

National Competition Policy Review of Queensland Gambling Legislation

**Queensland Treasury
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1. INTRODUCTION

1.1 Legislation

This Review includes an analysis of the following legislation:

- *Casino Control Act 1982.*
- *Gaming Machine Act 1991.*
- *Keno Act 1996.*
- *Lotteries Act 1997.*
- *Wagering Act 1998.*
- *Interactive Gambling (Player Protection) Act 1998.*
- *Charitable and Non-Profit Gaming Act 1999.*

This Review also considers the Regulations made under the above legislation. This Review does not consider the *Racing and Betting Act 1980* as an assessment of identified restrictions on competition in that Act, including those related to bookmakers, was undertaken as a separate review. Nor does this Review consider the *Casino Agreement Acts* as they have also been the subject of a separate review.

1.2 Reasons for the Review

In April 1995, the Commonwealth, State and Territory Governments signed a set of agreements to implement a National Competition Policy (NCP). This includes the Competition Principles Agreement (CPA) which, among other matters, requires each participating jurisdiction to review and, where appropriate, reform all legislation that contained measures restricting competition.

The Queensland Legislation Review Timetable¹ identified potential restrictions on competition in the various Acts and subordinate legislation which regulate gambling in Queensland (gambling includes all forms of gaming plus wagering). Under the NCP, a Public Benefit Test (PBT) is required of these restrictions and alternative means of meeting the objectives of the legislation.

1.3 The Public Benefit Test Methodology

The guiding principle for a PBT, as specified in Clause 5(1) of the CPA, is that legislation should not restrict competition unless it can be demonstrated that:

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

This PBT was conducted in accordance with the Queensland Government's *Public Benefit Test Guidelines* (the PBT Guidelines). The PBT Guidelines provide that in applying the guiding principle, Governments have a responsibility to ensure that NCP reforms are only implemented where it is demonstrated that such reforms are clearly in the public interest, that is, there is a clear demonstration that competitive reform will yield a net benefit, and no significant detriment, to the community. Rather than placing the onus in the legislation review process on the need to defend restrictions on competition, the Guidelines aim to ensure that reviews focus on a thorough and meaningful analysis of the benefits and cost of alternative options, which takes full account of employment, regional development, social, consumer and environmental effects. The review draws upon previous consideration of relevant issues in the following documents:

- The Productivity Commission's *Inquiry Report into Australia's Gambling Industries*, November 1999.
- The Queensland Government's *Policy Direction for Gambling in Queensland*, April 2000.
- The National Competition Council (NCC) report titled *Regulating Gambling Activity; Issues in Assessing Compliance with National Competition Policy*, October 2000.

¹ Queensland Legislation Review Timetable: A Queensland Government Policy Statement, July 1996

- The NCC report entitled *Third Tranche Assessment Framework, 5 February 2001*.
- The NCC's 2002 Report to Jurisdictions.

1.4 Terms of Reference

The Review was conducted in accordance with Clause 5 of the CPA. As such, the Review:

- clarifies the objectives of the legislation;
- identifies the nature of the restriction on competition;
- analyses the likely effect of the restriction on competition and on the economy generally;
- assesses and balance the costs and benefits of the restriction including the identification of market failure;
- identifies alternative means for achieving the same result including non-legislative approaches; and
- assesses the costs and benefits of the implementation of the identified alternatives.

The *PBT Guidelines* also require that reviews, in assessing the most effective means of achieving a policy objective, should take into account in line with Clause 1(3) of the CPA:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such 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 of a class of consumers;
- the competitiveness of Australian, and specifically Queensland, businesses;
- the efficient allocation of resources; and
- the impacts on affected parties, including adjustment costs².

The Review also takes account of the Queensland Government's Priorities, as follows:

- More Jobs for Queensland -- Skills and Innovation -- The Smart State.
- Safer and More Supportive Communities.
- Community Engagement and a Better Quality of Life.
- Valuing the Environment.
- Building Queensland's Regions.

1.5 Conduct of the Review

This Review was undertaken in accordance with the criteria outlined in the Queensland Government PBT Guidelines. The review was coordinated and overseen by the Transport and Industry Branch within Queensland Treasury, in conjunction with the Queensland Office of Gaming Regulation, which administers all of Queensland's gambling legislation.³

A Draft Report presenting the preliminary findings of the PBT was prepared for public release to give stakeholders an opportunity to put forward their views with regard to the regulation of gambling in Queensland. The Draft Report was released on 5 April 2003 with the period for public comments ending on 9 May 2003.

This report presents the final findings of the PBT and incorporates a summary of submissions made on the Draft Report as an appendix.

² Council of Australian Governments, *COAG Communique*, November 2000.

³ In addition, persons who wish to conduct bookmaking under the *Racing and Betting Act* must apply to QOGR for an eligibility certificate and QOGR is responsible for conducting probity checks on applicants.

2. GAMBLING IN QUEENSLAND

2.1 Industry Structure

Casinos

The *Casino Control Act 1982* (the "Casino Control Act") provides that the Government may grant licences for the operation of a hotel-casino in Queensland. There are currently four hotel-casino complexes licensed to operate in Queensland. These are:

- the Conrad Hotel and Jupiters Casino at Broadbeach on the Gold Coast, which opened in November 1985;
- the Jupiters Townsville Hotel and Casino which opened in May 1986 as the Breakwater Island Hotel and Casino;
- the Conrad International Hotel and Treasury Casino, which opened in Brisbane in April 1995; and
- the Reef Hotel Casino in Cairns, which opened in January 1996.

Each of the Casino licensees has entered into a separate Casino Agreement with the Government for each hotel-casino operation. These Agreements amount to commercial contracts for the provision of the hotel-casino facilities. They are also subordinate legislation and, as already mentioned, were previously examined under NCP.

The casinos offer table games, gaming machines, UNiTAB facilities and keno. The Casino Control Act provides the requirement for all Casino licensees to submit, for approval, floor plans of the relevant casino layout. This floor plan provision must specify the number of table games and gaming machines which each hotel-casino can operate, as well as the types of table games. The current number⁴ of machines and gaming tables operating at each hotel-casino is outlined in the following table.

Hotel-Casino	Number of Gaming Tables		Number of Gaming Machines		Number of Licensed Employees
	Approved	Operating	Approved	Operating	
Conrad Jupiters	117	103	1,404	1,348	1,020
Jupiters Townsville	37	24	300	273	346
Treasury Casino	111	86	1,332	1,329	993
Reef Casino	70	43	740	537	328

Approvals have been granted for the following table games to be played at Queensland casinos.

- Blackjack
- Baccarat
- Caribbean Stud
- Mini-Baccarat
- Roulette
- Mini dice
- Wheel of Fortune
- Pai Gow
- Tri Chro
- Craps
- Two-up
- Triple Penny Two-Up
- Draw Poker
- Manilla Poker
- 5 Card Stud Poker
- 7 Card Stud Poker
- Sic Bo

⁴ Numbers as at 30 June 2003

In 2002–03, the Government collected \$50.121M in revenue from casino taxes and licence fees. In addition 1% of gross casino gambling revenue—totalling \$5.309M—was collected as a casino community benefit levy.

Gaming Machines

Gaming Machines were introduced into Queensland clubs in 1992 to improve the viability of an ailing club industry. Later that year, following evidence provided by the hotel industry in relation to the effect that having gaming machines in clubs only would have on many hotels, the Government also permitted the hotel industry to operate a limited number of gaming machines to provide this facility to their patrons.

The operation of gaming machines is subject to the provisions of the *Gaming Machine Act 1991* (the “Gaming Machine Act”) (excluding gaming machines operated in casinos which are subject to the Casino Control Act). Venues other than registered clubs, hotels and hotel-casino complexes are not permitted to operate gaming machines in Queensland.

There is no distinction between the types of gaming machines which may be operated by clubs and hotels, albeit, there are differences in maximum number of gaming machines that each club and hotel is permitted to operate. Clubs were initially able to operate 250 machines and hotels 10 machines, however, currently, the maximum number of gaming machines that a club is allowed is 280 and the maximum number of gaming machines for a hotel is 40⁵.

The industry is continually monitored, leading to amendments to the regulation of the industry including the following legislative amendments:

- (i) the staged increase in the number of gaming machines;
- (ii) lower tax rates; and
- (iii) other significant social policy changes.

The reduction of restrictions on numbers of gaming machines in hotels and taxation reductions arising from the Review of Queensland Gaming Machine Regulatory Arrangements in 1996 have resulted in a very rapid growth in gaming machine numbers in Queensland hotels. This rapid expansion caused concern as it produced a significant spread of gambling into areas which were considered inappropriate (eg shopping centres and restaurants). Accordingly, in May 2001, a state-wide cap was introduced on the number of gaming machines in hotels in Queensland. It is proposed that legislation will be introduced to enable a hotel to increase the number of gaming machines it operates or introduce gaming machines for the first time only when another site relinquishes the ability to hold gaming machines. This means that there will be no net increases in the total number of gaming machines operating in Queensland hotels.

In 2002–03, gaming machine tax in Queensland totalled \$362.177M. Gross revenue from gaming machines in hotels for 2002–03 was \$643.110M while the gross figure for clubs was \$634.494M. The amount paid into the Community Investment Fund (CIF) is 8.5% of total taxes raised on gaming machines (as well as keno, lotteries, interactive gambling and wagering). In 2002–03 the gaming machine contribution to the CIF amounted to approximately \$30.785M. In addition, \$12.754M was collected from hotels where gaming machine taxable monthly metered win is more than \$100,000, as the major facility fund levy.

Keno

State-wide linked jackpot keno is conducted in accordance with the provisions of the *Keno Act 1996* (the “Keno Act”). Currently, the exclusive provider of linked jackpot keno is Jupiters Gaming Pty Ltd. The Keno licence expires in 2022 and is exclusive until 2007. However, if the State issues another licence after 2007, compensation is payable.

⁵ Provided by the *Gaming Machine Act 1991* and its Regulation

A keno game is drawn every three minutes and players are able to participate in venues throughout Queensland via data links. Keno in Queensland is available at casinos, licensed clubs, hotels and TAB agencies.

In 2002–03, keno was available at 229 licensed clubs, 362 hotels, 224 TAB agencies and the four (4) casinos. In the same year, tax revenue from the keno amounted to \$11.171M and an additional \$0.986M was received in Keno Licence Fees. In 2002 the tax and licence fee arrangements for keno were changed. A flat quarterly licence fee now applies and the keno tax rate was increased to offset the reduction in the keno licence fee, which had previously been calculated as 50% of the net profit arising from the Keno operation. In 2002–03 the Keno contribution to the CIF amounted to approximately \$949,535.

Lotteries

Commercial lotteries are conducted in accordance with the *Lotteries Act 1997* (the “Lotteries Act”). The Golden Casket Lottery Corporation Ltd (“Golden Casket”) currently holds an exclusive licence under the Act to conduct lottery operations in Queensland. The licence expires in 2022 and is exclusive until 2009. Golden Casket enters into agreements with certain small businesses (the majority of which are newsagents) to provide lottery services. These are commercial agreements between Golden Casket and the small business and the Government is not involved except to approve the agreement in its basic form. In 2002–03, lotteries tax revenue totalled \$170.156M. The lotteries contribution to the CIF for 2002–03 was approximately \$14.455M. The table below outlines the lottery products turnover for 2002–03.

Product	Turnover 2002–03 (\$M)
Jackpot Casket	1.722
Instant Scratch-Its	217.467
Saturday Gold Lotto and Super 66	304.845
Wednesday Gold Lotto	55.678
Oz Lotto	55.446
Powerball	133.765
Soccer Pools	3.294
Total	772.217

Wagering

The *Wagering Act 1998* (the “Wagering Act”) provides for the conduct of three categories of wagering. These are:

- Race wagering—which is the conduct of on and off course totalisator and fixed odds wagering on horse, greyhound and trotting races held at any race meeting worldwide;
- Sports wagering—which is the conduct of totalisator and fixed odds wagering on any sporting event (excluding race wagering events) and other non-sporting activities which have been approved by the Minister; and
- On-course wagering (other than wagering conducted in accordance with a race wagering licence)—which is conducted by a race club by means of a totalisator on races where there is no race wagering being conducted by the holder of a race wagering licence.

UNiTAB (previously TAB Queensland) currently holds the exclusive licence, to conduct race and sports wagering activities. The race wagering licence expires in 2098 and the sports wagering licence expires in 2014. Both are exclusive until 2014. However, UNiTAB does not offer its totalisator service at all race clubs in Queensland. In these cases, a race club may obtain an on-course wagering licence, to enable a totalisator to be offered on-course. To assist these smaller race clubs in providing totalisators, the Queensland Government amended the wagering legislation in 2002, relaxing some of the licensing and tax requirements for clubs that hold smaller race meetings.

Wagering tax in 2002–03 amounted to \$28.841M, of which approximately \$2.451M was contributed to the CIF.

Interactive Gambling

The *Interactive Gambling (Player Protection) Act 1998* (the “Interactive Gambling (Player Protection) Act”) provides for the licensing and control of all forms of interactive gambling in Queensland. However, the Commonwealth subsequently enacted the *Interactive Gambling Act 2001* (Cth) legislation prohibiting Australian on-line and interactive gambling service providers (other than some lotteries and wagering) from providing services to people located in Australia.

As a result GOCORP, the only operator licensed under the Interactive Gambling (Player Protection) Act, surrendered its licence on 1 October 2001. Therefore, in the 2002–03 financial year, Interactive Gambling Tax paid to the government was nil. Further, there are no exclusivity arrangements stipulated by this legislation.

Charitable and Non-Profit Gaming

The *Charitable and Non-Profit Gaming Act 1999* (the “Charitable and Non-Profit Act”) has established a regime where fundraising activities through gaming can be undertaken, in most cases, without a licence. Charitable and non-profit gaming is regulated in 4 categories:

Category 1: May be conducted by individuals or associations and all proceeds are returned to players as prizes. Estimated gross proceeds per draw must not exceed \$2,000. No licence is required.

Category 2: May be conducted by eligible associations. Estimated gross proceeds for a category 2 game must be more than \$2,000 and less than \$20,000 per draw (\$5,000 for lucky envelopes). A licence is not required.

Category 3: May be conducted by incorporated eligible associations. Estimated gross proceeds for this category are above \$20,000 per draw. This category excludes bingo centres and lucky envelopes where the Charitable and Non-Profit Act provides that a licence is required for these.

Category 4: Also known as trade promotions, may be conducted by any entity to promote goods or services and no licence is required.

The legislation contains provisions to ensure that charitable and non-profit gaming is conducted in appropriate environments, thus maintaining the integrity of the industry and consumer confidence that gaming under the legislation is for legitimate charitable and non-profit causes. No taxes are collected under this legislation.

2.2 Regulatory Framework

Gambling is a well-established part of modern Australian society. Not only is it recognised as having its origins in colonial Australia, for many ethnic groups, which form the fabric of modern Australian culture, gambling is an important form of entertainment and enjoyment.

An overview of the emergence of gambling in Queensland has been provided so an understanding of the current legislative arrangements controlling the operation of gambling activities can be obtained.

Horse racing was first permitted in Queensland on prescribed racecourses and lawful gaming was made available in specific private gentlemen’s clubs in the mid nineteenth century. The first totalisator was introduced onto a Queensland racecourse in 1880 and in 1889 the *Totalisator Restriction Act* confined totalisators to racecourses. This legislation was followed by the *Suppression of Gambling Act 1895* and the *Criminal Code 1899* which imposed penalties on operators of illegal lotteries, gaming and betting.

While art unions for charitable and patriotic purposes had operated for some time, from 1920 the lottery (which later became the Golden Casket) was run by the State to specifically raise funds for child and maternal health, under stringent guidelines to ensure that it was free from fraud or disrepute. In addition, charitable art unions were legalised in 1930 by the *Art Union Regulation Act 1930*.

In 1931 the *Vagrants, Gaming and Other Offences Act* provided that gambling was illegal unless there was specific authorising legislation to permit its conduct. This legislation is still in force and remains a fundamental part of the regulatory umbrella controlling all forms of illegal gambling activities in this State.

Legalised gambling did not expand until 1962 when the Queensland TAB was created to legally conduct offcourse betting on racing events following a Royal Commission which identified starting price (SP) bookmakers as a significant area of crime throughout the State. As with lotteries, this form of gambling was operated by a State-owned organisation.

Non-government organisations were only permitted to offer mainstream gambling products from the 1980s when the first hotel-casino complex was licensed in Queensland under a strict framework of probity and integrity requirements as provided by the Casino Control Act. The result of this was the establishment of the Gold Coast and Townsville Casinos and subsequently the Brisbane and Cairns Casinos later.

Gaming machines became available in hotels and clubs in 1992 in accordance with the Gaming Machine Act and state-wide linked jackpot keno commenced in 1997 under the provisions of the Keno Act.

In 1996, the Queensland Government released the White Paper⁶, which provided a framework for widespread reforms of the gaming market in Queensland. It recommended removing the Government from ownership of gaming machines and freeing up Government control over the purchasing, allocation and monitoring of gaming machines. It also permitted a staged increase in the maximum number of gaming machines permitted in venues. It was intended that, among other things, the White Paper would lead to 'best practice' by providing patrons with an improved quality of gaming while providing the industry with the ability to develop in accordance with patron demands. The implementation of the White Paper recommendations occurred following extensive periods of consultation and review.

However, according to the 1999 review of Queensland's gambling industries, the White Paper changes had greater consequences than intended.⁷ Many hotels were quick to respond to this new commercial environment by increasing the numbers of gaming machines to the maximum and embarked on promotional campaigns to attract gamblers. Furthermore, hotels that did not have gaming machines took advantage of the more profitable environment by deciding to acquire gaming machines. Of particular concern, were new hotel sites, which were small or located in inappropriate areas (eg shopping centres). This resulted in community concerns in relation to the number and availability of gaming machines in Queensland.

In response to these concerns, the *Policy Direction for Gambling in Queensland* (April 2000) resulted in the Government acting to prevent the expansion of gaming machines into inappropriate places of community congregation such as shopping centres, bowling alleys and restaurants⁸. This is in accordance with the Government's commitment to balance the provision of gambling services with the social impacts that gambling has on the community.

Further supporting its commitment to balancing the social and economic impacts of gaming machines, the Government has placed a state-wide cap on the number of gaming machines which may operate in hotels in Queensland. The cap means that there will be no net increases in the number of gaming machines that can be operated in hotels in Queensland, albeit the reallocation of gaming machines will be possible within the total state-wide maximum number.

⁶ *Review of Queensland Gaming Machine Regulatory Arrangements*, 1996

⁷ *Review of Gambling in Queensland* (1999), Queensland Government, p4

⁸ *Policy Direction for Gambling in Queensland* (April 2000), Queensland Government, p3.

In order to maximise the community benefit from machine gaming in hotels, hotels and taverns with a monthly metered win of over \$100,000 are now required to contribute to the Major Facilities Levy⁹. The Levy finances major public sporting and cultural facilities of state-wide significance and associated infrastructure.

In 1997 the Golden Casket Lottery Corporation Limited was corporatised as a Government Owned Corporation in accordance with the provisions of the *Government Owned Corporations Act 1993*. At the same time the legislation controlling the conduct of lotteries in Queensland was reviewed and remade. The Lotteries Act was the result and separated the commercial activities of the Golden Casket Lottery Corporation Ltd from the Government as regulator of lotteries.

The increase in gambling by non-government organisations was considered to have a potential impact on charitable and non-profit organisations' ability to raise funds through gaming. This prompted a review of the regulation of charitable and non-profit gaming in Queensland. As a result of the review, of the *Art Unions Act 1992* and the subsequent release of the Art Unions Discussion Paper in 1998, the Charitable and Non-Profit Gaming Act was enacted, providing a much more flexible regime for charitable and non-profit associations conducting gambling activities.

The development of each piece of legislation regulating commercial gambling activities has occurred in acknowledgment of the need to ensure that the highest levels of probity and integrity are maintained in the provision of the gambling product and that all persons involved in such activities are suitable to be associated with gambling.

This can only be achieved through the inclusion in each piece of gambling legislation of detailed public interest provisions. These provisions ensure that the public can participate in gambling activities in the knowledge that the operators have satisfied high standards of probity and the systems have high standards of integrity—i.e. the games are fair. Further, the probity and integrity provisions ensure that the operators of legal gambling activities in Queensland are not associated with organised crime, a problem which has adversely impacted on other countries' gambling industries.

In addition, the Queensland Government recognises that the gambling industry as a whole must be continually monitored to ensure that legislation is able to address developments in society, business, technology and the gambling industry itself. Accordingly, there have been numerous amendments to the legislation that controls lawful gambling in Queensland, as well as the creation of new legislation.

Notably, the Interactive Gambling (Player Protection) Act was enacted in recognition of the fact that many Queenslanders were gambling on the internet—and through other interactive means—with no knowledge of the provider of the game and no consumer protection. The legislation intended to rectify this situation and provide a secure environment where adults wishing to participate in gambling activities through interactive means could do so in a secure environment, assured that their winnings would be honoured and that the game is fair. The original intentions of this legislation have been undermined and hence unable to be achieved, due to the imposition of the ban on interactive gambling forced by the enactment of the Commonwealth's Interactive Gambling legislation.

The privatisation of the Queensland TAB also prompted a review and remake of the legislation controlling the conduct of wagering in Queensland. The resulting Wagering Act provides for issuing of licences for conduct of specific wagering activities (see 2.1).

⁹ The Levy was applied on a marginal basis to those category 1 licensed premises (primarily hotels) which have a gaming machine revenue exceeding \$100,000 per month. These sites will pay the levy as a percentage of their revenue, additional to the monthly remittance of gaming machine tax.

3. OBJECTIVES OF THE LEGISLATION

3.1 Policy Direction

The Government released its *Policy Direction for Gambling in Queensland* on 12 April 2000 as a result of the findings of the 1999 Queensland Gaming Review and the *Green Paper on Gaming in Queensland (December 1999)*. These analyses were undertaken following growing concerns over the adverse impacts that increasing accessibility to gambling activities was having on the community. In addition, these studies recognised that there had been a rapid growth in expenditure by the community on gambling products since the mid 1980s.

The Queensland Government initiatives occurred at the same time as the release of the Productivity Commission's 1999 Report titled *Australia's Gambling Industries*. This Report also recognised the potential harm the increased availability of gambling products (especially gaming machines) had on members of the community¹⁰.

Queensland's Policy Direction aims to:

- ensure that the provision of gambling balances its social costs with its economic benefits; and
- better coordinate the overall lawful provision of gambling, particularly in relation to the social impacts of gambling in the community.

The Policy Direction focuses on initiatives that will develop and enhance community protection measures in the State's gambling legislation and will therefore encourage more responsible gambling practices in the community.

In this regard, all Queensland gambling legislation has been amended to include in its objects to ensure that, on balance, the State and the community as a whole, benefit from the operation of gambling under the Acts. Further, the legislation states that the balance is to be achieved by allowing each form of gambling, subject to a system of regulation and control designed to protect players and the community through:

- ensuring integrity and fairness of the games;
- ensuring probity of those conducting the games; and
- minimising the potential for harm.

The Policy Direction provides the mechanism by which the Government can achieve its regulatory responsibilities over the rapidly changing characteristics of the gambling industry (eg the internet, accessibility and speed of games) while continuing to service the primary objectives of gambling legislation. These objectives are:

- to ensure a greater balance and enhanced coordination of the social and economic issues related to gambling in Queensland through harm minimisation and consumer protection initiatives;
- to ensure the integrity and probity of gambling activities;
- to ensure a gambling environment in which there is a high level of public and industry confidence;
- to ensure that legal gambling is regulated in the community interest;
- to provide an honest and efficient gambling industry;
- to provide equitably regulated and controlled gambling activities; and
- to provide appropriate financial returns from gambling activities for the Government and the community.

¹⁰ Productivity Commission; *Australia's Gambling Industries', Volume 1, Report, July 1999, p xii.*

The Interactive Gambling (Player Protection) Act and the Charitable and Non-Profit Gaming Act also have the following additional objects:

- Interactive Gambling (Player Protection) Act -
 - (a) to regulate and control gambling (“interactive gambling”) accessible from the home involving interactive games in which players participate by means of the internet or through some other telecommunication medium; and
 - (b) to provide protection for players of interactive games; and
 - (c) to provide a basis for implementing an inter-jurisdictional regulatory scheme for-
 - (i) the reciprocal recognition between participating jurisdictions of licences, authorisations and other administrative acts; and
 - (ii) the regulation and control of interactive gambling in the participating jurisdictions on a cooperative basis; and
 - (iii) the sharing of tax derived from interactive gambling on an equitable basis.
- Charitable and Non-Profit Gaming Act -
 - (a) ensuring appropriate standards and levels of accountability for the conduct of general gaming are set and maintained; and
 - (b) the public obtains reasonable net benefits from the conduct of general gaming; and
 - (c) individuals engaged in conducting general gaming do not derive a personal gain from it; and
 - (d) the integrity of general gaming is maintained; and
 - (e) public confidence and trust in buying general gaming tickets as a worthwhile way of supporting persons’ fundraising activities are maintained.

The Queensland Government’s role in the regulation of gambling is achieving a balance between maximising the benefits from the provision of gambling and minimising the adverse impacts associated with gambling. It is considered that achieving this balance would be impossible if unfettered competition was allowed in the gambling industry. Therefore, fundamental to the regulation of gambling is ensuring that the restrictions that are put in place are the most appropriate way to meet these objectives.

3.2 Responsible Gambling

The Productivity Commission’s 1999 Report classified the impacts of gambling as ranging from having no adverse consequences to promoting severe problem gambling¹¹. At its worst, problem gambling can have negative effects not only on the person gambling, but can adversely affect that person’s relationships, family and the community as a whole. The Queensland Government considers problem gambling exists when gambling activity results in a range of adverse consequences where:

- the safety and wellbeing of gambling consumers or their family or friends are placed at risk; or
- the negative impact extends to the broader community¹².

The Queensland Government’s Policy Direction for Gambling highlighted the need for an overarching strategy to address problem gambling. The Policy recognises the validity of incorporating harm minimisation principles into all gambling legislation and, through a cooperative approach with industry and the community, supports these legislative measures with problem gambling minimisation initiatives.

Fundamental to these initiatives is the notion of responsible gambling, which is considered a means of minimising the adverse impacts of gambling, as well as developing strategies intended to improve the

¹¹ Productivity Commission; *Australia’s Gambling Industries’, Volume 1, Report*, July 1999

¹² Queensland Government: *The Queensland Responsible Gambling Strategy – A Partnership Approach*, February 2002, p3.

health and wellbeing of people who are already affected by gambling. Responsible gambling has been defined as follows:

Responsible gambling occurs in a regulated environment where the potential for harm associated with gambling is minimised and people make informed decisions about their participation in gambling. Responsible gambling occurs as a result of the collective actions and shared ownership of individuals, communities, the gambling industry and Government to achieve outcomes that are socially responsible and responsive to community concerns¹³.

In February 2002, the Government released “The Queensland Responsible Gambling Strategy” which is intended to form an important piece of the overall strategy to minimise the negative impacts of gambling. It is intended to support the legislative harm minimisation principles by developing a framework for the provision of information, education and assistance.

Also forming part of the strategy is the Whole-of-Industry Responsible Gambling Code of Practice, which is a voluntary commitment to best practice in the provision of responsible gambling.

The Responsible Gambling Advisory Committee¹⁴ was established in 1996 as an advisory body to Government on gambling issues. The Committee is comprised of representatives from industry, community and Government and provides high level advice to the Treasurer on all issues relating to the provision of gambling in Queensland. The Committee plays an important role in the operation of the Strategy and Code of Practice.

Finally, Queensland has four community benefit funds, three of which derive income from a 1% community benefit levy on the gross revenue of the State’s four casinos and another which derives its income from a percentage (8.5%) of gambling taxes on other forms of gambling. The funds provide grants to community organisations to provide services within their local communities. The four funds are:

- the Jupiters Casino Community Benefit Fund;
- the Breakwater Island Casino Community Benefit Fund;
- the Reef Hotel Casino Community Benefit Fund; and
- the Gambling Community Benefit Fund.

3.3 Queensland Government Priorities

The Queensland Government’s policy priorities for the community are outlined in its Charter of Social and Fiscal Responsibility. The policy priorities play an important role in guiding the development of policy and the delivery of services to the community.

In accordance with Queensland’s Public Benefit Test Guidelines for Legislation Review, the restrictions and alternatives to them will be assessed in relation to whether each option is consistent with the Government Priorities. These Priorities are:

- More jobs for Queenslanders—skills and innovation—the Smart State;
“The Government will support Queenslanders in gaining and maintaining employment through infrastructure provisions to support investment and development, by encouraging an environment for business that allows firms to grow and diversify.”
- Safer and more supportive communities;
“All Queenslanders want to live in communities where they are protected from harm, where the differences of people are respected, and where everyone is treated with fairness and dignity.”

¹³ Queensland Government: *The Queensland Responsible Gambling Strategy – A Partnership Approach*, February 2002, p3.

¹⁴ The Committee was formerly known as the Problem Gambling Advisory Committee.

- Community engagement and a better quality of life;
“All Queenslanders are encouraged to take part in the rich cultural, social and economic life of our State and to support the democratic processes that underpin our way of life. The Government is working to ensure equality and opportunity and equitable access to high standards of education, health, housing and family services and to achieve this through greater participation in choices made by Government.”
- Valuing the environment; and
“A healthy and sustainable environment is essential to our future. The Government will protect Queensland’s natural and cultural heritage for current and future generations, and manage the development of our natural resources in an ecologically sustainable way.”
- Building Queensland’s regions.
“Queensland is the most decentralised State in Australia. The Government will ensure that Queensland’s regions can capitalise on their unique assets and resources.”¹⁵

Particularly relevant to this Report are the Government priorities relating to safer and more supportive communities and community engagement and a better quality of life. The priority relating to jobs for Queenslanders is also relevant.

The review will also look at the restrictions in the gambling legislation in terms of meeting the Queensland Government priorities.

4. RESTRICTIONS ON COMPETITION

4.1 Restrictions

There are a number of restrictions contained in Queensland gambling legislation. The table below outlines these restrictions and places them in categories according to the nature of the restriction.

Table 4.1

Category of Restriction	Description of Restriction		Objective
Licensing	Operators— corporation/individual licensed to run the gambling activity.	- Casino operators, gaming machine sites, UNiTAB, Golden Casket Lottery Corporation Ltd, Jupiters Gaming Pty Ltd.	Probity and consumer protection
	People / employees	- Nominees, key employees, employees, key persons, key monitoring employees.	
	Service providers	- Manufacturers, service contractors, repairers, lucky envelope printers.	

¹⁵ Queensland Government Priorities, <http://www.thepremier.qld.gov.au/govt-priorities/index.html>.

Gaming Machines	<p>Limits on maximum numbers of machines a venue may operate.</p> <p>State-wide cap on the number of gaming machines that can be operated in Queensland hotels</p> <p>Licensing of monitoring operators</p>	<ul style="list-style-type: none"> - Clubs and Hotels - Hotels - Clubs and hotels 	<p>Harm minimisation</p> <p>Harm minimisation</p> <p>Probity</p>
Business Conduct	<p>Responsible gambling</p> <p>Protection of Minors</p>	<ul style="list-style-type: none"> - Advertising restrictions, - Restrictions on hours of operation, - Prohibition on credit betting, - Self exclusion provisions, - Maximum wager controls, - Exclusion provisions for someone who endangers another person as a result of their gambling behaviour - Prohibition on minors participating in gambling, - Prohibition on minors purchasing a ticket where liquor is a prize, - Prohibition on the employment of minors in some gaming activities. 	<p>Harm minimisation and consumer protection</p>
Exclusivity	<p>Geographical</p> <p>Product</p>	<ul style="list-style-type: none"> - Casinos only—limited time - Keno, casino games, lotteries and wagering. 	<p>Harm minimisation by preventing proliferation of gambling activity</p>
Revenue Sharing	<p>A club or hotel may not enter into a revenue sharing arrangement.</p>	<ul style="list-style-type: none"> - Gaming machines 	<p>Integrity</p>
Sales Restrictions	<p>Restrictions on the places where gambling products may be sold.</p>	<ul style="list-style-type: none"> - Wagering—UNiTAB agents, clubs, hotels and casinos, - Gaming Machines—clubs and hotels - Lotteries—small business - Keno—clubs, hotels, UNiTAB agencies and casinos. - Casino games—casinos 	<p>Harm minimisation, consumer protection, probity, limit the proliferation of gambling.</p>

Miscellaneous Provisions	<ul style="list-style-type: none"> - Prohibition on marketing by non-licensed providers; - Prohibition on products not provided by licensed providers - Shareholder restrictions; - Community Benefit statements. 	<ul style="list-style-type: none"> - All gambling activities - All gambling activities except charitable and non-profit gaming - Casinos - Large clubs 	Integrity of industry and harm minimisation.
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4.2 General Rationale for the Regulation of Gambling

While it is recognised that the operation of unfettered markets is generally the best and most efficient means of allocating resources across the economy, market failure occurs when markets can not operate efficiently or deliver outcomes which reflect community standards. As a general rule, it is when market failure occurs that governments intervene in the market.

There are four main types of market failure:

- Externalities, which is when the costs or benefits are imposed on or accrue to a third party.
- Natural monopoly, where it is most economically efficient for the market to be served by one provider.
- Public good, goods which do not have direct rivals and cannot prevent people from accessing them, for example a national park.
- Information asymmetry; which is where information is not equally available to buyers and sellers.

The main forms of market failure that are relevant to Queensland's gambling industries relate to:

- the high likelihood of adverse impacts on third parties, that is, negative externalities; and
- the existence of information problems, that is, information asymmetries.

Negative Externalities

The overriding rationale for introducing the regulation of gambling was to ensure that negative externalities potentially arising from criminal influence in gambling were prevented. The Productivity Commission's *Inquiry on Australia's Gambling Industries* noted that there are 'long held concerns' that organised crime exerts significant influence or control over segments of the gambling industry. Notwithstanding these concerns, the Productivity Commission also noted that the lack of evidence that significant criminal activity is associated with the (legalised) gambling industry is attributed to strong probity rules¹⁶.

The Productivity Commission estimated that each problem gambler has a direct and negative financial and emotional impact on at least five other people. For example, one in four problem gamblers reported divorce or separation as a result of gambling; one in ten contemplated suicide due to gambling and nearly half of all problem gamblers in counselling reported losing time from work or study due to gambling¹⁷. On the basis of the links the Productivity Commission found between the accessibility of gambling products and the extent of problem gambling, these statistics would worsen if gambling were allowed to proliferate in an unregulated environment.

¹⁶ Productivity Commission: *Australia's Gambling Industries, Inquiry Report*, Volume 1: Chapter 10.1

¹⁷ Productivity Commission: *Australia's Gambling Industries, Inquiry Report*, Volume 1: p. xii.

Government regulation and industry and community co-operation have been adopted by Queensland as the most appropriate basket of mechanisms to address this market failure. This has taken the form of harm minimisation provisions in all Queensland gambling legislation, combined with industry codes of practice, training, and counselling support services. Further facilitating this approach is the Responsible Gambling Advisory Committee, which advises the Treasurer on issues relating to the provision of gambling in Queensland.

It should also be noted that some positive externalities can be identified. These include:

- improved community services and facilities directly provided by the industry and via the various community benefit funds;
- increased levels of employment in associated industries; and
- enhancement of the tourism industry arising from Queensland's hotel-casino complexes and to a lesser extent, hotel and club facilities.

Information Asymmetries

In a free market, participants or consumers of gambling products may be unable to easily access information about the nature of the gambling activity itself as well as the provider of the activity. Most consumers would have difficulty in assessing the true nature of the gambling product, such as;

- odds of winning,
- returns to players (that is, what percentage of money gambled gets returned to players as prizes),
- frequency of draws,
- rules of the game,
- compliance with the rules, and
- the guarantee of the payment of prizes.

While gambling, by its very nature, involves the assumption of risk, most consumers are unlikely to be able to assess in advance the integrity of a gambling activity or service provider in an unregulated environment. The risk they take ought, to, therefore, be represented by the actual odds of the game, not external factors or the honesty of the operator. Further, as gambling is considered a form of entertainment, it is often conducted in places where consumers are involved in other forms of leisure or recreation and, as such, are not able (or willing) to conduct a full evaluation of the gambling product. Also, the participation in gambling is often a spontaneous activity, undertaken by the consumer without extensive planning and prior research.

Lack of information about gambling products and providers can be addressed through legislation that aims to ensure that all gambling is conducted by people and corporations which are bona fide. In addition, technologically sophisticated products mean that punters can never be personally sure of the integrity of the gambling systems and must rely on regulatory standards.

4.3 Productivity Commission Inquiry

On the instruction of the Commonwealth Treasurer, in August 1998 the Productivity Commission undertook to investigate and prepare an information report on the nature, performance and impacts of Australia's gambling industries. The Commission was to examine and report on:

- the nature and definition of gambling and the range of activities incorporated into the definition;
- the profile of participants in gambling;
- the economic impacts of gambling;
- the social impacts of gambling;
- the effects of regulatory structures;

- the implications of new technology on gambling; and
- the adequacy of Australian Bureau of Statistics data collected on gambling¹⁸.

The findings of the Inquiry were released in November 1999. Notably, the Inquiry concluded that the principal rationale for regulating gambling industries in manners different to other industries was in relation to:

- promoting consumer protection;
- minimising the potential for criminal and unethical activity; and
- reducing the risks and costs of problem gambling¹⁹.

The Inquiry also recognised that over 80% of the Australian adult population have taken part in gambling activities and 40% gamble regularly. The industry was credited with providing net gains in jobs and economic activity for the overall economy.

However, the Inquiry also recognised that approximately 1% of the adult population suffer from severe gambling problems, with a further 1.1% of Australian adults having moderate gambling problems (approximately 290,000 people were identified as being “problem gamblers”). The Inquiry linked the level of problem gambling with the degree of accessibility of gambling, especially noting the negative impacts associated with the increase in the availability of gaming machines²⁰.

Soon after the release of the Productivity Commission Report, the NCC released its paper titled “*Regulating Gambling Activity: Issues in Assessing Compliance with National Competition Policy*”²¹. In this paper, the NCC advised that restrictions that are genuinely aimed at probity, harm minimisation and consumer protection are in the public interest and comply with NCP. Relevant characteristics of such restrictions include:

- probity regulation with appropriate risk management which balances the following objectives:
 - consumer protection;
 - allowing operators to employ their own risk management procedures with costs borne by the industry; and
 - the development of a common framework across venues and between gambling options;
- provision of appropriate information to consumers; and
- codes of conduct.

The incorporation of harm minimisation, probity and consumer protection principles into gambling legislation are recognised by both the Productivity Commission and the NCC as being valid for the industry.

4.4 Queensland Gaming Commission

The Queensland Gaming Commission is a statutory body established under the Gaming Machine Act. The Commission’s principal role is the assessment of gaming machine site licence applications and, where making a decision to grant a licence, determining the maximum number of machines able to be operated at the site in accordance with legislation.

¹⁸ Productivity Commission: *Australia’s Gambling Industries, Inquiry Report*, Volume 1: p. xii.

¹⁹ Productivity Commission: *Australia’s Gambling Industries, Inquiry Report*, Volume 1, The Commission’s Key Findings: p. xiii.

²⁰ Productivity Commission: *Australia’s Gambling Industries, Inquiry Report*, Volume 1, The Commission’s Key Findings: p2.

²¹ Released October 2000.

The Commission also grants, refuses to grant, cancels and suspends various prescribed licences including monitoring operator's licences and repairers licences. It also has the function of hearing appeals against certain decisions made under the Keno Act, the Lotteries Act, the Wagering Act, the Interactive Gambling (Player Protection) Act, the Charitable and Non-Profit Gaming Act and the Gaming Machine Act.

The Commission is charged with the role of balancing the community benefits from the availability of gaming machines with the costs that problem gambling has on the community as a whole.

5. LICENSING

Licensing is a pivotal part of the regulation of gambling in Queensland. It is a means of ensuring that only appropriate individuals and organisations are involved in the provision of gambling. Licensing is considered a means of ensuring, as far as reasonably possible, that participants in the industry are of the highest levels of probity and integrity.

When state-wide linked jackpot Keno was created, a new legislative regime for the licensing of individuals and corporations associated with the provision of gambling was introduced. This became a general template for licensing entities involved in lawful gambling activities. Therefore, all gambling legislation enacted after 1996 has almost identical licensing obligations. The requirements under the Casino Control Act and Gaming Machine Act are also similar.

The categories of licences have been identified by type of licence for the purposes of this review (see Table 5.1).

5.1 Operators

The following table outlines the current licences required under Queensland gambling legislation to operate gambling activities in the State.

Table 5.1

Name of Licence	Legislative Provision
Casino Licence	Casino Control Act (s.18)
Keno Licence	Keno Act (s.13)
Lottery Licence	Lotteries Act (s.6)
Interactive Gambling Licence	Interactive Gambling (Player Protection) Act (s.30)
Race Wagering Licence	Wagering Act (s.16)
Sports Wagering Licence	Wagering Act (s.17)
On-Course Wagering Permit	Wagering Act (s.18)
Gaming Machine Licence	Gaming Machine Act (s.55)
Category 3 Gaming Licence	Charitable and Non-Profit Gaming Act (s.43)
Licensed Monitoring Operator Licence	Gaming Machine Act (s.122(7))

5.1.1 *Rationale for Intervention*

The licensing of operators is a means of ensuring that individuals and organisations involved in the provision of gambling in Queensland are deemed appropriate to do so. It is intended to prevent individuals or organisations that fail to meet appropriate standards of probity and integrity from having any involvement in the industry.

All potential operators are required to undergo a comprehensive application process which requires the provision of information about the individual's or corporation's financial situation, business activities, business and personal associates, as well as any past unlawful activities. In addition, comprehensive information is required about an applicant organisation's ownership structure and the persons associated with the organisation. The checks performed include a company history search and an examination of the financial and company accounts for at least the preceding two years.

An organisation's secretary and executive officers are required to provide financial details and personal history and probity checks and are likely to be required to apply for key person licences. The organisation's directors are also required to provide financial details and personal history and undergo probity checks.

The rationale for this is to assess the overall suitability and probity of the person or corporation to hold the responsibility for and carry out the functions of an "operator" of a regulated gambling activity. It is also designed to ensure that the community's confidence in the fairness and honesty of lawful gambling is maintained.

Generally, the requirements that must be satisfied to be licensed as a gambling operator are consistent across all Queensland gambling legislation. The one exception is gaming machine licences, which have additional requirements relating to community obligations and harm minimisation. These additional licensing requirements are intended to address the level of harm associated with this form of gambling.

Applicants are required to pay a licence fee that is based on the recovery of costs—the licence fee amounts are intended to cover the extensive investigations that are undertaken as part of the assessment for suitability.

In addition to the requirements of all Queensland gaming machine legislation, the Gaming Machine Act requires that all gaming machine licence applicants complete a Community Impact Statement and a Statement of Responsible Gambling Initiatives for the site on which the gaming machines are to be located. Additionally, the application must be advertised, allowing any member of the public to comment on the application.

Further, the Gaming Machine Act provides that the chief executive may invite comments from the relevant local authority and any other person prior to the Queensland Gaming Commission making a decision on an application for a gaming machine licence.

These additional requirements are intended to minimise the negative effects that the increased access to gaming machines has had on the community and complement the Queensland Responsible Gambling Strategy.

5.1.2 *Other Jurisdictions*

All Australian jurisdictions license the operators of gambling activities. The only alternative to licensed gambling operators is an outright prohibition on the specific forms of gambling activity. For example, Western Australia prohibits the operation of gaming machines outside of its licensed casino.

5.1.3 *Conclusion*

The licensing arrangements incorporated into Queensland's gambling legislation are based on identifying any inappropriate past behaviour by prospective operators and any associates likely to be in a position to influence the operator's conduct. The arrangements also require that prospective operators also have the

financial viability to ensure they are not susceptible to pressure from outside elements, which could include criminal influence. Where practical, a common framework has been established across venues and gambling categories. On this basis, Queensland's operator licensing regime meets the Productivity Commission's and NCC's criteria as an appropriate means of ensuring probity and integrity in the gambling industry and is in the public interest.

5.2 People / Employees

The following licensing requirements for people/employees are contained in Queensland's gambling legislation.

Table 5.2

Licence Types	Legislative Provisions
Key Monitoring Employee	Gaming Machine Act (ss.185, 190 & 192)
Key Officer	Gaming Machine Act (ss.186, 190 & 192)
Licensed Gaming Employee	Gaming Machine Act (ss.189 & 191)
Licensed Gaming Nominee	Gaming Machine Act (ss.189, 193 & 195)
Licensed keno employee	Keno Act (ss. 43 & 44)
Licensed key operator	Keno Act (s.45)
Licensed key employee	Lotteries Act (s.41)
Licensed key operator	Lotteries Act (s.44)
Licensed key person	Lotteries Act (s.47)
Licensed key person	Interactive Gambling (Player Protection) Act (ss.61 & 62)
Wagering Manager	Wagering Act (ss.65 & 66)
Licensed key employee	Wagering Act (s.96)
Licensed key operator	Wagering Act (s.99)
Licensed key person	Wagering Act (s.102)
Casino key employee licence	Casino Control Act (s.35)
Key employee licence	Casino Control Act (s.35)

5.2.1 Rationale for Intervention

The objective of licensing individuals employed by a gambling operator is to assess the individual's probity and suitability to be involved in the industry. Notably, licensed employees/persons are those who are permitted access to sensitive aspects of gaming operations or who otherwise can affect the outcomes or results of a game. In addition to individuals directly employed by the licensed operator, licensed employees/persons includes any person who may have a degree of influence over the conduct of the licensed operator, for example, significant shareholders or consultants. These are called "key persons" in the gambling legislation. The licensing process involves the taking of fingerprints to prove identity and undertaking criminal history, financial stability and work history assessments.

These licence requirements are intrinsic to the objectives of the legislation and are purely intended to maintain the probity of gambling operations and, as with operators licences, maintain public confidence in the conduct of lawful gambling. If a person fails to meet probity standards they must cease to be employed in that capacity. Not all employees are required to be licensed—only those directly involved in the conduct of the gambling activity of their employer or those who have influence over that gambling activity need be licensed.

Licence fees for individuals are set at a cost recovery rate, averaging about \$317 per application.

5.2.2 Other Jurisdictions

While the extent of licensing varies from jurisdiction to jurisdiction, generally all jurisdictions require those who are involved in the outcome of a game to meet certain probity requirements.

5.2.3 Conclusion

As with the licensing of gambling operators, the licensing of people/employees who could potentially influence the outcomes of a gambling activity is considered essential in achieving the objective of Queensland's gambling legislation relating to maintaining probity and integrity in the industry.

5.3 Service Providers

Table 5.3

Licence Types	Legislative Provisions
Major Dealer Licence	Gaming Machine Act (s.115)
Secondary Dealer Licence	Gaming Machine Act (s.115)
Service Contractor Licence	Gaming Machine Act (s.198)
Repairer's Licence	Gaming Machine Act (s.203 & s.198)
Lucky Envelope Printer Licence	Charitable and Non-Profit Gaming Act (s.43 & s.40)
Bingo Centre Licence	Charitable and Non-Profit Gaming Act (s.43 & s.38)

5.3.1 Rationale for Intervention

The objects for licensing service providers is also to ensure that only individuals and organisations that meet the highest levels of probity and integrity are involved in provision of gambling activities in Queensland. Major dealers are responsible for manufacturing gaming machines and ancillary gaming equipment and therefore could influence the outcomes of gaming activities. Similarly, secondary dealers, service contractors and repairers have access to sensitive information and access to sensitive parts of gaming equipment and could potentially adversely affect the integrity of gaming.

Lucky envelope printers are responsible for manufacturing tickets used by many charitable and non-profit associations for fundraising. Again, it is essential that these manufacturers are bona fide and conduct their operations to the highest standards of probity and integrity.

Bingo centre licences are issued to ensure that bingo centres are run in an appropriate and equitable manner.

The rationale for service providers varies based on the type of licence issued. Therefore, the analysis of these licences has been broken down into the following groups:

- Repairers and dealers, which includes major dealers licences, secondary dealers licences, service contractor licences, repairers licences and lucky envelope printers licences; and
- Bingo centre licences.

Each group is discussed below:

(i) Repairers and Dealers

Service providers to licensed venues can potentially have a significant influence on the operations of gaming machines. The integrity of the gaming machine environment is also based on machines which are functioning correctly themselves and interfacing correctly with the monitoring systems. Inadequately maintained machines can lead to increased opportunity for theft and potentially, manipulation. Accordingly, a similar rationale to that of licensing persons/employees is adopted in relation to the licensing of service providers.

In addition, major dealers, who manufacture gaming equipment are also subject to control system and company history checks to ensure that they conduct their business in an appropriate manner. While all gaming equipment is tested prior to its installation in the field, the complexity associated with modern gaming equipment makes it important that there be confidence in the honesty of manufacturers and the soundness of their equipment and internal control systems.

Note that there are no barriers or constraints on entry into the market for any of these categories of licences other than probity (i.e. standing as a fit and proper person) which is an essential part of licensing.

Other Jurisdictions

Generally, each jurisdiction has in place arrangements where any person or employee that can potentially influence the outcome of gambling activity is licensed. The exact nature of the licensing is linked to the lawful gambling activities of the jurisdiction.

(ii) Bingo Centres

There are many dedicated bingo centres throughout Queensland, however, only one is licensed due to the fact that it conducts more than 25 sessions per week. Although there is only one licensed bingo centre, it is still considered necessary to licence large centres to ensure that the probity of the operator and the integrity of the games are maintained. The strict probity and integrity provisions placed on bingo centres maintain the public confidence in the industry. Furthermore, the decline in bingo centres may be attributed to a number of factors including the general decline in the popularity of bingo due to the availability of other gambling opportunities, the maturity of the product and smoking bans etc.

The Charitable and Non-Profit Act, states that the licensee of a bingo centre must be an association incorporated under the *Associations Incorporations Act 1981* and, ordinary members of which must consist only of individuals appointed by eligible associations conducting or intending to conduct bingo at the premises for which the licence is sought.

Prior to the licensing of bingo centres, access to bingo centres was dominated by larger associations and, as such, smaller associations were denied access to centres as a means of fundraising. The Government intervened in the market to ensure a fairer access to the means of raising funds for charitable and non-profit purposes.

As these centres can be considered gambling centres, the licensing of bingo centres enables the Government to ensure that activities at such centres remain bona fide and maintain high levels of integrity. While it is a restriction per se, it is not considered that the continued licensing of bingo centres imposes an appreciable negative impact on the community as a whole.

Other Jurisdictions

Jurisdiction	Arrangement
New South Wales	<ul style="list-style-type: none"> • Social Housie requires no permit but cannot be conducted on licensed premises • Club Bingo—all can register for authority to conduct bingo. There is no fee and the permit is valid for up to 5 years • Charity housie requires a permit—no fee and is valid for 12 months
Victoria	<ul style="list-style-type: none"> • Centre/premises requires licence if it is a bingo centre—bingo centre is defined as a premises that holds seven or more sessions in a seven day period • Community or charitable organisation may conduct up to four sessions per week without the requirement of a licence • Bingo may only be conducted by a charitable or community organisation holding a community permit, which is valid for two years • Bingo employee licence is required—\$115—valid for 10 years

South Australia	<ul style="list-style-type: none"> • The centre/premises does not require a licence • Bingo can only be conducted by clubs and associations/charities • Cost - \$5.45 for 12 month period • No individual licences are required
Western Australia	<ul style="list-style-type: none"> • Centre/premises requires licence • Licence valid for five years—cost \$50 • Bingo may only be conducted by charity/sporting organisations—organisation licence valid 26 sessions or six months—cost \$20 • Gaming operator's licence required for caller and card checker
Northern Territory	<ul style="list-style-type: none"> • Centres/premises do not require permit • Bingo may only be conducted by a registered non-profit organisation • There is no specific legislation as permits are conducted on a case-by-case basis
Tasmania	<ul style="list-style-type: none"> • Centre/premises does not require permit • Clubs and non-profit organisations may only conduct bingo—permit valid 12 months—cost \$60
Australian Capital Territory	<ul style="list-style-type: none"> • Permit required • Permit valid for 13 weeks—cost varies with the total prize value—usually \$350-\$500 • Can only be conducted by charities and community organisations • No licence required for caller or checkers

There is an annual licensing fee of \$191.00 per bingo centre. The benefits of the licensing regime ensure that only suitable parties conduct bingo.

There are no barriers on new market entrants other than their compliance to be an eligible association.

Alternatives

The only viable alternative would be to remove the requirement that bingo centres be licensed under the Charitable and Non-Profit Gaming Act. This would result in an increased potential for unscrupulous operators to dominate bingo centres, would lower protection for consumers and result in an inequitable distribution of funds raised through the operation of bingo centres. It is considered the negative impacts which would occur if the licensing of bingo centres was removed would outweigh the benefits.

Conclusion on bingo centres

Given the potential for bingo centres to operate in an unscrupulous manner and the benefits to participating charitable and non-profit associations and consumers in maintaining the licensing regime, it is considered that the licensing of bingo centres should be maintained in the public interest.

5.4 Productivity Commission Position on Licensing

The Productivity Commission findings held that there was a net public benefit justification for restrictions involving probity checking. The aims of the restrictions must be intended to:

- protect consumers;
- allow operators to employ their own risk management procedures when the risks accrue to the operators;

- ensure costs are borne by the industry; and
- establish a common framework for probity checking across activities, venues and, if possible, jurisdictions.

5.5 Overall Conclusion on Licensing

Gambling in Queensland is illegal unless specifically permitted. Thus, in the absence of any legislative framework there could be no gambling activity. The regulatory framework is designed to provide protections for consumers in terms of integrity, keeping the industry free from corruption, crime and adverse consequences that have arisen in history where there has been no requirement on conducting games. Therefore, licensing is considered the most appropriate means to ensure that the objects of Queensland's gambling legislation are satisfied. These objectives include:

- maintaining the integrity, probity and equity of gambling activities;
- creating a gambling environment in which there is a high level of public and industry confidence;
- ensuring that legal gambling is regulated in the community interest including the principles of harm minimisation;
- providing an honest and efficient gambling industry;
- providing equitably regulated and controlled gambling activities; and
- providing appropriate financial returns from gambling activities for the Government and the community.

6 GAMING MACHINES

6.1 Background

As mentioned above, it is now recognised that gaming machines have made the single greatest contribution to the increase in gambling related harm in the community. Accordingly, the Queensland Government believes that specific measures need to be maintained which ensure that access to gaming machines is controlled.

Three strategies have been put in place to ensure this is achieved. These strategies are:

- limiting the number of machines that each licensed venue may operate;
- setting a cap on the number of machines which can be operated by hotels in the State; and
- limiting the availability of gaming machines to clubs, hotels and casinos.

In addition, this section analyses the current market share restriction placed on licensed monitoring operators of gaming machines.

Machine gaming commenced in clubs and hotels in Queensland on 11 February 1992 and 30 April 1992 respectively, pursuant to the *Gaming Machine Act 1991*. Since its introduction, the legislation has undergone continual and significant modification to ensure that it continues to provide for the lawful operation of gaming machines in Queensland clubs and hotels. Most notably, the outcomes of the *Review of Queensland Gaming Machine Regulatory Arrangements ("the White Paper")* led to significant legislative amendments in 1997, 1998 and 1999. The main outcome of these amendments included the removal of the Queensland Government from ownership and monitoring of all gaming machines.

The April 2000 Report titled *Policy Direction for Gambling in Queensland* recommended further changes to the Gaming Machine Act and, in particular, aimed to establish a balance between the interests of gaming providers and the community in relation to the provision of gaming machines. These amendments were

enacted in 2000 and 2001. One of the major outcomes of these initiatives was the imposition of a state-wide cap on the maximum number of gaming machines which can operate in hotels.

In Queensland, gaming machines are available in casinos as well as clubs and hotels. Consistent with other casino activities, the operation of gaming machines in casinos is regulated by the Casino Control Act. However, it should be noted that there are four casinos operating in the State in areas which are considered the State's tourism hubs. Gaming machines in casinos are a single activity in a venue which offers wide variety of gambling activities. Further, the casinos are not considered to be so widely and easily accessible to the community as a whole as other gaming venues. Therefore, in relation to access to gaming machines, the casinos are not discussed in this section.

6.2 Maximum Number of Gaming Machines per Venue

6.2.1 *Rationale for Intervention*

Currently, the maximum number of machines for each licensed club has been established at 280, with each hotel being allowed a maximum of 40 machines.

The increase in maximum number of gaming machines per venue was staged as follows:

Table 6.2.1(a)

	Clubs	Hotels
From 1 July 1997	260	25
From 1 July 1998	270	30
From 1 July 1999	280	35
From 1 Jan 2001	280	40

N.B.—In 1996 there was a significant increase in the number of gaming machines in hotels from 10 to 20 and later to 25.

A further increase in maximum machine numbers per venue was proposed to take effect in clubs on 1 January 2001 and 1 July 2001 (290 and 300 respectively) and hotels from 1 July 2001 (45), however, these proposals did not proceed following the release of the 2000 Policy Direction Paper.

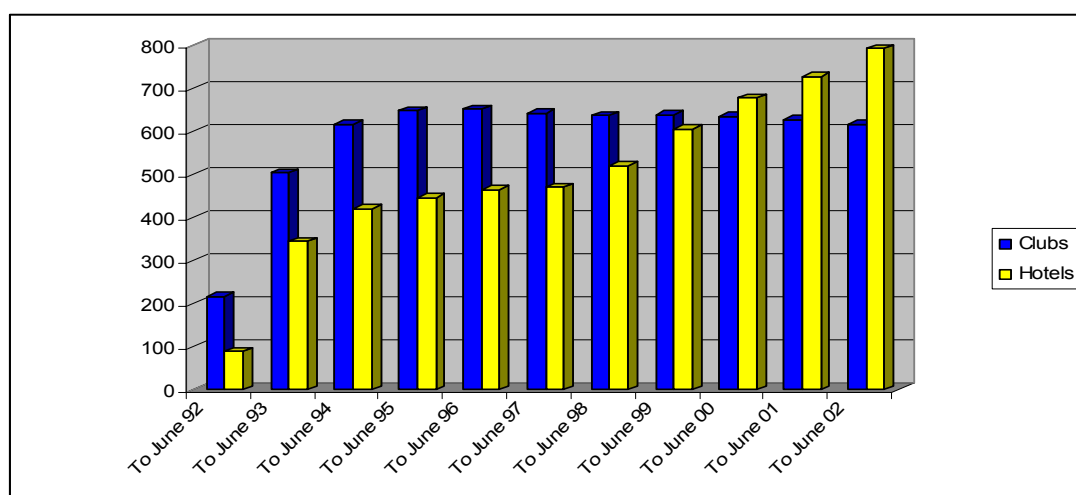
Placing a limit on the number of machines a site may operate is considered restrictive. It can also be argued that granting clubs a higher maximum number of machines than hotels is an additional restriction which allows clubs to potentially generate higher profits than hotels through the operation of gaming machines. From June 1997 to June 2000, the number of hotel gaming machines increased from 4,963 to 13,360 while the number of gaming machines operating at clubs increased from 16,079 to 18,360. As this growth increases the population's access to gaming machines, the potential for more frequent gambling also increases. Despite the disparity in maximum gaming machine numbers between clubs and hotels, the expansion in the availability of gaming machines can be mostly attributed to the hotel sector.

The following table lists the number of gaming machines held by clubs and hotels in Queensland as at 1 January 2003.

Table 6.2.1(b)

Number of Gaming Machines Operated by Venue	Clubs	Hotels
1 – 5	63	60
6 – 10	188	152
11 – 20	144	157
21 – 30	66	99
31 – 39	21	129
40	13	145
41 – 60	32	0
61 – 100	38	0
101 – 150	28	0
151 – 200	9	0
201 – 250	4	0
> 250	6	0
Total Sites	612	742

The graph below illustrates the contrast in growth rates (by number of sites) between hotels and clubs:



Without the restrictions on the maximum numbers of machines, the market would determine the number of gaming machines each venue could operate in order to optimise its revenue. It is recognised that much of the recent growth in the gambling industry has come from gaming machines, particularly in the hotel sector. Moreover, there is a high correlation between the growth in the number of gaming machines and the potential for an increase in the level of harm associated with gaming machines. Consequently, the Queensland Government does not consider it appropriate to limit clubs and hotels to the identical maximum numbers of machines.

Further supporting the continuation of the different maximum gaming machine numbers permitted in clubs and hotels is the fact that clubs have a non-profit focus. In fact, gaming machines were first introduced into Queensland to assist clubs with fundraising activities that ultimately benefited the community including improving club facilities and supporting charitable causes. Profits generated from hotel gaming machines, on the other hand, are considered the private profit of the hotel owner and, therefore, do not need to be used to fund community facilities.

The Queensland Government has a strong commitment to assisting the club industry in meeting its non-profit and community objectives and believes that the existing maximum gaming machine numbers for clubs and hotels are appropriate.

6.2.2 Other Jurisdictions

All jurisdictions have provisions controlling the maximum number of gaming machines allowed to operate in a licensed gaming venue, except for Western Australia, which prohibits the operation of gaming machines outside of the licensed casino. However, there are quite significant variations in the maximum number of machines allowed in each jurisdiction. The table below summarises the maximum number of gaming machines a venue may operate in each jurisdiction:

Table 6.2.2

Jurisdiction	Maximum Number of Gaming Machines Permitted		
	Clubs	Hotels	Other Venues (excluding casinos)
Victoria	105	105	Nil
New South Wales	450 (for new or existing clubs with less than 450 gaming machines). Clubs already operating more than 450 have to shed 10% by April 2007.	30	Nil
South Australia	40	40	Nil
Western Australia	Nil	Nil	Nil
Northern Territory	45	6	Nil
Australian Capital Territory	Unspecified	Hotels – 13 Taverns – 2	Nil
Tasmania	40	30	Nil

6.2.3 Costs and Benefits

Costs: A significant cost associated with restricting the maximum number of gaming machines is the potential loss of gaming revenue to clubs and hotels. That is denying them access to additional machines could result in a decrease in overall profit. Moreover, while it is recognised that there has been little substitution between different forms of gambling (that is, the introduction of a new form of gambling has had little adverse impact on participation rates in other forms of gambling), it is recognised that increasing the numbers of gaming machines available could adversely impact on other industries or businesses, as consumers choose to allocate a higher proportion of their income to gambling.

For many clubs, revenue from gaming activities makes up a significant proportion of revenue. The original intention of the introduction of gaming machines into clubs was to assist an ailing club industry to raise revenue to meet their charters. The current restriction on the maximum number of gaming machines a club can operate could potentially limit the amount of funds a club may generate from the operation of gaming machines.

Conversely, it cannot be assumed that merely allowing more gaming machines would increase the profitability of sites. Further, it is important to note that most venues in Queensland do not operate the maximum numbers of gaming machines permitted under the legislation.

Additionally, the current restrictions on the number of machines which may be operated may potentially have some flow on costs. By restricting the number of gaming machines and hence gaming revenue, clubs and hotels may be denied additional business which would prompt them to employ more staff or undertake venue and building improvements, all of which could have a positive effect on the economy.

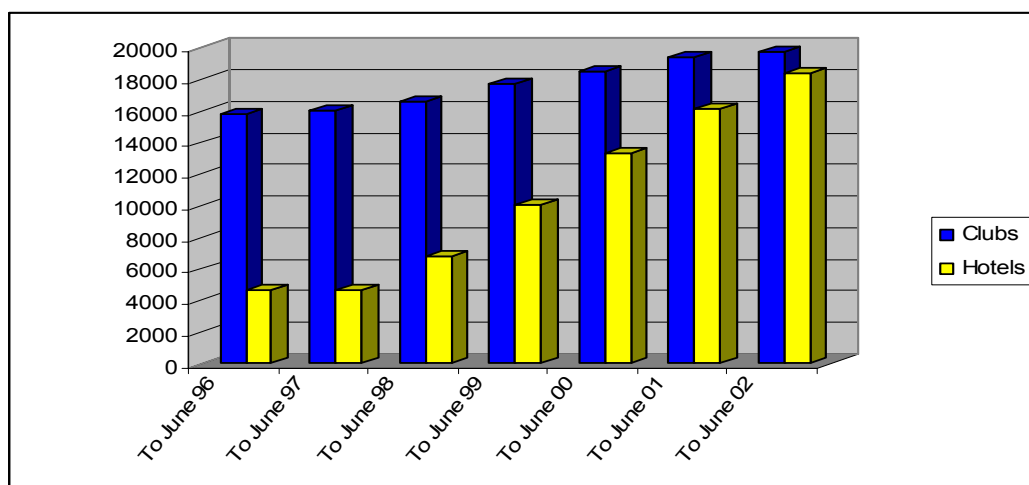
The restriction on gaming machine numbers may also be denying gamblers access to wider choice and access to gaming machines. However, the Productivity Commission suggested that limiting a given

number of gaming machines among venues would likely lead to a decrease in expenditure by gamblers because they would find it difficult to play for extended periods due to congestion.²²

Benefits: There has been growing public concern over the expansion of gambling in the community and, in particular, the issue of gaming machine numbers. Restrictions on the numbers of gaming machines in clubs and hotels is seen as the most effective way of preventing any further proliferation of gambling and keeping in check the incidence of problem gambling.

It can be considered that only a relatively small number of clubs actually benefit from the fact they are able to operate more machines than hotels. In fact, there are only 170 or so clubs which are licensed to operate more than 40 gaming machines, while there are 289 hotels which are licensed to operate more than 30 gaming machines (with 146 of these sites operating the maximum of 40 machines)²³.

The following graph illustrates the number of gaming machines in clubs and hotels in Queensland since June 1996:



This table illustrates that the most significant growth in new gaming machines has been in hotels.

While it can be argued that clubs should be able to attract more patrons because they have more gaming machines, it appears that the increase in participation rates in gaming has increased in line with the increased availability of gaming machines in hotels. The relative growth in hotel gaming indicates that hotels are competing successfully and attracting patrons who do not want to be in a club atmosphere.

Restrictions on the number of gaming machines in hotels are also seen as necessary to ensure that hotels do not become gambling dens, totally dominated by gaming activities. The maximum gaming machine numbers are considered a means of balancing the traditional focus of hotels with their ability to offer gaming machines. Importantly, by limiting the number of machines in each hotel, the incidence of problem gambling and associated inappropriate behaviour is also minimised.

The fundamental objective of this restriction is to ensure that, on balance, the State and the community as a whole benefit from this form of gambling. This balance is achieved by instilling a system of regulation and control designed to protect players and the community by ensuring the potential for harm is minimised. Placing limits on the numbers of gaming machines that can be operated in various venues prevents the proliferation of gaming activities and ensures that there is balance between the social and economic impacts of gaming machines on the community.

²² Productivity Commission: Australia's Gambling Industries Inquiry Report, Volume 1 p 8.3

²³ Queensland Office of Gaming Regulation, "A Scheme for Re-Allocating Gaming Machines in Hotels" *Discussion Paper*, December 2001, p 19.

6.2.4 *Alternatives*

Two alternatives can be identified in relation to restrictions on gaming machine numbers. The first alternative is to remove caps on gaming machine numbers in all venues. This alternative is not consistent with the objectives of the legislation in relation to the principles of harm minimisation.

A removal of restrictions on gaming machine numbers could lead to the proliferation of gambling activities, potentially encouraging more people to gamble beyond their financial means. This is illustrated in the above graph which shows the large growth in gaming machines in hotels. Consequently, given the commercial nature of hotels, a removal of restrictions could lead to a proliferation of gaming machines in the community. This approach would also increase the polarisation of the club industry whereby larger and more commercially focussed clubs that invest revenue raised from current gaming activity into new gaming equipment, would attract customers from smaller clubs that do not have the financial capacity to replace their gaming equipment. It could also lead to aggressive advertising strategies to maximise market share in an increasingly competitive environment. This would in turn, encourage people to gamble beyond their means, discourage sites from adopting responsible gambling strategies and contradict the objects of the legislation relating to minimising the negative impacts of gambling. No jurisdiction in Australia has adopted this approach.

The second alternative is to install a single maximum number of gaming machines for all venues. Achieving this would require either; (i) reducing existing clubs to a nominated level and increasing hotels to that level, or (ii) increasing hotels to the current club level. In either case the impact would be to significantly advantage an already buoyant hotel industry and see significant detriment to the existing clubs. Note that at present, financial difficulties in the machine gaming sector tend to be centred on the club industry despite its access to greater numbers of machines per venue, the lack of a cap on overall machine numbers and lower tax rates.

Additionally, this alternative does not meet the legislative objective that stipulates that legal gambling is to be regulated in the community interest. As clubs are non-profit organisations, the profits they raise from gaming machine activities are channelled back into the community. In some instances, hotels would have greater financial capacity to increase their gaming machine numbers if current restrictions were removed. Some club patrons may be drawn away from clubs to hotels due to the greater variety and numbers of machines available. This would be detrimental to many clubs that are heavily reliant on customer patronage to fund their activities and to the community which also uses revenue raised from local clubs to fund various community facilities and activities.

6.2.5 *Conclusion*

Given the fact that few clubs in Queensland actually operate the maximum number of gaming machines, the impact of the restriction on gaming machine numbers in clubs is not broadly significant. This is further supported by the fact that hotels have been able to successfully compete with the club industry, making the most significant contribution to the recent expansion in gaming machine numbers. It is also important to note that clubs and hotels have different types of patrons and do not always directly compete for market share.

6.3 State-wide cap on Gaming Machines

6.3.1 *Rationale for Intervention*

As mentioned above, it is recognised that the increased availability of gaming machines has led to an increase in the level of harm caused by gambling. Given the high proportion of the recent expansion of gaming machine numbers being attributed to the hotel industry, the Government has introduced a state-wide cap on the number of gaming machines which could be operated in Queensland in hotels. This cap will allow for the reallocation of gaming machines that become available within the cap as a result of hotel closures or reductions in the number of machines but ensures that there will be no net increase in the number of gaming machines available in hotels across the State.

The state-wide cap was introduced in response to growing concerns about the adverse impacts that the expansion of gaming machines was having on the community as a whole. The calls for halts on the growth of the gaming machine industry and the increases in the number of people seeking assistance for gambling related problems prompted the Government to stop the introduction of any further gaming machines into hotels. Similar stances have been taken in other jurisdictions, mirroring the strong belief that the gaming machine market should not be permitted to grow any larger.

Another reason for imposing the cap on hotels but not on clubs is because the profits from gaming machines in hotels flow directly to publicans, unlike clubs, whose gaming machine profits are either reinvested in the club or dispersed to the community for benevolent purposes. The proliferation of machines in hotels has enabled hoteliers to refurbish their premises, increase entertainment and the general appeal of their venues, creating competitive difficulties and adverse impacts for the club industry.

At the time of the announcement of the state-wide cap in Queensland, caps on gaming machines in hotels also existed in Victoria, the Australian Capital Territory and the Northern Territory. Further to this, New South Wales and South Australia had both announced temporary “freezes” on gaming machine numbers in hotels. Such actions are consistent with comments made by the Prime Minister in his speech releasing the Productivity Commission Report in which he stated “I think the achievable goal ought to be for all governments to put a limit on the expansion of gambling facilities, and to try and help in different ways people who have become problem gamblers. If we can at least together do those two things over the next couple of years we will have achieved a lot.”²⁴

A re-allocation scheme for gaming machines within the state-wide cap on hotels commenced on 1 July 2003. The scheme allows for the re-allocation of gaming machines that become available within the cap as a result of hotel closures or reductions in the number of machines. A Public Benefit Test was conducted in relation to the elements comprising the re-allocation scheme prior to the scheme being introduced. A separate report contains a review of the restrictions on competition arising from the re-allocation scheme (Public Benefit Test Report Gaming Machine and Other Legislation Amendment Bill 2003).

6.3.2 *Other Jurisdictions*

The following table outlines the current regulatory arrangements in other jurisdictions relating to caps on the maximum number of gaming machines which can be operated within a jurisdiction.

²⁴ Prime Minister, 16 December 1999 – Subject: *National Approach to Problem Gambling*

Table 6.3.2

Jurisdiction	Cap on number of gaming machines which can be operated		
	Clubs	Hotels	Other Venues (excluding casinos)
Victoria	Overall cap of 27,500 gaming machines for clubs and hotels. (50% earmarked for clubs)	Overall cap of 27,500 gaming machines for clubs and hotels (50% earmarked for hotels)	Not permitted in other types of venues
New South Wales	Overall cap of 104,000 gaming machines permitted in clubs and hotels (from November 2001). State-wide cap on the number of gaming machines which a club can operate – 78,020 (since April 2002)	Overall cap of 104,000 gaming machines permitted in clubs and hotels (from November 2001). State-wide cap on the gaming machines which a hotel can operate – 25,980 (since April 2002)	Not permitted in other types of venues
South Australia	There is a freeze on granting any new gaming machine licences or allowing any increases in gaming machine numbers (in force until May 2003).	There is a freeze on granting any new gaming machine licences or allowing any increases in gaming machine numbers (in force until May 2003).	Nil
Western Australia	Nil	Nil	Nil
Northern Territory	Total number of gaming machines in community venues not to exceed 55% of the national average.	Total number of gaming machines in community venues not to exceed 55% of the national average.	Not permitted in other types of venues
Australian Capital Territory	Cap on total number of gaming machines (clubs and hotels) of 5,200 (since 1998). NB clubs hold approximately 4,954 machines.	Cap on total number of gaming machines (clubs and hotels) of 5,200 (since 1998). NB hotels hold approximately 60 machines.	Not permitted in other types of venues
Tasmania	No State-wide cap	No State-wide cap	Not permitted in other types of venues

6.3.3 Costs and Benefits

Costs: The most significant cost resulting from the introduction of the State-wide cap is limiting the ability for hotels which are not operating the maximum number of gaming machines to expand their gaming machine operations. This may limit the ability of such hotels to expand the profitability of their operations. It also acts to prevent the development of new hotel gaming sites—and given the industry's growing dependence on gambling revenue, often limits the development of new hotel sites generally.

The cap may also limit the choice available to gamblers in relation to access to gaming machines.

The cap may also lead to reduction in revenue for the Government as any reduction in the amount spent on gaming machines by the public will reduce the amount of taxation collected by the Government.

Benefits: The State-wide cap on the number of gaming machines which can be operated in hotels in Queensland is also seen as a means of controlling the proliferation of gaming machines. The Government has adopted a clear policy position that there are enough gaming machines available in hotels in Queensland. A number of other jurisdictions have also recognised the need to cap the total number of gaming machines as a means of reducing the adverse consequences associated with gaming machines.

By restricting the growth in the availability of gaming machines, the access to gambling activities by problem gamblers is also restricted. This is considered an important aspect of reducing the negative effects of gambling on the community as a whole.

The club industry may benefit as patrons attend clubs rather than hotels to play gaming machines.

6.3.4 *Alternatives*

Two alternatives have been considered. These are, firstly, removing the cap to allow all hotels to potentially operate a maximum of 40 gaming machines and, secondly, expanding the cap to include clubs.

- a. Removing the state-wide cap: this option does not meet the objectives of the legislation in that it fails to give adequate weighting to the community concerns over the recent proliferation of gambling, and in particular, access to gaming machines.
- b. Expanding the state-wide cap to include clubs: this is not considered necessary given the recent expansion of gaming machines in the State can be attributed to the hotels sector. Further, it is considered that the positive flow-ons from the community focus of clubs balances any negative impacts of the gaming machines.

6.3.5 *Conclusion*

It is considered that the state-wide cap on gaming machines in hotels should be retained. Removing this restriction would lead to the continued proliferation of gaming machines in the State and further encourage some people to gamble beyond their financial means. In turn, this would lead to adverse social impacts for those affected by gambling.

Restrictions designed to limit accessibility to gaming machines are essential to meet the objectives of the legislation and are in the public interest.

6.4 Availability of gaming machines in clubs and hotels

The linking of gaming machine licences to venues holding liquor licences is a further measure which prevents the proliferation of gambling. Specifically, it ensures that other types of venues, such as shopping centres and movie theatres, cannot operate gaming machines. In addition, allowing gaming machines to operate only in clubs and hotels assists in preventing access to gaming machines by minors.

This is further supported by the Queensland Government's 2000 Policy Direction for Gambling which clearly intends to prevent the emergence of gambling in what has been called "convenience locations". It is considered that to allow this to occur would further promote access to gambling and contradict the principles of harm minimisation.

As all jurisdictions in Australia also limit the availability of gaming machines to venues which hold liquor licences, this restriction is seen as an appropriate means to assist in limiting the availability of gaming machines in the community.

6.4.1 *Conclusion*

Limiting the availability of gaming machines to clubs, hotels and casinos is considered an appropriate restriction given the potential harm that excessive gambling can cause.

6.5 Licensed Monitoring Operators—Market Share Restriction

6.5.1 *Rationale for Intervention*

Each club and hotel in Queensland is required to enter into an agreement with a Licensed Monitoring Operator (LMO) for the provision of gaming machine electronic monitoring services. The electronic monitoring of gaming machines is mandatory and intended to ensure the integrity of gaming machine operations, as well as providing the Government with the necessary financial information from each gaming machine. The LMOs also supply new and used gaming machines, ancillary gaming equipment and other services, such as maintenance, promotions, jackpots, signage, training and advisory services.

The maintenance of gaming machines is important in guaranteeing the integrity of gaming and minimising the risk of injury to employees and the public.

There were originally eight licensed monitoring operators in Queensland and four currently continue to operate. Each LMO is restricted to a maximum of 40% of total market share. The 40% market share restriction was originally proposed in the Government's 1996 White Paper, to ensure that there were at least three providers of gaming machine monitoring. Prior to the implementation of the White Paper's recommendations, the monitoring of gaming machines was undertaken by the Queensland Government. The objective of the current requirement was to ensure that a minimum of three (3) LMOs continued to operate in Queensland, giving gaming machine venues a wider choice when selecting a LMO and minimise possible monopoly pricing and service standard problems which can accompany undue market concentration.

Section 123 of the Gaming Machine Act also provides that the Queensland Gaming Commission may set conditions that allow the chief executive to approve a greater maximum percentage. However, in making such a decision, the chief executive must take into account the public interest, the proper conduct of gaming and the proper conduct of the LMO's operations. This provision is intended to deal with situations where the 40% limitation is exceeded through changes in the market structure or the acquisition of a new venue's machines for monitoring purposes.

6.5.2 Other Jurisdictions

As a result of the changes that occurred following the implementation of the White Paper policies, the gaming machine monitoring market in Queensland became the most competitive of the Australian jurisdictions.

New South Wales, Tasmania, South Australia and the Northern Territory have only one monitoring operator. In Victoria there is a Government appointed duopoly who also own all gaming machines and lease them to clubs and hotels. Gaming machines are prohibited in clubs and hotels in Western Australia.

The following table summarises the current situation in each Australian jurisdiction.

Table 6.5.2

Jurisdiction	Arrangement
Queensland	No limit of the number of LMOs. However, a LMO's market share in the provision of monitoring services is restricted to a maximum of 40% of the total number of gaming machines.
New South Wales	The NSW TAB has monopoly on monitoring.
Victoria	There is a State Government appointed duopoly of LMOs (TABCORP and Tattersalls).
Western Australia	Gaming machines are not permitted in hotels or clubs.
South Australia	The Government appointed a consortium of the hotel and club peak bodies as the sole monitoring operators.
Tasmania	The Government appointed the casino operator to own and monitor the gaming machines in clubs and hotels.
Northern Territory	UNiTAB monitors all gaming machines in clubs.
Australian Capital Territory	There is no centralised monitoring of machines.

6.5.3 Costs and Benefits

Benefits: Studies of market structure (Kwoka 1979, Bresnahan and Reiss 1991) argue that there is an increased likelihood of effective competition where there are three or more providers rather than in a monopoly or duopoly situation. The benefits of increased competition include the provision of better prices and services and increased levels of choice for consumers.

While there has been a reduction in the number of LMOs servicing the Queensland market, four operators remain — comprising three large LMOs (with two of these approaching 40% market share) and one very small LMO. Therefore, the current market structure has the following benefits:

- Until two LMOs reach the 40% threshold, there remains the potential for gaming machine sites to benefit from price competition. Even then, the chief executive's discretion to relax the 40% limit in the public interest provides some relief from any perverse impact on competition which might otherwise arise.
- Even where two LMOs reach the 40% limit, there remains scope for competition on service standards. Indeed, as the market has matured and prices have stabilised at a fairly uniform level, the standard of service offered to clients has emerged as a key area of competition between the current LMOs.
- Gaming machine sites have a degree of choice not generally available to sites in other jurisdictions where monopoly or duopoly provision of monitoring services applies. In New South Wales and South Australia, where single operators provide monitoring services similar to those provided by LMOs in Queensland, the fees for basic monitoring are \$28 and \$37.40 per gaming machine per month respectively. In Queensland, the basic monitoring fee is about \$15 per machine per month. Comparisons with other jurisdictions are not possible due to differences in fee structures and services provided by monitoring operators.
- The current arrangement reduces the pressure and need for the Government to intervene compared to the situation where monopoly or near monopoly conditions apply. Unlike a statutory monopoly, it provides a discipline on prices and service standards by allowing new LMOs which meet the licensing criteria to enter the market in response to poor performance by incumbents. While the Gaming Machine Act provides for the prescription of fees for basic monitoring services, the success of the current regime means that to date there has been no need to prescribe fees.

The 40% market share limit is not regarded as an issue by LMO clients. Clubs Queensland and Jupiters Ltd, in their submissions on the draft Report, commented that the restrictions should be retained in order to ensure that the current level of competition is maintained. The Queensland Hotels Association did not make any comment on the restriction in its submission. Nevertheless, the Queensland Office of Gaming Regulation continues to monitor the impact of the restriction on LMO fees and service standards, particularly as the two largest LMOs are likely to reach the 40% limit in the near future and the cap on gaming machine numbers reduces LMOs' abilities to grow their businesses through servicing new sites and the expansion of existing sites.

Costs: Despite the fact the current arrangements appear to be working satisfactorily, there are some potential disadvantages which could emerge as LMOs approach or reach the 40% market share threshold.

As this occurs, gaming machine sites will have limited choice in selecting an LMO. Where an LMO reaches the 40% market share, a new or expanding venue would not be able to select that LMO as a monitoring operator unless the operator relinquishes existing machines or sites or the chief executive approves a relaxation of the limit. If a market structure emerges with only three LMOs and two reach the 40% limit, any new venues effectively could be denied the right to choose an LMO. Nevertheless, this is still preferable to the monopoly situation which applies in some other jurisdictions.

LMOs which may wish to focus on attracting large venues (which are generally more profitable to monitor than smaller venues as the cost of monitoring per machine declines with higher number of machines) may be disadvantaged. Any LMO approaching 40% of the market share may be disadvantaged if their clients primarily consist of smaller venues with lower returns. These LMOs may seek to replace less profitable venues with more profitable venues. While there is no clear evidence that this has occurred to date, it is an issue which is continually monitored.

6.5.4 *Alternative*

Removing the market share restriction was considered as an alternative. In the short term, removing the restriction would have little impact on any of the stakeholders. Potential new LMOs, the Government and gaming patrons would not be affected. However, it could increase the pressure for further rationalisation of the market as the two largest LMOs seek to expand their market share at the expense of the other two functioning LMOs.

In the longer term, removing the restriction could have a number of benefits. It could benefit smaller gaming machine sites by reducing the incentive for the larger LMOs approaching the 40% limit to increase their profitability by dropping smaller, less profitable sites, in favour of the larger sites where economies of scale may apply. It could also benefit larger sites by increasing the likelihood of the larger LMOs competing for their custom. It would benefit the larger LMOs by providing another avenue for them to expand their businesses. Potential new LMOs would be unaffected as evidenced by the fact that no new LMOs have entered the market even though there is no restriction on entry other than the normal licensing criteria.

The major concern would be if one operator were to gain sufficient market power by driving smaller operators out of the market and then take advantage of the lack of competition to increase prices to levels above those which applied previously. Service levels could also suffer under such circumstances.

This raises the question of whether existing legislation would be adequate or effective in minimising the potential for abuse by a dominant operator. The most obvious remedy available to aggrieved customers would be under part IV of the *Trade Practices Act 1974* (Cth) (TPA). While resort to the TPA may be an appropriate avenue for larger gaming machine sites, it may not be cost-effective for smaller sites. Also, recent cases based on Part IV also suggest the success of actions taken under this part is uncertain and difficult to predict. The power under the Gaming Machine Act to prescribe fees for basic monitoring services could be used but this would limit the benefits of removing the market share restrictions and would increase government costs.

6.5.5 *Conclusion*

The introduction of the 40% maximum market share restriction was intended to ensure that in the initial phase of transferring monitoring from the Government to the industry, there was a stabilisation of monitoring services. When compared to other jurisdictions, this provision has ensured that Queensland has more competitors in the market and a greater selection of monitoring services for gaming machine venues.

It is considered that continued competition of LMOs is important for limiting prices but more so for ensuring the quality of service is maintained across the state. While there are arguments for lifting the restriction on market share, the current arrangements appear to be working well and, on balance, it would not be in the public interest to remove the restriction at this time. This is supported by the fact that LMO clients do not regard it as a problem and generally support its retention. Further, any adverse impact of the restriction can be tempered by the power of the chief executive to relax the 40% limit in appropriate circumstances.

While it is considered that there is no case for removing the market share restrictions at this time, the Queensland Office of Gaming Regulation will continue to monitor the impact of the restriction on efficient provision of services to gaming machine operators.

7. BUSINESS CONDUCT RESTRICTIONS

7.1 Description of Restrictions

The business conduct restrictions outlined in this section are grouped together primarily because they aim to achieve the same outcome—that is, minimise the harm associated with gambling and enhance consumer protection.

The term “harm minimisation” defines a strategy aimed at reducing the possible adverse effects of an activity. It is a means of assisting the vulnerable by providing limitations on access to certain activities. One of the first areas to benefit from the imposition of harm minimisation principles into legislation was in relation to the regulation of liquor. Soon after, the principles of harm minimisation were also applied to gambling. These principles aim to balance the provision of gambling and the risks associated with excessive or addictive gambling. Overall the principles of harm minimisation are intended to reduce the negative impacts of gambling on individuals, their families and the community.

An important part of harm minimisation is the principle of responsible gambling. In an environment where prohibition is not in accordance with the wishes of the community, this involves the development of a safer approach to gambling through the provision of information and education. It aims at encouraging individuals to be proactive about their own wellbeing and not rely on others, including the Government, to protect them.

The following table describes the restrictions associated with harm minimisation principles.

Table 7.1

Principle	Restriction	Legislation
Adherence to the notion of Harm Minimisation	Advertising restrictions	All gambling legislation
	Restrictions on hours of operation	<i>Gaming Machine Act 1991</i> <i>Keno Act 1996</i> <i>Casino Control Act 1982</i>
	Prohibition on credit betting,	All Legislation
	Exclusion provisions for problem gamblers	<i>Casino Control Act 1982</i> <i>Gaming Machine Act 1991</i> <i>Interactive Gambling (Player Protection) Act 1998</i> <i>Wagering Act 1998</i> <i>Keno Act 1996</i>
	Maximum wager controls	<i>Gaming Machine Act 1991</i> <i>Interactive Gambling (Player Protection) Act 1998</i>
Protection of Minors	Prohibition on minors participating in gambling	All gambling legislation except the <i>Charitable and Non-Profit Gaming Act 1999</i>
	Prohibition on minors purchasing a ticket where liquor is a prize	<i>Charitable and Non-Profit Gaming Act 1999</i>
	Prohibition on the employment of minors in gaming activities	<i>Casino Control Act 1982</i> <i>Wagering Act 1998</i>

7.2 Rationale for Intervention

It is considered that a direct link exists between the accessibility of gambling and the level of adverse impacts from gambling in the community. Following its investigation into Australia’s gambling industries, the Productivity Commission concluded that there is sufficient evidence to confirm a connection between the levels of accessibility to gambling activities and the prevalence of problem gambling²⁵.

²⁵ Productivity Commission: *Australia’s Gambling Industries, Inquiry Report*, Volume 1, The Commission’s Key Findings, p8.24.

7.3 Adherence to the Principles of Harm Minimisation

There are a number of provisions in Queensland's gambling legislation which are specifically intended to minimise the harm which can result from excessive or addictive gambling. These provisions are intended to work together with the Responsible Gambling Code of Practice, which was developed collectively by industry, community and the Government, to form a safer and more responsible environment for gamblers. Each legislative initiative is discussed below:

Advertising restrictions ensure that the odds of winning or the lifestyle impacts which relate to gambling activities are not distorted through advertising. While recognising that advertising may tend to exaggerate possible benefits, it is considered important to ensure that the public is not deceived. Similar restrictions exist in relation to all forms of advertising and business conduct through legislation such as the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1989* (Qld).

Prohibition on credit betting ensures that only those who actually have the money (in the form of cleared funds) to gamble can do so. It is unlawful to place or receive bets on credit or enable a gambler to run a "tab" with a gaming venue. These provisions assist in reducing impulse betting as well as preventing individuals from gambling beyond their financial means.

Exclusion provisions are designed as a "pressure valve" for individuals whose gambling is getting out of control. There is a requirement that the operator of a gaming machine venue, keno operator, wagering operator and interactive gambling provider exclude any person from gambling where there is reason to believe the peace or happiness of that person's family is endangered. Casino operations are also subject to exclusion requirements. The mechanisms for exclusion are specific to the gambling sector involved, but the RGAC is developing a model for mandated self-exclusions and optional venue-initiated exclusions that could be incorporated in all gambling legislation.

Exclusion provisions are considered powerful harm minimisation tools. They serve to raise awareness that some people do become addicted to gambling activities or alternatively gamble beyond their financial means. Also, once removed from the gambling environment, the individual may be able to re-evaluate his or her behaviour in relation to gambling.

Maximum Wager Controls, where implemented, are intended to help prevent individuals gambling beyond their means by limiting the amount which can be wagered in a single bet. Limiting the size of each bet slows the overall rate of gambling and reduces problem gambling.

Restricting the times that certain gaming venues operate means that venues that have trading hour conditions attached to their liquor licence cannot open purely to offer gaming activities to the public. Forcing breaks in play is considered a means of reducing excessive gambling behaviour by patrons vulnerable to the negative impacts of gambling. Other than the casinos in Brisbane and on the Gold Coast, no gambling site operates 24 hours per day—seven days per week, and no club or hotel site operates 24 hours at any time. This restriction is in place as a harm minimisation measure. It is consistent with the Productivity Commission's Report which stated that increased opening hours are likely to exacerbate problem gambling by leading to longer durations of play and greater expenditure by problem gamblers.²⁶

7.3.1 Achieving the objects of the Legislation

The NCC noted that the Productivity Commission had identified probity, harm minimisation, and consumer protection as acceptable rationales for restricting gambling activity. While it identified certain restrictions which it considers acceptable to meet these objectives, it also acknowledged that there may be other restrictions governments wish to use to achieve these objectives. In such cases the NCC advised that the

²⁶ Productivity Commission; *Australia's Gambling Industries*, Volume 2 Report, July 1999, p 16.53

government need not argue the rationale for the restriction is a net public benefit, only that the restrictions are the only way to achieve the outcome²⁷.

Clearly these business conduct restrictions intend to achieve the principles of harm minimisation and consumer protection. They do so by tempering access to gambling, and focusing on ensuring that participants take a break from the gambling activity from time to time. These measures are also designed to prevent a gambler from losing track of the amount they are gambling, including requiring them to leave the gambling environment if they choose to use an ATM and the prohibition on credit betting.

These provisions are designed to operate simultaneously with a number of voluntary harm minimisation provisions which have been adopted jointly by the Queensland Government, the gambling industry and community groups.

7.3.2 Other Jurisdictions

All jurisdictions have in place business conduct restrictions aimed to minimise the harm associated with gambling. In addition, all have in place mandatory or voluntary industry codes of practice, although the extent of the codes varies between jurisdictions. It is considered that the codes of conduct and the legislated harm minimisation provisions work together to reduce the negative impacts associated with gambling. Note that, in virtually all jurisdictions, increasing concerns at the socially undesirable consequences of gambling have resulted in increasing levels of community protection through the imposition of responsible gambling measures. While the measures employed in the various jurisdictions differ, the overall intent of each jurisdiction is similar.

7.3.3 Conclusion

Responsible gambling is necessary to reduce the potential negative impacts that gambling activities can have on individuals, their family and the community as a whole. Incorporating the principles into legislation is fundamental to meeting the objectives of the gambling legislation under review. Further, the principles of responsible gambling which are enshrined in Queensland's gambling legislation provide a framework for the operation of the *Responsible Gambling Code of Practice* which is a joint initiative of the State's gambling industry, community groups and the Government.

7.4 Protection of Minors

The provisions which prohibit minors from participating in gaming activities regardless of whether there is parental or guardian consent is intended to unequivocally exclude minors from participating in gambling activities. If minors do participate in gambling activities in breach of the legislation, the minor and the operator/agent that enabled the minor to gamble may both be guilty of an offence under the relevant legislation. Further, if a minor wins a prize in a game in breach of the legislation he or she forfeits the right to claim the prize (in the case of the Casino Control Act) or the prize will be held in trust until that person reaches 18 years of age (in most other cases, including for example the Lotteries Act).

Supporting these provisions is the restriction on minors being able to be employed in any capacity that requires them to be directly involved in the operation of gambling activities under the Wagering and Casino Control Acts.

An exception to this general rule regarding minors and gambling is the area of charitable and non-profit gaming where participation by minors in roles such as ticket sellers in school raffles has been a long tradition.

Additionally, a recent review of the participation of minors in charitable and non-profit gaming confirmed the view that 70% of submissions supported minors selling tickets in these activities. As charitable and non-profit gaming activities provide a significant source of funding for many institutions which aid children, including schools, minors are not generally prohibited from purchasing tickets for non-profit fundraising

²⁷ National Competition Council, *Regulating gambling activity: Issues in assessing compliance with National Competition Policy*, October 2000, p 5.

purposes. However, the Liquor Act prohibits minors from purchasing liquor from licensed venues. The inclusion of the restriction on minors purchasing tickets in charitable and non-profit games that contain liquor as a prize was considered prudent and consistent with other Government legislation.

7.4.1 *Achieving the Objects of the Legislation*

Consideration has been given to whether the objects of the legislation can be met by any other method. Prohibiting the participation of minors in gambling activities is considered essential to ensure that gambling is undertaken in a manner which minimises the potential for harm, by explicitly protecting minors in the legislation. This is consistent with other products such as tobacco and alcohol.

Therefore, there are no other non-legislative means of achieving the objects of the legislation in relation to access to gambling by minors.

7.4.2 *Conclusion*

The prohibition of minors from participating in gambling activities should therefore be maintained to protect minors from the potential risks of developing gambling problems later in life. This harm minimisation mechanism is in line with the Government's ongoing commitment to balancing the social and economic costs and benefits of gambling.

8. EXCLUSIVITY ARRANGEMENTS

8.1 Description of Restrictions

The ability to operate commercial gaming activities is restricted to persons licensed to do so under the relevant piece of legislation. However, in addition to this, some current gambling legislation contains specific provisions that enabled the Government to issue, in the first instance, exclusive licences to certain gambling operators. These exclusivities are:

Lotteries:	Initial period of exclusivity for lottery licensee;
Keno:	Initial period of exclusivity for keno licensee;
Wagering:	Initial period of exclusivity for sports wagering and race wagering licensee; and
Casinos:	Game exclusivities and an initial period of geographic exclusivity for each licensee.

These exclusivities can be described as a restriction on entry to the market, because they prevent potential gambling providers from obtaining a licence to conduct certain gambling activities within the period or locale of exclusivity. Essentially, the exclusivities enable the licensee to operate without direct competition from a gaming provider offering a similar gambling product. However, notwithstanding the existence of product exclusivities, competition within the broader gambling industry certainly exists. For example, there is competition between lotteries and keno and between venues offering gambling facilities.

In the case of lotteries, keno and wagering, the exclusive licences have been issued to the initial licensees only. Once the period of exclusivity expires or the licensee forfeits the right to hold an exclusive licence, the Government may issue other licences as it sees fit.

The casino exclusivities vary in that four licences have been issued. However, each licensee was granted an initial period of exclusivity to operate a casino within a determined geographical location. In addition, casino licensees have exclusive rights to operate casino table games, including blackjack and roulette throughout Queensland. However, there is competition from licensed clubs and hotels which offer gaming machines in direct competition with the casinos. This is of considerable significance given the increasing dependence of casinos on gaming machines, rather than table games, for their revenue.

8.2 Rationale for Intervention

The rationale for the granting of these exclusivities varies slightly between each piece of legislation, but there are some overriding reasons for the inclusion of these restrictions.

The major commercial forms of gambling require extensive capital investment to ensure their operational and commercial viability. In particular, the casino licensees were required to invest large amounts in the development of hotel-casino complexes to house their gambling activities. The Government's intention in this regard was to generate additional tourist facilities in each of the regions where a casino was established. It has been estimated that the combined development and licence costs associated with establishing the four Queensland casinos was approximately \$778,000,000.

Notably, in the case of the Brisbane and Cairns Casinos, the licensees were required to make very significant cash contributions towards the construction by Government of the Exhibition and Convention Centre facilities in the two cities, in addition to meeting rigorous requirements for the construction of the hotel-casino facilities themselves.

The geographic exclusivity of the Gold Coast and Townsville casinos has already expired. The other casinos each have only a relatively short period of time remaining in relation to the geographical exclusivity.

The exclusivity on the operation of casino games is to ensure that only casino licensees operate casino table games (a list of table games is provided in section 2.1). It is these games which, in effect, differentiate a casino from other gambling venues. Without this restriction, it is likely that there would be a proliferation of casino type gaming throughout the State. In addition to the social impacts of such an occurrence, it would reduce the value of the licences held by each casino operator which underpinned the initial very high fees given to the State.

There were also substantial costs associated with the establishment of the State-wide Keno game, licensed under the Keno Act. While there is no express exclusive agreement issued under the legislation, the current keno licensee has been granted an initial period of exclusivity as part of the licence agreement. This agreement recognises the significant costs associated with developing a State-wide network which would enable the conduct of the game of keno throughout Queensland in a technologically advanced and secure way.

It was considered necessary to permit the keno operator to develop short and medium term viability in recognition of the costs associated with commencing these gaming operations. If this had not occurred, it would be likely that the investment and the resulting economic benefit associated with these activities would have relocated out of the State.

While the situation in the case of lotteries and wagering was slightly different, in that the operating networks were, for the most part, already established, there were some overriding similarities. Both of these gaming operators had been State-owned operations, conducting business in a monopoly environment without commercial pressures. In both cases, operating surpluses were returned to the Government's consolidated fund, and for wagering, to provide financial assistance to the racing industry.

It was considered that granting these two operators an initial period of exclusivity (12 years for the lotteries operator and 15 years for the wagering operator) would ensure their successful transition from government entities to commercial ones. The process of enacting the Lotteries Act and the Wagering Act was undertaken in conjunction with the corporatisation of the Golden Casket Lottery Corporation (as a Government Owned Corporation) and the privatisation of the TAB Queensland. The issuing of exclusive licences coincided with and supported these activities.

To deny these operators an initial period of exclusivity could have led to a dramatic decline in the profitability of their operations, as well as their viability, which would have ultimately led to a decline in public confidence in commercial gambling activities. The exclusivity periods were considered a means of enabling these operators to develop as commercial entities while fostering short and medium term commercially viable operations.

Experience to date does not suggest that exclusivity arrangements have inhibited the introduction of new technology or games. Due to the ready availability of gambling opportunities within and outside the State, providers must strive to continually update the product range. Casinos and UNiTAB are publicly listed companies which are answerable to their Boards and shareholders, and are therefore accountable for their bottom line performance. It is worth noting that the increasing mobility of key players (physically in the case of casinos and via telecommunications devices in the case of wagering and lottery activities) ensures that price and product offerings are subject to national (and sometimes international) competition.

8.3 Other Jurisdictions

The table below summarises the current exclusivity arrangements in relation to gambling products. Note that most jurisdictions have adopted exclusivity arrangements similar to Queensland's restrictions.

Table 8.3

Jurisdiction	Lotteries	Keno	Casino	Wagering
Queensland	GCLC - until 2009	Jupiters —until 2007 GCLCL may be issued licence after 2007— compensation payable	4 Casinos—perpetual exclusivity for casino games	UNiTAB until 2013
New South Wales	NSW Lotteries — until 2007	Club Keno— Casino—Jupiters until 2007	Star City—NSW wide exclusivity until 2007 (fixed tax regime)— 2037 (Government will not enact legislation that will extinguish casino gaming)	TAB Ltd until 2013
Victoria	Tattersalls—until 2007	Tattersalls and TABCORP each have exclusivity— 2012.	Crown—state-wide exclusivity until 1999. 150km radius exclusivity until 2005	TABCORP until 2012
South Australia	Lotteries Commission of SA—Government owned	Lotteries Commission of SA—Government owned.	No exclusivity but Government does not intend to grant another licence	UNiTAB until 2016
Western Australia	Lotteries Commission of WA—Government owned	Burswood Casino operates in casino only	Exclusivity expired in 2000 but conditions on type of casino licence which may be granted within 100km of Burswood Casino.	WA TAB (Government owned)— perpetual exclusivity
Australian Capital Territory	NSW Lotteries and Tattersalls—no exclusive arrangement	Tattersalls, ACTTAB (both operating) and Casino Canberra (not operating)— no exclusive arrangement	Exclusivity until 2012	ACTTAB— exclusivity for totalisator until 2016. No exclusivity for sports wagering or race wagering.

Northern Territory	Tattersalls and the Australian Lottery Company—no exclusivity arrangement	MGM-Grand—Nth 2015 Lasseters (sub agency agreement)—Sth 2018	MGM Grand (North) is exclusive until 2015 and Lasseters (South) is exclusive until 2018	UNiTAB until 2015
Tasmania	Tattersalls—no exclusivity arrangement	TAS-Keno—perpetual exclusive arrangement	Wrest Point and Launceston licensed to Federal Group of companies—exclusivity until 2009	TOTE Tasmania—no exclusivity

8.4 Costs and Benefits

Costs: The issuing of any exclusive licence prevents potential gambling operators from entering the market. This may have an adverse impact on other gambling and potential gambling operators in the State. It limits the gambling operations of existing providers, for example, the keno licensee cannot sell lottery products for the term of the lottery exclusivity.

It could be argued that this potentially imposes a limit on the varieties of gaming products offered and could therefore have a negative impact on consumer choice. Also, increased consumer choice may lead to price advantages for gaming participants. Further, if there were numerous licensees offering competing products, incentives and discounts, new cheaper gambling products may be offered to participants.

It could be argued that an exclusive licensee may be reluctant to invest in new technology or games, whereas a competitive environment would promote the development of new gaming opportunities. This would give participants in gambling activities choices that they may currently be denied. However, it should be noted that with the periods of exclusivity coming to an end and providers increasing competition by utilising new forms of technology, the current experience is that the lottery and wagering licensees are continually developing new and innovative products, in order to maintain market share. This is reinforced by the level of competition between products for the gambling dollar and with other pursuits for the leisure and entertainment dollar.

Benefits: The issuing of exclusive licences in the first instance has enabled the casino operators to establish secure and financially viable gambling operations in this State. Pivotal to the success of their respective operations has been the initial outlay of capital that has ensured state of the art development of gaming venues, including the hotel-casino complexes. These hotel-casino complexes have become tourist attractions in their respective geographical locations and have resulted in positive benefits to economic activity in their respective communities.

In addition, the success of the hotel-casino complexes has had a positive impact on employment, with thousands of people employed in both gambling operations as well as the general hotel areas. The employment generated by the hotel-casino complexes also has had a positive flow-on throughout the community, by creating stability in creating employment opportunities and increasing the demand for goods and services in the community.

Supporting this success has been the inclusion of exclusivity arrangements relating to the operation of casino type games. The success of Queensland's casinos would not have been achieved if a proliferation of casino type gaming in venues outside the licensed casinos had been allowed to occur. However, the Government has proven its commitment to addressing exclusive arrangements with the establishment of state-wide Keno.

Prior to it going state-wide, Keno was a casino game and was subject to the same perpetual exclusivity as other casino games. Subsequently, the Government entered into a time-limited exclusivity for the length of the Keno licence, which means that at the end of the exclusivity period, the Government may issue

further Keno licences. The Government considered it necessary to enter into a time-limited exclusivity to avoid significant compensation to the casinos.

While not required to develop hotel complexes, the wagering, Keno and lotteries licensees were nevertheless required to put in place extensive infrastructure to facilitate the delivery of their respective products. For example, the State-wide Keno network had very high start up costs, including rolling out the network and attracting venues to offer their products.

The lottery licensee was issued an exclusive licence until 2009 as a means of ensuring the continued short-term viability of existing lotteries in Queensland. It should also be noted that, as the lottery licensee is a Government Owned Corporation, its continued success directly benefits the people of Queensland.

In exchange for its exclusive licence, UNiTAB ensures that the majority of the State is serviced with on-line totalisator facilities and that the Queensland racing industry continues to provide a racing service which punters across the State can bet on. Without such an arrangement, it is likely that the Queensland racing industry be significantly reduced and Queensland punters would only be able to bet on interstate or overseas race meetings. The implications of this to the Queensland economy would be far reaching, as many rural and regional communities rely on the racing industry for their economic survival.

Importantly, the Queensland racing industry will continue to receive payments from UNiTAB to assist the viability of the industry. The industry employs in excess of 20,000 people and is important to Queensland economy.

It is recognised that the exclusive licences may limit the availability of gambling products and the sites from which they are offered. Such limitations are considered appropriate given the Government's commitment to reducing overall growth in the accessibility to gambling in line with its commitment to the principles of harm minimisation. Restrictions on the availability of gambling products ensure that those adversely affected by gaming are not able to access any type of gaming product from any type of venue. The exclusive licences effectively prevent the proliferation of gambling in the community, without stifling innovation.

Further, gambling is a national (and increasingly international) market, thus operators review operations in other jurisdictions and implement changes in order to remain competitive. Therefore, the perceived lack of competition within the State does not lead to a poorer product.

Achieving Objects of Legislation

The provisions which have enabled initially exclusive licences of limited duration to be issued to certain Queensland gambling providers ensure that the objects of the legislation are met by guaranteeing that gambling continues to take place in an appropriately regulated and controlled environment. The exclusive licences have ensured that gaming and wagering activities are offered to all Queenslanders who wish to participate in such activities in a manner that does not encourage excessive gambling behaviour or promote the ad hoc proliferation of gambling.

The restriction placed on the offering of casino games is purely a means of ensuring that such gaming activities occur only in regulated casino environments. The cash nature of casino games requires very high levels of oversight through Internal Controls, Rules, proper training and enough surveillance to ensure their integrity. These are only possible in a highly regulated environment such as a casino. Without the legislative restrictions there would potentially be a proliferation of inadequately supervised casino gaming activities.

8.5 Alternative

8.5.1 Removal of Exclusivity Provisions

To remove the provisions relating to exclusive licences under the various pieces of gambling legislation would, in the first instance, expose the Government to extensive compensation claims by the holders of these licences, thus placing a severe financial burden on the State. Each exclusive licence was

negotiated and signed as a commercial contract and, accordingly, contains provisions which, if breached, would allow the aggrieved party to claim compensation. As the licences have attached to them substantial compensation clauses, and because of the possible high amounts of financial loss facing the existing licensees, these claims would be significant.

Each licensee has made commercial and business decisions on the basis of its exclusive licence and to remove the exclusivity arrangements from the licence would be of considerable detriment to the existing licensees. The sovereign risk involved would be that the removal of exclusivity would reduce the credibility of the Government in the financial markets and result in the State being seen as a 'risky' place in which to do business.

The removal of the exclusive licences would also signal that the Government is encouraging the proliferation of gaming activities throughout the State. Given that the existing exclusivity arrangements are for finite periods, it is considered appropriate to allow the existing exclusivities to expire rather than revoke them.

8.6 Conclusion

The maintenance of the exclusive licences issued under Queensland gambling legislation should remain in force until the exclusivity period for each expires. This will ensure the viability of the newly corporatised and privatised entities, as well as enabling those licensees who invested large sums of capital as part of their licence agreements to recoup that expenditure. This will also mean that the need for the Government to make compensation payments for breach of contract will be avoided. Once the initial periods of exclusivity have expired the Government will be free to issue licences on a case-by-case basis.

The maintenance of these exclusivities for the time being will limit the proliferation of gaming and wagering activities in the State in the short term and ensure that gambling activities are offered in a way that offers integrity and trust in the system and promotes responsible gambling and harm minimisation.

9. REVENUE SHARING

9.1 Description of Restriction

Section 189(1) of the Gaming Machine Act provides:

A licensee or any other person must not enter into, or be a party to, any lease, agreement or arrangement for a person to lease, let, lend or otherwise provide any property or thing to furnish any service to the licensee in return for any direct or indirect interest in or percentage or share of-

- (a) *the amount bet for the purpose of gaming; or*
- (b) *moneys, revenues, profits or earnings from the profits of gaming;*

on the licensee's premises.

The purpose of this provision is to ensure that gaming machine licensees retain control over the gaming machine operations at their venue. It also prevents revenue from club gaming machine operations being diverted from the obligation of the club to expend their revenues for the benefit of their membership and the community and.

It was considered that enabling third parties to enter arrangements with gaming machine licensees could potentially have an adverse effect on the integrity of gaming machine operations. Effectively, such commercial arrangements could enable individuals who would not be able to acquire a gaming machine licence (because they could not meet probity standards) to effectively have a position of influence over a gaming machine licensee's operations. In other words, there was concern that commercial agreements and arrangements could become a "back door" entry to the industry for people who would not otherwise be considered suitable to obtain a gaming machine licence.

Amendments to the Gaming Machine Act have provided for the licensing of Monitoring Operators who can make commercial agreements with venues in relation to the provision of gaming machine monitoring and other services. To accommodate the introduction of LMOs in Queensland, section 189 was amended and section 189(6) inserted:

[Section 189(1)] does not apply to an agreement between a licensee and a licensed operator for electronically monitoring the licensee's gaming machines in conjunction with supplying other services.

After the commencement of this amendment in 1997, one of the LMOs began offering, as an option, agreements which involved the provision of services, including gaming machines, in exchange for a share of gaming machine revenue. The revenue sharing arrangements which LMOs began offering was an unintended consequence of the amendments which facilitated the introduction of the competitive monitoring of gaming machine venues.

This caused concern in many areas of the industry and the community. In particular, there was concern that the objectives of clubs that are to benefit club members and the community were being undermined by these agreements. The continued concern over such agreements prompted the Government to amend section 189(6) as follows:

[Section 189(1)] does not apply to an agreement entered into between a licensee and a licensed operator for electronically monitoring the licensee's gaming machines in conjunction with the supply of services relating to the installation or operation of a linked jackpot arrangement on the licensee's premises.

Linked jackpot arrangements are exempted because the implementation of linked jackpot systems means that revenue from the participating venues is shared in the linked jackpot prize trust fund. Consequently, the winner of a particular prize would be sharing revenue from the other participating venues. The revenue sharing in this sense is in relation to the creation of a larger prize pool only and not contrary to the club ethos.

9.2 Rationale for Intervention

All Sites

The original intention of the Gaming Machine Act was to prohibit the entering of revenue sharing arrangements with third parties that were not the holders of the gaming machine licence. Modifications to the Gaming Machine Act were undertaken to allow for the monitoring of gaming machine operations by private organisations, under a licence arrangement. These modifications did not intend to change any other aspect of the legislation, including the ability for gaming machine venues to enter into arrangements with third parties who were not directly licensed to operate a gaming machine venue.

Further, it is considered that the prohibition on revenue sharing does not preclude gaming machine sites from obtaining financial assistance for the expansion of their business through other conventional means, such as loans from financial institutions.

In short, the Government maintains its policy that no other party should have undue influence over the operations of a gaming machine licensee's operations. This is important to the integrity of the industry.

Clubs

The Gaming Machine Act provides that the only clubs that may apply for gaming machine licences are those whose memorandum and articles of association, rules, constitution or other incorporating documents provide that the income, profits and assets of the club are to be applied solely for the promotion of the club's objects and the payment, or the distribution of income, profits or assets of the club among its members is prohibited. Therefore, the legislation clearly intends to ensure that the revenue clubs obtain from the operation of gaming machines should be used to help the club achieve its community and social obligations.

In this regard, the Gaming Machine Act reflects the principle that clubs exist to benefit the community. They are non-profit organisations that benefit from a special standing in the economy in recognition of their unique nature. In addition, clubs enjoy advantages in relation to taxation and structural issues which are not granted to other money making organisations because the revenue generated from clubs flows directly back to the community.

The Government believed that if clubs were allowed to enter into revenue sharing arrangements with LMOs or other parties, there would be scope for the other party to develop a quasi-equity position and gain effective control of the clubs' operations. This would reduce the capacity of the clubs to provide the services to members for which the club was originally established.

Another concern was that the longstanding Government commitment to assist clubs in providing the sporting, cultural and other community services for which they were formed would be eroded.

9.3 Other Jurisdictions

In Queensland, the LMOs and the gaming machine venues have developed a number of types of agreements ranging from basic monitoring to complex arrangements including additional services such as leasing of gaming machines and the provision of promotional advice and products. This situation is not replicated in any other Australian jurisdiction mainly because of the absence of fully competitive monitoring services in any other jurisdiction.

Section 5 of this paper summarises the current situation in relation to the monitoring of gaming machines in each jurisdiction. It should be noted that, in Victoria and New South Wales, there are revenue sharing arrangements in place. However, in New South Wales, monitoring services are conducted under a monopoly situation and there is no significant negotiation process as to the percentage of contribution made to the monitor. Similarly, Victoria operates a duopoly, and it is understood that an LMO has standard arrangements with each gaming machine venue. However, in Victoria, machines are owned by the LMO and not the site and thus an LMO can remove a gaming machine from a site if it considers it would be more profitable to allocate it to another venue.

The high level of competition in Queensland has made way for the development of innovative financing and servicing arrangements by the LMOs. Given the need to maintain probity in the conduct of all forms of gambling, it is considered prudent to ensure that LMOs are not able to obtain financial interests in the operation of gaming machine venues.

9.4 Costs and Benefits

The primary cost of the prohibition on revenue sharing is the potential additional profit which could be obtained by LMOs or other entities. The prevention of LMOs from entering profit-sharing contracts with sites may also have an adverse effect on the sites in question.

However, it is also important to note that the prohibition on revenue sharing does not prohibit gaming machine venues from obtaining finance for the expansion of their business through conventional means, such as loans from financial institutions. What the restriction prohibits, is the entering of arrangements which enable an LMO or any other party to obtain a percentage of profits from the operation of gaming machines in return for financial or other forms of assistance.

The benefit of the restriction on revenue sharing is to ensure that gaming machine venues operate without the potential for influence from third parties. In addition, the restriction will maintain the non-profit nature of clubs in Queensland.

9.5 Alternatives

There have been no alternatives identified which would achieve the Government's objectives relating to maintaining the independence and integrity of the operation of all gaming machine venues in Queensland and maintaining the non-profit nature of clubs.

Where revenue sharing occurs in other jurisdictions, a monopoly (or duopoly) of gaming machine monitoring services occurs and there is no commercial discretion for gaming machine venues when entering into the arrangement.

9.6 Conclusion

Given the Queensland Government's commitment to the overall integrity of gambling and to the viability of club and hotel industry, the prohibition on revenue sharing is considered to be in the public interest.

10. RESTRICTIONS ON WHERE GAMING PRODUCTS MAY BE SOLD

10.1 Description of Restriction

Queensland's gambling legislation contains restrictions relating to the places where gaming products may be sold. Relating closely to this restriction are the controls placed on who may sell gaming products and, in particular, who may be appointed as agents. These restrictions are contained in the:

- Keno Act and its Regulation;
- Lotteries Act and its Regulation;
- Wagering Act and its Regulation;
- Casino Control Act and its Regulation;
- Interactive Gambling (Player Protection) Act and its Regulation; and
- Gaming Machine Act and its Regulation.

The Keno legislation identifies the persons with whom a keno licensee may enter into an agency agreement. These are: a body corporate that holds a club licence; the holder of a general liquor licence; the holder of a prescribed liquor licence; a casino licensee; a casino operator; UNiTAB and a subsidiary operator (which are defined as sub-agents under the legislation).

These agents are only permitted to operate keno in areas that are identified in the legislation. The areas are: for liquor licensees, part of the premises where the sale and consumption of liquor is permitted under their licence; for casino licensees or operators, the premises where the relevant casino licence relates; for UNiTAB, the approved place where the totalisator is operated.

The Lotteries legislation also restricts who may be appointed as an agent. The persons with whom the lottery licensee may enter into agency agreements are the owner and controller of a small business that is a retail business or is operated or intended to operate from retail shopping premises, retail business premises or other commercial premises or offices. Certain businesses are excluded from this restriction on the basis that they were already operating at the time that the Lotteries Act commenced²⁸.

The Wagering legislation contains similar restrictions. The wagering licensee may only appoint a person who is intending to carry on operations as an agent of the licensee, whether or not it is their primary business activity. While this is extremely general, venues where agents may conduct wagering business operations is more specific. In particular, a race club may only conduct agency operations from a racing venue. A retail business may only conduct agency operations in a retail shopping premises or other commercial premises that are approved (including, in some cases, temporary sites). A casino licensee and operator may only conduct agency operations at the premises where the casino licence relates and

²⁸ The Lotteries Act also defines a small business as a business which: is wholly owned or controlled by an individual or individuals in partnership or by a proprietary company within the meaning of Corporations Law; that is managed by the owners or directors; that is not a subsidiary of, or forms part of, a larger business or enterprise; and which does not employ more than 50 persons. If more than 50 persons are employed the total number of hours worked by the employees must not be more than 2,000.

similarly a liquor licensee may only conduct agency operations at the venue where the liquor licence relates.

Gaming machines are only allowed to be operated in clubs and hotels (outside of the licensed casinos) in accordance with the provisions of the Gaming Machine Act. The legislative framework has been developed to explicitly prohibit the operation of gaming machines in venues which can be described as “convenience gambling” sites, for example shopping centres and movie theatres.

Ultimately, these restrictions all have similar impacts. They place limitations on the places where the gambling products may be sold as well as the types of businesses that may distribute gambling products. This has the impact of limiting the appointment of persons to sell or distribute gambling products and possibly prevents certain persons who wish to sell or distribute gambling products from doing so.

This restriction can be described as a barrier to entry for persons wishing to enter agency agreements with a gaming licensee or become a gaming machine licensee. It also has the effect of limiting the venues from where these gaming products are available (i.e. the customer’s ability to access gaming products), as well as potentially impacting on an agent’s or licensee’s ability to access customers.

10.2 Rationale for Intervention

The rationale for restricting the types of businesses that may operate as agents for the sale of gaming products is fundamentally linked to the commitment to restrict availability of gaming activities in the community. In general, it is considered that there are currently ample opportunities for those wishing to participate in gambling to do so and to expand the types of gambling venues available would not accord with the Government’s commitment to harm minimisation and responsible gambling.

This is especially the case given the Productivity Commission’s identification of a link between accessibility of gambling products and the extent of problem gambling.

In the case of keno, the restrictions were introduced to ensure that the game of keno was available only at casinos, hotels, clubs and Queensland UNiTAB agencies. It is worth noting that initially, keno was only available in casinos in Queensland. After a period of negotiation it was expanded to hotels and clubs and then to UNiTAB agencies. The rationale for this was that keno was seen as a relaxing game that a person or groups of persons could participate in while enjoying other activities, for example, while having a meal at a hotel or club. To expand the availability of the game beyond the current venues would increase the game’s availability to the community and, possibly, lead to an increase in the number of people who participate in keno gaming excessively.

A similar rationale was adopted in relation to wagering. The controls on agents and venues were intended to capture all existing venues without allowing any further expansions in the availability of wagering. At the commencement of the Wagering Act, totalisator facilities were accessible at race clubs, hotels, clubs, casinos and Queensland UNiTAB agencies. The new legislation intended to ensure that the types of venues that could offer totalisator facilities did not expand beyond the existing venues.

In addition to preventing the proliferation of gambling in the community, the controls in the Lotteries Act also focussed on maintaining the traditional marketing strategy for lottery products. That is, they were to be sold through newsagencies and small businesses. There was concern that, in addition to promoting proliferation in the availability of lottery products, enabling larger businesses, (such as supermarkets) to offer gaming products would lead to financial difficulties for many small businesses in Queensland, which have benefited from lottery sales revenue, particularly in rural and regional locations.

There were also practical concerns to operators, such as:

- the cost of providing point of sale terminals and communication equipment for the lottery, wagering and keno systems;
- the orderly marketing of a product —operators do not necessarily want several agencies within a small area as it may adversely affect relations with agents; and

- control over access; eg to ensure minors could not purchase products.

Ultimately, these restrictions are considered fundamental to ensuring that gaming is conducted only in specific approved types of areas and prevented from proliferating throughout the community. This is an important means of protecting the public from over exposure to gambling products and accords with harm minimisation principles. It also is a means of ensuring that gambling products are not sold through inappropriate means, such as telephone or door-to-door selling.

The restriction of gaming machine venues is considered fundamental to limiting the harm associated with gaming machines in the community.

10.3 Other Jurisdictions

All jurisdictions place restrictions on where certain gambling products may be sold. Gaming machines are limited to hotels, clubs and casinos in all jurisdictions other than Western Australia, where gaming machines are only permitted in its casino, and the ACT, where gaming machines in the casino are prohibited. In all jurisdictions wagering is restricted to TAB agencies, hotels, clubs, casinos, telephone and on the Internet. The restrictions on where lotteries are sold are consistent in all jurisdictions. It is widely accepted that lottery products are sold in retail outlets such as newsagents, in remote areas general stores or kiosks (and Lotto Outlets in NSW). It should be noted that in Queensland, the commercial criteria for lottery agencies is set by the lottery licensee. The restrictions on keno vary among all jurisdictions. Of all jurisdictions keno is most available in Queensland, where it can be played in clubs, UNiTAB agencies, hotels and casinos. Other jurisdictions differ in that some restrict keno to casinos or clubs or hotels but not all.

10.4 Costs and Benefits

Costs: There are two potential costs associated with the restrictions on where keno, wagering and lottery products may be sold. The first cost relates to the restrictions on consumer access to gambling products and the inconvenience that may arise for consumers who wish to participate in these gambling activities. By requiring consumers to purchase these gambling products from designated outlets, consumer choice is limited to some extent. Individuals may find it inconvenient to participate in a gambling activity that they would otherwise enjoy. However, this argument could be challenged on the basis that lottery products are available from a high percentage of newsagencies and keno is available in a most hotels, clubs, UNiTAB agencies and all casinos. Furthermore, the intervention by the Commonwealth has ensured that instant and repetitive lotteries and keno cannot be offered to Australian residents on the Internet. This places a further restriction on where products may be sold, particularly in rural and remote areas that do not have ready access to these products.

The other cost is incurred by potential businesses wishing to sell gambling products that do not satisfy the criteria to be appointed as an agent under the legislation. These businesses are denied revenue from customers who may make other purchases or transactions while participating in gambling products. In relation to lotteries, the provisions dealing with business are also restrictive because the eligibility to be appointed as an agent also rests on the size and ownership of the business rather than solely on the type of business. This places an additional restriction on large businesses.

The cost of restricting gaming machines to hotels and clubs could be seen to have a negative impact on other potential gaming machine venues. However, all jurisdictions have applied restrictions on the accessibility of gaming machines.

Benefits: The restriction on where certain products may be sold is consistent with the Productivity Commission's findings that there is a positive link between the accessibility of gambling products and problem gambling. If jurisdictions lifted the current restrictions on where products may be sold then the potential for a recreational gambler to become a problem gambler is exacerbated. For example if the restrictions on gaming machines and keno were removed and products were subsequently available in shopping centres, the potential for a person developing a problem is increased due to the easy access to a number of products.

Furthermore, if the restrictions on casino games were removed and the games were able to be played in hotels or clubs, the potential for the compromising, the integrity of gaming would be greatly increased.

In the case of keno and wagering, requiring a person to attend specific premises, such as a casino, hotel, club or UNiTAB agency means that the person has made a conscious decision to do so and is not purely acting on a whim. This is an important aspect of the Government's Responsible Gambling Policy. It ensures that those who are vulnerable to excessive gambling habits can avoid being exposed to these gambling activities by avoiding the specific types of venues from which they are sold.

While it is considered appropriate to place some restrictions on their availability, it is generally acknowledged that lottery products pose less of a threat to the community, through abuse, than other forms of gambling. However, instant lottery products (scratch-its) provide the high play repetition rate and increased potential for players to gamble winnings that are associated with problem gambling issues for gaming machines. This means that while lottery products are available more freely in the community, they are still restricted to specific types of venues. In addition, the sale of lottery products from small businesses is considered a positive commitment to assisting small businesses in Queensland. The Government believes that allowing the proliferation of lottery products to large retail outlets could cause financial hardship for many small businesses in the State. Given the contribution these businesses make to the State's economy, including employment levels, the maintenance of the agency requirements is considered to be of considerable overall benefit. This is particularly true in the State's regional and rural areas where the continued viability of small businesses is fundamental to the continued survival of many communities.

The restriction on the access to gaming machines is considered fundamental to achieving harm minimisation in gambling. As mentioned by the Productivity Commission, it is now readily acknowledged that the increased levels of access to gaming machines has increased the level of harm associated with gaming machines.

There are clear benefits associated with the current restriction relating to access to gaming machines. These restrictions protect the public interest by ensuring that there is not an excessive availability of gambling products in the community. It also ensures that gambling products are not sold through canvassing or other high pressure methods.

10.5 Alternative

Removal of the restrictions on the types of businesses that can offer gaming machine, keno, wagering and lottery products could lead to a dramatic proliferation of gambling activities in the State. The gambling operators would be free to appoint any site in the State as an agent subject to practical issues relating to their State-wide networks, which could lead to gambling products being made available through most retail outlets. In fact, agencies may even extend beyond retail sites. This would have the potential to significantly increase the extent of gambling and increase the incidence of problem gambling in the community. While it may be argued that market forces may dictate the level of supply of gambling products/venues to meet demand, the Government has an overriding obligation to address for the social costs of widespread gambling.

Therefore, deregulation would not be an acceptable alternative.

10.6 Conclusion

It is considered that the restrictions on where gambling products may be sold or conducted are justified in the public interest. They are essential to ensuring that these gambling activities are offered through specific types of venues and that availability is not permitted to proliferate freely throughout the community. As previously mentioned these restrictions meet two aims; the first is a harm minimisation mechanism by limiting accessibility (i.e. Productivity Commission's findings) and the second is to maintain the probity and integrity of gaming.

11. MISCELLANEOUS RESTRICTIONS

11.1 Description of Restrictions

There are a number of other restrictions which require examination to ensure that they meet the requirements of National Competition Policy. Generally these restrictions aim to ensure the continued integrity of the gambling industry and provide a secure framework within which gambling can be lawfully conducted.

The restrictive provisions are summarised in the table below.

Table 11.1

Restriction	Legislation
Minimum percentage returns to players	All Queensland gaming legislation
Prohibition of products provided by non-licensed providers	All Queensland gambling legislation except the Charitable and Non-Profit Gaming Act
Prohibition on advertising and marketing of products of non-licensed providers	All Queensland gambling legislation except Charitable and Non-Profit Gaming Act
Requirement for equipment approvals	All Queensland gambling legislation

Despite being implemented to achieve the overall objectives of the legislation, the restrictive impacts of these provisions vary.

11.2 Rationale for Intervention

On the whole these provisions are designed to ensure that the business operations of gambling providers are always conducted in a manner which is responsible and accountable. This is fundamental to ensuring that all gambling operations in the State are conducted free from inappropriate business activities and with the highest level of integrity. It is considered that due to the historical link between gambling and illegal activities, it is essential that all the business activities of gambling operators are subject to stringent controls and open to scrutiny.

Within this broad framework, each restriction focuses on achieving specific outcomes.

Minimum percentage return to players

All gambling legislation contains specific requirements relating to the percentage of total proceeds that must be returned to the consumer in the form of prizes. This ensures that all participants in gaming activities can be assured of receiving a guaranteed percentage of total money spent on the activity over the life of the game. Other provisions prevent un-won prizes simply being retained by operators as profits in the short term—some do after a period (e.g. wagering and lotteries).

Prohibition on products not provided by licensed providers

This restriction is intended to ensure that only licensed gambling products are lawfully offered for sale in Queensland. This restriction supports the licensing provisions of Queensland's gambling legislation and ensures the overall integrity of the industry.

Prohibition on advertising and marketing of non-licensed products

This is closely related to the above restriction and ensures that only licensed gambling operators can advertise in Queensland. This is considered both a consumer protection provision—because it ensures that individuals do not participate in fraudulent gambling activities - and is a valuable harm minimisation provision by protecting those vulnerable to excessive gambling.

Queensland's gaming legislation has specifically been designed to ensure that only licensed operators can offer gambling products to consumers (except for the charitable fundraising and promotional activities conducted pursuant to the Charitable and Non-Profit Act). Accordingly, only licensed gambling operators may conduct gambling operations and advertise in relation to these operations in the State. This is considered a fundamental consumer protection and harm minimisation initiative.

Requirement for Equipment Approvals

This restriction is essential to ensure that the integrity of gaming is maintained. As previously stated, technological changes as well as the fact that the gambling, by its very nature, involves the assumption of risk, however, most consumers are unlikely to be able to assess in advance the integrity of a gambling activity or service provider in an unregulated environment.

Objectives of the Legislation

These provisions are seen as essential to both maintaining the integrity and probity of the gambling industry and minimising the harm associated with gambling. They are designed to ensure that lawful gambling activities are offered in an appropriately regulated and supervised environment and in a responsible manner. They also ensure that only legitimate gambling activities are conducted in the State and provide the mechanism where action can be taken against unlawful gambling activities. In this regard, these provisions can also be seen as important consumer protection initiatives.

11.3 Alternatives

The removal of the provisions relating to the conduct of the gambling activity would lead to a decline in the high level of public confidence the industry enjoys. Also, if regulators were to abdicate responsibility for the close supervision of gambling providers, there would be a decline in the probity of the industry. It would be impossible to ensure that gambling activities were being conducted in accordance with legislation and in fact, whether they were being conducted honestly. In addition, removal of these restrictions could also result in an increase in the size of the gambling market, which would lead to an increase in the adverse impacts of gambling on the community as a whole.

Removal of these provisions would also lead to an increase in unlicensed and unregulated gambling operations in the State. These operations could harm the lawful licensed gambling industry thus negatively impacting on the revenue of licensed gambling operators, their employees and, ultimately, Government. Therefore, no viable alternatives to these provisions could be identified.

11.4 Conclusion

These provisions are considered necessary for protecting consumers from unscrupulous gambling providers and helping to reduce the harm associated with the provision of certain gambling products.

APPENDIX - CONSULTATION ON DRAFT REPORT

The public notification of the Draft Public Benefit Test Report was made in *The Courier-Mail* on Saturday, 5 April 2003 and the document was made available on the Queensland Treasury Web site. The closing date for submissions was 9 May 2003. In addition, a copy of the draft report was sent with a letter inviting a submission to major industry, government and community stakeholders.

Ten (10) submissions on the draft report were received:

- ACT Gambling and Racing Commission.
- Centacare Catholic Family Services Townsville (Centacare).
- Clubs Queensland (CQ).
- Conrad Casinos.
- Golden Casket Lottery Corporation Limited (GCLCL).
- Jupiters Ltd.
- Queensland Department of Families.
- Queensland Hotels Association (QHA).
- Responsible Gaming Advisory Committee (RGAC).
- Restaurant and Catering Qld (RCQ).

In addition, the Queensland Department of Tourism, Racing and Fair Trading advised that although there are connections between the legislation considered in the draft report and the Liquor Licensing and Racing Divisions, the issues raised in the report do not impact on those connections, and therefore the Department would not be making a submission. The Tasmanian Gaming Commission also advised that similar issues in relation to harm minimisation and exclusivity were considered by Tasmania when entering into a new agreement for the operation of gaming machines in that state, but the Commission would not be making a submission.

Summary of Submissions

The ACT Gambling and Racing Commission provided corrections and additional information on gambling regulation in that jurisdiction. The report was amended to include this information.

In providing a submission on the draft report, the Director of Centacare Catholic Family Services Townsville noted that his response includes views canvassed by some of the Regional Gambling Help Services network and that some of the issues raised could be described as work in progress by the RGAC. The Director also acknowledged that some of his comments may be perceived as not directly related to competition principles, but are certainly at least indirectly related. The comments are summarised below.

- Centacare suggested the costs and benefits of a reduction of numbers of gaming machines or changing the relative numbers of machines permitted in hotels and clubs should have been considered in the draft report. Potential issues (and presumably costs) associated with clubs having the maximum number of gaming machines, with regard to impacts on small communities and problem gambling, were also raised.
- Centacare noted the consideration of harm minimisation issues in the draft report and supported the strengthening of these considerations, particularly in relation to the consideration of social costs against revenue. The potential for smoking bans to strengthen harm minimisation by limiting accessibility to gaming machines was suggested. Centacare also suggested that restricting gaming machines to licensed venues may not be the best way of limiting accessibility.

- While supporting the public benefit test methodology, Centacare suggested further details of the assessment of costs and benefits could have been included in the draft report (presumably to increase the transparency of the process).
- Centacare commented that the reliance of venues on gambling revenue instead of activities that are social entertainment is not necessarily in the best interest of the community. Centacare considers that the appeal of venues for non-gambling patrons has decreased significantly, and the live music industry has suffered considerably, with the introduction of gaming machines. (Presumably this is a cost that Centacare considers should have been considered in the report).
- Centacare supported consumers being provided with greater education on gambling products so that they can make a more informed (and therefore responsible) choice, and suggested that controls on advertising gambling products should be increased (suggesting that the report would benefit from the inclusion of a greater emphasis on the cost of increased public education and restrictions on advertising).
- Centacare supported the strengthening of current exclusion provisions through greater enforcement and support by venues and public education (suggesting concern that the draft report underestimated the future costs of these restrictions).

Clubs Queensland made the following comments on the major issues affecting competition discussed in the draft report.

- CQ supported the requirements for licensing of operators across all Queensland gambling legislation, including background checks on key staff, training of staff and reasonable licensing fees.
- CQ recommended that the threshold at which applications for additional gaming machines are required to include a community impact statement be raised for clubs from 20 to 40 additional machines, to make the process more streamlined and less costly for smaller clubs.
- CQ commented that there are many constraints on the licensing of providers of servicing of gaming machines in some sectors. Casinos have no such restrictions, while clubs cannot engage any licensed service provider of their choice directly. CQ recommended that the restrictions be lifted for all providers.
- CQ considered it is anti-competitive to permit entities holding category 1 gaming machine licenses (hotels) to purchase another venue and hold two licences, while category 2 licensees (clubs) that purchase another venue must operate both venues under one licence. This has the effect of combining the revenue from both venues, resulting in a higher tax rate being applied than would be levied on each individual venue if separate.
- CQ recommended that the state-wide cap on number of gaming machines in hotels should remain permanently. However, no such cap should be imposed on clubs because of the economic disadvantage it would pose to developing non-profit organisations.
- CQ recommended that new or existing hotels without gaming machines should not be allowed to obtain machines under the scheme for re-allocation of gaming machines within the state-wide cap on hotels. (A review of the restrictions on competition arising from the reallocation scheme is the subject of a separate report).
- CQ commented that the current market share restriction for Licensed Monitoring Operators has been very effective in meeting the objectives of preventing a monopoly or duopoly and sustaining competition, and recommended that the market share restrictions be maintained.
- CQ commented that it supports responsible gambling and the work of the RGAC. However, the exclusion arrangements under the gambling legislation should be aligned, and the differences in wager controls and types of machines between clubs/hotels and casinos should be lifted, to increase competition. In addition, CQ commented that the \$20 limit on note acceptors does not protect problem gamblers and is anti-competitive, and should be removed.

- CQ recommended that in order to avoid costly compensation claims against the Government, existing exclusivity arrangements should not be revoked. However no new exclusive licences should be issued.
- CQ commented that it is vehemently opposed to all forms of revenue sharing in clubs, as the sole purpose of clubs is to serve the interests of their members, and not private interests.
- CQ supported the retention of restrictions on where gambling products can be sold, and enforcement of the Commonwealth ban on interactive gambling.
- CQ supported the prohibition of supply, advertising or marketing of gambling products by non-licensed providers and the requirement for equipment approvals.

Conrad Casinos supported the responsible gambling practices described in the draft report and found no matters of concern with the document. Specific comments on the wording of some sections of the report were made, and the report was amended to take account of most of these comments.

The GCLCL submission raised issues relating to the aspects of the draft report dealing with the *Lotteries Act 1997*. The GCLCL supported the conclusions drawn at Section 8.6 of the report, which relate to the maintenance of the exclusive licences under Queensland gambling legislation until the exclusivity period for each expires. The GCLCL also commented on the restriction on where lottery products can be sold, noting that distribution systems in other jurisdictions are similar to that of Queensland, predominantly through small business retailers. In the view of the GCLCL, the arguments provided in the draft report for the retention of this restriction needed to be strengthened.

Jupiters Limited commented that the objective of the *Casino Control Act 1982*, which is the same as the objectives of the other Queensland gaming legislation, should be expanded to reflect the differences in the function and level of regulation of casinos as compared to other gambling venues. Jupiters made the following specific comments on the competition issues identified in the draft report.

- Jupiters concluded that a positive licensing regime is required to ensure the probity and integrity of any gambling provider, and supported the licensing requirements for operators, key employees and other gambling staff.
- Jupiters supported the retention of limits on the number of gaming machines in venues and the state-wide cap on the number of gaming machines in hotels.
- Jupiters supported the restriction on the availability of gaming machines to clubs, hotels and casinos.
- Jupiters commented that while lifting the market share restriction on licensed monitoring operators may increase competition, it would eventually lead to only one operator existing and a consequent increase in pricing in the long term. Therefore Jupiters supported the retention of the restriction on the market share of licensed monitoring operators with appropriate controls in place to protect the market.
- Jupiters strongly supported the aims and objectives of responsible gambling, and supported the maintenance of controls over these areas (but noted that this should not be taken as necessarily supporting the current iteration of the details of these controls).
- In general, Jupiters supported the retention of current exclusivity arrangements. However Jupiters considered the argument for retaining the exclusivity for race wagering, where wagering is linked to funding racing, is less valid for sports betting. Jupiters recommended that the option of revoking the exclusive licence for sports wagering could be considered further.
- Jupiters supported the retention of the prohibition on revenue sharing.
- Jupiters supported the retention of restrictions on where gambling products can be sold.
- Jupiters supported the retention of the miscellaneous restrictions including the approval of gambling equipment and minimum returns to players.

The Queensland Department of Families commented that the review articulates a credible balance between the social and economic impact and benefits of gambling on the community. The department

supports the non-proliferation of gaming machines through the current regulatory mechanisms and range of harm minimisation and consumer protection practices, and would not support any changes to legislation that could lead to an increase in the total number of gaming machines in Queensland.

The Queensland Hotels Association submission focused on restrictions on gaming machine operations that the QHA considers disadvantages hotels as compared to clubs. Overall, the QHA argued that gaming machine operations in hotels are no more harmful than that of clubs, and that the community benefits provided by clubs are overstated. In addition, QHA commented that the rationale for some of the restrictions placed on gaming machine operations in hotels are based on incorrect perceptions of the hotel industry. The QHA made the following specific comments on the restrictions applied to hotels.

- QHA considered that applying a state-wide cap on the number of gaming machines in hotels and not clubs is anti-competitive and ineffective. QHA suggested that a non-legislative alternative to the cap would be to redefine the Queensland Gaming Commission Guidelines to require a greater balance of benefits versus costs for the analysis of hotels or clubs applying for gaming machines.
- QHA did not support the provisions of the reallocation scheme for gaming machines in hotels for the purchase of gaming machines authorities from a pool. (A review of the restrictions on competition arising from the reallocation scheme is the subject of a separate report).
- QHA did not support a higher maximum number of gaming machines being allowed at clubs than at hotels. Noting that the rationale for this difference is that clubs raise money for the community, QHA suggested that instead some of the taxes paid by clubs and hotels be required by legislation to be returned directly to registered charities, sporting or community groups.
- QHA considered that the higher taxation rates on metered win paid by hotels compared to clubs is anti-competitive. While noting this is not covered by the draft report, QHA assumed that the different tax rates are associated with the role of clubs in raising money for their local community, and suggested that clubs and hotels instead be required to pay community groups directly.
- QHA considered that the Major Facilities Levy paid by some hotels is anti-competitive, and that hotels and clubs should be subject to the same the tax rates.
- QHA considered that requiring a Community Impact Statement with an application for an increase in number of gaming machines of 20 or more for clubs or 10 or more for hotels provides clubs with a competitive advantage. QHA suggested that the requirement for Community Impact Statements be the same for hotels and clubs.

The RGAC submission represents a tri-partite response (industry/community sectors/Government) and supported the harm minimisation rationale and practices reflected in the draft report. The Committee found no matters of significant concern with the draft report, but provided specific comments on some statements made in the report. Amendments were made to the report to take account of most of these comments.

Restaurant and Catering Queensland commented that the practice of using gambling revenue to subsidise food and beverage at gambling venues is harmful to the community as it used as a means of enticing more people to gambling venues, thereby leading to increased rates of problem gambling. The following comments were provided by RCQ on specific competition issues raised in the draft report.

- RCQ recommended that the Community Impact Statement required to be submitted by an applicant for a gaming machine licence include the consideration of the impact of the proposed gambling venue on similar businesses, both gambling and non-gambling, in the area.
- RCQ recommended that the Statement of Responsible Gaming Initiatives required to be submitted by an applicant for a gaming machine licence should include an agreement by the applicant not to provide food and beverages at subsidised rates as an enticement for people to attend the venue.
- RCQ supported retention of the current limits on number of gaming machines in venues, the state-wide cap on numbers of gaming machines in hotels and restrictions on the availability of gaming machines.

- RCQ supported retention of the restriction on market share of licensed monitoring operators, to avoid a monopoly or duopoly situation.
- RCQ supported the restrictions and provisions of gambling legislation that are intended to minimise the harm that can result from excessive gambling. In particular, the prohibition on minors having access to or participating in gambling activities was strongly supported. RCQ also recommended that further legislative restrictions be imposed to ensure that gambling venues do not use subsidised food and beverage prices to increase the number of people gambling at the venues.
- RCQ considered that, given the size of the investments involved, particularly with regard to casinos, the time-limited exclusivity arrangements appear justified.
- RCQ supported the restrictions on profit sharing to ensure that venues operate without undue influence from third parties.
- RCQ agreed that there are clear benefits associated with the restrictions on access to gaming machines. However, RCQ disagreed with the draft report statement that these restrictions ensure that gambling products are not sold through canvassing or other high pressure methods. RCE considered that the subsidies on food and beverage products are the most widespread canvassing of increased patronage of gambling venues.
- RCQ supported the miscellaneous restrictions listed in section 11 of the draft report.

Summary of Comments on Restrictions

Restriction	Comments
Licensing of operators (including Community Impact Statements) and key employees	<p>CQ supported the requirements for licensing of operators across all Queensland gambling legislation, including background checks on key staff, training of staff and reasonable licensing fees.</p> <p>CQ recommended that the threshold at which applications for additional gaming machines are required to include a Community Impact Statement be raised for clubs from 20 to 40 additional machines, to make the process more streamlined and less costly for smaller clubs.</p> <p>CQ considered it is anti-competitive to permit entities holding category 1 gaming machine licenses (hotels) to purchase another venue and hold two licences, while category 2 licensees (clubs) that purchase another venue must operate both venues under one licence.</p> <p>Jupiters concluded that a positive licensing regime is required to ensure the probity and integrity of any gambling provider, and supported the licensing requirements for operators, key employees and other gambling staff.</p> <p>QHA suggested that the requirement for Community Impact Statements be the same for hotels and clubs.</p> <p>RCQ recommended that:</p> <ul style="list-style-type: none"> • the Community Impact Statement required to be submitted by an applicant for a gaming machine licence include the consideration of the impact of the proposed gambling venue on similar businesses, both gambling and non-gambling, in the area; and • the Statement of Responsible Gaming Initiatives required to be submitted by an applicant for a gaming machine licence should include an agreement by the applicant not to provide food and beverages at subsidised rates as an enticement for people to attend the venue.

Licensing of service providers	CQ commented that there are many constraints on the licensing of providers of servicing of gaming machines in some sectors. CQ recommended that the restrictions be lifted for all providers.
Venue limits on number of gaming machines	<p>Centacare suggested the costs and benefits of a reduction of numbers of gaming machines or changing the relative numbers of machines permitted in hotels and clubs should have been considered in the draft report.</p> <p>Jupiters supported the retention of the current limits on the number of gaming machines in venues.</p> <p>QHA did not support a higher maximum number of gaming machines being allowed at clubs than at hotels.</p> <p>RCQ supported retention of the current limits on number of gaming machines in venues.</p>
State-wide cap on number of gaming machines in hotels	<p>CQ recommended that the state-wide cap on number of gaming machines in hotels should remain permanently. However, no such cap should be imposed on clubs because of the economic disadvantage it would pose to developing non-profit organisations.</p> <p>Jupiters supported the retention of the state-wide cap on the number of gaming machines in hotels.</p> <p>The Queensland Department of Families supported the non-proliferation of gaming and would not support any changes to legislation that could lead to an increase of the total number of gaming machines in Queensland.</p> <p>QHA considered that applying a state-wide cap on the number of gaming machines in hotels and not clubs is anti-competitive and ineffective.</p> <p>RCQ supported retention of the state-wide cap on numbers of gaming machines in hotels.</p>
Restriction on availability of gaming machines	<p>Centacare suggested that restricting gaming machines to licensed venues may not be the best way of limiting accessibility.</p> <p>Jupiters supported the restriction on the availability of gaming machines to clubs, hotels and casinos.</p> <p>RCQ supported retention of the restrictions on the availability of gaming machines.</p>
Licensing of gaming machine monitoring operators	<p>CQ commented that the current market share restriction for Licensed Monitoring Operators has been very effective in meeting the objectives of preventing a monopoly or duopoly and sustaining competition, and recommended that the market share restrictions be maintained</p> <p>Jupiters supported the retention of the restriction on the market share of licensed monitoring operators with appropriate controls in place to protect the market.</p> <p>RCQ supported retention of the restriction on market share of licensed monitoring operators, to avoid a monopoly or duopoly situation.</p>

Responsible gambling restrictions	<p>Centacare supported:</p> <ul style="list-style-type: none"> • the strengthening of these restrictions and suggested that smoking bans would further limit accessibility to gaming machines; • consumers being provided with greater education on gambling products so that they can make a more informed choice; and • the strengthening of current exclusion provisions through greater enforcement and support by venues and public education. <p>CQ commented that it supports responsible gambling and the work of the RGAC. However, the exclusion arrangements under the gambling legislation should be aligned, and the differences in wager controls and types of machines between clubs/hotels and casinos should be lifted, to increase competition. In addition, CQ commented that the \$20 limit on note acceptors does not protect problem gamblers and is anti-competitive, and should be removed.</p> <p>Conrad Casinos supported the responsible gambling restrictions.</p> <p>Jupiters strongly supported the aims and objectives of responsible gambling, and supported the maintenance of controls over these areas.</p> <p>The RGAC supported the harm minimisation rationale and practices reflected in the draft report.</p> <p>RCQ supported the restrictions and provisions of gambling legislation that are intended to minimise the harm that can result from excessive gambling. RCQ also recommended that further legislative restrictions be imposed to ensure that gambling venues do not use subsidised food and beverage prices to increase the number of people gambling at the venues.</p>
Protection of minors	RCQ strongly supported the prohibition on minors having access to or participating in gambling activities.
Exclusivities	<p>CQ recommended that in order to avoid costly compensation claims against the Government, existing exclusivity arrangements should not be revoked. However no new exclusive licences should be issued.</p> <p>The GCLCL supported the maintenance of the exclusive licences under Queensland gambling legislation until the exclusivity period for each expires.</p> <p>Jupiters supported the retention of current exclusivity arrangements, but recommended that the option of revoking the exclusive licence for sports wagering could be considered further.</p> <p>RCQ considered that, given the size of the investments involved, particularly with regard to casinos, the time-limited exclusivity arrangements appear justified</p>
Prohibition of Revenue sharing	<p>Jupiters supported the retention of the prohibition on revenue sharing.</p> <p>CQ commented that it is vehemently opposed to all forms of revenue sharing in clubs, as the sole purpose of clubs is to serve the interests of their members, and not private interests.</p> <p>RCQ supported the restrictions on profit sharing to ensure that venues operate without undue influence from third parties.</p>

Restrictions on where gambling products may be sold	<p>CQ supported the retention of restrictions on where gambling products can be sold, and enforcement of the Commonwealth ban on interactive gambling.</p> <p>The GCLCL commented on the restriction on where lottery products can be sold, noting that distribution systems in other jurisdictions are similar to that of Queensland, predominantly through small business retailers.</p> <p>Jupiters supported the retention of the current restrictions on where gambling products can be sold.</p> <p>RCQ commented that there are clear benefits associated with the restrictions on access to gaming machines.</p>
Miscellaneous restrictions	<p>CQ supported the prohibition of supply, advertising or marketing of gambling products by non-licensed providers and the requirement for equipment approvals.</p> <p>Jupiters supported the retention of the miscellaneous restrictions including the approval of gambling equipment and minimum returns to players.</p> <p>RCQ supported the miscellaneous restrictions listed in the draft report.</p>