

National Competition Policy Legislative Review of:

The Casino Control Act 1984

The Casino (Burswood Island) Agreement Act 1985

The Gaming Commission Act 1987

The Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985

The Gaming Commission Regulations 1988.

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1 Introduction

In accordance with the Competition Policy Agreement, to which the Government of Western Australia is a signatory, this paper reports the findings of a National Competition Policy (NCP) legislative review of gaming in Western Australia. The gaming legislation is:

- The Casino Control Act 1984
- The Casino (Burswood Island) Agreement Act 1985
- The Gaming Commission Act 1987
- The Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985
- The Gaming Commission Regulations 1988.

1.1 Scope of the Legislation

The above legislation covers the gaming legislation in Western Australia. The Totalisator Agency Board Betting Act 1960 and the Betting Control Act 1954 are the subject of separate reviews. The Lotteries Commission has already reviewed the Lotteries Control Act 1990 in the context of National Competition Policy.

Gaming legislation needs to be considered as a package rather than in isolation. This is because many of the provisions in the legislation interact with each other. Provisions in the various acts are inextricably linked and this impacts upon both the administration of each Act and also on the competition consequences associated with the legislation.

It is this package of legislation combined with the Totalisator Agency Board Betting Act 1960; the Lotteries Control Act 1990; and the Betting Control Act 1954 that create the Government's public policy framework to regulate the gaming market.

Treating the gaming legislation as a separate legislative group is administratively more efficient but also reflects the fundamental differences between the gaming that is the subject of this legislation – casinos, social and permitted gambling – and the gambling – betting on horses and greyhounds – that is the subject of the other legislation. The nature of the wagering, the nature of the industry and the basic legislative objectives are different as between the two.

1.2 The Objectives of the Review

As required by the Competition Principles Agreement the review sought to:

- clarify the objectives of the relevant legislation.
- identify the nature of any restrictions on competition.
- analyse the likely effect of the restrictions on competition.

- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.

The guiding principle for legislation reviews is that legislation should not restrict competition unless it can be demonstrated that:

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

The Competition Policy Agreement further indicates that the following matters should be taken into account when balancing the benefits and costs of any restrictions;

- Social welfare and equity considerations, including community service obligations.
- Economic and regional development, including employment and investment growth.
- The interests of consumers, or a class of consumers.
- The efficient allocation of resources.

The Competition Policy Agreement indicates that a range of economic and non-economic matters should be taken into consideration in assessing whether legislation, which contains a restriction, is in the public interest. In addition, competition objectives do not necessarily take precedence over important public policy objectives.

1.3 Submissions to the Review

As part of the process of this review submissions were called for from interested parties and the public. Advertisements were placed in the West Australian Newspaper on Saturday 6 December 1997 and the Sunday Times on Sunday 14 December 1997 seeking public submissions concerning the legislative reviews to be undertaken by this office. Submissions were received from:

- Burswood International Resort Casino
- Lotteries Commission
- Western Australian Turf Club
- Western Australian Trotting Association
- Western Australian Bookmakers' Association
- Western Australian Racehorse Owners Association
- Country Women's Association
- Although invited to make a submission the Western Australian Hotel's Association declined the invitation.
- The Totalisator Agency Board and the Western Australian Greyhounds Association indicated that they would be involved in the review as part of on going consultation
- Mr G. Taylor of 18 Parklands Square, Riverton.

The submission received from Burswood International Resort Casino supported maintenance of the status quo. Burswood considered the existing arrangements essential to develop a viable casino industry.

The Western Australian Bookmaker's Association supported relaxation of legislation with regards to telephone and sports betting.

The Lotteries Commission supported the existing legislative framework but believed that further regulation would be necessary to control the developing interactive gaming market.

The Western Australian Turf Club and the Western Australian Trotting Association were keen to see the introduction of two-up at metropolitan race meetings and the relaxation of casino gaming to permitted gaming functions respectively.

The Country Women's Association believed that sufficient avenues for gambling existed and that further expansions of gambling should be avoided.

Mr G Taylor submitted that Burswood International Resort Casino should not be the only venue to be permitted to have electronic gaming machines and sought their extension to licensed clubs. Mr Taylor also believed that Government revenues from gambling should be used, in part, to ensure a high level of surveillance of gaming activity to prevent criminal entry into the gaming market.

2 Background to the Western Australian Legislation

The Acts covered by this review form part of a package of regulations covering casinos, social and permitted gaming. This framework reflects the particular attributes of gaming and the assessment that where these issues are concerned the market will generally fail to protect the interests of consumers, will be unable to ensure limitation of criminal activities and will encourage unacceptably high levels of gambling in the community with associated social costs. These are long standing views that have influenced the whole approach to gaming and it is appropriate therefore to consider the background to the current legislation and the way in which these issues have been given prominence in the evolution of the gaming framework and the associated legislation in Western Australia. This is primarily useful because it provides some insights into the nature of the community benefits that have been ascribed to intervention in the gaming market.

Gambling in one form or another has been part of the lifestyle of Western Australians since the commencement of colonisation. In the early stages of the development of laws relating to gaming the thrust was to prohibit most forms of gaming as an undesirable activity. The Western Australian Police Act 1892 made it an offence to play or bet:

“at thimblrig, or at or with any table or instrument of gaming, other than a totalisator lawfully permitted to be used, or at any unlawful game, or at any game or pretended game of chance in any public place, to which the public (whether upon or without payment for admittance) have or are permitted to have access.”

The gaming laws focused particular attention on common gaming houses and the prohibition of the use of premises as common gaming houses. The Western Australian Police Act 1892 provided that a premises could be considered to be a common gaming house if it could be established that it was kept for playing at any unlawful game and that a bank was kept there by one or more of the players, exclusively of the others, or that the chances of any game played there were not equally favourable to all the players.

Despite the law, illegal forms of gaming flourished in the State with two-up schools and ethnic based card houses proving that there existed considerable unsatisfied demand for gaming activities. It became quite clear that prohibition was an ineffective method of controlling gaming. The development of subsequent gaming laws recognised the public's desire for access to gaming activities but attempted to strictly regulate the manner in which gaming occurred for the protection of the public interest.

In 1932 the Lotteries Control Act was proclaimed as a response to the increasing numbers of private lotteries, art unions and sweepstakes which were being promoted throughout the State. The number of cases of malpractice and fraud that were found in connection with lotteries had aroused public concern. The Act created the Lotteries Commission which was empowered (with the prior approval of the Minister) to conduct lotteries in order to raise

money for charitable purposes as well as to issue permits to eligible organisations to conduct lotteries on their own behalf. Subsequent amendments to the act granted the Commission unfettered powers to grant or refuse applications to eligible organisations without reference to the Minister.

Permits for lotteries were not issued for commercial purposes. Successive Governments have maintained this philosophy and have excluded permits being issued for lotteries that are conducted for commercial purposes or that result in private gain to individuals. Over the years the Lotteries Commission has moved into different forms of lotteries but its underlying aim is still to accumulate monies for “good” works and to provide grants to community-based organisations.

In 1972 the Lotteries Commission was empowered to grant permits for bingo to religious or charitable organisations. In 1982 the definition of a charitable organisation was extended to include any organisation which in the opinion of the Commission has for any of its objects the raising of money for charitable purposes or for the promotion and advancement of social welfare, including public recreation and sport.

In 1982 the provisions for the playing of bingo was extended to licensed clubs (licensed under the Liquor Act) and in 1984 the law was further extended to allow the game to be played in other licensed premises. The legalising of bingo was a response to community demand for this type of gaming which had been conducted by legitimate and respected organisations, albeit illegally.

The Government viewed the legalisation of bingo as an avenue for non-profit organisations to raise funds not as an activity for commercial interests. Successive Governments have maintained this philosophy.

The extension of bingo to non-profit organisations resulted from recommendations of the Royal Commission into Gambling 1974 as part of its examination of gambling in Western Australia. The Commission found that many forms of gambling were being conducted by clubs as a method of raising funds. Although the activity was illegal clubs were prepared to take the risk and conduct gambling functions as an avenue to raise funds. The Commission reported:

“We feel that this is the sort of activity which in the public interest is better legalised and controlled than to leave it in the unsatisfactory and sometimes unsavoury way it has developed and persisted over the years. It is not a good thing when otherwise respectable and worthy bodies have to more or less countenance a breach of the law in order to raise funds, and when their members and friends are prepared to do so repeatedly for a form of recreation which they undoubtedly enjoy. Logically if T.A.B. betting on a horse race or taking tickets in a State Lottery is not an evil, then neither is a “flutter” on cards, dice or a wheel. We cannot think that the ordinary reasonable person would regard such gambling as an affront to the public conscience or as immoral, particularly where the profits will benefit a cause which they regard as worthy” (pages 39 and 40 - *Report of the Royal Commission into Gambling 1974*).

Recommendations of the Commission included:

- Permitting certain further forms of gambling was not likely to have any significant adverse effect on the social and economic well being of the people of the State generally
- It would be in the best interest of the people of the State to permit further gambling under strict licence and regulation.

- Non profit bodies formed for sporting, social, charitable, cultural or other lawful purpose should be allowed to apply for approval to conduct “gaming nights” for their own fundraising purposes.
- It should not be unlawful for members and their guests of clubs to play cards for money, nor for the club to conduct sweeps on horse racing for the entertainment of the members and their guests.
- A public statutory authority should control all gambling and for this purpose a Gaming and Betting Board should be established. The Commission suggested that this could possibly be achieved by restructuring and reconstituting the Totalisator Agency Board and/or the Lotteries Commission and combining their functions and conferring additional powers.

The Commission also considered the issues of poker machines and casinos. In relation to poker machines the Commission strongly recommended against their introduction reporting that:

“We do not feel that we should recommend the legalisation of poker machines in Western Australia. From our observations we formed the opinion that poker machine playing is a mindless, repetitive and insidious form of gambling which has many undesirable features. It requires no thought, no skill or social contact. The odds are never about winning. Watching people playing the machines over long periods of time, the impressionistic evidence at least is that they are addictive to many people. Historically poker machines have been banned from Western Australia and we consider that, in the public interest, they should stay banned” (*page 72 - Report of the Royal Commission into Gambling 1974*) (2).

Successive Governments have maintained this philosophy with poker machines remaining illegal and prohibited as a matter of public policy.

In relation to casinos the Commission recommended that a casino should be established in Western Australia. The Commission reported that a casino under strict licensing conditions would not pose any threat to the social or economic well being of the community. The Commission regarded the need for strict regulation of a casino as essential to ensure the integrity of gaming and to exclude organised crime from involvement in casino operations. The Commission concluded that it was possible to exclude organised crime from casinos by a system of strict licensing. The Commission considered the existing situation of the day where gambling was illegal but several “mini casinos” operated in Perth as presenting more of a concern stating that;

“The fact of the matter seems to be that crime syndicates and other forms of organised crime feed on the desire of people to gamble and, where the law forbids gambling, organised crime finds a ready market for the illegal gambling it provides” (*pages 92 - Report of the Royal Commission into Gambling 1974*).

The Commission considered the advantages to the State to be a substantial increase in tourism which would benefit the tourism industry as well as the indirect benefits which would flow to the community from the spending of the tourist dollar. The State Government could also be expected to benefit from the imposition of a tax on the gross receipts of a casino. The Commission reported that;

“properly sited we are of the firm opinion that a casino could do little harm to the community but could bring about the much needed development of a suitable area as a major resort and tourist centre with resultant advantages to the State and the people as a whole” (*page 93- Report of the Royal Commission into Gambling 1974*).

The Commission recommended that a casino should be operated by private industry, as there would be very substantial capital outlay for the construction of the project and facilities and for its promotion. The Commission considered the financial risk and promotional effort required to be too great a for government authority to be expected to undertake it. The Commission recommended that;

“Any grant of a casino licence should be made under an Agreement to be entered into by the State with the developer who is selected by the State. We visualise that the form of such an Agreement would be similar in some respects to the Agreements that have been entered into by the State with the iron ore companies operating in the Pilbara. It would require the developer to submit a detailed proposal of his project for the approval of the State. On approval by the State of the proposal or any amended proposal, the developer would be required to complete the project in accordance with the proposal within a limited time. On completion of the project in accordance with the proposal as approved the developer would be entitled to a license for the casino for a specific period subject to compliance with the term and conditions of the Agreement.” (*Page 97- Report of the Royal Commission into Gambling 1974*).

As part of security and assurances in a casino development agreement the Commission recommended that the State should undertake to the casino developer not to grant another casino licence in the State until after the casino had been operating for a period of at least fifteen years.

The Commission considered that the developer (or in the case of a company, its directors and shareholders) of the casino should be persons of good repute and be able to demonstrate to the satisfaction of the State that he or it has the financial resources required to complete the project.

The Commission also recommended that on any breach of the casino licence the State should have the power to either cancel the licence or suspend it.

In 1981 the Government appointed a three member Back Bench Committee to gather information from the public in relation to the recommendations contained in the 1974 Gambling Royal Commission Report. The Committee report stressed that its findings were entirely based on the public submissions to it and did not represent the opinions of its members. It noted that there was virtual complete agreement that further forms of gambling were not likely to have significantly adverse effects. Most interviewees agreed that it should not be unlawful for members and their guests to play cards for money in non-profit members clubs nor for the clubs to conduct sweeps on horse racing.

The Committee reported that all interviewees agreed that a statutory authority should control all gambling. Most interviewees were of the opinion that separate authorities should remain as they were for the regulation of legal totalisator betting and State run lotteries, that is, the T.A.B. and the Lotteries Commission, and that a separate authority be established to regulate the new forms of gambling.

The Committee also noted that most interviewees agreed that a casino should be established in Perth and that an overwhelming number of interviewees did not favour the introduction of poker machines.

The Back-Bench Committee recommended that “non-profit” making clubs should be allowed to conduct sweeps and their members should be allowed to play cards for money as they had been doing for many years. It also noted that after country racing events were finished, race clubs had been playing two-up to “round off” the race meet and that consideration should be given to the legalisation of this situation. Consideration should also

be given to legalising the use of “beer ticket” machines, “chocolate wheels” and other forms of fund raising equipment.

The Committee recommended that a Gaming Commission be established in order to licence and control any gambling authorised by legislation. This body should be an entirely separate body from either the Lotteries Commission or the Totalisator Agency Board.

In 1982, following a change of Government and despite the recommendation made by the 1981 Back Bench Committee to relax the gaming laws amendments were made to the Police Act that were designed to put an end to the illegal forms of gaming operating in the community. At the time the Minister stated that the objectives of the amendments were to;

- Increase the penalties for operating an illegal gaming house.
- To provide effective provisions to catch the operators and beneficiaries of illegal gaming.
- To provide effective provisions to allow forfeiture of equipment connected with illegal gaming.
- To clarify the existing law.

The measures failed to reduce the incidence of illegal gaming but rather drove it “underground”.

In 1984 the Government established a Committee to inquire and report into gaming in Western Australia. Referring to the existing legislation of the day (including the recent amendments to the Police Act) the Committee noted;

“From the submissions received and other information available to the Committee it became clear that the needs of the Western Australian community are not being satisfied by that legislation. The Committee considers that neither the perpetuation of the existing laws nor the further tightening of them would have much effect in reducing illegal gaming” (*page 20: Report of the Committee appointed to inquire into and report upon gaming in Western Australia 1984*).

The Committee’s report stated that the existing gaming laws contained many anomalies with consequential problems associated with their enforcement and identified some forms of gaming which were innocuous, widely practised and should be permitted without legal restraint. The report also identified other forms of gaming that the Committee found were so popular that they should be permitted but regulated and controlled for the good of society. Relevant conclusions contained within the report included;

- Despite laws to the contrary illegal gaming had flourished over the years.
- Although strictly beyond its powers, the Lotteries Commission had performed a service to “non-profit” community based organisations in some situations by granting permits purporting to authorise forms of gaming which had been proven in courts to be in breach of provisions of the Police Act and/or Liquor Act. This activity of the Commission served to highlight the fact that the existing laws were out of touch with community needs.
- The liberalisation of gaming should be designed for the benefit of the community generally and particularly to assist bona fide clubs and organisations and not for the benefit of the private businessman.
- Liberalisation and regulation of the gaming laws would result in many benefits to the community, including; opportunities for sporting and other bona fide non profit clubs

and charitable organisations to engage in fund raising activities both on public and private property.

- The proper scrutiny and control of gaming and a more effective and permanent control of illegal gaming.
- The ability of people who regard gaming as a normal part of their way of life to play their traditional games lawfully.
- A reduction of the risks of unfair practices, juvenile and criminal involvement and other unsatisfactory aspects intruding into gaming.

The Committee noted that the gaming laws were in need of an immediate overhaul and recommended that most of the gaming laws should be rationalised into a composite Gaming Act. This recommendation did not include gaming as lotto or instant lotteries or other lotteries conducted by the Lotteries Commission. The Lotteries Commission was considered to perform an important and proper function as the promoter of lotteries conducted by the State. It was considered correct that the Lotteries Commission should continue to conduct lotteries for the purpose of raising monies for charitable purposes under existing legislation. Likewise, the report did not recommend changes to the regulatory regime covering betting relating to horse and greyhound racing which were administered by the provisions of the Betting Control Act 1954 and the Totalisator Agency Board Betting Act 1960.

The Committee recommended that the proposed Gaming Act should create a Gaming Authority which;

“should be independent, autonomous and capable of handling all of the new liberalised areas of gaming as well as some of the existing legal and supposedly legal gaming currently being conducted. The Gaming Authority should be empowered to control and regulate gaming for the good of the community; to deal exclusively with gaming and where practical to have exclusive jurisdiction in this area; to grant gaming permits to eligible organisations for fund raising purposes; to approve suitable premises, gaming operators and suppliers of equipment with a view to ensuring that the proceeds of the gaming are for the benefit of the club or organisation holding the gaming permit; to review and approve new games and new forms of gaming from time to time; to impose fees which should more than cover the cost of its administration and operation” (*pages 10 and 11: Report of the Committee appointed to inquire into and report upon gaming in Western Australia 1984*).

Prior to the appointment of the 1984 Committee to inquire into gaming the Government had considered the issue of a legalised casino. In March 1983 the Government Casino Advisory Committee (GCAC) was established to formulate guidelines and legislative procedures for the establishment and control of casino operations in Western Australia. This committee was formed as a result of the recommendation of the 1974 Royal Commission to establish a casino in Western Australia. Included in the terms of reference of the GCAC relevant matters were;

- The conditions under which a casino licence or other gaming licences should be granted.
- The control of licensed casinos.
- The legislative procedures necessary to provide for casino operations.

The GCAC was instructed that the Government’s broad objectives were public control of the facilities; the highest standard of casino facilities and operation; the maximum enhancement of the tourist industry and contribution to the area in which it was located and related community benefits. Relevant findings and recommendations of the GCAC included

that a casino incorporated into a large tourist/convention type hotel complex should be established in Western Australia. The GCAC reported:

“It is our opinion that this type of complex would have the benefit of becoming a tourist attraction of world standard in itself and providing in addition; employment; high standard casino operations and facilities; five star international accommodation; top class convention facilities, bars, restaurants; ancillary benefits such as golf courses, tennis courts, parks, gardens, specialty shops all of which would be available for the local community.

In addition, this type of casino operation would raise the State’s revenue potential. Based on the revenue currently being obtained from casinos in other States of Australia the revenue could be in the order of \$6-\$7 million per annum” (page 2, *Government Casino Advisory Committee. Reports of Chairman and Members to the Cabinet sub committee: November 1983*).

The GCAC recommended against public ownership of the casino and opted for private ownership of the casino under strict licensing conditions. The GCAC reported that all major reports produced in Australia at the time had recommended against Government ownership of casinos because there is no guarantee of success and the morality of using tax payers money to gamble is called into question and the GCAC agreed with that view. The Committee supported a view put to it by Mr Ron Hurley, a former casino executive who stated to the GCAC:

“Unlike the T.A.B. and Tatts Lotto, where total payouts are always somewhat less than the total pool thus ensuring a profit and margin to cover labour costs, the Casino must pay winners on each individual wager as it occurs and the final outcome has no relationship with the total pool. It is only at the close of play at the end of the day that the casino can confirm a win or loss. It would be intolerable for a public servant to be in charge of gambling with the tax payers money. Entrepreneurs are paid to take risks and it is they that should hold the casino licence. Government involvement should cover the legislation which would include security, the licensing and taxation” (page 15, *Government Casino Advisory Committee. Reports of Chairman and Members to the Cabinet sub committee, November 1983*).

The GCAC considered licensing and control as an essential element of permitting casinos. The major concerns were ensuring that the games were conducted with integrity, that organised crime was unable to gain control of casinos and that the State received its correct amount of taxation revenue.

The GCAC concluded that a regulation system that allowed for a form of inventory control. This would ensure the accountability of cash and chips and the determination of the gross profit and loss for the casino as a whole (as well as for each individual table) would be most suitable to safeguard revenue.

A regulatory regime that included inspection, audit and review would assist in ensuring the integrity of gaming. On the question of keeping organised crime from being involved in casino ownership or operations, the GCAC was acutely aware of the potential for organised crime to infiltrate gambling and paid particular attention to evidence provided to the Victorian Inquiry into Gambling by Mr Powis, Deputy Assistant Commissioner, New Scotland Yard who stated in relation to casinos;

“It provides an immense cash flow. It has considerable support services that can be parasitically taken over with supplies to gambling. It provides entry into the entertainment world, the top flight of the entertainment world. It provides a secret but very efficient international banking system. It enables money to be laundered, as the colloquialism goes, quickly and safely....taken altogether, that is a pretty severe amalgam of criminal opportunities.” (page 27, *Government Casino Advisory Committee. Reports of Chairman and Members to the Cabinet sub committee, November 1983*).

The GCAC considered that strict probity requirements and investigation of the owners, operators and the staff of casinos would enable the State to preclude organised crime from being involved with casinos. The GCAC recommended that the Government establish by legislation a Board or Commission with the authority to license and control the establishment of casinos in Western Australia. The GCAC also recommended that applicants for licenses be required to reveal full details of company ownership and share holdings. This would enable investigations to be conducted by the authority to ensure that they are persons of good reputation, financial stability and have the capacity to organise and conduct casino gambling. Further, the authority should have the power to investigate and grant reject or cancel licenses for staff members employed by the operator in casino gaming.

In April 1984 acting on recommendations of the GCAC the Government decided that a casino complex should be established in the metropolitan area of Perth. The Government had determined that a casino complex would be located at Burswood Island and had called for expressions of interests from developers to develop a casino resort complex. The Government regarded the decision to establish a casino as an opportunity to provide for the establishment of a complex that would become a tourist attraction of world class standard, which would provide a boost to employment. Ancillary benefits of such a complex would include convention facilities, golf courses, tennis courts, parks and gardens which would all be accessible to the local community. The Government also saw the opportunity to increase the revenue base to the State through licence fees and taxation on casino revenue.

2.1 The Current Legislative Framework

2.1.1 Casino Control Act, 1984

Following on from the various assessments discussed above, the Government legislated to enact the Casino Control Act 1984, which enabled the Government through the responsible Minister to enter into negotiations with prospective developers of a casino complex. Parliament was to be afforded the right to deliberate on the terms of any agreement reached between the Minister and the developer because the Act provided that a casino agreement was not enforceable by either party thereto unless and until it had been ratified by an Act.

The Casino Control Act further provided for the administrative mechanisms to licence casinos, the control of gaming operations within casinos, and for the regulation of casino gaming operations by a statutory authority. Originally this body was the Casino Control Committee. Upon the proclamation of the Gaming Commission Act 1987 the powers of the Casino Control Committee were merged with those of the Gaming Commission (the Commission).

Part III of the Act provides the Minister with the power to enter into agreements for the construction and establishment of casinos. The Minister may also agree to a period during which further casino licences will not be granted. Part IV of the Act provides the powers of the Commission and Minister when considering applications for casino licences and outlines the procedures to be followed in the determination process. Part V of the Act details provisions for the control of gaming operations within casinos in Western Australia. Part V provides that the games played in casinos must be authorised by the Commissions and that the rules of play are required to be approved by the Commission prior to the games being played in casinos. Part V further provides powers for the Commission to issue directions to casino licensees in respect of casino gaming operations, account keeping, the production of records relating to the casino gaming operations and the supervision and control of casino gaming operations.

The Casino Control Act 1984 is aimed at casino gambling generally. A variety of restrictions – discussed in detail in subsequent sections - are applied to casinos under this Act.

The general provisions are applied to the Burswood International Resort Island Casino.

2.1.2 The Casino (Burswood Island Agreement) Act, 1995

In 1985 the Government legislated to enact the Casino (Burswood Island Agreement) Act to ratify an agreement with the developers of the planned Burswood Island casino resort complex. The Government viewed the project as providing a major boost to the economy of the State. The agreement committed the resort developers to spending \$220 million on the project. The Government regarded the project as a method to create jobs in the construction industry and at the casino complex and also through a broad section of industry and commerce. The development was expected to increase tourism resulting in further increases in income and employment across many businesses. The Government also saw that the State's revenue would be boosted by a tax of 15 per cent of gross casino revenue; an annual licence fee set initially at \$400 000 and increased each year by CPI change; \$30 million for land and consideration of the State signing the agreement; and by the establishment of a public park funded by revenue from the operations of the casino.

The Casino (Burswood Island Agreement) Act is divided into seven parts. Part II covers the obligations of the developers to construct the whole resort complex on Burswood Island. This part also provided for the establishment of the Burswood Park Board to manage the public park on Burswood Island. Part IV provided for payment by the developer of fifteen per cent of gross revenue to the Treasurer and the annual licence fee of \$400 000 to the Casino Control Committee (later the Gaming Commission). Provisions were also made for the Burswood Park Board to be paid one per cent of gross casino revenue or \$1 million per annum, whichever was the higher figure. This part also provided the machinery for the grant of a casino licence and the review of the tax rate, which could grow to a maximum of twenty per cent and not be increased by more than one per cent per year.

In consideration of the rate of tax and the licence fee, the Government acknowledged that the establishment of the complex was a very large project requiring very large capital expenditure (with the developers committed to spending \$220 million dollars).

A number of restrictions exist in this Act. These are not related to gaming in casinos per se, but to the specific issue of securing a viable casino operation. In the latter context the then Government agreed to the developers being granted exclusive rights to casino gaming in Western Australia for a period of 15 years.

The casino has the exclusive rights to certain games except the games of poker with cards and two-up. The game of two-up may be allowed to be played outside a radius of 200 kilometres from the casino. After the 15 years exclusivity period the agreement provided that the State shall not grant another casino licence within a radius of 100 kilometres of Perth unless it is in a hotel and casino of comparable size and standard to the Burswood casino. Outside of the 100 kilometres a hotel and casino need only to be built to international standards. Nothing in the agreement prevented the playing of games which were currently approved under the provisions of the Lotteries (Control) Act and other Acts, including chocolate wheels and raffles.

2.1.3 The Gaming Commission Act, 1987

In 1987 the Government acted upon the recommendations of the Committee appointed to inquire and report upon gaming in Western Australia. The Gaming Commission Act 1987 was enacted to amalgamate under one body all gaming with the exception of Lotto, instant

lotteries and other lotteries conducted by the Lotteries Commission. The Act allows for social gaming without legal restraint and other forms of gaming under a permit system. The Act deals with gaming and betting connected with gaming but does not include betting related to horse and greyhound racing which remained under the ambit of the Betting Control Act 1954 and the Totalisator Agency Board Betting Act 1960.

The Act created the Gaming Commission. The duties of the Commission are to administer the law relating to gaming and betting; to keep under review the conduct, provision, use and location of gaming and betting facilities; and to formulate and implement policies for the scrutiny, control and regulation of gaming and betting, taking into consideration the requirements and interest of the community as a whole. The Commission also became responsible to administer the Casino Control Act; Casino (Burswood Island Agreement) Act and the Casino Control (Burswood Island) (Licensing of Employees) Regulations.

Part IV of the Act transferred (the then) existing provisions of the Police Kalgoorlie Two-up Regulations and the Police Act dealing with unlawful gaming; common gaming houses and cheating. Part V of the Act provided for the lawful conduct of certain types of gaming by permit. This part also provided for the lawful conduct of gambling which was spontaneous (even though it may occur regularly), was not promoted and for which no charge was made to be considered to be social gambling and was lawful without a permit being required to authorise its conduct.

The Act provided for the lawful conduct of two-up, bingo, lotteries and gambling functions under a permit condition, provided that the gambling was conducted on behalf of a community based organisation, and was not conducted for commercial purposes or for the purposes of private gain. Other types of minor fundraising activities such as chocolate wheels were made lawful without the requirement to obtain a permit.

The second reading speech associated with the Gaming Commission Bill notes that the Bill was aimed at:

“Regulating and controlling, but at the same time liberalising some of the archaic gaming laws which will result in many benefits to the community at large, including, opportunities for sporting and other bona fide non-profit clubs and organisations to engage in fund raising activities; the proper scrutiny and control of approved premises and persons engaged in gaming activities; the ability of ethnic people and others who regard gaming as a normal part of their way of life, to play their traditional games lawfully, and a more effective and permanent control of illegal gaming” (*page 1377, Hansard Tuesday 26 May 1987: Gaming Commission Bill Second Reading Speech*).

2.1.4 Overview of Current Legislative Position

By 1988, with the implementation of the Gaming Commission Act, as a result of a number of public inquiries and the subsequent implementation of the findings of those inquiries by successive Governments as discussed above, public policy had been shaped relating to gaming. That policy is reflected in the current legislation.

In essence, Governments have legislated to provide the public access to the gaming activities that they have expressed desire to participate in. The form of this access has been influenced by the recognition that the gaming industry is an industry particularly attractive to unscrupulous operators and organised crime. In an effort to provide protection to the consumer from fraudulent activity and to ensure that organised crime does not have an interest in operating or owning gaming activities, Governments have determined that it is in the public interest to have a legislative regime requiring licensing and strict regulation of the gaming industry.

Policy decisions of successive Governments have shaped an industry in Western Australia where casino gaming and bookmaking is the ambit of the private sector. Other gaming activities are the ambit of bona fide community based organisations and the Lotteries Commission, with the exception of the Kalgoorlie Two Up School which is retained in private hands, reflecting the historical and cultural development of gaming in Kalgoorlie. Other than those mentioned, gaming activities cannot be conducted by commercial organisations nor conducted for the purpose of private gain. Governments have realised the potential to broaden the revenue base of the State by taxing gaming activities. This has also enabled the costs of regulation to be met by the industry.

The Totalisator Agency Board, the Lotteries Commission and the Gaming Commission are the statutory authorities charged with the responsibility of administering the legislation pertaining to gaming and betting. The Gaming Commission is responsible to administer the Casino Control Act 1984, the Casino (Burswood Island Agreement) Act 1985 and the Gaming Commission Act 1987. The development of public policy pertaining to gaming in Western Australia has resulted in inter-relating provisions contained across individual Acts. A review of the gaming legislation administered by the Gaming Commission is most appropriately performed by consideration of the various Acts as one package of legislation.

Inherent in the approach described above is the need for a large and complex regulatory structure based on a number of restrictions on the operation of the gaming market. The major focus for the Acts is the creation of a licensing system covering all those involved in the supply of gaming products. These licences have appended to them a wide variety of associated restrictions. These restrictions relate to the particular form of gaming being covered by the licence as set out in the Acts.

This review looks at the overall licensing framework, the specific restrictions pertaining to each area of gaming covered by the legislation and the regulations associated with each area of activity.

3 Objectives of the Legislation

The objectives of the legislation pertaining to gaming in Western Australia relate directly to the concerns outlined in the various reviews and inquiries. In summary, the objectives relate to maintaining the integrity of gaming in the interests of the community and to containing the social costs of permitted gaming. The objectives are not spelt out in detail in a separate sections of the various Acts. They can be inferred from the background as discussed above and from the duties of the Gaming Commission as set out in section 7 of the Act.

On this assessment the major objectives appear to be:

- To regulate and control the gaming industry in the interests of the community.
- To establish one statutory authority - the Gaming Commission. The Commission's duties are to keep under review the conduct, extent and character of gaming and betting.
- To monitor and review the provision use and location of gaming or betting facilities.
- To formulate and implement policies for the scrutiny, control and regulation of gaming and, in conjunction with the Betting Control Board and the Totalisator Agency Board betting, taking into account the requirements and interest of the community as a whole.

The Commission attempts to achieve these objectives by administering a licensing regime that is designed to:

- Contain the social costs of gambling.
- Ensure integrity of the gambling product and providing consumer protection.
- Secure a revenue base for the State. This objective includes ensuring to some degree that the costs of regulation are met by the gambling industry and that the industry makes a contribution to the costs associated with problem gambling.
- Assist selected industries and activities. Examples include the provisions in the TAB Act for monies to assist the racing industries and the provisions of the Gaming Commission Act designed to assist community based organisations in their fund raising endeavours.
- Enhance regional and State development.
- Prevent organised crime from being active in the gaming market.

4 Uniqueness of Gaming as an Industry

Assessing the restrictions in the various Acts has to be done in the light of the objectives set out above and, where relevant, the public interest test. Before considering particular restrictions and their relative merits it is appropriate to summarise the particular attributes of gaming that need to be accounted for in any assessment.

Gaming is a unique industry. There appears to be little compatibility between the gaming industry product and the products of other industries. Gaming offers a unique product. The value of the product can far outweigh the initial outlay - or it can result in the total loss of the initial outlay. The random laws of chance must determine the result of a purchase.

One outcome of this is that while the consumer may have an intuitive understanding of the game, the basic products do not appear to be well understood and there is not the same direct relation (as there is with other products) between what is tendered (the price paid) and what is received (the expected win and the pleasure of playing) as in other product markets.

Of particular significance for gaming is the possibility of manipulation. There are a variety of ways in which the result of a game can be manipulated and the buyer has no means of knowing whether this in fact is happening. The possibilities of manipulation occur at a variety of levels from the manufacture of equipment through to the design of game rules and the operation of games. The nature of the industry is such that consumers are open to abuse from unscrupulous persons who may cheat or defraud them.

The gaming industry is a cash industry. Once transactions occur they are gone, often without any record of them occurring. This is particularly the case with table games, but not so much with lotteries or keno where printed transaction receipts are produced. One consequence of the cash orientation of the industry is that the industry is susceptible to criminal activity at various levels. Where the activity involves high volumes of cash, the industry also provides an incentive for organised crime to attempt to become involved.

While the actual details vary the gaming industry continues to be a regulated industry in all jurisdictions. The major reason for this lies in the above characteristics. It is these attributes that have led Governments to intervene in the gaming markets and enact legislation to provide for licensing of gaming activities with strict probity checks to ensure the integrity of lawful gaming activities.

Governments have recognised the need to provide some form of consumer protection in relation to gaming and have framed legislation accordingly.

These particular characteristics are well known in economics. They can be summarised as follows.

1. Information Asymmetry. The average gambler has no understanding of the mathematical probabilities associated with a game and what criteria must be met for the game to be “fair”. For example, in a gaming machine the algorithm that determines the expected payoff is programmed in at manufacture. This determines the nature of play and payout ratio for the machine. The individual gambler is not capable of checking the algorithm and is not usually able to play a machine for long enough to assess whether the machine performs properly. The same applies to other games such as roulette. The odds can be shifted in favour of the operator relatively easily with little prospect of the consumer detecting it.
2. Externality. Gambling is thought to impose costs on society when gamblers become “addicted” and consume beyond the level that is socially optimal. These costs are imposed on themselves and others (a reciprocal externality is produced) and involve society in significant treatment costs to deal with the problem. Particular forms of gaming – most notably gaming machines – appear to be most associated with the generation of significant social costs.
3. Criminal activity. The asymmetry of information discussed above is conducive to fraud against the consumer. This fraud may operate at all levels and scales. It may be ad hoc and opportunistic or organised and systemic. The cash nature of gambling – especially table games – is held to be a strong incentive for organised crime to become involved with gaming activities. Such involvement is well documented. In addition to direct gaming fraud, other typical crimes – money laundering – are associated with gaming because of the opportunity it affords. Policing illegal activities involves significant costs, intervention may occur in a market in order to detect illegal activities, and also to reduce the transaction costs associated with detection and prosecution.
4. Tax Base. The gaming industry is a major tax revenue source for governments.

In assessing restrictions in subsequent sections, this review considers the relationship between the restriction and the above characteristics of the gaming industry.

5 Identify the nature of any restrictions on competition.

The gaming market consists of the organisations and individuals active in supplying wagering and betting services to consumers. It encompasses wagering on thoroughbred horse racing and horse trotting; wagering on greyhounds; wagering conducted by bookmakers; wagering on games conducted by the Lotteries Commission; minor lotteries and community gaming; and casino gaming.

The Gaming Commission is responsible to administer the law relating to casino gaming, minor lotteries and community gaming segments of the market. The legislation covered by this review contains a variety of regulatory instruments across the various segments of the gaming market. The thrust of the regulation is to license gaming activities and to reinforce this with a variety of associated restrictions designed to address particular issues in the various market segments.

Gaming is a highly regulated industry in all jurisdictions. To facilitate the assessment of restrictions, the following section summarises the primary licensing restrictions embedded in the legislation. Following this the specific restrictions in each act are considered in terms of their impact and their costs and benefits.

5.1 Overview of Restrictions in the Legislation

5.1.1 Licensing conditions

Under the legislation, licenses are required for casino gaming, permits are required for community gaming and permits are required for “Approved Premises” in which to conduct community gaming.

Licences for are required for casino employees and certificates are required for paid community gaming operators; licences are also required for Video Lottery Terminal (VLT) technicians.

In addition to licences for the gaming itself and for the employees involved in the direct delivery of gaming products to the consumer, approval is also required for manufacturers and suppliers of gaming equipment. Approval and commissioning of gaming and wagering equipment (e.g. video gaming machines and gaming tables) is required.

Approval is required for the detailed design and layout of playing areas and for the surveillance arrangements in casinos.

Approval is also required for the particular games used and for the particular rules for gaming.

Regarding casinos, approval is required for casino controlled contracts.

The various licences and approvals operate through the Gaming Commission Act, 1987 and Casino Control Act, 1984.

5.1.2 Quantitative and Qualitative restrictions

In addition to the licensing and approvals requirements, a number of direct restrictions are imposed regarding the number of operators for certain gambling products. The legislation provides for licensing of all casinos and operators of lotteries. However, the further restriction is that only one organisation is permitted to conduct lotto gaming and major lotteries, and only one casino operator is licensed.

There are restrictions on the type of gaming to be conducted in various venues. Certain types of gaming are restricted to casinos only whilst other forms of gaming are the ambit of community based organisations. The different strata are often referred to as “hard” and “soft” gaming respectively.

Restrictions exist to prohibit non-casino gaming being conducted for purposes of private gain or commercial undertaking.

There are a variety of regulations pertaining to business conduct and the operation of a gaming business and a series of controls over ownership of casinos.

5.1.3 Inspection monitoring and audit

A variety of restrictions exist that relate to monitoring and audit. There is required supervision of all casino games. Community gaming is subject to inspection and various compliance requirements.

There are a number of restrictions relating to audit and revenue verification of casino gaming, of community gaming and lotto gaming.

5.1.4 Price and prize control

Requirements exist in the legislation and regulations relating to prizes and payouts. There are minimum payout ratios for bingo, continuing lotteries and VLT permits. There are minimum payout ratios for video games authorised for play at the casino. For a variety of games in the community and permitted lotteries area, the price of tickets and playing is specified.

5.1.5 Revenue sharing arrangements between operators, gaming venues and the State

The legislation specifies a variety of requirements regarding fees and taxes. There is a requirement for taxation on casino revenue, for licence fees and for a casino gaming licence. There are community gaming permit fees, and there are specified fees for approval of premises connected with gaming.

6 Gaming Commission Act, 1987

The Gaming Commission Act 1987 was enacted to amalgamate, under one body, all gaming with the exception of Lotto, instant lotteries and other lotteries conducted by the Lotteries Commission. The Act allows for social gaming without legal restraint and other forms of gaming under a permit system. The Act deals with gaming and betting connected with gaming but does not include betting related to horse and greyhound racing, which remained under the ambit of the Betting Control Act 1954 and the Totalisator Agency Board Betting Act, 1960.

The Commission is responsible for administering the Gaming Commission Act; the Gaming Commission Regulations; the Casino Control Act; Casino (Burswood Island Agreement) Act and the Casino Control (Burswood Island) (Licensing of Employees) Regulations.

The main features of the Act are:

- The Act permits gaming and wagering that would otherwise be unlawful if that gaming were not conducted in accordance with the provisions of the Casino Control Act; Lotteries Control Act; Betting Control Act and Totalisator Agency Board Betting Act.
- The Act and the Gaming Commission regulations further establish a licensing regime over a range of gaming activities including; bingo, minor lotteries, continuing lotteries and video lottery terminals, two-up and card and dice gambling functions.
- This licensing system has developed in accordance with Government policy to permit these gaming activities for community based organisations as a means of fund raising. A prohibition exists on community gaming in that such gaming cannot be conducted for purposes of private gain or as a commercial undertaking.

A number of particular restrictions are embodied in the provisions of the Act. These are considered below.

6.1 Restriction – requirement to hold a casino licence

Barrier to entry into the market for casino style games in the absence of a casino licence.

PART IV COMMON GAMING HOUSES, UNLAWFUL GAMES

Section 41

Makes it unlawful to keep premises open for gaming and betting as a “common gaming house”.

6.1.1 Costs/Disadvantages

This restriction precludes non-licensed operators from operating gaming establishments. It limits the number of competitors to the number of licence holders but is not an exclusive licence. The need to have a licence imposes licensing and compliance costs on operators.

6.1.2 Benefits/Advantages

The major benefit of the licence is that it enables protection of consumers as per the information asymmetry failure identified previously. It levels the competitive playing field for all operators. Being non-exclusive, this restriction does not limit the number of licence holders. It preserves the position of bona fide licence holders in the market place. The licence requirement ensures consistency with other aspects of government policy as considered below. The need to obtain a licence facilitates initial checking of the operator and the achievement of ongoing surveillance for criminal activity.

EFFECT SUMMARY TABLE	
Nature of restriction:	Licensing of casinos.
Effect	Licensing and compliance costs.
<i>How:</i>	Basic licence criteria applied including probity checks.
<i>Impact:</i>	Not an exclusive licence. Likely to be insignificant.
<i>Evidence:</i>	Standard policy in all jurisdictions.
<i>Impacts when:</i>	At time of granting licence. Some continual compliance impacts.
<i>Impacts on whom:</i>	Potential market entrants who must go through the probity checks.
<i>Public objectives impacted:</i>	Economic/social.

6.1.3 Assessment of Public Benefits

Given the propensity for casinos to attract criminal activity and the near impossibility of regulation of game conditions by consumers, the benefits are likely to outweigh the costs.

6.1.4 Alternatives

See discussion of alternative licensing regimes in section 6.2.4 below.

6.1.5 Recommendation

Minor restriction. The provision that casino operators should hold a valid licence should be maintained.

6.2 Restriction – certain games unlawful

Barrier to entry for entry into the market for certain games because they are deemed unlawful.

PART IV COMMON GAMING HOUSES, UNLAWFUL GAMES

Section 42

Makes certain games unlawful to play including games played at Burswood Casino (except at Burswood).

6.2.1 Costs/Disadvantages

This restriction precludes certain games from being played. The primary direct exclusion is thimblorig and its variations. There are some costs imposed on those who may wish to play thimblorig. Thimblorig could be played for private pleasure. The exclusion applies to playing it as a formal game included in organised social and commercial gaming activities for which licenses are required.

The section also precludes the playing of games (e.g. two-up) for which permits have not been obtained and of games (e.g. casino table games) that are otherwise precluded other than for play at Burswood International Resort Casino. The latter restrictions are required for consistency with restrictions contained in the Casino (Burswood Island) Agreement Act. The requirements for permits under the provisions of the Gaming Commission Act and the exclusive gaming position of the casino are discussed in subsequent sections.

6.2.2 Benefits/Advantages

The major benefit is the prevention of the playing of games that are too easily rigged and which too easily allow the gambler to be cheated. Given the basic licensing system in place for permitted gaming in Western Australia, allowing thimblorig and its variants would involve considerable licensing and policing costs – arguably it would be impossible to police.

EFFECT SUMMARY TABLE	
Nature of restriction:	Some games deemed unlawful.
Effect	Protects consumers from games that are inherently suited to manipulation. Reduces policing costs.
<i>How:</i>	Prevents consumers and operators from playing some games
<i>Impact:</i>	Likely to be insignificant. Prohibition is only applicable to thimblorig and variants for permitted and casino gaming. Private play allowed.
<i>Evidence:</i>	Nature of game.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Potential consumers and operators who wish to use the game commercially or in fundraising.
<i>Public objectives impacted:</i>	Economic/social.

6.2.3 Assessment of Public Benefits

The number of games actually made unlawful under Section 42 is minor – in reality the only games that are unlawful are thimblorig and its variants. All other games can be played either with a permit or at a licensed casino or in fairs and shows.

6.2.4 Alternatives

Allow thimble-ig or its variants.

6.2.5 Recommendation

Minor restriction. The restriction should be maintained on thimble-ig and its variants. The requirement that casino style games are only played in the casino is consistent with the recommendation contained in 6.1.5 and should be retained.

6.3 Restriction – permitted games restricted to games not authorised for the Casino

The permits required for permitted gaming create a comprehensive licensing scheme for community based gaming that effectively restricts community gaming to non casino style games.

PART V PERMITTED GAMING

Section 46(2)

Permitted gaming - “a permit does not authorise the playing of any kind of game which is a game authorised to be played in the Burswood Casino or which is commonly played in casinos (whether in Australia or elsewhere)”.

This restriction prevents any community-based organisation from offering games in “competition” with the Casino.

6.3.1 Costs/disadvantages

Inability of community gaming patrons to enjoy casino type games and the associated loss of consumer surplus. To play casino games patrons must use the casino. The nature of this cost is difficult to assess but is mitigated by the availability of a large range of gaming opportunities in community gaming, the availability of casino games at the casino and the unsuitability of many casino games for community gaming situations.

6.3.2 Benefits/advantages

The primary reason for the restriction and its primary benefit is to ensure compliance with the provisions contained elsewhere in the Gaming Commission Act and the Casino (Burswood Island) Agreement Act which confer monopoly rights on the casino for certain games. Games authorised for play at the casino cannot be permitted elsewhere.

However, while continuing the rights of the casino is the major benefit, the nature of the permitted gaming market is such that many casino games are unsuitable for use in the community gaming market. Casino games have smaller “house advantages” than those games permitted for community gaming. They have to be played for longer periods and have a greater risk of loss for the organisation conducting the gaming if this is not done.

EFFECT SUMMARY TABLE

Nature of restriction: Restricts games for community gaming to those not authorised for Casino gaming.

Effect 1 Loss of consumer surplus for those denied access to the games.

How: Prevents consumers and operators from using these games in community gaming.

Impact: Likely to be insignificant. Wide range of other games available. Consumer can access games at the casino. Casino games not suited to community gaming.

Evidence: Nature of game. No complaints from community gaming groups.

Impacts when: Continual.

Impacts on whom: Potential consumers and operators who wish to use the games commercially or in fundraising.

Public objectives impacted: Economic/social.

Effect 2 Ensures compliance with Casino Agreement.

How: Prevents consumers and operators from using these games in community gaming. This would breach the Casino Agreement.

Impact: Likely to be significant. Compliance on casino games is essential to avoid significant claims for damages and compensation from casino operators.

Evidence: Nature of Agreement. Past experience with casino operators.

Impacts when: Continual.

Impacts on whom: Casino and non-casino consumers and operators.

Public objectives impacted: Economic/social.

6.3.3 Assessment of Public Benefits

The restriction regarding the playing of casino type games away from the Casino certainly denies market participants the benefit of this product. However, this restriction is largely about protecting the rights of the casino and is best considered in that context. The rights conferred on the casino are considered fully in the sections below on the restrictions contained in the Casino Control Act and Casino (Burswood Island) Agreement Act.

While the restriction limits the availability of casino style games in a way that is inconsistent with efficiency, the agreement with the Casino operators would entail the State in potentially very significant damages claims and compensation costs if this was changed.

Moreover, with the exception the game of two-up (considered below) there has been little concern expressed by participants in the community gaming market that games played at Burswood Casino are unavailable for play by way of permits for community gaming functions. The games permitted for community gaming offer greater “house advantages” than casino style games and therefore have reduced risk of loss on the part of the organisation conducting the gaming. The games offered are primarily recreational and “softer” with lower wagering limits and shorter hours of operation when compared to casino gaming. This allows community based organisations to conduct occasional “gambling nights” as a method of raising funds and as a means of entertainment and to a large extent avoid the social problems associated with gambling. During the financial year ending 30 June 1997, 320 organisations conducted permitted gaming raising between them a total net amount of \$548,327.

Considering this, and interpreting the avoidance of the damages claims as a public benefit, the balance of public benefits favours keeping this restriction.

If the Casino Agreement Act was not a constraint, it would be appropriate to have the casino style games played under permit, where the availability and conditions for the playing of these games would be decided by the regulator when issuing the permit.

6.3.4 Alternatives

Allow casino style games in the permitted gaming sector.

6.3.5 Recommendation

The current restriction exists because of a commitment under the Casino Agreement Act. It should be removed subject to appropriate changes being negotiated in the Casino Agreement to allow this restriction to be removed. However, for the reasons discussed above, this is likely to be very difficult to achieve - casino style games are central to the operation of the casino. Therefore, the balance of public benefits favours not attempting to do this. There are other restrictions emanating from the Agreement (e.g. restrictions on two-up) which have greater claims for removal than this one.

6.4 Restriction – licence requirement for community based gaming

The following section is part of the comprehensive licensing scheme for community based gaming. It restricts community based gaming to games played for the benefit of community-based organisations and not for the private gain and restricts the games to non credit arrangements.

Permitted gaming or social gaming as it is known refers to that category of gaming carried on for community and social purposes. It deals with gaming such as gaming functions held by local social groups (P&F organisations, local sporting clubs) and larger community based fundraising organisations such as the Association for the Blind. It does not include casino based gaming and other forms of commercial gaming.

PART V PERMITTED GAMING

Section 51(2)(b)

Persons eligible to be permit holders must be representatives of a club, society, institution, organisation or other body of persons being a body which has as the principal object of the gaming the raising of moneys for the active promotion, support or conduct of any sporting, social, political, literary, artistic, scientific, benevolent, charitable or other like activity.

Gaming or betting is not to be conducted for the purposes of private gain or any commercial undertaking.

Section 58

Section 58 allows the Commission to set conditions in relation to permits that require funds raised from gaming to be applied to objects of permits.

6.41 Costs/Disadvantages

The licensing provisions and associated restrictions create a barrier to entry in this market segment in that community gaming is not permitted for private gain or for any commercial undertaking. This precludes purely private operators.

The operation of the licensing provision imposes a variety of costs on agents in the market place. These can be summarised as follows.

- Commercial activity does occur in respect of community gaming by way of gaming equipment suppliers and gaming operators (croupiers, bingo callers and spotters). One impact of restrictions arising from the legislation is that both suppliers and operators must pay fees to obtain licenses and both must undergo examination of their integrity by the Gaming Commission. These integrity checks consist of an examination of an applicant's criminal record. This is considered an adequate assessment of a person's character and fitness.
- Net administration costs to Government are effectively zero. The net cost of services to the Gaming Commission for community gaming regulation for the year ending 30 June 1997 was \$411,000. The Gaming Commission is self-funding. In its 1997 annual report, the Gaming Commission reported a positive change in net assets from its operations of \$104,000. for the 1997 financial year. Therefore, there was no net cost to government. Section 7(2) of the Gaming Commission Act requires "In carrying out its duties the Commission shall, in so far as is practicable, ensure that the revenue derived pursuant to this Act, and any other written law relevant to the duties of the Commission, is sufficient to provide for the operating costs of the Commission."
- Costs to organisations for permit fees. The costs of permit fees vary according to gaming type. At a minimum, there is a permit fee of \$10 and at the maximum, it is \$500. The costs are not excessive compared to the potential revenue to be earned from conducting community gaming. In 1997, organisations paid a total of \$299,797 for permits to conduct community gaming. During the same period organisations raised a total net amount of \$17,261,645 from the conduct of community gaming (source: Gaming Commission Annual Report 1997).
- Compliance costs to organisations. Community organisations are required to satisfy the Gaming Commission as to their bona fide nature and are required to pay permit fees to conduct gaming. Costs at a minimum are the cost of operating a bank account and the cost of maintaining accurate financial records to substantiate to the Commission the nature of the gaming activity and compliance with the licensing conditions. The cost of operating a bank and cheque account would normally be incurred by any business and the further cost of keeping records of income/expenditure relating to community gaming would also usually be incurred as part of meeting more general audit requirements.
- Costs may be incurred in community gaming by the payment of wages for licensed gaming operators. However, there is no requirement to use licensed operators if the person performing the gaming operations is not receiving payment for their services.

The majority of community gaming activities use volunteer labour and therefore do not incur labour costs.

The prohibition on private gain imposes a number of further costs as follows:

- The prohibition on community gaming being conducted for private gain or for any commercial undertaking creates an absolute barrier to entry to commercial operators conducting community gaming for private profit motives. It can be argued that the lack of commercial entities operating in this market segment results in inefficiencies that would not occur in an unrestricted market. However, the community gaming market appears to be a very competitive market with a large number of organisations eligible to operate in it and actively doing so. The competition is enhanced by the role of professional fundraisers who operate games on behalf of the social groups.
- Commercial activity is associated with the community gaming market by way of commercial support services that are run by private operators for private gain. Obviously the returns to commercial organisations are less than if the gaming was conducted as their own commercial venture but they are reasonable enough to have created an industry of professional fundraising businesses. It is not possible to quantify the cost to commercial organisations of this restriction because historically commercial organisations have never been able to conduct this type of gaming for commercial gain.

6.4.2 Benefits/Advantages

The primary benefits associated with the community gaming restrictions go directly back to the more general case for intervention: information asymmetry and consumer protection, control of the negative externality associated with gaming and control of criminal activity. The benefits can be summarised as:

- Ensuring that only legitimate community based organisations may apply and be granted a permit generates economic and social benefits. Economic benefits are derived directly by the organisations competing in the community gaming market. Organisations are able to raise funds themselves and they are therefore less dependent on government support to achieve their community aims. Social benefits are derived from the funds generated from community gaming when these funds are used to undertake various community activities. It is difficult to quantify the benefit with this. However, based on the recent study of the economic and social benefits of Lotteries Commission discretionary grants, a strong case can be made for this funding arrangement. That study indicated that there was a considerable community benefit derived from the fact that many social initiatives could be pursued which were initiated by the affected community and carried through by it and which would not have been funded if all funding had been delivered directly by government agencies consistent with the policy of the day. Such funding elicited significant matching input from the community in terms of time and other resources.
- Reduced risk of fraudulent schemes. The nature of gaming means that consumers, and organisations conducting gaming, are open to unscrupulous persons defrauding persons participating in the gaming or misappropriating moneys from the game. By regulating the conduct of community gaming, the opportunity for persons to behave fraudulently is greatly reduced.
- Controlling criminal activity. The permit system for community gaming ensures that only eligible charitable and community organisations benefit from the conduct of community gaming. The legislative provisions combined with a regime of regular inspection and audit generates social benefits from the knowledge that the conduct of community gaming is free from undesirable elements and the influence of organised crime. Community gaming

must be conducted honestly, free from influence and exploitation by organised crime and conducted so that public confidence in community gaming is not undermined.

- Consumer protection. The setting of odds for card and dice games; combined with minimum prize percentages for bingo; continuing lotteries; and video lottery terminals guarantees a minimum return to the player.

The consumer is in a vulnerable position concerning the fairness of games, the odds, and final payouts compared with the gaming operator. Table 1 presents an examination of consumer risks associated with the various gambling products. By regulating the conduct of community gaming this information imbalance is addressed by ensuring that the gaming is conducted in accordance with reasonable and transparent standards. By incorporating accountability controls on permit holders, problems of dishonesty and mismanagement are addressed and players can be assured the games are conducted fairly. By regulating the rules of games the players benefit from a clear understanding by all parties of the rules and responsibilities of the principal parties in a game. The restrictions ensure fairness in terms of an understanding of what is being played for (the prize), how the game is supposed to work (the rules) and in ensuring that the game does work as explained and is winnable (the expected payout).

TABLE 1 GAMBLING PRODUCTS AND CONSUMER RISKS

GAMBLING PRODUCT	CHARACTERISTICS OF GAMBLING OPERATOR	CHARACTERISTICS OF THE VENUE	CHARACTERISTICS OF THE PRODUCT
Minor gaming	Many operators (by permit)	Gambling and venue operators are the same. Diverse local venues.	Small bets and small pools. Parimutuel gambling. Games of chance.
	Moderate to high risk of dishonesty or mismanagement. Little effective competition despite large number of operators, because they are widely dispersed	Diverseness of the venue probably adds to the risk because there are local dominant suppliers.	Because of the nature of the game, the risk to the consumer of a large financial loss is small, despite risks associated with both the operator and the venue.
Lotteries Commission products	Lotteries Commission is the monopoly provider.	Operator retails through newsagents.	Parimutuel betting. Can be large bets although most would be relatively small.
	The risk is minor despite lack of competition.	The venues are local monopolies but the agents are strictly controlled by agency agreements. Vulnerable consumers will be exposed.	The risk of dishonesty and unfairness is small, but vulnerable consumers will be exposed to this form of gambling.
Casino - table games and electronic gaming machines.	Monopoly until 24/12/2000	Burswood Casino is the single venue.	The odds of games and prize schedules are set by the rules. Bets range from small to very large
	The risk is minor because of stringent probity checks, despite lack of competition.	The risk is minor because of stringent probity checks, despite lack of	The risk of dishonesty and unfairness is small, but vulnerable consumers

competition. The risk to juveniles is not high because the venue is licensed.	will be exposed to this form of gambling.
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Source: Centre for International Economics. *A Framework for National Competition Policy Reviews of Gaming Legislation* May 1997.

The prohibition on private gain confers the following benefits.

- Social benefits accrue because community based organisations are able to create income to be used for the furtherance of their community objectives. In the normal commercial sphere it is unlikely that the majority of community based organisations would be able to compete with private enterprise. By the creation of barriers to entry to purely commercial operators, community organisations are able to compete more effectively in this market segment as they only compete with like organisations.
- The community benefits from this restriction because there is less demand on public funds from community based organisations requiring resources to meet their community commitments. In the 1997 financial year a total net amount of \$17,261,645 (source: Gaming Commission Annual Report 1996/97) was raised by community based organisations through the conduct of community gaming. If open competition was permitted in this market segment it is unlikely that such amounts would be raised by community organisations for worthwhile community projects. This would in turn place additional pressure on government to fund these organisations needs.

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EFFECT SUMMARY TABLE

Nature of restriction:	Licensing for community based gaming. Permits only issued to community groups where gaming is not for private gain.
Effect 1	Increased costs on operators.
<i>How:</i>	Licence fees, record keeping costs, wages for licenced game operators.
<i>Impact:</i>	Minor.
<i>Evidence:</i>	Fees in 1997 were \$299,000 against funds raised of \$17.2 million. Record keeping is simply standard bank records, ticket sales records etc, that would be kept anyway.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Operators.
<i>Public objectives impacted:</i>	Economic/financial/social.

Effect 2

Barrier to entry for commercial operators.

How:

Permits not issued for private gain.

Impact:

Difficult to assess. It is already a highly competitive market with many participants. Licences are issued freely. Game rules not suited to significant commercial activity. Major lotteries and casinos are better suited to large commercial involvement but these are not part of this restriction.

Evidence:

Number of participants. No submissions suggesting change.

Impacts when:

Continual.

Impacts on whom:

Current and potential operators.

Public objectives impacted:

Economic/financial/social.

Effect 3

Funds generated for community purposes.

How:

Maximum payout rules, expense control, ensures significant share of funds raised goes to stated purpose.

Impact:

Major. Many community based organisations of all sizes participate. No reasonable organisation refused a permit. This form of funding allows wide range of purposes at all scales and stimulates direct community input.

Evidence:

\$17.2 million raised in 1997. Recent Lotteries Commission research showing significant matching community effort for their discretionary grants.

Impacts when:

Continual.

Impacts on whom:

Community recipients, operators..

Public objectives impacted:

Economic/financial/social.

Effect 4	Reduced risk of fraud.
<i>How:</i>	Only bona fide community groups get a permit. Regular inspections and audits.
<i>Impact:</i>	Substantial. Critical to keep community gaming free from crime to sustain public confidence in the product.
<i>Evidence:</i>	Fees in 1997 were \$299,000 against funds raised of \$17.2 million. Record keeping is simply standard bank records, ticket sales records etc, that would be kept anyway.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Operators.
<i>Public objectives impacted:</i>	Economic/financial/social.
Effect 5	Protects consumer in presence of considerable information asymmetry.
<i>How:</i>	Setting of odds, minimum prize payouts, through licence system ensures expected payoff to player and fairness in operation.
<i>Impact:</i>	Significant. Consumers have very little knowledge of the statistical properties of games and lotteries and can be easily defrauded..
<i>Evidence:</i>	Inherent complexity of games. Gaming Commission knowledge of attempts to rort system.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Operators.
<i>Public objectives impacted:</i>	Economic/financial/social.

6.4.3 Assessment of Public Benefits

These licensing requirements are not considered excessive. Compliance costs appear to be minimal and are very small in relation to the substantial amounts raised. Although operating gaming for purely private gain is not allowed the community gaming market is still extremely competitive. The licence system is non-exclusive. So long as the basic requirements and the probity checks are passed, permits are issued. As a consequence, there are a large number of participants in the community gaming sector and professional fundraisers are involved in organising gaming for the large number of permit holders.

Securing a community gaming sector that is free from criminal influences and in which games are run fairly for the protection of consumers and operators and beneficiaries is a substantial benefit. On this basis, it is not considered unduly restrictive to assess a person's suitability through a basic licence requirement and associated probity check.

6.4.4 Alternatives

The alternative to the prohibition on private gain is to allow commercial operators and tax them with funds earmarked for community purposes. This is likely to be inefficient. It would require tax collection administration and an administrative structure for dealing with thousands of applications for community grants. Such a structure would mean that many small organisations would miss out on funds. The overall size of the community gaming market at \$17 million is unlikely to justify this. Such an approach is better suited to large scale activities like major lotteries, and is used in the case of the Lotteries Commission. The current system appears to generate a significant matching effort from the community (e.g. parent input to match a P&F lottery fundraising) that goes with the fundraising and this is valuable in itself.

The licensing regime controlling permitted (community) gaming is part of a more general approach to the administration of gaming under which all gaming activities require a licence. In summary, the current licensing system allows the following benefits.

- Licensing provides increased certainty about the quality and integrity of the gambling product. The rules and procedures ensure that the operators of gambling activities achieve a particular standard of professional service. This also assists to reduce the information asymmetry that exists between the operators of gambling activities and consumers. The public benefits by reduced uncertainty or risk being associated with the gambling product.
- The licensing regime in place is designed to reduce the incidence of fraudulent behaviour. Gambling is inherently open to exploitation by criminals and organised crime. Existing consumer legislation presupposes a degree of business continuity. This is not necessarily the case with gambling “scams” which are often one off enterprises which succeed by moving locale and setting up again. Current consumer laws were not intended to apply to gaming transactions. Any swindles could be hard to prove in court and getting redress could be slow, cumbersome and expensive if it is done as a private court action. The licensing system provides an extra layer of consumer protection.
- The regulatory regime assists to address problems associated with excessive gambling by being able to limit the supply of the gambling product. The licensing system enables the government to assess and monitor the impacts of increased opportunities to gamble and make adjustments accordingly based on the impact on the community. It is pertinent to note that the current regulatory system is permissive compared to the pre licensing system which was a complete ban on the activity.

Alternatives to the current licensing system need to be able to produce similar benefits. There are a number of alternatives that could be considered. These are evaluated in detail here although they apply equally to other areas of the legislation (e.g. casinos) where licenses are required.

Self regulation

Self-regulation would depend on the gaming industry setting and enforcing standards through membership rules or a code of practice, the application of which would be voluntary.

Self-regulation is the least restrictive method of industry regulation, but one that has significant defects. Self-regulation by an industry body excludes consumers from the regulatory process; it can create inherent conflicts of interest with the industry body both drafting and enforcing the rules; and industry organisations can have a reluctance to recognise that members’ standards are inadequate.

The gaming industry consists of several distinct market segments with different types of organisations active within each market segment. The Lotteries Commission, the Totalisator Agency Board and licensed casinos each have a different purpose, method of operation and reason for existing. It is likely that self-regulation would result in different peak bodies in each of the gaming market segments operating differing codes of conduct. If one body was established to administer self-regulation it is possible that the most lucrative segment of the gaming industry would seek to control that body to protect (or expand) its own interests.

Further, it is unlikely that unscrupulous gaming operators would become members of industry associations, and far less likely, that such persons would adhere to a voluntary code of conduct. Under self-regulation, the presence of organised crime would more difficult to police, if it could be policed at all.

Self-regulation is not regarded as a satisfactory alternative to formal licensing. It is incapable of addressing the potential problems inherent in the gaming industry and is unlikely to maintain the current standard of integrity of the gaming product.

Co-regulation

Co-regulation of the gaming industry would involve self-regulation with an added element of government ratification of standards developed by the industry. The Fair Trading Act 1987 provides for the prescribing of codes of practice, which are enforceable before the Commercial Tribunal. Before a code of practice can be prescribed, there must be agreement amongst representatives of those to be bound by the code under the provisions of section 42(5) of the Fair Trading Act 1987. Because the gaming industry has no clear peak industry association, the scope of any code of practice is likely to be significantly limited. The large number of short-term participants in community gaming would make this an area where co-regulation was likely to be ineffective.

Registration

Registration is a means of combating the information asymmetry that favours the gaming operator over the consumer. Registration provides a public record of relevant information about service providers. However, the granting of registration is a purely administrative act with no real discretion to refuse to register.

A register of gaming operators would provide consumers with information as to the identity of gaming service operators and could include information about the qualification, training and experience of individual gaming operators. Requiring all persons conducting gaming to be registered would enhance registration as an option. However, the actual process of becoming registered would still have to be automatic on provision of the relevant information; otherwise registration becomes a de facto form of licensing.

Registration would require legislative support to operate and a registering authority to administer it. Legislative provisions making it an offence to provide false or misleading information for inclusion on the register could enhance the integrity of the register.

Registration does not establish minimum standards for entry to the market. Registration will not mean that the casino gaming service provider necessarily possesses the management skills or financial capability to operate casino gaming enterprises. Mere registration will not address issues of probity and integrity. The potential for unscrupulous operators to be active in the gaming industry will not be addressed by a process of registration as opposed to a process of licensing involving detailed probity checks.

Registration does not stand alone as a viable alternative to a system of licensing for the gaming industry.

Accreditation

Accreditation is a form of non-mandatory licensing. Accreditation does not establish minimum standards for entry to the market: these are usually established through some other process. Accreditation involves prior approval and compliance with minimum standards before a person can claim to be accredited. Accreditation can be withdrawn if standards are not maintained, but lack of accreditation would not prevent a person from operating in the market place.

Accreditation provides consumers with enhanced information about the standards and qualifications of service providers and can be used by employers as a means of judging potential employees. Accreditation can be a powerful marketing tool in establishing credibility in the market.

Accreditation preserves freedom of choice. It enables service providers and consumers to negotiate a balance between the standard of the service provided and the cost of that service. Licensing does not permit the negotiating of lower cost/lower standard service other than within the confines of the standards set by the licensing regime. Accreditation can provide consumers with more information than licensing because licensing merely records that the minimum standards have been met. Accreditation can provide sophisticated levels of information about the qualifications, experience and capability of the gaming operator to manage operations. Further, accreditation can provide a means of recognising improvements in those criteria after accreditation is granted by reflecting those changes in the accreditation documentation.

Accreditation requires value judgements to be made about applicants and a decision making body is required to assist in the administration of the accreditation process. This body could be an industry body or a government body. Either way its role would need to be recognised in legislation.

Accreditation offers a feasible alternative to licensing. The main drawback of a system of accreditation in the gambling market is that it would be dependent on the market entrant being willing to follow the accreditation process. Governments have recognised the need for gambling to occur only in an environment of strict control with the highest levels of integrity and probity applying to the industry. Unless all gaming operators were accredited before operating in the market, the integrity of the gaming industry could still be questionable. Unscrupulous operators are unlikely to follow the accreditation path. If all operators needed accreditation, the system may still offer some advantages over licensing but mandatory accreditation becomes a de facto licensing system.

Accreditation does not offer the protection afforded by the current licensing system, particularly in the area of probity considerations. It is considered that accreditation does not offer a full satisfactory alternative to the current licensing regime.

Negative licensing

Negative licensing means that market entrants are not screened at the entry stage. Persons are prohibited from operating in the industry only if problems are identified with their operations such as breaches of general consumer protection laws or breaches of high level standards. Negative licensing requires legislative support because the sanction is to prohibit a person carrying on an otherwise lawful function. An administering authority would still be required mainly because judgements are being made about a person's behaviour in the market place.

This approach is likely to be more costly to government and less costly to the business operators. The gambling industry requires checks to ensure only those operators with integrity and capability are able to enter the market. Probity checks before market entry are the most effective way of ensuring the integrity of the gaming product.

On balance, negative licensing does not present a viable alternative to the current licensing system.

A licensing system that regulates and controls the gaming industry appears necessary to meet the objectives of the Gaming Commission Act 1987 as it applies to community gaming. By extension, it is also required to meet the requirements of the Casino Control Act 1984 the Casino (Burswood Island) Agreement Act 1985 and the licensing of employees. The Gaming Commission currently regulates the gambling industry in Western Australia through the licensing system.

A further alternative to those already discussed which potentially provides for the current level of probity and control combined with aspects that would be consistent with competition principles is “agreement” licensing.

Agreement licensing

Under an agreement licensing model, the responsibility for the administration of all legislation pertaining to wagering and gaming would be vested in one single statutory authority. This body would incorporate the roles of the Gaming Commission and the Betting Control Board merged to form a new Commission. The Gaming Commission Act and the Betting Control Act would be repealed and/or amended to reflect a new Wagering and Gaming Commission Act. The duties and responsibilities of these acts would be mirrored in the new act. The current provisions detailing the duties and responsibilities of the respective controlling bodies contained in the Gaming Commission Act and the Betting Control Act are consistent with each other and are conducive to this approach.

The Wagering and Gaming Commission would issue licenses for all permitted wagering and gaming activity in accordance with provisions detailed in “control” acts specific to various segments of the industry as outlined below.

The Wagering and Gaming Commission Act would continue to control and regulate community gaming, and the requirements for community gaming permits and the process to be followed by the Commission in determining applications.

The Betting Control Act as it pertains to the licensing and control of bookmakers’ would be retained. The licensing and regulation of on and off course totalisator betting would be incorporated in a Totalisator Control Act. This Act would provide the authority for the Minister, with the approval of Parliament, to enter into agreements on behalf of the State with organisations to provide off course totalisator betting services. The Act would provide for the Commission to issue totalisator licences. The existing Totalisator Agency Board Betting Act that establishes the Totalisator Agency Board and details the duties and responsibilities of the Board could be amended to include an agreement enabling the Board to conduct totalisator betting under the conditions of a licence issued by the Wagering and Gaming Commission. The Totalisator Agency Board would then be subject to the same regulatory regime that applies to other organisations in the gambling market. The intent would be to remove the provisions of the Betting Control Act that provide sole supplier status to the Totalisator Agency Board and allow the government to issue as many (or as few) licenses as it determines in accordance with National Competition principles.

The Casino Control Act 1984 would remain as the control act for the casino gaming market segment. The act would only require amendment to reflect the creation of the Wagering and

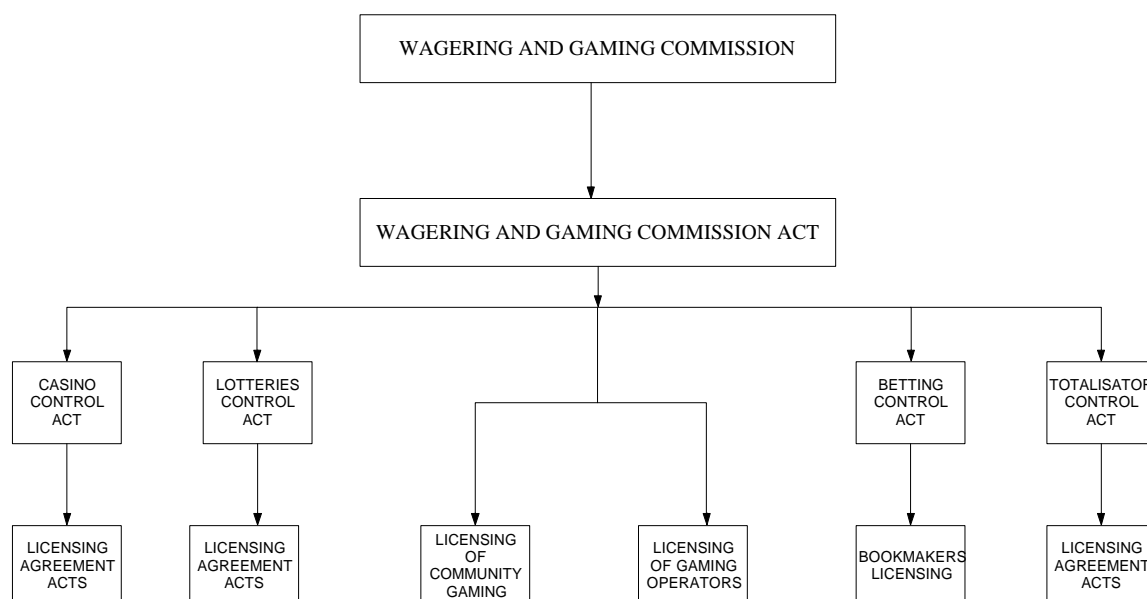
Gaming Commission. In addition the current process of the State entering into agreements for the establishment and operation of casinos would remain.

A Lotteries Control Act would provide the Commission with the powers to control and regulate the conduct of major lotteries of the type currently conducted by the Lotteries Commission. In addition, the act would empower the Minister to enter into agreements on behalf of the State with organisations to conduct this type of gaming. Further, the act would provide for the issuing of licenses to conduct this type of gaming. The current Lotteries Commission Act 1990 which establishes the Lotteries Commission and its duties and responsibilities could be amended to include an agreement enabling the Lotteries Commission to conduct games under the conditions of a lottery licence issued by the Wagering and Gaming Commission. The Lotteries Commission would then be regulated in the same manner as other organisations that are currently active in the gaming market. The intention is to remove provisions of the gaming legislation that grant sole supplier status to the Lotteries Commission and enable the government to issue licenses to other organisations to conduct major lotteries should it so desire.

The use of agreements would enable the State to enter contractual arrangements with service providers in each of the various segments of the gaming market as to the capital investment and size of operation considered necessary by the government. This is particularly relevant where the service provider is a public company.

The possible framework is shown in Figure 1.

Figure 1: Model for Future Legislative Framework



The model presents a scenario where the current level of regulation and control of gambling operations is maintained. The model allows for greater competition within the market place by enabling the government to increase market participants within sectors of the market.

6.4.5 Recommendation

The Gaming Commission Act establishes the basis for controls over the conduct of community gaming. Specific conditions, standards and procedures in order are required to satisfy the objectives of the Act in relation to community gaming. Without these restrictions the Act would be limited in its effectiveness.

One of the prime objectives in legalising the conduct of certain gaming activities was to ensure that the community as a whole benefits from the funds generated through this type of gaming. This is achieved by restricting this segment of the gaming market to charities and community based organisations.

After assessing the costs and benefits, it is considered on balance that it is in the public interest to retain a licensing system for organisations conducting community gaming. While there are alternatives to licensing, none offer the efficiency and benefits regarding probity and security as the current up-front licensing system.

6.5 Restriction – prohibition on credit gaming

The following section prohibits the use of credit gaming.

PART V PERMITTED GAMING

Section 63

Prohibition of credit for permitted gaming.

6.5.1 Costs/Disadvantages

The cost to community gaming organisations is that they are unable to offer a line of credit service as part of their gaming venture. Consequently, their expected level of turnover may be lower. The transaction costs of gaming for those wishing to use credit are increased as they must arrange credit away from the gaming venue and take cash to the venue.

6.5.2 Benefits/Advantages

The primary benefit is that it reduces the social costs associated with gambling. Evidence on the social costs is presented in the section below dealing with gaming machines. There is increasing evidence that significant social costs are associated with gaming. By eliminating credit gaming, it is considered that the incidence of problem gambling will be reduced and so there will be benefits to the community because the social costs associated with problem gambling will be avoided.

EFFECT SUMMARY TABLE

Nature of restriction: Prohibition on credit wagering for community based gaming.

Effect 1 Increases transaction costs for consumers.

How: Credit must be acquired away from venue and cash taken into venue.

Impact: Likely to be negligible.

Evidence: Permits for gaming functions are for community purposes and not for commercial gain. Relatively small scale and impact mitigated because casino type games which better suit large bets and credit gaming are prohibited.

Impacts when: Continual

Impacts on whom: Consumers and operators

Public objectives impacted: Economic/social.

Effect 2 Helps reduce the incidence of problem gaming.

How: Prevents credit gaming decisions being taken during the game. Places a barrier between seeking credit and actual play that discourages losing beyond one's means.

Impact: Potentially significant.

Evidence: Survey evidence from NSW on social costs of gaming. Not directly related to credit but credit facilitates higher levels of gambling.

Impacts when: Continual

Impacts on whom: Consumers and operators

Public objectives impacted: Economic/social.

6.5.3 Assessment of Public Benefits

This restriction does not substantially affect the consumer's ability to participate in community gaming. It simply imposes some transaction costs on those wishing to gamble on credit. It does not affect competition in the industry because all licence holders (permitted gaming and casinos) are required to follow this requirement. On the other hand, credit gaming, by making it very easy for a person to lose money beyond their means while involved in the "hot house" atmosphere of the game generates some positive risk that problem gambling will be made worse.

This is a direct legislative response by government to attempt to contain the incidence of problem gambling (and therefore the economic and social costs) by attempting to protect consumers from being able to wager beyond their available funds.

On balance, the benefits of retaining this restriction are considered to outweigh the costs of the restriction. It is in the public interest to retain a prohibition on credit betting in community gaming.

6.5.4 Alternatives

The alternative is to allow credit wagering or some form of restricted credit wagering. Unrestrained credit wagering appears completely inconsistent with the basic desire to control the social costs of gambling. Restricted credit wagering (e.g. to certain venues, certain games, or certain credit facilities) while still being inconsistent with the basic objective is likely to have significant policing and administration costs, if it can be policed at all.

6.5.5 Recommendation

The prohibition on credit gambling should remain.

6.6 Restriction – restrictions on the playing of two-up

The following sections restrict the playing of two-up. The restriction contained in the Gaming Commission Act and the Casino (Burswood Island) Agreement Act precludes permits for the game of two-up being issued where the premises to be used for the game are within 200 kilometres of Burswood Casino.

DIVISION 4 PERMITTED TWO UP

Section 80

Two-up at country race meetings. Details circumstances under which two up permit may be issued to a race club.

Section 81

Details conditions under which a two up permit may be issued.

The licensing restriction is that two up permits can not be issued for premises within 200 kilometres of Burswood casino.

6.6.1 Costs/Disadvantages

The major cost associated with this restriction is that it precludes consumers from playing a popular game within 200 kilometres of Perth other than at the Casino. It favours consumers and operators beyond 200 kilometres who can play two-up. There is a complete barrier to entry into the two up market within 200 kilometres of Perth save for the Casino.

The racing codes in particular have indicated that this prohibition causes them some concern, as the game of two-up has traditionally been associated with the racing industry. The game of two-up was illegal prior to the enactment of the Race Meeting (Two-up Gaming) Act 1985. However, since then the Casino (Burswood Island) Agreement Act 1985 has constrained the development of two-up. Metropolitan based racing clubs now wish to exercise the same privileges as their country based colleagues and be able to apply for permits to conduct games of two-up in conjunction with race meetings as an additional method of raising funds to support their club. In the financial year ending 30 June 1997, 126

organisations conducted permitted two-up raising between them a total net figure of \$169,320.

6.6.2 Benefits/Advantages

There are no inherent benefits or advantages for consumers or operators in this restriction. There are certainly efficiency losses. However, the restriction is not primarily a reflection of the nature of two up as a game or of any inherent difference between the market inside and outside the 200km zone. The reason for the restriction and its primary benefit is to ensure compliance with the provisions contained elsewhere in the Gaming Commission Act and the Casino (Burswood Island) Agreement Act which confer monopoly rights on the Casino within the 200km zone.

EFFECT SUMMARY TABLE	
Nature of restriction:	Prohibits two up within 200 kilometres of Perth
Effect 1	Denies consumers and operators like metropolitan racing clubs access to the game while country consumers and operators can have access.
<i>How:</i>	Permits will not be issued for two up within 200 kilometres.
<i>Impact:</i>	Likely to be moderately significant for consumers, although two-up is available at the casino and at country race meetings outside 200kilometres.
<i>Evidence:</i>	Nature and popularity of game at country race meetings and in Kalgoorlie. Submission from metropolitan race clubs.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Potential consumers and operators who wish to use the game commercially or in fundraising.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Ensures compliance with Casino Agreement.
<i>How:</i>	Prevents consumers and operators from using two up in community gaming which would breach the Casino Agreement.
<i>Impact:</i>	Likely to be significant. Compliance on casino games is essential to avoid significant damages claims from casino operators.
<i>Evidence:</i>	Nature of Agreement. Past experience with Casino operators.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Casino and non-casino consumers and operators.
<i>Public objectives impacted:</i>	Economic/social.

6.6.3 Assessment of Public Benefits

The two up restriction limits the availability of the game in a way that is inconsistent with efficiency. There is no particular reason to prohibit the game within 200 kilometres of Perth. However, the agreement with the Casino operator would entail the State in potentially very significant damages/compensation costs if this were changed. Taking this into account, and interpreting the avoidance of these costs as a public benefit, the balance of public benefits favours keeping the restriction unless it can be removed by re-negotiation of the Casino (Burswood Island) Agreement.

6.6.4 Alternatives

Remove the restriction.

6.6.5 Recommendation

The current restriction exists because of a commitment under the Casino (Burswood Island) Agreement Act. It should be removed subject to appropriate changes being negotiated in the Agreement to allow this restriction to be removed.

6.7 Restriction – prohibition on the use of gaming machines

The following section has the effect of preventing the use of poker machines in Western Australia. The restriction is a prohibition on poker machines in the form of spinning wheel slot machines.

DIVISION 5 GAMING MACHINES

Section 85

Prohibits the use of poker machines.

6.7.1 Costs/Disadvantages

The costs of these restrictions can be viewed from two aspects. Firstly, the potential costs to organisations and businesses denied access to the gaming machine market. Secondly, the costs to remove the restriction contained in the Casino (Burswood Island) Agreement Act.

- Costs arise for community based organisations of potential income foregone from the operation of gaming machines. In Victoria in the 1997 financial year, gaming machine expenditure was \$1,455.797 million dollars and in South Australia, it was \$364.255 million dollars (Source: *Australian Gambling Statistics*, Tasmanian Gaming Commission). This represents a major potential fund raising avenue for community based organisations.
- Loss of potential revenue to the operators of venues that could be used to conduct gaming using permitted gaming machines. Ancillary benefits would flow to the operator of premises by patrons spending money and food and drink whilst playing the gaming machines.
- Potential revenue to government through taxes on gaming machines is lost. Based on the increase in government revenue in South Australia since the wider introduction of gaming machines, the Office of Racing Gaming and Liquor in Western Australia believes that government revenue would rise by over \$100 million dollars if gaming machines were operated outside of licensed casinos.

6.7.2 Benefits/Advantages

A number of benefits are associated with the restriction on gaming machines, including the banning of poker machines. These are:

- By restricting the conduct of gambling on gaming machines to licensed casinos, it is less costly and more feasible to maintain the integrity of this particular gaming product. Inspection, audit and surveillance can be conducted more effectively.
- The cost of the government monitoring of gaming machines is lower because of the smaller number of venues operating gaming machines.
- Reduces the impact on retailing and other competing entertainment venues as a result of changes in spending patterns as consumers divert their discretionary spending away from retail, entertainment and other forms of consumer products to gaming machines.
- The social costs of problem gambling are reduced. Given that it appears that problem gambling is more likely to be associated with forms of gambling such as gaming machines, the restrictions assist in reducing the economic costs associated with problem gambling. Costs incurred in this sense include individuals incurring productivity losses; job change costs; legal system impacts (through gamblers turning to crime to support their problem); family and individual impacts, including divorce costs; bankruptcy costs and treatment costs.

Containing the social costs of gambling is potentially the most significant benefit. The wide spread use of gaming (including poker) machines although allowed in some jurisdictions (e.g. NSW), is relatively recent. However, evidence is beginning to emerge from research on the consequences. A study prepared for the Casino Community Benefit Fund Trustees in New South Wales by the University of Western Sydney in 1995 found that the incidence of problem gambling was highest amongst those persons favouring “continuous” forms of gambling such as gaming machines. The study concluded that the incidence of problem gambling was twice as prevalent in New South Wales compared to Tasmania and Western Australia where gaming machines are confined to casinos (Page 81, *A Framework for National Competition Policy reviews of gaming legislation*. Centre for International Economics, Sydney May 1997).

Another study by the University of Western Sydney in 1991 quantified the incidence of problem gambling amongst the adult population of various capital cities in Australia. The study estimated the percentage of problem gambling amongst the adult population of selected cities was as follows:

PERTH	0.32%
SYDNEY	1.09%
MELBOURNE	2.33%
BRISBANE	1.43%

(Source: “*Estimating the extent and degree of gambling related problems in the Australian population; a national survey*, University of Western Sydney 1991).

Sydney, Melbourne and Brisbane are all cities where gaming machines are available at a wide number of venues. The incidence is lowest amongst the Perth population where the limitation on the use of gaming machines is strictest.

There is little information available concerning the economic costs of problem gambling in Western Australia.

The study conducted by the University of Western Sydney in 1995 estimated the annual cost in New South Wales at \$48.1 million. Given the much greater access to electronic gaming machines in New South Wales combined with the higher incidence of problem gambling associated with that form of gambling it is reasonable to assume that the economic costs associated with problem gambling would currently be lower in Western Australia.

A particular cost that must be considered is the cost of modifying the Casino (Burswood Island) Agreement Act.

To enable other organisations to conduct gaming based on games authorised for play in casinos at venues other than casinos would require amendments to the Casino (Burswood Island) Agreement Act. It is likely that the current casino licensee would seek multi-million dollar compensation payments from the State to waive existing contractual arrangements. The cost would be borne by the community. If they did not seek this form of compensation, the casino operator may seek priority access to the wider gaming machine market created by a relaxation of this restriction.

On balance, it is considered that the benefits resulting from restrictions concerning gaming machines outweigh the costs of the restrictions and it is therefore in the public interest to retain the restrictions.

EFFECT SUMMARY TABLE

Nature of restriction:	Poker machines prohibited in legislation. Other gaming machines prohibited under policy.
Effect 1	Treats spinning wheel slot machines (poker machines) differently. Loss of consumer surplus and producer surplus for those wishing to use and operate them.
<i>How:</i>	Permits not issued, casino authorisation not granted.
<i>Impact:</i>	Likely to be insignificant. Legislative prohibition is only on spinning wheel slot machines but all gaming machines are banned under policy. For many types of gaming machine, the Casino Agreement would restrict them to the Casino. Many alternatives exist to spinning wheel slot machines, for example electronic video machines.
<i>Evidence:</i>	Policy and Casino (Burswood Island) Agreement Act.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Potential consumers and operators who wish to use the game commercially or in fundraising.
<i>Public objectives impacted:</i>	Economic/social.

Effect 2	Foregone tax revenue.
<i>How:</i>	Permits not issued, casino authorisation not granted. Therefore tax revenue collection not possible.
<i>Impact:</i>	Likely to be insignificant. Tax revenue from gaming machines is potentially significant but these are prohibited under policy. Only poker machines are prohibited under the legislation so the tax implication of the legislative restriction is minor. Widespread use of machines would also be limited by Casino (Burswood Island) Agreement Act.
<i>Evidence:</i>	Policy and Casino (Burswood Island) Agreement Act.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Government.
<i>Public objectives impacted:</i>	Economic/financial.
Effect 3	Ban assists in limiting social costs of gaming.
<i>How:</i>	Permits not issued, casino authorisation not granted.
<i>Impact:</i>	Likely to be insignificant as a purely legislative restriction on poker machines .Policy prohibition on gaming machines generally is likely to have significant impacts by avoiding social costs.
<i>Evidence:</i>	NSW research on social costs of gambling and gaming machines.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers and government.
<i>Public objectives impacted:</i>	Economic/social.

6.7.3 Assessment of Public Benefits

The restrictions relating to gaming machines derive from government policy and from contractual arrangements with the casino licensee. There is a legislative restriction preventing gaming by the use of poker machines in Western Australia. Historically, successive governments as a matter of policy have determined that permitting gaming on poker machines was not in the public interest.

While other gaming machines are limited by policy, the use and possession of poker machines (in the form of spinning wheel slot machines) has been prohibited by Section 85 of the Gaming Commission Act. Electronic versions of poker machines are not prohibited in the legislation but are prohibited under policy. This prohibition extends to the casino operator through provisions of the Casino Control Act, which preclude the Commission from authorising a game played with poker machines (in the form of spinning wheel slot machines) as a game to be played in a licensed casino.

Provisions of the Casino (Burswood Island) Agreement Act preclude the State from authorising the conduct of games approved for play in licensed casinos (in Australia or elsewhere) to be played in venues other than licensed casinos. As well as the table games played in casinos the Commission has approved several types of electronic gaming machines to be played in licensed casinos. The Commission is therefore precluded by legislation from authorising those games to be played outside of a casino.

The Gaming Commission is empowered to issue permits for gaming machines providing they are not poker machines (in the form of spinning wheel slot machines) and are not games played in casinos. The current policy of government is not to extend gaming machines outside of licensed casinos in order to contain the social and economic costs associated with this form of gambling. The Commission has concurred with government policy by determining not to issue permits for gaming machines.

There is certainly a cost to these restrictions. Consumers are denied easy access to these games. Access is through the Casino.

The principal public benefit is the ability to curb the social costs of problem gambling. A related benefit is the ability to avoid costs arising out of conflict with the Casino over which games the Commission can licence in any particular case.

On balance, the emerging evidence is that the social costs are high and are connected to the widespread availability of gaming machines.

One aspect of this restriction that is difficult to quantify is the benefit of avoiding the transaction costs of future withdrawal of gaming machines. Clearly, the evidence on the social costs of gaming will grow as this market is intensively studied. Much more should emerge as a result of the recently commissioned study by the Productivity Commission. Almost certainly there is a significant asymmetry here. While the general restriction can be relaxed at any time in the future, if the evidence warrants it, removing gaming machines from a community once they have been established is likely to be virtually impossible. Even reducing their use and distribution where the social costs prove to be high may be very difficult. There is some benefit in a “wait and see” approach.

6.7.4 Alternatives

Removal of the prohibition on poker machines (spinning wheel slot machines) is the most likely alternative. These machines would then be covered by the current policy of not issuing permits for gaming machines. Removal of the restriction on gaming machines is the most obvious alternative that would allow poker machines into the market. Partial removal, which limits the range of machines and the venues, as has happened in Adelaide, is also possible. Partial removal has its own significant competition effects as the choice of games and venues to be allowed systematically favours some competitors over others. This problem arises in Victoria where a machine quota exists and is allocated between clubs, pubs, country, and metropolitan locations. Partial removal is likely to lose any benefits associated with controlling the social costs of gambling while introducing inherent inefficiencies in policing costs and in competition outcomes.

Only poker machines (spinning wheel slot machines) are actually prohibited under legislation. This restriction could be removed from the legislation (the Gaming Commission Act and the Casino Control Act). Poker machines would then be treated consistently with other gaming machines and would be prohibited under policy. Such a policy could be established as a direction from the Minister under Section 6.2 of the Gaming Commission Act or proclaimed under Section 85.

However, during the course of debating a number of gaming amendment bills, the parliament of Western Australia has clearly indicated that the prohibition on poker machines should remain in the legislation. This is to ensure that it remains the prerogative of parliament and not executive government to determine if the prohibition on poker machines should be removed.

6.7.5 Recommendation

On balance the emerging evidence on the social costs of gaming machines combined with the restricted number of games that could be permitted under the current agreement with the Casino means that the expected benefits of the current policy restriction on gaming machines outweigh the costs. The available evidence suggests that the restriction on the availability of gaming machines that is currently embedded in policy should stay but should be reviewed as more information becomes available on the social cost of gaming machines and on changing community attitudes.

6.8 Restriction –licensing and related restrictions on the gaming machine industry

The following restrictions serve to regulate the operation of the gaming machine industry. The restrictions pertain to licensing those supplying gaming equipment, preventing sale or lease of machines based on turnover, and licensing persons paid to conduct permitted gaming.

DIVISION 5 GAMING MACHINES

Section 88

Prescribed gaming equipment - creates powers for Commission to licence persons involved with the sale supply and maintenance of gaming machines.

Section 89(2)

Precludes calculation of sale or lease of gaming machines by reference to volume of turnover.

Section 91

Licensing requirement for persons to be licensed who are paid to conduct permitted gaming.

6.8.1 Costs/Disadvantages

It is essential that community gaming is conducted honestly and free from criminal influence or exploitation so that public confidence in community gaming is not undermined. Ensuring the integrity of the gaming equipment used is central to this outcome.

There are a number of costs imposed by the licensing of equipment suppliers.

- Cost of the licence. Gaming Operators licenses cost \$100 for a three-year period. Gaming Equipment Suppliers licences cost \$200 for a five-year period. In 1997, a total of \$3600 was collected in fees for suppliers' licences and \$7400 for gaming operator licences.
- Cost of administration to issue licences and conduct probity checks.
- Cost of maintaining records.

6.8.2 Benefits/Advantages

The benefits go directly back to major reasons for intervention – information asymmetry and consumer protection, probity and the deterrence of organised crime.

- Reduced risk to consumers of scams being conducted by the operators of the game. Gaming operators and equipment suppliers are required to follow certain procedures and abide by the rules of the game. Players can take comfort in the knowledge that the game is being conducted fairly and that the chances of winning are equally favourable to all players.
- Controlling the influence of organised crime. Gaming operators and equipment suppliers are required to undergo a probity examination as part of the licensing requirements. Social benefits occur by keeping community gaming free from the influence of organised crime and ensuring that the integrity of gaming is maintained.

EFFECT SUMMARY TABLE

Nature of restriction:	Licensing of suppliers of gaming machines and prohibition of turnover based lease contracts.
Effect 1	Imposes costs on suppliers for license, record maintenance and probity checks. Creates a barrier to entry.
<i>How:</i>	Non licensed suppliers precluded from market.
<i>Impact:</i>	Likely to be insignificant. Modest licence fee. Non exclusive licence. Probity check primarily designed to discourage organised crime is principal criteria.
<i>Evidence:</i>	Similar requirement in all jurisdictions. No submissions regarding this requirement. Evidence of attempts to corrupt supply process in various jurisdictions.
<i>Impacts when:</i>	Impact at time of acquiring licence.
<i>Impacts on whom:</i>	Potential suppliers.
<i>Public objectives impacted:</i>	Economic/social.

Effect 2	Protects consumers, deters organised crime.
<i>How:</i>	Equipment meets standards of statistical fairness. Information asymmetry neutralised. Probity checks deter organised crime.
<i>Impact:</i>	Likely to be significant. Easy to rig machines without consumer knowing. Organised crime has a history of attempting to be involved in supply chain.
<i>Evidence:</i>	From nature of machines and games, known criminal activity in various jurisdictions.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers.
<i>Public objectives impacted:</i>	Economic/financial.

6.8.3 Assessment of Public Benefits

The gaming industry is largely based on cash transactions. In general, there is no method of recording individual transactions. The activity is therefore susceptible to exploitation by organised crime. In the absence of some form of regulation, there are strong incentives to supply machines that are biased. The complexity of the programming and the nature of the play make it virtually impossible for the individual consumer to detect such biases and the ascertain that the stated attributes of the game (mainly the payout ratios and expected payout) are not the actual attributes.

6.8.4 Alternatives

See licensing alternatives discussed in section 6.2.4 above. The alternatives to simple licensing are likely to be less efficient and are unlikely to deliver equivalent benefits in relation to probity and protection of the consumer. Again, accreditation is the most feasible alternative.

6.8.5 Recommendation

The benefits of maintaining a licensing system for gaming operators and suppliers in order to maintain the integrity of community gaming are considered to outweigh the costs associated with this system.

6.9 Restriction – restrictions on bingo operators – no permits for private gain.

The game of bingo falls within the community gaming segment. Several restrictions are imposed on operators. These include not allowing an operator to seek private gain, setting maximum and minimum payout ratios, capping expenses under regulation and the prohibition of jackpot prizes. The Commission may make regulations dealing with all aspects of the rules and form of play.

Section 95(1)(a)

A permit shall not be issued for any private gain or any commercial undertaking

Specifies conditions under which bingo permits are issued.

6.9.1 *Costs/disadvantages*

This restriction prevents entrepreneurs from operating in the bingo market. Commercial involvement is restricted to fundraisers who may organise and run the games on behalf of the permit holder.

6.9.2 *Benefits/advantages*

Bingo is largely played by senior citizens. It is organised for community benefit with permit holders being worthy groups with the objectives of using proceeds in some community cause. This particular restriction on bingo is primarily about ensuring that it remains consistent with the broader objectives in gaming legislation – probity in operations, the protection of consumers and the exclusion of organised crime. The prohibition on private gain (discussed previously at section 6.4.2 and 6.4.3) also ensures community involvement.

EFFECT SUMMARY TABLE

Nature of restriction:	Prevents commercial operators of bingo. Restricts commercial involvement to professional fundraisers.
Effect 1	Ensures proceeds go to community purposes. Protects consumers by encouraging probity and removing commercial incentive to manipulate the games.
<i>How:</i>	Permits not issued if for private gain.
<i>Impact:</i>	Likely to be significant. Major fundraiser for community groups.
<i>Evidence:</i>	Participation numbers and funds raised.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers and operators.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Barrier to entry to commercial bingo operators. Potential limitation of competition.
<i>How:</i>	Permits not issued if for private gain.
<i>Impact:</i>	Likely to be insignificant. Bingo is a widespread and highly competitive market. Entrepreneurial role possible through fundraising.
<i>Evidence:</i>	Number of permits issued, number of participants. No demand expressed in submissions to change this aspect of permit system
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Potential commercial operators.
<i>Public objectives impacted:</i>	Economic/financial.

6.9.3 Assessment of Public Benefits

The public benefits largely come from ensuring probity and protecting the consumer. The prohibition on private gain exists in other parts of the legislation and this section gives effect to it in the context of bingo. In this sense, it is likely that the public benefits outweigh the costs for bingo just as they were argued to do for the more general restrictions.

The further public benefit of having this specific bingo provision that does essentially the same thing as the general prohibition on private gain in community (permitted) gaming is difficult to quantify. The main reason for repeating the prohibition in this Division has been the result of court decisions that imply that a prohibition only applies to the Division in which it appears. The restriction appears in this Division of the Act to ensure consistency with the objectives of the Act in relation to community gaming.

Consumer protection is a critical element of bingo given that the market, although very large, is primarily a senior citizens market. The prohibition on private gain is consistent with this and consistent with the broader objectives of the gaming legislation. It imposes no additional constraints.

6.9.4 Alternatives

Remove provision.

6.9.5 Recommendation

The benefits of maintaining a prohibition on the conduct of bingo for private gain are considered to outweigh the costs. One of the prime objectives in legalising the conduct of certain gaming activities was to ensure that the community benefits from the funds generated through this type of gaming. This is achieved by restricting this segment of the gaming market to charities and community based organisations. The restriction should remain as it is integral to meeting the objectives of the legislation.

6.10 Restriction – restrictions on bingo operators – limits on prize pools.

Section 96(2)(a)(b)(c)

Aggregate amount paid to players as prizes shall not exceed sixty per cent (or prescribed amount); the value of the prize shall not exceed prescribed amount.

Also permits Commission to place a cap on expenses by regulation.

Section 97(2)(a)(b)(c)

Same as section 96 for simultaneous bingo.

Specifies minimum prize payouts for multiple and simultaneous bingo.

6.10.1 Costs/disadvantages

Some costs are imposed on consumers in that the maximum payout is 60 per cent. This caps the prizes. Jackpot prizes are prohibited.

Constraints are placed on the commercial fundraiser role when the level of expenses, which are usually paid to a fundraiser, are capped under regulation.

6.10.2 Benefits/advantages

Bingo is largely played by senior citizens. It is organised for community benefit with permit holders being worthy groups with the objectives of using proceeds in some community cause.

The restrictions on payout ensure funds will be held for community uses while the ability to regulate expenses ensures that fundraisers cannot claim the bulk of proceeds. The latter has been an issue in other areas where similar regulations do not exist. In particular cases exist in fundraising lotteries where very little has been left for the worthwhile cause after unregulated fundraiser expenses have been deducted.

EFFECT SUMMARY TABLE	
Nature of restriction:	Limits bingo prize pools to 60% of funds raised and allows capping of expenses.
Effect 1	Ensures significant portion of funds raised is available for the stated community purpose.
<i>How:</i>	Prosecution if condition violated.
<i>Impact:</i>	Likely to be significant. Bingo is a major fund raising activity. Community gaming raised \$17.2 million in 1997.
<i>Evidence:</i>	Gaming Commission information on funds raised.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers, operators and recipients of funds.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Limits organiser expenses
<i>How:</i>	Capping of expenses as part of permit.
<i>Impact:</i>	Likely to be significant. Incentive exists for commercial fundraisers to charge high expenses.
<i>Evidence:</i>	Where such a restraint does not exist, cases of commercial fundraiser expenses consuming the bulk of funds raised have arisen.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Recipients, fundraisers.
<i>Public objectives impacted:</i>	Economic/social.

Effect 3	Ensures compliance with Casino Agreement.
<i>How:</i>	This bingo restriction is specified in the Casino Agreement. Burswood Trustee approval required to change it.
<i>Impact:</i>	Likely to be significant. Compliance with Casino Agreement is a contractual requirement.
<i>Evidence:</i>	Nature of Agreement.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Casino and non-casino consumers and operators.
<i>Public objectives impacted:</i>	Economic/social.

6.10.3 Assessment of Public Benefits

Strictly speaking, under the Casino (Burswood Island) Agreement Act, changes to this rule need to be negotiated with the Burswood trustee. It is included in Schedule A of the Casino (Burswood Island) Agreement Act relating to the conditions for playing bingo. The attitude of Burswood Limited would need to be tested regarding willingness to approve changes.

6.10.4 Alternatives

Remove the restriction from legislation and cover specific regulations required under section 100.

6.10.5 Recommendation

1. This permitted bingo rule is covered under the Casino (Burswood Island) Agreement, which in effect specifies the conditions of play reflected in this rule. The approval of the Burswood Trustee is needed to change it. It would be preferable if this was not the case and it is recommended that the Government negotiate to remove the conditions attached to bingo contained in the Casino (Burswood Island) Agreement.
2. However, the setting of a maximum payout and control of expenses is necessary to achieve the objective of community gain. The ability to set rules is contained in section 100, which allows the Commission to make regulations pertaining to bingo. It is recommended that the specific restrictions contained in sections 96(2)(a)(b)(c) and 97(a)(b)(c) be removed from the legislation and that the Gaming Commission use its powers under section 100 to regulate bingo to achieve the community gain objective of the legislation.

Consideration should be given to extending the regulatory control of organising expenses to other areas such as fundraising lotteries to ensure consistency of treatment. These are areas where examples exist of professional fundraiser expenses consuming a very high proportion of the funds raised, leaving the organising charity with little return.

6.11 Restriction – restrictions on bingo operators – licence requirement.

Section 98

Specifies that a person shall not conduct bingo without a permit, shall not offer prizes in jackpots unless authorised by permit to do so, and shall not conduct game unless holder of licence.

6.11.1 Costs/disadvantages

See section 6.4.1 above on the licensing requirement for community gaming.

6.11.2 Benefits/advantages

See section 6.4.2 above on the licensing requirement on community gaming.

6.11.3 Assessment of Public benefit

See section 6.4.3 above on the license requirement for community gaming.

6.11.4 Alternative

See section 6.4.4 above on licensing alternatives.

6.11.5 Recommendation

The Gaming Commission Act establishes the basis for controls over the conduct of community gaming. Specific conditions, standards and procedures are required in order to satisfy the objectives of the Act in relation to community gaming. Without these restrictions the Act would be limited in its effectiveness.

One of the prime objectives in legalising the conduct of certain gaming activities was to ensure that the community as a whole benefits from the funds generated through this type of gaming. This is achieved by restricting this segment of the gaming market to charities and community based organisations.

After assessing the costs and benefits, it is considered on balance that it is in the public interest to retain a licensing system for organisations conducting bingo. The restriction should continue.

6.12 Restriction – ability to make rules for permitted bingo.

Section 100

Allows Commission to make regulations, which restrict manner of play of bingo i.e. number of games played on premises in twenty four hours; period of playing of one session; hours during which gaming is permitted to take place; amount of the stakes; method of calculating the value or amount of the prize; functions of the organiser; requiring a security deposit to be lodged prior to commencing bingo; the sale of bingo cards; the provision and award of prizes.

6.12.1 Cost/disadvantages

The ability to make regulations regarding the play of the games imposes administrative and operator compliance costs. It may deprive consumers of some form of games. Compliance costs are expected to be minimal.

6.12.2 Benefits/advantages

Bingo is largely played by senior citizens. It is organised for community benefit with permit holders being worthy groups with the objectives of using proceeds in some community cause. The particular restrictions on bingo are primarily about ensuring that it remains

consistent with the broader objectives in gaming legislation – probity in operations, the protection of consumers and the exclusion of organised crime. The restrictions on payout ensure funds will be held for community uses while the ability to regulate expenses ensures that fundraisers cannot claim the bulk of proceeds. The latter has been an issue in other areas where similar regulations do not exist.

The ability to set detailed regulations regarding the rules and form of play is primarily to protect consumers and ensure that the permit holders do not breach other rules such as using derivatives of casino type games.

Certain rules for bingo are required under the Schedule 2 provisions of the Casino (Burswood Island) Agreement Act. These are specified in the Gaming Commission Act and changes require approval from the Burswood Trustee. The ability to make rules is the way of ensuring compliance with this requirement.

EFFECT SUMMARY TABLE

Nature of restriction:	Rules to restrict manner of play for bingo.
Effect 1	Potentially restricts game formats, imposes some compliance costs.
<i>How:</i>	Permits will specify rules.
<i>Impact:</i>	Minimal.
<i>Evidence:</i>	Current restrictions of forms of play have not hindered development of large and competitive market.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Potential consumers, operators and fundraisers.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Protects consumers, ensures probity by allowing rules to adjust to reflect changing market circumstances.
<i>How:</i>	Permits will specify rules.
<i>Impact:</i>	Potentially significant. Allows developments that threaten probity and consumer sovereignty to be easily addressed.
<i>Evidence:</i>	Current restrictions have largely emerged as a result of specific instances where protection is needed.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Potential consumers, operators and fundraisers.
<i>Public objectives impacted:</i>	Economic/social.

6.12.3 Assessment of Public Benefits

The public benefits largely come from ensuring probity and protecting the consumer. Most of the restrictions contained in these sections (e.g. the prohibition on private gain) exist in other parts of the legislation and these sections give effect to them in the context of bingo. In this sense, it is likely that the public benefits outweigh the costs for bingo just as they were argued to do for the more general restrictions.

The further public benefit of having specific bingo provisions essentially the same as the general requirements or which could be achieved through Section 100 is difficult to quantify. However, where the rules are required under the Casino (Burswood Island) Agreement Act, having them specifically set out may be a way of demonstrating compliance.

Consumer protection is a critical element of bingo given that the market, although very large, is primarily a senior citizens market.

6.12.4 Alternatives

Remove the ability to make rules for bingo.

6.12.5 Recommendation

The ability to make rules for permitted bingo should be retained.

6.13 Restriction - restrictions on lotteries

The following sections restrict the way in which lottery games are organised. In particular they establish the sole supplier status of the Lotteries Commission in relation to lotto, soccer pools and instant lotteries. These sections interact with the general prohibition on lotteries being conducted for private gain, to establish a licensing system for lotteries that creates significant barriers to entry for competitors to the Lotteries Commission. Together they give effect to Government policy that the Lotteries Commission is the sole participant in the major lotteries market.

The restrictions also affect the operation of the market for minor lotteries.

The Lotteries Commission has examined the impacts and assessed the cost and benefits of the restrictions on competition contained in the gaming legislation as they affect the major lottery segment of the gaming market in its National Competition Policy Review of the Lotteries Commission Act.

This review will therefore concentrate on the restrictions as they impact on minor lotteries and on assessing the legislative provision that enables the Lotteries Commission to be the sole supplier of state lottery products in Western Australia.

The principal restriction is a prohibition on permits for lotteries being issued for private gain or commercial undertakings.

DIVISION 7 LOTTERIES AND AMUSEMENTS WITH PRIZES

Section 102

Provides that a lottery is unlawful unless it is a lottery conducted under the Lotteries Control Act; a game within the meaning of the Lotto Act; an authorised game as defined by the Casino Control Act; a soccer football pool; a trade promotion lottery or a permitted lottery.

Section 104

Establishes licence requirement for standard lottery and continuing lottery; establishes application requirement for standard lottery.

Section 105

Establishes control over vending machines for use with a continuing lottery; provides ability to restrict value of prizes that can be obtained from tickets dispensed from a vending machine.

Section 107

Establishes the circumstances and conditions in which amusements with prizes may be conducted.

Section 108

Establishes criteria for minor fund raising activities.

The major restriction in the above sections is that the potential competition with the Lotteries Commission for major lotteries is eliminated.

6.13.1 Restriction for State lottery supplier

6.13.1.1 Costs/Disadvantages

Potential for higher prices to be charged by the LCWA than would be the case in a competitive environment.

The current legislative provisions grant the LCWA the position of sole supplier of the “State lottery”. There is no risk to the continuance of their sole supplier status as it is unlawful for any organisation except the LCWA to conduct the “State lottery”. In a competitive market competition would place downward pressures on prices and encourage the LCWA to reduce its operating costs. The provisions of the legislation effectively remove this market pressure and hence place no pressure on the LCWA to examine these issues.

The LCWA may be less likely to be cost efficient due to lack of competition.

The potential for the LCWA to charge higher costs as a legislatively protected monopoly is regulated to some degree by the expense provisions contained within section 20(5) of the Lotteries Commission Act 1990 which provides that:

“The total expenses of conducting lotteries, games of lotto and soccer football pools in any one year including commissions payable on subscriptions and the allowances and remuneration of the members of the LCWA shall not in one year exceed 25% of the gross amount received from subscriptions.”

The sole supplier may offer fewer products than would be the case in a competitive environment and is less likely to be innovative with product design than would be the case in a competitive environment.

The types and numbers of different lottery products available to consumers are a consequence of what products the Minister and the Government will permit the

LCWA to offer for sale. There may be fewer products available than in a competitive environment but this is a result of a regulatory function rather than any exercise of sole supplier power by the LCWA.

The provisions of the legislation prevent the Government utilising a different supplier of state lottery products even if an alternative supplier could demonstrate economic advantages to the Government for utilising their service.

The provisions of section 102 of the Gaming Commission Act 1987 creates a barrier to entry to the state lottery market and protects the LCWA from competition. Although the LCWA has demonstrated that it is in the public interest to have a single supplier of “State lottery” products in its National Competition Policy Legislative Review of the Lotteries Commission Act 1990 it was not demonstrated that the sole supplier should always remain the LCWA.

The legislation currently precludes the consideration of alternative arrangements as a means of promoting cost efficiency and providing downward market pressure on the price of products.

6.13.1.2 Benefits/advantages

Improved returns to the Western Australian community.

This occurs through there being no profit taking by the Lotteries Operator; all surpluses of the LCWA are returned to the community; “prize pool” sizes are optimised; there is no wasteful duplication of infrastructure; no wasteful competition for the public’s lotteries spend; and distribution costs are included in the operator costs.

Further, the LCWA is unique in Australian jurisdictions by having a discretionary grants program that provides grants direct to community organisations. The processes established by the LCWA for its consideration of applications for discretionary grants has resulted in effective regulatory control over this aspect of its community funding role and has ensured that the funds are used for worthwhile community projects that are in the public interest. Any reduction of the LCWA’s capacity to fund these grants has implications for the community and the Government. Should the capacity of the LCWA to fund community projects be reduced it is likely that organisations will seek funding from the Government for their community projects.

A private supplier of lottery products could be required to provide funding for community grants as a condition of them winning the right to supply “State lottery” products. However, it is likely that a government body would be obliged to determine the distribution of such community funding, or a regulatory regime would need to be put in place to ensure that grants provided by the private operator were for worthwhile community projects that were in the public interest.

Government control of a “public bad”.

This provides the public with a single highly credible supplier of lotteries products; provides the public with a reliable gaming product; approved game rules provide the public with certainty concerning the product and eliminates scams and racketeering and crime from the products offered by the LCWA.

EFFECT SUMMARY TABLE	
Nature of restriction:	<i>Sole supplier of major lottery products is LCWA.</i>
1.0	<u>COSTS/DISADVANTAGES</u>

Effect 1.1	Potential higher prices to consumers.								
<i>How:</i>	Exercise of monopoly power.								
<i>Estimate of Impact:</i>	Difficult to assess but likely to be negligible.								
<i>Evidence:</i>	Prices charged for lottery products are similar in all Australian jurisdictions.								
<i>Impacts when:</i>	Continual.								
<i>Impacts on whom:</i>	Consumers.								
<i>Public objectives impacted:</i>	Economic/financial.								
Effect 1.2:	Potential for higher costs to be charged by the sole state lottery operator than would occur in a competitive environment.								
<i>How:</i>	No competitive pressure to be cost efficient.								
<i>Estimate of impact:</i>	Negligible. The LCWA operates cost efficiently when compared with state lottery operators in other Australian jurisdictions. The Lotteries Commission Act 1990 restricts operating costs to 25% of gross proceeds. The LCWA currently operates at 6% of gross proceeds.								
<i>Evidence:</i>	<u>1998 Lottery industry operating costs as a % of Sales</u> <table data-bbox="619 1099 997 1294"> <tr> <td>Western Australia</td> <td>5.92%</td> </tr> <tr> <td>Queensland</td> <td>6.46%</td> </tr> <tr> <td>New South Wales</td> <td>6.75%</td> </tr> <tr> <td>South Australia</td> <td>5.64%</td> </tr> </table> <p>(source: Lotteries Commission of Western Australia)</p>	Western Australia	5.92%	Queensland	6.46%	New South Wales	6.75%	South Australia	5.64%
Western Australia	5.92%								
Queensland	6.46%								
New South Wales	6.75%								
South Australia	5.64%								
<i>Impacts when:</i>	Continual.								
<i>Impacts on whom:</i>	Consumers.								
<i>Public objectives impacted</i>	Economic/financial.								
Effect 1.3	The sole supplier may offer fewer products than in a competitive environment.								
<i>How:</i>	The lack of competition may result in fewer products being offered by the sole supplier, as there is no pressure to innovate or diversify.								
<i>Estimate of impact:</i>	Difficult to assess but likely to be negligible.								
<i>Evidence:</i>	The LCWA offers a similar range of lottery products to other Australian jurisdictions. A factor influencing the introduction of new products by the LCWA is that they must gain ministerial approval before introducing new products. Products available in other jurisdictions may not be available								

in Western Australia due to the Government not approving the introduction of such a product.

Effect 1.4: **Potential loss to the Government of economic advantages by utilising an alternative supplier of state lottery products.**

How: The provisions of section 102 of the Gaming Commission Act 1987 create a barrier to competition. Effectively the Act provides that only those state lottery products supplied by the LCWA are lawful state lottery products.

Estimate of impact: Difficult to assess but potentially significant.

Evidence: Section 102 Gaming Commission Act 1987.

Impacts when: Continual.

Impacts on whom: Consumers, Government.

Public objectives impacted: Economic/financial.

2.0 BENEFITS/ADVANTAGES

Effect 2.1: **Improved returns to the Western Australian community.**

How: No profit taking by the lottery operator. Distribution costs are included in the operator costs. All surpluses of the LCWA are returned to the community. "Prize Pool" sizes are optimised.

Estimate of impact: In 1998 the LCWA returned \$126 million to the community comprising \$71 million to health, \$8 million to sports and the arts, and \$47 million directly to the community through direct grants.

Evidence: Lotteries Commission of Western Australia Annual Report 1998.

Impacts when: Continual.

Impacts on whom: Consumers, community.

Effect 2.2: **Government control of a "public bad".**

How: Provides the public with a single highly credible supplier of lotteries products; provides the public with a reliable gaming product; approved game rules provide the public with certainty concerning the product and eliminate scams, racketeering and crime from the products offered by the LCWA. Costs of regulation of the market are minimised.

<i>Estimate of impact:</i>	Difficult to assess as all state lotteries throughout the world are generally operated in a market with a sole supplier of products who is either a government authority, a government owned corporation, or a private company operating under licence to the government.
<i>Evidence:</i>	The historical development of the LCWA indicates that substantial problems of scams and racketeering occurred in the market prior to the introduction of the State Lottery.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers.
<i>Public objectives impacted:</i>	Economic/financial.

6.13.1.3 Assessment of Costs/Benefits

The historical development of the LCWA (*refer to section 2 –“Background to the Western Australian legislation,” pages 4–11 in the National Competition Policy legislative review of the gaming legislation*) indicates that substantial problems of scams and racketeering occurred prior to Government control over major lotteries. The Government's reasons for establishing the LCWA included obtaining funding for the State by conducting a State Lottery and eliminating criminal activities associated with lotteries through having a single credible supplier. State and national governments have taken this approach to revenue raising and gaming control worldwide. Throughout the world, State lottery operators are made up of either Government authorities, Government owned corporations, or private companies operating under licence to the government. The most common model is the government authority model with Ministerial or Cabinet control as is the current situation in Western Australia.

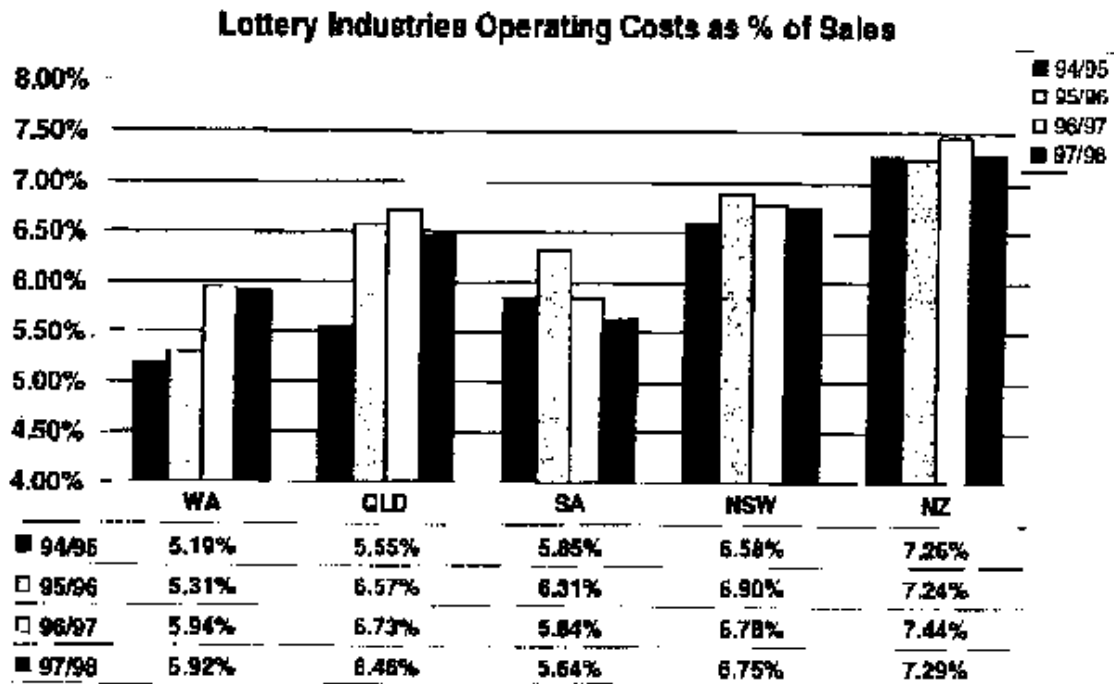
Costs of the restriction were assessed as:

- The potential for higher prices to be charged by the LCWA than would be the case in a competitive environment.
- The LCWA may be less likely to be cost efficient due to the lack of competition.
- The LCWA may offer fewer products and reduced services than would be the case in a competitive environment and may be less likely to be innovative with product design than would be the case in a competitive environment
- The provisions of the legislation prevent the Government utilising a supplier of state lottery products other than the LCWA.

The potential for higher prices to be charged for state lottery products by the LCWA exists (because of the lack of competition and/or by the exercise of monopoly power) but is not supported by a comparison of prices in Australian jurisdictions. The prices of Western Australian “State lottery” products are comparable to prices in all Australian jurisdictions. All Australian jurisdictions operate a sole supplier model.

In comparison with other Australian jurisdictions, the LCWA is an efficient supplier of state lottery products (*refer Figure 1*). In 1998 the LCWA recorded operating costs of 5.92% of sales. In the same year state lottery operators recorded cost percentages of 6.46% in Queensland, 6.75% in New South Wales, and 5.64% in South Australia (*source: LCWA*). In both Western Australia and South Australia a statutory authority operates the state lottery.

FIGURE 1 (source: Lotteries Commission of Western Australia)



The LCWA has, over time, outsourced 48% of its operations as part of ongoing cost efficiency strategies. The LCWA constantly assesses its operations to ensure cost effectiveness. The LCWA is committed to continued costing reviews of its operations with particular emphasis on contracting out non-core functions. Further, the LCWA and the Totalisator Agency Board are jointly working on a proposal to investigate the potential for facilities and resource sharing, as a means for both agencies to reduce costs.

The lack of competition and the monopoly position enjoyed by the LCWA potentially means that fewer products may be offered and less innovation occur than would be the case in a competitive environment. However, the evidence suggests that the variety of state lottery products available in Western Australia is a consequence of the regulatory function rather than any reaction to economic forces by the LCWA. The LCWA must receive ministerial approval for new games prior to new products being introduced to the market. Government policy concerning gambling products determines what products will be available in the State lottery.

The Minister for Racing and Gaming noted in a report on the review of the Lotteries Commission Act 1990 that was presented to Parliament in December 1998;

“While the LCWA must have a strong commercial focus, and it has taken this view for many years, as its performance in recent years clearly demonstrates, I also consider the community expects that the gambling of which lotteries is a form, and the promotion of gambling, must be managed in a socially responsible way. It would not be acceptable to the Government or the community to increase sales levels to the detriment of society, and a growth in the instance of problem gambling.”

Amendments made to the Lotteries Commission Act 1990 (through the Lotteries Commission Amendment Act 1998) broadened the definition of a lottery, authorised the use of new communication technology and multimedia, and enhanced the capacity of the LCWA to enter into partnerships for the operation of lotteries. The amendments provided the LCWA with the flexibility to:

- Generate and market new lotteries and similar/related gaming products.
- Pursue the development of a broader range of business partnerships with which to conduct lotteries.
- Pursue appropriate opportunities to generate additional revenue from the marketing of its professional services, expertise and intellectual property.
- Take advantage of opportunities offered by developments in information technology and telecommunications.

The LCWA operates an efficient and widespread service for retail distribution. The LCWA appoints independent small businesses as licensees to sell lottery products. Currently there is approximately 470 retailers, “on-line”, (i.e. who sell Lotto, Cash 3 and Soccer Pools and also Instant tickets). Another 135 are Instant only retailers. The majority of retailers are newsagencies with a small number of specialist kiosks. Retailers’ appointments are made on clear criteria based on the capacity of the outlet to generate a certain level of turnover.

The provisions of the legislation prevent the Government utilising a different supplier of state lottery products even if an alternative supplier could demonstrate economic advantages to the Government for utilising their service. The provisions of section 102 of the Gaming Commission Act 1987 creates a barrier to entry to the state lottery market and protects the LCWA from competition. Although the LCWA has demonstrated that it is in the public interest to have a single supplier of “State lottery” products in its National Competition Policy Legislative Review of the Lotteries Commission Act 1990 it was not demonstrated that the sole supplier should always remain the LCWA.

The benefits of the restriction were assessed as:

- ease and economy of regulation resulting in higher returns to the public
- providing high levels of credibility and integrity

The LCWA established the public benefit case of having a sole supplier of State lottery products in its National Competition Policy review of the Lotteries Commission Act 1990. The perceived benefits of the restriction (achieving economies of scale, pursuing social objectives, managing public risk and minimising regulatory costs) were assessed against the perceived costs (reduced consumer choice and possible reduced returns). On balance, each of the restrictions was seen to be justifiable as providing a net public benefit. Legislative controls were found to be necessary to guard against fraudulent and criminal activities, and lotteries provide significant funds for government and community purposes that would be difficult to raise from other sources.

Since the introduction of the current Lotteries Commission Act in 1990, revenues and returns to Government and the community have increased on a regular basis, with the

exception of 1996/97. The reduction in sales turnover in 1996/97, and the consequent decrease in the amount available for statutory funding, was consistent with a broader trend across Australia that saw lotto and, in particular, instant lottery sales plateau and decline. All states subsequently showed an increase in lotto sales during 1997/98. Western Australia's share of the national lotteries market (based on gross sales) remains much greater than the State's proportion of the Australian population.

FIGURE 2: SALES AND FUNDING BY THE LCWA

YEAR	GROSS SALES TURNOVER \$M	STATUTORY FUNDING \$M	DISCRETIONARY FUNDING \$M
1990/91	293.6	65.0	24.6
1991/92	302.9	60.9	32.6
1992/93	298.5	60.1	38.4
1993/94	313.5	62.6	30.1
1994/95	347.7	69.1	34.8
1995/96	391.5	78.4	42.3
1996/97	383.3	75.4	44.6
1997/98	400.5	80.0	46.5

Source: LCWA

The LCWA is unique in this country, in having the authority to distribute a proportion of its net revenue, through discretionary grants, directly to eligible organisations in the community. The LCWA has built up a significant infrastructure and expertise to manage a very diverse funding portfolio which has achieved widespread support in the community and government, as demonstrated in the debates in the Parliament on the Lotteries Commission Amendment Bill 1998. The Commission has also developed a national and international reputation for its funding operations.

A major marketing strength of the LCWA is its capacity to directly link the discretionary grants programs to revenue generation from State lotteries. Market research undertaken by the LCWA indicates that members of the public broadly regard their participation in lottery activities as a form of charitable contribution (in the event they are not successful in winning). This view appears to be reliant on the public's perception that the LCWA is both independent of Government intervention and is a "not for profit" organisation. The LCWA's business focus clearly links gaming and community benefit.

In 1998 a review of the LCWA was conducted in conjunction with a review of the Lotteries Commission Act 1990. In a forward to the report the Minister for Racing and Gaming noted:

"This review of the LCWA's activities has confirmed that the LCWA operates efficiently and effectively. In recent years the LCWA has succeeded in growing its lotteries business to raise increasing sums for the community while operating its gaming business responsibly. In its role as a source of funds for the community sector the LCWA has become a valued partner for a multitude of not for profit community groups.

I believe that the LCWA's unique dual role, that of operating lotteries games and distributing a significant proportion of the profits directly to the community, has served the LCWA and the Western Australian community well.

In the course of preparing this review it has become apparent that the LCWA is held in particularly high regard in the community. Through the effective management of its lotteries business the LCWA has become a vital source of funding for the public health service, for arts and sporting organisations, and for many hundreds of community organisations.

I believe that the LCWA is well placed to make a very significant contribution to the community, and is to be commended for its excellent record of service."

The LCWA provides the public with a single highly credible supplier of State lottery products. The products provided are highly reliable with gazetted rules providing the public with certainty regarding the product and the elimination of scams, racketeering and crime from the products offered by the LCWA.

The benefits of the existing single provider model are recognised in nearly every state and national jurisdiction throughout the world as providing the most economic, efficient and effective control of lotteries, and maximising funds for public benefit. In view of the explicit legislative objectives of controlling lottery gaming, of providing a single credible sole supplier of lottery products, and of generating revenue for community purposes the restriction is assessed as providing net public benefit.

In terms of the regulatory regime that gives the LCWA its monopoly as the sole supplier of state lottery products in Western Australia it was not established that this delivers the optimal public benefit. Although it has been demonstrated that the LCWA is an efficient and effective supplier of state lottery, the current legislation lacks the flexibility for the Government to utilise another supplier even if there were clearly demonstrated net public benefits to be obtained from doing so.

6.13.1.4 Alternatives

It has been clearly demonstrated that a single sole supplier of State lottery products provides significant public benefits. It has not been demonstrated that the regulatory regime, which determines that the sole supplier of State lottery products should always be the LCWA, provides the optimal public benefit. Given that a sole supplier of State lottery products provides the optimal public benefit we should consider alternatives to the current situation whereby legislative measures are used to restrict competition through the creation of a single statutory supplier.

Another option is that of the central regulator issuing a single licence to conduct the State lottery, which is available through competitive tendering. In this scenario one supplier at a time has the right to supply State lottery products, but that right lasts for a limited time. Other suppliers have the right to compete to be awarded that right to supply for a subsequent period. The threat of competition would place downward pressure on prices and encourage the sole supplier to reduce costs. Such an option introduces "serial competition". The advantage of serial competition is that it provides a threat of competition in a market while enabling the benefits of a single provider to be captured

Whilst serial competition introduces competitive pressure, the advantages gained may be small and may be short lived. After the initial State Agreement period the incumbent contractor would have a substantial competitive advantage in contract renewals due to familiarity with the State lottery and existing infrastructure and human capital. Gains in efficiency after any initial contract terms would be reliant more on negotiating powers of the

State regulatory agency and the incumbent contractor than on competition for re-award of the contract.

Although the LCWA has been shown to be an efficient and effective supplier of State lottery products the current regulatory regime grants the LCWA its sole supplier status in perpetuity. The lack of any threat of competition combined with there being no risk to the continuance of the LCWA as the sole supplier of State lottery products, effectively means that there is little market pressure on the LCWA to examine prices and costs.

An alternative that provides both flexibility for the Government and introduces the threat of competition would be the inclusion of provisions in the Gaming Commission Act 1987 to empower the Minister to enter into State agreements, ratified by Parliament, with organisations to supply State lottery products. Section 102 of the Gaming Commission Act would also be amended to reflect the lawful nature of lotteries conducted by organisations the subject of such a State agreement.

The State Agreement would essentially detail the conditions under which the successful tenderer would conduct the State lottery. Included in the agreement would be the cost of the licence and the fees payable to the Government from the conduct of lotteries. Such agreements would probably result in the Government obtaining a percentage of turnover as fees. The State Government currently collects around \$125 million of revenue from the LCWA. State Agreements would need to be structured in a manner that would ensure that returns to the Government and the community equated at least to those currently provided by the LCWA.

A regulatory regime of this nature would provide the Government with the mechanism to be able to choose an alternative the supplier of state lottery products other than the LCWA, and would introduce some form of competitive pressure into the market. The Government would then be provided with the flexibility to manage trade-offs between the benefits to consumers from greater competition and the returns to Government and the community including-

- the value to the State of the LCWA as a public asset;
- the value of the LCWA's contribution to the community;

6.13.1.5 Conclusion

The restriction was assessed as providing a net public benefit in terms of the legislative objectives of controlling the conduct of state lotteries and of providing a single credible supplier of lottery products that provides returns to the community. However, the existing regulatory regime lacks flexibility because it does not provide the Government with a mechanism to choose a supplier of state lottery products other than the existing supplier. Further, the existing regime places no competitive pressure on the sole supplier to examine issues relating to product pricing and operating costs.

A less restrictive regulatory framework would be a provision within the Gaming Commission Act 1987 allowing the Minister to enter into State agreements, ratified by Parliament, for the licensing of State lottery suppliers if this is considered by the Government to be in the public interest. In this regard, the impact on the overall public interest would need to take into account any diminution of the benefits

provided by the LCWA to the State and the community by removing its sole supplier status. Included in any public benefit assessment would be the possibility that if an organisation other than the LCWA won the right to operate the State lottery it is likely that the LCWA would no longer have a function to perform and may be wound up.

While the case for not introducing competition in this market at this time has been established in the review of the Lotteries Commission Act, it is concluded that the Government should be provided with a mechanism to license State lottery suppliers. This provides greater flexibility, if at some time in the future it is determined by Government that an alternative supplier to the LCWA will provide a net public benefit.

6.13.1.6 Recommendations

1. Amend the Gaming Commission Act 1987 to allow for the licensing of suppliers of State lottery products by State Agreement

The provision would allow for the Minister (on behalf of the State) to enter into State Agreements with an organisation to supply State lottery products.

2. Amend section 102 of the Gaming Commission Act 1987 to reflect that lotteries conducted by organisations, the subject of a State agreement, are lawful lotteries.

6.13.2 Restrictions on community lotteries

A barrier to entry to the Standard Lottery (and Continuing Lottery) market is the prohibition on the issue of permits for the purpose of private gain or for any commercial undertaking. This has restricted this market to the ambit of charities and community based organisations.

6.13.2.1 Costs/disadvantages

The application requirements for the conduct of a lottery impose minor economic costs on permit applicants. At minimum these costs are the permit fee, the cost of maintaining proper financial records (although there is no requirement to utilise the services of professionals to maintain these records) and the cost of operating a bank account. These are not considered onerous requirements especially in view of the potential revenue to be derived from the conduct of lotteries. In the financial year, ending 30 June 1997 organisations conducting standard lotteries raised a total net amount of \$9,452,539 from a total of 1650 permits issued. In any event, it is likely that the activities of a club would require the club to maintain records and operate a bank account.

6.13.2.2 Benefits/Advantages

This is consistent with Government policy and the objectives of the Gaming Commission Act. One of the intentions in regulating lotteries is to ensure that the community as a whole benefit from the funds generated through this type of gaming. This is achieved by restricting the conduct of certain minor gaming to charitable and community organisations. This restriction eliminates the private gain objective and as such confers essentially the same benefits as documented in section 6.2.1.2 in relation to the similar restrictions applied to permitted gaming.

EFFECT SUMMARY TABLE

Nature of restriction: Licence requirements and associated operation restrictions for minor lotteries including restrictions on type of lottery allowed.

Effect 1 Eliminates potential competition with the Lotteries Commission

How: Prohibition on issuing permits for parimutuel games like lotto or for other lotteries approved for Lotteries Commission. Only minor standard lotteries can be permitted.

Impact: Potentially significant. Commercial competitors would need to use prize pools and jackpots.

Evidence: All major lottery organisations use prize pool and jackpot formats, not simple standard lotteries.

Impacts when: Continual.

Impacts on whom: Consumers, Lotteries Commission

Public objectives impacted: Economic/social.

Effect 2 Barrier to entry into minor lottery market because of licence requirement and associated costs.

How: Failure to have a permit results in prosecution.

Impact: Minimal. Normal bank and accounting records are sufficient for compliance.

Evidence: Thriving minor lotteries market. Virtually all organisations receive permits.

Impacts when: Continual

Impacts on whom: Consumers, operators.

Public objectives impacted: Economic/financial.

6.13.2.3 Assessment of Public Benefits

The minor lottery market is a competitive market. An organisation need only satisfy the Gaming Commission that it is a charitable or community based organisation to be eligible to conduct lotteries. There are no restrictions on how many lotteries an organisation can conduct, or on how much money can be raised from the conduct of an individual lottery (for example there is no relationship between the value of the prize offered and the total number of tickets authorised to be sold in a lottery). Market forces and the marketing ability of the organisation conducting the lottery determine if the lottery is successful.

Although the entrepreneur is excluded from obtaining permits to conduct lotteries for commercial or private gain, there is no exclusion preventing commercial organisations

participating in lotteries as professional fund raisers on behalf of organisations that hold lottery permits. There is an industry of professional fundraisers operating in the lottery market offering lottery ticket sales by telephone marketing methods or by direct selling over shop counters or from sales booths in shopping centres.

There are no restrictions imposed by the Gaming Commission Act on the operations of professional fundraisers in the lottery market. The professional fundraising market is a competitive market. The activities of professional fundraisers are scrutinised by the Gaming Commission as part of the audit regime pertaining to the lottery conducted by the organisation using the service of the fundraiser. The scrutiny involves an examination of the proposed budget for the lottery at the application stage to assess the percentage of gross receipts to be used for expenses, and the verification of (and examination of the validity of) expenses charged by the professional fund raiser. The aim is to ensure that the organisation is receiving a fair return from the lottery.

By regulating the conduct of lotteries community and social benefits are derived from the knowledge and assurance that the system of sale and prize distribution is conducted fairly and in accordance with reasonable and transparent standards.

Commercial organisations may also conduct “trade promotion lotteries” as a means of promoting their products or the services provided by the business. A trade promotion lottery is deemed a lawful lottery if conducted in accordance with a permit issued under the provisions of section 104 of the Gaming Commission Act. The restriction on this type of lottery is that it must be conducted to promote the sale of goods or the use of services and that entry into the lottery must be either free of charge or occur by virtue of purchasing the product or using the service being promoted.

Currently in Western Australia no fees are paid by enterprises conducting trade promotion lotteries. Fees are possible under a national agreement regarding trade promotion lotteries designed to facilitate companies running national trade promotion lotteries. This agreement has already been reviewed under National Competition Policy. The provisions of the Gaming Commission Act have virtually no impact on commercial organisations conducting trade promotion lotteries.

Where minor lotteries are concerned the current restrictions are likely to confer net benefits. Significant funds are made viable for worthwhile causes. The regulatory costs are kept low by eliminating the private gain objective and reducing the incentive for unscrupulous behaviour by permit holders. The market is highly competitive and commercial activity is allowed through the fundraising organisations.

Most private entrepreneurs interested in lotteries for private gain would wish to develop major lotteries of the kind that are restricted to the Lotteries Commission. As noted this is a major restriction already dealt with under the review of the Lotteries Commission Act.

6.13.2.4 Alternatives

Given that the permits for minor lotteries are non-exclusive and are readily available and that there are no restrictions on professional fundraisers, the main alternative would be to allow lotteries for private gain. However, this is likely to be of little consequence, as most private operators would like to run major lotteries. The permit requirement for minor lotteries could be removed.

6.13.2.5 Recommendation

The restrictions on minor lotteries should be retained. However, there appears to be an inconsistency in the treatment of the permit holder (usually a charity) and the fundraiser (usually a private firm). The former are subject to all the usual checks possible for a permit

holder (e.g. probity checks) while the latter are not. Given the objectives of the Gaming Commission Act and the public benefits associated with the restrictions to incentives for unscrupulous behaviour, there may be merit in treating fundraising organisations more equally with permit holders in the licensing system.

It is recommended that the Gaming Commission Act be amended to allow for licensing of professional fundraisers.

6.13.3 Restrictions on “foreign lotteries”.

The Gaming Commission Act 1987 contains a barrier to entry to lotteries generating from outside of Western Australia by declaring foreign lotteries to be unlawful lotteries for the purpose of section 102. A foreign lottery is defined as:

“foreign lottery means a lottery which is conducted, drawn or decided wholly or partly outside the State, notwithstanding that the same may be legal according to the law of the place where it is conducted, drawn, or decided.”

The Gaming Commission is unable to consider applications for lotteries that are intended to be conducted across State boundaries because it cannot permit foreign lotteries as the Act expressly declares them to be unlawful.

The historical development of this provision was to enable authorities to exercise control over lotteries conducted in Western Australia. Scam lotteries coming to Western Australia were almost impossible to police because of jurisdictional difficulties. The total prohibition of lotteries generating from outside the jurisdiction was considered necessary to eliminate enforcement difficulties in prosecuting criminal activity associated with inter state lotteries.

Organisations that have the capacity to market their proposed lottery throughout Australia are barred from marketing such a product in Western Australia. These organisations are often worthwhile groups such as Rotary or charities such as the Red Cross. This provision also hampers the Commission to some extent because it results in applications for worthwhile community projects by credible charities and other organisations being refused because the proposed lottery is intended to be conducted Australia wide.

In recent times organisations based in other Australian states have used direct marketing by mail to “invite” consumers to subscribe to the lottery. This is viewed as a loophole to the Western Australian legislation as the Gaming Commission has no jurisdiction in the State where the invitation to subscribe to the lottery originates. Lottery organisers in other states realise that the likelihood of prosecution by Western Australian authorities is extremely low.

It is considered that the provisions of Section 102 are sufficient to provide regulatory control over foreign lotteries without the declaration of foreign lotteries as unlawful lotteries. Section 102 provides that a lottery that is not conducted under the authority of a permit is unlawful. Foreign lotteries could be issued with permits providing the applicant met the normal requirements for an application to be considered by the Gaming Commission.

In considering applications for foreign lotteries the Commission would be able to consider the public benefit of the proposed lottery to Western Australia and any conditions the Commission may consider appropriate to impose concerning the method by which the lottery is conducted, administered and audited. The Commission may, for example, impose conditions requiring the permit holder to be a Western Australian resident; or impose a condition that requires the portion of net profit attributed to Western Australian sales of tickets in the lottery, be allocated to projects the beneficiary organisation conducts in Western Australia. The power to apply such conditions already exist in the Gaming

Commission Act and therefore requires no amendment to enable the Commission to exercise such control over foreign lotteries.

In conclusion the “foreign lottery” provisions of the Gaming Commission Act 1987 creates a barrier to entry to the lottery market for organisations outside of Western Australia. These provisions also mean that the Gaming Commission is unable to consider applications from otherwise worthy organisations merely because they intend to maximise market exposure of their lottery. It is considered that there are sufficient safeguards within the Act, the application process, and the financial reporting process required to protect the public interest. The declaration that foreign lotteries are unlawful should be removed from the Gaming Commission Act 1987.

6.13.3.1 Recommendations

- 1. Remove the definition of “foreign lottery” contained in section 101(1) of the Gaming Commission Act 1987.**
- 2. Amend the definition of “unlawful lottery” contained in section 101(1) of the Gaming Commission Act 1987 to remove a reference to “and includes a foreign lottery conducted in the Sate”.**

7 Gaming Commission Regulations, 1988

The Gaming Commission Regulations complement the licensing regime and establish restrictions that create barriers to entry and provide for minimum payouts on certain forms of gaming.

7.1 Restriction –regulations on gaming machines

The following regulations provide for a variety of constraints on social gaming involving amusements and lotteries with prizes. They deal with gaming and amusement machines. Primarily they have the effect of preventing social gaming from escalating into serious gambling. In part, they do this by dealing with areas of the legislation that had the potential to allow commercial operators to become involved for private gain.

DIVISION 4 GAMING MACHINES AND OTHER EQUIPMENT

Regulation 18A

Possession or use of a gaming machine that is a “skilltester” or “merchandiser” or a machine played by inserting a coin into the machine and operating a mechanical assembly to pick up or otherwise convey a prize to a player is unlawful unless it is located in an amusement centre; an arcade; a shopping centre; a mall or other premises approved by the Commission.

Maximum amount to play per game is \$5.

Prizes, which may be won, must be goods and not money.

Maximum retail value of a prize is \$50.

Regulation 18B

Gaming equipment, the playing of which can result in vouchers being dispensed, at the conclusion of a sequence of play, that may be exchanged for prizes can only be located in premises approved by the Gaming Commission.

The maximum amount per sequence of play is \$5.

Prizes must be goods and not money.

Maximum retail value of prize - \$500 at an amusement parlour.

- \$50 at any other premises.

In amusement parlours the maximum value of vouchers that may be dispensed per sequence of play must not exceed a value, which is 10 times the amount, charged per sequence of play for that game.

Regulation 18AA

A video lottery terminal must not provide a direct cash payout. A video lottery terminal shall be located in premises approved by the Commission and specified in a permit for that device. Prizes shall comprise seventy per cent of the face value of a series of tickets.

These regulations establish criteria for the use of gaming machines and control price.

7.1.1 Costs/disadvantages

The major costs associated with these regulations are:

- Operators of amusement type games are limited in the locations they can play at and the conditions of play. As the objective is to prevent these activities from growing into serious gambling, the cost is that the operators are prevented from growing their revenue base.
- Compliance costs. Operators must comply with the rules. This is difficult to quantify but the judgement on compliance costs is that these are minor. Once the machines are in place with the predetermined rules embedded in them, the ongoing compliance costs are insignificant for the operators.

7.1.2 Benefits/advantages

The major benefit is the prevention of “back door” entry into the serious gaming market without a licence and the associated probity checks. The regulations ensure that the focus of these games remains a small community focus not for private gain.

The regulations regarding the size of amusement game prizes and locations are designed to do this.

There is a significant element of consumer protection in these regulations. Many of the amusement type games are oriented towards young people (show games) and have a significant information problem. For example modifying a skilltester game to significantly reduce the payout is relatively easy to do but virtually impossible for customers, especially very young customers, to detect and is in fact very costly for regulators to detect.

EFFECT SUMMARY TABLE

Nature of restriction: Limits prizes and play amounts for amusement games with prizes.

Effect 1 Protects consumer.

How: Limits loss on any individual game.

Impact: Potentially significant because these 'skilltester' machines have significant information asymmetry problems and are easy for the operator to manipulate.

Evidence: Nature of games, evidence of manipulation.

Impacts when: Continual.

Impacts on whom: Consumers, operators

Public objectives impacted: Economic/social.

Effect 2 Focus of these games remains small scale community games not for private gain. Hence deters "back door" entry into commercial gaming.

How: Limits scope for commercial gain.

Impact: Potentially significant because these 'skilltester' machines are difficult to monitor and costs of doing so would be high if they developed into a serious gaming segment for commercial gain.

Evidence: Nature of games, evidence of manipulation.

Impacts when: Continual.

Impacts on whom: Consumers, operators.

Public objectives impacted: Economic/social.

7.1.3 Assessment of Public Benefit

No exclusive rights are created under these provisions. Any number of competitors can exist in this market segment so long as rules are complied with and the evidence suggests that the competition is strong.

To a very large extent, these regulations are the logical consequence of the broader framework whereby community gaming is restricted to gaming being not for private gain. They need to be viewed in this context.

The overall impact of these regulations is to prevent the small gaming market (shows, amusement parlours) from escalating into larger scale serious gaming without the provision of the relevant licence and probity checks. This is consistent with the previously discussed restrictions designed to limit private gain and to protect consumers based on information asymmetry. Clearly the compliance costs are relatively low because virtually no on going

policing is required by the operator. By restricting the scale of play, the Gaming Commission has also limited its own policing costs.

7.1.4 Alternatives

The main alternative would be to remove these regulations and allow control to be exercised through other legislation – fair trading, trade practices. However, the nature of the amusement games, the ease with which they can be adjusted by the operator combined with the significant information asymmetry and the nature of the customers and locations, means that transaction costs are likely to be minimised by prevention, including controlling potential loss. The alternative is likely to be inefficient compared to the regulations.

7.1.5 Recommendation

Given the consistency of these recommendations with the primary objectives the regulations should remain.

7.2 Restriction – regulations on permitted bingo

The following regulations deal with permitted bingo. Primarily they have the effect of preventing social bingo gaming from escalating into serious gambling. In part, they do this by dealing with areas of the legislation that had the potential to allow commercial operators to become involved for private gain and from limiting the scale of the bingo operation.

Establishes strict control over bingo gaming that causes barriers to entry and sets minimum payout ratios

DIVISION 5 PERMITTED BINGO

Regulation 21A

- (2) Organisation may only have two permits per week.
- (3) Premises may only be used for one-day session and one night session in any twenty-four hour period.

Regulation 22

- (1) Session of bingo is three hours or thirty games whichever is the shorter.
- (2) Unless a permit specifically provides not more than one session of bingo per week; not more than one session per month will have a requirement that players purchase a minimum number of books as a condition of entry to that session; no charge for admission to a session of bingo shall be made; the purchase of raffle tickets shall not be a prerequisite to participation in a session of bingo.

Regulation 23A

Prior to a session of bingo, it is not permissible to advertise or announce the value of prizes at that session.

Regulation 24

Prizes calculated on gross receipts for session in accordance with: -

\$1 500 and less - no limit

\$1 501 - \$3 000 - 60% with 10% (+ or -) variation

\$3 001 and above - 60% with 5% (+ or -) variation

Regulation 25

Limits expenses at bingo session to 20% of gross revenue from session.

Regulation 26

No other games of chance other than a lottery under section 103 and a continuing lottery are permitted at a bingo session.

7.2.1 Costs/disadvantages

The major costs associated with these restrictions are:

- Bingo organisations are restricted in terms of the permits per week and the periods of play. This will have some effect on their potential revenues as an organisation. However it does not appear to affect the owners and operators of bingo halls who appear regularly to fill their halls by dealing with a variety of permit holding organisations.
- Compliance costs. Operators must comply with the rules. This is difficult to quantify but the judgement on compliance costs is that these are minor. The ongoing compliance costs are because no ongoing monitoring by the bingo operator is required.

7.2.2 Benefits/advantages

The major benefit is the prevention of “back door” entry into the serious gaming market without a licence and the associated probity checks. The regulations ensure that the focus of these games remains a small community focus not for private gain.

The regulations regarding the number of permits per week and the inability to offer other gaming activities are directly designed to achieve this. In particular, the bingo regulations were implemented largely to prevent the bingo market from becoming monopolised by one organisation or dominated by a small number of organisations, to the detriment of other community organisations wishing to raise funds this way and to prevent community oriented bingo organisations from branching out into fully fledged gambling operations.

For the bingo, there is the prevention of side conditions such as the requirement to purchase full books of tickets and associated raffle tickets. In effect, this prevents a form of third line forcing which in normal commercial markets is likely to be prohibited under competition law.

By limiting these areas of gaming to very small scale, there are potentially significant cost savings because it limits the policing costs in areas where otherwise these policing costs would be significant.

EFFECT SUMMARY TABLE

Nature of restriction: Limits number or bingo permits, period of play and form of games and packaging of bingo with other games.

Effect 1 Prevents market domination by large operators.

How: Individual operators have restricted permit numbers combined with permit conditions.

Impact: Significant. Ensures more widespread distribution of community benefits to community groups.

Evidence: Gaming Commission information on number and range of organisations holding permits.

Impacts when: Continual.

Impacts on whom: Consumers, operators

Public objectives impacted: Economic/social.

Effect 2 Limits third line forcing of gaming products.

How: Condition of permit.

Impact: Significant. Protects consumers. Many consumers, mostly senior citizens, are protected.

Evidence: Previous attempts to force sale of other products on bingo patrons.

Impacts when: Continual

Impacts on whom: Consumers, operators

Public objectives impacted: Economic/financial.

Effect 3 Ensures compliance with Casino (Burswood Island) Agreement Act.

How: These bingo regulations are specified in the Casino (Burswood Island) Agreement Act. Burswood Trustee approval required to change it.

Impact: Likely to be significant. Compliance with Casino (Burswood Island) Agreement Act is a contractual requirement.

Evidence: Nature of Agreement.

Impacts when: Continual.

Impacts on whom: Casino and non casino consumers and operators.

Public objectives impacted: Economic/social.

7.2.3 Assessment of Public Benefit

To a very large extent, these regulations are the logical consequence of the broader framework whereby community gaming is restricted to gaming being not for private gain. They need to be viewed in this context.

The overall impact of these regulations is to prevent the small gaming market (shows, amusement parlours) from escalating into larger scale serious gaming without the provision of the relevant licence and probity checks. This is consistent with the previously discussed restrictions designed to limit private gain and to protect consumers based on information asymmetry. Clearly, the compliance costs are relatively low because virtually no on-going policing is required by the operator. By restricting the scale of play, the Gaming Commission has also limited its own policing costs.

No submission was received regarding the bingo regulations being unduly restrictive.

Strictly speaking, under the Casino (Burswood Island) Agreement Act, changes to these regulations need to be negotiated with the Burswood Trustee. Schedule A of the Agreement relates to the conditions for playing bingo and these regulations are all specifically covered by this. The attitude of the Burswood Trustee would need to be tested regarding willingness to approve changes.

7.2.4 Alternatives

The control on third line forcing could be left to trade practices. However, it should be noted that the process of using trade practices requires each case of third line forcing to be identified, investigated and a decision being made and implemented throughout the whole bingo market. This is a time consuming process. In the meantime bingo operators could implement a different form of third line forcing which has not been identified. The existing provisions in the regulations prevent third line forcing up front and the rules are open and transparent to all bingo operators.

The concern that certain bingo operators could become monopolies if the number of permits was not limited may also be dealt with under trade practices. It is important to recognise that the outcome may be different under this alternative.

7.2.5 Recommendation

1. The bingo regulations are affected by the Casino (Burswood Island) Agreement Act, which in effect, specifies the conditions of play reflected in the regulations. Schedule A of the Agreement relates to the conditions for playing bingo, and the regulations all specifically cover these. The approval of the Burswood Trustee is needed to change the Agreement. It would be preferable if this was not the case and it is recommended that the Government negotiate to remove the conditions attached to bingo contained in the Casino (Burswood Island) Agreement Act.
2. The regulations ensure that the focus of these games remains a community focus not for private gain. The regulations regarding the number of permits per week and the inability to offer other gaming activities are directly designed to achieve this. In particular the bingo regulations were implemented largely to prevent the bingo market from becoming monopolised by one organisation or dominated by a small number of organisations to the detriment of other community organisations wishing to raise funds this way and to prevent community oriented bingo organisations from becoming fully fledged gambling operations. It is recommended that the restrictions contained in the regulations designed to achieve these objectives remain.

7.3 Restriction – regulations on lotteries

The following regulations provide for a variety of constraints on lotteries with prizes. They deal with the minor lotteries market. Primarily they have the effect of preventing social gaming from becoming fully-fledged commercial lotteries.

Establishes minimum payout ratios for continuing lotteries and provides minimum and maximum wagers for minor fund raising activities.

DIVISION 6 LOTTERIES ETC.

Regulation 32(2)(b)

Prizes in continuing lottery shall be not less than sixty per cent of face value of a series of tickets.

Regulation 38

Every permit relating to a lottery is issued subject to the condition the whole proceeds, after deduction for proper expenses, are to be devoted to purposes other than private gain.

Regulation 39

For the purposes of section 107(1) maximum amount to play is \$2; maximum value of prize is \$10 and amusement with prizes must be conducted during the entertainment or sporting event that it relates to.

Regulation 40

For the purposes of section 108 the aggregate value of prizes shall not exceed \$100.

7.3.1 Cost/disadvantages

The lottery regulations have the following costs:

- Compliance costs. Operators must comply with the rules. These are minor. For lotteries the process of establishing a lottery (e.g. printing tickets) and running it (e.g. collecting payments, checking ticket books, accounting etc) are fairly standard. Restricting the value of tickets and prizes is a not significant compliance cost issue.

7.3.2 Benefits/advantages

The major benefit is the prevention of “back door” entry into the serious gaming market without a licence and the associated probity checks. The regulations ensure that the focus of these games remains a small community focus not for private gain.

The benefits of the lotteries regulation is that it ensures that the lotteries are small, are not for private gain, and have fair outcomes based on payout ratios.

EFFECT SUMMARY TABLE

Nature of restriction: Sets payout ratios, minimum and maximum wagers for minor lotteries.

Effect 1 Ensures fair outcomes. Protects consumer in relation to information asymmetry.

How: Permit conditions.

Impact: Substantial. Ensures probity and therefore confidence in community based lotteries.

Evidence: Large number of community based lotteries.

Impacts when: Continual.

Impacts on whom: Consumers.

Public objectives impacted: Economic/social.

Effect 2 Compliance costs for lottery organisers.

How: Condition of permit.

Impact: Negligible. Standard accounting records (bank accounts, lottery stubs) are sufficient.

Evidence: No complaints from community groups regarding compliance rules.

Impacts when: Continual

Impacts on whom: Operators.

Public objectives impacted: Economic/financial.

7.3.3 Assessment of Public Benefit

To a very large extent, these regulations are the logical consequence of the broader framework whereby community gaming is restricted to gaming being not for private gain. They need to be viewed in this context.

No exclusive rights are created under these provisions. Any number of competitors can exist in this market segment so long as rules are complied with and the evidence suggests that the competition is strong. The overall impact of these regulations is to prevent the small gaming market (shows, amusement parlours) from escalating into larger scale serious gaming without the provision of the relevant licence and probity checks. Clearly, the compliance costs are relatively low because virtually no on-going policing is required by the operator. By restricting the scale of play, the Gaming Commission has also limited its own policing costs.

7.3.4 Alternatives

The main alternative would be to remove the regulations to allow greater freedom for lottery operators.

7.3.5 Recommendation

Given the consistency of these recommendations with the primary objectives – particularly the broader community benefit objective for permitted gaming - regulations on lotteries should remain.

8 Casino Control Act, 1984

The Casino Control Act provides the Minister with the power to enter into negotiations (on behalf of the State) with a public company to construct and establish a casino complex. The Minister may agree to a period of time in a casino complex agreement during which an application for a casino gaming licence will not be considered from a party other than the parties who are the subject of the casino complex agreement.

The Commission is required (prior to the Minister entering into a casino complex agreement) to conduct investigations to inform itself of the reputation and financial status of the public company and its capacity to organise and conduct the gaming operations of a licensed casino.

The Act requires a public company, that is a party to a casino complex agreement, to obtain a casino gaming licence prior to lawfully conducting casino gaming operations. The Act provides the Commission with extensive powers to supervise and control casino gaming operations. The games played, and the rules by which the games are played in casinos in Western Australia are required to be approved by the Commission. Further, the Commission is empowered to direct the operators of casinos concerning the operations of casino gaming; the manner in which accounts are kept; the supervision of casino gaming operations and the production of information relating to casino gaming operations.

The Act requires casinos to be licensed and for the market place to be controlled and regulated. A number of ancillary restrictions support the requirement of licensing.

The submission by the Burswood International Resort Casino argued that the status quo should be maintained in relation to the Casino and gaming control in Western Australia.

8.1 Restriction – agreement conditions affecting the casino industry

The following section creates a significant barrier to entry into the casino industry.

PART III CASINO COMPLEX AGREEMENT

Section 19(1)

The Minister may enter into an agreement with a public company to build and establish a casino complex. In that agreement he may undertake not to approve, during a period specified in that agreement, an application for a casino gaming licence made by a person other than a party to that agreement.

8.1.1 Costs/disadvantages

This clause establishes a barrier to entry to potential casino operators should such provisions be contained in casino complex agreement acts previously declared. This is indeed the case in Western Australia where the existing Burswood Casino has a period of exclusivity assigned to it. The current impact of this agreement is considered below under the Casino (Burswood Island) Agreement Act. The general consequence of this restriction is that it

allows the Minister to limit competition to the possible detriment of consumers and other potential operators.

8.1.2 Benefits/Advantages

The invoking of this restriction may secure a casino operation where this would otherwise be unlikely.

8.1.3 Assessment of Public Benefits

It is difficult to assess the net public benefits of this provision because the benefits depend on the exact circumstances in which it is invoked.

EFFECT SUMMARY TABLE	
Nature of restriction:	Period of exclusivity can be provided for a new casino operator under an Agreement.
Effect 1	Creates market power for casino operator. Potential for higher prices. Lack of competition.
<i>How:</i>	Agreement has potential to prevent the issuance of further casino licences during period of exclusivity.
<i>Impact:</i>	Substantial but depends on exact details of any Agreement established.
<i>Evidence:</i>	Existing casino 15 year monopoly until 2000.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers and potential entrants.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Level of casino investment may be increased.
<i>How:</i>	Agreement can guarantee market position and this may be needed to justify the investment.
<i>Impact:</i>	Potentially significant if new casino investment would not otherwise occur.
<i>Evidence:</i>	Current Casino investment commitment under Agreement.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Consumer, operator, government.
<i>Public objectives impacted:</i>	Economic/financial.

Effect 3	Ensures compliance with Casino (Burswood Island) Agreement Act until the end of the year 2000.
<i>How:</i>	Agreement binds Government.
<i>Impact:</i>	Potentially significant because failure to comply could result in substantial compensation claims.
<i>Evidence:</i>	Current Agreement and previous attempts to modify Agreement.
<i>Impacts when:</i>	Continual until end of period of exclusivity.
<i>Impacts on whom:</i>	Consumer, operator, government.
<i>Public objectives impacted:</i>	Economic/financial.

8.1.4 Alternatives

Remove the ability to enter into agreements or at least the ability to enter into agreements that restrict competition unless a net public benefit is demonstrated. Include sunset clause provisions on any competitive advantage conferred.

8.1.5 Recommendation

This is a provision which is inherently anti competitive. In the event, there is already a major casino benefiting from this provision and the specific provisions relating to Burswood extend it a number of protections. In future, any agreement entered into would be an Act and would be subject to NCP review and this should ensure that any such protection was only granted after a full public benefits assessment was made.

However, even given this, it is desirable that sunset clause provisions be applied to any competitive advantage granted and that any agreements entered into be on the recommendation of the Gaming Commission.

8.2 Restriction –restrictions on casino licence applicants.

The following sections restrict the way in which shares may be traded and require a variety of checks to be made of a casino operator prior to entering into an agreement.

The Casino Control Act establishes the requirements to be followed by the Minister and the Gaming Commission in considering applicants for casino licenses and provides powers to control and regulate casino gaming operations. The object of the application provisions of the Casino Control Act is to ensure that persons (or public companies) responsible for managing and operating licensed casinos are persons of integrity and have the reputation, financial status and capacity to organise and conduct the gaming operations of a licensed casino.

PART III CASINO COMPLEX AGREEMENT

Section 19(1a)

Prior to the Minister entering into a casino complex agreement, the Commission shall conduct investigations to satisfy itself that the public company, and each close associate of

the public company, is a suitable person to be concerned or associated with the organisation and conduct of the gaming operations of a licensed casino.

The Commission is required to pay particular attention to the following matters:

- The reputation and financial status of the public company and each close associate of the public company.
- The reputation, financial status, and capacity to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino, of each natural person and each director of a body corporate intended by the public company to be concerned in or associated with the organisation and conduct of the gaming operations of the licensed casino.

Section 19B

The Minister may determine (on the advice of the Commission) that a close associate of a public company with which the Minister has entered into a casino complex agreement, or that is a casino licensee, is not, or is no longer, a suitable person to be concerned or associated with the gaming operations of a licensed casino. The Minister may require that person to dispose of shares in that public company.

8.2.1 Cost/Disadvantages

This investigation restriction creates a barrier to entry to the market by limiting who may operate casinos. It also may discourage potential casino operators by creating costs in terms of the time taken for investigations and in the provision of information by the company entering into the agreement.

The share trading restriction potentially impedes a persons ability to freely trade in shares if they are a close associate of a public company the subject of a casino complex agreement, or that is a casino licensee.

8.2.2 Benefits/Advantages

Both these restrictions confer benefits related to the need to ensure scrupulous behaviour in operating a casino and the need to deter criminal activity. Ongoing integrity checks are central to this process.

The probity and licensing requirements in relation to casino operations help to ensure that operators have the necessary industry experience and integrity to establish and maintain an appropriate standard of operation.

Controls over the ownership structure assist with probity by making it less likely that the business will be subject to take-over by an operator that might be considered unsuitable. This is aimed particularly at detecting and deterring the influence of organised crime.

EFFECT SUMMARY TABLE

Nature of restriction:	Casino licence applicant(s) must be investigated for suitability.
Effect 1	Limits potential entrants. May deter some. Creates a barrier to entry.
<i>How:</i>	Initial investigation is time consuming and costly for applicant.
<i>Impact:</i>	Minimal. Bona fide applicants follow similar processes in all modern jurisdictions.
<i>Evidence:</i>	Standard procedures used throughout industry. Accepted by industry.
<i>Impacts when:</i>	Initial impact.
<i>Impacts on whom:</i>	Applicants.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Deters organised crime. Reduces on-going integrity checking costs.
<i>How:</i>	Choose applicant with good record, industry experience and integrity.
<i>Impact:</i>	Substantial. Encourages market confidence in casino operation.
<i>Evidence:</i>	Other jurisdictions (e.g. US) have substantially tightened probity test to eliminate criminal elements in their industry.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Operators.
<i>Public objectives impacted:</i>	Economic/financial.

8.2.3 Assessment of Public Benefits

On balance there are likely to be net public benefits from requiring initial investigations of proponents for casino licences and from some scrutiny of ownership transactions.

8.2.4 Alternatives

Do not undertake initial checking of proponents.

8.2.5 Recommendation

This restriction should be maintained.

8.3 Restriction – taxation of casinos

This restriction establishes the taxation arrangements for a casino.

Section 20(1)

A public company entering into a casino complex agreement with the Minister shall undertake in the casino complex agreement to pay, on becoming a casino licensee-

(a) To the Commission a casino gaming licence fee in an amount; and

(b) To the Treasurer a tax at a rate

specified in the casino complex agreement.

8.3.1 Costs/Disadvantages

This section establishes the cost of a casino gaming licence and sets the casino gaming tax regime. These costs are imposed on the casino licensee and are determined according to provisions in the casino complex agreement. Where more than one operator exists, there is the potential for differential tax treatment. The tax regime may influence the international and national competitiveness of a casino in particular market segments.

Unlike casinos, community gaming is not used as a direct tax source.

8.3.2 Benefits/Advantages

Licence fees contribute to costs of regulation. Tax revenue benefits accrue to the state. In 1997, tax revenue was \$56.3 million. Licence fee income was \$1.72 million. This is charged under the requirement that the Gaming Commission recover costs.

EFFECT SUMMARY TABLE

Nature of restriction:	Tax levied on Casino turnover.
Effect 1	Increases Casino costs. Potential to reduce national and international competitiveness if tax set too high.
<i>How:</i>	Tax regime specified in Agreement.
<i>Impact:</i>	Significant. \$56.3 million paid in 1997.
<i>Evidence:</i>	Gaming Commission records.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Operator, consumers.
<i>Public objectives impacted:</i>	Economic/social.

Effect 2	Significant tax revenue benefit for State.
<i>How:</i>	Tax regime specified in Agreement.
<i>Impact:</i>	Significant \$56.3 million paid to State in 1997.
<i>Evidence:</i>	Gaming Commission records.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Operator, Government.
<i>Public objectives impacted:</i>	Economic/financial.

8.3.3 Assessment of Public Benefits

There is general acceptance of industry as a tax source and the public benefits likely outweigh costs. Community gaming is not for profit and is precluded from competing with casinos. It is required to pay its revenue to worthwhile causes and is therefore effectively taxed. Therefore the tax and licence fee requirement has no significant competition consequence vis a vis community gaming. In part, the tax collections go with the monopoly rights extended to the casino.

8.3.4 Alternatives

Do not treat casinos separately in terms of having specific tax arrangements.

8.3.5 Recommendation

Ability to set a licence fee and levy taxes should remain. Safeguards should be incorporated in future casino agreements to ensure that competing casino operators are treated equally and that licence fees are limited to cost recovery.

8.4 Restriction – casino licence requirement

The following sections effectively require that a casino be licensed as a casino before gaming can commence. They specify a range of licence conditions that can be invoked. These include restrictions pertaining to the area used for gaming at a casino, ministerial approval for mortgage transactions, approval for games played at the casino and the associated rules, the system of internal controls and accounting standards used in the casino, “junkets “ to a casino and conditions imposed on management and staff.

PART III CASINO COMPLEX AGREEMENT

Section 19(4)

A casino complex agreement shall not confer the right on any party thereto to conduct games at the premises of the casino to which the casino complex agreement relates until a casino gaming licence is granted and then only in accordance with the casino gaming licence.

PART VI CASINO GAMING LICENCE

Section 21(1)(a)

Section 21(1)(a) provides for an application fee of \$5000 to be paid by a public company which is a party to a casino complex agreement and wishes to obtain a casino gaming licence.

Section 21(4a)

Section 21(4a) the Commission (with the approval of the Minister) may fix the area to which a casino gaming licence relates or alter the fixed area. However, the Commission cannot reduce the area to which a casino licence relates without the prior consent of the relevant casino licensee. Recent amendments have provided more flexibility by permitting the Commission to approve the playing of games in areas of the casino complex, which may be outside the fixed area of the casino gaming licence.

Section 21F

Section 21F A casino licensee may create a mortgage or other encumbrance over its casino gaming licence; the whole or any part of the casino complex concerned; its rights and benefits under the relevant casino complex agreement only with the prior consent and in favour of a person approved by the Minister.

PART V CONTROL OF CASINO

Section 22

Section 22 requires that games played in casinos are approved by the Commission and provides the Commission with the power to declare any game, except for a game played with poker machines, to be an authorised game. The Commission is further required to approve the rules by which games are played.

This section contains provisions that make it an offence for a casino licensee to conduct games that are not authorised and provides an offence if a person conducts an authorised game other than in accordance with the approved rules of that authorised game.

Section 24

The Commission may give directions to a casino licensee with respect to the system of internal controls and administrative and accounting procedures that apply to the gaming operations of the casino licensee. This section also provides that the casino licensee must give effect to directions issued by the Commission.

Section 25A

This section provides that the Commission may approve persons to conduct “junkets” to licensed casinos within the State. Further, an approved person must give the Commission advance notice of the junket and provide information as to the participants of a junket. A junket is defined as “any arrangement for the promotion of gaming in a licensed casino by groups of persons, usually involving arrangements for the provision of transport, accommodation, food, drink and entertainment for the participants in the arrangements, some or all of which are paid for by the casino licensee or are otherwise provided on a complementary basis”.

Section 29

The conditions to which a casino gaming licence shall be subject may include provisions relating to the management and staffing of the casino gaming operations and the appointment, employment and or duties of persons in relation to those operations,

including provisions requiring the licensing, and as to the conduct of, casino key employees and casino employees.

8.4.1 Costs/Disadvantages

The above restrictions combine to form the package of licence arrangements that can be put in place for a casino.

A variety of costs can be associated with the above restrictions. These include the following.

The licensing system influences the number of competitors in the market by establishing barriers to entry. Licensing can create barriers to entry in the following ways.

- The licensing process adds a layer of uncertainty to the decision for the prospective industry entrant. The expense of the licensing process can also affect the investment decision of a prospective applicant. The application fees and the cost of the casino licence can alter the cost-benefit calculus of the prospective entrant and by that create a barrier to entry. (Page 324, Anthony N. Cabot, *Casino Gaming: Policy, Economics and Regulation*. UNLV International Gaming Institute, The William F. Harrah College of Administration. 1996). Given identical investment opportunities, funds will be expended for the project requiring the least licensing scrutiny.
- The licensing process necessarily implies a passage of time to submit the application itself and to allow for the investigative process to be completed. In the investment decision process the time required for the application process may influence the decision to invest and act as a barrier to entry.
- The extent of the probity assessment requirements associated with licensing may act as a barrier to entry to potential investors. Many individuals may not want past actions brought to the attention of the public or business associates or may be aware that their past actions will preclude them from being involved in a project requiring probity checks.

Initial Costs

There are set up costs that can be attributed to the casino licence. These include:

- Cost of application for casino gaming licence. The cost of an application is \$5000. Only a public company the subject of a casino complex agreement can apply for a casino gaming licence.
- Cost of compliance with initial probity requirements.
- Cost of submissions and process involved in having games authorised.

In addition to the above the licensing requirement interacts with other restrictions to influence the up front development cost. At this point we simply note that:

- Capital costs of resort development must be agreed under the terms of a casino complex agreement. Under the terms of the Casino (Burswood Island) Agreement Act 1985 the Burswood casino developer was committed to spending \$300 million on the development.

Requiring licensed operators to commit to this scale will limit the number of market participants. Where the conditions imposed require hotel rooms, convention centres and other amenities, new investment may only be attractive for the first or perhaps a very small number of entrants into the market. At some point potential competitors will not be willing to enter the market because they cannot raise the required capital, or returns on investment are lower than alternative investment opportunities given the scale at which they have to

enter. (Page 99, Anthony N. Cabot, *Casino Gaming: Policy, Economics and Regulation*. UNLV International Gaming Institute, The William F. Harrah College of Administration 1996).

This scale restriction arises because the associated development requirements can be specified under the Casino (Burswood Island) Agreement Act. This issue will be considered in more detail under the review of that act.

On-going costs

While the initial costs may be significant, there are also substantial on-going costs associated with the licensing process. These include the following.

- Administration cost to government. In the 1997 financial year the cost of casino regulation was outweighed by the revenue collected resulting in a net benefit to the Commission of \$507,000.
- Cost to casino operator of licence and casino tax. In 1997, the casino operator paid a licence fee of \$1.72 million and casino tax of \$56.3 million. As part of the licensing agreement, the casino operator also paid \$3.7 million to the Burswood Park Board for the development and maintenance of the Burswood Park.
- Cost to the casino operator of compliance with licensing requirements. These costs are a mixture of fixed and variable costs. They may include costs for the use of the services of professionals, the installation of specialist systems to ensure compliance with the regulatory requirements, and the costs of specialist staff. They also include the costs of having games authorised.
- Higher prices to consumers. It can be argued that the costs incurred by the casino operator for the casino licence and the requirements to comply with the licensing regime will be passed on to consumers in the form of higher prices for the gambling product. This assertion is difficult to examine, as there are similar licensing, taxation and monopoly conditions existing in all States in Australia with casinos. The price paid by the consumer for the casino gaming product in Western Australia is comparable with the prices charged in other States. The price paid for the casino gaming product is determined by the payout odds specified in the rules of the game. The rules and payout odds offered at the casino are similar to the odds offered at casinos in other Australian states.
- Direct costs to the casino operator of any on-going probity checks required by the legislation and indirect costs in terms of time taken for such investigations.
- Direct costs to the casino operator if required to hire and train labour as part of the surveillance system.
- The requirement to licence 'junkets' imposes costs on the casino that do not occur in other jurisdictions where this is not a requirement. A junket generally refers to groups of overseas gamblers rather than to organised groups of local gamblers. Section 25A enables the Commission to frame regulations which determine the manner in which junkets are conducted and the type of information concerning junkets that is required to be lodged by junket operators or their authorised representatives. The provisions of section 25A may serve to restrict competition if other jurisdictions have less demanding requirements concerning junkets. Junket operators are likely to favour casinos in jurisdictions with the least demanding requirements.

8.4.2 Benefits/Advantages

The object of the provisions relating to the control of casino gaming is to ensure that the gaming is conducted honestly and with integrity and is free from the influence of organised crime.

There are also consumer protection objectives satisfied by the setting of odds for games and the minimum payout provisions for video gaming machines at casinos.

The licensing regime provides consumer protection by setting the maximum price the casino can charge people to gamble and ensuring compliance with those prices. This is accomplished by setting the odds of the games through the rules of the game, or by regulating minimum prize payouts in the case of gaming machines.

The key to this requirement is information asymmetry. In the casino industry consumer knowledge about pricing of games and expected payouts will range from sophisticated to almost total ignorance. Generally, the typical consumer is in a particularly weak information position about the odds of the game, betting strategies and the final payouts compared with the gaming operator. Patrons are generally incapable of obtaining information about the true price of the casino games because of the complexity of the odds determining the outcome of the game. Because of this they cannot make rational decisions on whether to gamble or not, or to comparison shop with other gaming products. To prohibit exploitation the government sets the maximum amount the casino can charge the patron to play.

A government restricts maximum price by prohibiting a casino from theoretically retaining more than a set amount of each wager. The price charged for the casino gaming product is determined by the payout odds specified in the rules of the game. For example, the Gaming Commission has determined that the casino must have a minimum average of ninety per cent payout on its video gaming machines. This means that the maximum average price that the casino operator can charge is ten cents for each dollar played on the machines. The prices the casino can charge people to gamble will feature in the potential market entrant's investment decision to enter the market.

8.4.3 Assessment of Public Benefits

The licensing regime has led to the development of barriers to entry. Casino style gaming (including gaming machines) is restricted to licensed casinos.

Restricting casino gaming to licensed casinos makes the monitoring and control of illegal activities more effective and less costly. This also assists to guarantee the integrity of the gaming product through government monitoring and surveillance.

Restricting casino gaming to licensed casinos provides the government with the ability to introduce social change in a controversial area of business in a managed and deliberate manner so that the effects of such change can be observed and the supply of casino gaming can be either wound back or increased taking into account the available evidence and economic consequences of gambling activities.

The objectives of the restrictions pertaining to junkets can be accomplished without the requirement for a formal approval (de facto licensing) process contained in the legislative provisions of section 25A of the Casino Control Act 1984. The primary objective of the restrictions relating to junkets are to ensure that junket operators and their authorised representatives are fit and proper persons to be involved in the conduct of this aspect of the gaming industry. Further, to exclude the influence of organised crime in this particularly lucrative segment of the casino gaming market. This can be achieved through the Department of Immigration when considering applications for visas for entry to Australia. It

appears that these checks are duplicated in the approval process for junket operators and representatives. In addition, under section 26(2) of the Casino Control Act, the police have the authority to prohibit individuals from entering and remaining in licensed casinos. Should the Police discover information that leads them to believe that a junket operator, a junket representative, or even a junket player has links with organised crime they have the option to issue a prohibition notice to that person.

The Gaming Commission can make regulations under the provisions of section 25A of the Casino Control Act that would require the casino licensee to provide specified information prior to a junket operating at the casino.

EFFECT SUMMARY TABLE

Nature of restriction: Licensing of casinos with restrictions relating to gaming area, approval of mortgage transactions, authorisation requirement for games played, internal controls and junkets.

Effect 1 Creates a barrier to entry.

How: Licensing process increases uncertainty, takes time and involves probity checks.

Impact: Significant. Complexity of process can influence investment decision.

Evidence: Cabot, N. *Casino Gaming Policy, Economics and Regulation*,

Impacts when: Initial.

Impacts on whom: Operators

Public objectives impacted: Economic/social.

Effect 2 Increases start up costs

How: Applicant bears costs of making application, of complying with probity checks and of having games approved.

Impact: Minor. Small relative to overall development costs.

Evidence: From Burswood set up.

Impacts when: Continual

Impacts on whom: Operator.

Public objectives impacted: Economic/financial.

Effect 3

Increases operating costs

How: Applicant bears costs of: annual licence fee, tax levied on operations, installation and operation of specialist systems and staff to ensure compliance with probity requirements, costs of having games authorised.

Impact: Significant. Licence fee was \$1.72 million in 1997, tax paid was \$53.6 million. Other costs difficult to estimate.

Evidence: From Gaming Commission.

Impacts when: Continual

Impacts on whom: Operator.

Public objectives impacted: Economic/financial.

Effect 4

Potentially reduces competitiveness in junket market.

How: Licensing of junkets does not occur elsewhere in Australia.

Impact: Potentially significant.

Evidence: Casino operator, knowledge of rules elsewhere.

Impacts when: Continual

Impacts on whom: Operator.

Public objectives impacted: Economic/financial.

Effect 5

Possible increase in prices dues to higher set up and operating costs.

How: Monopoly position allows licensing and associated costs to be passed on to consumer.

Impact: Difficult to assess. All jurisdictions have similar market and licence conditions. WA prices are comparable to Eastern States.

Evidence: From Gaming Commission..

Impacts when: Continual

Impacts on whom: Consumer.

Public objectives impacted: Economic/financial.

Effect 6	Protects consumer. Offsets the consequences of significant information asymmetry and deters organised crime.
<i>How:</i>	Licence forces compliance with game rules, odds and payout ratios. Monopoly power limited by regulation of maximum price.
<i>Impact:</i>	Significant. Information asymmetry is a major problem for consumers in this market.
<i>Evidence:</i>	Gaming Commission, inherent nature of games.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Consumer, Operator.
<i>Public objectives impacted:</i>	Economic/financial.

8.4.4 Alternatives

See discussion of licensing alternatives in section 6.2.4 above.

8.4.5 Recommendation

On balance, it is considered that the benefits of the restriction requiring casinos to be licensed outweigh the costs of the restriction. The retention of this restriction is considered to be in the public interest. This includes the licensing of games and the rules of games.

The licensing of “junkets” is of doubtful merit and should be removed in favour of a less restrictive form of monitoring junkets that does not involve a formal approval process. Sufficient protection already exists to meet the objectives of the restriction to exclude unsuitable persons and organised crime. It is recommended that the provisions of sections 25A(2)(b) and 25A(2)(c) of the Casino Control Act be repealed.

8.5 Restriction – controlled contracts.

The following sections place a restriction on the casino operator that is ancillary to the main licensing requirement. The Act defines controlled contracts relating to the supply of goods and services. It is a constraint on business decision making by requiring “approval” of businesses that supply the casino and of the associated contracts.

PART VA CONTROLLED CONTRACTS

Section 29B

A casino licensee shall not enter into or become a party to a controlled contract, or the variation of a controlled contract relating to the licensed casino concerned, unless the casino licensee has given to the Commission notice in writing of the details of the proposed contract or variation of the contract and the Commission has not objected to the proposed contract or variation of contract.

A controlled contract is defined as a contract that

- (a) Relates wholly or partly to the supply of goods or services to a licensed casino or to any other matter that is prescribed for the purposes of this definition.

(b) That provides for a payment, or receipt, by a party to the contract of an amount that exceeds, or amounts that together exceed, the amount that is determined from time to time by the Commission.

but does not include

- (c) A contract that relates solely to the construction of a casino or to the alteration of premises used or to be used as a casino.
- (d) A casino complex agreement.
- (e) A lease, or
- (f) A contract of a class that is prescribed as exempt from this definition.

8.5.1 Cost/disadvantages

The restriction imposes costs on the government through the administration requirement and on the casino operator through the compliance requirement. It imposes the cost on the casino operator that the regulator can influence what would be termed normal commercial contract arrangements in other industries.

8.5.2 Benefits/advantages

The casino industry is, as argued previously, regarded as substantively different from other industries because of the potential involvement of organised crime. Governments around the world have intervened strongly in this market place as a way of ensuring the greatest level of probity possible. This requirement is an integral part of this arrangement. The concern is that organised over pricing of supply contracts is an effective way of moving money through casinos as part of money laundering. As much as is possible the incentive (and expected gain) to do this needs to be removed.

EFFECT SUMMARY TABLE	
Nature of restriction:	Approval needed for Casino supply contracts.
Effect 1	Increases operating costs.
<i>How:</i>	Operator bears costs of seeking approval and complying.
<i>Impact:</i>	Minor. Primarily operator needs to ensure supply firms are bona fide and pass probity checks.
<i>Evidence:</i>	No casino submission requesting to change this requirement.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Operator.
<i>Public objectives impacted:</i>	Economic/social.

Effect 2	Ensures probity of Casino operation.
<i>How:</i>	Deters organised firms by vetting contract suppliers and conditions.
<i>Impact:</i>	Significant. Manipulation of supply contracts is an effective money laundering technique.
<i>Evidence:</i>	From other jurisdictions, especially US where these issues have been prevalent.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Operator, suppliers.
<i>Public objectives impacted:</i>	Economic/financial.

8.5.3 Assessment of Public Benefits

While such restrictions would be considered unusual in normal industries, the particular features of the casino industry make such restrictions acceptable in the interests of preventing the involvement of organised crime. Given that the usual provisions tackle operators, employees and gaming equipment suppliers it is likely to be in the public interest to have some form of scrutiny of other major supply contracts as these are potential vehicle for a variety of criminal activities.

8.5.4 Alternatives

The major alternative is to leave the policing of contract arrangements to the usual combination of criminal and corporate law. It is unclear whether this combination is adequate to deal with the particular issues involved in casinos.

8.5.5 Recommendation

Continue the restriction.

9 Casino Control (Burswood Island) (Licensing of Employees) Regulations

In conjunction with the Casino Control Act, these regulations strengthen the licensing regime requiring strict licensing of casino employees. The single restriction is licensing.

9.1 Restriction – licensing of casino employees

The following regulations serve to restrict the types of people who can be employed in the casino. They effectively licence casino employees so that only those employees who meet the required standard and hold the necessary licence can be employed.

Regulation 3

Neither the holder of the Casino Gaming Licence, nor the operator, shall employ a person, or permit a person to be employed or to work in the casino as a casino key employee or as a casino employee without that person holding a valid licence and being over eighteen years of age.

Regulation 3(4)

The Commission may define the types of work in the casino which may be carried out by a person who is a holder of a licence and may by restrictions imposed in relation to a licence require that the holder of the licence be employed or permitted to carry out a specified type of work and not otherwise.

Regulation 4(2)(f)(ii)

The applicant for a licence must satisfy the Commission that they have successfully completed a training course approved by the Commission.

Regulation 8

Allows Commission to grant or refuse licenses in its absolute discretion.

Regulation 14(1)(d)

Licence ceases to operate when holder ceases to be employed or permitted to work in the casino.

Regulation 15

Commission may cancel or suspend the operation of a licence.

Regulation 15(2)(a)

It is a condition of their licence that the holder shall comply with rules of authorised games and procedures of authorised games

9.1.1 Costs/disadvantages

The licensing of employees imposes a variety of costs both on employees and potential employees and on the casino operator. Government administration costs are also incurred but as the Gaming Commission is self funding these will ultimately be borne by the casino operator and perhaps, in the final analysis, by consumers and employees. These costs can be summarised as:

- the cost of the licence. Casino employee licences cost \$100 and casino key employee licences cost \$300. During the 1997 financial year \$3900 was collected for casino key employee licences and \$33000 was collected for casino employee licences.
- costs of the administration needed to issue licences and conduct probity checks on employees and potential employees.
- cost to the casino operator of ensuring compliance with licensing conditions.

9.1.2 Benefits/advantages

The main purpose of licensing employees is to ensure probity in casino operations. The nature of casino operations is such that any systematic attempts to defraud customers or involve the casino in criminal activities would have to include some employees.

Licensing employees is a way of controlling the influence of organised crime. Probity checks associated with the employee licensing system assist in keeping the industry free from the influence of organised crime.

Licensed personnel are required to abide by the rules of the games and approved procedures concerning the conduct of casino gaming. This assists to ensuring that casino games are conducted with integrity. Casino patrons can take comfort in the knowledge that the games are conducted in accordance with the rules approved by the Gaming Commission, and that the games are conducted fairly.

EFFECT SUMMARY TABLE

Nature of restriction:	Licences required for Casino employees.
Effect 1	Ensures probity of Casino operations.
<i>How:</i>	Deters organised crime. Licensed employees are required to abide by rules of game. Systematic fraud relating to games requires some employee involvement.
<i>Impact:</i>	Significant. Probity of operations is critical to long term success.
<i>Evidence:</i>	History of employee involvement where organised crime/ fraud have been found in other jurisdictions.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Employees, operator, customer.
<i>Public objectives impacted:</i>	Economic/social.
Effect 2	Imposes compliance costs on Casino
<i>How:</i>	Annual licence fees plus cost of monitoring employees.
<i>Impact:</i>	Minimal.
<i>Evidence:</i>	1997 licence fees were \$33,000. Employee monitoring would be done in some form anyway.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Operator.
<i>Public objectives impacted:</i>	Economic/financial.

9.1.3 Assessment of Public Benefits

Licensing of casino staff is considered to be an integral part of keeping the industry free from the influence of organised crime.

9.1.4 Alternatives

See discussion of general licensing alternatives in section 6.2.4 above. The various possible alternatives – self regulation, negative licensing – do not offer acceptable controls regarding probity and consumer protection. Accreditation may be a feasible alternative because an employee accreditation requirement could be built into the casino licence. Under this approach it is a defacto licensing system.

9.1.5 Recommendation

This is a minor restriction. Its benefits are considered to outweigh the costs. It is in the best interests of the public to retain a system of licensing casino employees.

10 Casino (Burswood Island) Agreement Act, 1985

The Act gives effect to the contractual arrangements between the State and the casino licensee.

The Casino Control Act enables the Minister acting on behalf of the State to enter into an agreement with a public company with respect to the construction and establishment of a casino complex in the State. The agreement entered into in respect of the Burswood Casino is covered by the Casino (Burswood Island) Agreement Act, 1985.

Development proposals with respect to the construction, establishment and development of the Resort, including within the Resort Complex the Burswood Casino, were submitted and accepted in principle by the Minister.

The Minister entered into an agreement for the purpose of providing for and facilitating implementation of the Development Proposals and the operation of the Resort and the Resort Complex.

The State recognised that the establishment of the Resort was a large scale development project requiring a very large capital expenditure. The view was taken at the time that to secure the development it was necessary to give the security to the developers and operators of the Casino. Several restrictions are included in the Agreement under which the casino was developed to enable the provision of capital for the establishment of the Resort.

The end result of the process of developing the casino in this way is that the Casino (Burswood Island) Agreement Act contains a number of clauses that restrict entry to the casino gaming segment of the gaming market in Western Australia.

10.1 Restriction – restrictions imposed on ownership and management of the casino

A number of restrictions are imposed on the casino developer and operator. The effect is to allow the government, through the Minister, to exercise some control over the ownership and management of the casino.

PART III CORPORATE ORGANISATION AND RELATED MATTERS

Clause 17

Sets conditions on the Agreement: including -

- no amendment or variation to the terms and conditions of the foundation agreement without the prior approval of the Minister
- no party to the foundation agreement shall be released or discharged from its obligations without the prior approval of the Minister

- the Trust Deed shall not be altered or amended without the prior approval of the Minister
- the Memorandum and Articles of Association of the Manager shall not be altered or amended without the prior approval of the Minister
- the Memorandum and Articles of Association of an approved company shall not be altered or amended without the prior approval of the Minister
- an approved company may not sell or otherwise dispose of any units without the prior approval of the Minister
- no person shall be appointed as an auditor under the trust deed or by the Manager unless the Minister has approved that person's appointment
- the total number of units and options to which any person shall be entitled shall not exceed ten per cent of the aggregate total number of the Units and Options in issue without the approval of the Minister
- no appointment of any new additional or substitute Trustee or Manager under the Trust Deed without the prior consent of the Minister
- neither the Project Management Agreement or the Operation Management Agreement shall be terminated or altered or amended, nor shall there be any change in the parties thereto without the prior approval of the Minister
- any new or substitute Project Management Agreement or Operations Management Agreement and the parties thereto shall be subject to the prior approval of the Minister
- the total number of units to which a foreign person shall be entitled shall not exceed forty per cent unless exemption given by the Minister
- except for holding units, any approved company will not without the Ministers consent be engaged, or interested in, any investment or business activity which the Trustee would not have the power under the Trust Deed to be engaged concerned or interested in

10.1.1 Costs/disadvantages

Imposes a variety of costs on the owners and operators of the casino because their business decisions regarding ownership and some areas of operations such as the appointment of auditors require ministerial approval.

10.1.2 Benefits/advantages

The primary benefit is that the government/ministerial approval regarding ownership and related decisions enables the government to control important areas of activity associated with casino ownership (ownership control and transfer of shares) where criminal involvement may need to be guarded against and to have some influence over the pattern of development of the resort.

EFFECT SUMMARY TABLE

Nature of restriction: Agreement allows some Ministerial control over ownership transactions and operations.

Effect 1 Imposes some additional costs on operator.

How: Specified business decisions (e.g. selection of auditors, ownership changes, changes to Articles of Association) require approval.

Impact: Difficult to assess.

Evidence: No specific data available on cost consequences.

Impacts when: Continual.

Impacts on whom: Operator.

Public objectives impacted: Economic/social.

Effect 2 Ensures probity of operations.

How: Deters organised crime from ownership involvement.

Impact: Potentially significant. Ownership involvement is a common form of activity where organised crime is established in the industry.

Evidence: From other jurisdictions, most notably US, where rules have been recently tightened to address this issue.

Impacts when: Continual

Impacts on whom: Operator and owners.

Public objectives impacted: Economic/financial.

10.1.3 Assessment of Public Benefits

The organisational controls and shareholder restrictions contained in the Casino (Burswood Island) Agreement Act essentially produce three outcomes. They:

1. Prevent the ownership and corporate structure of the casino changing without the prior approval of the Minister.
2. Require the Minister's approval if an individual shareholder wishes to purchase in excess of 10 per cent shares.
3. Restrict foreign ownership to less than 40 per cent unless exempted from this requirement by the Minister.

Controls over the ownership and management structure assist with probity by making it less likely that the business will be subject to takeover by an operator that might be considered

unsuitable. These controls assist in ensuring that organised crime is not involved in the ownership or management of the casino.

These controls on balance have net public benefit if used to ensure probity in the share dealings and other ownership dealings of the casino.

These restrictions would probably not be changed without changing the Agreement Act provisions in other areas (see below) in mutual agreement with the licence holder. There is a case for making some changes as outlined in the discussion of alternatives.

However, for all the reasons noted previously in this review, gambling generally and casino gaming in particular impose considerable requirements to ensure probity in all aspects of ownership and operation. Considerable effort is put into the granting of casino licences in all jurisdictions to ensure the owners are free from criminal associations, especially organised crime. Ongoing scrutiny is generally regarded as equally necessary and the current provisions relating to the ownership and management achieve this.

10.1.4 Alternatives

Although the corporate structure, ownership, and management restrictions are considered to be an essential element of the probity and integrity requirements associated with casino licences it may be possible to achieve the same ends without specifying such requirements in the legislation.

Some provisions relating to corporate organisation and structure contained within clause 17 of the Agreement may be adequately protected by the provisions of existing legislation. As such these provisions may be superfluous in the Agreement and consideration may be given to their removal.

Clause 17 provides that changes to the Trust Deed, the Memorandums and Articles of Association, the appointment of auditors and so forth requires the prior approval of the Minister. Existing provisions of the Corporations Law adequately cover the objectives of these restrictions contained in the Agreement. Combined with the fact that companies must comply with the applicable Australian Accounting Standards and (in the case of Burswood Limited) the Australian Stock Exchange Listing Rules sufficient protection applies to the requirements of this clause in other legislation. It is considered that the application of Corporation Law is sufficient without these matters being specifically targeted in the gaming legislation.

Clause 17 provides that the total number of units and options any person shall hold cannot exceed ten per cent of the total available without the prior consent of the Minister. It is suggested that this provision be retained but that it is clarified to the extent that the Minister only takes into account matters of probity when considering granting approval. The Minister's function here would be to ensure that the person acquiring the influential holding is a fit and proper person to be involved in the ownership or management of a casino.

Clause 17 further contains provision restricting foreign ownership to 40 per cent of the total number of units on issue unless exempted by the Minister. The Foreign Investment Review Board is charged with the responsibility to examine proposals by foreign interests for investment in Australia, and against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals. The Board is also responsible to monitor and ensure compliance with foreign investment policy, and the provisions of the Foreign Acquisitions and Takeovers Act 1975. It would appear that the functions of the Foreign Investment Review Board provide sufficient protection to meet the objectives of the foreign investment provisions of the Casino (Burswood Island) Agreement Act.

The provisions of the Agreement can be amended with the consent of the parties subject to the Agreement. The Government may consider such changes as part of any future trade-off negotiations with the casino licence holder concerning restrictive provisions of the agreement. This may, for example, include negotiations relating to the type of casino complex required to be built within 100 kilometres of Burswood Resort Casino. Currently a new casino within 100 kilometres has to be comparable to Burswood and must be a complex containing a hotel and casino of comparable size and standard to the Burswood Casino and the first hotel within that resort complex.

10.1.5 Recommendation

The ability of the Minister to approve certain ownership transactions and certain operating decisions as specified should stay. Where the current provisions can be adequately dealt with under Corporations Law or under the Foreign Investment Review procedures consideration should be given to making appropriate changes. However, given some of the other aspects of the Act, it is suggested that, as the provisions of the Agreement can only be amended with the consent of the parties subject to the Agreement, the Government consider such changes as part of any future trade-off negotiations with the casino licence holder concerning other restrictive provisions of the agreement such as the nature of casino complex to be built by any future licence holder and the restriction on two-up within 200 kilometres of Perth.

10.2 Restriction – Permission required for credit gaming at casino.

This restrictive provision prevents the use of credit wagering at the Casino without the prior approval of the Gaming Commission.

PART VI CASINO GAMING LICENCE AND RELATED MATTERS

Clause 21(d)

No person concerned with the operation of the Burswood Casino shall, directly in connection with gaming in the Burswood Casino, without the prior consent of the Commission accept a credit wager from any person; make a loan to any person; provide cash or chips to any person in respect of a credit card transaction; extend credit in any form to any person.

10.2.1 Costs/disadvantages

The cost to the Casino operator is that they are unable to offer a line of credit service as part of their commercial gaming venture without approval from the Gaming Commission. Cost are incurred in seeking approvals. Where approval is not given, the expected level of turnover may be lower. Lack of suitable credit wagering facilities may reduce the competitiveness of the Casino in the national and international markets.

The transaction costs of gaming for those wishing to use credit are increased as they must arrange credit away from the casino and take cash to the venue.

10.2.2 Benefits/advantages

The primary benefit is that it limits the social costs associated with casino gambling. Evidence on the social costs was presented in the previous section dealing with gaming machines. There is increasing evidence that significant social costs are associated with gaming. By preventing credit gaming, it is thought that the incidence of problem gambling will be reduced and so there will be benefits to the community because the social costs associated with problem gambling will be avoided.

EFFECT SUMMARY TABLE

Nature of restriction: Gaming Commission approval needed for credit wagering at Casino.

Effect 1 Imposes costs on Casino.

How: Potential loss of business.

Impact: Difficult to assess. No experience with credit wagering at Casino. Possibly more significant for national and international markets where rivals may have the facility.

Evidence: None. No studies look at effect of credit wagering.

Impacts when: Continual.

Impacts on whom: Consumers, operator.

Public objectives impacted: Economic/social.

Effect 2 Helps reduce the social costs of problem gambling.

How: Prevents credit gaming decisions being taken during the game. Places a barrier between seeking credit and actual play that discourages losing beyond one's means.

Impact: Potentially significant but difficult to assess for the existing Casino.

Evidence: Survey evidence from NSW on social costs of gaming. Related to gaming machines more than traditional casino games. Not directly related to credit but credit facilitates higher levels of gambling.

Impacts when: Continual

Impacts on whom: Consumers and operators

Public objectives impacted: Economic/social.

10.2.3 Assessment of Public Benefits

This restriction is an approval requirement not a prohibition. If approval is not given for credit wagering, it does not substantially affect the average consumer's ability to participate in casino gaming. It primarily has the effect of imposing transaction costs on those wishing to gamble on credit. On the other hand, credit gaming, by making it very easy for a person to lose money beyond their means while involved in the "hot house" atmosphere of the game generates some positive risk that problem gambling will be made worse. The form and conditions attached to any credit wagering will influence this likelihood.

This is a direct legislative response by government to attempt to contain the incidence of problem gambling (and therefore the economic and social costs) by attempting to protect consumers from being able to wager beyond their available funds.

Against this, the lack of credit wagering at the casino denies customers wishing to use this facility the benefits of it and imposes transactions costs on them, although these are expected to be small for most consumers. No submission was received arguing for credit wagering.

The casino itself may suffer in terms of national and international markets. However, because it is not a prohibition but only a prior approval requirement, it is open the casino operator to make submissions seeking approval for various credit wagering arrangements.

On balance, the benefits of retaining this restriction are considered to outweigh the costs of the restriction. It is in the public interest to retain the requirement that prior approval be required for credit wagering in casino gaming markets.

10.2.4 Recommendation

The restriction regarding approval for credit wagering is consistent with the general approach taken to credit wagering in respect of other gaming activities. Whereas for community based gaming it is a prohibition, for the casino it is an approval requirement. This reflects the full commercial nature of the casino, the potential legitimate demand for credit wagering, and the ability to monitor it and the need to do so. The restriction that approval be required for credit wagering at the Casino should be retained.

10.3 Restriction – Burswood monopoly and associated restrictions on casino games.

The restrictive provisions in the act establish a monopoly (the period of exclusivity) on casino gaming for fifteen years (expiring on 24 December 2000). Beyond this, further casino licences can be issued. However, there are further restrictions that do not expire at the end of the fifteen year period which restrict casino style gaming to licensed casinos and restrict the form of casino that can be licensed.

PART VI CASINO GAMING LICENCE AND RELATED MATTERS

Clause 22(3)

During the period of exclusivity the State shall not enter into a Casino Complex Agreement with another party or permit another casino licence to be granted.

During the period of exclusivity the State will not authorise, licence or approve in any manner whatsoever and whether pursuant to the Control Act or any other Act or otherwise, the conduct or playing except in the Burswood Casino of any game commonly played in casinos (whether in Australia or elsewhere) or any variation or derivative thereof no matter how played, or the use of any premises whatsoever nature for the conduct and playing of any such game or variation or derivative thereof.

Clause 22(4)

After period of exclusivity State will not authorise playing of casino games in any other premises except the Burswood Casino or any other licensed casino. Further establishes that a Casino constructed within 100 kilometres of Burswood must contain a hotel and casino of comparable size and standard to the Burswood Casino which must be the first hotel within the casino complex.

Clause 22(5)

Provides ability for State to permit the playing of two-up but only outside of a 200 kilometres radius of Burswood Casino.

10.3.1 Costs/disadvantages

Clause 22 establishes a monopoly for casino gaming for fifteen years. This is due to expire on 24 December 2000. This clause further restricts the playing of games commonly played in casinos, whether in Australia or elsewhere to licensed casinos only. As the current casino is the only licensed casino in Western Australia, the effect is to grant monopoly status to the casino over a whole range of games.

The strength of this monopoly is further enhanced by the inclusion of variants of casino type games or derivatives of casino type games. This means that each application for a game away from the casino – for example a video card game in a hotel – has to be assessed against this test. This increases the transaction costs for those wishing to operate such games because the applicant and Gaming Commission have to prove that the game is not a variant or derivative of a game played at the casino or any other casino in Australia.

This clause also establishes basic requirements for the potential holders of future casino licences if and when these are to be granted. In particular the Act requires that a new casino within 100 kilometres of Perth can only be granted a licence if the proposed development includes a hotel, casino and other attributes (convention centre) of comparable size and standard to the Burswood Casino. This imposes significant costs on potential developers. It prevents any development of small scale, club style casinos catering for a niche market.

Administrative costs to government will arise from the need to ensure that new casinos comply with the requirements that the State has agreed to.

10.3.2 Benefits/advantages

The main benefits stemming from these restrictions are associated with the development of casino and resort facilities to international standard. This provides the community with benefits derived from employment and other economic activity associated with the building of such facilities. The community also benefits from ancillary infrastructure established with such a resort (parks, gardens, restaurants and so forth).

The agreement committed the resort developers to spending \$220 million on the project. The Government regarded the project as a method to create jobs not only in the construction industry but also at the casino complex and also through a broad section of industry and commerce. This would increase tourism resulting in further increases in income and employment across many businesses. The Government also saw that the State's revenue would be boosted by a tax of 15 per cent of gross casino revenue; an annual licence fee set initially at \$400 000 and increased each year by CPI change; \$30 million for land and consideration of the State signing the agreement; and by the establishment of a public park funded by revenue from the operations of the casino.

The Burswood International Resort Casino complex is one of Western Australia's most significant tourism attractions and a significant export earner. It is one of the largest non-government single site employers. It has been the catalyst for ancillary public recreational infrastructure established with a casino complex. The casino complex established at Burswood Island has a public reserve (Burswood Park) that includes an eighteen hole public golf course.

The benefits flowing from Burswood were effectively secured by granting the monopoly rights and competitive advantage contained in these restrictions.

EFFECT SUMMARY TABLE

Nature of restriction: Period of exclusivity for Casino.

Effect 1 Creates Casino monopoly.

How: Prohibits issuing of additional licences.

Impact: Potentially significant over life of exclusivity period but minor now because of expiry date.

Evidence: Expires in 2000.

Impacts when: Continual to 2000.

Impacts on whom: Consumers, operator.

Public objectives impacted: Economic/social.

Effect 2 Potential higher prices to consumers.

How: Exercise of monopoly power.

Impact: Difficult to assess but likely to be negligible.

Evidence: Regulation sets maximum prices at Casino, prices are comparable to Eastern States.

Impacts when: Continual

Impacts on whom: Consumers.

Public objectives impacted: Economic/financial.

EFFECT SUMMARY TABLE

Nature of restriction:	Conditions imposed on new casinos beyond the period of exclusivity.
Effect 1	Effectively prevents competition. Creates capital cost and scale of entry barriers.
<i>How:</i>	Within 100 kilometres, new casino must be a resort complex comparable to Burswood. Outside 100 kilometres it must have a major hotel attached to it.
<i>Impact:</i>	Potentially significant. Makes it unlikely that a new Casino will be established within 100kilometres. Prevents entry at small scale (e.g. club style casinos).
<i>Evidence:</i>	Capital cost and capacity at Burswood.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers, operator.
<i>Public objectives impacted:</i>	Economic/social.

EFFECT SUMMARY TABLE

Nature of restriction:	Casino style games and variants restricted to Burswood and any new casino (unlikely) beyond the period of exclusivity.
Effect 1	Creates Casino monopoly over these games.
<i>How:</i>	Permits for these games will not be approved for hotels etc.
<i>Impact:</i>	Potentially significant. Prevents hotels etc from competing in this market. Casino prices not likely to be competed down below current regulated maximum.
<i>Evidence:</i>	Difficult to quantify but current policy would prevent spread of gaming machines in any event.
<i>Impacts when:</i>	Continual.
<i>Impacts on whom:</i>	Consumers, operator.
<i>Public objectives impacted:</i>	Economic/social.

Effect 2	Potential higher prices to consumers.
<i>How:</i>	Exercise of monopoly power.
<i>Impact:</i>	Difficult to assess but likely to be negligible.
<i>Evidence:</i>	Regulation sets maximum prices at Casino, prices are comparable to Eastern States.
<i>Impacts when:</i>	Continual
<i>Impacts on whom:</i>	Consumers.
<i>Public objectives impacted:</i>	Economic/financial.

10.3.3 .Assessment of Public Benefits

The period of exclusivity is due to expire on 24 December 2000. The processes involved in the consideration of any applications submitted for casino licenses could reasonably be expected to take at least one year. Given these two factors, the period of exclusivity is now more historical fact rather than an ongoing barrier to entry.

After the year 2000, other casino licences can be granted. Any attempt to legislate to issue licences prior to that date could result in significant claims for damages against the State from the existing casino operator for breach of contract.

The restrictions relating to the playing of casino games effectively grant a monopoly position to the Burswood Casino until a new casino is licensed.

The granting of further casino licences is made difficult by the requirements relating to the size and type of any new casino allowed. Under the requirement for the inclusion of a resort complex and casino comparable to the current Burswood, it is doubtful if more than one new competitor would wish to enter the market - possibly none.

While these are restrictions that limit potential competition, removal of the restrictions could only be achieved with the agreement of Burswood, or by legislation without the agreement of Burswood. The second course of action would amount to the use of legislative power to release the State from its contractual obligations. This course of action would raise issues of sovereign risk, which could have significant adverse consequences to the State's international and financial standing. Certainly, it would open up the prospects for substantial damages claims.

The cost of claims for damages should the State use legislative powers to negate the provisions of the existing agreement could be substantial. Such claims are likely to be for multi million dollar amounts. Further, the State's reputation would be damaged should it negate the existing contractual arrangements contained in the current casino complex agreement. This could affect the willingness of companies to invest in the State for the development of major projects.

Because of the nature of the agreement, the costs to the State of removing this restriction unilaterally appear to far outweigh potential benefits to be derived in terms of generating competition in the casino gaming market. The retention of this restriction is considered to be in the public interest.

10.3.4 Alternatives

There are two alternatives to these restrictions. Unilateral adjustment would expose the state to significant damages claims. Negotiated adjustment may be possible. This is discussed further in the next section. Whether this will produce net benefits will depend on the negotiated outcome.

10.3.5 Recommendation

The period of exclusivity should be allowed to proceed to termination in 2000.

The restrictions relating to the two-up limit, the required scale for a new casino and on the casino type games played elsewhere are restrictive. They cannot be justified in terms of economic efficiency.

However, given the likelihood of substantial damages claims, they should not be changed unilaterally. The government should consider negotiating some relaxation or removal of these restrictions (e.g. on two-up, new casino complexes, certain derivative games) in return for adjustments to other restrictions that place burdens on the casino, such as those relating to corporate control. Any concessions considered by the government should only be granted after a full public benefit assessment is made and it is demonstrated that there is a net benefit to the community.

The future tax burden (see below) may be a legitimate element of this negotiation. So too may the ability to grant additional casino licences. While clause 22(4) makes it unlikely that a Casino will be established within the 100 kilometre limit, it may be feasible for a casino operator to seek a licence for existing establishments outside of the 100 kilometre limit, for example at venues such as the Cable Beach Resort in Broome and the Lord Forrest in Bunbury.

10.4 Restriction – taxation of the casino operator

These clauses establish the cost of the casino licence and determines how variations to the tax rate may occur.

Clause 23

Sets taxes, licence fees and other payments.

- (a) Casino tax at a rate of fifteen per cent of Casino Gross Revenue per month
- (b) An annual licence fee
- (c) Payment to the Burswood Park Board of one per cent of Casino Gross Revenue or \$1,000,000 whichever is the greater. This payment is conditioned that the Site remains a C class reserve under the control and management of the Board.

Clause 23(4)(a)

During period of exclusivity Minister shall review rate of casino tax at each second anniversary and the trustee shall if so required by the Minister consult and negotiate with the Minister with a view to agreeing to an alternative rate of tax and the date from which it should apply.

Clause 23(7)

After the period of exclusivity, the Minister may review the tax rate. However, this is limited by an arrangement that the Government will not on any one occasion increase the rate of

casino tax by more than one per cent and requires consent of the trustee if the rate of tax will exceed twenty per cent per annum.

10.4.1 Cost/disadvantages

See section 8.3 where the general ability to tax the casino was considered.

10.4.2 Benefits/advantages

See section 8.3 where the general ability to tax the casino was discussed.

10.4.3 Assessment of Public Benefits

See section 8.3 where the general ability to tax the casino was discussed.

10.4.4 Alternatives

See section 8.3 where the general ability to tax the casino was discussed.

10.4.5 Recommendation

The ability to set a licence fee and levy taxes should remain. Safeguards should be included in the legislation to ensure that competing casino operators are treated equally. This is particularly so regarding the setting of the licence fee and variations to the tax rate.

11 Conclusion

The gaming industry continues to be a regulated industry in all jurisdictions. Governments intervene in gaming markets based on the particular characteristics of gaming markets that result in market failure. These characteristics are:

- **Information Asymmetry.** The average gambler has no understanding of the mathematical probabilities associated with a game and what criteria must be met for the game to be “fair”. The individual gambler is not capable of checking the programming of a machine and is not usually able to play a game for long enough to assess whether the machine performs properly. The odds can be shifted in favour of the operator relatively easily with little prospect of the consumer detecting it.
- **Externality.** Gambling is thought to impose costs on society when gamblers become “addicted” and consume beyond the level that is socially optimal. These costs are imposed on themselves and others (a reciprocal externality is produced) and involve society in significant treatment costs to deal with the problem. Particular forms of gaming – most notably gaming machines – appear to be most associated with the generation of significant social costs.
- **Criminal activity.** The asymmetry of information discussed above is conducive to fraud against the consumer. This fraud may operate at all levels and scales. It may be ad hoc and opportunistic or organised and systemic. The cash nature of gambling – especially table games – is held to be a strong incentive for organised crime to become involved with gaming activities. Such involvement is well documented. In addition to direct gaming fraud, other typical crimes – money laundering – are associated with gaming because of the opportunity it affords. Policing illegal activities involves significant costs and intervention may occur in a market in order to detect illegal activities and also to reduce the transaction costs associated with detection and prosecution.

In addition to the market failure justification for intervention, governments also intervene to secure the gaming tax base. The gaming industry is a major tax revenue source for government.

The gaming legislation in Western Australia contains a number of restrictions. Most are consistent with the market failure attributes of the market.

The primary restrictions relate to licences.

Under the legislation, licenses are required for casino gaming, permits are required for community gaming and permits are required for “Approved Premises” in which to conduct community gaming. Licenses are also required for casino employees, certificates are required for paid community gaming operators and licences are required for Video Lottery Terminal (VLT) technicians. Approval is also required for manufacturers and suppliers of gaming equipment. Approval and commissioning of gaming and wagering equipment (e.g. video gaming machines and gaming tables) is required.

The various licenses and approvals operate through the Gaming Commission Act, 1987 and Casino Control Act, 1984.

The primary benefit of the licensing regime is to protect consumers from unscrupulous operators, to deter organised crime by allowing for the relevant probity checks to be carried out and to ensure compliance with requirements relating to game rules, venues, community gaming objectives and the like.

The various licences are non-exclusive in that they do not extend monopoly rights to any individual operator or supplier. For most categories licences and permits are not restricted in number and are generally available to any applicant who passes the associated probity checks.

The report recommends that there are net benefits in continuing a licensing system. The asymmetric information and the potential for organised crime and other fraudulent behaviour make it important that rules are in place to give consumers confidence that the various games are conducted fairly. Licensing seems the most appropriate way to achieve this. Accreditation may be an alternative to licensing but given the nature of the industry and the rigour required of the process it is not likely to offer net benefits when compared to licensing. The report does recommend that the continued licensing of junket operators is no longer necessary.

An important restriction is the one that limits community gaming to organisations undertaking gaming for community purposes. Gaming for private gain is prohibited. A large number of community organisations are involved in gaming. They use professional fundraisers and the funds go to their particular cause. Although this restriction prevents pure commercial interests running gaming, it does not appear to have reduced competition, or reduced the availability of products (games). It is directly connected to the benefit of reducing the incentive for criminal behaviour and reducing the social cost of gaming. The report recommends that this restriction, along with related restrictions on credit wagering and the availability of gaming machines should stay. The report notes that there is merit in adopting a cautious approach to the prohibition on poker machines. Evidence is mounting regarding the significant social cost of widespread machine gaming and while it is easy to relax the restriction in future if circumstances warrant it, the reverse (removing gaming machines) would be almost impossible.

The report notes that the various licences are non-exclusive. The exception is the casino licence but this restriction is to be removed in 2000 and has no impact.

However, exclusivity is involved and will be on-going for lotto gaming and major lotteries and casino gaming. Only one supplier is permitted in each case. These monopolies are not due to the licensing regime as such but are achieved through related restrictions introduced as part of establishing casino gaming in Western Australia.

These restrictions derive primarily from the rights granted to the casino under the Casino Agreement Act, 1985. As a consequence of this agreement, a number of restrictions arise.

These include preventing the playing of casino games or derivatives or variations of casino games away from the casino, the prohibition of two-up within 200 kilometres of the casino, and restrictions on the type of casino complex that can be issued with a casino licence beyond 2000.

These are potentially serious restrictions on competition and ones that are likely to produce inefficiencies and welfare losses and this has been pointed out in the report. However, the report notes that there is a significant "second best" problem here. Rights have been granted to the casino with no end date and no formal process for review. Changes must be

by mutual agreement and the casino operator has already demonstrated an unwillingness to contemplate change without substantial compensation.

Further restrictions emanating from the Casino (Burswood Island) Agreement Act affect the rules and regulations for the playing of permitted bingo.

Without a change in the Casino (Burswood Island) Agreement Act, it is not possible to remove these other restrictions. To remove them unilaterally would involve the State in substantial damages and it is unlikely that they can be removed by agreement without substantial compensation.

However, the report recommends that several of the restrictions associated with the Casino (Burswood Island) Agreement Act be removed. In the interest of removing or modifying these restrictions the report recommends that the government consider using the possibility of adjusting some of the current restrictions on ownership, operations and on taxation of the casino as part of a negotiation process. The ability to licence new casinos outside of 100 kilometres after 2000 should also be part of this negotiation process.

The report recommends that such agreements in future should have clear sunset provisions attached to them covering all of the restrictions in the agreement.

The Casino (Burswood Island) Agreement Act and Casino Control Act also introduce a number of restrictions on the operation of casinos including controls over ownership, requirements for monitoring and audit and for supervision of controlled contracts. Provision is also made to tax the casino and vary the tax rate.

The latter restrictions on operations are largely about protecting the consumer and ensuring a casino industry that is free from crime. The report recommends that these should stay. It does recommend however that where other legislation is capable of doing the task, it could be relied on and the associated restriction removed. This is the case for clause 17 of the Casino (Burswood Island) Agreement Act dealing with a number of corporate matters.

Two further areas not specifically covered in the legislation need comment. These are fundraising and internet gaming.

Although community gaming is restricted to community organisations and is not for private gain, there are large professional fundraising activities involved. These organisations handle large volumes of funds and are not subject to the same probity checks as other participants. A case can be made that these market participants should be subject to the same checks as permit holders and this would require a licence or accreditation. As part of this process, the same bingo regulation that allows some limit on the share of funds raised being consumed as expenses (usually to the professional fundraiser) could be extended to other areas such as lotteries.

Currently commercial provision of internet gaming services is not allowed. The regulators cannot stop an individual from internet gambling in private – and do not wish too. However, if a commercial organisation such as a hotel or cyber cafe installed an internet gaming facility this would be in violation of the law. Therefore, internet gaming is covered by the Gaming Commission Act, although it is not specifically dealt with.

Finally, it needs to be noted that there are important interactions between the restrictions in these Acts. Most notably the Casino (Burswood Island) Agreement Act restricts the playing of casino type games and variants and derivatives thereof. This interacts with the prohibition on poker machines, the restrictions on gaming machines in general, and internet gaming. If the government wished to relax or remove some of the latter restrictions it would be forced to ensure that this did not result in the playing of casino type games. This would involve very significant transaction costs (including enforcement costs) and would be almost

impossible to police in the internet context. This highlights the need to deal with the restrictive provisions of the various Casino Acts as a way of giving the government the degrees of freedom to deal with these other restrictions in the future as circumstances warrant it.

11.1 Summary of Recommendations and Associated Legislation Changes

A variety of restrictions have been identified and evaluated in the report. In some cases, the recommendations require amendments to the gaming legislation. In others they do not. The following summarises the potential legislative changes resulting from the various recommendations.

Recommendation 6.1

The provision that casino operators should hold a valid licence should be maintained.

No legislative changes required.

Recommendation 6.2

The restriction should be maintained on thimblery and its variants. The requirement that casino style games are only played in the casino is consistent with the recommendation contained in 6.1 and should be retained.

No legislative changes required.

Recommendation 6.3

The current restriction on casino games played for community gaming exists because of a commitment under the Casino (Burswood Island) Agreement Act. It should be removed subject to appropriate changes being negotiated in the Casino (Burswood Island) Agreement Act to allow this restriction to be removed.

To allow casino style games to be played for community gaming requires that Clauses 22(3)(b) and 22(4) of the Casino (Burswood Island) Agreement Act be amended or repealed. Sections 46(2) and 46(3) of the Gaming Commission Act would also need to be amended or repealed.

Recommendation 6.4

After assessing the costs and benefits, it is considered on balance that it is in the public interest to retain a licensing system for organisations conducting community gaming. While there are alternatives to licensing, none offer the efficiency and benefits regarding probity and security as the current up front licensing system.

No legislative changes required.

Recommendation 6.5

The prohibition on credit gambling (for community gaming) should remain.

No legislative changes required.

Recommendation 6.6

The current restriction (on permitted two-up) exists because of a commitment under the Casino (Burswood Island) Agreement Act. It should be removed subject to appropriate changes being negotiated in the Casino (Burswood Island) Agreement Act to allow this restriction to be removed.

To remove this restriction requires amendments to sections 80(2) and 81(1)(a) of the Gaming Commission Act to remove the reference to a 200 kilometre radius from Burswood

Casino. Clauses 22(3)(b) and 22(4) of the Casino(Burswood Island) Agreement Act would need to be amended or repealed. Clause 22(5)(a) would need amending to remove the reference to the 200 kilometre radius from Burswood Casino.

Recommendation 6.7

The available evidence suggests that the restriction on the availability of gaming machines that is currently embedded in policy should stay but should be reviewed as more information becomes available on the social cost of gaming machines and on changing community attitudes.

To remove the particular restriction on poker machines from legislation and deal with them under the general policy would require that Section 22(1) of the Casino Control Act be amended to allow games played with poker machines to be declared as an authorised game. Section 85(1)(a) of the Gaming Commission Act would need amending to remove reference to poker machines being an unlawful gaming machine.

Recommendation 6.8

The benefits of maintaining a licensing system for gaming operators and suppliers in order to maintain the integrity of community gaming are considered to outweigh the costs associated with this system.

No legislative changes required.

Recommendation 6.9

The benefits of maintaining a prohibition on the conduct of bingo for private gain are considered to outweigh the costs. One of the prime objectives in legalising the conduct of certain gaming activities was to ensure that the community benefits from the funds generated through this type of gaming. This is achieved by restricting this segment of the gaming market to charities and community based organisations. The restriction should remain as it is integral to meeting the objectives of the legislation.

No legislative changes required.

Recommendation 6.10

The permitted bingo rule is covered under the Casino (Burswood Island) Agreement Act, which in effect specifies the conditions of play reflected in this rule. The approval of the Burswood Trustee is needed to change it. It would be preferable if this was not the case and it is recommended that the Government negotiate to remove the conditions attached to bingo contained in the Casino (Burswood Island) Agreement Act. However, the setting of a maximum payout and control of expenses is necessary to achieve the objective of community gain. The ability to set rules is contained in section 100, which allows the Commission to make regulations pertaining to bingo. It is recommended that the specific restrictions contained in sections 96(2)(a)(b)(c) and 97(a)(b)(c) be removed from the legislation and that the Gaming Commission use its powers under section 100 to regulate bingo to achieve the community gain objective of the legislation.

To achieve this requires that Clause 22(5)(b)(ii) of the Casino(Burswood Island) Agreement Act and/or Schedule A(a)(ii) of the agreement be amended. Sections 96(2)(a)(b)(c) and 97(a)(b)(c) of the Gaming Commission Act should be deleted.

Recommendation 6.11

After assessing the costs and benefits, it is considered on balance that it is in the public interest to retain a licensing system for organisations conducting bingo. The restriction should continue.

No legislative changes required

Recommendation 6.12

The ability to make rules for permitted bingo should be retained.

No legislative changes required

Recommendation 6.13.1

Amend the Gaming Commission Act 1987 to allow for the licensing of suppliers of State lottery products by State Agreement. The new provision would allow for the Minister (on behalf of the State) to enter into State Agreements with an organisation to supply State lottery products.

Amend section 102 of the Gaming Commission Act 1987 to reflect that lotteries conducted by organisations, the subject of a State agreement, are lawful lotteries.

Recommendation 6.13.2

That the Gaming Commission Act also be amended to allow for licensing of professional fundraisers.

Add a licensing requirement for professional fundraisers to the Gaming Commission act.

Recommendation 6.13.3

Remove the definition of “foreign lottery” contained in section 101(1) of the Gaming Commission Act 1987.

Amend the definition of “unlawful lottery” contained in section 101(1) of the Gaming Commission Act 1987 to remove a reference to “and includes a foreign lottery conducted in the State”.

Recommendation 7.1

Given the consistency of these recommendations with the primary objectives the regulations (relating to amusements and lotteries with prizes) should remain.

No legislative changes required

Recommendation 7.2

The bingo regulations are affected by the Casino (Burswood Island) Agreement Act, which in effect specifies the conditions of play reflected in the regulations. Schedule A of the Agreement relates to the conditions for playing bingo, and the regulations all specifically cover these. The approval of the Burswood Trustee is needed to change the Agreement. It would be preferable if this was not the case and it is recommended that the Government negotiate to remove the conditions attached to bingo contained in the Casino (Burswood Island) Agreement Act. To achieve this requires that Clause 22(5)(b)(ii) of the Casino(Burswood Island) Agreement Act and/or Schedule A(a)(ii) of the agreement be amended

The regulations ensure that the focus of these games remains a community focus not for private gain. The regulations regarding the number of permits per week and the inability to offer other gaming activities are directly designed to achieve this. In particular the bingo regulations were implemented largely to prevent the bingo market from becoming monopolised by one organisation or dominated by a small number of organisations, to the detriment of other community organisations wishing to raise funds this way, and to prevent community oriented bingo organisations from branching out into fully fledged gambling

operations. It is recommended that the restrictions contained in the regulations designed to achieve these objectives remain.

Recommendation 7.3

Given the consistency of these recommendations with the primary objectives – particularly the broader community benefit objective for permitted gaming - regulations on lotteries should remain.

No legislative changes required.

Recommendation 8.1

Sunset clause provisions be applied to any competitive advantage granted and that any agreements entered into (in regard to casinos) be on the recommendation of the Gaming Commission and subject to a full public benefits test.

Section 19(1) of the Casino Control Act needs to be amended to require this to be done prior to the Minister entering into a casino complex agreement.

Recommendation 8.2

This restriction (requiring initial checking of casino proponents) should be maintained.

No legislative changes required.

Recommendation 8.3

The ability set a licence fee and levy taxes should remain. Safeguards should be incorporated in future casino agreements to ensure that competing casino operators are treated equally and that licence fees are limited to cost recovery.

No legislative changes required. Safeguards to be written in to future casino agreements.

Recommendation 8.4

On balance, it is considered that the benefits of the restriction requiring casinos to be licensed outweigh the costs of the restriction. The retention of this restriction is considered to be in the public interest. This includes the licensing of games and the rules of games.

The licensing of “junkets” is of doubtful merit and should be removed in favour of a less restrictive form of monitoring junkets that does not involve a formal approval process. Sufficient protection already exists to meet the objectives of the restriction to exclude unsuitable persons and organised crime.

To achieve this requires that the provisions of sections 25A(2)(b) and 25A(2)(c) of the Casino Control Act be repealed.

Recommendation 8.5

The requirement for controlled contracts should remain.

No legislative changes required.

Recommendation 9.1

Retain a system of licensing casino employees.

No legislative changes required.

Recommendation 10.1

The ability of the Minister to approve certain ownership transactions and certain operating decisions as specified should stay. Where the current provisions can be adequately dealt with under Corporations Law or under the Foreign Investment Review procedures, consideration should be given to making appropriate changes. However, given some of the other aspects of the Act, it is suggested that, as the provisions of the Agreement can only be amended with the consent of the parties subject to the Agreement, the Government consider such changes as part of any future trade-off negotiations with the casino licence holder concerning other restrictive provisions of the agreement, such as the nature of casino complex to be built by any future licence holder and the restriction on two-up within 200 kilometres of Perth.

To achieve this requires that Clause 17 of the Casino (Burswood Island) Agreement Act be amended to remove the powers dealing with corporate matters and matters best dealt with through a combination of Corporations Law and the Foreign Investment Review Board.

Recommendation 10.2

The restriction that approval be required for credit wagering at the Casino should be retained

No legislative changes required.

Recommendation 10.3

The period of exclusivity should be allowed to proceed to termination in 2000. The restrictions relating to the two-up limit, the required scale for a new casino and on the casino type games played elsewhere are restrictive. They cannot be justified in terms of economic efficiency.

Changes should not be made unilaterally. The government should consider negotiating some relaxation or removal of these restrictions (e.g. on two-up, new casino complexes, certain derivative games) in return for adjustments to other restrictions that place burdens on the casino, such as those relating to corporate control. Any concessions considered by the government should only be granted after a full public benefit assessment is made and it is demonstrated that there is a net benefit to the community.

The future tax burden (see below) may be a legitimate element of this negotiation. So too may the ability to grant additional casino licences. While clause 22(4) makes it unlikely that a Casino will be established within the 100 kilometre limit, it may be feasible for a casino operator to seek a licence for existing establishments outside of the 100 kilometre limit, for example at venues such as the Cable Beach Resort in Broome and the Lord Forrest in Bunbury.

Clause 22 of the Casino (Burswood Island) Agreement Act would need to be amended conditional upon the outcomes of negotiations.

Recommendation 10.4

The ability to set a licence fee and levy taxes should remain. Safeguards should be included in the legislation to ensure that competing casino operators are treated equally. This is particularly so regarding the setting of the licence fee and variations to the tax rate.

No legislative changes required. Safeguards to be included in any future casino complex agreements