

National Competition Council

Regulating gambling activity; issues in assessing compliance with National Competition Policy

Council Paper

October 2000

Preface

This document is a revised version of a paper presented to the Committee on Regulatory Reform in July 2000. Its aim is to provide a framework for how the Council considers questions related to restrictions on competition in gambling legislation.

Background

Gambling matters were considered in the first tranche National Competition Policy (NCP) assessment in June 1997 and the subsequent supplementary first tranche assessment in June 1998.

In the first tranche assessment, the Council:

- found that some governments had not scheduled legislation supporting monopoly casino licences for review and/or had not provided a net public interest case in support of recently enacted legislation providing monopolies in other areas of gambling activity;
- asked governments to add monopoly licensing legislation for gambling activities to their review schedules because the licences restrict competition.

Arising from the first assessment, several jurisdictions conducted reviews of restrictive gambling arrangements. Queensland and South Australia reviewed casino licensing arrangements and NSW examined its TAB monopoly. The Council considered the outcomes of these reviews as part of the supplementary first tranche assessment, concluding that:

- the reviews highlighted the complexities and sensitivities associated with the social and economic impacts of gambling and wagering;
- because of the social policy implications of gambling, gambling regulation would be better reviewed in a broader context than an NCP assessment process; and
- assessment of NCP compliance relating to gambling regulatory matters should occur in the third tranche after the national inquiry by the Productivity Commission (PC) into the social and economic impacts of gambling had reported (report released in November 1999).

Scope of the assessment task

The Council's role in assessing NCP compliance with respect to gambling arrangements arises from clauses 3, 4 and 5 of the Competition Principles Agreement (CPA): these relate to competitive neutrality (clause 3), structural reform of public monopolies (clause 4) and legislation review and reform (clause 5).

The third tranche will include an assessment of NCP compliance in all States and Territories for all forms of gambling, including:

- gaming machines and keno;
- casino games;
- TABs and other wagering and betting on horse and other racing;
- lotteries;
- interactive gambling; and
- other forms of betting such as raffles and bingo.

Compliance with the NCP obligation to review and, where appropriate, reform restrictive legislation is likely to be the most significant obligation facing governments. The clause 5(5) obligation in relation to new restrictions, including those dependent on an exemption under s51 of the TPA, is also relevant.

Competitive neutrality

NCP obliges governments to apply competitive neutrality principles to all significant government business activities, where appropriate. For the third tranche assessment, jurisdictions will need to identify any government businesses providing gambling services and confirm that they are subject to full competitive neutrality provisions, or demonstrate that competitive neutrality is not relevant.

Structural reform of public monopolies

Governments have an obligation to review the structure of public monopolies, including removing any regulatory role and examining whether there is merit in restructuring the monopoly prior to introducing competition into the market traditionally supplied by the monopoly or privatising the monopoly.

Following a submission from Tasmania relating to the privatisation of that State's TAB, the Council wrote to all the States and Territories on this matter in May 1999. The Council considers that TABs are not monopoly providers of their core gambling services (pari-mutuel betting) as they face competition from a number of providers, including other TABs, which are

accessible by telephone. Accordingly, the Council sees no obligations under clause 4.

However, the principle underpinning clause 4(2), the relocation of industry regulation, should be addressed with respect to TABs through clause 5 commitments.

Application of the principle underpinning clause 4(2) is relevant because of the nature of the relationships between gaming machine regulation and the provision of gaming machines in some jurisdictions. For example, under legislation passed in December 1997, the NSW TAB has a fifteen year exclusive licence to provide a Centralised Monitoring System (CMS) for gaming machines in all NSW registered clubs and hotels. Since then, further changes to the legislation, in May 1998, have granted the NSW TAB an exclusive fifteen year licence to enter into agreements with clubs and hotels to run gaming machines on their premises (investment licences). While these matters are directly clause 5(5) issues, when the NSW TAB investment licence is combined with the CMS licence, it raises the question of whether the NSW TAB is obtaining a regulatory or commercial advantage because the TAB's CMS operates on both gaming machines owned by the TAB and those owned and operated by its direct competitors.

Legislation review and reform

Jurisdictions have scheduled a large number of gambling acts and associated regulations for NCP review. As noted above these regulations cover a wide range of activities.

The legislation scheduled for review and progress with those reviews as at October 2000 is set out in Attachment A. This information is taken from a range of sources, primarily jurisdictions' annual and individual review reporting. However, this is an evolving document and the Council expects new information to be added to this list over time.

Attachment B sets out some important competition questions relating to gambling legislation which the Council has identified to date. These matters have arisen in a number of ways, including from reviews, the PC report and direct contact by interested parties with the Council. This list is not necessarily exhaustive and further matters may arise which will need to be considered.

In assessing legislation review and reform activity, the Council does not propose to make any comment on the objectives of State and Territory governments with respect to gambling legislation, except if the objective is to restrict competition, in which case the Council would expect the objectives to be removed.

Regimes which perpetuate past restrictive practices will be unlikely to be assessed as fulfilling the NCP obligations if there has been no attempt to identify and evaluate alternatives to the restrictions on competition. This will apply to both existing and new regulation (clause 5(5)). Clause 5(1) of the CPA requires a net public benefit from the restrictions and evidence that the restriction is the only way of achieving the aim of the legislation. All of the legislation review guidelines published by the jurisdictions and the NCC's own guidelines, discuss how to meet both of these guiding principles. The second of these is sometimes neglected or underplayed. However, it is important in achieving policy outcomes consistent with NCP.

In assessing NCP compliance, the Council will take account of conclusions reached by review panels as well as the conclusions reached by the PC review.

The PC Report

While the PC report on gambling¹ did not focus exclusively on NCP matters, it does provide some guidance on acceptable parameters for reviews and also on the arguments for various restrictions.

In respect to the overall goals of gambling regulation, the PC stated:

The two objectives providing the strongest rationale for special gambling policies are 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. (PC p 12.1)

In addition, the PC found there are often competing and conflicting goals and variable application of gambling policies, the rationale for policies is often unclear and sometimes policies and objectives lack a sound prima facie basis.

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

- probity regulations, with appropriate risk management which is aimed at protecting consumers and allowing operators to employ

¹ Productivity Commission (PC) 1999, Australia's Gambling Industries, Report No. 10.

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 the games being played and the likelihood of receiving large payouts,
- codes of conduct.

These restrictions have been shown to meet clause 5 obligations. Therefore, jurisdictions can rely on the PC arguments in support of these restrictions and the Council will require no further justification of the restrictions.

The PC identified probity, harm minimisation and consumer protection as acceptable rationales for restricting gambling activity. It also identified some restrictions which could be used in order to achieve these objectives and which meet the NCP obligations (see above). However, there may be other restrictions governments wish to use to achieve these objectives and for these there is still a need to establish that the *form* of restriction is the only way of achieving the stated objectives of legislation. In these cases, jurisdictions do not need to argue that the rationale for the restrictions is a net public benefit, only that restrictions are the only way of achieving the outcome.

For example, the PC reported that caps on the number of gaming machines, including state-wide, regional or venue caps, are a fairly blunt instrument for reducing problem gambling and have a number of adverse effects. This would suggest that imposing caps for harm minimisation purposes is not a preferred option for meeting NCP obligations. Nevertheless, the PC advised 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.

In addition, because of past decisions, it is apparent that 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. One example is the means of limiting access to gaming machines to reduce problem gambling. In WA, there are gaming machines only at Burswood Casino, so the policy response would be different to say, South Australia or Tasmania, where there are gaming machines in casinos and some – but not many – other locations, and different again in NSW and Victoria where there are many machines across a wide range of locations. Some options that might be available in WA, because of the limited spread of gaming machines, may be unavailable to NSW and Victoria where the costs of immediate radical change may be prohibitive. In other words, the Council expects that jurisdictions may adopt different policy outcomes, if for no other reason than they face different industry structures.

Restrictions applied primarily for reasons other than harm minimisation and probity should be removed unless there is a public interest case to support their retention. In particular, a number of restrictions which are applied to achieve objectives other than harm minimisation and probity are identified in Attachment B and would need to be removed or a public interest justification, consistent with the PC findings, demonstrated.

In particular, the Council is aware of arguments for the retention of restrictions on the grounds that the aims of the legislation are other than ensuring probity, consumer protection and harm minimisation. The Council does not wish to preclude the retention of other aims per se. However, jurisdictions cannot rely on the PC's arguments to provide support for these restrictions. Jurisdictions will need to provide a net public benefit argument – including that the restrictions are the only way of achieving the objectives of the legislation – to satisfy their NCP obligations.

In assessing the costs and benefits of the restrictions which are not aimed at the harm minimisation, consumer protection and probity objectives, jurisdictions should take account of the conclusions from the PC review and other NCP reviews to date. The PC review provides some regulatory direction in relation to the following types of arrangements:

- exclusivity;
- requirements based on the type of venue;
- restrictions on supply/access;
- consumer protection; and
- probity checks.

Competitive restrictions in gambling legislation generally fall into one of three categories – restrictions on ownership, restrictions on venue and restrictions on access. This is a useful construct when considering the issues raised in the gambling reviews. Regulation of ownership can usefully be considered separately from venue type or outlets. These in turn can be considered separately from the consideration of access.

The PC used these categories in its report. It considered restrictions on ownership under the heading of exclusivity; issues about venues it considered in the discussion on requirements related to venue types; and it addressed access issues in discussions on restrictions based on supply or accessibility.

Exclusivity

Exclusivity refers to the practice of legislating to grant exclusive rights to certain activities or the supply of certain services, generally through the

issue of exclusive licences. For example, each TAB has exclusive rights to supply pari-mutuel betting in its jurisdiction.

The PC noted there is a strong relationship between exclusive licences and tax arrangements, concluding that providing exclusivity to maximise taxation revenues is unlikely to be good policy. In particular, exclusivity arrangements create monopolies, or quasi-monopolies, which often act to reduce consumer welfare by restricting choice and raising prices.

It can be argued that economies of scale can lead to monopoly (or duopoly) and that therefore competition in such markets will be weak. The sale of exclusive franchises in these circumstances, it is argued, creates competition for these markets, through the bidding process, while at the same time allowing the community to benefit from any monopoly profits transferred through the payments to government for the franchise.

However, there are two points worth noting. Firstly there is the question of whether the relevant markets are at a national level, as opposed to a state or regional level. As the size of the market increases, there is a reduced likelihood of such scale economies. Secondly, even if there are economies of scale, sale of exclusive franchises may not be the only, or even the most efficient, way of allowing the community to share in the monopoly profits.

Further, the PC found that, in general, exclusivity arrangements do not reduce problem gambling.

The PC also considered this issue in regard to racing legislation and in particular, legislation concerning TABs. While recognising that there is a case for government intervention in overcoming the market failures in the racing industry, the PC said that TAB exclusivity did not appear to be necessary to ensure adequate funding for the racing industry. Furthermore, the PC found that many of the restrictions in racing legislation

... are designed with the interests of the current participants – governments, the TABs, the racing clubs and so on – in mind, and should be subject to broad public interest tests. (PC 14.17)

The PC considered arguments in favour of exclusive licences, particularly that exclusivity offers economies in industry supervision and regulation. However, the PC noted that exclusivity is not the preferred option in other regulated industries, such as insurance and banking, and concluded that a better approach would be to institute probity procedures appropriate to the activity and venue.

The PC rejected the case commonly put for exclusive lottery licences, that such arrangements allow bigger prize pools. While the exclusive licence

has enabled bigger prize pools, in most States and Territories larger pools are being offered through commercial arrangements in which lottery administrators pool their activities. The PC concluded that this indicated that the capacity to provide larger lottery pools does not constitute an argument for government-enforced exclusivity.

The PC review shows that, as a general principle, exclusivity is not consistent with NCP principles. On this basis, compliance with NCP would generally imply that exclusive licences should not be renewed and new exclusive licences should not be agreed without a strong public benefit argument.

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Restrictions on venue types

Restrictions on places where gambling is offered are common through all jurisdictions. The PC concluded that one of the core rationales for these restrictions is to limit gambling to adults. This is done through linking gambling and liquor licences. An important restriction in all jurisdictions is different regulation of gaming machines for clubs and hotels.

The PC concluded that current venue restrictions are based on “... *history and arrangements with particular interests rather than strong policy rationales.*” (PC 14.32).

The PC concluded that there may be benefit from adopting a broad risk management approach to limits across all venue types. In other words, one of the criteria for granting gaming licences ought to be harm associated with different venue types. It noted that there is little evidence that clubs provide a less risky environment than hotels. However, it noted that allowing hotels parity with clubs in the immediate future 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. Indeed, it is unlikely that if machine numbers are approaching any caps which are in place, redistribution under these caps would be a gradual process.

Under NCP, a rigorous public interest justification in terms of harm minimisation would need to be demonstrated for a difference in regulation of hotels, casinos and clubs. In the absence of such a case, there should be equivalent treatment. The Council notes that this may be a gradual process to take into account the possible increase in overall machine numbers.

Accessibility

Accessibility refers to the ease with which consumers can use gambling services. For example, it is relatively easy to buy a lottery ticket, with outlets spread widely throughout the community. On the other hand, casino games are available only in casinos and the restrictions in the licences to operate casinos mean that opportunities to partake of these gambling activities are restricted to a few locations.

The PC noted that restrictions on access often arise from policy objectives such as a desire to assist clubs or raise taxation revenues. It found that such rationales do not withstand scrutiny, arguing that the only rationale for regulating access should be to limit social harms and meet community expectations.

The PC canvassed a number of measures currently used to limit access, such as caps on gaming machine numbers, including venue caps and linking of liquor licences to gaming machine licences as a way of denying access to gaming machines by those aged under 18. It suggested how these measures may be best used as well as other measures which would be more effective in reducing hazards associated with gambling. The PC favoured harm minimisation strategies over quantitative restrictions. However, it noted that should these strategies not be put in place, there would be a case for some quantity restrictions in some circumstances.

The PC recognised the different circumstances in each State and Territory and that transitional arrangements may be necessary.

To the extent that measures aimed at reducing access to gambling attempt to reduce the incidence of problem gambling, the approach under NCP should be to determine whether they are the only way of achieving this objective. Restrictions on access not solely for harm minimisation would need a strong net public benefit justification.

Consumer protection

Where there are adverse impacts on some consumers, or where people have imperfect information, there is justification for consumer protection measures.

The PC concluded that:

Reducing the risks of crime and problem gambling, and increasing the scope for informed consent by consumers, provides a strong basis for oversight of gambling by governments. (PC 16.1)

The PC examined a range of policy responses. It concluded that there are many ways consumer protection could be enhanced, including provision of more and better information, treating problem gambling as a public health issue, legislating codes of conduct on standards for advertising, promotion and marketing of gambling, instigating easy to use self-exclusion procedures, and redesigning poker machines.

While some jurisdictions employ some of these measures for some gambling activities, the PC clearly envisaged a wider application of all of these consumer protection policies.

Under NCP, the PC findings justify some restrictions, such as those mentioned above, on the basis of consumer protection. Jurisdictions which employ, or legislate to employ, such policies could use the PC arguments to justify these competitive restrictions

Probity checks

The PC identified probity issues as a source of risk to the community and therefore warranting regulation. It considered probity issues broadly. While this included concerns about the involvement of criminal elements, it also included matters of ensuring payout ratios are adhered to, whether prizes are appropriately drawn in lotteries, concerns about 'insider trading or asymmetrical information, the conduct of race meetings and assurances that races have been conducted fairly.

The PC suggested that probity regulations should incorporate appropriate risk management. This means:

- aiming to protect consumers;
- allowing operators to employ their own risk management procedures when the risks accrue to the operators;
- the costs are borne by the industry; and

- a common framework of probity checks across activities, venues and, if possible, jurisdictions applies.

Under NCP, the PC findings provide a net public benefit justification for restrictions involving probity checking. However, where restrictions do not also incorporate the characteristics described above, jurisdictions will need to demonstrate that such restrictions are the only way of achieving the policy objectives.

Other issues

S51 exemptions

Several jurisdictions have relied on exemptions under s51 of the TPA in respect of gambling legislation. These exemptions constitute new legislation and are therefore subject to clause 5(5) obligations.

The impact of interactive gambling

Gambling on the internet may reduce the effectiveness of attempts to limit access to gambling opportunities. In addition, some of the licences granted by the States and Territories may have NCP implications if they restrict competition. The Council has no information from jurisdictions on their intentions with interactive gambling.

However, at the moment, the Commonwealth is examining a regulatory approach to interactive gambling. The Commonwealth has expressed concerns that such gambling may have a significant impact on problem gambling and may recruit new gambling customers because of ease of access. The Commonwealth Government is examining the feasibility of a ban on such activity. However, at this stage there is no policy for the Council to assess.

For NCP compliance in this case, as for other areas of gambling, restrictions, whether imposed by Commonwealth, State or Territory Governments, will need to reflect the NCP obligations. Restrictions which aim to minimise harm, including probity checking or consumer protection, are justified on public benefit grounds. However, the jurisdictions would need to demonstrate that any restrictions on competition are the only way of achieving these objectives.

Conclusion

In assessing legislation review and reform activity, the Council does not propose to make any comment on the objectives of State and Territory governments with respect to gambling legislation, except if the objective is to restrict competition, in which case the objective should be removed. The

Council will focus on whether restrictions aimed at achieving objectives in legislation provide a net community benefit and are the only way of achieving the objective.

The review conducted by the PC establishes a public interest case in support of measures directly aimed at harm minimisation, probity matters and consumer protection. Jurisdictions can rely on these arguments in establishing their case for the use of these measures in gambling regulation. The remaining task under NCP for jurisdictions using these measures is to ensure that restrictions on competition are the only way of achieving the objective of the legislation. For some such measures, the PC has already undertaken this task, but for many other measures the jurisdictions will need to complete this part of the public interest test.

For other restrictions, NCP compliance will involve governments demonstrating both a net community benefit case for the restriction and establishing that restricting competition is the only means of achieving the objective of the legislation. The Council will look closely at the regimes that continue past practices if there has been no identification and evaluation of pro-competitive alternatives. In assessing NCP compliance, the Council will take account of conclusions reached by the PC review regarding restrictions on ownership, venues and access.

Attachment A

NCP Gambling Reviews - progress

Jurisdiction	Legislation	Status
New South Wales	Gambling (Two Up) Act	Review complete - no change
	Casino Control Act 1992 Racing Administration Act Bookmakers Taxation Act Greyhound Racing Control Act Harness Racing Act Thoroughbred Racing Board Act Liquor Act Registered Clubs Act	Review underway
	Lotteries and Art Unions Act	Review not yet begun
	NSW Lotteries Corporatisation Act Public Lotteries Act Totalizator Act (and Amendments)	New legislation (cl 5(5))
Victoria	Casino Legislation	Withdrawn
	Club Keno Act 1993 Parts of the Gaming and Betting Act 1994 Racing and betting legislation Tattersall Consultations Act	Review complete, report not released or action not announced
	Gaming Machine Control Act 1991	Review underway
Queensland	Casino Agreements legislation (four agreement acts) Lotteries Act Wagering Act	Review complete, action taken
	Art Unions and Public Amusements Act	Repealed and replaced with the Charitable and Non-profit Gaming Act
	Racing and Betting Act and associated rules and regulations (as they relate to the Qld TAB)	Addressed in the new Wagering Act
	Racing and Betting Act and associated rules and regulations (as they relate to bookmakers and the Queensland racing industry)	Review underway; \$200 off-course betting limit for bookmakers removed from the legislation
	Keno Act Casino Control Act and associated regulation Gaming Machine Act Wagering Act Interactive Gambling (Player Protection) Act Charitable and Non-profit Gambling Act Gaming Legislation Amendment Bill Lotteries Act	Omnibus public benefit test review underway Queensland will need to provide a cl 5(5) argument on the exclusive licence in the Wagering Act

	Wagering Act	Queensland will need to provide a cl 5(5) argument on the exclusive licence
Western Australia	Instant lottery and lotto rules Lotteries Commission Act and regulations and rules	Review complete, restrictions retained
	Betting Control Act, Totalisator Board Betting Act and rules and regulations Racing Restrictions Act – 1927 and 1917 Casino Agreement Act Casino Control Act Gaming Commission Act and regulations Western Australian Greyhound Racing Association Act	Review complete, action announced
South Australia	Casino legislation	Does not appear on the SA legislation review schedule, although SA informed the Council in 1998 that it had considered its casino licensing arrangements
	Racing Act	Review complete, report not released/action not announced
	Lottery and Gaming Act State Lotteries Act	Review underway
	TAB legislation	A clause 5(5) review may be necessary for the privatisation legislation of the TAB
Tasmania	Tasmanian Harness Racing Board Act	New legislation (Racing Amendment Act 1997) - assessed under gatekeeper provisions
	Casino Company Control Act	Minor review completed, Act to be repealed
	Gaming and Racing Act (as it relates to minor gaming)	The gaming components of this Act are to be transferred to the Gaming Control Act and will be assessed under LRP gatekeeper requirement
	Racing Act and Racing and Gaming Act (except as it relates to minor gaming)	Review completed and it is anticipated a new act will replace existing legislation

	<i>Racing Act and Racing and Gaming Act Cont...</i>	This new act would be subject to the gatekeeper provisions
	Gaming Control Act	Review completed and the Government is considering the recommendations
	Racing Amendment Act 1997	New legislation – clause 5(5) review necessary
ACT	Bookmakers Act	Review complete – action announced
	Betting (ACTTAB Limited) Act Betting (corporatisation) (consequential provisions) Act Casino Control Act Games Wagers and Betting Act (NSW) Gaming and Betting Act (NSW) Gaming Machine Act Lotteries Act, Pool Betting Act Unlawful Games Act	Review complete - no information on status of review recommendations
	Racing Act 1999	The Racecourses Act was repealed and in part replaced by new racing legislation. If this is the new legislation needs to be subject to a clause 5(5) review
Northern Territory	Gaming Control Act and regulations Gaming Machine Bill (cl5(5)) Racing and Betting Act and regulations Totalisator Administration and Betting Act	Review underway

Source: Compiled from information contained in Annual Reports received by the Council to date.

Attachment B

Restrictions on competition and market behaviour are common in gambling legislation. Examples of these restrictions include:

- who can participate in the provision of the gambling activity, such as through probity checks;
- the accessibility of gambling operations – for example, caps on the number of gaming machines, whether regional or state-wide;
- the kinds of gambling activities which may take place at a particular venue;
- the kinds of races which can be staged, for example, there may be restrictions on races for some breeds, like quarter horse or arabs;
- measures to protect the operations of TABs such as:
 - the exclusive TAB licences in each state,
 - limits on advertising odds from other sources,
 - the \$200 minimum telephone bet with bookmakers;
- the involvement of third parties; and
- licences (sometimes exclusive licences) for some types of gambling operations.

Issues raised before the Council

As well as the general issues raised by the PC in its report, the following specific issues have been raised. The list is not exhaustive and the Council expects that further matters will be brought to its attention as reviews are completed and governments' responses announced.

Review Processes

The NCP legislation review program is aimed at good policy outcomes. Pre-requisites for this include independent, objective reviews and government responses consistent with review recommendations, unless there is a public interest case supporting a different approach. In conducting its assessments, the Council will look for evidence of processes which can lead to good policy outcomes.

The Council and most of the jurisdictions have published review guidelines. The Council will be looking for evidence that reviews have

been conducted in accordance with these guidelines. This involves properly constituted panels, reviews which allow public input, analysis that supports the conclusions reached, notification of government action on the recommendations and, where the government has rejected the review findings, a public benefit argument.

Information and clarification

In some cases, the Council does not have enough information to form a view about whether particular jurisdictions have met their NCP obligations. Information provided to the Council to date does not for example always provide information on reports, their conclusions and recommendations, the government's response (including public benefit arguments if necessary) and the outcome in terms of changes to legislation.

The Council has identified the following specific instances where information has not been supplied or is insufficient for the Council to adequately assess NCP compliance.

- To satisfy its clause 5(5) obligations with respect to the Wagering Act, Queensland will need to provide sound arguments in favour of the exclusive licence granted the TAB.
- Clause 5(5) obligations will also be relevant for new legislation in South Australia covering the privatisation of its TAB and the Council will need to be given evidence of these processes and outcomes.
- In earlier Annual Reports, South Australia has stated that it had completed its review of the casino legislation, however, there is no mention of this review in recent reports. The Council will need assurance that the review has been completed and that the action required from this process has been implemented.
- The ACT will need to provide information on the final outcome, government response and subsequent action arising from the Betting and Gaming legislation review process.
- The ACT has noted that the Racecourse Act has been repealed, but the Council also needs information on what legislation replaced it and what were the relevant clause 5(5) arguments for this new legislation.

Gaming machine licences

Venue-related issues

Discrimination between categories of venues (for example hotels, clubs and casinos) in relation to the distribution of licences arises in several

jurisdictions. Discrimination may limit availability to some extent – such as restricting gaming machines to venues where minors are not admitted – but the internet gambling may offset this to some extent.

The PC found no strong policy rationale for discrimination between categories of venues. In principle, the PC does not support discrimination between venues as being in the public interest. These findings suggest that, in most circumstances, discrimination is not the best way of achieving objectives such as harm minimisation.

Quantity restrictions

Some governments are proposing caps on gaming machines as a means of reducing harmful gambling.

The PC concluded that caps are, at best, a very blunt instrument for reducing adverse social effects of gambling. While the desired effect may be to reduce accessibility, invariably there will be other outcomes. For example, if the caps are binding, the operator may try to raise the price of gambling by reducing the odds. Alternatively, machines may no longer be allocated to those who most value them, instead there would be congestion and queuing to use the machines. The impact of gaming machine caps will depend on other aspects of the policy environment, such as who owns the machines and whether there are price controls in place.

While advocating a gradual removal of caps, the PC also noted that if governments do not act to significantly reduce the social risks associated with problem gambling, there may be a case for retaining quantity restrictions where gaming machines are not yet available, or where existing caps are set at relatively low levels.

The PC findings suggest that use of caps to achieve harm minimisation is not an optimal policy and in most circumstances would not be the only way of achieving this objective.

Ownership issues

The industry structure, namely who owns the gaming machines and the relationships between suppliers, owners and venues, can have significant impacts on the effects of other policies, in particular, those aimed at harm minimisation. The States and Territories have a range of ownership models, all of which contain some restrictions. Some of these restrict competition, for example, the duopoly on the ownership of gaming machines in Victoria outside the casino, and should be addressed as part of NCP reviews. In instances where the Government is the sole supplier of gaming machines, clause 3 matters may also be relevant.

Monitoring gaming machines

There are two issues:

1. Queensland's monitoring legislation bans revenue sharing between venues and some monitoring companies – which also provide machines to these venues. Queensland's clause 5(5) review did not present strong public benefit arguments. For example, the arguments were based solely on clubs being affected by this legislation. However, hotels are also affected and no mention was made of any costs to hotels of the restrictions. The review noted that the amendment blocks only one of a number of financing methods. It concluded that while the amendment would have some impact on competition, that it would not be substantial and it could be argued that the changes to the Act did not have the purpose or effect of substantially lessening competition. While this may be true, this is not the test for a Clause 5 (5) review.
2. NSW has a single exclusive arrangement with the NSW TAB to provide monitoring. The Council is not aware of any clause 5(5) review to support this.

In some jurisdictions, monitoring bodies also provide gaming machines to venues. While this has not arisen through the privatisation of government monopolies and is therefore not strictly a clause 4(2) issue, it could be construed as contrary to the spirit of clause 4(2).

Casinos

Legislation reviews have found that the level of compensation required to remove exclusive licences exceeds any benefits to be gained from their removal. However, there will be opportunities in the future as these licences come up for renewal to look at these questions again. The PC suggests that granting exclusive licences does not significantly improve harm minimisation. The Council would therefore be concerned about any new licences being granted in the absence of a rigorous public benefit argument. The Council is aware that the Burswood Island licence expires this year, although there are still other restrictions on market entry which will deter new entrants within a 100km radius of Burswood Island.

TABs/betting

The management of TABs raises several NCP issues, including:

- 1) Strong public benefit arguments will be needed for the granting of exclusive licences. The granting of these exclusive licences seems to have been a pre-condition for privatising the TABs. Only NSW has undertaken a Clause 5 review – others need to make sure it is done. The NSW review concluded that there is a public benefit from the exclusive licence. However, this was completed before the PC report

found that exclusive licences were not necessary to ensure funding for the racing industry.

- 2) The Council considers that there are no clause 4(3) matters.
- 3) Horse racing has some significant restrictions, for example, organisers of arab and quarter horse racing face significant hurdles in obtaining permission to hold race meetings.

The PC found that many of the restrictions serve the interests of a group of participants – namely governments, the TABs and the racing clubs – and should be subject to broad public interest tests. While it acknowledged that there is a complex web of regulations supporting the current regime, and in general no regulation could be considered in isolation, it found no case for the \$200 telephone betting limit on bookmakers and argued that it could be removed forthwith.

- 4) Questions have also been raised about other betting, such as restrictions on sports betting and restrictions on advertising. The PC noted that the betting environment for the TABs is changing. In particular, the impact of interactive betting is making inroads into the TABs domain. Further, betting on racing has been declining in importance relative to other forms of gambling. While in the past, the funding for the racing industry may have been assured through restrictions in place, the relative decline in racing betting and revenues may mean that the industry will have to revisit the funding question. In any case, the PC concluded that TAB exclusivity and associated restrictions are not necessary to ensure an appropriate level of funding for the racing industry.

Lotteries

Some reviews of lotteries legislation have been undertaken. In Queensland, for example, there is now a period of transition from the exclusive licence to a more competitive market, of 10 years, which seems to be a very long time. On the other hand, WA has reviewed its lotteries legislation and decided to keep the exclusivity.

The PC found that the argument that the exclusive licence will enable larger prize pools to be offered is flawed. The exclusive licence does mean that providers can offer a bigger prize pool than they would otherwise, and the size of the pool is an important consideration. However, in most States and Territories larger pools are being offered through commercial arrangements in which lottery administrators pool their activities. The PC concluded that this indicated that the capacity to provide larger lottery pools does not constitute an argument for government-enforced exclusivity. The Council will be looking for strong counter arguments

from those jurisdictions which decide to maintain the exclusive lottery licences.