
DEPARTMENT OF JUSTICE

**NATIONAL COMPETITION POLICY :
REVIEW OF *CLUB KENO ACT 1993***

Government Response

February 2003

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1. Background

This paper sets out the Government's response to the recommendations and findings of the National Competition Policy Review of the *Club Keno Act 1993* ("the Club Keno review").

National Competition Policy

Under the intergovernmental competition principles agreement signed by the Council of Australian Governments in April 1995, Victoria agreed to remove unnecessary statutory restrictions on competition. As part of the agreement, all Governments agreed to adopt the following guiding principle:

Legislation should not restrict competition unless it can be demonstrated that:

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

The guiding principle established under National Competition Policy places the onus of proof on governments to demonstrate a public interest case for the enactment or retention of statutory restrictions.

Governments agreed to review and reform all current and new legislation against the principle.

The Club Keno review

The then Minister for Gaming, commissioned a review of the *Club Keno Act 1993* in April 1997. It was conducted in accordance with the In-House review model contained in the NCP Guidelines, and under the supervision of the Department of Treasury and Finance (DTF) steering committee for all National Competition Policy reviews.

The terms of reference required the review to examine whether legislative restrictions on competition exist in the *Club Keno Act 1993* and its regulations, in accordance with the Victorian Government *Guidelines of the Review of Legislative Restrictions on Competition*. In particular, the review was directed to:

- clarify the objectives of the legislation;
- identify the nature of the restrictions on competition;
- assess and balance the costs and benefits of the restrictions; and to
- consider alternative means of achieving the same result including non-legislative means.

Consultation within government involved both the Taxation and Revenue Policy Division of DTF and the Victorian Casino and Gaming Authority (VCGA). The two key industry

stakeholders – Tattersall’s and TABCORP – were provided copies of an interim report, to which the two provided written submissions to the review panel.

The Government of the day decided to delay responding to the Club Keno review until all NCP reviews of gaming legislation were conducted.

The current Government withheld its response due to its primary focus on dealing with problem gambling.

The present response to the recommendations of the NCP review of the *Club Keno Act 1993* is based on this context of the Bracks Government’s commitment to fostering responsible gambling and addressing problem gambling. Since coming to power in 1999, the Government has instituted a range of measures in order to:

- minimise harm caused by problem gambling; and
- accommodate those who gamble for entertainment without harming themselves or others.

This policy approach was also the context for the Government’s response to the NCP review of the Victorian gaming machine (EGM) legislation conducted in 2000 (the Marsden review). The response to the Marsden review recommendations regarding the EGM industry structure was to note the recommendations and to agree to conduct a comprehensive review of the EGM industry structure closer to the expiry of the current EGM licences in 2012. It is expected that this review will be commenced by 2006.

The desire to limit problem gambling and to ensure probity was also the guiding principle for Victoria’s response to the NCP review of its racing and betting industry conducted in 1998. The Government accepted all the recommendations except for expanding the availability of sports betting, as it considered that increased availability through more outlets would encourage problem gambling and lead to difficulties in ensuring probity.¹

The recommendations of the review are listed below, together with a brief discussion and the Government response to each recommendation

¹ National Competition Council, *2002 Assessment of governments’ progress in implementing the National Competition Policy and related reforms - Volume One*, p. 12.47.

2. Summary of report recommendations and Government response

Review Recommendation	Government Response
<p>1. <i>The permissible venues for club keno should be liberalised. Two options that the government might consider are extension of club keno operations to any club or hotel in Victoria, or, sale through retail outlets.</i></p>	<p>The Government notes the recommendation, but will postpone examining the possibility of removing the venue restriction until the comprehensive review of the Victorian EGM industry to be commenced by 2006. The Government believes that any changes to club keno legislation should be considered in conjunction with changes to the EGM arrangements.</p> <p>However, the Government is concerned that club keno may have the potential to cause harm because:</p> <ul style="list-style-type: none"> • it is fast-paced, and therefore has a relatively high potential to induce problem gambling in some patrons; • research conducted in Victoria suggests that club keno is attractive to those who are problem gamblers or at risk of becoming problem gamblers; and • club keno is a potentially addictive form of gambling and should not be available in places where minors may be present.
<p>2. <i>The government should make available licences to supply club keno to those who pass the probity checks. Any pooling should emerge through the market (ie. Those with strong networks and attractive games). In club keno, there should not be exclusive licences.</i></p>	<p>The Government has committed to conducting a comprehensive review of the current EGM licences to examine the appropriate industry structure beyond 2012. Without pre-empting the outcomes of that review, the Government is supportive of greater competition in the industry, including in the provision of club keno.</p> <p>Any comprehensive review of the post-2012 EGM industry structure should consider a number of the issues, including the ownership structure and number of gaming operator licences, the licensing</p>

Review Recommendation	Government Response
	<p>arrangements for club keno, as well as the Government's obligation to minimise the harm caused by excessive gambling.</p> <p>The broader industry structure issues were raised in the <i>NCP Review of Gaming Machine Legislation</i> conducted by Marsden Jacob Associates in October 2000.</p> <p>The Government has announced that it will commence the review the EGM industry structure during its current term, i.e. by 2006. Extending the availability of club keno licences to other operators who pass probity checks will be considered as part of this review.</p>
<p>3. <i>There should be flexibility in the 'rules of the game' to allow for potential competitors to propose new game rules.</i></p>	<p>The Government accepts in principle the review recommendation. It concurs that increased flexibility would encourage innovation and also ensure consistency between the treatment of club keno and other forms of gambling. The Government will consider the matter as part of the review of EGM industry arrangements.</p>
<p>4. <i>In view of the small relative size of club keno, and other legislative reviews of gambling regulation to be conducted, the government may wish to combine implementation with other changes to gambling legislation.</i></p>	<p>The Government accepts the recommendation and will review any potential changes to the <i>Club Keno Act</i> as part of a review of the EGM industry review. It will implement any changes to club keno industry structure in parallel with changes to EGM industry structure.</p>

3. Government Response

The first task of the NCP review of the *Club Keno Act 1993* was to clarify the objectives of club keno legislation. It found that the objectives of club keno legislation are generally in line with the overall objectives of the nine Acts that constitute Victoria's gaming legislation. The review suggested that while some of the objectives of the legislation have now been achieved, the three main objectives that remain relevant are:

- to ensure the integrity of the game through specifying conditions under which it is played;
- to limit the social costs in providing this type of gaming;
- to provide for maximum and secure taxation revenues from the game.

The second part of the review was to identify barriers to competition. The review identified two ways in which the *Club Keno Act 1993* restricts competition. These are:

- restricting the opportunity to conduct club keno to the two currently licensed gaming operators, Tattersall's and TABCORP, acting as a consortium; and
- only allowing club keno to be played in licensed gaming venues.

The review noted that the binding constraint is the restriction on the type of venue. Even if the restriction on who may conduct club keno was removed, the restriction of club keno to licensed gaming venues would ensure that, in practice, the present gaming operators would still control the operation of the game.² The review concluded that the two restrictions should be removed.

The Government notes the conclusions of the review, but does not intend to amend the club keno legislation at this time. It intends to review club keno as part of a more comprehensive review of the Victorian EGM industry, which will be commenced within the current term of Government (that is, by 2006).

The Government's view is that club keno is a legitimate recreational activity available to adult Victorians. However, despite the fact that club keno is a niche product³, the Government is concerned that it has the potential to cause serious negative social problems that excessive or problem gambling brings to some individuals, their families and communities.

² Section 3 of the *Club Keno Act 1993* defines "participants", ie. the providers of club keno as (a) Tattersall's and (b) the holder of a gaming licence under the *Gaming and Betting Act 1994* (i.e. TABCORP). They are the only licensed operators EGM operators (in addition to the Casino), and therefore also control all EGM venues.

³ In 2000-01 club keno expenditure was only \$6.9 million relative to the total gaming expenditure of \$3,651 billion. (Tasmanian Gaming Commission (2002) *Australian Gambling Statistics 1975-76 to 2000-01*)

Since assuming office in 1999, the Government has focussed its efforts on promoting responsible gaming and tackling problem gambling. As part of this approach, the Government is committed to not expand the gaming industry in Victoria. It is of the view that competitive restrictions on the industry, which can effectively limit costs from problem gambling without significantly reducing the benefits for recreational gamblers, are in the public interest.

Further, the Government believes that a uniform approach to all forms of gambling is appropriate. Therefore this response to the review of club keno legislation follows its previous responses to the NCP reviews of the Victorian gaming machine and racing and betting legislation (see page 3).

In short, this response:

- demonstrates the Victorian Government's commitment to the NCP process;
- makes explicit the Government's view that competitive restrictions that contribute to the principle of harm minimisation are in the public interest; and
- commits the government to reviewing the club keno industry in conjunction with the EGM industry review prior to the current licence expiry in 2012.

The recommendations of the Club Keno review are listed below, together with a brief discussion and the proposed Government response to each recommendation.

4. Recommendations

4.1. Recommendation 1 – Venues

The permissible venues for club keno should be liberalised. Two options that the government might consider are extension of club keno operations to any club or hotel in Victoria, or, sale through retail outlets.

4.1.1. Discussion

The government notes the recommendation, and the argument that the current restriction of club keno to EGM venues may retard market development and innovation.

However, the Government will not examine the possibility of removing the venue restriction at this time. It believes that any changes to club keno legislation should be considered in conjunction with changes to arrangements relating to electronic gaming machines.

This view is based on the evidence that club keno as a product is more similar to gaming machines than to gambling products such as lotteries. Both club keno and EGMs are continuous forms of gambling, in other words, they are characterized by rapid cycles of play and the opportunity for players to immediately reinvest their winnings.⁴ In club keno, draws occur every few minutes and results are posted on an electronic board. Most prizes are paid out immediately, with only larger ones paid later by cheque.

Because of this similarity of the club keno product and EGMs, the Government believes that any changes that would impact on their availability should be considered at the same time. Therefore the Government will examine the venue restriction on club keno in conjunction with a comprehensive review of the Victorian EGM industry that it will commence within the current term of Government by 2006.

Without pre-empting the findings of this review, the Government expects its decision on the matter to be closely guided by the policy principle of harm minimisation, and its commitment to minimising problem gambling and encouraging responsible gambling.

The NCP review of club keno found that the restriction of club keno to gaming venues is aimed at limiting or mitigating the social costs associated with this type of gambling. The review suggested that these social costs could relate to excessive spending and other adverse household impacts, access to minors or potential criminal elements in the game.

The review asserted that the concern about other adverse social impacts may be overstated because it found:

- no evidence to suggest that there were criminal activities linked to club keno; and
- club keno, as a product and in terms of its potential to cause harm, to be similar to instant lotteries, which are available through Tattersall's retail outlets.

The Government accepts the view presented in the review that club keno does not appear to present opportunities for criminals whether through money laundering or in providing a 'bent' game.

The Government acknowledges that club keno has not as yet been publicly associated with extensive social problems in Victoria, possibly because of the low expenditure associated with it.⁵ Because of the low level of community concern with social problems linked to club keno, the Government did not include club keno as part of its substantial focus on dealing with problem gambling in the recent years.

⁴ Productivity Commission (1999) *Australian Gambling Industries*, p. 2.5.

⁵ \$6.9 million compared to the total gaming expenditure of \$3,651 billion in 2000-01. (Tasmanian Gaming Commission (2002) *Australian Gambling Statistics 1975-76 to 2000-01*).

However, the Government does not agree with the proposition presented in the review that club keno, as a gambling product, has little potential to cause social problems.

As discussed above, club keno is a continuous gambling product, and therefore more similar to EGMs than other forms of gambling such as lotteries.⁶ Although problem gambling is a complex issue, there is strong evidence to suggest that continuous forms of gambling have greater potential to cause addictive behaviour than non-continuous forms.⁷

Due to its fast pace and continuous nature, club keno is very likely to be associated with much higher levels of problem gambling than non-continuous games, and the limited research on club keno confirms this. Two VCGA research reports found that club keno gamblers tended to have a higher than average proportion of heavy gamblers and problem gamblers.⁸

As a result, the Government does not consider it is in the public interest to extend the provision of club keno facilities beyond the current licensed gaming venues. It believes that any expansion in the number of venues where gambling opportunities are available may lead to greater social costs by increasing the number of gambling opportunities available to problem gamblers. Increasing the number of club keno venues would also be inconsistent with the Government's policy of limiting new gaming venues and the cap on EGM numbers.

The Government took this view in its response to the NCP review of the racing and betting legislation. In response to a recommendation that sports betting licences should be liberalised, the Government argued that:

“Issuance of further sports betting licences can be expected to produce a major expansion of the presence of sports betting outlets and opportunities in Victoria that will in turn significantly stimulate demand. While this would deliver the benefit of expanding consumer choice, the Government considers this quantum liberalisation of sports betting opportunities will exacerbate problem gambling in Victoria.”

⁶ Research commissioned by the Victorian Casino and Gaming Authority is also strongly suggestive that club keno has more in common with Casino and EGM gambling than the more benign, non-continuous forms of gambling. Victorian Casino and Gaming Authority (1997) *Sixth Survey of Community Gambling Patterns and Perceptions*; VCGA (2000) *Seventh Survey of Community Gambling Patterns and Perceptions*.

⁷ The importance of continuous versus non-continuous play in gambling addiction is well-documented in the gambling literature. See for example Chapter 6 of the Productivity Commission's 1999 Report on Australia's Gambling Industries, and Volberg, R.A. (1997) *Gambling and problem gambling in Oregon*. Report to the Oregon Gambling Addiction Treatment Foundation. Available at <http://www.gamblingaddiction.org/oregonreport/OregonReport-06.htm> - TopOfPage

⁸ Victorian Casino and Gaming Authority (1997) *Sixth Survey of Community Gambling Patterns and Perceptions*, pp. 47, 51, 225; VCGA (2000) *Seventh Survey of Community Gambling Patterns and Perceptions*, p. 53. The VCGA report defined gamblers with a SOGS score of 5+ as being “at risk”, rather than being termed problem gamblers as in the conventional Australian research terminology as used in the Productivity Commission report.

Further, restricting club keno to gaming venues is the most effective way of ensuring that minors do not access the game. To extend club keno to retail outlets, where minors are more likely to be able to access it, would extend the risk and is incompatible with harm minimisation principles. This view is based on the facts that:

- club keno is a high risk form of gambling, as illustrated by the VCGA and Productivity Commission research; and
- the forms of gambling that minors can currently readily access (eg. instant lotteries) have been shown to cause harm in a proportion of young people.⁹

The Victorian Government is committed to not expanding the gaming industry, including the types of venues in which gaming opportunities are available. This policy is widely accepted and supported, as it:

- meets the community expectation that the Government has to limit the social harm associated with gaming;
- is based on the widely-available evidence that the availability of gambling opportunities is directly related to the extent of problem gambling and other social harm;¹⁰ and
- is in line with the Productivity Commission view, which has been endorsed by the NCC, that restrictions on access to gaming opportunities are acceptable if the rationale is to limit social harm and to meet community expectations.¹¹

The Victorian Government believes that even a limited expansion (for example to TABs and lottery outlets where other gambling products are sold) would constitute an expansion of the industry, and that this would not be the interest of the Victorian public. Such expansion would also be contrary to the Government's policy approach of minimising the harm from gambling.

The Government believes that its restriction of club keno to EGM venues has been successful in limiting the expenditure and the potential for social harm associated with the game. As outlined in the table below, in Victoria, where keno is available only in EGM gaming venues, per capita expenditure on keno is only \$1.88. In NSW, where keno is available in any registered clubs (with or without EGMs), per capita expenditure much higher at \$17.33.¹²

⁹ Wood, R., & Griffiths, M. (1998). The acquisition, development and maintenance of lottery and scratchcard gambling in adolescence. *Journal of Adolescence*, 21, 265–272.

¹⁰ See, for example, Chapter 8 of the Productivity Commission report on Australia's Gambling Industries, which summarised its findings as follows: "... there is sufficient evidence from many different sources to suggest a significant connection between greater accessibility – particularly to gaming machines – and the greater prevalence of problem gambling."

¹¹ National Competition Council, *Regulating gambling activity: issues in assessing compliance with National Competition Policy*, Council paper, October 2000, p.9.

¹² Tasmanian Gaming Commission (2002) *Australian Gambling Statistics 1975-76 to 2000-01*.

	Victoria	NSW	QLD
Expenditure	\$6.856 million	\$85.200 million	\$53.663 million
Expenditure per capita	\$1.88	\$17.33	\$20.00
Number of venues	288	More than 1000	More than 800
Types of venues	Licensed EGM venues only	Any clubs and the casino	Clubs, Hotels, TABs and Casinos

The Government believes that the existing restriction on club keno venues have acted to minimise the potential harm associated with club keno. The Government therefore considers that the restriction on club keno venues conforms to community expectations and standards about the availability of gambling venues, and does not materially limit the opportunities of those that wish to gamble for recreation.

4.1.2. Government Response

The Government notes the recommendation, but will postpone examining the possibility of removing the venue restriction until the comprehensive review of the Victorian EGM industry to be commenced by 2006. The Government believes that any changes to club keno legislation should be considered in conjunction with changes to the EGM arrangements.

However, the Government is concerned that club keno may have the potential to cause harm because:

- **it is fast-paced, and therefore has a relatively high potential to induce problem gambling in some patrons;**
- **research conducted in Victoria suggests that club keno is attractive to those who are problem gamblers or at risk of becoming problem gamblers; and**
- **club keno is a potentially addictive form of gambling and should not be available in places where minors may be present.**

4.2. Recommendation 2: Licence availability

The government should make available licences to supply club keno to those who pass the probity checks. Any pooling should emerge through the market (i.e. Those with strong networks and attractive games). In club keno, there should not be exclusive licences.

4.2.1. Discussion

The Government notes the recommendation that availability of club keno licences be extended beyond Tattersall's and TABCORP.

The Government concurs with the review's conclusion that the restriction in the availability of club keno licences is unlikely to deliver benefits in terms of:

- ease of collecting taxation revenues;
- ease of supervision and control of small number of operators; or
- ensuring the integrity of the game.

The Government also notes the concern expressed in the review that the current restriction on licence availability creates incumbency advantages to the present two suppliers, and may retard future competition.

However, the Government's policy is driven by its goal to minimise the potential harm caused by gambling, while not interfering with the enjoyment that recreation gamblers obtain from social gambling.

Any expansion of licences will entail an expansion of availability of club keno and, as described in more detail in 4.1, this would not be compatible with harm minimisation. As the Government is committed to not expanding club keno beyond EGM venues, removing license exclusivity would not have any practical impact at this stage, given that the licensed EGM operators, Tattersall's and TABCORP, would still control the operation of the game.

The Government's approach is therefore that the removal of this restriction on competition should be examined in conjunction with the expiry of the contractual arrangement with the EGM operators in 2012. The Government has announced that it will be reviewing the EGM industry structure in its current term of office and this will be accompanied by a review of club keno licensing arrangements.

In the meantime, the Government is committed to, and will continue to uphold, all its contractual agreements including those to the club keno licences. As a result, the Government is committed to the current club keno arrangements until 2012.

4.2.2. Government Response

The Government has committed to conducting a comprehensive review of the current EGM licences to examine the appropriate industry structure beyond 2012. Without pre-empting the outcomes of that review, the Government is supportive of greater competition in the industry, including in the provision of club keno.

Any comprehensive review of the post-2012 EGM industry structure should consider a number of issues, including the ownership structure and number of gaming operator licences, the licensing arrangements for club keno, as well as the

Government's obligation to minimise the harm caused by excessive gambling. The broader industry structure issues were raised in the *NCP Review of Gaming Machine Legislation* conducted by Marsden Jacob Associates in October 2000.

The Government has announced that it will commence a review of the EGM industry structure during its current term, i.e. by 2006. Extending the availability of club keno licences to other operators who pass probity checks will be considered as part of this review.

4.3. Recommendation 3: Flexibility of 'rules of the game'

There should be flexibility in the 'rules of the game' to allow for potential competitors to propose new game rules.

4.3.1. Discussion

The club keno 'rules of the game' will be considered as part of the EGM industry review. The Government notes that existing licensees have the option to request rule changes to make the product more competitive with other gambling products but no such requests have been made.

4.3.2. Government response

The Government accepts in principle the review recommendation. It concurs that increased flexibility would encourage innovation and also ensure consistency between the treatment of club keno and other forms of gambling. The Government will consider the matter as part of the review of EGM industry arrangements.

4.4. Recommendation 4: Combining implementation with other changes to legislation

In view of the small relative size of club keno, and other legislative reviews of gambling regulation to be conducted, the government may wish to combine implementation with other changes to gambling legislation.

4.4.1. Discussion

The Government agrees with the recommendation that the review and implementation of legislative changes should be conducted in conjunction with other reviews of Government policy and legislation in relation to gambling products.

The Government also notes that this approach is in-line with the NCC conclusion that ‘because of the social policy implications of gambling, gambling regulation would be better reviewed in the broader context than an NCP assessment process’.¹³

In its 2002 NCP progress report the Government indicated that it would address competition restrictions relevant to club keno as part of a review of all Victorian gambling legislation, possibly to be conducted in 2003.¹⁴

The Victorian Government has since announced that it will commence this large-scale review of the gaming machine industry structure in the current term of government, and given the magnitude of the task, will confine its 2003 review to developing improved gambling regulation arrangements.

As a consequence of the expiry of current gaming licences in 2012, the Government has committed to commencing a detailed review of the gaming legislation and industry structure within its current term. The Government does not consider it advisable to implement any changes in club keno legislation until the possible changes to EGM industry structure are implemented.

4.4.2. Government response

The Government accepts the recommendation and will review any potential changes to the *Club Keno Act* as part of a review of the EGM industry review. It will implement any changes to club keno industry structure in parallel with changes to EGM industry structure.

¹³ National Competition Council, *Regulating gambling activity: issues in assessing compliance with National Competition Policy*, Council paper, October 2000, p.1.

¹⁴ National Competition Council, *2002 Assessment of governments' progress in implementing the National Competition Policy and related reforms - Volume One*, p. 12.53.