

**REVIEW OF GAMBLING LEGISLATION**

**UNDER NATIONAL COMPETITION POLICY**

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## CHAPTER 1 - INTRODUCTION

### 1.1 Background

This is the final report of the Review of Gambling Legislation, required under the National Competition Policy (NCP).

In April 1995 the Council of Australian Governments (COAG), representing the Commonwealth and States and Territories endorsed (amongst other things) the Competition Principles Agreement (CPA).

The CPA puts in place policy elements that are considered essential for a comprehensive NCP. Under the CPA, the South Australian Government is required to review legislation that restricts competition. The basis for such reviews is that legislation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction to the community as a whole outweigh the costs; and
- The objectives of the restriction cannot be achieved through other means (including non-legislative approaches).

In undertaking a NCP assessment, regard should be had, where relevant, to effects on:

- The environment;
- Welfare and equity;
- Occupational health and safety;
- Economic and regional development;
- Consumer interests;
- The competitiveness of business including small business, and
- Efficient resource allocation.

Further, COAG has endorsed that consideration should be given to explicitly identifying the likely impact of reforms on specific industry sectors and communities, including expected costs in adjusting to change.

### 1.2 Scope of the Review

This Review covers the following gambling legislation:

- Gaming Machines Act
- Casino Act
- Independent Gambling Authority Act
- State Lotteries Act
- Authorised Betting Operations Act
- Lottery and Gaming Act

### 1.3 Who has conducted the Review?

Responsibility for gambling legislation in South Australia is currently split between the Minister for Government Enterprises (*State Lotteries Act*) and the Minister for Gambling.

A Review Panel established in 1998 met initially in July of that year and comprised the following officers:

John Hill, Treasury and Finance (Chair)  
John Barrett, RIDA  
Terry Arbon, RIDA  
Pat Walsh, Premier & Cabinet  
Pamela Tomes, Premier & Cabinet  
Mary Marko, DAIS  
Greg Cox, Attorney Generals

The Review Panel determined that the Department of Treasury & Finance would prepare a review report, and that any further involvement on the part of the above Review Panel would be limited to an advisory/consultative capacity.

This report has subsequently been reviewed by and subject to consultation with:

John Hill, Treasury and Finance  
Denis Harvey, Office For Recreation, Sport & Racing  
Robert Ruse, Director Government Business Group, Office for Government Enterprises  
Bill Pryor, Liquor & Gaming Commissioner,  
Rod Williams, Director Policy, Department of the Premier & Cabinet, and  
Greg Cox and Simon Howlett, Attorney Generals

#### **1.4 Consultation**

The examination and report on “Australia’s Gambling Industries” by the Productivity Commission involving public hearings and submissions, including that of the SA Government, is considered to have constituted adequate public consultation in respect of the issues covered by the Review. Similarly, the Productivity Commission undertook substantial research, and other bodies such as the Ministerial Council also have research programs. It was, therefore, considered unnecessary to duplicate this research effort as part of the Review.

During bilateral discussions in April 2001, NCC officials agreed the global review process used in this report would be acceptable and it was not necessary to undertake further consultation.

#### **1.5 Restrictions**

The main restrictions identified in the Review relate to barriers to entry to sectors of the gambling market through exclusive licence provisions, and are discussed in a separate Chapter. Other restrictions on competition identified are less significant and are discussed in Chapters under each of the respective Acts.

Three types of restrictions have been identified by the Productivity Commission:

- Restrictions applied to achieve the purposes of harm minimisation, probity or consumer protection of a type regarded by the NCC as *prima facie* justified for NCP purposes<sup>1</sup>;

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<sup>1</sup> These include: probity regulations which are aimed at protecting consumers and allowing operators to employ their own risk management procedures with costs borne by the industry and employing a common framework across venues and between gambling options, requirements to provide information to consumers on the nature of games being played and the likelihood of receiving payouts and codes of conduct.

- Other restrictions applied to achieve the purposes of harm minimisation, probity or consumer protection; or
- Restrictions applied not solely for reasons of harm minimisation, probity and consumer protection.

The cost/benefit analysis required as part of a competition policy legislative review is undertaken on the basis of the overall costs and benefits to the community of gambling regulation, drawing particularly on the Productivity Commission's report and the Social Development Committee of State Parliament's Gambling Inquiry Report.

## **1.6 Additional sources**

Two National Competition Council (NCC) papers were used as sources of NCC views on gambling regulation. Namely "Regulating gambling activity; issues in assessing compliance with National Competition Policy" dated October 2000 and "Education Services, Childcare and Gambling" dated September 2001.

## **1.7 Structure of the Report**

Chapter 2 of this report outlines the South Australian Government's view that gambling is a matter of social policy. This is critical background to the ideology of gambling legislation in South Australia and the underlying rationale for the restriction of gambling opportunities.

Chapter 3 discusses the *Lottery and Gaming Act* - which provides the overall framework for regulation of lotteries and gambling in the State. This chapter includes consideration of improvements to administrative processes.

Chapter 4 weighs the benefits and costs of the current exclusive licence arrangements for the Casino and TAB, as well as for the effective market dominance of the Lotteries Commission in South Australian gambling legislation.

Chapter 5 examines restrictions on competition under the *Gaming Machines Act* which establishes licensing and regulatory structures for gaming machines in hotels and clubs. This does not include gaming machines at the Casino.

Chapter 6 considers the provisions of the *Casino Act*.

Chapter 7 deals with the *Authorised Betting Operations Act* which provides the framework for the licensing and regulation of totalisator and fixed odds betting on horse, harness and greyhound racing.

Chapter 8 deals with the *State Lotteries Act* which establishes the Lotteries Commission of South Australia.

Chapter 9 considers the *Independent Gambling Authority Act* which provides for oversight of Casino and gaming machine licences as well as regulation of the betting operations of totalisator, bookmakers, bookmaker's clerks and betting shop licences.

Chapter 10 presents the overall Review conclusions.

## CHAPTER 2 – GAMBLING IS A MATTER OF SOCIAL POLICY

### 2.1 Gambling is a Matter of Social Policy

The authority of the Parliament of South Australia is fundamental to the consideration of regulation of gambling in the state of South Australia.

While there is considerable scope for gambling by State residents, the general legislative arrangements are not designed to be pro-competitive. These arrangements do not seek to achieve the emergence of a free market in gambling services where the level of, types of, and participants in gambling activity are determined by normal commercial forces.

Historically, South Australia has prohibited all gambling and only through specific legislative exception has provided for the introduction of well regulated forms of gambling. The objective of the *Lottery and Gaming Act 1936* was to protect consumers from the harm caused by widespread unregulated gambling. This foundation continues to underpin gambling activity in South Australia with parts 5 and 6 of the *Lottery and Gaming Act 1936* continuing to provide that participation in gaming and wagering is illegal unless otherwise authorised or licensed.

Since then gambling in South Australia has been characterised by slow liberalisation. In 1966, a Parliamentary Act was passed to create the Lotteries Commission and South Australia was the last mainland State to introduce its own lottery. The South Australian Totalisator Agency Board (TAB) was established around the same time, under the *Lottery and Gaming Act Amendment Act No. 2 1966*. Community and Parliamentary concern over the potential harmful effects of liberalising gambling and the resultant desire to maintain strict controls on these services, meant that both the Lotteries Commission and TAB were established under statutory control and Ministerial oversight.

Amendments to the *Lottery and Gaming Act 1936* assented to in 1970 introduced provisions which enabled licensing of charitable and not-for-profit association lottery activities.

Sixteen years later, the Casino Bill 1982 (which became the *Casino Act 1983*) was introduced to Parliament following three earlier failed attempts to establish a legal casino in South Australia. That there were three earlier failed attempts reflected concern over the need to protect consumers and minimise any adverse effects that may be experienced by South Australians as a result of the establishment of a Casino. During the debate on the subsequently enacted (1982) Casino Bill, an amendment was proposed to allow more than one casino licence but this was defeated, again reflecting Parliament's concern over the proliferation of gambling.

The continuing focus of Governments on harm minimisation when introducing new gambling legislation was also apparent in the most recent liberalisation of gambling in South Australia - gaming machines in licensed clubs and hotels in 1994. The introduction of gaming machines followed vigorous and lengthy debate within the community and the Parliament, reflecting the diversity of views. The *Gaming Machines Act 1992* was passed by the narrowest of margins on a conscience vote.

The issue of unfettered competition was not the focus of consideration in the slow and cautious liberalisation of gambling in South Australia. Gambling by its very nature may

have adverse effects and warrants focus on the need for harm minimisation in an effort to protect individuals. The Government and community focus on harm minimisation for gambling is still very much apparent. This is demonstrated in many ways including the Productivity Commission's Inquiry Report on "Australia's Gambling Industries".

Consistent with these views, the South Australian Parliament has determined that for principally social reasons it does not want to open up the State to the creation of an unrestricted gambling industry. This stance encompasses (but is not restricted to) a conventional economic analysis that where there are negative externalities flowing from an activity such as with gambling, an unrestricted competitive market is unlikely to produce the best social and economic outcomes. As a result, some form of Government intervention in the market would produce better results for society.

Across the world, gambling is an issue of social conscience for legislatures as well as the wider community. In South Australia there is strong community concern regarding the social impact of gambling. The objective of most gambling legislation is to allay community concern, while also securing the positive economic benefits associated with gambling as a legitimate form of entertainment.

The South Australian public has not demanded unrestricted markets in this area. To the contrary, it has demanded strong supervision and control to ensure probity, consumer protection, to prevent the involvement of criminals, a contribution to the development of tourism in the State and in some instances to specifically reduce the supply of gambling.

The South Australian public continues to express their concerns over gambling via significant amounts of correspondence with the Government and other ways on a continuing basis. It has also been expressed through the election of a 'No-Pokies' Member of Parliament. Gambling matters are a significant on-going issue for Parliament with a number of pieces of gambling legislation always before Parliament.

The Social Development Committee of State Parliament also undertook a Gambling Inquiry to which the SA Government responded. The recommendations of the Committee included increasing public awareness of the potential risks of gambling and availability of counselling, training for staff, research, codes of practice for advertising, placing a cap on the number of gaming machines in South Australia and maintaining the statutory limit of 40 gaming machines per venue. A number of the harm minimisation measures introduced by the Government are consistent with these recommendations.

The Social Development Committee of State Parliament found evidence of "*increasing numbers of people admitting to gambling problems.*" Furthermore, information provided to the Social Development Committee of State Parliament suggested that gaming machines have significantly added to the problem gambler population.

The introduction of gaming machines in South Australia's licensed clubs and pubs in July 1994 had the effect of increasing net takings per head of the adult population for all gambling activity in South Australia by 63% between 1994-95 to 1997-98—the largest increase of any Australian State or Territory.<sup>2</sup> This time period corresponds with the proliferation of gaming machines into the South Australian community. The latest ABS survey shows that between 1994-95 and 2000-01, South Australia has seen a 75%

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<sup>2</sup> ABS Catalogue No 8684.0, Gambling Industries Australia 1997-98

increase in net takings per head of the adult population—this compares with a national average of 62%.<sup>3</sup>

These issues reflect the concerns of both the community and Parliament with regard to the impacts of gambling and the determination of Parliament to achieve the right balance of social protection and consumer sovereignty. The importance of the independent authority of Parliament is evident in that, as social policy matters, significant gambling issues are a conscience vote of Members of Parliament in South Australia. The importance of gambling as a social issue was reflected in the Government's allocation of a further \$5.9 million over 4 years in the 2002-03 State Budget for counselling, research and an education campaign on the social and economic costs of gambling.

This focus on the social issues surrounding gambling is not inconsistent with the Competition Principles Agreement signed by all jurisdictions. Under the Competition Principles Agreement, Clause 1(3) provides that certain matters, where relevant, may be taken into account as part of a review. These matters include:

*(e) social welfare and equity considerations, including community service obligations; and*

*(h) the interests of consumers generally or of a class of consumers;*

The social emphasis is also consistent with actions taken by the Commonwealth Government in its response to the Productivity Commission report, namely: the establishment of the Ministerial Council on Gambling, with the objective of minimising harm of gambling; COAG consideration of the negative social consequences of gambling at its meeting on 3 November 2000; and the legislated ban on interactive gambling.

It is the social welfare of consumers in general, and more specifically problem gamblers, that is the principal concern of the community and of the Parliament in addressing gambling policy issues before it.

One of the policy objectives of all gambling legislation is to protect consumers by guaranteeing the integrity, probity and safety of legal gambling activities and preventing crime and unfair contests. The South Australian Government is committed to protecting the interests of consumers through gambling policy and the current approach to regulation.

In its Council Paper "Regulating gambling activity; issues in assessing compliance with National Competition Policy" (October 2000) the National Competition Council (NCC) stated that the Productivity Commission identified consumer protection, probity and harm minimisation as acceptable rationales for restricting gambling activity. The NCC has indicated that jurisdictions can rely on the Productivity Commission arguments in support of these restrictions and that the NCC will require no further justification of the restrictions.

The NCC's paper and its views are acknowledged as background to this Review report.

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<sup>3</sup> ABS Catalogue No 8684.0, Gambling Industries Australia 2000-01

As indicated in its submission to the Productivity Commission the South Australian Government does not consider that gambling regulation is essentially a competition policy issue.

In summary, the objectives of gambling legislation are to restrict access to gambling opportunities and to regulate permitted gambling activities to ensure adherence to probity requirements and for consumer protection. In the first instance, community expectations are that restricting supply of gambling will help in minimising the incidence of problem gambling and its impact on individuals and families.

The community expresses its concerns in a whole range of areas of social regulation. In areas such as gambling it is considered that the community is sufficiently well informed for Governments to accept this revealed preference for a regulatory stance that is not necessarily pro-competitive. This equally applies to other moral/social issues including prostitution and drugs. In these instances it is reasonable to accept the views of the community on face value and the authority of State Parliament to discern them.

## CHAPTER 3 – LOTTERY AND GAMING ACT 1936

### 3.1 Introduction

This chapter examines the *Lottery and Gaming Act 1936 (L&G Act)* and its Regulations, with a view to identifying and analysing restrictions on competition.

The L&G Act 1936 sets the overall framework for the regulation of lotteries and gambling in South Australia. The main aspects of the Act are as follows:

- To make certain games and gaming unlawful.
- To make unlawful all common gaming-houses (except where authorised by the *Casino Act*).
- To prohibit totalisator/bookmaking activities (except where authorised under the *Authorised Betting Operations Act 2000* which superseded the *Racing Act 1976*).
- To make unlawful all lotteries (except where authorised or exempted).
- Where lotteries and gaming are permitted; to regulate the persons and/or associations to whom licences are granted.
- To regulate, without the need for a licence, charities and not-for-profit association lotteries (total prizes up to \$2,000 in value), bingo (gross proceeds per session of up to \$200) and sweepstakes (gross proceeds of up to \$1,000), which seek to raise for their community purpose, small sums of money (exempted minor fundraiser lotteries);
- To regulate, without the need for a licence, trade promotion lotteries where the lottery prizes are small in value (up to a total value of \$500) (exempted trade promotion lotteries);
- To allow any person in the community, including a charity or not-for-profit association, to run a non-fundraiser lottery (other than an instant lottery) provided the proceeds from ticket sales are applied (apart from administrative expenses of a maximum of 2%) entirely to lottery prizes. Gross proceeds in these lotteries are limited to a maximum value of \$1,000 (exempted non-fundraiser lotteries).
- To authorise fundraiser lotteries through application and approval for a licence. Licences are required for all major lotteries. Major lotteries are those where the total prizes are valued in excess of \$2,000 (authorised major fundraiser lotteries).
- To authorise the playing of bingo, where the proceeds of a game exceed \$200 and gross proceeds of a session are up to \$6,000 (authorised bingo).
- To authorise Trade Promotion Lotteries through provision of a licence, where the total prize value exceeds \$500 (authorised trade promotion lotteries).
- To authorise the sale of instant lottery (instant bingo) tickets through provision of a licence to suppliers of tickets, where total prizes per lottery are valued at up to \$1,000 (authorised instant lotteries).

The *L&G Act* is to be read subject to the provisions of the *State Lotteries Act 1966*, which provides the framework for operations of the Lotteries Commission of South Australia.

The lottery rules, outlined in Part 4 of the Regulations, regulate how lotteries permitted under the *L&G Act* must be conducted—and in this the rules apply equally to the exempted and authorised lotteries (except the exempted fundraiser lotteries are not required to provide financial returns to the Minister).

The Regulations recognise that only those organisations which serve a community purpose may raise money using any of the various forms of lottery regulated under the Act, apart from some minor exceptions. For instance, any person (including a charity or not-for-profit association) may promote exempted non-fundraiser lotteries (excluding instant lotteries) as no direct financial benefit from these lotteries flows to the promoter and the total prize values are not substantial enough (up to \$1,000) to justify the application of the additional regulatory requirements provided by prescribed lottery rules. Such lotteries are exempted provided each ticket in the lottery gives rise to a fair and equal chance of winning a prize in the lottery. Similarly, trade promotion lotteries and Calcutta sweepstakes are allowed provided they meet the requirements of the regulations.

The Commonwealth Government has enacted legislation in relation to Internet gambling and this is not considered separately as part of this review. The Lottery and Gaming Act, however, does not draw a distinction between Internet and other forms of gambling.

### **3.2 Objectives of the Act**

The social policy position of the South Australian Government put forward in Chapter Two of this report underlies the regulation of lotteries and gaming under this Act and will not be repeated here. Suffice to say that the objectives of all gambling legislation are to restrict access to gambling opportunities and to regulate permitted gambling activities to ensure adherence to probity requirements, harm minimisation, and for consumer protection.

All lotteries in the State are “*declared to be a common nuisance and unlawful, and every sale or gift, disposal or distribution made by means or in pursuance thereof void*”.<sup>4</sup>

The overarching objective of the Act is, therefore, to prohibit lottery and gambling activity unless specifically authorised or exempted under this or other legislation. With regard to lotteries, exemption/authorisation under this Act is restricted to those activities that are not-for-profit approved purposes and the regulations are in place to ensure these activities are run appropriately.

The *L&G Act* defines unlawful gaming (Clause 4) and names specific games as unlawful (Clause 59). Unlawful gaming and the playing of unlawful games are offences under Clause 61 of the Act.

Another objective of the *L&G Act* is to prohibit bookmaking and totalisator activities by individuals not licensed to undertake such functions.

Although not explicitly stated, the objectives of the *Lottery and Gaming Act 1936* and the *Lottery and Gaming Regulations 1993* for the not-for-profit fundraising sector (ie excluding trade promotion lotteries, which are conducted with a view to promoting the sale of goods or services) are to ensure:

- appropriate standards of accountability are maintained by the promoters of lotteries;
- the public receives reasonable net benefits from the proceeds of lotteries;
- individuals engaged in conducting lotteries do not derive a personal gain from it; and
- public confidence and trust in buying lottery tickets as a worthwhile means of supporting community organisations is maintained.

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<sup>4</sup> Lottery & Gaming Act 1936, Part 2, Clause 5

These objectives were addressed in the 1994 Hansard reports of the debate to preclude private interests from misusing major lotteries. The then Treasurer, the Hon S J Baker stated that “...*the Act and Regulations aim to limit the conduct of lotteries to those conducted by non profit organisations, under licence, as a means of fundraising. Such lotteries are subject to rules of operation to ensure that participants have a fair and equitable chance of winning, ...and to requirements that the proceeds from the lottery benefit the non profit organisation rather than individual promoters.*”<sup>5</sup>

In all exempted and authorised lotteries, except trade promotions and Calcutta sweepstakes, the proceeds of the lotteries must be applied to “approved purposes”. The approved purposes listing contained in the regulations, specifies the types of community services provided by not-for-profit associations, that can be financed by lottery proceeds.

Consumer protection is particularly important in the regulation of trade promotion lotteries. Trade promotion lotteries are now licensed in South Australia under provisions that are consistent with those of other States—in effect, establishing minor concessions to South Australian gambling laws to permit the use of common marketing approaches by national firms which are operating throughout Australia.

With respect to Trade Promotion Lotteries, the Hon K T Griffin (Attorney General) said in 1980 that “... *unless trade promotion lotteries are subject to regulation they can be an evil in the community and can race unchecked throughout the trade promotion area.*”<sup>6</sup>

Trade promotion lottery regulation was introduced in 1981. Hansard records that the previous prohibition on participation in promotional and free to enter lotteries run by business had cost South Australian consumers as they had been deprived of the potential benefit of products for which they were paying. The stated aim of these regulations was to control the number of competitions and to check the *bona fides* of promoters and the delivery of advertised prizes.

The *L&G Act* also stipulates the licensing of suppliers of instant lottery tickets. This licensing requirement applies to any manufacturer or distributor of “purchased” lottery tickets that are sealed and for which a prize may be payable immediately. Lottery tickets produced for the Lotteries Commission of South Australia are excluded from this requirement. The licensing regime for Instant Lottery Ticket Suppliers was introduced in response to public complaints about malpractice by ticket suppliers. The express purpose of the provisions is to ensure probity and consumer protection.

### **3.3 Nature and effect of restrictions**

The main restrictions on competition relate to:

- the declaration of lotteries as unlawful (unless exempted or authorised);
- the requirements for licences for authorised lotteries and suppliers of instant lottery tickets;
- the prohibition of unlawful gaming and wagering; and
- the prohibition on totalisator/bookmaking activities.

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<sup>5</sup> Hansard, House of Assembly, Wednesday 30 November 1994

<sup>6</sup> Hansard, Legislative Council, 3 December 1980

A full analysis of the Act and potentially restrictive sections is contained in Appendix 1 to this Chapter. A number of clauses in the *L&G Act* have been identified which may have the potential to constrain competitive conduct, although many of them are considered to be trivial.

**Table 1: Key restrictions in the Lottery and Gaming Act 1936 and Lottery and Gaming Regulations 1993**

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<i>Lottery and Gaming Act 1936</i>		
5-8	Lotteries declared nuisances and unlawful. Participation in lotteries through sale or purchase declared unlawful.	Prohibits all forms of lottery and participation in lotteries.
9	Outlines exemptions from the Act.	Permits some activities/lotteries to be legally undertaken.
14A	Provision for the lawful conduct of authorised and exempted lotteries.	Limits participation in the market to those activities which are authorised or exempted.
14B	Power for the Governor to make Regulations.	Limits new entrants to gambling market to those prescribed. Other operational issues.
16	Requirement to hold a licence for the supply of instant lottery tickets.	Restricts suppliers to those holding a licence.
53-55	Prohibits gambling by, or with, persons under the age of eighteen.	Age restriction.
56	Makes it an offence to obtain a fee or reward for conducting a sweepstake.	Restricts an individuals ability to benefit from sweepstake activity.
57-58	Makes soliciting totalisator investments and provision of totalisator ‘agent’ services an offence.	Restricts totalisator activities.
59-59A	Declaring certain games and certain instruments of gaming as unlawful.	Prohibits the playing of certain games and the use of certain instruments of gaming.
59AA	Makes provision for the playing of “two-up” on Anzac Day.	Restricts the playing of “two-up” to RSL and defence forces owned land.  Restricts the playing of any other unlawful game.
63	Requires that bookmakers hold a licence.	Restricts bookmaking activities to those who hold a licence.
64	Prohibits unauthorised totalisator betting.	Restricts totalisator betting to those authorised to do so under the <i>Authorised Betting Operations Act 2000</i> .

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<i>Lottery and Gaming Regulations 1993</i>		
5-7	Defines exempted fundraiser lotteries.	Restricts the activity to defined boundaries.
8-10	Defines exempted non-fundraiser lotteries.	Restricts the activity to defined boundaries.
11	Defines authorised fundraiser lotteries.	Requires a licence for their conduct.
12-13	Applications for a licence must be in an approved form and be made by eligible persons.	Age Restriction.
17A-17B	Granting of licences for certain trade promotion lotteries and associated licence fees.	Requires trade promotion lotteries with prize values above \$500 to be authorised.
19	Establishes minor lottery rules. Specifies parameters with respect to prizes, costs, proceeds etc.	Restrictions placed on how proceeds of a lottery are to be applied.
20	Establishes major lottery rules. Specifies parameters with respect to prizes, costs, proceeds etc.	Restrictions placed on how proceeds of a lottery are to be applied.
21	Establishes bingo rules. Specifies number of games and sessions, refreshments, as well as how proceeds of a game/session should be utilised.	Restrictions placed on how bingo proceeds are applied.
22	Establishes instant lottery rules. Specifies how net proceeds should be applied as well as proportions of gross proceeds expended on prizes, costs, administrative expenses etc.	Restrictions placed on how proceeds are applied.
23	Establishes sweepstakes rules. Specifies the events where sweepstakes may be conducted as well as how the proceeds should be applied.	Restrictions placed on sweepstakes events and how proceeds are applied.
24	Establishes Calcutta sweepstakes rules. Specifies events where a Calcutta may be conducted and how proceeds should be applied.	Restriction placed on Calcutta events and how proceeds are applied.
24A	Establishes trade promotion lottery rules and conditions of running such a lottery.	Restriction placed on competition entry charges.
32-33	Restricts sale of lottery tickets by children and specifies when lottery tickets may be sold.	Age restriction.
36	Prohibits an association from offering any inducements to enter a lottery.	Restricts an association from offering inducements that may increase participation in a lottery.

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The costs and benefits of these restrictions will be considered in the following sections along with discussion of alternative approaches (where relevant).

*General prohibition on lotteries, totalisator, bookmaking, common gaming houses and other games*

As noted above, lotteries are unlawful, unless authorised or exempted—with the general prohibition on lotteries being relaxed for charitable and other activities providing a public benefit. The *L&G Act* enables the conduct of minor lotteries and ‘major’ fundraiser lotteries, as well as small non-fundraiser lotteries (proceeds up to \$1,000) and trade promotion lotteries. The prohibition on conduct of lotteries under the *L&G Act* other than where proceeds are applied for the public benefit provides the main restriction on competition.

The *L&G Act* makes it unlawful for persons to set themselves up as totalisator agents—whether or not they place the ‘investment’ with a lawful totalisator or bookmaker. The restriction is designed to control the proliferation of totalisator activities by individuals which would make access to gambling easier and more widespread. Removing such a restriction would make it impossible to police the activity or conduct probity on individuals providing the service, and consequently would expose more individuals to harm.

Similar arguments of probity and harm minimisation are valid when considering the restriction on bookmaking activities. The legislation ensures that only those licensed under the *Authorised Betting Operations Act 2000* can provide bookmaking services. Similarly, the *L&G Act* provides that no person shall conduct totalisator betting unless authorised under the former Act.

These restrictions ensure betting remains regulated by government and protects consumers. Specific issues with regard to the operation of licensed betting providers are considered in the *Authorised Betting Operations Act* chapter.

The *L&G Act* also declares certain games as unlawful and the playing of unlawful games an offence. This restriction is consistent with the general prohibition on unlawful gaming.

The antecedent of the present provision can be traced back to UK legislation in the era of Henry VIII. The first L&G Bill was introduced to the South Australian Parliament in 1875 with the aim of suppressing lotteries by assimilating the law of ‘the colony’ to that of England.

There is, however, special provision within the Act for the playing of “two-up” on Anzac Day. This dispensation is granted for emotive reasons and historic importance—which are largely self-evident.

The playing of “two-up” on the premises of the Casino is not restricted and is authorised by the *Casino Act 1997*.

The *L&G Act* deems a common gaming-house to be “any house, office, room or place” where unlawful games or wagering are conducted, and provides a series of prohibitions consistent with the general prohibition on unlawful gaming.

The impact of prohibiting lotteries and gambling in general, but exempting or authorising specific activities, is clearly to provide limited access to gambling opportunities within an appropriate regulatory framework and to facilitate minor fundraising through lotteries by charitable type organisations. As a result, lotteries and gambling legislation discriminates

in favour of the authorised/exempted activities, consumer choice is narrowed, and other potential gambling activities are prohibited.

The benefits of combining a general policy of restriction with specific exemptions include a degree of control over crime and consumer protection.

The South Australian community, through the Parliament, would appear to have concluded that the restrictions to competition arising from the current legislative scheme provide benefits to the community in excess of any benefit to be derived from relaxing such restrictions.

These general prohibitions on unlicensed gambling are the fundamental basis of gambling legislation and regulation in South Australia. In addition to the social policy support for this approach, the requirement for all forms of gambling to be authorised and/or licensed and regulated, protects consumers and probity requirements and is considered consistent with national competition policy.

*Licence requirements for lotteries*

Authorised lotteries (major lotteries, bingo and instant lotteries) and trade promotion lotteries require a licence. Authorised major lotteries are fundraiser lotteries with total prize values of over \$2,000. No licence is required for a minor lottery (prize values up to \$2,000). Eyes down bingo licences authorise clubs/associations to run two sessions of bingo per week with gross proceeds of up to \$12,000 per week, whilst instant lotteries authorise prize values of up to \$1,000. Trade promotion lotteries with total prizes valued at over \$500 also require a licence.

The licensing requirement is clearly designed to ensure appropriate probity and consumer protection standards are adhered to. The exemption for the smaller lotteries, acts to ensure the administrative burden is not prohibitive.

Table 2 outlines the number of licence applications made, approved, withdrawn or refused for major, bingo, instant and trade promotion lotteries for the twelve months from 1 July 2000 to 30 June 2001.

**Table 2: Number of applications for licensed lotteries, 2000-01**

Lottery Type	Applications	Licensed (approved)	Refused	Withdrawn
Major lottery	232	228	1	3
Eyes-down bingo lottery	153	146	1	6
Instant lottery	978	975	Nil	3
Trade Promotion lottery	5461	5245	Nil	216

Table 2 above, demonstrates that, in practice, the vast majority of applications are approved, and as such licensing requirements do not pose any significant barrier to entry. Furthermore, it is evident that although there are a significant number of organisations making applications for the various lotteries, very few are refused—an indication that in achieving the objective of harm minimisation there has been little restriction on competition. Similarly, the ‘withdrawn’ column demonstrates that the highest number of applicants who have withdrawn applications is mainly for trade promotion lotteries—possibly because of the realisation they could not effectively meet all the requirements, or because the trade promotion was not considered viable.

Applications for lottery licences are refused only where it becomes evident that the regulatory objectives will not be satisfied by a lottery proposal.

When an applicant has previously failed to properly conduct a lottery or to account for the lottery proceeds, consideration is given to the refusal of any subsequent application. A licence will be granted to such an applicant who can demonstrate that the causes of previous failure have been reasonably addressed.

The requirement to obtain a licence is considered to meet national competition policy obligations.

Licensing of Instant Lottery Ticket Suppliers was introduced to the Act and Regulations in response to public complaints about malpractice by ticket manufacturers.

Complaints highlighted the following abuses:-

- (i) See through tickets. Some tickets, when held up to a strong source of light allowed the winning combinations to become visible, providing the opportunity for the winning tickets to be removed.
- (ii) Enveloped winning tickets. Manufacturers of the instant lottery tickets would at the time of packing the instant tickets remove some of the larger winning tickets and place them in an envelope. These boxes of tickets would be sold to the charity or not-for-profit association at a lesser price because of an understanding with the charity or not-for-profit association that the winning tickets were separate.
- (iii) Small borders under the flaps. Winning instant tickets had little or no white border under the flaps. By gently and slightly prising open the flaps to reveal the border and background colour the tickets giving the largest prizes in the lottery could be identified.
- (iv) Extra losing tickets. Some manufacturers were reported to be placing extra losing tickets in the boxes of instant lottery tickets.

As the manufacturers were responsible for these abuses it was necessary to introduce controls. After the introduction of regulatory controls on instant ticket suppliers there have been no further reported cases of abuse in the manufacture and distribution of instant lottery tickets.

There is no restriction on the number of instant lottery ticket suppliers. The licensing requirement acts to ensure probity and consumer protection and is considered to meet NCP obligations.

#### Age Restriction

The L&G Act places a restriction on “betting” by, and with, individuals aged 18 years and under. A bet in the Act means to “*make or negotiate a bet whether by spoken word, writing, signal, gesture or any other direct or indirect means and whether with or for money or any valuable thing or by cash or under any credit arrangement; or receive, pay or give money or any valuable thing in connection with a bet; or settle a bet.*”

Setting a minimum age of 18 is consistent with the limitation on access to gambling activities by virtue of other Acts. Such restrictions ensure harm minimisation and

consumer protection. The *State Lotteries Act* contains a similar restriction but for a minimum age of 16 (see relevant chapter).

In addition to restricting “betting” activities to individuals aged 18 and over, the Act places a restriction on the selling of lottery tickets by persons under the age of 15 unless accompanied and supervised by an adult. This is to protect younger children from potential harm if unaccompanied whilst “doorknocking” etc and is a general social welfare issue, not directly related to gambling per se. There is no restriction placed on the purchase of “lottery” tickets by minors (except for lotteries conducted by the Lotteries Commission). That is, while minors are not permitted to utilise most forms of gambling, they are currently allowed to purchase tickets in exempted, authorised and instant lotteries, participate in eyes down bingo and enter trade promotion lotteries.

There is currently no evidence to suggest that these forms of gambling are being inappropriately marketed toward, or are attracting undue attention from minors. It is acknowledged that minor and major lotteries constitute the single most utilised method of fundraising for schools and community groups and that children actively participate in these activities. Working toward social objectives is admirable and should not be discouraged. The same cannot, however, be said for other forms of lottery, such as bingo and instant lotteries, where despite the fundraising objectives of the association, participation in such activities provides an immediate personal outcome and is thus more aligned to other gambling options. It is suggested that the L&G Act be amended to restrict individuals aged 18 years and under from participating in the sale and purchase of bingo and instant lotteries, thereby minimising potential harm and ensuring consistency with other State gambling legislation.

#### *Exemption of minor fundraising lotteries*

The Act provides for regulations to be made declaring specified lotteries or classes of lotteries as exempted, subject to provisions regarding their conduct. Organisations/associations conducting minor fundraising lotteries (defined as those with total prizes valued at up to \$2,000) are exempted from requiring a licence to conduct such a lottery. This enables small charities, community organisations, not-for-profit associations etc, to raise funds for ‘approved purposes’, without the need for a licence. This reduces the administrative burden on the Government and small organisations where the risk of harm is assessed to be low.

The exempted lotteries remain subject to conduct rules which ensure the interests of consumers are protected and the promoters meet minimum probity standards.

The lack of licensing requirements for these providers is justified on administrative grounds.

*“Eyes down bingo” and Lottery Rules*

Bingo can be either an exempted or authorised lottery. Bingo is an exempted lottery where the gross proceeds of the session (a series of no more than 30 games) do not exceed \$200. This compares with authorised bingo where the gross proceeds of a game must not exceed \$200. The prescribed game limit for authorised bingo was increased from \$100 to \$200 in 1995 following the Government Inquiry into the social and economic impact of gaming machines in South Australia.

The Act provides for detailed rules and requirements covering the operation, conduct and financial arrangements for authorised bingo. These rules are contained in the Regulations and set out detailed requirements for such items as ticket purchase amounts, the administration cost of providing lotteries, prize levels, and the licensing of manufacturers and suppliers of bingo sheets and instant lottery tickets. These restrictions serve to define and limit the lottery style gaming activities undertaken by the not-for-profit sector.

The constant innovation of the gaming market, by contrast to the tightly regulated market for not-for-profit sector lotteries, may confine these lotteries to a static or diminishing market. The effect of these restrictions may therefore be to limit the fundraising activities of these organisations and perhaps to limit their competitiveness with more commercial forms of gambling.

In November 1995 a Government Inquiry Report, which examined the impact of the introduction of gaming machines in South Australia, identified a dilemma confronting the legislature, in regulating instant lotteries and “eyes-down bingo” (bingo). Any easing of the existing regulatory constraints would assist larger fundraisers at the expense of the smaller fundraisers but retaining the restrictions for the benefit of the smaller fundraisers leaves the larger fundraisers less able to compete against gaming machine operators. No solutions to the dilemma were presented, although discussions around other options such as Trusts or a Community Support Fund only succeeded in highlighting difficulties of a different nature—administration, distribution of funds etc.

There are significant detailed rules associated with lotteries and bingo and these should be reviewed to ensure minimal administrative burden on providers and determine whether any trivial restrictions can be removed to enable licensed providers greater flexibility—without undermining the general principle of enabling fundraising to be shared within the charitable sector.

The Act and Regulations presently depend upon the lottery rules. This has been identified as an area for further review, for possible simplification of those rules. Any rationalisation, however, can only occur where the legislation maintains satisfactory administrative, civil and criminal sanctions to address misconduct and to ensure public accountability. In addition, any change to less prescriptive legislation would require considerable enhancement of investigative power to enable the regulator to pursue misconduct. It is considered that it would not be possible to meet the objectives without some form of legislative requirement. Subject to further review of these detailed matters, the current form of regulation is considered the most appropriate means of achieving consumer protection, probity and harm minimisation.

The appropriate regulatory balance to allow charities and community associations, large and small, to have fair access to public funds through lotteries is a matter for the

Parliament's judgement. Freeing these lotteries from gross proceed limits and allowing greater prize values for these lotteries would disadvantage the smaller charities and not-for-profit associations. Equally, expanding the ability to offer lotteries products beyond the current "approved purposes" would enable private operators into the market and reduce the funds available to the charitable sector.

An alternative to the regulations that safeguard the fundraising abilities of charities would be to open the provision of lotteries to all providers and impose differential taxation to redistribute from private operators to charities and disproportionately from large to small charities. This, however, is not considered to be a viable alternative, as it would create significant administrative burden for no change in the outcome, given the desire to maintain funding to the charitable sector. Furthermore, the taxing of charity lottery proceeds may not be socially acceptable.

### Sweepstakes

The L&G Regulations specify that sweepstakes may only be conducted on the outcome of certain races, namely, the "Adelaide Cup", "Onkaparinga Great Eastern Steeplechase", "Port Adelaide Cup", "Caulfield Cup" or "Melbourne Cup". The naming of races effectively puts a boundary around the fundraising activities of organisations through such means.

The rationale for the restriction to these specified races is unknown. The continuation of this arrangement cannot be justified. Sweepstakes should be permitted on all approved events. The requirement for approval will ensure the probity of the event and should be conducted by the Independent Gambling Authority, which is already required to approve events for betting under the *Authorised Betting Operations Act*.

### Calcutta Sweepstakes

Calcutta sweepstakes is defined in the L&G Regulations as "sweepstakes conducted on the basis that the winning chances will be auctioned." Calcutta sweepstakes are not a fundraiser as all proceeds (after deducting for administrative expenses) are returned in prizes to the successful players. Calcutta sweepstakes may be conducted on horse, harness and greyhound races (where on-course totalisator betting is authorised under the *Authorised Betting Operations Act 2000*), the Bay Sheffield foot race and the Australian Formula One Grand Prix.

While broader than the permitted races for sweepstakes these boundaries are equally unjustifiable. This provision should also be broadened to all events approved for this purpose by the Independent Gambling Authority.

### Administration of the L&G Act

Currently, the Liquor and Gambling Commissioner and the Independent Gambling Authority administer all gambling legislation except the *L&G Act* and parts of the *State Lotteries Act*. The *L&G Act* is currently administered by the Lottery & Gaming Unit in RevenueSA. In order to ensure consistency in the treatment of gambling across all legislation it is suggested that the delegated administration of the *L&G Act* be transferred to the Liquor and Gambling Commissioner.

### 3.4 Administrative Burden in the L&G Act

In recognition of the existence of some administrative burden arising from the implementation of the *Lottery & Gaming Act 1936*, Part 4 of the Regulations should be reviewed with the aim of reducing such burden through removal of obsolete provisions. Part 4 outlines the rules that associations/individuals must comply with in running a lottery—including minor and major lotteries; bingo; instant lotteries; sweepstakes; Calcutta sweepstakes and trade promotion lotteries. Each of these is considered in turn below, raising issues for consideration and potential amendment.

The review of the Regulations should have particular regard to probity, consumer protection and harm minimisation and be based on the premise that the general objective of the legislation is to protect consumers and to ensure fair access to the market for lottery providers. It is not considered appropriate to control charities financial decisions or intervene in internal operations.

A range of pressures, including correspondence from the fundraising sector, suggests that it is an appropriate time to consider these regulations and also potentially any broader regulatory alternatives. It is envisaged that a review of the Regulations will involve discussions with industry.

#### Minor and Major Lotteries

Minor fundraiser lotteries are those with a total prize value of up to \$2,000. Major lotteries are those with total prize values of over \$2,000. All major lotteries require a licence.

Consideration of clauses 19 and 20 of the Regulations (minor and major lotteries, respectively) highlighted some inconsistencies across the two lotteries with regards to treatment of prizes, costs, proceeds etc. For example, total prizes in the minor lotteries constitute no less than 20% of the total face value of all tickets—the equivalent for major lotteries is 1/6 (16.7%). In addition, while for minor lotteries the maximum cost to the association of prizes and administrative expenses comes to 85%, the equivalent for major lotteries is 60%.

Also, the *L&G Act* makes no reference to more contemporary forms of lottery and therefore, by omission, is unclear with respect to its adoption. This may hinder the ability of charities/associations to take advantage of developments such as electronic ticketing.

Currently, there is no requirement that charities indicate what proportion of the lottery proceeds will be directed toward the stated cause. Requesting this information will introduce added probity as well as permit better informed decisions by consumers—with public confidence and trust in buying lottery tickets as a worthwhile means of supporting community organisations being maintained.

In light of the above, the review should include consideration of:

- Consistency across the lotteries with respect to the limits on the proportion of gross proceeds allocated to prizes, costs etc while at the same time ensuring an adequate return to lottery participants;
- The *L&G Act* being kept contemporary and reflecting the advent of electronic ticketing, in the first instance;

- Charity organisations being required to declare what percentage of the lottery proceeds will in fact benefit the charitable cause to which the participants will be contributing;
- The setting of upper limits on costs, prizes etc (in addition to securing an appropriate return for lottery participants ie minimum values) may be unnecessary as safeguards are already in place to ensure an adequate return to the consumer; and
- the need to regulate the activities of charity agents.

### Bingo

There are both exempted and authorised bingo games. Exempted bingo does not require a licence, but gross proceeds are limited to up to \$200 per session. Gross proceeds of more than \$200 in any one session needs to be authorised, and therefore requires a licence.

At present, there are restrictions on number of games, sessions, prizes, costs, proceeds, timing etc. In principle it would appear appropriate to simplify these arrangements providing greater flexibility for bingo providers in the way they conduct their business. One possible approach would appear to be to only restrict maximum proceeds per week (in line with current regulations), allowing bingo providers to exercise their own judgement within that.

While bingo licensees are currently required to provide to the Minister financial statements (as per Schedule 6), these statements are certified correct by a member of the management committee—who may or may not be an accounting professional. There may be merit in introducing the requirement for audited financial statements.

Review of these provisions should include:

- Potential removal of restrictions relating to the number of sessions, hours, number of games per session etc whilst maintaining the restriction on weekly proceeds (up to \$400 per week for exempted bingo and \$12,000 per week for authorised bingo);
- Current Regulations pertaining to refreshments; and
- Bingo licensees being required to submit audited financial statements.

### Sweepstakes and Calcutta Sweepstakes

For sweepstakes and Calcutta sweepstakes the review should consider removing references to maximum restrictions on sweepstake prizes and replacing these with minimums which safeguard the interests of sweepstakes participants.

## **3.5 Conclusions**

As demonstrated in Chapter 2 and above, the South Australian Government considers gambling a social policy matter, and as such, gambling legislation is intended to restrict access to gambling opportunities and to regulate permitted gambling activities to ensure adherence to probity requirements, harm minimisation and consumer protection. The policy objectives of all gambling legislation are to protect consumers by ensuring integrity, probity and safety of legal gambling activities, as well as preventing crime and unfair contests. It is considered that the legislation currently delivers these policy objectives and in fact the *Lottery and Gaming Act* is the fundamental basis of all gambling legislation in South Australia.

It is concluded, therefore, that the general prohibition on gambling meets National Competition Policy requirements as the benefits outweigh the costs and the objectives of the legislation can only be achieved by restricting competition. In addition to further consideration of the Regulations aimed at reducing administrative burden it is suggested that the legislation be amended to:

- Restrict purchasing activity of bingo and instant lotteries to individuals aged 18 and over; and
- Establish a structure where the events on which sweepstakes and Calcutta sweepstakes can be conducted, include all events approved for this purpose by the Independent Gambling Authority.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<b>Lottery and Gaming Act 1936</b>		
1-4	Establishment of the Act.	Not a restriction.
5-8	Lotteries declared nuisances and unlawful. Participation in lotteries through sale or purchase declared unlawful.	Prohibits all forms of lottery and participation in lotteries.
9	Outlines exemptions from the Act.	Permits some activities/lotteries to be legally undertaken.
10-13	Provisions creating the unlawful sale, advertising and participation in illegal lotteries an offence.	Not a restriction. Operational issue.
14	Evidentiary provision.	Not a restriction. Operational issue.
14A	Provision for the lawful conduct of authorised and exempted lotteries.	Limits participation in the market to those activities which are authorised or exempted.
14B	Power for the Governor to make Regulations.	Limits new entrants to gambling market to those prescribed. Other operational issues.
14C	Offence provision.	Not a restriction. Operational issue.
14D	Requirement that association identify individual who will be responsible for compliance with the Act.	Not a restriction. Operational issue.
15	Defines “instant lottery ticket” and its sale.	Not a restriction.
16	Requirement to hold a licence for the supply of instant lottery tickets.	Restricts suppliers to those holding a licence.
17	Application must be in the prescribed form.  Applicant must satisfy the Minister that they are a fit and proper person	Not a restriction. Operational issue.  Restricts type of applicant.
18	Minister has the discretion to place conditions on the licence and to vary the conditions.	Not a restriction. Operational issue.
19	Stipulates the terms of a licence.	Not a restriction. Operational issue.
20	Minister has the discretion to suspend or cancel a licence.	Not a restriction. Operational issue.
49	Prohibits cheating.	Not a restriction. Operational issue.
50-50A	Declares void all contracts or agreements of gaming or wagering.	Not a restriction. Operational issue.
51	Creating offences for unlawful gaming.	Not a restriction. Operational issue.
53-55	Prohibits gambling by, or with, persons under the	Age restriction.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
	age of eighteen.	
56	Makes it an offence to obtain a fee or reward for conducting a sweepstake.	Restricts an individuals ability to benefit from sweepstake activity.
57-58	Makes soliciting totalisator investments and provision of totalisator ‘agent’ services an offence.	Restricts totalisator activities.
59-59A	Declaring certain games and certain instruments of gaming as unlawful	Prohibits the playing of certain games and the use of certain instruments of gaming.
59AA	Makes provision for the playing of “two-up” on Anzac Day.	Restricts the playing of “two-up” to RSL and defence forces owned land.  Restricts the playing of any other unlawful game.
60-62	Creates an offence for betting, inviting to subscribe to a bet or sweepstakes, unlawful gaming and for being in a public place for the purpose of unlawful betting.	Not a restriction. Operational issue.
63	Requires that bookmakers hold a licence.	Restricts bookmaking activities to those who hold a licence.
64	Prohibits unauthorised totalisator betting.	Restricts totalisator betting to those authorised to do so under the <i>Authorised Betting Operations Act 2000</i> .
68	Creates an offence for the advertising and/or promotion of unlawful betting or gaming.	Not a restriction. Operational issue.
69, 72	Confers powers on the police to remove a person suspected of unlawful gaming. Creates an offence against persons who obstruct the police from this duty.	Not a restriction. Operational issue.
73	Provides the Commissioner of Police with the power to authorise police to enter premises where it is known unlawful gaming is, or is about to, take place.	Not a restriction. Operational issue.
74-76	Defines common gaming-house and provides a series of prohibitions consistent with the general prohibition on unlawful gaming.	Restricts type of venue.
77	Creates an offence for the use of any premises as a means of access to a common gaming-house.	Not a restriction. Operational issue.
78	Provides the owner of premises with the power to evict a tenant, where there are reasonable grounds of suspicion the premises are being used as a common gaming-house.	Not a restriction. Operational issue.
79	Provides the tenant with the ability to challenge such as accusation.	Not a restriction. Operational issue.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
80-83	Supreme Court may declare a place to be a common gaming-house where the affidavit of a member of the police force shows reasonable grounds for suspecting such activity. Supreme Court also able to rescind such a declaration. Notice of any such declaration or rescissions be placed in a local paper as well as being Gazetted.	Not a restriction. Operational issue.
84-88A	Creates an offence for a person to be found on premises declared a common gaming-house or for unlawful activities to continue following such declaration.	Not a restriction. Operational issue.
89-92	Establishes grounds for proof of the use of premises as a common gaming –house and creates offences for the activity and the advancing or receiving of money for such unlawful activities.	Not a restriction. Operational issue.
93-94	Creates an offence for the advertising of common gaming-houses or the unlawful activities therein.	Not a restriction. Operational issue.
95	Creates an offence against individuals who refuse to provide identifications details or do not provide correct details.	Not a restriction. Operational issue.
96	Exempts entrance and nomination fees in respect of any lawful gambling activity.	Not a restriction. Operational issue.
97-108A	Evidentiary provisions.	Not a restriction. Operational issue.
112-115	Range of administrative and offence provisions.	Not a restriction. Operational issue.
116	Exemption of certain sweepstakes.	Not a restriction. Operational issue.
118	Act is constructed subject to Commonwealth Constitution Act.	Not a restriction. Operational issue.
119	Power for the Governor to make regulations.	Not a restriction. Operational issue.
Schedule 1-2	Legislative history.	Not a restriction. Operational issue.
Schedule 4	Search warrant proforma.	Not a restriction. Operational issue.
Schedule 4	Power for the Governor to make regulations.	Not a restriction. Operational issue.
Appendix 1	Legislative History	Not a restriction. Operational issue.
Appendix 2	Divisional Penalties and Expiation Fees	Not a restriction. Operational issue.

***Lottery and Gaming Regulations 1993***

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
1-4	Establishes the Regulations and provides definitions.	Not a restriction. Operational issue.
5-7	Defines exempted fundraiser lotteries.	Restricts the activity to defined boundaries.
8-10	Defines exempted non-fundraiser lotteries.	Restricts the activity to defined boundaries.
11	Defines authorised fundraiser lotteries.	Requires a licence for their conduct.
12-13	Applications for a licence must be in an approved form and be made by eligible persons.	Age Restriction.
14	Minister has the discretion to grant or refuse applications.	Not a restriction. Operational issue.
15-16	Specifies conditions and duration of a licence and licence fees.	Not a restriction. Operational issue.
17	Outlines licence conditions that must be met with respect to major lottery, bingo and instant lottery.	Not a restriction. Operational issue.
17A-17B	Granting of licences for certain trade promotion lotteries and associated licence fees.	Not a restriction. Operational issue.
17C	Minister may grant or refuse an application for a trade promotion lottery.	Not a restriction. Operational issue.
17CA-17E	Licence conditions	Not a restriction. Operational issue.
17F	Creates trader offences.	Not a restriction. Operational issue.
18	Minister has the discretion to cancel or suspend lottery or trade promotion lottery licences.	Not a restriction. Operational issue.
19	Establishes minor lottery rules. Specifies parameters with respect to prizes, costs, proceeds etc.	Restrictions placed on how proceeds of a lottery are to be applied.
20	Establishes major lottery rules. Specifies parameters with respect to prizes, costs, proceeds etc.	Restrictions placed on how proceeds of a lottery are to be applied.
21	Establishes bingo rules. Specifies number of games and sessions, refreshments, as well as how proceeds of a game/session should be utilised.	Restrictions placed on how bingo proceeds are applied.
22	Establishes instant lottery rules. Specifies how net proceeds should be applied as well as proportions of gross proceeds expended on prizes, costs, administrative expenses etc.	Restrictions placed on how proceeds are applied.
23	Establishes sweepstakes rules. Specifies the events where sweepstakes may be conducted as well as how the proceeds should be applied.	Restrictions placed on sweepstakes events and how proceeds are applied.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
24	Establishes Calcutta sweepstakes rules. Specifies events where a Calcutta may be conducted and how proceeds should be applied.	Restriction placed on Calcutta events and how proceeds are applied.
24A	Establishes trade promotion lottery rules and conditions of running such a lottery.	Restriction placed on competition entry charges.
25	Minister may waive compliance with a specified lottery rule.	Not a restriction. Operational issue.
26	Minister may give directions on winding up or dissolution of licensed association.	Not a restriction. Operational issue.
27-29	Outlines the application and fees applicable to instant lottery ticket suppliers' licences.	Not a restriction. Operational issue.
30	Licensed supplier collects certain fees on behalf of the Minister.	Not a restriction. Operational issue.
31	Creates an offence for false or misleading statements.	Not a restriction. Operational issue.
32-33	Restricts sale of lottery tickets by children and specifies when lottery tickets may be sold.	Age restriction.
33A	Creates an offence for the disclosure of a winning ticket in an instant lottery before its acquisition.	Not a restriction. Operational issue.
34	Creates an offence where commission agents fail to comply with requirements.	Not a restriction. Operational issue.
35	Requirement that associations keep account relating to each lottery for a specified period of time.	Not a restriction. Operational issue.
36	Prohibits an association from offering any inducements to enter a lottery.	Restricts an association from offering inducements that may increase participation in a lottery.
37	Creates offences relating to unclaimed prizes.	Not a restriction. Operational issue.
38	Outlines the duty of an auditor of lottery accounts.	Not a restriction. Operational issue.
39	Makes management committee or board of directors liable for any offences committed by an association or corporation.	Not a restriction. Operational issue.
40	Outlines transitional provisions.	Not a restriction. Operational issue.
Schedule 1	Application form for a Major Lottery Licence	Not a restriction. Operational issue.
Schedule 2	Application form for Bingo Licence.	Not a restriction. Operational issue.
Schedule 3	Application form for and Instant Lottery licence.	Not a restriction. Operational issue.
Schedule 4	Application form for a Trade Promotion Lottery Licence.	Not a restriction. Operational issue.
Schedule 5	Financial Statement for Major Lottery Licence.	Not a restriction. Operational issue.
Schedule 6	Quarterly Financial Statement for Bingo Licence.	Not a restriction. Operational issue.

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<i>Section</i>	<i>Description</i>	<i>Restriction</i>
Schedule 7	Annual Financial Statement for Instant Lottery Licence.	Not a restriction. Operational issue.
Schedule 8	Application form for an Instant Lottery Ticket Supplier's Licence.	Not a restriction. Operational issue.
Schedule 9	Quarterly Financial Statement for an Instant Lottery Ticket Supplier's Licence.	Not a restriction. Operational issue.
Appendix 1	Legislative History	Not a restriction. Operational issue.
Appendix 2	Divisional penalties and expiation fees.	Not a restriction. Operational issue.

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## CHAPTER 4 – EXCLUSIVE LICENCES

### 4.1 Introduction

There are two major areas of exclusive licence provision in the South Australian gambling industry, namely the Casino and TAB licences.

1. The *Casino Act 1997* provides that there be only one Casino licence issued. This provides an exclusive licence to provide Casino gaming services. The proliferation of gaming machines in hotels and clubs, however, means that the exclusive licence only has practical effect in respect of the provision of table games.

Section 7 of the *Casino Act 1997* provides for the exclusive licence as follows:

*7. There is not to be more than one casino licence in force under this Act at the same time.*

Under the Approved Licensing Agreement for the Casino, entered into in October 1999, the Treasurer is liable to pay compensation to the licensee if a person (other than the licensee) is authorised to conduct Casino Gaming (as defined) in South Australia prior to 1 July 2015. That compensation is equivalent to the diminution, in the value of the Licensee in respect of the Casino (including the Casino Licence) as a result of the authorisation by the Government of an otherwise exclusive event.

This exclusivity is further supported by other commitments made in the Approved Licensing Agreement for which the Casino can claim compensation if breached. These commitments include, that no person (other than the Casino Licensee) will be authorised to operate:

- (a) more than 60 gaming machines in respect of the same premises within 150 kilometres of the Casino; or
  - (b) a gaming machine of a form that replicates or simulates to a material extent, physical aspects of the corresponding casino gaming when conducted as a table game at the Casino including, but without limitation, machines which have a multi-player capacity or a physical layout or method of participation or operation akin to the corresponding casino gaming.
2. The *Authorised Betting Operations Act 2000* only provides for the operation of one major betting provider (Totalisator Agency Board (TAB)).

Sub-section 7(2) of the *Authorised Betting Operations Act 2000* provides for the exclusive licence as follows:

*(2) There is not to be more than one major betting operations licence in force under this Act at the same time.*

Under the Approved Licensing Agreement for the TAB the Minister is liable to pay compensation to the Licensee if a person (other than the Licensee) is, with some exceptions, authorised to conduct off-course totalisator betting on intrastate races, interstate races, proprietary races conducted in South Australia and overseas racing,

totalisator betting on certain sports, fixed odds betting on certain sports and walk in trade in South Australia prior to January 2017.

Again that compensation is equivalent to the diminution, if any, in the value of the Licensee in respect of the TAB (including the TAB Licence) as a result of the occurrence of an otherwise exclusive event. This compensation is capped at \$43.5 million.

In addition, the *Lottery and Gaming Act 1936* provides that all lotteries are illegal unless exempt or authorised. That same Act provides for the licensing and operation of lotteries in South Australia for approved (not-for-profit) purposes. Given compliance with the provisions of the *Lottery and Gaming Act* and its *Regulations* there is no restriction on the size of lottery that can operate pursuant to this Act.

Pursuant to the *Lottery and Gaming Act 1936* and the *State Lotteries Act 1966*, all lotteries in South Australia (public or private) are to be operated for the benefit of charitable and public purposes. Lotteries for private profit making are not permitted in South Australia.

The State operated Lotteries Commission does not have exclusivity to operate lotteries in South Australia. The Lotteries Commission of South Australia is established under the *State Lotteries Act 1966* as an entity to provide for the operation of lotteries by the Government. This Act provides the Commission with an exemption to the general prohibition on gambling in the State as specified in the *Lottery and Gaming Act*. All surpluses (profits) generated by the Commission are directed through the Hospitals and Recreation and Sport Funds and thus used for public purposes. As outlined above, legislation (the *Lottery and Gaming Act 1936*) allows other significant not-for-profit lotteries providers to be established (under licence) in South Australia.

Notwithstanding that, it is true that the market outcome of the current arrangements is that the Lotteries Commission has established a market dominance over other lottery providers. This market dominance may result, at least partially, from differences in the legislative and thus regulatory structures of the *State Lotteries Act* as compared with the *Lottery and Gaming Act*. In particular, there is a more prescriptive approach set out for authorised lotteries as compared to the broad provisions for Ministerial approval required by the Lotteries Commission. The specific content of the *Lottery and Gaming Act* and *State Lotteries Act* are addressed in separate chapters of this report.

While not a necessary outcome of the legislative provisions, the market dominance of the Lotteries Commission means that it is in a position not dissimilar to exclusive TAB and Casino operators. On that basis, and because it is likely the intended outcome, and for the sake of completeness, the Lotteries Commission is included here, in the analysis of exclusive licences.

## **4.2 The National Competition Council Approach**

In its Council Paper “Regulating gambling activity; issues in assessing compliance with National Competition Policy” (October 2000) the National Competition Council stated that it accepts that restrictions based on the Productivity Commissions argument that the overall goals of gambling regulation, as follows, satisfy NCP obligations:

*“to ensure probity and to reduce adverse social impacts ..... The overarching goal should be to maximise the welfare of the community as a whole. Measures which can reduce the social harms of gambling while maintaining the benefits find particular favour under this approach.”*

### **4.3 Benefits**

#### **(i) Social**

The social factors surrounding the regulation of gambling and hence the current exclusive licence arrangements were comprehensively discussed in Chapter 2 of this report and will not be repeated here. Social factors do, however, link with the benefits considered to arise from the current legislative restrictions on gambling licences.

Social concern about gambling in South Australia is evidenced in the Productivity Commission’s report. Table 10.3 of that report summarises responses to the question of whether gambling does more good than harm for the community. In by far the strongest sentiment of all jurisdictions, 84.6% of South Australians disagreed with this view (ie they believe more harm is caused). This is well above both the national average (71.3%) and even the second highest jurisdiction (Tasmania – 77.9%).

The high profile of gambling and associated strong community debate in South Australia on this issue is also evidenced with only 5.6% of South Australians neutral or uncertain with regard to the question as compared to the national average of 13.7%. South Australians have clear, strong and considered views about gambling.

Further evidence of these views is contained in Table 15.1 of the Productivity Commission’s report which shows that 75.6% of South Australians believe there should be a decrease in gaming machine numbers. This is again much greater than the national average (50.6%) and other jurisdictions (next highest Tasmania 59.5%).

Parliamentary debate on the issue of gambling has been frequent and heartfelt, with community views having been of paramount importance in deliberations on gambling regulations. The following excerpts from Hansard are demonstrative of the community’s reticence to liberalise gambling restrictions, and emphasise the basis of gambling as social policy in this State.

*“However, to say that gaming machines can keep increasing at the rate that they are today and to have no capping would be irresponsible, so I commend the government, the Premier and members from both sides of this chamber who support this bill, because the community wants us to do something – it does. Not only is there the perception that gambling is a problem but also there is the reality that it is. It is not only 2 or 3 per cent of gamblers who are affected: it also affects their families, friends and people who support the problem gamblers”. [House of Assembly Hansard, Mr G Scalzi, Member for Hartley, 9 November 1999]*

*“I do not believe that it would be in the best interests of this State to see additional casinos established, nor do I believe that the majority of South Australians would want to see that occur”.* [House of Assembly Hansard, Mr E J Meier, Member for Goyder, 5 August 1999]

*“.....[in] moving to privatise the TAB, the government was quite clear in its goal of leading to no proliferation of betting. It did not wish to add to opportunities per se.”* [House of Assembly Hansard, the Hon M H Armitage, 29 November 2000]

These responses are clearly indicative of the general view of South Australians that they do not want more gambling in this State. While the basis for this view may well be concern about the level of player loss in general, and problem gamblers in particular, rather than gambling opportunities per se, there would appear to be a clear social preference for, at a minimum, the continuation of the current restrictions on gambling.

This expressed desire indicates that the community obtains a benefit from the restrictions on the further expansion of gambling facilities. As the Productivity Commission report demonstrates, it is the revealed view of South Australians that to allow more, or less restricted, gambling would increase the net harm (cost) in the community.

(ii) *Harm Minimisation*

The Productivity Commission recognises that *“there is sufficient evidence from many different sources to suggest a significant connection between greater accessibility – particularly to gaming machines – and the greater prevalence of problem gambling.”* One of the primary objectives of the South Australian Government is to minimise harm caused by gambling and the Commission’s findings support that this can be achieved by limiting accessibility to gambling products.

Chapter 13 of the Productivity Commission report assesses the extent to which exclusive licence arrangements and restrictions on venues offering gambling services advance community welfare. It concluded:

*“while exclusive licence arrangements disadvantage consumers as a group, it may be that limiting gambling opportunities in this way provides a degree of protection to problem gamblers by limiting the gambling opportunities they face ..... The effect of exclusive licence rights on the accessibility of casino gambling is apparent.”*

The Productivity Commission’s confirmation that exclusive licensing and its associated restrictions on gambling venues can offer problem gamblers a degree of protection by limiting their opportunities to gamble is acknowledged.

Although a blunt instrument, allowing only single licence providers that are subject to significant levels of restriction results in conditions that allow the broader community access to gambling opportunities, but reduces the proliferation

of problem gambling. The fact that other measures to reduce problem gambling may also be required does not invalidate this proposition.

Table 6.15 in the Productivity Commission's report compares the prevalence of problem gambling and harm incidence rates, by gambling mode and frequency of playing. Of the four main forms of gambling, it is found that Lotteries products result in the least 'harm', with 'harm' progressively increasing with racing, gaming machine and casino table game products.

Keno products are not included in the Productivity Commission's analysis.

This ranking of the relative harm caused by each mode of gambling is reflected in the restrictions placed on the availability of each form of gambling to members of the South Australian public. This is consistent with an objective of harm minimisation.

Lotteries and scratch tickets are considered to be the least harmful mode of gambling. These are the most accessible.

Consistent with the Productivity Commission ranking, the location of TAB outlets, and hence access to them, is closely regulated. Historically, under the *Racing Act*, TAB premises have been approved by the Minister, taking into consideration, among other things, proximity to places of worship, schools and other educational institutions. The new *Authorised Betting Operations Act* provides that the Independent Gambling Authority approve all future locations, but the Minister can give the Authority binding directions preventing or restricting the approval.

Gaming machines are only accessible to consumers through clubs, hotels and the Casino. Restricting gaming machines to licensed premises is an attempt to reflect the potential level of harm and social problems caused by gaming machines, by limiting the number of potential venues and by placing them in an environment which can be tightly controlled and regulated.

The Productivity Commission has identified table games as having the highest ratios of problem gambling. Table 6.15 of their report demonstrates that table game players have the highest prevalence of problem gambling under either South Oaks Gambling Screen (SOGS) or the HARM incidence measure. The achievement of harm minimisation for table games therefore requires greater regulatory control and restriction than applies to the broad range of gambling activities. This is consistent with exclusive licence (ie restricted access) for table games at the Casino.

Interactive gambling is not included in the Commission's rankings but anecdotal information suggests it is a source of significant potential harm. There is on-going debate about the most appropriate approach for minimising potential harm from this source. Interestingly, the Commonwealth Government decided that the best way to minimise the potential harm from this source, was to impose a ban on interactive gambling service providers providing non-exempt services to Australians.

Despite this ‘ban’ on interactive gambling instituted by the Commonwealth many argue that it is impossible to effectively prohibit access to interactive gambling. Indeed the Commonwealth ban itself relies on the voluntary action of individuals to block access to overseas gambling sites. The effect of the Commonwealth ban is to restrict access to this gambling opportunity in order to minimise the associated harm. It should be noted that banning is an extreme form of restricting access.

The notion that once one decides to permit an activity it must be thrown open to many players, as in normal unrestricted markets, is impossible to sustain unless the existence of such markets is considered a social objective in itself.

More broadly on harm minimisation issues, the Productivity Commission suggests that there could be some economies of scale associated with establishing harm minimisation programs from limiting the number of venues. There may also be some benefit associated with an ability to enforce self-exclusion orders with a single provider.

To the extent these benefits exist, and there is certainly advantage in a limited number of entities and locations in imposing self-exclusion orders, the current South Australian licensing arrangements would take advantage of them.

The Productivity Commission sees the key mechanism for harm minimisation programs as involving the principle of “informed consent”. This approach is supported and acknowledged as a more targeted solution to harm minimisation that complements exclusive licences. Some of the specific suggestions and issues raised by the Productivity Commission have already been addressed in South Australian legislation. Others will be contained in codes of practice approved by the independent gambling regulator. However, it is not apparent that such provisions are, or would be, sufficiently robust for informed consent to be the sole factor in achieving harm minimisation objectives. As required under the Competition Principles Agreement this alternative approach to harm minimisation is addressed below in section 4.6 (Alternative Approaches).

(iii) *Probity*

With regard to the Casino, table games provide a significant opportunity for fraud and require intensive monitoring. This can be achieved at least cost and highest standard in a single location. The Productivity Commission recognises that there are some cost minimisation benefits associated with exclusive arrangements in regard to probity checks on games and staff, but considers that a better approach is to establish appropriate probity procedures for the mode of gambling and venue type and charge the licensee accordingly. This is seen by the Commission as having the benefit of ensuring that probity becomes part of the cost structure of the industry and is reflected in operating arrangements and future decision making.

The Productivity Commission considers that the casino industry in Australia is unlikely to have significant problems associated with money laundering due to the role of the Australian Transaction Reports and Analysis Centre (AUSTRAC). AUSTRAC is the Commonwealth’s anti-money-laundering agency that collects

financial transaction information from industries that deal in large amounts of cash, including casinos.

Nevertheless, it is considered that the provision of a single licence ensures probity of the highest standard at the lowest cost. An exclusive licence enables much more stringent and effective probity checking than if South Australia had several casinos to monitor. High probity standards minimise the potential for fraud, money laundering or other criminal activity and therefore reduce the incentives for organised crime to be associated with the casino. A single casino permits greater presence of casino inspectorate staff. Strong probity has been a specific focus of Parliament since the original debate on the introduction of the Casino.

As part of the sale of the TAB exclusive licence, the Government has provided for an independent regulatory structure for the TAB. This is provided for in the *Authorised Betting Operations Act*. This is consistent with Section 4 of the Competition Principles Agreement.

New arrangements for the South Australian Lotteries Commission also include requirements for the approval of codes of practice by the Independent Gambling Authority notwithstanding the fact that it remains a Government supervised statutory body. In addition, its statutory form will ensure the highest probity standards are maintained.

The NCC accepts that restrictions which are aimed at ensuring probity standards which provide a net community benefit, and are the only way of achieving these objectives; satisfy NCP obligations.

(iv) *Regional Development*

The Productivity Commission assumes that regional development is a zero sum game where development in one region comes at the expense of another region and considers that the net effects Australia wide must necessarily be small. For this reason, the Productivity Commission does not consider that regional development provides a sound rationale for exclusive licences.

However, although it may be a zero sum game nationally, there may be some benefits from a regional perspective if South Australia can preserve a stake in the national tourism market. The Productivity Commission does recognise that in a region with under utilised resources, such as high unemployment, a tourism/casino development could provide an economic benefit.

The ABS estimates that in 1997-98 overseas visitors accounted for 25% of casino revenue.

The Adelaide Casino was established as part of a major development of underdeveloped railyard space in the CBD. The Casino was and remains an important rationale for the Convention Centre/5 Star Hyatt Hotel/ Casino precinct. The aim was to attempt to add to the capital development and tourism infrastructure of the State by establishing a high quality hotel/convention centre/casino complex. This rationale was one of the reasons for adopting a single, large casino.

The exclusive licence for the Adelaide Casino assisted in attracting new investors into South Australia—retaining and developing the important tourism complex on North Terrace. The Casino continues to provide an important quality attraction in Adelaide, as part of an overall holiday/travel experience. The Casino is also an important component of the River Torrens redevelopment project.

The Productivity Commission report recognises that there is a case for the regional exclusive licence for casinos, as this can provide a boost to business activity and employment in the region concerned.

The single TAB licence and the market structure in which the Lotteries Commission operates encourage a wide distribution network throughout metropolitan and regional areas. This provides employment and supports business in regional areas. Were there increased competition in these markets it could be expected that competitors would focus on the more profitable metropolitan areas perhaps to the detriment and possible reduction in services to regional South Australia. This would be similar, in effect, to the cost cutting and removal of regional services by the banking industry.

The financial arrangements between the TAB and the racing codes also provide for support to the regional racing industry and associated facilities. New competitors for the TAB could also be required to enter into financial arrangements with racing clubs but these businesses may choose to only contract with and use the services of the more profitable metropolitan race meetings. Again this could harm regional racing employment and services.

(v) *Revenue Generation*

The Productivity Commission report states that provision of exclusive arrangements provides economic rents to the owners of the licence, as the owner will be able to charge higher prices, or provide less service, than would be achieved in a competitive environment. The report points to the prices paid for casino licences and the substantial ongoing licence fees as examples of the minimum expected financial benefits to be gained by the owner from the exclusive licence.

Further, the Productivity Commission recognises that governments have captured much, if not all, of the expected financial benefits associated with the monopoly licence through sale processes or through licence fees. Therefore, the exclusivity arrangement could effectively be characterised as a mechanism for collecting tax revenue.

In the case of exclusive licences for gambling businesses, a single licence will ensure that the community will receive the largest possible return from sale.

With specific reference to the sale of the Adelaide Casino and the TAB, the granting of exclusive licences was a critical factor in maximising sale proceeds. The greater the benefits which arise from sales, the greater the level of resources available for the provision of Government services.

Other jurisdictions have also sold Casino and TAB licences with valuable exclusive licence periods.

The local community does derive substantial revenue through taxation of gambling. The money raised contributes additional funding to public services.

#### **4.4 Costs**

The theoretical economic costs of monopolies are well documented. These costs include artificially reduced supply, and therefore, higher prices and reduced incentives for innovation.

The Productivity Commission report concludes that exclusive licence arrangements disadvantage consumers as a group and that “*services and facilities, convenience to players and the range of differently-priced games on offer could be expected to be less favourable than under more competitive supply arrangements.*” The specific evidence for this expectation on materially significant terms needs to be examined.

##### **(i) *Reduced Access to Gambling Facilities***

The link between exclusive licences and accessibility varies between modes of gambling. The exclusive licences do not greatly reduce accessibility for the TAB and Lotteries as access is generally through agents who are widely dispersed throughout the State. With regard to the Casino, the exclusive licence has no significant effect on access to gaming machines since they are widely available in hotels and clubs. The only restriction on access arising from that licence relates to table games access as that is restricted solely to the single location of the Casino.

The question arises as to what ‘cost’ is associated with this restriction on access.

The Adelaide Casino is situated in the CBD in Adelaide. Over 70% of the State’s population resides in the Adelaide metropolitan area. Given the size of Adelaide, the Casino is in the vicinity of the large majority of South Australians. This implies that access to table games at the Adelaide Casino is only significantly limited for those living outside of the Adelaide metropolitan area. South Australia’s regional centres are much smaller than in the Eastern States and have a much lower level of tourism, which would influence the viability of a regional Casino.

Despite Commonwealth legislation in this area, table games and other gambling opportunities are also increasingly available over the Internet, making access for those wishing to utilise table games much easier than ever before. Gamblers no longer even have to leave home to access table games.

The Productivity Commission does not fully recognise the extent of available substitutes both within the gambling industry itself and in the broader entertainment industry. The gambling industry of South Australia has to compete in national and regional markets with many alternative gambling and entertainment options for consumers.

As noted above, the Commission's survey revealed that a majority of South Australians consider gambling does more harm than good. This indicates that even if restrictions on accessibility limit 'consumer choice' in South Australia, further restrictions may in fact be the choice of the vast majority of consumers.

The impact on consumers of exclusive licence provisions has not been quantified by the Commission. Given the widespread availability of gambling opportunities in the State, the cost to consumers of exclusive licence provisions is considered to be trivial.

(ii) *Increased Price of Gambling*

The Commission links the restriction on consumer choice arising from exclusive licence provisions to increased prices. It is not apparent that such restrictions have any effect on prices of gambling, especially in the absence of any supporting argument from the Productivity Commission. The Commission appears to assume that 'price' is simply equivalent to, or at least proportional to, the inverse of the return to player. In what follows we can make the same assumption, but the rationale behind this assumption does not appear to have been explored.

The 'price' that is perceived by a gambler is not clear. One interpretation is that the 'price' for a gambler would be the expected return from each gamble as measured by expectation of success. That is, a gambler would sum up the probabilities of winning different returns from a bet, with the net result being the expected loss/gain (ie 'price') of the gamble. With perfect information about a game this would lead the gambler to the conclusion that the 'price' of a gamble is equivalent to the legislated or preset chance of winning (ie the inverse of the return to player).

A lack of perfect information may make the 'price' of gambling different for each player. In particular, the expectation of winning is likely to reduce the perceived price—particularly for problem gamblers. Gamblers may also incorrectly expect the 'price' to change as they expect the chances of winning to be greater after a period of losses.

The absence of any impact on the price of gambling arising from exclusive licences is considered feasible for two reasons:

1. Controls on 'price'; and
2. Competition constraints on 'price' and consumer choice.

Controls on 'price': Gambling providers do not have complete freedom to adjust prices. Independent regulation of the rules restricts the ability of an operator to extract monopoly profits.

For the Casino the 'price' of table games are capped by the rules of the game as approved by the Liquor and Gambling Commissioner. These prices can be reduced below these capped amounts by the provision of player incentives in various forms. Equally, gaming machines (at the Casino and elsewhere) have a legislated minimum payout ratio, formerly 85% but from 1 October 2001 all new machines must have a minimum payout ratio of 87.5%.

For the TAB and the Lotteries Commission legislation or regulation controls the ‘price’ of gambling. The ‘price’ is also influenced by the need for common deduction rates from bets that results from the pooling arrangements for these entities with other States.

For the TAB the deduction rates from pari-mutuel bets (ie inverse of return to player) are capped. In South Australia, the maximum deduction from a bet is 25%. The actual deduction rates are common with all TABs that are in the same pooled arrangement. Deductions can also be reduced by provision of punter incentives.

Under the *State Lotteries Act* the player payout ratio for the Lotteries Commission must not be less than 60% (other than for sport or special lotteries). Relative to other forms of gambling the Lotteries Commission has a low level payout ratio as has been the case historically. Of course all profits are retained by the community. The benefit that arises from all profits going to the community was a clear objective at the time the Lotteries Commission was established and was a major reason for the proposal gaining support.

Competition between two suppliers of lottery products exists in the ACT, namely NSW Lotteries and Tattslotto. The cost of entry for Lotto (Saturday night) varies slightly between the two suppliers. In South Australia, where there is only one licensed provider, the cost of entry for Lotto for the equivalent number of games is equal to or lower than in the ACT, as the following table illustrates.

Number of games	Entry cost		
	South Australia - SA Lotteries	ACT – NSW Lotteries	ACT – Tattslotto
4	\$1.75	\$1.80	\$1.80
6	\$2.60	\$2.60	\$2.70
8	\$3.45	\$3.50	\$3.55
10	\$4.30	\$4.30	\$4.40
12	\$5.15	\$5.20	\$5.30

Source: NSW Lotteries, Tattslotto websites.

As shown, not only are prices controlled by consumers or the community itself via legislation and regulation, but in the case of the Lotteries Commission the cost of entry in South Australia is lower than the cost in the ACT where there is more than one provider.

Competition constraints on ‘price’ and consumer choice: The Productivity Commission report states that an exclusive licence disadvantages consumers by raising prices and restricting choice. This argument may carry some weight if each mode of gambling is considered in isolation. However, if the broader picture of the whole gambling industry is considered consumers have a much greater choice.

Exclusivities apply within each narrow mode of gambling but these gambling providers compete with a range of gambling service providers (including each other) as well as more broadly within the entertainment industry.

The Productivity Commission admits that “*competitive pressures can still come from other gambling forms and, more broadly, from other uses of discretionary spending.*” And that there “*is mixed evidence as to whether current exclusive licence arrangements are . . . having an effect on the price and quantity of gambling services.*”

Consumers can choose between many different types of gaming and wagering in various (and often the same) venues. In economic terms, there are significant cross-elasticities between the different gambling markets. These competitive forces were evidenced with the introduction of gaming machines in South Australia, where there were adverse impacts on the revenues of other gambling activities. The popularity of ‘pokies tours’ to interstate locations prior to the introduction of gaming machines in South Australia, is also indicative of interstate competitive forces.

The rapid growth of gambling and communications technology in Australia has also led to substantial competition between different types of gambling and operations based in different states. The TAB competes for its telephone betting with both bookmakers and interstate TABs, although it is acknowledged that the TAB has a monopoly position in respect of a retail network for fixed odds walk in betting (with a minor exception in respect of the Morphettville auditorium), which is not subject to price control. Interactive gambling via the Internet is further globalising gambling opportunities providing competition for the gambler’s dollar regardless of location. The ability to segment the individual gambling markets domestically is now seen to be increasingly limited.

Further, the gambling industry is merely part of a much wider and constantly expanding entertainment industry, offering consumers even more choices varying from movie theatres, restaurants to huge sports stadiums, available at a large range of prices.

The main theme of the Productivity Commission findings was the principle of ‘informed consent’ for gamblers. This concept and the provision of greater amounts of information to gamblers to improve knowledge on the true ‘price’ of the gambling entertainment being purchased is supported.

There are numerous misconceptions held by gamblers with respect to the cost and likelihood of winning. Players should be informed of the average return from the gamble being made as well as the chances of winning specified prize levels and information about the random nature of the results of each gamble.

Improved information to gamblers to enable rational choices about the amount of gambling they purchase, and to enable better comparison with alternate entertainment options, will act to strengthen the competitive forces in the gambling (and entertainment) market. This will further constrain any alleged artificial increases in price arising from a lack of understanding of the true ‘price’ of gambling.

Price regulation and the competitive forces under which gambling providers operate, ensures the exclusivities provided do not allow monopoly pricing of gambling services. Further, any monopoly profits that have been generated for the

Casino and TAB have been returned to the community through competitive sale processes. Competitive tendering for these licences would have retained these benefits to the community.

Equally the ongoing 'government ownership' of the Statutory Lotteries Commission means that all profits are available to the community.

#### **4.5 Benefits Outweigh the Costs**

The ongoing public and Parliamentary debate in South Australia over gambling emphasises that gambling is a matter of social policy rather than competition policy and that exclusive licence restrictions are consistent with community interests and needs.

Competition policy requires that the relative benefits and costs associated with the provision of exclusivities in the gambling industry be weighed against each other. Broad based community concern regarding access was reflected in the defeat of an amendment proposed during the debate on the subsequently enacted (1982) Casino Bill, to allow more than one casino licence.

As quoted in the Productivity Commission report, a significant majority (85%) of South Australians believe gambling causes net harm to the community. It follows that consumers want to maintain gambling restrictions and that any expansion of gambling opportunities would be at a cost to community preference, and would result in considerable loss of public benefit. This evidence alone illustrates that in the broad sense of any cost benefit analysis the costs of providing for any additional licences in the current environment clearly outweigh any benefits.

The underlying sentiment behind this community view to not expand and even restrict gambling access is clearly based on a desire to control and avoid any further increases in problem gambling, that is, for harm minimisation reasons. This preference is demonstrated through the democratic processes of the South Australian Parliament, as significant gambling matters are conscience votes for all Members.

Even leaving aside this clear community benefit in retention of the current exclusive licence arrangements the NCP test of weighing benefits and costs can be met.

Neither the Productivity Commission analysis nor this review have identified, let alone quantified, any significant costs associated with exclusive licensing. The potential for excessive pricing is removed by a combination of Government maximums on 'price', the fact that they are fixed by the rules of the games, and the use of common pools to engender sufficient economies of scale to enable larger prizes. Equally, notwithstanding the access restrictions, particularly for Casino table games (see below), the gambling providers compete sufficiently with each other and within the broader entertainment industry to ensure innovation and consumer choice. This level of competition driven by consumer choice could be further strengthened through the provision of greater information to gamblers on the 'price' and related information of particular gambling types.

It is accepted that in the case of Casino table games the exclusive licence arrangement does have an effect on access to this form of gambling and thus represents a cost to gamblers in travelling to the single venue. This restriction is, however, in line with the

object of harm minimisation as the Productivity Commission analysis identified, for it carries the highest risk of associated problem gambling. The benefit of reduced harm is considered greater than the trivial cost associated with restricted access.

Restrictions on access and the level of gambling opportunities arising from the exclusive licensing arrangements for the Casino and TAB and dominant market position of the Lotteries Commission do, as the Productivity Commission agrees, provide a degree of protection to problem gamblers. Equally, although a blunt instrument, these restrictions assist in meeting harm minimisation objectives for gamblers more broadly.

This report also identified other benefits associated with the current arrangements through benefits in probity, regional development and revenue generation.

In conclusion, even leaving aside the clear social benefits from, and community preference for, retaining restrictions on gambling, the economic benefits such as harm minimisation, revenue generation, probity and regional development may outweigh any alleged costs of exclusive licences on the range of gambling products.

It is noted that this approach is not inconsistent with the proposed Commonwealth Government approach with regard to interactive gambling which would have banned access to interactive gambling product from within Australia. The Commonwealth was clearly of the view that this partial restriction on access to gambling was in the community interest and the cost of such restriction outweighed the cost in lack of access for consumers. In the event the Federal Parliament amended this legislation to ban non-exempt interactive gambling services being offered in Australia from whatever source.

It is commonly understood that the total ban will not prevent access to all forms of interactive gambling but it clearly remains the Commonwealth's view that restrictions on the number of gambling opportunities will produce beneficial harm minimisation effects. This approach is consistent with the exclusive licence provisions in States and Territories where the number of providers of gambling is restricted to minimise harm.

#### 4.6 Alternative Approaches

The Competition Principles Agreement requires the consideration of “*alternative means for achieving the same result including non-legislative approaches.*” Two alternative methods considered for achieving the will of the community and Parliament for restrictions on the supply of gambling are discussed below:

- (i) Market to determine number of licences
- (ii) Unrestricted licences with taxes/ subsidies to meet tourism or other objectives.

(i) **Alternative:** Remove current provisions containing exclusive licence provisions and allow the market to determine the number of licensees for each form of gambling.

**Discussion:** This approach would provide that all organisations that meet minimum probity and consumer protection standards would be eligible for licences to provide gambling services. This would give a more pro-competitive alternative than the current arrangements.

There are significant issues with this proposed approach:

### *Harm Minimisation*

As noted above, expansion of gambling is not the preferred approach of South Australians and would create significant costs through loss in consumer benefit. The underlying premise for this community concern lies in the desire to avoid increases in problem gambling.

A greater number of licensees would be expected to result in increased competition in a bid to ensure viability of the new operators. New operators would try to both encourage additional gambling from active and new gamblers (ie increase aggregate gambling expenditure) as well as win market share away from the current exclusive provider. This would result in increased advertising and promotion of gambling products.

To the extent that new operators succeed in entering the market it is likely that this would result in an overall increase in gambling expenditure and/or a transfer of spending to forms of gambling which could be considered more problematic. This would be expected to result in an increase in the level of problem gambling.

To overcome this concern, the provision of a greater number of licences would need to be associated with sufficiently strict harm minimisation measures to avoid further problem gambling. Clearly the view of the community is that the current harm minimisation measures are inadequate to meet this objective. The consideration of measures which would appropriately contribute towards minimising the harm caused by problem gambling is a developing area and subsequently includes a degree of uncertainty with regards to the extent to which measures may succeed, or in quantifying potential effects.

The South Australian Government has acknowledged that problem gambling is a significant issue and has recently passed the *Statutes Amendment (Gambling Regulation) Act 2001* which provides for a number of immediate measures as well as a process to further address problem gambling issues. By way of specific measures this Act includes:

- The current freeze on gaming machines to be extended to 31 May 2003;
- Banning the introduction of note acceptors on all gaming machines;
- Increasing the minimum return to players on new gaming machines from 85% to 87.5%;
- Establishing a barring register for problem gamblers;
- Banning auto-play facilities on all gaming machines;
- A limit to be enforced on cash withdrawals from cash facilities within gaming venues. The limit will initially be set at \$200 per transaction (or other amount fixed by the Commissioner). This limit will subsequently be reduced to one transaction per day (maximum \$200) in a gaming venue on any one credit or debit card; and
- The establishment of two codes of practice on all forms of gambling:
  - Advertising Code of Conduct; and
  - Responsible gambling Code of Practice dealing with:
    - the display of signs, the provision of information relating to responsible gambling, and the availability of services to address problems associated with gambling; and
    - the provision of training to staff relating to responsible gambling and the services available to address problems associated with gambling; and

- any other matters to reduce the incidence of problem gambling.

The Codes will be developed and approved by the Independent Gambling Authority (see below) and be disallowable instruments of the Parliament.

The Act also provides for the establishment of the Independent Gambling Authority (IGA) as successor to the Gaming Supervisory Authority.

Pursuant to the Act, the functions and powers of the new Authority have been expanded to include:

- a) to develop and promote strategies for reducing the incidence of problem gambling and for preventing or minimising the harm caused by gambling; and
- b) to undertake, assist in, or coordinate ongoing research into, matters relevant to the Authority's functions.

In performing its functions the Authority must have regard to the following objectives:

- the fostering of responsibility in gambling and, in particular, the minimising of harm caused by gambling, recognising the positive and negative impacts of gambling on communities; and
- the maintenance of a sustainable and responsible gambling industry in this State.

In addition to these measures the South Australian Government has recently announced the appointment of a Minister for Gambling to tackle problem gambling. In this context it is relevant to note the establishment of the Ministerial Council on Gambling. Under the direction of the Council of Australian Governments this Council will auspice the development of a national strategic framework to be implemented by State and Territory governments around prevention, early intervention and continuing support, building effective partnerships and national research and evaluation. This Council is considering a number of measures and is establishing a research program to obtain information that will enable policy-makers to more accurately identify and target harm-reducing measures.

#### Transition Costs

As outlined above, compensation would be payable to current licensees if contractual exclusivity provisions were breached. Compensation payable to the TAB and the Casino would be equivalent to the diminution in value of the entity (the TAB has a liability cap of \$43.5m). This would be a significant cost. Compensation for the removal of exclusive licences is likely to outweigh any benefits to be gained. This was recognised by the NCC in its September 2001 working paper on Education Services, Childcare and Gambling – *“The requirement for a government to make large compensation payments may well outweigh the benefits from revoking exclusive casino licences.”*

In addition, the establishment of new gambling services would involve significant transitional costs. The establishment of additional distribution networks would result in inefficient and costly duplication of services. These effects may be most significant in regional areas.

These transition costs are magnified given that any initial market entrants are likely to be short term since the use of common national pools for TAB and lotteries gambling suggests that the likely medium to long term outcome is the return to a market driven

monopoly. The intervening period of market disruption for all parties is not justified where it is not considered feasible that the market could in any event support more than one licensee.

### Probity/Regulation

Monitoring, regulation and probity checks can be carried out more efficiently and effectively on a single or limited number of entities in a restricted industry.

### Prices

It is not conclusive that a model of increased competition would increase consumer welfare through lower prices and a greater level of gambling production (see discussion above). Further, to the extent that there are any monopoly profits in the industry these have been extracted for the benefit of the community through competitive sale processes in the case of the Casino and the TAB and statutory distributional requirements in the case of the Lotteries Commission.

### Summary

While the removal of exclusive licences would achieve the outcome of a more competitive environment for gambling service providers, this would be at some potential cost of additional problem gambling. There are also very significant transitional costs resulting from exclusivity compensation provisions for the Casino and TAB. In addition, there are other transitional costs given the likely medium to long-term market outcome remains that of a monopoly provider.

Exclusive licences may be considered a blunt instrument to achieve the harm minimisation outcome, but prior to the Independent Gambling Authority and the Ministerial Council providing sufficient analysis and more targeted policy solutions to substantially minimise or remove problem gambling, the alternative of a number of competitive gambling providers is unlikely to be acceptable to the community.

The NCC in its September 2001 working paper on Education Services, Childcare and Gambling recognises that *“even where review and reform activity is complete, the appropriate course of action is to await development of the CoAG strategy.”*

If Parliament so decided, it could confer on the Executive Government the responsibility for determining how many gambling licences would be issued. However, that is not likely to occur. The elected representatives and their constituencies hold strong views on this issue and it is unrealistic to expect that they would give carte blanche to any Government. In any event and apart from that reality, it is most desirable for legislation to specify the number of licences available in the interests of accountability and to ensure the highest levels of probity in Government dealings with existing and potential gambling operators.

- (ii) With particular reference to the Casino Act 1997, an original objective of the legislation was to contribute towards the establishment of a major landmark tourism development in Adelaide with the setting up of a Casino complex.

**Alternative:** A system of unrestricted licence numbers (aside from probity and land use controls) and explicit taxes on non-preferred venues and subsidies for preferred venues to reflect tourism or other objectives.

**Discussion:** Such a system seems unduly complicated. The community's preference will remain that of restricting Casino numbers by the (equally transparent) means of licensed exception from general legal prohibitions on gambling.

It has not been possible to identify alternative means of achieving the objectives of the legislation, Parliament and the community at the present time.

#### **4.7 Conclusion**

It is the clear position of the South Australian Government that gambling is a matter of social policy. Gambling matters are considered by the Parliament frequently. Parliament typically considers these matters as conscience votes of Members reflecting the broader community views.

This is consistent with the Competition Principles Agreement since that Agreement specifically provides for social factors as relevant to its provisions.

Notwithstanding the prevalence of social issues surrounding gambling and the will of the community to restrict gambling services, it nevertheless is likely that the current exclusive licence arrangements for various gambling operators in this State provide benefits that offset any costs associated with the restriction and that the methods used (although blunt) are the best way of achieving the desired objectives at the present time.

The removal of the current exclusive licence provisions would not be favoured by the SA community. Hypothetically, a competitive market could possibly be designed that would satisfy the SA community, that is, one which maximises gambling opportunities but still constrains the potential harm of problem gambling. It is yet to be established whether such an environment is possible in practice such as to warrant the removal of exclusive licences.

While it is recognised that the benefits of the exclusive licence arrangements currently outweigh the costs (including compensation liabilities), it would be appropriate to re-evaluate the merits of exclusive licence arrangements continuing beyond the respective exclusivity periods.

This report demonstrates that the current exclusive licence provisions for the Casino and TAB in SA currently meet National Competition policy requirements. The dominant market position of the Lotteries Commission is also not inconsistent with the competition policy constructs of benefits outweighing costs.

It is for the State Government to determine what policy, within the range of outcomes that could reasonably be reached, is in the public interest. This review establishes that the Government's decision to retain restrictions on competition is in the public interest; that the benefits of the restrictions as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition. In terms of the NCP requirements, the decision to retain exclusive gambling licences falls within the range of possible conclusions that could reasonably be reached based on the evidence available.

## CHAPTER 5 – GAMING MACHINES ACT 1992

### 5.1 Introduction

This chapter examines restrictions on competition under the *Gaming Machines Act 1992*.

The Gaming Machines Act provides that gaming as authorised or licensed under the Act is lawful and also provides for the following classes of licences:

- Gaming machine licence
- Gaming machine dealer's licence
- Gaming machine supplier's licence (one only)
- Gaming machine monitor licence (one only)
- Gaming machine service licence (one only)

The Act specifies a number of criteria, conditions and other requirements for the granting of licences.

Gaming machine licences are restricted to hotels or clubs licensed under the Liquor Licensing Act. Each licensed venue is limited to a maximum of 40 machines. There is a freeze on new licences and increases in the approved number of gaming machines until 31 May 2003. The monitor licence is held by the Independent Gaming Corporation and the State Supply Board is specified under the Act as the holder of both the supplier's and service licences (but cannot act under the supplier's licence except through an approved agent).

The Liquor and Gambling Commissioner is responsible to the Independent Gambling Authority for scrutiny of operations under all licences granted by the Commissioner under the Act. The Commissioner also approves gaming machine managers and employees as well as agents of the Board.

Other provisions relate to approval of gaming machines and games, the exclusion of minors and barring of individuals as well as the establishment of the Sport and Recreation Fund, the Charitable and Social Welfare Fund and the Community Development Fund.

Regulations under the Act cover a range of provisions ranging from prescribing gaming machine components and duties of gaming machine employees through to exemptions of possessing gaming machines in certain circumstances (eg training).

The Act does not apply to gaming machines operated in the licensed casino under the *Casino Act*.

This chapter includes the following issues identified by the NCC:

- the operations of different types of venues, including the distribution of gaming machine licences;
- access to gaming machine licences (for example, quantity restrictions);
- ownership structures; and
- the monitoring of gaming machines.

## 5.2 Objectives

As discussed in Chapter 2, while there is considerable scope for gambling both nationally and within the State, it is accepted that the general legislative arrangements are not designed to be pro-competitive. The arrangements do not seek to achieve the emergence of a free market in gambling services where the level of, types of and participants in gambling activity are determined by normal commercial forces.

The focus of the South Australian Government on harm minimisation when introducing new gambling legislation was apparent in the most recently passed *Statutes Amendment (Gambling Regulation) Act 2001*, which provides for a number of immediate measures as well as a process to further address problem gambling issues. In his second reading speech in the Legislative Council, the then Treasurer stated:

*“On behalf of the government, I introduce this bill as a clear demonstration of the government’s commitment to deal with the ongoing issue of problem gambling. This package not only contains significant reforms to assist problem gamblers, the creation of an Independent Gambling Authority provides a vehicle for ongoing regulation and monitoring of gambling activities in South Australia, with a particular focus on assisting those with gambling problems.”*

The social policy basis for restrictions on gambling are detailed in Chapter 2 and will not be repeated here, suffice to say that the objectives of the South Australian Government in restricting the gaming machine industry are clearly consistent with consumer protection, probity and harm minimisation approaches, which are identified as acceptable rationales by the NCC.

## 5.3 Nature and Effect Of Restrictions

Appendix 1 of this chapter provides analysis of the sections in the Act and identifies any potential restrictions.

The Productivity Commission (PC) noted that reducing risks of crime and problem gambling, and increasing the scope of informed consent by consumers, provides a strong basis for oversight of gambling by governments. The Commission’s findings provide a net public benefit justification for restrictions involving probity checking. Further, as noted in the National Competition Council’s October 2000 issues paper, restrictions aimed at harm minimisation and consumer protection were also identified as being acceptable rationales for restricting gambling activity.

This Act contains a range of restrictions the rationale for which is considered self-evident on probity and/or harm minimisation grounds. These provisions are as follows:

### Probity

These restrictions act to ensure the integrity of the gaming product and prevent undesirable activities of licensees and related persons:

- Applicant must satisfy the Commissioner that they are a fit and proper person (s19);

- Applicant for gaming machine monitor licence must have technical and management expertise (s21);
- Holder of gaming machine monitor licence cannot hold other licences (s22);
- Commissioner may approve gaming managers and employees, persons in authority and agents of the State Supply Board (s37-39);
- Holder of the gaming machine dealer licence cannot be linked with other licensees (s44A);
- Persons who may not operate a gaming machine in specified circumstances (s51);
- Prevention of cheating and interfering with machines (s62-67);
- Prohibition of partnership or distribution of profits with an unlicensed person (s68);
- Service agents not to operate gaming machines (reg 8); and
- Certain tasks must not be delegated by licensee or approved person (reg 9).

#### *Harm Minimisation/Consumer Protection*

These restrictions provide for basic protection of consumers and to support responsible gambling:

- Minors cannot hold a licence or occupy a position of authority (s23);
- Requirement not to operate Good Friday and Christmas Day and to close down for at least 6 hours in each 24 hour period (s27);
- EFTPOS and ATM not to be provided in gaming area and cash withdrawal limits restricted in gaming venues (s51A-51B);
- Lending or extension of credit prohibited (s52);
- Prohibition on linked jackpots (s53);
- Prohibition on machines being operated other than by a coin and on auto-play facilities (s53A);
- Prevention of minors in gaming areas (s55-58);
- Barring provisions (s59-61); and
- Codes of practice on advertising and responsible gambling (Schedule 1).

Consistent with these harm minimisation restrictions, and proposals put forward for other forms of gambling, there remains the potential to provide an increased amount of information to gaming machine players on the ‘price’ of gambling. This is consistent with the principle of informed consent as promoted by the PC. The exact content of the information requires further consideration but would potentially include the average return to players of the machine, the statistical chance of winning specified levels of prizes, and contextual information reminding gamblers that the outcome of each spin is random and not related to the previous activity of the machine.

These probity and harm minimisation provisions are considered to be compliant with national competition policy and are not considered further in this report.

A range of other restrictions require further consideration. These restrictions are shown in Table 1.

**Table 1 – Sections of the Act Potentially Restricting Competition**

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
14	Establishes classes of licence under the Act.  Gaming Machine Licence Gaming Machine Dealer's Licence Gaming Machine Supplier's Licence Gaming Machine Monitor Licence Gaming Machine Service Licence	Section provides that there will only be one gaming machine supplier's licence, one gaming machine monitor licence and one gaming machine service licence.
14A	Freeze on gaming machines. Licence cannot be granted if application made on or after 7 Dec 2000 other than for a number of technical reasons. Venues cannot be granted an increase in machine numbers. This section expires 31 May 2003.	Prohibits new entrants to gambling market and growth within current venues.
15	Only persons who hold a hotel, club, specified special circumstances licence or licence pursuant to s73 or s74 of the Liquor Licensing Act are eligible for a gaming machine licence.  A licence will only be granted where the applicant satisfies the Commissioner that the area to be used for gambling is suitable; has adequate security; would not disturb those who reside, work or worship in the vicinity; would not predominate over the undertaking ordinarily carried out on the premises; would not detract from the premises; and would not attract minors.  The Commissioner must not have regard to the proximity or number of other gaming venues in the area.	Restricts the type of venue that can be licensed to operate gaming machines (ie essentially hotels and clubs only).  Various standard probity and regulatory approvals are required. That the gaming area cannot predominate over the undertaking ordinarily undertaken in the premises restricts the size and type of venue that can be licensed.
15A	Gaming venues are not permitted to be located under the same roof as shops or within shopping centres.	Restricts location of venue.
16	Licence cannot authorise possession of more than 40 gaming machines	Restricts size of activity.
25	Independent Gaming Corporation to be granted the gaming machine monitor licence.	Restricts potential to hold licence.
26	State Supply Board to hold supplier's and service licence.	Restricts potential to hold licence.
28	Gaming licence only transferable when hotel/club licence is transferred.	Prevents transfer of right to operate machines between venues.

The NCC noted the need for justification for any difference in regulation of hotels and clubs. No such regulations have been identified in South Australia as hotels and clubs in this State are subject to the same regulatory requirements (including venue caps). The

only difference in the operation of gaming machines in hotels and clubs in South Australia is a differential tax structure in favour of not-for-profit venues – this is not a restriction on competition. We also note that unlike other jurisdictions hotels and clubs in South Australia own their own gaming machines.

The benefits and costs of each of the restrictions identified in the above table will now be considered further along with any potential alternative approaches (where relevant).

*Single Gaming Machine Monitoring Licence - Issued to the Independent Gaming Corporation (s14 and s25)*

The exclusive monitoring licence is held by the Independent Gaming Corporation (IGC)—a not-for-profit company limited by guarantee whose shareholders are the Licensed Clubs Association of SA and the Australian Hotels Association (SA). The role of the IGC is, under the direction of the Liquor and Gambling Commissioner, to provide and operate an approved computer system (dial-up with a 24 hour/7 day site controller at each venue) for monitoring the operation of all gaming machines operated by gaming machine licensed venues in South Australia (other than the Casino). All gaming machines installed in licensed premises are connected to the monitoring system, whereby the Commissioner performs monitoring of all gaming machine operations.

By having an exclusive monitoring licence, the Government is able to liaise with a single entity in most aspects of regulation including monitoring, revenue collection and probity checks.

*Industry Structure*

Experience in other jurisdictions of exclusive monitoring licences extends beyond the function of monitoring—operators also own the machines and share in the profits. The sole monitoring licence that exists in South Australia is quite different. The sole provider, the IGC, is a not-for-profit company, jointly owned by the Australian Hotels Association and the Licensed Clubs Association. These industry bodies' prime functions are to represent the interests of their members—the gaming machine licensees, who benefit from keeping costs as low as possible, thus encouraging efficiency. Monitoring fees are set on a cost recovery basis, approved by the Minister, and represent the lowest cost possible by the provider.

Another factor is the relative size of the South Australian market. Queensland, which has four competing Licensed Monitoring Operators (LMO), has approximately 2½ times the number of gaming machines operating than in SA. These LMOs are able to offer lower monitoring fees by being able to cross-subsidise from income generated through other activities (particularly the two TABs whose main activity is in the operation of a totalisator).

It should be noted, however, that the Queensland model is not a true competitive environment. A condition of each licence limits the number of gaming machines that each LMO can monitor to 40% of the market. There are some 37,000 machines in Queensland—40% would represent just over 14,000, around the size of the SA market. Given the relatively small size of the SA market, it is questionable whether another provider could set up, capture market share and maintain profitability. Significant capital input is required to start up a monitoring system.

*Communications Protocols*

It would be difficult for an interstate provider to set up in SA due to the different machine communication protocol requirements between jurisdictions, as well as any regulatory issues. Currently, machines in SA are not compatible with interstate monitoring systems—an interstate provider entering the SA market would need software that is compatible with the existing site controllers. Hence any lower monitoring fee that may be offered by the provider in interstate markets is unlikely to be offered in SA due to the significant start-up costs. Also, manufacturers currently only have to produce one game for SA and the game is tested against one communication protocol. In the case of multiple monitoring systems, manufacturers would need to produce machines capable of operating on each of the systems. The Office of the Liquor and Gambling Commissioner would have to evaluate and approve such multiple games, creating a greater administrative burden.

*Regulatory Functions*

A sole monitoring operator provides a single source to access information for the collection of gaming tax, approval of games and machines, of directing the hours of operation of machines and numerous other functions. The Office of the Liquor and Gambling Commissioner is responsible for the regulatory functions for gaming machines. It is argued that by having a central source of all monitoring activities, the Government is able to achieve its objective of probity within the industry more efficiently than if they had to gather information from several different LMOs. Multiple providers would result in a greater administrative burden on the Office, and a subsequent increase in the cost to Government. Therefore, any cost advantage to gaming licensees that may be gained by competing providers (if possible) may be lost through increased administration costs.

There is an obvious social benefit in eliminating criminal elements and ensuring probity within the gaming industry. It is argued that such probity considerations are best achieved in an environment of an exclusive monitoring licence.

Any costs of a single monitoring provider should be weighed against these benefits. In this instance the cost (if any) would occur through the lack of competitive pressure on the cost of monitoring. The following table shows a comparison of the structure and pricing of gaming machine monitoring in various jurisdictions.

<b>State</b>	<b>Arrangement</b>	<b>Monthly Price Per Machine</b>
NSW	Sole monitoring provider (& exclusive betting licence to supply, finance & share in profits from gaming venues) (NSWTAB)	Fee set by I.P.A.R.T, \$26.10
Victoria	Machines owned & monitored by sole provider (Tabcorp & Tattersalls)	Fee included in operator's share of gaming machine revenue (33 1/3%)
Queensland	4 service providers operating in a competitive environment	Between \$12-\$15
SA	Sole monitoring provider (Independent Gaming Corporation)	\$34 (\$22 net of community service obligations)
Tasmania	Machines owned & monitored by sole provider (Federal Hotels)	\$12
NT	Sole monitoring provider	\$25

The fee set by the SA IGC, subject to the approval of the Minister, includes the Corporation's community service funding program such as the Gambler's Rehabilitation Fund and the Donations Program. The Liquor and Gambling Commissioner estimates that after adjusting for these "community costs", the actual fee is \$22 per machine per month.

As shown below, monitoring fees in South Australia have constantly declined and are significantly lower than when machines were introduced in 1994. It should be noted that total fee revenue has also fallen. In 1996/97, the total monitoring fee revenue had a budget of \$6.8 million, whilst in 2001/02 the total revenue budget has fallen to \$5.9 million—this represents a 13% fall over the period. Over the same period, the monthly per machine fee fell from \$60 to \$33 (exclusive of GST)—representing a 44% fall. It is clear that the per machine fee has fallen over time due to economies of scale, as total machine numbers have increased. The IGC as a not-for-profit entity is willing to fully pass on reductions in costs on gaming outlets, and not to increase profits as would be expected by a profit maximising entity.

	<i>Monthly Fee (per machine)</i>
25 July 1994	\$120
4 April 1995	\$100
1 July 1995	\$65
1 July 1996	\$60
1 July 1997	\$52
1 July 1998	\$52
1 July 1999	\$43
1 July 2000	\$47 ( <i>GST inclusive</i> )
2 January 2001	\$44 ( <i>GST inclusive</i> )
3 July 2001	\$37 ( <i>GST inclusive</i> )

While the competitive structure in Queensland provides a lower monitoring cost, such a fee may be subsidised by income from other services provided. Licensed monitoring operators (LMOs) in that State provide player loyalty systems, employ service providers to service machines, and purchase and sell machines on behalf of the gaming venues and manufacturers. It is therefore possible that the monitoring fee is subsidised by fees charged from these other value added services.

It should also be noted that two of the remaining LMOs in Queensland are TABs whose primary business is operating a totalisator—their role as an LMO would be a very small part of their overall operations. One of these LMOs is the sole monitoring provider for Northern Territory, which charges a fee of \$25 per machine per month. The Commissioner believes that this is closer to the true cost of the service and is comparable to the \$22 (net of community costs) charged in South Australia.

Ownership of the gaming machines is another factor to be considered, as in some jurisdictions the exclusive nature of licensing goes beyond that of monitoring. Gaming machines in Victoria and Tasmania are owned by the LMOs and leased to gaming venues—Tasmania has the lowest monitoring fee, whilst no separate fee is charged in Victoria. A low monitoring cost does not necessarily reflect the level of competitiveness within the gaming industry.

The NCC's paper noted that the Victorian review of the *Gaming Machine Control Act 1991* found that the two-operator structure (of Tattersall's and TABCORP) was anti-competitive and not justified on public interest grounds. In its most recent working paper, the NCC found that 'most of the other competitive restrictions in the Act apply because of the current industry structure.' The Victorian Government has undertaken to address this exclusivity of ownership when the licences expire in 2012.

The NSW TAB has an exclusive investment licence to supply, finance and share the profits from gaming machines in hotels. The NCC found that because it both monitors the use of gaming machines across all venues and profits from the use and supply of gaming machines through its investment licence, the NSW TAB may have a conflict of objectives.

Given the existing industry structure in South Australia—with the IGC not owning gaming machines or sharing in the profits of the licensees—such conflict of interest is not evident in this State.

There is difficulty in making a meaningful comparison of monitoring fees in the various jurisdictions, given the variations in industry structure. The current monitoring provider in South Australia (the IGC), is jointly owned by the two representative bodies of the industry. As the IGC represents the interests of its members—the gaming machine licensees—the monitoring fees are set on a cost recovery basis, representing the lowest cost possible to the licensees.

The small size of the gaming market in South Australia also suggests there is limited opportunity or benefit in a "competitive model" of monitoring in South Australia.

The sole monitoring operator provides a single source of necessary information for the Liquor and Gambling Commissioner, ensuring probity within the gaming industry (a desirable social benefit) in the most efficient manner. This efficiency results in the lowest possible administration costs.

The judgement is that the benefits outweigh the costs and that retaining the exclusive monitoring licence in South Australia meets NCP requirements.

The alternative to the exclusive monitoring licence is to provide for an open number of licences where providers can meet the necessary probity and technical tests required. There are significant issues with this alternative approach.

- During 1999-2000, the IGC replaced the Central Monitoring System with the Advanced Gaming System at a cost of \$5.8 million. These significant infrastructure costs are to be recouped through the monitoring fees. Given this high level of fixed cost in monitoring activities any competition by other LMOs would reduce revenue to the IGC, requiring it to increase fees to gaming venues to maintain viability. Equally, other LMO's would need to charge higher fees to offset their own infrastructure costs.
- It may be argued that the size and the structure of the market in SA means that monitoring, regulation and probity checks can be carried out more efficiently on a single or limited number of entities. Given the relatively small size of the SA market (as well as the start-up costs involved in acquiring the necessary infrastructure), it is questionable whether other LMOs could set up, capture market share and maintain

profitability. Introduction of competition potentially could lead to a period of instability in the provision of monitoring services. Any instability would be detrimental to probity objectives.

- The Office of the Liquor and Gambling Commissioner is responsible for the regulatory functions for gaming machines. It is argued that by having a central source of all monitoring activities, the Government is able to achieve its objective of probity within the industry more efficiently than if it had to regulate through and gather information from several different LMOs.

There is a clear social benefit in eliminating criminal elements and ensuring probity within the gaming industry. It is considered that the probity objectives of the legislation can best be achieved by maintaining the exclusive monitoring licence arrangements.

There are not considered to be any viable alternatives to the current arrangement.

*Single Gaming Machine Supplier's and Service Licence – Issued to the State Supply Board (s14 and s26)*

The State Supply Board (SSB) holds both the Gaming Machine Supplier's Licence and Gaming Machine Service Licence. In the case of the Gaming Machine Supplier's Licence, SSB agents, approved by the Liquor and Gambling Commissioner, are authorised to purchase from a licensed gaming machine dealer and to sell or supply machines, prescribed gaming machine components and gaming equipment to licensees. All contracts for the acquisition and supply of machines must be approved by the SSB prior to machines being installed. The SSB may also appoint service agents to install, service and repair gaming machine components and gaming equipment on its behalf. These agents must be approved by the Liquor and Gambling Commissioner. The Commissioner cannot approve a person to act as an agent of the SSB if the person:

- a) is the holder of a gaming machine licence or gaming machine dealer's licence;  
or
- b) is associated with the holder of a gaming machine licence or gaming machine dealer's licence.

Currently the SSB contracts service agents WANG and AWA to service gaming machines. The SSB has also appointed the IGC as its service agent in respect of the central computer monitoring system. A condition of the approval is that the IGC does not perform any service work itself but has approved sub-contractors to carry out specific service tasks in respect of the monitoring system.

By having an exclusive supplier/service licence, the Government can readily ensure certain standards are met in the supply and service of gaming machines, thus ensuring probity within the gaming industry generally.

The SSB ensures that gaming machine operators (when purchasing and selling gaming machines) are treated equally and fairly under open and transparent processes. The SSB is also involved in liaising with the gaming machine manufacturers and service agents to ensure machines are installed as per approved

applications. The SSB therefore fulfils a role in instilling confidence in these processes to the community and gaming industry participants. As with the exclusive monitoring licence, it is argued that an exclusive supply/service licence ensures probity within the industry more readily than under a competitive environment.

In practical terms the SSB acts as an intermediary for the buy/sell contract between a gaming machine licence holder and a gaming machine dealer (manufacturer). A gaming machine licence holder seeking to purchase a gaming machine must make application to the SSB. The SSB charges an administration fee when a venue is selling a machine to a dealer, or to other venues as part of the sale of the venue itself. Similarly, the SSB receives a commission when a venue buys a machine from a dealer, as well as a commission from the total invoiced amounts from each of the service agents.

The SSB expenditure in 2000-01 for administering these arrangements amounted to \$367,000, including staffing costs. The SSB has also incurred costs in the implementation of IT packages, such as software for the purchase/sale, asset management and tracking of all machines, the introduction of electronic lodgement of gaming machine applications, and extension of existing accounts payable and receivable functions to encompass all gaming machine transactions.

The SSB sets its fee at 1% of all sales of new gaming machines and gaming machine components (with a set fee of \$100 on the sale of second-hand machines), and collects 2% commission from service agents for the installation, servicing and/or repair of gaming machines.

For the 2000-01 financial year, the SSB raised \$509,000 in revenue from commissions and application fees, therefore representing a cost to the gaming industry.

The Liquor and Gambling Commissioner stated that:

*“the SSB has little direct involvement in the activity carried out under the licence, and that the fees charged result in an additional cost to industry with little perceived benefit.”*

Both in NSW and the Northern Territory, gaming machine licensees are able to purchase direct from the manufacturer, and licensed service providers are able to service machines in their own right.

The Liquor and Gambling Commissioner believes that although the existing structure has worked well because of the ‘regulatory and administrative procedures in place’, this could be maintained under a more competitive environment. It appears that the State Supply Board acts more as an intermediary between buyers, sellers and service technicians, and as such has little direct involvement in the activities carried out under the licence at an additional cost to the industry.

In maintaining probity considerations, it may be argued that many of the functions of the SSB are already, or could be in the future, carried out by the Office of the Liquor and Gambling Commissioner. For instance:

- The SSB ensures that all applications for new machines and gaming components are approved by the Office of the Liquor and Gambling Commissioner;
- The gaming machine licence holder may purchase any machine or gaming component (through the SSB) approved by the Office of the Liquor and Gambling Commissioner; and
- Technicians and sub-contractors of service agents are subject to probity checks performed by the Office of the Liquor and Gambling Commissioner prior to their appointment by the SSB.

Provided probity standards are upheld through maintaining licensing of suppliers and service agents, it seems the functions of the SSB could be more efficiently implemented under a more competitive environment. This includes enabling the gaming machine licence holders to deal directly with gaming machine manufacturers and technicians.

The current role of the SSB is not considered compliant with national competition policy. It is considered that a more open and competitive structure should be developed in consultation with the Liquor and Gambling Commissioner to ensure the appropriate regulatory/probity controls are maintained. That is, that gaming machine dealings and service arrangements continue to occur between licensed and approved parties.

*Freeze on Gaming Machines Preventing New Licensees and Increases in Machine Numbers (s14A)*

Section 14A of the *Gaming Machines Act* provides that the Liquor and Gambling Commissioner cannot grant a gaming machine licence, or an increase in the number of gaming machines to be operated under a licence, if the application was made on or after 7 December 2000.

This provision was introduced in South Australia during 2000 and had an initial sunset date of 31 May 2001. The freeze was subsequently extended to 31 May 2003 by the passage of the *Statutes Amendment (Gambling Regulation) Act 2001*. This extension of the freeze on gaming machines coincided with the establishment of the Independent Gambling Authority which has increased functions and powers as compared to its predecessor – the Gaming Supervisory Authority. In particular, these increased powers provide for the development and promotion of strategies for reducing the incidence of problem gambling, and for undertaking or coordinating research into the social and economic effects of gambling.

As stated in Parliamentary debate on this provision, it is envisaged that the extension of the freeze on gaming machines to 31 May 2003 will enable the newly established Independent Gambling Authority to conduct research and advise the Parliament on the implications of the licensing freeze and alternative harm minimisation measures. It is this support of harm minimisation objectives which is the rationale for the freeze on gaming machine numbers.

This freeze clearly applies a restriction on competition by preventing new entrants, but at the current level of gaming machine penetration throughout the community is not considered to be having any effect on gambling opportunities or gambling

expenditure (by recreational or problem gamblers). As has been documented in Parliament, there was a significant surge in machine numbers just prior to the introduction of the cap, reflecting discussion of its imminent implementation, and this has ensured that the vast majority of venues who wish to operate machines have in fact got licences to do so. Any cost associated with the freeze would therefore be at marginal locations, possibly in developing areas (eg new land subdivisions).

Table 15.1 of the Productivity Commission (PC) report into Australia's Gambling Industries shows that over 75% of South Australians want a decrease in the number of gaming machines in this State. While the concern about the level of player loss in general, and problem gamblers in particular, overshadows any concern about machine numbers per se, there would appear to be a clear social preference for, at a minimum, the continuation of the current restrictions on gambling compared with removing the caps on machine numbers.

As noted in the Council's October 2000 issues paper, restrictions aimed at harm minimisation and consumer protection were identified as being acceptable rationales for restricting gambling activity. Given the widespread nature of the restriction however, the PC reported that caps on gaming machine numbers, including state-wide, regional or venue caps, were blunt instruments for reducing problem gambling and are "*not a preferred option for meeting NCP obligations.*" Nevertheless, the PC noted that "*while direct harm minimisation strategies, including locational controls, are the best strategy, in some circumstances there is a case for retaining quantity or venue restrictions if effective harm minimisation strategies are not adopted.*" The temporary freeze on machine numbers while the IGA undertakes research and considers harm minimisation alternatives is consistent with this finding.

The gaming machine freeze is not considered to provide any benefit in terms of reduced problem gambling and equally to have no cost through reduced access to gambling facilities. Given the expressed social preference for, at a minimum, the continuation of the current restrictions on gambling compared with removing the cap on machine numbers there are no grounds for this provision to be found inconsistent with national competition policy.

The alternative to these quantity restrictions is to have quantitatively unrestricted licensing of gaming machines in South Australia. As noted above, however, this is at odds with the expressed community preference for fewer gaming machines or at least no increase in machine numbers.

*Only Hotels and Clubs Eligible to hold a Gaming Machine Licence (s15)*

Section 15 of the *Gaming Machine Act* provides (in part) that:

*The following persons only are eligible to hold a gaming machine licence:*

- (a) the holder of a hotel licence (whether temporary or otherwise);*
- (b) the holder of a club licence, or two or more holders of separate club licences, jointly;*

- (c) *the holder of a special circumstances licence (whether temporary or otherwise) if –*
- (i) –
- *the special circumstances licence was granted on the surrender of a hotel licence or a club licence; and*
  - *the nature of the undertaking carried out under the licence is substantially similar to that of a licensed hotel or club; or*
- (ii) *the premises to which the special circumstances licence relates constitute –*
- *a major sporting venue; or*
  - *the headquarters in this State for any particular sporting code, and the nature of the undertaking carried out under the licence is substantially similar to that of a licensed club;*
- (d) *a person entitled to carry on business under such a licence pursuant to section 73 or 74 of the Liquor Licensing act 1997.*

This clearly restricts the type of venue where gaming machines are located, essentially to hotels and clubs. It is acknowledged that historically this ownership restriction was at least in part based on an intention to improve the financial viability and stability of the club and hotel industry, particularly following adverse impacts as a result of the introduction of the .05 alcohol limit for drivers.

One of the principal aims of the legislation is to restrict the playing of gaming machines to adults. This is substantially assisted by restricting machines to venues which are already adult orientated (licensed premises), with the necessary experience in dealing with issues of access to regulated activities. It also attempts to reflect the potential level of harm and social problems caused by gaming machines by placing them in an environment that can be tightly controlled and regulated.

Nevertheless, these restrictions exclude persons (and venues) which might otherwise be able to meet facilities and licensing requirements. If other venues/persons can meet facilities and licensing requirements (eg exclusion of minors, probity etc) there is no apparent reason for their current ineligibility for a gaming machine licence.

In addition to the general restriction on non (liquor) licensed venues from access to gaming machines it can be argued that the environment of alcohol consumption may not be conducive to responsible decision making in relation to gambling. Where the decision to play the machines, as well as size of bets and decision to stop playing, is possibly made under the influence of alcohol this is likely to have adverse impacts such as increased player loss, particularly for those who are already problem gamblers. The PC acknowledged that *“it is not clear that linking alcohol and gambling licensing is good policy – a broader, more vigorous, venue-based risk assessment approach may be preferable.”*

The potential for this incidence of player loss and problem gambling to be exacerbated by the type of venue (in which alcohol is consumed) may provide an argument for the introduction of gaming activities in ‘other venues’.

Section 15(5) of the *Gaming Machines Act* also provides that in determining an application for a gaming licence the Commissioner will not have regard to the proximity

or number of other licensed premises. Hotel licences (but not club and special circumstances licences) are, however, already restricted under the *Liquor Licensing Act* on the basis of need in a given area and while gaming machine licences remain restricted to (liquor) licensed venues, notwithstanding this provision of the *Gaming Machines Act*, a de facto competitive restriction probably exists. The broadening of the right to offer gaming machines to other venues would overcome this defacto restriction.

It is not clear, however, that permitting venues other than hotels and clubs to become gaming machine venues would be beneficial overall since the prevalence of gaming venues would be expanded in a way inconsistent with community expectations and presumptions.

The PC (and NCC) noted that removing differences in treatment between hotels and clubs (in those States where there are such differences) would impact on the total number of gaming machines. The NCC commented that this:

*“would greatly increase the number of gaming machines and their accessibility. It is likely that removing a bias towards clubs as preferred venues would result not in a redistribution of the current machine population, but an increase in total machine numbers as venues other than clubs increased their machine numbers. Thus the impact of increasing the number of machines in any particular venue type needs to be balanced against the effect of increasing machine numbers in total.”*

A similar argument could be applied in South Australia in relation to opening up gaming machine licences to other venue types.

Consistent with this, any action to broaden the range of potential gaming venues beyond hotels and clubs associated with an overall increase in machine numbers needs to be considered in the context of the current licensing freeze (discussed above). This matter could however be addressed sooner if gaming machine transferability within the current freeze were permitted – see below.

Venues other than hotels and clubs that wish to operate gaming machines would need to meet the same strict probity and licensing requirements that apply to current venues. That includes restricting gaming to adults in tightly monitored premises, and other venue restrictions addressing harm minimisation and consumer protection matters.

Restrictions of this type already apply to a range of other businesses (eg newsagents are not permitted to sell lottery tickets to persons 16 years or under) and while the requirements on a gaming machine venue cover a broader range of matters there is no seeming reason why such venues could not be established.

On the other hand gaming machine tax settings permit the community to share adequately in potential economic rents associated with supply restrictions available to hotel and club venues. This is an alternative to eliminating potential economic rents by increasing the prevalence of gaming venues ie by allowing a large number of non-hotel/club venues, thereby increasing the aggregate cost base of the industry.

On balance, the restriction on gaming machine licences to hotels and clubs is justified based on harm minimisation (prevalence of gaming venues), recognising that potential

economic rents for licensees are able to be avoided through tax settings for the benefit of the South Australian Community.

*Gaming Area Cannot Predominate over the Normal Undertaking of the Premises* (s15)

Section 15 of the *Gaming Machines Act* provides in part that:

*(4) A gaming machine licence will not be granted unless the applicant for the licence satisfies the Commissioner, by such evidence as the Commissioner may require-*

.....

*(e) that the size of the proposed gaming operations on the premises would not be such that they would predominate over the undertaking ordinarily carried out on the premises;*

This licensing provision acts to ensure that gaming in hotels and clubs does not predominate over the primary function of the venue. That is, that venues primarily remain hotels and clubs. This potentially restricts the flexibility and size of venues that can be licensed to operate gaming machines beyond the need for consistency with the requirement that venues be hotels and clubs. This provision may go too far in potentially inhibiting the obtaining of gaming licences by smaller size hotels and clubs.

There does not appear to be any probity or harm minimisation rationale in requiring gaming activities to only form a minor part of licensed venues. Equally, it is difficult to conceive that there is a net benefit in ensuring gaming is controlled within a broader venue. Indeed it is arguable that stricter regulatory and harm minimisation controls could be in place where the primary focus of the venue is on the gaming area. This may both, ensure that the licensee is not distracted by other activity in the venue, and increase the financial risk of non-compliance with regulatory requirements given that disciplinary action for breach of conditions of a gaming licence would put the entire business at risk.

It is acknowledged that the removal of this provision may have the effect of creating venues that have a greater focus on gaming. While conceptually different to the current gaming presence in the State, this would not impact on the gaming product per se as the current strict regulatory and harm minimisation standards would continue to equally apply to all venues. Those attending more gaming oriented venues would do so for the purpose of gambling which may even be considered preferable to those who attend other gaming venues and subsequently get attracted into the gaming area.

On the other hand, gaming is typically enjoyed as part of a broader entertainment experience. In an environment with a relatively low cap on the number of gaming machines per venue, other facilities (eg dining/bar) would normally be expected to be significant. The requirement that gaming must not predominate has not posed a significant barrier to entry—there are 600 gaming machine venues, and applicants have been able to accommodate this requirement.

It is considered that the requirement that gaming operations should not predominate over the other activities of the licensed premises is not consistent with national competition policy, but this is not considered a significant restriction..

*Gaming Venues not Permitted in Shopping Centres (s15A)*

Section 15A of the Act provides that gaming venues must not be located under the same roof as shops or anywhere within the boundaries of a shopping complex. This provision was inserted in 1997 and did not apply retrospectively.

The intent of this provision is to reduce the risk of gamblers diverting spending on essential household purchases such as food to gambling by banning the co-location of gaming venues within shopping complexes or under the “same roof” (ie harm minimisation rationale).

The effectiveness of this approach is doubtful and if retained may warrant some modification to ensure that the ban covers the broader concept of proximity to supermarkets/shopping centres including strip shopping rather than under the “same roof” as a shop. This, of course, could provide some difficulties because of the tendency for many hotels to be located near shopping activity including strip shopping. Implementation experience also suggests a clearer definition of shopping centre may be beneficial.

Clearly this restriction narrows the options for location of gaming venues.

On balance, while the harm minimisation benefits of restricting gaming venues in shopping areas are accepted, it is not considered that this legislative restriction appropriately achieves the intended objective. An alternative arrangement to achieve this restriction would be to enable the Liquor and Gambling Commissioner to apply conditions on gaming machine licences to restrict access and signage of gaming venues from near supermarkets and other outlets selling staple food or household items.

The harm minimisation goal of removing access to gaming machines from purchases of essential household goods is accepted and s15A is consistent with Competition Policy requirements, but the objective can be better achieved by providing for the Liquor and Gambling Commissioner to place conditions on relevant licences to ensure that gaming venue access and signage is not located in a way which provides easy access from supermarkets and other similar shops.

*Cap of 40 Machines per Venue (s16)*

Section 16 of the *Gaming Machines Act* provides that a gaming licence cannot authorise possession of more than 40 gaming machines. This 40 machine limit applies equally to all hotels and clubs holding a gaming machine licence.

The 40 machine venue cap is aimed at avoiding the creation of ‘mini casinos’ and is consistent with Parliament’s intention that there will be an exclusive single casino licence, as well as ensuring the profits of gaming activities are spread more equally among hotels and clubs. A significant increase in the venue cap would likely lead to a number of very large hotels that would dominate the gaming machine market at the expense of clubs and smaller hotels. This would likely have serious implications for the viability of many smaller venues.

The restriction to 40 machines (or a number of that order) also provides a harm minimisation benefit through the ability for licensees and gaming employees to know and

observe their patrons and be better placed to identify problem gamblers and offer assistance. Large venues would provide greater opportunities for gamblers to be anonymous, play for longer periods and lose greater amounts of money. The desire for anonymity is considered to be a particular characteristic of problem gambling.

The quantity restriction is further supported under the commitment contained in the Casino Approved Licensing Agreement where the Government is liable to pay compensation to the Casino licensee if a person (other than the licensee) is authorised to operate more than 60 gaming machines in respect of the same premises within 150 kilometres of the Casino prior to 1 July 2015. The amount of compensation is equal to the diminution in value of the Casino (including the Casino licence).

It is noted that other jurisdictions have significantly higher limits on the number of gaming machines permitted in hotels and clubs.

The PC commented that, *“there is a case for maintaining quantity restrictions ... where existing venue caps are set at relatively low levels (as in Tasmania and South Australia)”* and they expressed the view that *“any moves to lift the restrictions in place would need to proceed gradually to enable the impacts to be gauged”* because of uncertainties of the impact of caps on problem gambling as well as community attitudes.

Similarly, the NCC noted in its issues paper that due to past decisions, *“each jurisdiction faces a unique set of circumstances. As a result, there are likely to be differences in the types of restrictions which deliver net public benefits.”*

The community attitudes of South Australians against further expansions of gambling have been noted above.

A relatively low venue cap on machines is considered to provide for a reasonable spread of gaming revenues across the community and to enable improved player identification with potential harm minimisation benefits. The cost associated with the compensation provisions in respect of the Casino are also prohibitive for any significant increase in the venue cap.

The 40 machine venue limit is not inconsistent with national competition policy.

#### *Prevention of Transfer/Removal of Gaming Machines Separate to Gaming Licence (s28)*

Section 28 of the *Gaming Machines Act* provides that a gaming machine licence can be transferred in association with the transfer of a hotel licence or special circumstances liquor licence (ie upon sale) but that it cannot be transferred in its own right. Liquor and gaming machine licences can therefore be transferred between persons or entities in respect of the same licensed premises.

Section 60 of the Liquor Licensing Act 1997 provides for the removal of a licence from one premises to another but there is no corresponding provision in the Gaming Machines Act 1992. Section 14(2)(b) of that Act simply provides as an exemption under the freeze provision that a new gaming machine licence may be granted to the holder of a gaming machine licence who surrenders that licence so that a new one may be granted to the applicant following removal of his or her liquor licence to the new premises.

The net effect of these provisions is that the holder of a gaming machine licence in respect of one licensed premises cannot sell that licence either in full or part (the machine entitlement) to either the holder of a gaming machine licence in respect of other premises or to a person holding an appropriate liquor licence who does not have a gaming machine licence.

The prevention on transferring gaming machines between venues had no effect in an environment where gaming machine licences were freely available on approval of the Liquor and Gambling Commissioner. The introduction of the freeze on approvals of gaming machine licences and on increasing the number of gaming machines in venues has, however, meant that the non-transferability of machines prevents the redistribution of gaming machines within the current maximum number. This restricts access to the market and competition between venues. It also potentially results in a sub-optimal distribution of the now scarce resource.

It has been argued that the prevention on transferability of gaming machines ensures appropriate levels of regulatory standards, since the Liquor and Gambling Commissioner is the sole body for licensing new venues and giving approvals for the location of machines. This regulatory objective need not be sacrificed in a scheme that enables the separate transfer of the right to operate gaming machines (permits) as long as all transfers of machines occur with the approval of the Liquor and Gambling Commissioner.

In fact, the most appropriate method of providing for the transfer of permits is likely to be through the Office of the Liquor and Gambling Commissioner. That is, machines can be returned to the Commissioner for him to auction (or some alternate means of allocation) to prospective venues.

A specific proposal for re-distribution of gaming machines requires a number of issues to be resolved including the sharing of the value of the permits between the government and the relinquishing venue, equitable access to transferred machines for all venues and whether location restrictions are required for social reasons. While these issues must be resolved in the development of an appropriate re-distribution model, they are not considered prohibitive.

It is considered that, if a cap on the total number of gaming machines remains in place, a scheme should be introduced enabling the transfer of the right to operate gaming machines (permits) between venues (without breaching the gaming machines per venue limit) with all transfers to occur through the Office of the Liquor and Gambling Commissioner.

#### **5.4 Conclusions**

Consistent with all other forms of gambling regulation in South Australia the underlying basis for the *Gaming Machines Act 1992* is tight regulatory, probity and harm minimisation controls on this explicitly legalised form of gambling.

The review concluded that there are a range of minor restrictions under the Act which are justified on probity and harm minimisation grounds as they ensure integrity and consumer protection. It also found that consistent with the principle of informed consent there is potential to improve the amount of information provided to gamblers on the 'price' of gambling. Further work would be required on the exact content of this information but it

could include average return to player, chances of winning specified levels of prizes and contextual information reminding gamblers that the outcome of each spin is random and not related to the previous activity of the machine.

A number of restrictions were subject to analysis and in relation to these provisions the review finds in respect of compliance with national competition policy:

1. The current single gaming machine monitoring licence held by the Independent Gaming Corporation is not inconsistent with competition policy;
2. The role of the State Supply Board as single gaming machine supplier and service licensee should be removed and a more open and competitive structure be developed in consultation with the Liquor and Gambling Commissioner to ensure the appropriate regulatory/probity controls are maintained;
3. The temporary freeze on granting gaming machine licences is not inconsistent with competition policy;
4. The restriction on availability of gaming machine licences to hotels and clubs only can be justified with respect to competition policy.
5. The licensing requirement that gaming operations should not predominate over the other activities of the licensed premises is not justified and should be repealed;
6. The legislative restriction on gaming machines in shopping centres is not inconsistent with competition policy, but the harm minimisation objective of this restriction can be more appropriately achieved through provisions for the Liquor and Gambling Commissioner to place conditions on relevant licences to ensure that gaming venue access and signage is not located in a way which provides easy access from supermarkets and other similar retail outlets;
7. The current 40 machine maximum cap on gaming venues is not inconsistent with competition policy; and
8. The restriction on transferring the right to operate machines between gaming venues is not justified in respect of competition policy and if a cap on the total number of gaming machines remains in place, a scheme should be introduced enabling the transfer of the right to operate gaming machines (permits) between venues (without breaching the gaming machines per venue limit) - with all transfers to occur through the Office of the Liquor and Gambling Commissioner.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<b>Gaming Machines Act 1992</b>		
1-4	Establishment of the Act.	Not a restriction.
5	Commissioner responsible to Authority for scrutiny of operations under all licences.	Not a restriction. Operational issue.
6-9	Powers and procedures for proceedings before the Commissioner under this Act.	Not a restriction.
10	Provides for appointment of inspectors to ensure proper administration of the Act.	Not a restriction.
11	Enables to Independent Gambling Authority to give directions to licensees.	Not a restriction. Operational issue.
12-13	Repealed.	
14	Establishes classes of licence under the Act.  Gaming Machine Licence Gaming Machine Dealer's Licence Gaming Machine Supplier's Licence Gaming Machine Monitor Licence Gaming Machine Service Licence	Section provides that there will only be one gaming machine supplier's licence, one gaming machine monitor licence and one gaming machine service licence.
14A	Freeze on gaming machines. Licence cannot be granted if application made on or after 7 Dec 2000 other than for a number of technical reasons. Venues cannot be granted an increase in machine numbers. This section expires 31 May 2003.	Prohibits new entrants to gambling market and growth within current venues.
15	Only persons who hold a hotel, club, specified special circumstances licence or licence pursuant to s73 or s74 of the Liquor Licensing Act are eligible for a gaming machine licence.  A licence will only be granted where the applicant satisfies the Commissioner that the area to be used for gambling is suitable; has adequate security; would not disturb those who reside, work or worship in the vicinity; would not predominate over the undertaking ordinarily carried out on the premises; would not detract from the premises; and would not attract minors.  The Commissioner must not have regard to the proximity or number of other gaming venues in the area.	Restricts the type of venue that can be licensed to operate gaming machines (ie essentially hotels and clubs only). Various standard probity and regulatory approvals are required. That the gaming area cannot predominate over the undertaking ordinarily undertaken in the premises restricts the size and type of that can be licensed.
15A	Gaming venues are not permitted to be located under the same roof as shops or within shopping centres.	Restricts location of venue.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
16	Licence cannot authorise possession of more than 40 gaming machines	Restricts size of venue.
17	Enables more than one licence to be held for a premises subject to more than one liquor licence.	Not a restriction.
18	Application must be in an approved form.	Not a restriction. Operational issue.
19	Applicant must satisfy the Commissioner that they are a fit and proper person.	Restricts type of applicant.
20	Repealed.	
21	Applicant for gaming machine monitor licence must have technical and management expertise.	Restricts type of applicant.
22	Holder of gaming machine monitor licence cannot hold other licences.	Restricts cross-ownership of licences.
23	Minors cannot hold a licence or occupy a position of authority.	Age restriction.
24	Commissioner has discretion to grant or refuse applications.	Not a restriction. Operational issue.
25	Independent Gaming Corporation to be granted the gaming machine monitor licence.	Restricts potential to hold licence.
26	State supply board to hold supplier's and service licence.	Restricts potential to hold licence.
27	Applies conditions to holding licences. Includes requirement to not operate Good Friday and Christmas Day and to close down for at least 6 hours in each 24 hour period.	Timing restrictions prevent greater operating periods.
28	Gaming licence only transferable when hotel/club licence is transferred.	Prevents transfer of right to operate machines between venues.
29-31	Applications for licensing require advertising and are subject to objections.	Not a restriction. Operational issue.
32-35	Licences can be suspended, revoked or surrendered.	Not a restriction. Operational issue.
36	Commissioner can take disciplinary action against licensees.	Not a restriction. Operational issue.
37-39	Commissioner may approve gaming managers and employees, persons in authority and agents of the State Supply Board.	Restricts persons who can undertake these roles.
40-41	Commissioner may approve gaming machines, games and gaming tokens.	Not a restriction. Operational issue.
42-44	Commissioner can grant, refuse or revoke approvals.	Not a restriction. Operational issue.
44A	Holder of the gaming machine dealer licence cannot be linked with other licensees.	Restricts cross-ownership of licences.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
45-49	Provisions creating an offence for various breaches of conditions and licensing.	Not a restriction. Operational issue.
50	Approved gaming machine managers and employees must carry identification.	Not a restriction. Operational issue.
51	Licensed persons may not operate a gaming machine in specified circumstances.	Restricts ability to play machines.
51A-51B	EFTPOS or ATM not to be provided within gaming area and cash withdrawal limits restricted in gaming venues.	Restricts access to cash facilities.
52	Lending or extension of credit prohibited.	Restricts access to cash facilities.
53	Prohibition on linked jackpots.	Restricts gaming options available to players.
53A	Prohibition on machines being operated other than by a coin (ie note acceptors) and on auto-play facilities.	Restricts gaming options available to players.
54	Gaming Machine licence must be displayed in venue.	Not a restriction. Operational issue.
55-58	Prevention of minors in gaming areas.	Restricts access by minors.
59-61	Barring provisions.	Restricts access by barred persons.
62-67	Prevention of cheating and interfering with machines.	Restricts actions of gamblers.
68	Prohibition of partnership or distribution of profits with an unlicensed person.	Restricts contractual arrangements of licensee.
69-70	Commissioner's decisions can be appealed to the court or Authority.	Not a restriction. Operational issue.
71	Authorised officer has power to enter and inspect premises.	Not a restriction. Operational issue.
72-73C	Taxation and related revenue provisions.	Not a restriction. Operational issue.
74	Authority and Commissioner must produce annual reports.	Not a restriction. Operational issue.
74A-74B	Requirement to review responsible gambling and advertising codes of practice.	Not a restriction. Operational issue.
75-86	Range of administrative and offence provisions.	Not a restriction. Operational issue.
87	Power for the Governor to make regulations.	Not a restriction. Operational issue.
Schedule 1	Conditions of a gaming machine licence – essentially that the licensee complies with approvals of the Commissioner and Authority (including codes of practice on advertising and responsible gambling).	Codes of Practice restrict advertising and requires signage and staff training.
Schedule 2	Conditions of the gaming machine monitoring licence.	Not a restriction. Operational issue.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<b><i>Gaming Machines Regulations 1993</i></b>		
1-3	Establishment of the Regulations	Not a restriction.
4	Details of prescribed gaming machine components.	Not a restriction. Operational issue.
5	Described duties for gaming machine employees.	Not a restriction. Operational issue.
6	Notification of cessation of employment or subcontracting arrangement.	Not a restriction. Operational issue.
7	Duty to wear identification cards.	Not a restriction. Operational issue.
8	Service agents not to operate gaming machines.	Restricts specified persons from gambling.
9	Certain tasks must not be delegated by licensee or approved person.	Restricts persons undertaking certain functions.
10	Minister may grant exemptions.	Not a restriction. Operational issue.
11	Exemption of certain private owners of gaming machines – mainly transitional regulation.	Not a restriction. Operational issue.
12-15	Applications and notices must be in approved form.	Not a restriction. Operational issue.
16	Fees payable.	Not a restriction. Operational issue.
17	Indemnity against costs must be lodged with certain applications.	Not a restriction. Operational issue.
Schedules	Application and notice forms and fees.	Not a restriction. Operational issue.

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## CHAPTER 6 – CASINO ACT 1997

### 6.1 Introduction

The Adelaide Casino was opened in December 1985 under the *Casino Act 1983*. This Act was subsequently replaced by the *Casino Act 1997* in preparation for the subsequent sale of the Casino. The Act enables the operation of the Casino and participation in authorised games conducted at the Casino that would otherwise be unlawful under the *Lottery and Gaming Act*. It establishes the framework for the licensing, supervision and control of the Adelaide Casino. In addition, the Act provides that there is not to be more than one casino licence in force at the same time.

The Casino licence relates to the premises in the Adelaide Railway Station on North Terrace and may be changed to a new site following inquiry by the Independent Gambling Authority (IGA).

Operations under the Casino licence are subject to the conditions set out under the Act and in the approved licensing agreement with the Minister. Conditions cover a range of matters including the ownership and transfer of the licence, and details of operating requirements such as management systems, approval of management, staff and equipment etc.

The Act also provides for a casino duty agreement. Agreements must be tabled in Parliament.

The Act specifies a range of harm minimisation measures such as prohibitions on gambling on credit; cash facilities withdrawal limit; exclusion of children; and barring problem gamblers. The Act also provides for the making of regulations. There are extensive probity requirements under the Act.

The Liquor and Gambling Commissioner is responsible to the Independent Gambling Authority for scrutiny of the Casino. The Commissioner approves applications for authorisation of a game to be played in the casino. In this regard, the Commissioner must have regard to any guidelines issued by the IGA for the purpose of assessing whether a game is likely to lead to an exacerbation of problem gambling, and if so, must refuse to authorise the game.

### 6.2 Objectives

The Act specifies that its object in regulating the Casino is to ensure-

- (a) that the Adelaide Casino is properly managed and operated; and
- (b) that those involved in the control, management and operation of the Adelaide Casino are suitable persons to exercise their respective functions and responsibilities; and
- (c) that gambling in the Adelaide Casino is conducted responsibly, fairly and honestly, with due regard to minimising the harm caused by gambling; and
- (d) that the interest of the State in the taxation of gambling revenue arising from the operation of the Adelaide Casino is properly protected.

### **6.3 Nature and Effect of Restrictions**

Appendix 1 of this chapter provides an analysis of the sections in the Act and identifies any potential restrictions.

As discussed in the chapter on the *Gaming Machines Act* the Productivity Commission and the National Competition Council noted that restrictions for probity, harm minimisation and consumer protection are considered acceptable rationales for restrictive provisions. As with the *Gaming Machines Act* the *Casino Act* includes a range of restrictions—the rationale for which is self-evident. The *Casino Act* maintains strong focus on integrity and responsible gambling, which underlies all South Australian gambling legislation.

As noted elsewhere in this report in relation to other forms of gambling the review concurs with the view of the Productivity Commission of the benefit of ‘informed consent’ for gamblers. This principle should equally apply to gaming activities at the Casino. This would involve the provision of greater information to gamblers on the ‘price’ of gambling, including the average return to player, chances of winning specified prizes and the random nature of outcomes.

It is acknowledged that the provision of information of this type is typically more complex for table games which are by their nature games combined of chance and skill. While this may be true, it does not undermine the objective of informed consent and information should be provided on table games to the fullest extent practicable.

The 1998 SA annual report to the NCC reported on the Casino exclusive licence and the NCC did not recommend any penalty.

The only issue identified in the *Casino Act* where further analysis is required of the potential restrictive nature of a provision relates to the single exclusive casino licence. This matter was specifically discussed earlier in the report.

### **6.4 Conclusion**

The review has not identified any matters in this Act that do not comply with national competition policy.

Consistent with statements elsewhere in this report informed consent is considered to be an appropriate objective and proposals to provide additional information to gamblers on the ‘price’ of gambling and the chances of winning is supported.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<b>Casino Act 1997</b>		
1-4	Establishment of the Act.	Not a restriction.
5	Grant of licence.	Not a restriction. Operational issue.
6	Casino premises must be approved and subject to public inquiry if different from current location.	Restricts location of casino.
7	Restriction to one casino licence.	Restricts number of casinos.
8	Provides that casino does not breach <i>Lottery and Gaming Act</i> .	Not a restriction. Operational issue.
9-10	Term and conditions of licence as fixed by this Act or the licensing agreement.	Not a restriction. Operational issue.
11-14A	Approvals required for transactions effecting control and rights over licence.	Restricts transactions of casino licensee.
15	The licence can be surrendered.	Not a restriction. Operational issue.
16	Establishes approved licensing agreement and matters that are to be dealt with in the agreement.	Restricts operations of licensee and provides exclusivity.
17	Establishes casino duty agreement and matters that are to be dealt with in the agreement.	Not a restriction. Operational issue.
18	ALA and DA must be tabled in Parliament.	Not a restriction. Operational issue.
19-23	Applicants for grant of Casino licence meet suitability tests as assessed by the Authority.	Restricts type of applicant.
24	Governor and applicant to be notified of results of application.	Not a restriction. Operational issue.
25	Costs of investigation of applicant to be met by applicant.	Not a restriction. Operational issue.
26	Governor not bound to act in accordance with recommendation of Authority.	Not a restriction. Operational issue.
27	Opening hours to be fixed as condition of licence. Casino not permitted to open Good Friday or Christmas Day.	Some restriction on flexibility of operating times.
28-33	Management and staff must be approved.	Restricts persons from working at casino.
34	Staff must wear identification cards.	Not a restriction. Operational issue.
35	Staff must not gamble at casino.	Restricts actions of staff.
36	Staff must not accept gratuities.	Restricts actions of staff.
37	Staff exempt from Security and Investigation Agents Act.	Not a restriction. Operational issue.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
37A	Commissioner must refuse to authorise a game to be played in the casino if he is of the opinion that it is likely to lead to an exacerbation of problem gambling. Authority to provide guidelines for the purpose of this assessment.	Restricts games the casino can offer.
37B	Minimum return to players on gaming machines.	Restricts games the Casino can offer.
38	Systems and procedures for conducting games, surveillance and security, internal management, dealing with money and other matters required by the Authority must be approved.	Restricts actions of licensee.
39	Licensee must comply with directions of Commissioner with regard to movement of money.	Restricts actions of licensee.
40	Gambling and surveillance equipment must be approved.	Restricts actions of licensee.
41	Offence for interfering with approved system or equipment.	Not a restriction. Operational issue.
41A-41D	Codes of practice on advertising and responsible gambling.	Restricts advertising and other actions of licensee.
42-42A	Gambling on credit prohibited and limits on cash withdrawals in venue.	Restricts access to cash facilities.
42B	Prohibition on use of gaming machines other than by coin and use of auto-play facilities.	Restricts gaming options available to players.
43	Minors prohibited from casino.	Restricts access by minors.
44-45	Permits barring of persons by licensee or Commissioner.	Restricts access by barred persons.
46	Provides for intoxicated persons to be removed from the casino.	Restricts access by intoxicated persons.
47	Authority can give binding directions to licensee.	Restricts actions of licensee.
47A-47B	Requires Authority and Commissioner to consult with licensee prior to giving directions or approvals.	Not a restriction. Operational issue.
48-50	Licensee must have accounts audited and provide a copy of report to the Authority.	Not a restriction. Operational issue.
51-52	Licensee must pay casino duty.	Not a restriction. Operational issue.
53	Commissioner responsible to Authority for constant scrutiny of operations of the casino.	Not a restriction. Operational issue.
54	Licensee must provide requested information to Authority and Commissioner.	Not a restriction. Operational issue.
55	Powers of authorised officers to inspect relevant matters.	Not a restriction. Operational issue.

*Review of Gambling Legislation Under NCP*

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<i>Section</i>	<i>Description</i>	<i>Restriction</i>
56-64A	Power to deal with Statutory default by licensee.	Not a restriction. Operational issue.
65-67	Provisions for review and appeal of decisions.	Not a restriction. Operational issue.
68	Governor, Authority and Commissioner not bound to give reasons for decisions.	Not a restriction. Operational issue.
69	Provides for confidentiality of information provided by the Commissioner of Police.	Not a restriction. Operational issue.
70	Prohibition of gambling by the Commissioner and authorised officers.	Restricts specified persons from gambling.
71	Authority and Commissioner must produce annual reports.	Not a restriction. Operational issue.
72	Governor may make regulations.	Not a restriction.
Schedule	Transitional provisions.	Not a restriction.

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## CHAPTER 7 – AUTHORISED BETTING OPERATIONS ACT 2000

### 7.1 Introduction

This Chapter examines the *Authorised Betting Operations Act 2000* (Betting Act) with a view to identifying and analysing restrictions on competition contained in that Act.

The substantive parts of the *Authorised Betting Operations Act 2000* commenced operation on 14 December 2001 and replaced the provisions of the *Racing Act 1976* which was repealed on that day. The drafting of a revised Act reflected the proposed sale of the TAB and the requirement to adopt a licensing and regulatory structure suitable for private ownership of the TAB.

The *Racing Act 1976* had been subject to a national competition policy review with the report provided to the Government in March 2000. That report was not progressed as a result of the subsequent repeal of the Act.

In general terms, the Betting Act provides a framework for the licensing and regulation of totalisator and fixed odds betting on horse, harness and greyhound racing and other sports and approved contingencies within South Australia.

It includes provisions dealing with the following:

- the issue by the Governor of a major betting operations licence authorising the licensee to conduct off-course totalisator betting on horse, harness and greyhound races and other approved contingencies;
- the issue by the Independent Gambling Authority (Authority) of on-course totalisator licences, bookmaker's licences, bookmaker's clerk's licences and betting shop licences; and
- the regulation and supervision of the betting operations of licensees and enforcement of the Betting Act by the Authority and the Liquor and Gambling Commissioner (Commissioner).

Pursuant to the Act the major betting operations licence was first granted to the government owned entity TABCO(A) without need for application. The licence has subsequently been sold to UNiTAB (a wholly owned subsidiary of TAB Queensland). Operations of the major betting operations licensee are subject to the conditions set out in the Act and the Approved Licensing Agreement with the Minister. Conditions include the ownership and transfer of the licence and details of approval and operating requirements.

The Act also provides for the major betting operations licensee to have a duty agreement and a racing distribution agreement.

On-course totalisator licences can be issued to authorised racing clubs to conduct on-course totalisator betting in conjunction with a race meeting and at other approved times. Bookmaker licences authorise persons to conduct fixed-odds betting. Bookmakers must obtain a permit to accept bets at a location. A bookmaker clerk also requires a licence. Duty for on-course totalisators and bookmakers are established in the regulations.

All of the licensed gambling providers under the Act are subject to a range of harm minimisation provisions including restrictions on cash facilities, prohibition on betting by minors and restrictions in advertising.

The Liquor and Gambling Commissioner is responsible to the IGA to ensure the operations of each licensed business are subject to constant scrutiny.

## **7.2 Objectives**

The Betting Act does not contain an objects clause.

The second reading speech accompanying the introduction of this Bill into Parliament outlines the purpose and intent of the legislation. In that speech the Minister emphasised the strong probity protection aspects of the legislation:

*“The Act provides for a comprehensive and consistent new regulatory regime for betting operations conducted by the SA TAB, racing clubs and bookmakers in place of the existing provisions of the Racing Act.”*

and

*“The SA TAB will be subject to a comprehensive probity, regulatory, licensing and compliance regime overseen by the Authority and the Commissioner.”*

The Minister also focussed on the social responsibilities in the Act and the new requirement to adopt advertising and responsible gambling codes of practice.

In summary the Minister concluded that:

*“The Bill establishes a comprehensive yet balanced licensing and regulatory framework for all betting in this State. The Bill should give all South Australians full confidence that a privately owned SA TAB will operate to the highest standards of probity and that fairness to customers, and other matters of public interest have been adequately addressed.”*

## **7.3 Nature and effect of restrictions**

Appendix 1 of this chapter provides an assessment of the potential restrictive nature of the provisions of this Act.

As with other gambling Acts, the *Authorised Betting Operations Act* contains a range of restrictive measures which have self-evident probity and harm minimisation rationales. These will not be discussed further in this report.

Other chapters have also supported the role of informed consent for gamblers. In that context the provisions in this Act for advertising and responsible gambling codes of practice as well as the requirement to provide player return information on betting tickets are noted. While these provisions are yet to be commenced they provide an excellent opportunity to ensure gamblers are well informed about the gambling product they are purchasing.

The Act provides that there will be a single major betting operations licence issued (ie one TAB). This precludes others from providing off-course totalisator betting. The restriction resulting from this exclusivity has been specifically addressed earlier in the report.

A range of other provisions identified in the review of this Act require further assessment. These provisions are identified in Table 1.

**Table 1 – Sections of the Act Potentially Restricting Competition**

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
8	The holder of the major betting operations licence must be a body corporate.	Restricts entry by limiting type of legal entity that may hold licence.
9	Major betting licensee may conduct off course totalisator and other forms of betting on approved contingencies (other than fixed odds betting on races).	Prevents licensee from conducting fixed odds betting on racing.
13	Licensee must enter into a racing distribution agreement with the racing industry about terms and conditions on which the licensee may conduct betting operations on races held by licensed racing clubs. Provides for entering into the agreement to be exempt from TPA restrictions.	Restricts licensee by requiring agreement with racing industry to be in force at all times.
34(1)	Authority may grant licences for: - On-course totalisator betting; - Bookmaking; - Betting clerk; and - Betting shop licence.	Restricts betting shops to City of Pt Pirie.
34(2)	Bookmaker and clerk licence must not be granted to a body corporate.	Restricts business structure of bookmakers.
34(3)	Minister may give directions regarding times for on-course totalisator betting (other than in conjunction with a race meeting).	Restricts operations of on-course totalisator licences.
52	Restricts betting shop licensee from carrying on business as a bookmaker or from opening the betting shop on a day when races are held within 15 kms.	Restricts actions of licensee.
54	Licensed bookmakers must hold permits to accept bets.	Restricts actions and locations of bookmakers.
56	Bookmaker permits can provide for betting by telephone or other electronic means.	May restrict actions of bookmakers.
61	Persons are prohibited from communicating information as to the probable result of a race or approved contingency or on the betting with bookmakers.	Restricts actions of persons.

The benefits and costs of each of these restrictions are considered below with discussion on alternative approaches, where applicable.

*Major Betting Operations Licensee – Body Corporate  
(Section 8)*

Section 8 of the Act provides with respect to the major betting operations licence that:

*(8) The holder of the licence must be a body corporate.*

This provision has the effect of restricting natural persons from being granted the major betting operations licence. The probity rationale for this is relatively obvious in that the restriction ensures a greater degree of control of actions and processes of the licensee. A body corporate is subject to business licensing and related regulatory requirements.

With reference to the size and scope of operations of the major betting operations licensee it is not anticipated that a licensee would wish to adopt any other form of structure. As a result the restriction to body corporate is not expected to result in any economic cost.

With probity benefits and no offsetting cost this provision is considered consistent with national competition policy.

While the body corporate nature of the licensed entity would not be expected to be different if this provision were removed this alternative would lessen the probity structure and as such is not considered a viable alternative arrangement.

*Scope of Major Betting Operations Licence activities  
(Section 9)*

Pursuant to section 9 of the Act:

*(9) The licence may authorise the licensee –*

*(d) to conduct other forms of betting on approved contingencies (other than fixed odds betting on races within Australia on which licensed bookmakers are authorised to conduct betting),*

*in accordance with this Act.*

This provision prevents the major betting operations licensee from offering fixed odds betting on races within Australia in competition with bookmakers. This protects the historical domain of bookmakers. The rationale for providing this on-going restriction of competition is unclear.

TABs in other jurisdictions provide fixed odds betting on races and bookmakers continue to operate.

The introduction of the major betting operations licensee into the bookmaking field would provide increased competition in the market for punters. It would also provide an additional price monitor for bookmakers and another potential avenue for the placement of bets.

The major betting operations licensee already conducts fixed odds betting on sports in competition with bookmakers.

There do not appear to be any probity or harm minimisation grounds to restrict the major betting operations licensee from offering fixed odds betting on races.

The restriction on the major betting operations licensee from conducting fixed odds betting on races is not consistent with national competition policy.

The Government should consult with the bookmaking industry to determine whether there are any other significant issues with regard to opening this market segment to greater competition and any transitional requirements that may be required. Subsequent to that review the Government should enter negotiations with the major betting operations licensee with regard to agreeing arrangements (including appropriate tax rate or fee) to enter the fixed odds betting market.

*Major Betting Operations Licensee relationship with racing industry  
(Section 13)*

Passage of the *Racing (Controlling Authorities) Amendment Act* in mid 2000 amended the now repealed *Racing Act 1976* to provide for the corporatisation of the traditional racing codes in South Australia. This approach was carried forward into the *Authorised Betting Operations Act* which provides only for the conduct of betting on races and sports and does not restrict the structure or actions within the racing industry.

The racing codes now operate as private sector authorities without government controls or restrictions on their activities. This contrasts with the structure of racing codes in other jurisdictions. The non-legislative basis for the codes is consistent with a competitive approach to the racing industry. Further, the passage of the *Racing (Proprietary Business Licensing) Act* provides for new forms of racing to be conducted subject to meeting a standard of probity consistent with the for profit nature of their activities.

This pro-competitive outcome is consistent with the findings of the competition policy review of the *Racing Act* which concluded that other codes of racing should be able to be established.

In relation to the traditional racing codes the *Authorised Betting Operations Act* does however require as follows:

*13(1) At all times during the term of the licence the licensee must have in force an agreement (the racing distribution agreement) with the racing industry about terms and conditions on which the licensee may conduct betting operations on races held by licensed racing clubs.*

This agreement and its content are a matter between the major betting operations licensee and the racing industry (through the racing controlling authorities). Notwithstanding that the Act provides that the agreement must include provisions relating to:

- (a) The arrangements of racing programs and the provision of racing information to the licensee; and
- (b) The payments to be made by the licensee to the racing industry.

This provision basically enshrines the rights of the racing industry over the racing product and associated information and requires the major betting operations licensee to pay a fee to the SA racing industry for access to that information.

Racing product information (ie programs, fields etc) is currently shared between the racing codes in each jurisdiction without cost under a so-called 'Gentlemen's agreement'. This means that each State's racing industry holds information on racing fields across Australia.

The major betting operations licensee in South Australia (TABQ) also operates the TAB in Queensland and the Northern Territory and thus has access to racing information through those jurisdictions. Without the requirement to have the racing distribution agreement in place in South Australia the major betting operations licensee in this State could use the information it has obtained through its Queensland operations to provide the race betting service in South Australia. The racing industry in this State would then not receive a product fee revenue payment from the TAB.

The racing distribution agreement protects the South Australian racing industry by ensuring it does receive a product fee for the racing information it provides (either directly or via other jurisdictions under the Gentlemen's Agreement). This product fee revenue is the major source of revenue for the racing industry and ensures the on-going viability and stability of the racing sector in South Australia.

Even where the holder of the major betting operations licence did not hold a similar licence in another jurisdiction the nature of the wagering product and the requirement to provide the information to punters means that the racing product information is widely available from various public sources. A licensee would thus have access to this information without contracting to the local racing industry and paying any appropriate fee (a free-rider in economic jargon). The provision in the Act protects the racing industry from this occurrence.

The legislative provisions do not prevent the major betting operations licensee from also contracting with other parties in relation to betting information but ensures that the racing industry is protected as owner of the racing information product.

As a result of these benefits the requirement to enter into the racing distribution agreement is not considered inconsistent with national competition policy.

An alternative structure would be to remove the legislative provisions and allow the major betting operations licensee to source the racing information from any available source. Under these circumstances the local racing industry would need to protect its revenue stream through more tightly controlling the use of its racing information. That is, it could not provide the information free to another source or without strict copyright provisions on the use of such information.

This type of arrangement would require a shift from the current 'Gentlemen's Agreement' of free provision of information between jurisdictions and would likely lead to each State's racing codes entering into agreements with each TAB across Australia for the use of its racing information.

Such an arrangement would be inefficient for the industry and is unnecessary when the same outcome is effectively achieved through the internal sharing of information within the racing industry and each racing code dealing solely with the TAB in its own jurisdiction. Of course if this sharing of information through the Gentlemen's Agreement were to cease this alternative may need to be considered.

*Betting Shops*  
*(Section 34(1) and Section 52)*

It is prima facie unlawful in South Australia to operate a betting shop unless a person holds a betting shop licence. Section 34(1) of the Act provides that:

*34(1) The Authority may grant the following classes of licences:*

.....

- (d) a licence (betting shop licence) authorising a licensed bookmaker to conduct fixed odds betting on races held by licensed racing clubs (excluding races of a prescribed kind) and approved contingencies at specified premises situated within the City of Port Pirie.*

Under section 52 of the Act this licensee must not operate on a day in which horse races are to be held on a racecourse within 15 kilometres of the licensed betting shop.

This licence allows a bookmaker to operate at specified premises in the City of Port Pirie. This is peculiar to that town. Betting shops are not allowed in any other location in the State. Historically bookmakers were permitted to establish betting shops in registered premises. With the changing structure of wagering, betting shops closed down and the actions of bookmakers were targeted to racecourses. Betting shops in Port Pirie were permitted to remain.

This provision has remained in the Act over a number of years reflecting the historical status quo. The number of betting shops has reduced over time and there is currently only one betting shop licensee in Port Pirie.

The provision for a betting shop licence is not considered inconsistent with national competition policy.

However, it is considered a minor anachronism and it is suggested that this class of licence should be abolished when the remaining licensee ceases operations.

Broader access to the wagering market for all bookmakers should be subject to review on expiry of current exclusivity arrangements for the TAB.

*Bookmakers and Clerks – Not Body Corporate*  
*(Section 34(2))*

Section 34(2) of the Act provides that:

*34(2) A bookmaker's licence or clerk licence must not be granted to a body corporate or a child.*

The rationale for non-grant of a licence to a child is self-evident. The reason to not grant a licence to a body corporate is less clear.

In principle there seems no reason to prevent bookmakers from adopting whatever organisational structure best suits their circumstances and needs. While the licensing and regulatory arrangements would need to be amended to deal with the introduction of corporate providers of bookmaking services this would not seem prohibitive. Such probity requirements are already placed on other corporate gambling entities including the major betting operations licensee and the casino.

Bookmaker bond and financial backing arrangements would also need to be reviewed to ensure they remain appropriate for corporate entities.

The introduction of partnerships or corporations has the potential to change the make up of the bookmaker industry in favour of larger corporate bookmakers at the expense of smaller operations. It also brings the possibility of attracting new entrants to the declining bookmaker industry.

The introduction of corporate bookmakers would allow the major betting operations licensee to apply for a bookmaker licence to enable it to operate fixed odds betting on races. While this may occur we note that other restrictions on bookmakers, including times and location, would prevent the major betting operations licensee from using its general distribution network for fixed odds race betting.

On balance it appears that the restriction of bookmaker and clerk licences to non body corporate structures is not consistent with national competition policy.

*On-course Totalisator Licensee Locations*  
*(Section 34)*

In relation to on-course totalisator licences the Act provides that:

*34(1) The Authority may grant the following classes of licences:*

(a) a licence (an on-course totalisator betting licence) authorising a racing club to conduct on-course totalisator betting in conjunction with a race meeting held by the club, or at other times authorised by the Authority, on races held by the club or another licensed racing club (excluding races of a prescribed kind) and on other races that are approved contingencies;

.....

Section 34(3) of the Act provides for the Minister to give binding directions to the Authority about the authorisation of on-course totalisator betting at times other than in conjunction with a race meeting.

The ability to offer an on-course totalisator at ‘other times’ authorised by the Authority and controlled by the Minister sets boundaries on the right to operate this service.

At present the auditorium at Morphettville is the only location with authorisation to conduct on-course totalisator betting at ‘other times’.

The structure of the Act establishes two classes of totalisator licences. The major betting operations licence authorises the licensee to (among other things) conduct off-course totalisator betting on races held by licensed racing clubs and on approved contingencies.

This authorisation to conduct off-course totalisator betting is supported by the provision that there only be one licence for this purpose (competition policy aspect of this discussed earlier in report).

The provision to allow on-course totalisator betting at times other than when a race meeting is being held would appear to provide it with a right to conduct off-course totalisator betting. That is, it would act to defeat the intention of the Act. Taken to the extreme this provision would enable authorisation of racing clubs to conduct totalisator betting across the State similar to the major betting licensee. While this would increase the level of competition this right would automatically be provided to racing clubs rather than offered through a competitive bidding or open process. If it was intended to provide for a second off-course totalisator provider this should be done explicitly, not via on-course totalisator licences.

Consistent with the intent of the Act the on-course totalisator licences should only be authorised to operate on racecourses in conjunction with race meetings and this distinction between the licences should be clarified.

Adherence to the distinction between licences and the principle that on-course totalisators can only operate during race meetings would remove the current authorisation for the Morphettville Auditorium. This would not necessarily require closure of the auditorium were the major betting operations licensee to open an outlet at that location and permit bookmakers to attend. Given the joint pooling arrangement already in place gamblers would not see any distinction in the service being offered. The SAJC and the major betting operations licensee would need to negotiate an appropriate financial arrangement.

To the extent that the activity in the venue is redirected to another wagering licensee (ie TAB or bookmaker at another location) the racing industry and the bookmakers who currently receive income from the auditorium would lose a source of revenue. Consultation on transitional or phase out arrangements would then need to occur with the operator of the auditorium (South Australian Jockey Club).

#### *Location of Bookmakers* *(Section 54)*

Bookmaking is prima facie unlawful in South Australia unless a person holds a bookmaker's licence (issued under section 34(1)(b) of the Act) and has been issued by the Commissioner with a permit to accept bets at a specified place on a specified day (section 54). The Commissioner must not grant a permit to accept bets on a racecourse unless a licensed racing club is authorised to conduct an on-course totalisator at that racecourse and the racing club has been consulted by the Commissioner (section 55(2)). The Commissioner must not grant permits in respect of betting on a day and place other than a racecourse (or a licensed betting shop) unless the person that occupies or has control of that place has been consulted by the Commissioner (section 55(3)). The Commissioner must not grant a permit to a group of bookmakers unless the group has entered into an agreement with respect to the sharing of, and liability for, bets, and that agreement has been approved by the Commissioner (section 55(5)).

To the extent that bookmakers are restricted in their ability to provide fixed odds betting in certain locations, this could be seen as a relevant restriction on competition. The regulatory regime currently provides for certain exclusive rights to be granted to the major

betting operations licensee. The Approved Licensing Agreement establishes exclusivity for the major betting operations licensee by providing that compensation is payable to the TAB if bookmakers are permitted to be at locations other than:

- Pursuant to any permit in force under the *Racing Act* as at 10 August 2001;
- At a racecourse in conjunction with a race meeting;
- In a Betting Auditorium;
- In a licensed Betting Shop in the City of Port Pirie;
- At (or in the vicinity) of:
  - Events which have historically had bookmakers;
  - Major national and international events;
  - Annual events organised by community and charitable bodies;
  - Events where the bookmaker is restricted to accepting bets on that event only;
  - Other Events with the consent of the major betting operations licensee.

In addition, the exclusivity provisions provide that compensation is also payable if a bookmaker is permitted to conduct betting by means of a telecommunication device where the bookmaker has supplied, leased, installed or subsidised the telecommunication device or provides an incentive to the owner or occupier of the premises where a telecommunication device is installed.

Accordingly, with the exception of certain off course locations at which bookmakers have traditionally been authorised to conduct bookmaking, bookmakers will not be permitted to accept bets at off-course locations. Section 55(4) enables the Minister to give binding directions to the Commissioner about the grant of off-course bookmaking permits to ensure that the Government can give effect to its policies with respect to the proliferation of gambling and also to give effect to any exclusivity commitments made to the major betting operations licensee.

To the extent that bookmakers are prevented or restricted from conducting bookmaking operations, the licensing and permit scheme has the objective of harm minimisation and consumer protection by regulating the granting of permits and requiring consultation prior to the issue of permits. This approach is consistent with section 42 of the Act which requires the major betting operations licensee to obtain the Authority's approval prior to establishing any new sales outlet.

Providing for a greater range of locations for bookmakers would provide for additional competition in the wagering industry and the greater availability of fixed odds betting on races. Betting with bookmakers is already widely available through telephone betting and other forms of gambling are widely available in approved locations throughout the community. It would be consistent to allow bookmakers in locations approved for gambling purposes, ie that were considered acceptable from a harm minimisation perspective. At present the major betting operations licensee is permitted to offer fixed odds betting on sports in (liquor) licensed premises but bookmakers are precluded from being in those locations offering the same product (or fixed odds race betting).

As noted above this broadening of bookmaker activity would be in breach of the exclusivity provisions provided to the major betting operations licence. The compensation payable would be a significant cost.

The compensation cost of broadening locations for bookmakers would most likely outweigh the minor benefits derived from additional competition and choice for consumers. This provision is therefore considered to meet national competition policy. The position of bookmakers within the wagering sector and the role Parliament wishes them to play should be clarified after the expiry of the current exclusivity arrangements (December 2016).

Permits on the location of bookmakers are currently issued by the Commissioner after consultation with the racing industry or other relevant body. The Commissioner rations permits where sufficient space is not available and also issues permits to bookmakers in a way which supports the spread of bookmaker activities across the racing industry.

The fall in bookmaker incomes and numbers over the decade suggest that the arrangements do not lead to monopoly rents for South Australian bookmakers. Moreover, these arrangements may be seen as providing a full service to all racing venues which in turn supports the racing and bookmaker industry.

The Act does not provide any specific guidance or criteria for the Commissioner in issuing these permits. The Act should be amended to provide such guidance to the Commissioner. Alternatively, it is arguable that the rationing of permits between bookmakers is not a role of government and the industry body may be better placed to enter supply agreements with locations that desire bookmakers. Probity and social policy restrictions would continue to be required but it may be possible to develop a system that ensures these requirements continue to be met but with greater industry participation and less Government intervention.

The SA Bookmakers' League has proposed this type of arrangement and the feasibility of this alternative approach should be considered.

*Bookmaker receive bets by telephone or other electronic means*  
*(Section 56)*

Section 56 provides that a permit may authorise a bookmaker to accept bets by telephone or other electronic means. This provision is not intended so much to restrict telephone betting with bookmakers, but to ensure that sufficient statutory power exists to enable such betting to take place. The requirement to obtain a permit to do so is consistent with the statutory scheme under which all betting activities are regulated and monitored by the independent regulators.

Under the exclusivity arrangements with the major betting operations licensee, bookmakers will continue to be able to seek a permit to accept telephone bets provided it does not constitute 'indirect walk in trade' (ie de facto off course bookmaking through subsidisation of off course telecommunications devices by bookmakers). Indirect walk in trade would give rise to compensation being payable to the major betting operations licensee.

The exclusivity provisions do not restrict bookmakers' existing ability to accept bets over the telephone or via like means provided the appropriate permit is obtained from the Commissioner.

Like other jurisdictions South Australia has historically had significant minimum bet limits on telephone bets with bookmakers. This restricts the degree of competition between bookmakers and other wagering providers. These limits are currently being phased out, as shown in the following table.

**Table 2 -Tabular representation of rule 130A(1)(k) of the Bookmakers Licensing Rules 2000**

<i>Class of bet</i>	<i>–30 June 2001</i>	<i>1 July 2001–30 June 2002</i>	<i>1 July 2002–30 June 2003</i>	<i>1 July 2003–30 June 2004</i>	<i>1 July 2004–</i>
Bet made on-course at a metropolitan galloping meeting [ <i>minimum bet/minimum risk</i> ]	200/2000	150/1500	100/1000	50/500	—/—
Bet made on-course at any other meeting [ <i>minimum bet/minimum risk</i> ]	100/1000	50/500	—/—	—/—	—/—
Bet made in a betting auditorium during a metropolitan galloping meeting [ <i>minimum bet/minimum risk</i> ]	200/2000	150/1500	100/1000	50/500	—/—
Bet made in a betting auditorium at any other time [ <i>minimum bet/minimum risk</i> ]	100/1000	50/500	—/—	—/—	—/—
Double event bet [ <i>minimum risk</i> ]	—/1000	—/750	—/500	—/250	—/—

Note: Minimum risk—Rule 130A(3) deems certain risks taken by bookmakers to be the equivalent of a minimum bet. The minimum restriction on double event bets is expressed only as a minimum risk.

This provision is consistent with national competition policy and supports the removal of minimum telephone bet limits for bookmakers is supported.

*Prevention of communicating betting information (Section 61)*

Section 61 (3) of the Act provides:

*(3) Except with the approval of the Commissioner, a person who is, or was, within a racecourse or other place during a period when bookmakers are, or were, accepting bets on races or approved contingencies must not, before the end of that period, communicate (whether or not for fee or reward) to a person who is outside the racecourse or other place information or advice as to the betting with bookmakers at that racecourse or place.*

This provision arguably restricts persons from comparing prices of the same ‘good’ at various locations and thus the operations of a free market.

This restriction may historically have assisted the prohibition of unlicensed bookmakers by restricting the flow of information to off-site locations (ie illegal betting shop). With the advent of SKY channel and other televised racing services this benefit would have virtually no remaining application.

This restriction also provides a benefit to on-course bookmakers. Gambling is not like other goods given the significant risk accepted by the licensee as a result of the unknown outcome of the product being bought and sold. A punter with greater information on prices at other locations can take advantage of price differentials to the detriment and potentially significant losses to licensees.

This does not deny the benefits of the competition caused through the dissemination of price information between wagering locations. A racing information service is provided on all racecourses where the information on prices is collected and transferred via a centralised system to other venues. This information is then released in the betting ring. All parties (bookmakers and punters) should be provided with equal access to this information.

This enables the benefits of price sharing to be maintained but ensures the on-going viability of the industry through the avoidance of profiteering from arbitrage by punters with more information than is available to the licensee.

In theory, the benefits of this arrangement could potentially outweigh the costs and be considered consistent with national competition policy, but there is a question about its practical enforceability given the prevalence of mobile phones.

The time critical nature of the information flow does not permit an alternative solution to the centralised sharing of this information. It is noted however that this information sharing is provided by government officers of the Office of the Liquor and Gambling Commissioner in South Australia. This service is not provided by government agencies in any other jurisdiction, rather it is a matter for the industry. It is not considered that this function needs to be undertaken by government review to determine whether this role can be transferred to the bookmaker industry in this State is supported.

#### **7.4 Conclusion**

The Act contains a range of probity, harm minimisation and consumer protection restrictions which are considered self-evident. It is considered unlikely that the objectives of maintaining high standards of probity, harm minimisation and consumer protection could be achieved without a robust legislative and regulatory framework.

Consistent with other chapters the principle of informed consent is an important objective of gambling regulation. This principle should be supported wherever possible including in the forthcoming development and approval of the Codes of Practice and player return information requirements.

The provision in the Act restricting to one the number of major betting operations licensees has been assessed earlier in this report.

A number of other restrictions were subject to analysis in this chapter and in relation to these provisions the review finds in respect of compliance with national competition policy:

1. The requirement for the major betting operations licensee to be a body corporate is not inconsistent with competition policy;

2. The exclusion of the major betting operations licensee from conducting fixed odds betting on races is not consistent with competition policy and should be removed subject to consultation with the SA Bookmakers' League and appropriate agreement (including financial arrangements) being reached with the major betting operations licensee;
3. The requirement of the major betting operations licensee to enter into a racing distribution agreement is not inconsistent with competition policy;
4. Betting shop licences should be abolished when the remaining licensee ceases operations;
5. The restriction that bookmakers cannot be a body corporate is not consistent with national competition policy and should be repealed dependent upon development of appropriate probity and financial security arrangements;
6. Consistent with the intent of the Act on-course totalisator licences should only be authorised to operate on racecourses in conjunction with race meetings and the distinction between on-course and off-course licences should be clarified;
7. The current restrictions on the location of bookmakers is not inconsistent with competition policy having regard to compensation provisions with the major betting operations licensee but the extent of access for bookmakers to the wagering industry should be clarified after the expiry of these arrangements;
8. The criteria for issuing permits to bookmakers should be clarified in the Act and consideration should be given to transferring this function to the industry if an appropriate structure can be developed;
9. Minimum telephone bet limits for bookmakers should be removed; and
10. The prohibition on communicating betting information is not inconsistent with competition policy but the provision of the racing information service should be reviewed to determine if it can be transferred to the industry.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
<b>Authorised Betting Operations Act 2000</b>		
1-3	Establishment of the Act.	Not a restriction.
4	Authority must approve contingencies to bet on, subject to Minister's right to prevent approval.	Restricts events that can be bet on.
5	Definition of close associates.	Not a restriction.
6	Designation of racing controlling authorities.	Not a restriction. Operational issue.
7	Provides for grant of major betting operations (TAB) licence and that only one major betting operations licence may be in force at any time.	Restricts entry by limiting the number of providers to one.
8	The holder of the major betting operations licence must be a body corporate.	Restricts entry by limiting type of legal entity that may hold licence.
9	Licensee may conduct off course totalisator and other forms of betting on approved contingencies (other than fixed odds betting on races).	Prevents licensee from conducting fixed odds betting on racing.
10-11	Term and conditions of licence as fixed by this Act or the licensing agreement.	Not a restriction. Operational issue.
12	Establishes approved licensing agreement and matters that may be dealt with in the agreement (including exclusivity and minimum return to player). Provides for entering into the agreement to be exempt from TPA restrictions.	Restricts operations of licensee and provides for exclusivity.
13	Licensee must enter into a racing distribution agreement with the racing industry about terms and conditions on which the licensee may conduct betting operations on races held by licensed racing clubs. Provides for entering into the agreement to be exempt from TPA restrictions.	Restricts licensee by requiring agreement with racing industry to be in force at all times.
14	Establishes duty agreement and matters that are to be dealt with in the agreement.	Not a restriction. Operational issue.
15	ALA and DA must be tabled in Parliament.	Not a restriction. Operational issue.
16-18	Approvals required for transactions effecting control and rights over licence.	Restricts transactions of licensee.
19	The licence can be surrendered.	Not a restriction. Operational issue.
20	Directors and executive officers of licensee must be approved.	Restricts persons that can hold relevant positions.
21-24	Applicants must meet suitability tests as assessed by the Authority.	Restricts persons that can hold relevant positions.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
25	Cost of investigation to be met by applicant.	Not a restriction. Operational issue.
26	Minister and applicant to be notified of results of application.	Not a restriction. Operational issue.
27-30	Licensee must have accounts audited and provide a copy of report to the Authority (except if government owned).	Not a restriction. Operational issue.
31-32	Licensee must pay duty in accordance with duty agreement.	Not a restriction. Operational issue.
33	Authority can give binding directions to licensee.	Restricts actions of licensee.
34	Authority may grant licences for: <ul style="list-style-type: none"> <li>- On-course totalisator betting;</li> <li>- Bookmaking;</li> <li>- Betting clerk; and</li> <li>- Betting shop licence.</li> </ul> <p>Bookmaker and clerk licence must not be granted to a body corporate or child.</p> <p>Minister may give directions regarding times for on-course totalisator betting (other than in conjunction with a race meeting).</p>	Restricts betting to licensed persons.  Restricts betting shops to City of Pt Pirie.  Restricts business structure of bookmakers and prohibits children.  Restricts operations of on-course totalisator licences.
35	Term of licence to be specified by Authority or by Minister under binding direction.	Not a restriction. Operational issue.
36	Authority may attach conditions to licences. Conditions must include set minimum return to player.	Restricts operations of licensee.
37	Provides for application, grant or renewal, or variation of condition of licence.	Not a restriction. Operational issue.
38	Licensees must meet suitability tests as assessed by Authority.	Restricts licensees to suitable persons.
39-40	Provides that duty is to be established in regulations.	Not a restriction. Operational issue.
41	Rules, systems, procedures and equipment must be approved by the Commissioner.	Restricts actions of licensee.
42	Location of off-course totalisator offices, branches and agencies must be approved by Authority. Minister can give binding directions preventing approval.	Restricts actions of licensee.
43	Major betting and on-course licensee must prevent betting by children.	Prevents betting by minors.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
44-45	Prohibition on lending or extension of credit and location of cash facilities.	Restricts access to cash facilities.
46	Requires major betting and on-course licensees to display player return information on betting tickets.	Restricts actions of licensee.
47	Requires major betting and on-course licensees to have systems and procedures for dispute resolution.	Restricts actions of licensee.
48-49	Requires major betting and on-course licensees to have advertising and responsible gambling codes of practice approved by Authority.	Restricts actions of licensee.
50	Permits barring of persons by major betting licensee.	Restricts access by barred persons.
51	Provides for alteration of approved rules, systems, procedures, equipment and code provisions.	Not a restriction. Operational issue.
52	Restricts betting shop licensee from carrying on business as a bookmaker or from opening the betting shop on a day when races are held within 15 kms.	Restricts actions of licensee.
53	Prohibits cash facilities in licensed betting shops.	Restricts access to cash facilities.
54	Licensed bookmakers must hold permits to accept bets.	Restricts actions of bookmakers.
55	Commissioner authorised to grant permits within specified arrangements and subject to binding directions from the Minister.	Not a restriction. Operational issue.
56	Bookmaker permits can provide for betting by telephone or other electronic means.	May restrict actions of bookmakers.
57-58	Commissioner may attach conditions or revoke a permit.	Not a restriction. Operational issue.
59	Repealed.	
60	Bookmakers must not accept bets from children.	Prevents betting by minors.
61	Persons are prohibited from communicating information as to the probable result of a race or approved contingency or on the betting with bookmakers.	Restricts actions of persons.
62	Authority may make rules for bookmaker operations including regarding records, advertising and security.	Restricts actions of bookmakers.
63	Commissioner is responsible to Authority for constant scrutiny of operations of licensees.	Not a restriction. Operational issue.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
64	Power for Commissioner and Authority to obtain information from licensees.	Not a restriction. Operational issue.
65-66	Inspectors and powers of authorised officers.	Not a restriction. Operational issue.
67-76	Power to deal with default or business failure.	Not a restriction. Operational issue.
77-79	Provisions for review and appeal of decisions.	Not a restriction. Operational issue.
80	Betting operations conducted in accordance with this Act are lawful.	Not a restriction. Operational issue.
81	Entering into, giving effect to, or enforcing the Government Agreement, the Racing Distribution Agreement or another prescribed agreement is authorised for the purposes of section 51 of the TPA.	Not a restriction. Operational issue.
82	Repealed.	
83	A person must not make a false or misleading statement.	Not a restriction. Operational issue.
84	Offences by body corporate include members and manager of body corporate.	Not a restriction. Operational issue.
85	Requirements to give (or not) reasons for decisions.	Not a restriction. Operational issue.
86	Approvals from the Authority and Commissioner can be general or conditional.	Not a restriction. Operational issue.
87	Provides for confidentiality of information provided by Commissioner of Police.	Not a restriction. Operational issue.
88	Provision for serving of notices.	Not a restriction. Operational issue.
89	Requirements for evidence for specified breached of the Act.	Not a restriction. Operational issue.
90	Authority and Commissioner must produce annual reports.	Not a restriction. Operational issue.
91	Governor may make regulations.	Not a restriction.
92	Act to be reviewed within 12 months of commencement.	Not a restriction.
Schedule 1	Transitional licensing and financial provisions.	Not a restriction. Operational issue.
Schedule 2	Consequential amendments to other legislation.	Not a restriction. Operational issue.
<b><i>Authorised Betting Operations Regulations 2001</i></b>		
1-3	Establishment of regulations.	Not a restriction.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
4	Trade Practices Act authorisations.	Not a restriction. Operational issue.
5	Proprietary racing prescribed as a contingency rather than a race – thus requiring approval by Authority for betting.	Betting on proprietary racing requires approval of Authority.
6	Process for renewing licences.	Not a restriction. Operational issue.
7	Duty on on-course totalisator licensees.	Not a restriction. Operational issue.
8	Refunds of GST to on-course totalisator licensees.	Not a restriction. Operational issue.
9	Unclaimed dividends of on-course totalisator licensees to be paid to Treasurer.	Not a restriction. Operational issue.
10	Duty on licensed bookmakers.	Not a restriction. Operational issue.
11	Transitional arrangements for refunds of GST to bookmakers.	Not a restriction. Operational issue.
12	Unclaimed dividends of bookmakers to be paid to Treasurer.	Not a restriction. Operational issue.
13	Fees payable as per schedule and for cost of approval of systems, procedures and equipment.	Not a restriction. Operational issue.
Schedule	Fees payable.	Not a restriction. Operational issue.

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## CHAPTER 8 – STATE LOTTERIES ACT 1966

### 8.1 Introduction

This chapter considers restrictions on competition in the *State Lotteries Act 1966* (the “Act”).

The Act establishes the South Australian Lotteries Commission (“the Commission”) and the framework for the Commission’s operation.

The Lotteries Commission of South Australia is a body corporate and is subject to the control and direction of the Government of the State acting through the Minister. The Act also provides for the operation and remuneration of members of the Commission.

Pursuant to the Act the Commission may promote and conduct lotteries either individually or jointly with an appropriate authority of another State or Territory of the Commonwealth.

The Act provides for the administration of the proceeds of the Commission including that all moneys received by the Commission must be paid to the Lotteries Fund, for the provision of prizes, approved expenses of the Commission and for allocation to various Government funds as directed by the Act. The major proportion of the surplus is paid to the Hospitals Fund.

The Commission may, with the approval of the Minister, make rules dealing with practices, procedures and operations of the Commission. The Governor can make regulations under the Act.

### 8.2 Objectives

While the Act does not include any specific objectives, the Act is the result of the 1965 referendum on lotteries.

The question put to the South Australian people was

*“Are you in favour of the promotion and conduct of Lotteries by the Government of the State”.*

Nearly two thirds of the voting population voted yes<sup>7</sup>.

It is clear from the Second Reading debate,<sup>8</sup> on the State Lotteries Bill, that the objective of the legislation is to establish an entity for the purposes of promoting and conducting lotteries on behalf of the South Australia Government in accordance with the outcome of the 1965 referendum.

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<sup>7</sup> The information has been taken from the SA Electoral Office web site, *Summary of Referendums in South Australia 1896-1991*, 19 February 2001.

<sup>8</sup> Parliament of South Australia, *State Lotteries Bill*, House of Assembly Hansard, 18 August 1966, pp1199-2381.

### 8.3 Nature And Effect Of Restrictions

Appendix 1 provides the outcome of the analysis for the whole Act. There are currently no regulations under the Act.

Table 1 outlines those sections of the Act that have been identified as potentially restricting competition.

**Table 1 –Sections of the Act Potentially Restricting Competition**

<i>Sections</i>	<i>Description</i>	<i>Restriction</i>
13B-13E	Codes of Practice on advertising and responsible gambling.	Restricts advertising and require Commission to comply with other provisions approved by the Authority.
14	If a lottery is conducted under this Act, it is lawful and not subject to <i>the Lottery and Gaming Act 1936</i> .	May provide an advantage to the Lotteries Commission of South Australia vis-à-vis lotteries under the <i>Lottery and Gaming Act 1936</i> .
17A	Sets out the rules for the operation of Instant Lottery Tickets conducted by the Commission.	May provide an advantage to the Commission as the rules may be different to the rules of other instant ticket lotteries conducted via the <i>Lottery and Gaming Act 1936</i> .
17B	States that Minors (under 16) are not to participate in a lottery.	Limits who can purchase lottery tickets from the Commission.
18	The Commission with the approval of the Minister may make rules for the operation of the Commission.	May provide an advantage to the Commission as the rules may be different to other lotteries conducted via the <i>Lottery and Gaming Act 1936</i> .

From Table 1, it is possible to identify three broad categories of potential restrictions. They are:

- Codes of Practice;
- the prohibition on the sale of commercial lottery products to individuals under the age of 16; and
- the creation of a potential competitive advantage to the Commission by establishing a parallel regulatory framework that may be at variance to its competitors.

Sections 13B-13E of the Act require the Commission to adopt advertising and responsible gambling codes of practice approved by the Independent Gambling Authority. Such codes are required on all major forms of gambling, consistent with the general principle of harm minimisation and consumer protection. To that end this restriction is considered consistent with national competition policy.

These sections are recent amendments to the Act and the Codes of Practice for the Commission are yet to be implemented. The development of these codes provides an opportunity to strengthen informed consent for gamblers and in particular to provide greater information to gamblers with regard to the ‘price’ (including return to player/take by the licensee) of gambling. The requirement to provide this information would be consistent with provisions for betting providers under the *Authorised Betting Operations Act* and should be applied equally across all forms of gambling to assist gamblers in making informed choices in the use of discretionary spending.

The remaining two potential restrictions identified - Prohibition on Sale to Minors and the Parallel Regulatory Framework – have been examined in detail below to determine their effect.

#### *Prohibition on Sale to Minors*

Section 17B sets out that individuals under 16 years of age are prohibited from purchasing lottery tickets. This is in contrast to the *Lottery and Gaming Act 1936* sections, 53-55 and 58(3), which restricts totalisator, sweepstakes, betting and two-up on ANZAC day to persons 18 years and over (although betting by minors on other products licensed under that Act is permitted – see Chapter 3). Holders of totalisator, bookmaker, gaming machine and casino licences are prohibited from selling to persons under 18 years of age.

The prohibition on sale to minors is clearly justified in terms of reducing adverse social impacts. However, there is a potential for the discrepancy in the definition of a minor to provide limited advantage to the Commission. This discrepancy is likely to have a negligible impact on competition. Nevertheless, it is appropriate that the age limit for sale of gambling products be standardised.

The age limit at which Lotteries Commission products can be purchased should be increased to 18 years of age consistent with the other major gambling providers.

#### *Parallel Regulatory Framework*

Section 14(2) of the Act states that a lottery under this Act is not a lottery or sweepstake within the meaning of the *Lottery and Gaming Act 1936*. The practical result of section 14 is to establish the Commission outside the *Lottery and Gaming Act* and together with sections 17A and 18 the establishment of a parallel and potentially different regulatory regime for the Commission when compared to lottery suppliers regulated under the *Lottery and Gaming Act*.

Other than the requirement to abide by advertising and responsible gambling Codes of Practice approved by the Independent Gambling Authority the Lotteries Commission effectively self-regulates under direction from the Minister for Government Enterprises.

The *Lottery and Gaming Act 1936* (section 5) sets out that all lotteries are unlawful except where it is an authorised or exempted Lottery. The Government has established regulations under that Act that provide exemptions and a licensing regime for not-for-profit, fundraiser and trade promotion lotteries. The requirements contained in these regulations are very prescriptive and are not necessarily consistent with those applying to the Lotteries Commission.

While strict consistency may not be appropriate in the circumstances a review of those regulations is recommended (see Chapter 3).

With regard to an appropriate regulatory structure for the Lotteries Commission it is recognised that the statutory framework for the Lotteries Commission and the associated regulatory controls and Ministerial responsibilities provide a different organisational framework than for non-government or non statutory gambling providers. These differences are particularly evident with regard to the required level of independent probity checking required of the ownership structures and individuals with positions of responsibility. In these instances direct Ministerial regulation is considered appropriate.

With regard to harm minimisation/consumer protection matters a consistent regulatory approach across all forms of gambling is considered an appropriate objective, particularly in light of the recently established Independent Gambling Authority with the overarching objective of fostering responsible gambling.

This has been partly implemented with the requirement for the Commission to adopt Codes of Practice for advertising and responsible gambling approved by the Independent Gambling Authority. In order to create common responsible gambling regulation across the gambling industry the role of the Authority (and Liquor and Gambling Commissioner where appropriate) with respect to the Lotteries Commission should be expanded to include:

- Approval of new games and products;
- Approval of rules, systems, procedures and equipment; and
- Approval of the location of branches and agencies.

A review of legislated harm minimisation proposals applying to other gambling providers should also be undertaken to determine whether they should also be applied to the Lotteries Commission. This would include restrictions on access to funds and the provision of player return information (see above).

The current regulatory framework provisions are not inconsistent with national competition policy. While the Commission is not a private body which requires the oversight of formal gambling regulators, a common approach to gambling harm minimisation should be nevertheless adopted through provision of additional powers to the Independent Gambling Authority (and Liquor and Gambling Commissioner) via amendment to the *State Lotteries Act*.

#### **8.4 Conclusions**

The *State Lotteries Act 1966* essentially provides for the establishment and functions of the Lotteries Commission of South Australia.

The issue of the market dominance of the Lotteries Commission and defacto exclusive licence arrangement is dealt with in Chapter 4.

The requirement for the Lotteries Commission to adopt Codes of Practice is considered justified on harm minimisation grounds. These codes provide an opportunity to support the informed consent approach to gambling supported by the Productivity Commission

including through the provision of greater amounts of information on the ‘price’ of gambling products.

This review identified two other restrictions in the Act. The review did not find any non-compliance with national competition policy but to ensure greater consistency and uniformity in regulation of harm minimisation and consumer protection across the gambling industry amendments to the *State Lotteries Act* are suggested to:

1. Increase the age limit at which Lotteries Commission products can be purchased, to 18 years of age, consistent with the other major gambling providers; and
2. Provide powers to the Independent Gambling Authority and Liquor and Gambling Commissioner with respect to approval of new games, rules, systems, procedures and equipment and location of sales outlets.

In addition, a review of legislated harm minimisation proposals applying to other gambling providers should be undertaken to determine whether they should also be applied to the Lotteries Commission.

<i>Sections</i>	<i>Description</i>	<i>Restriction</i>
1 – 3	Establishment of the Act	Not a restriction.
4 – 12	Establishment of the Commission and Board	Not a restriction.
13	Outlines the powers and functions of the Commission, includes powers to promote and conduct lotteries and that the Treasurer may direct the Commission to undertake Special Lotteries.	Not a restriction. Provides the Lotteries Commission of South Australia with the ability, from an ownership perspective, to conduct lotteries. It does not authorise lotteries to conduct lotteries legally.
13A	Outlines the borrowing and Investment powers of the Commission.	Not a restriction.
13B-13E	Codes of Practice on advertising and responsible gambling.	Restricts advertising and require Commission to comply with other provisions approved by the Authority.
14	If a lottery is conducted under this Act, it is lawful.	May provide an advantage to the Lotteries Commission of South Australia vis-à-vis lotteries under the <i>Lottery and Gaming Act 1936</i> .
16-16A	Establishment of the Lotteries Fund and, Sport and Recreation Fund. Also stipulates what payments are to be made including tax and payments into the various funds.	Not a restriction. Operational issue.
16B-16C	Stipulates that any prize unclaimed after 12 months is to be forfeited to the Commission. It also stipulates that the Commission must pay unclaimed prizes, forfeited to itself, into the unclaimed prizes reserve.  The Commission, must pay 50% to the relevant fund and it can then use the remaining 50% for future lotteries or ex gratia payments	Not a restriction. Operational issue. Note: The sections do not stipulate that is it is restricted to lotteries conducted by the Commission.  However, lotteries under this Act are not lotteries under the <i>Lottery and Gaming Act</i> . Also regulations under the <i>Lottery and Gaming Act 1936</i> set out how unclaimed prizes under the <i>Lottery and Gaming Act 1936</i> are to be applied. This implies, although not clearly stated, that lotteries in this context are limited to lotteries conducted by the Commission.
16D	States that the Commission may make an ex gratia payment to a person who has lost/forfeited their ticket but has evidence that they purchased the correct ticket.	Not a restriction. Operational issue.
17	Sets out the value of prizes to be offered. Sports Lottery/Special lottery – determined by the Commission. Other lotteries – 60% of the value of tickets offered for sale.	Not a restriction. Operational issue.

<i>Sections</i>	<i>Description</i>	<i>Restriction</i>
17A	Sets out the rules for the operation of Instant Lottery Tickets conducted by the Commission.	May provide an advantage to the Commission as the rules may be different to the rules of other instant ticket lotteries conducted via the <i>Lottery and Gaming Act 1936</i> .
17B	States that Minors (under 16) are not to participate in a lottery.	Limits who can purchase lottery tickets from the Commission.
18	The Commission with the approval of the Minister may make rules for the operation of the Commission.	May provide an advantage to the Commission as the rules may be different to other lotteries conducted via the <i>Lottery and Gaming Act 1936</i> .
18AA	Sets out that a person can appeal to the Administrative and Disciplinary Division of the District Court against a decision of the Commission.	Not a restriction.
18A-18B	Sets out the report-keeping requirement of the Commission.	Not a restriction. Operational issue.
19	Sets offences under the Act.	Not a restriction.
20	The Governor may make regulations.	Not a restriction.

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## CHAPTER 9 – INDEPENDENT GAMBLING AUTHORITY ACT 2001

### 9.1 Introduction

Under the *Independent Gambling Authority Act 1995*, the Independent Gambling Authority (IGA) is established as a corporatised entity. The IGA was created on 1 October 2001 as the successor to the Gaming Supervisory Authority, with an increase in membership from 5 to 7 members.

The Authority is responsible for the regulation of casino and gaming machine licences granted under the prescribed acts *the Casino Act 1997* and the *Gaming Machines Act 1992*, and any other Act that assigns functions to the Authority (such as the *Authorised Betting Operations Act* and *State Lotteries Act*).

### 9.2 Objectives of the Act

Pursuant to the Act the functions and powers of the Authority include:

- a) to develop and promote strategies for reducing the incidence of problem gambling and for preventing or minimising the harm caused by gambling;
- b) to undertake, assist in or co-ordinate ongoing research into matters relevant to the Authority's functions, including research into the social and economic costs and benefits to the community, and the likely impact (both positive and negative) of any new gambling product or activity introduced; and
- c) to ensure that an effective and efficient system of supervision over the operations of licensees under the prescribed Acts is established.

In performing its functions the Authority must have regard to the following objectives:

- d) the fostering of responsibility in gambling and, in particular, the minimising of harm caused by gambling, recognising the positive and negative impacts of gambling on communities; and
- e) the maintenance of a sustainable and responsible gambling industry in this State.

In addition, the Authority provides advice and makes recommendations to the Minister and may hold enquires whenever it considers it necessary, or on the request of the Minister. It also has the ability to bar persons, on their written request, from the Casino or gaming venues.

### 9.3 Nature and Effect of Restrictions

The Act establishes the Independent Gambling Authority as the single overarching regulatory body for the gambling industry in South Australia. The lack of competition for this function reflects its design as a strictly regulatory function of government and reflects similar regulatory bodies in other areas, for example, APRA, ASIC, NEMMCO and the NCC itself.

Appendix 1 of this chapter provides an analysis of each section of the Act and whether it contains restrictions on competition.

This Act only contains two restrictions and the rationale for each is considered consistent with national competition policy.

*Voluntary Barring Register*

Section 15B of the Act provides for the barring of excessive gamblers from the Casino and gaming machine venues and creates an offence for that person to subsequently enter those premises.

This restriction is consistent with harm minimisation of gambling activities.

*Participation in Gambling*

Section 16 of the Act states that a Member of the Authority or the Commissioner must not engage in a gambling activity to which the Authority's statutory responsibilities extend.

This restriction ensures the independence of the Members of the Authority and the Commissioner and is consistent with the tight probity framework for gambling.

No other competitive restrictions have been identified.

#### **9.4 Conclusion**

The *Independent Gambling Authority Act 1995* provides the IGA with the regulatory powers to administer the Acts under its jurisdiction, as well as enabling it to develop and promote strategies for reducing the incidence of problem gambling and harm caused by gambling. As its operations directly address harm minimisation and probity issues, the Act itself is beneficial to the community, without having any effect on competition in the gambling industry.

<i>Section</i>	<i>Description</i>	<i>Restriction</i>
1-3	Establishment of the Act.	Not a restriction.
4-10	Establishment of Authority, provisions for Members and Secretary.	Not a restriction. Operational issue.
11	Functions and powers of the Authority including overarching objects.	Not a restriction. Operational issue.
11A-12	Committees and proceedings of Authority.	Not a restriction. Operational issue.
13-15	Provisions and processes for Authority to conduct Inquiries.	Not a restriction. Operational issue.
15A	Provides for Authority to delegate powers and functions.	Not a restriction. Operational issue.
15B	Established voluntary barring register for problem gamblers.	Restricts barred persons from entering premises.
16	Member of Authority or Liquor and Gambling not permitted to participate in gambling.	Restricts specified persons from gambling.
17	Confidentiality clause.	Not a restriction. Operational issue.
18	Authority not within Ombudsman's jurisdiction.	Not a restriction. Operational issue.
19	Authority must produce an annual report.	Not a restriction. Operational issue.

## **CHAPTER 10 - REVIEW CONCLUSIONS**

In South Australia there is a general prohibition on all forms of lottery and gambling, with specific exceptions having been legislated permitting a number of forms of gambling activity. Although gambling avenues are now moderately pervasive in the State, South Australian gambling legislation does not in principle seek to achieve the emergence of a free market in gambling services where the level of, types of, and participants in gambling activity are determined by normal commercial forces.

The objectives of all South Australian gambling legislation are to protect the South Australian community from harm caused by gambling and to ensure the integrity, probity and safety of legal gambling activities, as well as the prevention of crime and unfair contests. Revealed community preferences demonstrate the very strong views of South Australians on the importance of minimising the incidence of problem gambling and its impact on individuals and families. This includes a willingness and desire to restrict gambling activity for that purpose. Gambling is considered a significant social policy issue.

This Review report considers all South Australian gambling legislation, identifying all potential restrictions on competition and assesses them against competition policy criteria.

While not strictly an outcome of competition policy assessment, per se, one main finding is to support the Productivity Commission finding of ‘informed consent’ for gamblers. It is considered that there is potential to improve the amount of information provided to gamblers on the ‘price’ and chances of winning across all forms of gambling—particularly given the emergence of profit motivated private sector gambling providers. Specific proposals have not been developed but could include information on average return to player, chances of winning specified levels of prizes, probability of loss for periods of play and contextual information reminding gamblers that the outcome involves at least an element of chance and in the case of gaming machines is random and not related to the previous activity of the machine.

The review identified two major areas of exclusive licence provision in the South Australian gambling industry—the Casino and TAB licences. This report establishes that the current exclusive licence provisions for the Casino and TAB in South Australia meet National Competition Policy (NCP) requirements.

Under NCP it is for the Government to determine what policy, within the range of outcomes that could reasonably be reached, is in the public interest. This review establishes that the restriction on competition associated with exclusive licence provisions is in the public interest; that the benefits of the restrictions as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition. In terms of the NCP requirements, the decision to retain exclusive gambling licences falls within the range of possible conclusions that could reasonably be reached based on the evidence available.

The intended dominant (near exclusive) market position of the Lotteries Commission is also not inconsistent with the competition policy on the basis of benefit/cost analysis.

The other provisions within each Act covered by the review have also been assessed. Full details of these assessments are contained in the respective chapters. A number of findings have been made which require the consideration of Government. These findings, with respect to each Act, are set out below.

*Lottery and Gaming Act 1936*

With respect to the administration of the Act, the review suggests that the delegated administration of the *L&G Act* be transferred to the Liquor and Gambling Commissioner.

In recognition of the existence of some administrative burden arising from the implementation of the Lottery and Gaming Act, the review suggests a review of the Regulations, with the aim of reducing that burden where possible but maintaining equitable access to this market for not-for-profit lottery providers.

The review also finds:

1. Participation in bingo and purchasing of instant lottery tickets should be restricted to individuals aged 18 and over; and
2. Events on which sweepstakes and Calcutta sweepstakes can be conducted, should be events approved for this purpose by the Independent Gambling Authority.

*Casino Act 1997*

The review did not identify any matters in this Act of non-compliance with competition policy. If measures to improve 'informed consent' as proposed above were adopted, these would be relevant to the Casino.

*Gaming Machines Act 1992*

The review of the *Gaming Machines Act 1992* found that there are a number of minor restrictions under the Act which are justified on probity and harm minimisation grounds as they ensure integrity and consumer protection.

The review found that the restriction on gaming machine licences to hotels and clubs is justified on a harm minimisation basis (prevalence of gaming venues), and recognises that potential economic rents to licensees are able to be avoided through tax settings for the benefit of the South Australian community.

Further, the review finds:

1. The role of the State Supply Board as single gaming machine supplier and service licensee should be removed, and a more open and competitive structure be developed in consultation with the Liquor and Gambling Commissioner to ensure the appropriate regulatory/probity controls are maintained;
2. The licensing requirement that gaming operations should not predominate over the other activities of the licensed premises is not consistent with competition policy but is not considered a significant restriction;
3. The restriction on licensing gaming machine venues in shopping centres is not inconsistent with competition policy, but the harm minimisation objective of this restriction can be more appropriately achieved by the Liquor and Gambling Commissioner placing conditions on relevant licences to ensure that gaming venue access and signage is not located in a way which provides easy access from supermarkets and other similar retail outlets;
4. The restriction on transferring the right to operate machines between gaming venues is not justified in respect of competition policy and if a cap on the total number of gaming machines remains in place, a scheme should be introduced enabling the transfer of the right to operate

gaming machines (permits) between venues (without breaching the gaming machines per venue limit)—with all transfers to occur through the Office of the Liquor and Gambling Commissioner.

*Authorised Betting Operations Act 2000*

The *Authorised Betting Operations Act* contains a range of probity, harm minimisation and consumer protection restrictions which are considered self-evident.

On other matters the review finds:

1. The exclusion of the major betting operations licensee from conducting fixed odds betting on races is not consistent with competition policy and should be removed subject to consultation with the SA Bookmakers' League and appropriate agreement (including financial arrangements) being reached with the major betting operations licensee;
2. Betting shop licences should be abolished when the remaining licensee ceases operations;
3. The restriction that bookmakers cannot be a body corporate is not consistent with national competition policy and should be repealed dependent upon development of appropriate probity and financial security arrangements;
4. Consistent with the intent of the Act on-course totalisator licences should only be authorised to operate on racecourses in conjunction with race meetings and the distinction between on-course and off-course licences should be clarified;
5. The current restrictions on the location of bookmakers is not inconsistent with competition policy having regard to compensation provisions with the major betting operations licensee but the extent of access for bookmakers to the wagering industry should be clarified after the expiry of these arrangements;
6. The criteria for issuing permits to bookmakers should be clarified in the Act and consideration should be given to transferring this function to the industry if an appropriate structure can be developed;
7. Minimum telephone bet limits for bookmakers should be removed; and
8. The prohibition on communicating betting information is not inconsistent with competition policy but the provision of the racing information service should be reviewed to determine if it can be transferred to the industry.

*State Lotteries Act 1966*

With respect to the *State Lotteries Act*, the review did not find any instances of non-compliance with national competition policy but to ensure greater consistency and uniformity in regulation of harm minimisation and consumer protection across the gambling industry amendments to the *State Lotteries Act* are suggested to:

1. Increase the age limit at which Lotteries Commission products can be purchased, to 18 years of age, consistent with the other major gambling providers; and
2. Provide powers to the Independent Gambling Authority and Liquor and Gambling Commissioner with respect to approval of new games, rules, systems, procedures and equipment and location of sales outlets.

In addition, a review of legislated harm minimisation proposals applying to other gambling providers should be undertaken to determine whether they should also be applied to the Lotteries Commission.

*Independent Gambling Authority Act 1995*

The review did not find any matters inconsistent with competition policy.