machines operate are doing better than the others. However, competition in gambling would be expected to have cannibalisation effects of this*

sort now that total average gambling expenditure in the Northern Territory is above the current Australian average resistance level.

Casinos, clubs and hotels compete for gaming machine players, and the particular regulatory model applied in the Northern Territory creates advantages and disadvantages for each venue class.

That regulatory model has two strands. Firstly, it reflects the terms of the negotiated release of exclusivity by the casinos over machine gaming. Secondly, it creates a different gaming machine environment for gaming machines in casinos than in community venues, and, within community venues, differing rules for hotels as opposed to clubs.

The casinos had exclusivity over all of their approved games including gaming machines since 1981. Negotiations in 1995 saw the following changes to the agreements covering their right to operate:

- removal of exclusivity over gaming machines, previously ending in 1998 for Darwin and 1996 for Alice Springs ;
- entitlement to the equivalent of 22% of the player loss on any gaming machines outside the casinos in the respective halves of the Territory;
- increase of the tax on their own machines according to the following scale:

Period	Rate
To 30 June 1996	12.5%
1 July 1996 to 30 June 1997	15.0%
1 July 1997 to 30 June 1999	17.5%
1 July 1999 to 30 June 2000	20.0%
1 July 2000 to 30 June 2001	22.5%
1 July 2001 to 30 June 2003*	25.0%

\*now 30 June 2005 in the case of Darwin

When exclusivity was released, a rate of tax of 8% of gross profit applied to casino gaming machines, the same rate as for table games. Thus the casinos kept 92% of all losses by players, or more than 80% after direct machine costs were taken into account. If all player loss on community gaming machines were in substitution for losses that would otherwise have occurred in the casinos, then full compensation would have been 80% not 22% of those external profits.

Because it was recognised that casinos and community venues operate in different market sectors with only limited cross-overs, and that community venues were at varying distances from the casinos, the Government and the casinos came to the view that only about 10% leakage from casinos to community venues would occur in the first year and a further 10% in the second year (assuming half of the community machine total would be placed each year).

The 22% offset to the casinos for the balance of their licence term was negotiated having regard not only for the expected leakage but also for the progressive increase in the tax payable on the gross profit of casino gaming machines, a tax which would, it was agreed, more than triple.

*The tax rate on community machines is set independently of these considerations and would continue, at whatever rate applies, after the casinos exclusivity offset arrangements terminate.*

*Since 1 January 1996 there has been no appreciable change to the rate of growth of gaming machine gross profit in either casino.*

*That the casinos have been apparently unaffected so far is due to a combination of at least the following factors:*

- the six months delay from 1 July 1995 to 1 January 1996 in starting community gaming machine operations;*
- the slower than anticipated roll-out of community machines;*
- robust growth in Territory population and disposable incomes;*
- the market segment represented by club patrons being more substantially a new one or partly cannibalising other non-casino gambling product;*
- casinos successful application of new marketing strategies and premises development, partly cannibalising other non-club gambling product.*

*Whether some depression of casinos gaming machine profitability becomes evident when the full rollout of community machines is complete remains to be seen. What could happen is that the gaming machine industry could continue to develop on both fronts at the expense of some other form of gambling.*

*There does not seem to be any evidence of the gaming machine industry eating into the table game sector of the casinos, at least not sufficiently to affect their entire operations."*

### **Gaming Machine Directions**

The Alder Review proposed a range of recommendations for development of the Gaming Machine environment. As a result, during 2000 - 01, the following changes were approved:

1. Gaming machine licences to be issued only to licensed hotels and licensed clubs.
2. A Gaming machine licence to be available to only those hotels with take-away conditions in the liquor licence.
3. The primary objective is for Clubs to improve neighbourhood recreational amenity and hotels are only to be licensed and supplied with sufficient gaming machine capacity to moderate club competition.
4. No club to be eligible for a gaming machine licence unless its Constitution allows it to engage in neighbourhood development and make unrestricted donations to the community.
5. Details of community improvement obligations to be included in new and renewal licence applications for Clubs.

6. Casino machine gaming to be regulated through the Gaming Control Act.
7. The directions and rules covering gaming machine operations to be updated to include the effects of the new Casino regulation model.
8. Full disclosure of gaming machine activities, including Casinos, to occur.
9. Full prudential and probity requirements are to apply to constituent clubs in federation club arrangements.
10. Full statistical and performance reporting against Government objectives to occur.
11. Revision of various administrative arrangements covering Gaming Commission and staff.
12. Gaming machines in casinos not to be externally monitored.
13. Outsourcing of monitoring services to occur for community gaming machines.
14. Betting restrictions on community gaming machines to continue (differential to Casinos in terms of machine payout values/ note acceptors/ linked jackpots/ maximum bets/ advertising).
15. Cap of 10 machines per hotels to apply.
16. Cap of 45 machines per club venue to apply.
17. Revised regional gaming machine cap arrangements introduced. *(since removed with new Casino license arrangements now in place)*
18. Machine ownership to be transferred to operators.
19. New differential tax scales established for various operators.
20. Community benefit surcharge (10%) imposed on gross profit for hotels.

Alder went on to note:

*"Strong competition between essentially identical gaming machines operated in casinos and other venues is demonstrably present and it would be reasonable to assume that competition between gaming machines and other gambling products is also strong."*