
22 Regulatory processes and institutions

Box 22.1 Key messages

- Current institutional arrangements for gambling policies and regulation have some positive aspects, but also some deficiencies:
 - regulatory responsibilities are sometimes unnecessarily divided;
 - some regulators are part of government, some are independent;
 - mechanisms for obtaining community input are generally insufficient; and
 - there is inadequate information for good decision making.
- Key questions concern the appropriate level at which different decisions should be made, the information which should inform such decisions, and how that information, including community views, should be accessed.
- A regulatory ‘model’, drawing on the best aspects of current arrangements — though going beyond what is to be found in any jurisdiction — would comprise:
 - ‘big picture’ policy decisions being made by each government/Parliament, but informed by more open processes and better information;
 - an independent gambling control authority in each state and territory:
 - * with the primary objective of furthering the public interest;
 - * its charter emphasising a high standard of consumer protection as a central objective; and
 - * with the role of making decisions in accordance with legislative criteria, as well as providing objective information to government and the community.
 - * It would have:
 - > *a structure* which facilitates its statutory independence;
 - > *coverage* of all gambling activities; and
 - > *processes* based on transparency and public consultation;
 - an enforcement function separate to the control authority or the policy department;
 - an independent board with responsibility for (a) administering the Community Benefit Fund, (b) funding of counselling and harm minimisation programs, and (c) research and information gathering and dissemination (see also chapter 23).

22.1 Introduction

Previous chapters have only touched upon part of the complex web of government controls and requirements designed to regulate Australia's gambling industries. Nevertheless, it is apparent that current regulatory structures are characterised by a wide variety of approaches, heavily influenced by the changing views of governments and societies at different times and by specific arrangements entered into with particular providers. In addition, chapter 12 has shown that governments have not been wholly clear or consistent about their reasons for regulating gambling.

There are many positive aspects to current arrangements, and the ongoing process of review, through racing and gaming ministers conferences, NCP reviews and the like, have led to changes in regulations and the associated governmental structures. The changing nature of the gambling market itself has added impetus to this.

However, there are some perverse features. In part, this is because governments continue to face conflicting pressures. They wish to reduce the social harms of gambling, but also to expand gambling tax revenues. They promote and provide some forms of gambling. They inflate the prices of gambling products to consumers through exclusivity arrangements and high taxes, while imposing ceilings on the prices of some gambling products.

These matters raise questions about how decisions are made, and whether there are better ways to structure policy making and regulatory processes to get better outcomes in the future. Indeed, a concern frequently expressed to the Commission was that there was insufficient emphasis upon proper processes for reaching decisions, a general lack of transparency in those processes, and that decision making was insufficiently independent from the various interests involved (including arms of government). The variety of processes and governance arrangements used in different jurisdictions suggests that there may be lessons to be learned.

These issues are not unique to Australia. The United States National Gambling Impact Study Commission said that one of its key arguments for a 'pause' in the expansion of gambling in that country was:

... to encourage governments to do what to date few if any have done: To survey the results of their decisions and to determine if they have chosen wisely ... virtually no state has conformed its decisions in this area to any overall plan, or even to its own stated objectives. Instead, in almost every state whatever policy exists toward gambling is more a collection of incremental and disconnected decisions than the result of deliberate purpose (NGISC 1999, p. 1.7).

Across Australia, the development of regulatory regimes is in a state of flux. Several states and territories are reviewing or changing aspects of their policy towards one form of gambling or another. For example:

- the Queensland Government is nearing completion of a review into the economic and social impacts of gaming machines, and has announced several policy changes it will seek to implement;
- the ACT is setting up a Gambling and Racing Commission to be responsible for all forms of gambling, following a report by an ACT Legislative Assembly committee;
- the newly elected Victorian Government has announced that it intends to make some wide-ranging changes to aspects of that state's gambling policies, including with respect to caps on machine numbers, local community consultation and greater independence for the VCGA;
- New South Wales has enacted the *Gambling Legislation (Responsible Gambling) Act 1999* to, among other things, strengthen controls over the industry and foster harm minimisation measures;
- New South Wales and South Australia, among others, are undertaking public NCP reviews of their racing and wagering industries; and
- at the federal level, a Senate committee is examining the implications of growth in online gambling.

This chapter looks at some central questions about the structures and processes which lead to good policy outcomes. It asks:

- what functions need to be undertaken by a regulatory regime?
- at what level should different decisions be made?
- how should regulatory institutions be structured?
- how broad should their respective ambits be?
- what rules and processes should be followed by regulators and policy makers?

The next section looks at the functions which need to be undertaken within a regulatory regime for gambling industries, and briefly notes how some of these are being undertaken now. It also highlights some concerns raised by participants during the inquiry. The chapter ends with the Commission's views on what the most appropriate regulatory regime might look like, drawing on the experiences of different jurisdictions.

22.2 What regulatory functions need to be undertaken?

Previous chapters, the work of analysts such as McMillen and recent reports such as that by IPART (1998) point to the need for a regulatory regime for gambling to be organised around several key functions, namely:

- *the development of policy* — settling the ‘big picture’ questions on threshold matters with significant community-wide impacts;
 - this includes decisions about the liberalisation and accessibility of gambling, what forms of gambling should be legal, tax rates, harm minimisation and consumer protection policies, the number of provider licences to be issued, the nature of exclusivity arrangements entered into with particular providers, issues of government or private ownership of some gambling providers and caps on gaming machines;
- *control* — more ‘administrative’ decisions and independent advice within the established broad policy framework:
 - deciding, within the context of the principles so established, who should get licences, which venues get machines, which persons may operate or work in venues, which games may be played, technical standards for machines, and penalties for breaches of licence conditions; broadly, this is about making decisions, approving standards and (perhaps) deciding appeals;
- *enforcement* — monitoring to ensure compliance with the rules and standards;
 - the day-to-day surveillance of the conduct of gaming and enforcing the rules already in place, checking that technical standards are complied with, investigating complaints and ensuring that consumer protection requirements are met;
- *adjudication* on appeals against decisions made under the control and enforcement functions;
- *revenue assessment and collection*; and
- *programs* — such as those covering community awareness of the risks of gambling, support services for problem gambling, research programs and data collection.

The boundaries between these functions can be difficult to delineate precisely. In particular, separating the control and enforcement functions poses some practical difficulties. But what is clear is that there is currently some confusion of roles and functions, and that these are likely to lead to poor decision making, with the consequence that community concerns about aspects of gambling policy may not be properly addressed.

How are these functions undertaken now?

Each of the regulatory functions listed above is carried out in each jurisdiction, but in different ways. For example, each jurisdiction has a department or office with responsibility for administering a range of gambling legislation (box 22.2), responsible to a Minister who has the major responsibility for gambling policy and regulation — in several cases, within the Treasury portfolio. But a number of other agencies (for example, departments of health or community services, racing clubs and the police) may also have particular responsibilities.

The broad approaches are summarised in tables 22.1 and 22.2, which capture some of the main features and differences.

In addition, each jurisdiction has a statutory authority with a particular set of responsibilities. Typically, the authorities comprise independent commissioners, appointed for fixed terms, but the scope of their activities varies considerably. Some have a fairly broad focus (the VCGA, for example, and the ACT's proposed Gambling and Racing Commission), while others have a narrower set of responsibilities. Some have their own staff (the VCGA, for example, has 146, the Casino Control Authority of New South Wales has 22 and the ACT's Casino Surveillance Authority has 12), but more commonly they are serviced by secretariats from the regulating agency (the Queensland Gaming Commission is an example).

Some independent authorities have the semi-judicial right to determine certain matters, rather than recommend action to a Minister. In Queensland, where the regulation of gambling is almost wholly the responsibility of the QOGR, the power to grant, suspend or cancel licences (or to issue sanctions) for gaming machines in clubs and hotels is given to an independent statutory authority, the Queensland Gaming Commission. Similar powers are vested with:

- the VCGA (with respect to gaming machines and the casino);
- the Casino Control Authority of New South Wales (with respect to the casino); and
- the New South Wales Licensing Court and the Liquor Administration Board (with respect to gaming machines).

In many other cases, these functions are carried out by regulators, Ministers and the courts. In South Australia, for example, the Liquor and Gaming Commissioner has these powers, as does the Office of Racing, Gaming and Liquor in Western Australia (which also performs some functions for the Gaming Commission of Western Australia).

Box 22.2 Main legislation governing gambling

New South Wales:

Bookmakers (Taxation) Act 1917
Casino Control Act 1992
Gambling (Two-up) Act 1998
Liquor Act 1982
Lotteries and Art Unions Act 1901
Public Lotteries Act 1996
Racing Administration Act 1998
Racing Taxation (Betting Tax) Act 1952
Registered Clubs Act 1976
Totalisator Act 1997
Unlawful Gambling Act 1998

Victoria:

Casino (Management Agreement) Act 1993
Casino Control Act 1991
Club Keno Act 1993
Gaming No. 2 Act 1997
Gaming and Betting Act 1994
Gaming Machine Control Act 1991
Interactive Gaming (Player Protection) Act 1999
Lotteries, Gaming and Betting Act 1966
Racing Act 1958
Tattersall Consultations Act 1958
Trans-Tasman Line Gaming Act 1993

Queensland:

Art Unions Act 1992
Breakwater Island Casino Agreement Act 1982
Brisbane Casino Agreement Act 1992
Cairns Casino Agreement Act 1993
Casino Control Act 1982
Charitable and Non-profit Gaming Act 1999
Gaming Machine Act 1991
Interactive Gambling (Player Protection) Act 1998
Jupiters Casino Agreement Act 1983
Keno Act 1996
Lotteries Act 1997
Racing and Betting Act 1980
Wagering Act 1998

Western Australia:

Betting Control Act 1954
Casino (Burswood Island) Agreement Act 1985
Casino Control Act 1984
Gaming Commission Act 1987
Lotteries Commission Act 1990
Totalisator Agency Board Betting Act 1960

South Australia:

Casino Act 1983
Gaming Machines Act 1992
Lottery and Gaming Act 1936
Racing Act 1976
State Lotteries Act 1966

Tasmania:

Casino Company Control Act 1973
Gaming Control Act 1993
Racing Act 1983
Racing and Gaming Act 1952
TT-Line Gaming Act 1993

ACT:

Betting (ACTTAB Limited) Act 1964
Bookmakers Act 1985
Casino Control Act 1988
Games, Wagers and Betting-houses Act 1901 of NSW
Gaming and Betting Act 1906 of NSW
Gaming Machine Act 1987
Interactive Gambling Act 1998
Lotteries Act 1964
Pool Betting Act 1964
Racing Act 1998
Unlawful Games Act 1984

Northern Territory:

Gaming Control Act 1993
Gaming Machine Act 1995
Racing and Betting Act 1998
Totalisator Administration and Betting Act
Unlawful Betting Act
Soccer Football Pools Act
Racing and Gaming Authority Act

Table 22.1 Key portfolio and statutory agencies

Excluding taxation and revenue collection

| <i>State/ Territory</i> | <i>Agency</i> | <i>Main portfolios</i> | <i>Main roles in relation to gambling</i> |
|-----------------------------|---|------------------------|---|
| NSW | Dept of Gaming and Racing (incl Director of Casino Surveillance) | Gaming and Racing | has overall responsibility for the proper conduct and balanced development - in the public interest - of the gaming, racing, liquor and charity industries |
| | Liquor Administration Board | | administers liquor licences, assesses and collects gaming machine duty in clubs and hotels, approves gaming machine technical standards |
| | Licensing Court of NSW | | responsible for granting liquor licences to hotels and certificates of registration to clubs, both of which carry entitlements to operate gaming machines; also responsible for issuing licences to gaming machine dealers, sellers, technicians and advisers |
| | Casino Control Authority | | licensing, supervision and control of casino operations, approval of casino games and equipment etc, fund and conduct research into casino-related matters |
| Vic | Victorian Casino and Gaming Authority VCGA together with its: <ul style="list-style-type: none"> • Director of Gaming and Betting^a and • Director of Casino Surveillance^a | Gaming | has powers of review, regulation and to fund and conduct research grants licences, decides who is suitable to hold a licence etc quasi-judicial - tasks include making final determination on appeals lodged by external parties against decisions of the Directors |
| | Office of Racing | Racing | licensing of bookmakers |
| Qld | Queensland Office of Gaming Regulation | Treasury | regulation of almost all legalised gambling licensing and compliance functions |
| | Queensland Gaming Commission | | has the power to grant, censure, suspend or cancel a range of licences incl gaming machine licences; determines number of gaming machines at each venue; hears appeals against certain decisions; (appeals against its decisions go to Minister or Magistrates Court) |
| WA | Office of Racing, Gaming and Liquor | Racing and Gaming | carries out many of the Gaming Commission's operational functions, including the provision of licensing, inspection and audit for casino and permitted gaming, together with wagering |
| | Gaming Commission of WA | | policy and procedures in the administration of casino gaming; licensing and regulating minor gambling, VLTs and lotteries |

(continued)

^a Appointed statutory positions, with specific functions established in legislation.

Table 22.1 (continued)

| <i>State/ Territory</i> | <i>Agency</i> | <i>Main portfolios</i> | <i>Role and activities in relation to gambling</i> |
|-----------------------------|--|------------------------------|--|
| SA | Liquor and Gaming Commissioner | Justice | administers and regulates the casino and gaming machines in clubs and hotels determines applications for licences hears disciplinary action against licensees, and has to power to reprimand, suspend or cancel licences inspects, monitors and gaming machine operations |
| | Dept of Treasury and Finance | Treasury | some supervisory functions with respect to the casino, gaming and the Lotteries Commission |
| | Gaming Supervisory Authority | Treasury | review and supervision of the licensing process and of conduct of gaming can hear appeals and conduct inquiries on any matter relating to gaming covers casino and gaming machines |
| Tas | Dept of Treasury and Finance | Treasury | responsible for most gaming and wagering |
| | Tasmanian Racing Authority | | licensing of bookmakers |
| | Tasmanian Gaming Commission | | oversees and monitors gambling policy administers the Community Support Levy and makes recommendations on allocation of funding |
| ACT | ACT Revenue Office | Chief Minister | responsible for most gaming and wagering |
| | Casino Surveillance Authority ^a | | supervises the operation of the casino, licences employees, checks and approves gaming equipment, casino layout etc |
| NT | Racing and Gaming Authority | Racing, Gaming and Licensing | main regulator of all forms of gaming and racing |
| | Gaming Control Commission | | review and advisory functions on gaming matters |
| | Racing Commission | | regulates and controls racing, bookmaking and TAB |

^a To be replaced by the Gambling and Racing Commission.

Source: submissions, annual reports.

Table 22.2 Policy, control and enforcement: the main regulators

| <i>State/Territory Who handles the gambling policy role?</i> | <i>Regulators</i> | <i>Statutory authority?</i> | <i>Coverage of gambling modes</i> | <i>Mainly control or enforcement?</i> | <i>A research function?</i> | <i>Program adminis- tration^a</i> |
|---|---|---------------------------------|---|---|---------------------------------|---|
| NSW <i>Minister for Gaming and Racing</i> | Dept of Gaming and Racing | ✗ | most | both | ✓ | ✓ |
| | Liquor Administration Board | ✓ | machine gaming in clubs and hotels | control | ✗ | ✗ |
| | Licensing Court | ✗ | machine gaming in clubs and hotels | control | ✗ | ✗ |
| | Casino Control Authority | ✓ | casino gaming | control | ✓ | ✗ |
| Vic <i>Minister for Gaming (also Minister for Finance)</i> | Victorian Casino and Gaming Authority | ✓ | most | both | ✓ | ✓ |
| | Office of Racing | ✗ | racing | | ✗ | ✗ |
| Qld <i>Treasurer</i> | Queensland Office of Gaming Regulation | ✗ | most | both | ✗ | ✓ |
| | Queensland Gaming Commission | ✓ | most | control | ✗ | ✗ |
| WA <i>Minister for Racing and Gaming</i> | Office of Racing, Gaming and Liquor | ✗ | most | both | ✗ | ✗ |
| | Gaming Commission of WA | ✓ | most | control | ✗ | ✗ |
| SA <i>Treasurer</i> | Liquor and Gaming Commissioner | ✗ | casino, clubs, hotels | both | ✗ | ✗ |
| | Gaming Supervisory Authority | ✓ | casino, clubs, hotels | control | ✗ | ✗ |
| | Dept Treasury and Finance | ✗ | most | enforcement | ✗ | ✗ |
| Tas <i>Treasurer</i> | Dept Treasury and Finance | ✗ | most | enforcement | ✗ | ✗ |
| | Tasmanian Gaming Commission | ✓ | most | both | ✗ | ✓ |
| | Tasmanian Racing Authority | ✗ | racing | | ✗ | ✗ |
| ACT <i>Chief Minister</i> | ACT Revenue Office | ✗ | most | both | ✗ | ✓ |
| | Casino Surveillance Authority | ✓ | casino | both | ✗ | ✗ |
| NT <i>Minister for Racing, Gaming and Licensing</i> | Racing and Gaming Authority | ✗ | most | enforcement | ✗ | ✓ |
| | Gaming Control Commission | ✓ | gaming | control | ✗ | ✗ |
| | Racing Commission | ✓ | racing | control | ✗ | ✗ |

^a Undertaking or funding counselling, community or research programs.

In the past, it was common for casinos, racing and other forms of gambling to be handled separately, and to some extent this still holds in some jurisdictions. For example, control of casinos is vested in an independent authority in New South Wales and (currently) the ACT, but comes under a more broadly-based independent gaming control authority in several other states. For example, the VCGA is responsible for regulating all forms of gambling in Victoria other than the licensing of on-course bookmakers (the responsibility of the Office of Racing).¹

As new gambling forms have been permitted and have expanded in importance, regulatory regimes have sought to adapt to these changes. For example:

- the VCGA was formed in 1994 when Victoria's Gaming Commission, established to control the gaming machine industry, and its Casino Control Authority, established to regulate casino operations, were combined;
- South Australia's Gaming Supervisory Authority has a broader purview than the Casino Supervisory Authority, which it replaced in 1995;
- the ACT Government is about to establish a Gambling and Racing Commission with responsibility for all gambling including the casino and ACTTAB; and
- the QOGR is now responsible for almost all legalised gambling in Queensland (sub. 128, p. 15).

Other institutional changes have also been made. For example, Queensland has separated the operational functions of owning and monitoring gaming machines from the regulatory functions of the QOGR. It has separated the regulatory and business functions of the Golden Casket Lottery Corporation, and is doing the same for its TAB prior to selling off the business function (sub. 128, pp. 6–7). These changes have served to focus the regulatory responsibilities in the one place.

Similarly, the South Australian Government said that, while its TAB and Lotteries Commission are 'self-regulated through the Minister of Government Enterprises':

If they are to be privatised it is the intent of the government that the regulatory functions would be vested with a separate regulatory body (sub. D284, p. 7).

It cited section 4 of the Competition Principles Agreement, which requires that:

Before a party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the public monopoly any responsibilities for industry regulator (sub. D284, p. 7).

¹ The VCGA's responsibilities are shared between the Authority and the two senior statutory officers, the Director of Gaming and the Director of Casino Surveillance. The Authority and the Directors can provide advice to the Minister for Gaming jointly or separately.

Issues which have arisen during this inquiry

Some of the issues raised by participants were as much about how decisions were made as about the decisions themselves. Several raised concerns about:

- conflicting objectives;
- inconsistency of approaches;
- lack of transparency; and
- the inadequacy of consultation processes.

Conflicts of objectives

As noted elsewhere in this report, there are conflicts among some of the objectives which regulatory regimes seek to meet. Noting the government's reliance on gambling taxes, Logan City Council said:

Current regulation in Queensland appears to have been designed to achieve a mix of objectives that may have detracted from its main role (sub. 66, p. 23).

Some objectives are the cause of controversy. For example, the Casino Control Authority of New South Wales has responsibility for:

... promoting tourism, employment and economic development generally in the State (IPART 1998, pp. 16–17).

And similarly the VCGA is required:

... to promote tourism, employment and economic development generally in the State through the administration of the various Acts (sub. 135, p. 2).

The Interchurch Gambling Task Force and others criticised this clause, referring to 'the inherent contradiction between regulating gaming and promoting tourism'. It argued that that the VCGA 'isn't there to promote tourism and the hospitality industry ... it's there to ... regulate' (transcript, p. 373).

How much effect such a clause has in practice is not clear. Clearly there are some tourism and economic development aspects to gambling, particularly in the case of large destination venues such as casinos. But they should be taken into account in the economic and social impact studies which the agency commissions or carries out. In the Commission's view, *promoting* gambling, whether for tourism or any other reason, should not be a role of the regulator. (In the case of the Victoria, the newly-elected government has announced that it intends to introduce legislation to remove this role from the VCGA.)

The Australian Hotels Association, in its response to the draft report, agreed that:

... the promotion of this industry should be left to those that provide the services ... if privately owned companies wish to advertise their products then they should do so like the majority of other business enterprises and budget it into their general operating costs (sub. D231, p. 97).

While a mix of regulatory objectives is probably unavoidable (and this report has suggested some which the Commission sees as desirable), a key question is how to organise regulatory arrangements so as best to meet those objectives. As part of this, the respective roles of Ministers and regulators need to be kept clear.

For example, Catholic Social Services talked about the need for:

... a clear delineation of ... policy power and decision-making on the part of the government from the oversight and application and implementation of that policy by a body such as the Victorian Casino and Gaming Authority (transcript, p. 387).

In response, the VCGA observed that:

The Authority is responsible for the regulation of the industry; it does not determine gambling policy. This is entirely the province of government — eg whether or not there is to be a moratorium on [gaming machines] or the introduction of Club Keno etc. Legislative amendments would be required if the Authority was to become involved in any policy making procedures (sub. 135, p. 3).

In several jurisdictions, the main regulating agency sits within the Treasury portfolio, but the desirability of this location was questioned. Logan City Council argued that gambling regulation should be a part of the state agency that has responsibility for consumer protection, rather than part of an agency with a primary objective of increasing state revenue. It said that the location of the QOGR in Treasury raised questions about whether its primary objective would be to regulate the impact of the industry on the community, or to provide revenue for the state:

This is not to suggest there has been regulatory failure to date, only to indicate that the existing arrangements mean there are significant risks that regulatory failure could occur (sub. 66, pp. 23–5).

Of major concern to some is the perceived difficulty of regulators remaining immune to the preferences of Ministers and governments for particular regulatory outcomes. And some participants argued that the enormous revenues which gambling generates for the states and territories were unduly influencing the attitudes of governments and their willingness to tackle resulting social problems. For example, the Interchurch Gambling Task Force said:

... in this state I don't think it's an accident that the Minister for Gaming is the Minister for Finance and Gaming. That link is, I think, very undermining of the state government's regulatory role ... there is proper attention that needs to be given to the regulatory role of the VCGA, the role of government, not promoting and sponsoring this, and proper restraints upon the industry (transcript, p. 374).

It added that state governments can be ‘addicted to the gaming dollar almost more than the industry’:

... gaming has grown to nearly ... 14 per cent of recurrent revenue now, and it is growing. I think this has proved in the Victorian experience that ... governments find it almost impossible to be both regulator, in an objective sense for the social good, and revenue collector. This is what my reference is to as minister for finance and gaming. I think there is a fundamental contradiction with those two (transcript, p. 388).

Commonwealth-State funding arrangements have a role to play here. The Women’s Electoral Lobby argued that:

States do have enormous funding responsibilities in terms of provision of education and health and essential services, so it's important that they’re receiving funding which enables them to support that. If they don't, the pressure to raise revenue through fairly socially damaging means becomes more intense (transcript, p. 514).

More broadly, Star City argued that:

... governments of the day are under enormous pressure from gaming operators to approve additional machines and games. No government wants to lose the support of these powerful lobby groups so there has been a tendency for gaming decisions to be based on political considerations rather than on merit (sub. 33, p. 28).

Others expressed concern about the scope for industry to unduly influence regulators. Logan City Council said:

In the face of all the evidence in recent years that single industry regulators are vulnerable to capture from the very industries they regulate, this arrangement creates risks that the regulators will act first to protect the State’s revenue base, particularly if it does not threaten the industry. It raises questions about whether the public is at risk of its legitimate interests being overlooked. McMillen was raising issues about the conflict of interest apparent in the access of commercial interests to the policy-making process as early as 1991 (sub. 66, p. 23).

A concern expressed by several participants is that, in some jurisdictions, there is an undue closeness between government and the gambling industry, which many critics see as inimical to good regulatory practice. This need not be related to questions of government ownership. But government acting as a gambling provider (particularly in the context of heavy advertising by government lotteries and TABs) can reinforce such perceptions.

Inconsistency of approaches

Earlier chapters have noted that there are some significant differences between jurisdictions with respect to the approach in like circumstances. This contributes to some of the inconsistent outcomes mentioned in previous chapters. For example:

-
- in some jurisdictions there are separate regulatory structures for casinos, and probity checks are stringent for casinos but minimal for clubs, some of which are bigger than casinos (in New South Wales, the casino act requires an investigation of the casino licence every three years after its original grant);
 - liquor licences are sometimes handled by the same agency, and sometimes they are not;

The CCA is responsible for issuing and monitoring the Star City liquor licence and other liquor licences within the casino complex. This is in contrast with the rest of NSW which has liquor licensing undertaken by the Licensing Court and the Liquor Administration Board, yet very similar regulatory practices are followed (IPART 1998, p. 17); and

- broadly similar venues are subject to different regulation and taxation in some jurisdictions.

Jurisdictions also vary in the extent to which the regulatory agency is involved in the allocation of funds for counselling services or for harm minimisation programs. For example, New South Wales' Department of Gaming and Racing provides secretariat and administrative support for the Casino Community Benefit Fund, from which funds are allocated for counselling services, harm minimisation programs and gambling research. In South Australia funding for harm minimisation programs is undertaken by a private body funded by voluntary contributions from the clubs and hotels. And in Victoria, allocations from the Community Support Fund are the responsibility of the Premier. The Victorian Local Governance Association expressed concern about this:

... Victoria's own auditor-general has been critical of the fact that less than 5 per cent of the proceeds of gambling go back to research and gambling amelioration activities. We ... are very concerned that the final decisions about the use of funds rests with the premier. That doesn't happen in any other state and currently there is no local government, no community and no independent voice that has any say over the distribution of those funds (transcript, p. 408).

Lack of transparency

In recent times, governments have held public inquiries before changing aspects of gambling policy. For example:

- the Queensland Government released White Papers on proposed changes to its laws covering gaming machines (1996) and art unions (1998) and invited public comment before finalising its position. And in 1999 it has been undertaking a review of the social impact of the recent growth of gaming;
- in New South Wales, IPART held a public review of gaming policy in 1998, again using a process of public inquiry;

-
- the South Australian Parliament's Social Development Committee held a public inquiry into the effects of gambling on that state (completed in August 1998);
 - a Northern Territory inquiry into gaming machines was undertaken in 1998; and
 - NCP reviews in many jurisdictions have involved extensive consultation with stakeholders, including the general public, and the reports have been distributed widely, including by way of the internet (see, for example, Western Australia's NCP review of its racing and betting legislation at www.orgl.wa.gov.au).

This is a welcome development, but a relatively recent one, as public processes have been used only sporadically in the development of gambling policy. More generally, some participants questioned the extent of the transparency and integrity of review or decision making processes (including some NCP reviews). They noted that, for example, reviews vary in the extent to which public input is invited, the openness of the process, and whether they are sufficiently independent.

Later in this chapter, the Commission argues for greater transparency in procedures to be the norm when gambling policy is being reviewed. Such an approach is an important component of good policy making, particularly because gambling touches on issues of 'community norms' and requires judgments to be made about the nature of the public interest in a controversial area.

Inadequate community consultation

Some also argued that there is insufficient consultation with the community or canvassing of different views before decisions are made.

In particular, the inquiry heard consistently (and in most jurisdictions) that there was insufficient consultation of local communities. In particular, several councils in Melbourne expressed concern about their inability to influence the expansion of gaming machines and venues in their local government areas. In their view, low income areas were being targeted by the gaming operators. Local government representatives from Maribyrnong, Dandenong and Moreland argued that several communities were experiencing disproportionate harmful effects from the proliferation of 'convenience gambling'.

The councils said that state government legislation provided them with little scope to control or limit the number or location of gaming machine venues in their communities. For example, Maribyrnong City Council and the Shire of Yarra Ranges said that the powers of local government to regulate venues were very limited. A club or hotel only requires planning permission from council if the proposed restricted gambling area would account for more than 25 per cent of its

licensed floor area. Maribyrnong said, where a planning permit is required, a council's consideration of the application:

... may take into account factors such as car parking, hours, noise, and impact on amenity. Moral concerns do not constitute allowable grounds for refusal or the imposition of particular conditions. It is however arguable that demonstrated social and/or economic impacts may provide such grounds.

... there is some scope for opposition to extended hours on the basis of adverse economic and social impacts, but this issue remains comparatively complex and unclear (sub. 39, p. 5).

The Victorian Local Governance Association noted that Victoria's *Planning and Environment Act 1987*:

... does provide for the consideration of social and economic impacts in town planning decisions as well as traditional planning concerns such as noise, traffic and urban design. This applies to planning decisions where gaming machines exceed 25% of a venue's licensed area.

It added that:

Although many limitations are imposed on consideration of social and economic impacts some recent Victorian Civil and Administration Tribunal decisions have demonstrated a willingness to take into account social and economic impact when there is sufficient evidence. A recent decision endorsed Maribyrnong City Council's requirement that a venue operator demonstrate that there would be no adverse social and economic effects arising from a proposed expansion in gambling hours (sub. D206, p. 14).

The councils sought greater involvement in decisions about the spread of gambling in their local government areas. The Victorian Local Governance Association argued that there is a need for:

... greater local regulation to present an opportunity for local governments to support their communities and work to protect their communities (transcript, p. 409).

Councils from other states made similar requests (box 22.3).

At the draft report hearing, Maribyrnong City Council said:

There can be no systematic approach to ... local consultation which does not incorporate a central role for local government, not only because local government is very closely concerned with local issues but also because of its responsibility for the framework of decision-making about physical planning (transcript, p. 1260).

The Interchurch Gambling Task Force urged the Commission to recommend:

... that local councils have the right to veto further gambling venues and increases in the number EGMs, and to even allow for the removal of EGMs, in their region if they can (sub. D230, pp. 15–16).

Box 22.3 **Some local government views**

The Local Government Association of Tasmania argued that:

... as local government is the tier of government closest to the communities of Australia, any reforms to decrease the community costs of gambling must give local councils the powers to assess the community impacts and make decisions concerning the introduction of gaming machines and other forms of gambling. It is the local council that is in the best position to have knowledge of the dynamics of the community, and the socio-economic status of the majority of residents (sub. 52, p. 5).

It argued that local government should be given the power to assess whether the adverse effects of the introduction of gambling outweigh the costs to the community:

... the Federal government should urge the states to legislate so that all State regulations on the granting of casino, gaming, and gambling licenses are subject to the approval of the local planning authority – local government. It is local government that is in the best position to ascertain the likely effects of such on their communities (sub. 52, p. 5).

The Victorian Local Governance Association argued that:

... while there is no capacity to control the number of machines in particular areas, the machines just continue to flood into those areas on a performance basis, because that's where people are spending the money on the machines ... local governments must be given the capacity to introduce caps and to regulate the number of machines that they are able to have in their municipalities.

We also think there is a need for greater regulation at a local level over the venues themselves ... [and] over the proceeds of gambling ... an acceptable percentage of the gambling takes must go back into support programs for gamblers and their families ... research [and] gambling revenue really should be returned by formula ... to the communities that are making the major contribution (transcript, p. 410).

A survey of South Australia's local councils showed that 82 per cent of responding councils consider the impact of gaming machines on their community has been 'negative or severely negative'. The Local Government Association of South Australia said that, while over half of the councils prefer the State Government to remain responsible for licensing gaming machines, 73 per cent want to see them subject to greater regulation and 70 per cent want councils to obtain:

... input in the licensing process at least or more significant to the input Councils have into liquor licensing (sub. 171, p. 1).

In a response to the draft report, the Australian Hotels Association said it agreed with the Commission's view that local consultation is necessary:

There must be, however, considerable caution exercised by the authority when consulting ... given the general composition of local council. Many councillors continue to operate businesses that are in direct competition with gambling venues ... the AHA would have significant concerns over councillors with conflicts of interest having a significant say in the granting of licences (sub. D231, p. 102).

In its view, clear guidelines dealing with conflict of interest situations would be needed to deal with any such problems.

Some communities have been successful in preventing the spread of gaming machines. For example, in South Australia, Aboriginal leaders led a successful effort to have an application for additional gaming machines at a South Australian country motel denied (box 22.4). Maggie Brady of the Australian Institute of Aboriginal and Torres Strait Islander Studies argued that the case:

... indicates the degree of concern about gaming machines among these two Indigenous populations (sub. D203, p. 3).

The scope for the Liquor and Gaming Commissioner to uphold community objections is determined by the *Gaming Machines Act 1992*, which, among other things, requires an applicant to satisfy the Commissioner that gaming:

... would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the premises (section 15(4)(d)).

As the Nundroo case and the views of some councils show, Australian communities are not alike in their attitudes towards gambling, and, subject to good governance arrangements, there may be merit in mechanisms to better allow communities to have a say in these matters. However, different jurisdictions differ in how much leeway the licensing agency has to prevent or cause alteration to be made to a development.

Moreover, changes are occurring. In recent months, the Queensland and Victorian Governments have announced that they intend introducing processes to allow for greater local community consultation in decision-making. The Queensland Government said that it is considering:

... a stricter licensing process for gaming machines which will include a mechanism through which the community can have a say in how gaming expands in their local community.

One option being considered is a community impact study:

The Queensland Government seeks to establish a better balance between the benefits and costs of gambling, and ensure adequate returns to Queensland communities, particularly those communities and individual most adversely affected by gambling. (sub. D275, p. 7).

The Queensland Government explained:

... some form of impact assessment and the application of guidelines, depending on the social environment in question, to ensure growth is consistent with community

expectations and the community has an opportunity to influence the establishment of new venues in their local area.

The use of the local government urban planning process to assess public need, suitability of premises and impact on the amenity of surrounding areas and residents, is a consideration that may help create an improved licensing procedure. It may also indirectly help address many issues relating to access and problem gambling and would therefore enable the regulator to concentrate on probity issues, supervision of gaming and the control of internal gaming environments (sub. D275, p. 14).

Box 22.4 The Nundroo case

This concerns an application for a licence to operate six gaming machines at the Nundroo Hotel Motor Inn, located on the Eyre Highway at Nundroo, 143 km west of Ceduna in South Australia.

Representatives of two local aboriginal communities, the Yalata Community and the Maralinga Tjarutja, opposed the application on the grounds that granting a gaming licence would result in undue hardship to local aboriginal people.

Nunkuwarrin Yunti of South Australia said that, were the applicant successful, it would have generated economic returns for itself but the responsibility for supporting insolvent community members would have fallen on the local aboriginal people. Nunkuwarrin Yunti emphasised the need for consultation and local self-determination in processing licensing applications, noting that:

... this industry requires a special amount of regulation and control and communities need to be able to set the pace, mix and define the major beneficiaries of gambling at a local level (transcript, p. 974).

It added that:

This is a clear example of an industry participant being insensitive to the wishes of the local ATSI people and insensitivity to the realities of the projected harmful consequences of setting up such a business in this type of region.

South Australia's Liquor and Gaming Commissioner refused to grant the licence, noting that:

... the machines have the potential to drain a substantial amount of money from communities that are already hurt by money spent on alcohol.

... The result of this could be a significant increase in anti-social behaviour in and around Nundroo caused by Yalata and Oak Valley residents.

The motel operator appealed, but the Commissioner's decision was upheld by the Licensing Court of South Australia.

Subsequently, the operator submitted a revised application, but soon thereafter the motel changed ownership.

Source: sub. 106, p. 10 and the Office of the Liquor and Gaming Commissioner.

Summarising on current arrangements

There is a diversity of regulatory arrangements among jurisdictions, but no one system could be described as ideal. These systems change and evolve as governments review regulatory structures and their outcomes. Nevertheless, across jurisdictions, the problems the Commission has observed include:

- conflicts of objectives;
- fragmented responsibilities;
- lack of due process and transparency of procedures;
- patchy consultation processes; and
- inadequate data collection and research.

While each jurisdiction has some of these problems to varying degrees, they each have strengths in particular aspects of their approach to regulation.

The rest of this chapter draws on the best features of each jurisdiction's regulatory regimes in an attempt to describe the elements which would comprise a model regulatory framework. In so doing, it seeks to describe a regulatory regime which is more open, better focused on the broader public interest, and robust and flexible enough to cope with future changes in the industry or in community attitudes.

22.3 Towards a blueprint for gambling regulation

The above discussion, and the experience of states and territories, suggest some fundamentals of good regulatory design. These relate to:

- the structure of the institutions involved;
- the allocation of roles and functions between those institutions; and
- the processes by which each institutional or functional responsibility is carried out.

Importantly, these need to be underpinned by:

- avoidance of conflicting objectives and interests;
- open, consultative and well-informed processes; and
- the guiding principle of the broader public interest.

This approach has much in common with that used for regulation impact statements (box 22.5) and NCP review processes (chapter 14). Both are accepted and used in all jurisdictions in regulation-making and legislative review generally. However,

these processes have generally not been applied in respect of the development of, and changes to, gambling policies and regulation.

Box 22.5 Regulation impact statements

These are becoming widely used by Commonwealth, state and territory governments and by member nations of the OECD. A RIS sets out:

- the problem or issues which give rise to the need for action;
- the desired objective(s);
- the options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s);
- an assessment of the impacts (costs and benefits) on consumers, business, government and the community of each option;
- a consultation option; and
- a strategy to implement and review the preferred option.

Source: ORR (1998), p. xv.

We now turn to look in more detail at each of the regulatory functions listed at the beginning of the chapter, namely:

- *policy development* — answering the ‘big picture’ questions about matters with significant community-wide effects;
- *control* — advising the Minister on such matters and making decisions within the established policy framework;
- *enforcement* — surveillance and monitoring to ensure compliance with current rules and standards;
- *adjudication* — deciding on appeals against the decisions of the control or enforcement functions; and
- *program administration* — funding of community awareness, support for problem gambling services, research and data collection.

The policy development function

What is it?

As noted earlier, this is concerned with threshold questions about issues which can have significant community-wide impacts, such as decisions about:

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- the increased liberalisation and accessibility of gambling;
 - the forms of gambling which are acceptable;
 - tax rates;
 - harm minimisation and consumer protection policies.

Who should do it?

In the Commission's view, resolving these basic policy issues is properly the preserve of the Parliament in each jurisdiction, through the responsible Minister.

That said, there is an issue about who the relevant Minister ought to be. For example, some have said that a Minister within the Treasury portfolio is inappropriate because of the risk that decisions about gambling policy may be unduly influenced by revenue considerations. Others argue that a specialist Minister for Gaming or a Minister for Racing may be more vulnerable to lobbying by the industry concerned.

Indeed, some have seen a need to apply in Australia the recommendation of the United States National Gambling Impact Study Commission that the industry be prevented from making contributions to politicians or political parties. But the Australian Hotels Association argued against this:

While the AHA has significant concerns over the amount being donated to political parties by the club sector in Canberra, it is unfair and counterproductive to discriminate against the gambling industry and prevent political donations from this sector alone ... A possible alternative ... is to ensure that political parties do not have a financial interest in gambling enterprises (sub. D231, p. 98).

A core question concerns the amount of discretion which should reside with Ministers, and the extent to which decision making is delegated to others — whether to departmental staff or to a regulatory agency (see below).

How should it be done?

The process by which decisions are informed is crucial. Major policy questions require political debate that is adequately informed by disinterested and publicly available advice. They also require some measure of community awareness and support for legitimacy.

This may be best achieved by public policy processes to ensure that:

- the process of making decisions is well-informed — good information and clear identification of options are critical;

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- public consultation processes are effective — these are particularly important where the issue is controversial and community impacts are not easy to anticipate;
 - independent public reviews are used to identify options, and possible winners and losers, and otherwise inform this process;
 - the assessment of the costs and benefits (both economic and ‘social’) of each are undertaken rigorously, notwithstanding that many will be largely qualitative; and
 - all of these processes are undertaken in a transparent manner.

These processes may be used by the Parliament to inform itself. They should also be an important part of the activities of the regulatory authorities, as they are crucial to inform decisions made by governments.

In view of the need for well-informed political decisions, the use of such processes, including a requirement for independent assessments, should be a prerequisite for legislative change in this difficult area of policy — a government should be required to seek advice from its regulatory authority before implementing major change (and consequent obligations should apply to the authority, as discussed later). Such a requirement is broadly consistent with regulation impact statement (RIS) processes — for example, a RIS is required to accompany any Commonwealth legislative change which has an impact on business.

Once decisions are made, it is important that they be entrenched in legislation to provide transparency, greater surety for industry planning and guidance for administrators and regulators.

The Australian Hotels Association argued that entrenching extensive public consultation and information-gathering processes into legislation would result in some inefficiencies, given the ‘highly distorted and inaccurate public perceptions that exist in the community’:

Public consultation could, therefore, result in an inaccurate picture of the actual effect the gambling venue will have on the community (sub. D231, p. 99).

It also preferred to rely on a mechanism similar to that used for liquor licensing, under which applications are advertised locally and the public are given 40 days to register concern. Following council approval, an application is then made to the licensing court where, again, the application is advertised in local and state newspapers and in the licensing court, and the public given four weeks to register concern. The AHA saw such an approach as allowing:

... the possibility of linking the process of gambling and liquor licensing as well as ensuring that the public has ample opportunity to register their concern (sub. D231, p. 100)

It added that:

The right of appeal to the State Government over any decision must, however, be an element of such a process (sub. D231, p. 99).

While such arrangements (which tend to be specific to a venue or a single proposal) may have a place, the Commission also sees consultation in a wider context. In its view, there remains a need for processes to assess broader community views to inform the development of governments' policies towards gambling generally. Some of these may be triggered by a specific development proposal, but others may relate to questions concerning the forms of gambling which the community sees as acceptable, the extent of accessibility permitted and the efficacy of harm minimisation and consumer protection policies.

In sum, the Commission sees the policy development function as properly the preserve of parliaments. But effective public consultation and information-gathering processes should be prerequisites for legislative change, (supplemented by periodic review of outcomes, in part to inform future decisions). Policy should be entrenched in legislation with clear standards for subsequent decision making by an independent authority in each jurisdiction. Legislation should be reviewed on a regular basis and processes put in place to ensure such reviews are transparent and well-informed.

The control function: the need for an independent regulator

What is it?

Subsequent decision making, within the broad policy framework so established, involves making decisions about licences, approving standards and taking disciplinary action on some matters. This is the control function.

Who should do it?

Regulators will always be the 'meat in the sandwich' — under pressure (overt or otherwise) to give additional weight to the needs of particular interests, be they governments, industry representatives or others. In such circumstances, there is a risk that the broader community interest may at times be given lesser priority.

Such considerations emphasise the importance of an independent regulator with a clearly defined set of responsibilities (specified in legislation), an obligation to take a community-wide view when making decisions or providing advice, and a requirement that it employ public processes for informing its decisions. This is particularly important in areas of regulation (like gambling), where significant community and financial impacts can result from the decisions taken.

This can have several advantages on a number of levels. It can provide assurance to the community that some decision making, and some review and factfinding processes, are being undertaken independently of government and vested interests. It also helps Ministers, who can be independently advised and be seen to be at arm's length from the regulator.

The importance of independence

But what does 'independence' mean, and how is it best assured? In a recent report, the Victorian Auditor-General referred to 'the fundamental principle of independence' which underpins the work of the Ombudsman, Auditors-General, and internal and external auditors in both the public and private sectors. It argued that:

Any organisation charged with the responsibility of reviewing or monitoring the operations of another organisation and reporting the results to a third party must be capable of operating in a totally independent manner. Such a prerequisite is necessary to ensure that the reviewer or monitor is free from any influence or direction so that responsibilities are discharged without fear or favour and reported results can always be regarded as totally impartial in nature (VICAG 1999, p. 66).²

This raises questions of the extent to which direction or control may be exercised, and to whom the body reports or is accountable. In its review, IPART asked:

Is a commission that reports to a minister independent or does independence require that a commission should be only accountable to parliament? If a commission reports to a minister can a minister direct (either formally or informally) the commission? If so, is this still deemed 'independent'? (IPART 1998, p. 33).

Interestingly, venue operators making submissions to IPART all preferred the proposed gaming commission to report to the Minister, while most social welfare groups and problem gambling service providers preferred that it report only to Parliament. In IPART's view:

² The report discussed the role of the Correctional Services Commissioner.

... the Minister should have some control over key decisions in gaming. By contrast, the need for independence is greater where issues of control and property rights are involved (IPART 1998, p. 34).

It noted that New South Wales' Casino Control Authority is not subject to the control or direction of the Minister except in certain limited circumstances and directions given must be notified publicly and tabled in Parliament. In its view, the CCA has:

... functioned well for both the government and the community and could form a model for the commission (IPART 1998, p. 34).

IPART recommended that its proposed gaming commission be fully independent, but with the exception that it could be directed by the Minister in specified circumstances, and that such directions should be in writing, tabled in Parliament and published. It also argued that, before giving a direction, the Minister should be required to call for a report on the matter from the independent commission.

There are several advantages in adopting this approach. Governments remain free to accept or reject advice from the authority. But the public nature of the process would ensure that the subsequent decision making processes were better informed and took place in public.

Its structure and functions

In the Commission's view, the control function ought to be undertaken by an independent body, at arm's length from government and from interest groups. This would require it to be established by an Act of Parliament. The structure of the statutory authority will also have a significant influence on its capacity to be independent. To this end, the statute should specify that:

- the authority comprise a number of Commissioners (of whom one should be full-time), appointed by the Governor;
- appointments should be of fixed term, with terms not able to be terminated by the government of the day without just cause (to be specified in the Act);
- independence may be strengthened by a requirement that Commissioners may only serve one term;
- to avoid the perception of lack of independence, no persons with present or past links to gambling providers, regulators, counselling agencies or the like should be eligible for appointment;
- the authority should have its own budget, voted by Parliament;

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- and should employ its own staff, rather than be dependent on a secretariat from a department.

The Council of Community Clubs of Australia and New Zealand had reservations about this proposal. It saw it as unworkable if independent authorities did not also have responsibility for industry development, promotion or tourism:

Governments are not likely to make policy decisions on gambling in isolation from these other issues (sub. D226, p. 30).

The Council said it would be concerned if:

... the role of the government and the role of the minister was de facto passed down to the independent commission to make policy and make strong recommendations which would enable some politicians or some ministers to say, "Look, this independent commission has recommended this. Clearly that's what should be done," and they would walk away from their policy responsibilities. It's in that narrow area of ... influence where the independent commission would tend to make policy and have it rubber stamped by a government. (transcript, p. 1595).

In respect of the people who would comprise the independent authority, the Council asked:

Where would they come from? Would they come from people who had no knowledge, no involvement with gambling or with hotels and clubs? Would they be people drawn from an area who had no sympathy or empathy ... (transcript, p. 1595).

In contrast, the AHA supported the establishment of:

... an independent body in States where no such body exists to oversee the control function of the gambling industry with input and representation from industry (sub. D231, p. 8).

It agreed that those who have current direct interests in the gambling industry should not be involved in the makeup of the board, but argued that those with past associations and specialist knowledge or industry representatives should be considered:

The gambling industry is ... highly complex and incorporates a broad range of issues that require specialist knowledge ... there should be a range of board representatives that have previously been involved in the industry and fully understand the contentions issues surrounding its operation (sub. D231, p. 101).

The Queensland Government took a similar view on this point. It also saw no value in limiting commissioners to single term (sub. D275, p. 16).

There is merit in these views. But the Commission sees the independence of the regulator as a cornerstone of good regulatory practice. It places considerable weight on the need for the regulator to be, and to be seen to be, independent of the various

interests involved — whether they be gambling providers, regulators, counselling agencies, church groups or the like. Governments should forgo the specialist benefits which such people can bring, in favour of a clear public signal that the industry is being overseen by a regulator who is independent.

In the Commission's view, the independent control authority should have the primary objective of furthering the public interest. Its charter should emphasise a high standard of consumer protection as a central objective.

It should have an independent advisory function, distinct from departmental advice, with respect to major public interest matters, such as gaming machine caps and licences for casinos and TABs. These matters fall within the scope of the policy development function, and are properly decided at the political level.

But once the broad parameters of government policy towards gambling have been set in legislation, the authority should be charged with making decisions in accordance with established criteria. This would encompass, for example, making decisions about the licensing of a hotel or club, or authorising gaming machines.

The authority should also be required to assure itself that the *enforcement* function (discussed below) is carried out effectively. While not a direct supervising role, it should be required to assess the methods used and report and include in its annual report a judgment as to the effectiveness of the process.

Both advisory and decision making functions should be underpinned by an information-gathering and research program. Public dissemination of the results of this work would be a key part of this work.

In view of the sensitivities surrounding gambling policy in all jurisdictions, there are significant advantages in specifying that a government be required to seek the advice of its independent authority on all major policy changes. This in turn would require the authority to carry out a public consultation process, and to publish the advice it gives to Ministers.

There are also some functions that the authority should be *precluded* from undertaking.

- It should have no revenue or taxation functions.
- And it must have no industry development or tourism-related functions, or in any way be involved in promoting gambling.

It should cover all gambling activities

In the past, particular forms of gambling tended to have their own regulatory structures. Racing, in particular, tended to be treated separately because of, for example, the range of structures for regulating racing itself, unrelated to wagering activities per se. Casinos were also subject to special attention because of earlier concerns about possible links with crime.

Having separate regulatory authorities for particular forms of gambling increases the likelihood that inconsistent policies will be put in place in like circumstances. It also runs the risk that special arrangements for particular sectors may be established and maintained, with insufficient attention to the broader public interest.

Partly with these concerns in mind, a more integrated approach to gaming and wagering on racing is increasingly an objective of governments. Several jurisdictions, notably Queensland and Victoria, have already moved in this direction. Indeed, both the QOGR and the VCGA are consolidations of previously more fragmented arrangements in those states.

The Commission sees merit in placing all forms of gambling under the one regulatory umbrella to allow greater consistency of approach. This may also generate efficiencies in the regulation process. As the BetSafe Group of Clubs noted, having:

... one statutory independent central body to administer the entire gambling industry with regard to policy advice and administration of legislation ... would allow for some sort of standardisation in control mechanisms and provision of [Responsible Service of Gambling] policies for consumer protection and in the public interest (sub. D250, pp. 8–9).

In the Commission's view, there is also merit in having all gambling legislation consolidated into a single gaming Act. This would also reinforce the notion of a broadly consistent approach to gambling regulation.

Its processes should be open and transparent

The determination of public policy, particularly in the case of issues which are highly controversial, is helped by government processes which are consultative and open to public scrutiny. Of particular importance are:

- *transparent operating procedures*, to permit public scrutiny of ongoing processes — examples include ensuring the advertising of matters under review, publishing details of the process, and the basis for the decisions it reaches; and

using open tendering processes for the letting of contracts for research, public opinion surveys or other data collection;

- *processes for public consultation* on issues of public importance through, for example, providing opportunities for community input on a wide range of issues, providing open forums for community views to be put, and undertaking public inquiries where major policy changes are being considered.

Box 22.6 The control function: structure and activities

The control function should be undertaken by an independent body, at arms length from government and from interest groups. To this end, it should:

- be established by an Act of Parliament;
- be required to report to Parliament (through the Minister); and
- comprise at least one full-time Commissioner appointed by the Governor
 - appointments should be of fixed term, with terms not able to be terminated by the government of the day without just cause (to be specified in the Act);
 - Commissioners should be limited to one term; and
 - no persons with present or past links to the gambling industry should be eligible for appointment.

The control body should:

- have its own budget, voted by Parliament; and
- employ its own staff, rather than be provided with a secretariat from a department.

Its *activities* should include:

- advising the Minister on major public interest matters, such as gaming machine caps, licences for casinos or TABs;
- undertaking or commissioning social and economic impact studies; and
- deciding such matters as licence applications, suspensions and revocations.

These functions would be underpinned by information gathering and research.

The authority should cover all gambling activities, and have no promotion, industry development or tourism-related functions, and no revenue or taxation functions.

Assessing community views

As noted, several communities expressed concern about the effects of local proliferation of gambling facilities. Councils said they observe first hand the social impacts of gambling, and also expressed concern about money leaving the area, disadvantaging local businesses. Several argued for greater local council and

community input into decisions about the location and expansion of gambling activities.

In the Commission’s view, the principle that local communities should be consulted on these matters is a strong one. Councils are close to the local community, and it is at the local level that most social impacts are concentrated. Councils may have a better perspective on the impacts of gambling on families, households and community life than state government agencies. A typical view was put by Yarra City Council, which said:

Councils are in a key position to monitor these effects both through formal research methods and also through anecdotal evidence gathered through community networks and contacts. Local community services are often a “barometer” of social problem growth (sub. 238, p. 1).

Among participants, there was widespread agreement with the need for a consultation process whereby the local community’s views can have an influence on the decisions of regulators. As noted above, the Queensland and Victorian Governments have recently announced their intentions to implement greater local community consultation processes where gambling is concerned.

A mechanism for more local input would be to require, with the establishment of an independent control authority, that it take explicit account of community impacts of decisions and consult with local communities when matters of likely concern to them are under consideration (for example, in making decisions about licence applications for local venues). This could include the undertaking of surveys or, for occasional major issues, referenda.³

In Victoria, the VLGA (sub. D206) and some councils sought greater control over planning decisions concerning gambling, and sought to impose conditions, such as adherence to a local *Responsible Gaming Charter*, on the establishment and operation of venues. In part, they sought a repeal of the provision which limits their role in cases where the gaming area of a venue does not exceed 25 per cent of the licensed area.

Consideration of these matters raises several questions about the respective roles of state governments and councils, and about the processes most likely to give good outcomes. For example, while councils may be well-placed to evaluate social impacts, there is perhaps less of a case for the economic effects of a particular proposal to be evaluated at the local level. As noted in chapter 12, observed effects on jobs, retail trade, entertainment activities and the like at the local level may be

³ As occurred, for example, prior to the introduction of lotteries in South Australia and the licensing of the Wrest Point casino in Hobart. Referenda are also commonly used in many states in the United States.

only part of a broader reshuffling of economic resources within a region or across the state, with the net gains or losses being unclear when looked at in isolation. For such reasons, economic effects are probably better assessed at the state or regional level.

The most appropriate form and extent of local community input is difficult to judge, and will partly depend on the characteristics of different jurisdictions. As the primary responsibility for gambling policy rests with state or territory governments, which have established policy stances on such matters as the availability of gambling in strip shopping centres, venue or regional caps on gaming machine numbers and so on, careful consideration would need to be given to the range of matters over which further control ought to be passed to local councils.

A proper resolution of these matters would require more detailed and specific analysis than is possible in this national inquiry. Relevant considerations would include:

- the respective roles and responsibilities of councils and state planning and gaming authorities, and available appeal processes;
- the extent to which councils have the capacity or inclination to perform these roles (a survey of South Australian councils (sub. 171) noted that a majority wanted ‘more input’ into the licensing process but preferred that responsibility for licensing of gaming machines remain with the State Government, while Victorian councils sought more direct control over developments in their local areas);
- the adequacy of processes to ensure the appropriateness of decision-making and the quality of the information on which it is based. Some councils have invested considerable efforts in undertaking or commissioning research into the effects of gambling in their local areas. But were councils to have an enhanced role, establishing agreed methodology and criteria would be important, including appeal mechanisms and transparent processes;
- the alternative processes by which local community input may be sought; and
- the quality of governance structures at the local level. As the Commission has emphasised, independence of decision-making is a key to good outcomes which are widely accepted. The Commission is strongly of the view that the independence of the regulator is the cornerstone of good regulatory practice, and has delineated what this function requires in its ‘blueprint’. Some members of councils — who have close personal (and perhaps commercial) links with the

people, businesses or community groups in their area — may not be perceived as sufficiently independent of the interests involved.

Box 22.7 The control function: processes

The control authority should operate on an open, consultative basis, and undertake or commission worthwhile studies before making decisions.

Its guiding principle ought to be furtherance of the public interest for the community as a whole. To this end, it should implement:

- *transparent operating procedures*, to permit public scrutiny of ongoing processes — examples include ensuring the advertising of matters under review, publishing details of the process, and the basis for the decisions it reaches; and using open tendering processes for, for example, letting contracts for research, public opinion surveys or other data collection; and
- *processes for public consultation* on issues of public importance through, for example, providing opportunities for community input on a wide range of issues, providing open forums for community views to be put, and undertaking full formal public inquiries for issues where major changes are being considered.

The control authority should consult with local communities when matters of likely concern to them is under consideration (for example, in making decisions about licence applications for local venues). This could include the undertaking of surveys or, on major issues, referenda.

In addition:

- the authority could require impact studies to be undertaken as part of any proposed change put before it;
- it should have the power to initiate public inquiries into matters which it judged to warrant this; and

Government should be required to seek the advice of its independent authority on all major policy changes.

For such reasons, there is a need to proceed cautiously. One option would be to conduct a trial in a small number of local government areas by providing stronger local government powers over gambling activity for a specified period. In this way, lessons could be learned about the implications of greater control at that level, the most appropriate criteria for permitting expanded gambling and the ability of the appeals process to handle disputed decisions. An important element would be to establish benchmarks against which to judge the success or otherwise of such an trial. (Rough indicators might include the extent to which gambling was encouraged or deterred, the number of cases appealed or overturned on appeal, general community reactions and so on, and comparing experiences across local government areas might help sharpen the benchmarks to be used.)

The enforcement function

What is it?

As noted earlier, enforcement is about the day-to-day surveillance of the conduct of gaming: enforcing the rules already in place. It is about ensuring venue operators comply with the licence conditions and the law, and prosecuting cases of non-adherence.

Who should do it?

There are several ways this could be undertaken. One approach is simply to place this function within the independent control authority, to be handled by its staff.

This would have the advantage of bringing all the relevant regulatory expertise under the one roof, with consequent benefits in terms of skill development, cost efficiencies, maximising corporate knowledge and the like. (Indeed, such benefits partly explain the trend in some states to consolidate their regulators into single agencies with a broad remit.) But it would also require ‘Chinese walls’ to be established between the control and prosecution/enforcement functions to ensure the integrity of both.

Indeed, the appropriate degree of separation of control and enforcement is the key to making a judgment in this area. IPART agreed with the view expressed in a paper prepared for the New Zealand Gaming Review about the importance of keeping them separate. In IPART’s view:

Separation of these two functions for the gaming industry is particularly important, as there has been a history of criminal involvement in some countries in the gaming industry, particularly casinos. The potential for criminal involvement exposes regulators to bribery and corruption to a much greater extent than in other industries (IPART 1998, p. 26).

Moreover:

It is vital to ensure separation of the control and enforcement functions to provide appropriate checks and balances, minimise the potential for corruption, ensure proper accountability and maximise public confidence (p. iv).

Star City demurred, arguing that:

Much of this debate is not relevant to Australia. The policy functions will always rest with the government of the day. The judicial and policing functions may be conducted under a Commission provided their integrity is maintained (sub. 33, p. 28).

But McMillen and others took a similar view to IPART. This idea is also behind the so-called New Jersey model of gambling regulation, reputed to be the strictest gaming regulatory structure in the world (box 22.8).

Box 22.8 The New Jersey model of gaming regulation

The New Jersey Government placed governmental authority over the casino industry in two separate agencies.

The **New Jersey Casino Control Commission** is an independent agency. The Governor appoints the chairman (who is also the chief executive officer) and four full-time members for five-year terms.

The Commission has both regulatory and quasi-judicial functions. It has the power to interpret and enforce the provisions of the Casino Control Act, including the power to issue, deny, revoke, suspend or limit any required gaming affiliated licences and to hear and decide all complaints for violation of the Act.

The Commissioners act as quasi-judicial hearing officers to consider contested licence issues involving casinos, their employees and casino service industries. They preside over hearings, and make evidentiary rulings. They are required to make comprehensive findings of fact and conclusions of law in formal written submissions to the full commission for a final determination. The Commissioners vote on matters ranging from issuing casino licences to establishing rules of games. In addition, they rule on applications for corporate refinancings and restructurings as they affect financial stability.

Commission inspectors monitor compliance with regulations, receive complaints from the public and observe the daily count of casino revenue

The **Division of Gaming Enforcement** of the Attorney General's office investigates all licence applicants for corporations, individual owners, managers, employees and service industries.

It reports its findings and recommendations to the Commission, which has the authority to grant or deny a licence at a public hearing.

The Division also monitors casino equipment and operations, and prosecutes all complaints brought under the Act.

The separation of functions was done for the specific purpose of creating a system of checks and balances. The legislature recognised the need to centralise the regulation of this highly sensitive industry. However, it recognises the need to minimise the possibility of corruption. The Commission and Division act as a check and balance on each other. For example, if the Commission disagrees with a Division recommendation it may disregard that recommendation. Conversely, if the Division disagrees with a final decision of the Commission, it may appeal that decision to the courts.

Source: NJCCC (1998), pp. 7-8 and 16 and Seton Hall Legislative Journal, New Jersey Casino Gaming Symposium, vol. 6 Summer 1982, pp. 17-20, cited in IPART (1998), p. 32.

Under that model, the separation of functions into two agencies was recommended because:

- placing regulatory authority in one agency would be dangerous in an area as sensitive as casino gaming.
- by creating the Commission as an independent, impartial body vested with full quasi-judicial and quasi-legislative authority, the investigative and prosecutorial functions could remain in the Attorney General's office (the principal law enforcement agency of the state) without offending the concepts of fairness or due process. The scenario of one agency serving as investigator, prosecutor, and judge was avoided.

The Queensland Government cautioned that:

The New Jersey model was designed in 1976 to combat the specific issue of organised crime in the regulation of gambling. With there being no evidence relating to organised crime in Australia, such a model could be considered much less relevant than ... an Australian best practice model (sub. D275, p. 17).

It also queried whether there was sufficient evidence to show that a physical separation of enforcement and control functions would be an improvement:

... separation of regulatory functions can potentially lead to the duplication of resources, communication problems, inconsistent policy direction and formation and territorial disputes (sub. D275, pp. 16–17).

The Queensland Government agreed with many of the objectives of the Commission's draft report model, but considered that the criticisms of current arrangements did not adequately distinguish between the different approaches in different jurisdictions. It said that many of the elements of the Commission's preferred model are currently present in the Queensland regulatory structure. Nevertheless, it is reviewing its regulatory structure to ensure, for example, that the regulators are sufficiently independent of government while the policy direction continues to be set by government (sub. D275, p. 17).

The Commission agrees with this approach. While the merits of separating or combining policy and enforcement may be debated, a critical element is having strict separation of the control function from policy development.

Other approaches to the enforcement function include allowing it to be undertaken by:

- a unit within the policy department;
- a unit within another department; or
- a new separate agency.

The first has similar advantages and disadvantages as using the control authority. The second would encompass the New Jersey approach, where enforcement is undertaken by the Attorney General's office. And the third would involve setting up a new, independent enforcement agency, which would achieve the benefits of separation, but at the cost of some duplication of expertise and effort.

In the Commission's view, there are benefits in keeping the enforcement function in an organisation separate to the control authority or the policy department. The control authority should have responsibility to assure itself that the enforcement function is effectively carried out.

The adjudication function

At present, there is considerable variation in the processes by which decisions may be appealed. For example, Star City said that it had access to:

... no appeal processes at all ... There can be no valid reasons for this (sub. D217, p. 26).

A clear and readily available procedure for appealing the decisions of regulators is crucial to good governance.

At one level, the control authority should have the function of deciding upon administrative and disciplinary matters referred to it by the enforcement arm, possibly leading to the suspension or revocation of licences. In respect of decisions made by the control authority, there exist appropriate appeal processes, such as administrative appeals tribunals and ultimately the courts.

In respect of breaches of statute such as fraud or other criminal matters, investigations by the enforcement agency would be referred as appropriate to the police or the public prosecutor.

The program administration function

What is it?

A key question concerns the administration of programs funded by community levies. At present, some control authorities have responsibility for research or for disbursement of funds raised through community levies (for example, the Tasmanian Gaming Commission and the New South Wales Casino Control Authority).

Who should do it?

As noted in chapter 17, there is merit in an independent board having responsibility for all community levies for the funding of:

- counselling, harm minimisation and community awareness programs; and
- research and information-gathering.

The high level of concern about due process in these areas warrants a separate board to oversee the raising of funds through levies and their disbursement. No-one from the industry or from recipient organisations ought to have a place on such a board. Its secretariat could be provided by the independent control authority, although departments of health or human services could equally discharge that role. The board would need to establish appropriate processes and guidelines for undertaking this role.

At the draft report hearing, Reverend Harry Herbert of the Uniting Church (and a trustee of the New South Wales Casino Community Benefit Fund), strongly supported the proposal that support services be funded by an independent body. He saw particular merit in keeping ‘social impact issues’ under the one administration:

For instance, ... it is important that the organisation of public awareness campaigns about gambling is closely connected with the support services that are available [and] research into the incidence and effect of gambling is assisted by being linked with the body that funds support services (sub. D188, p. 2).

In his view, independence is particularly important for the body undertaking public awareness campaigns:

Such campaigns must be distanced from the industry itself, which is bound not to be pleased with them, and distanced also to some degree from the State Governments who are the recipients of funds from the industry (sub. D188, p. 2).

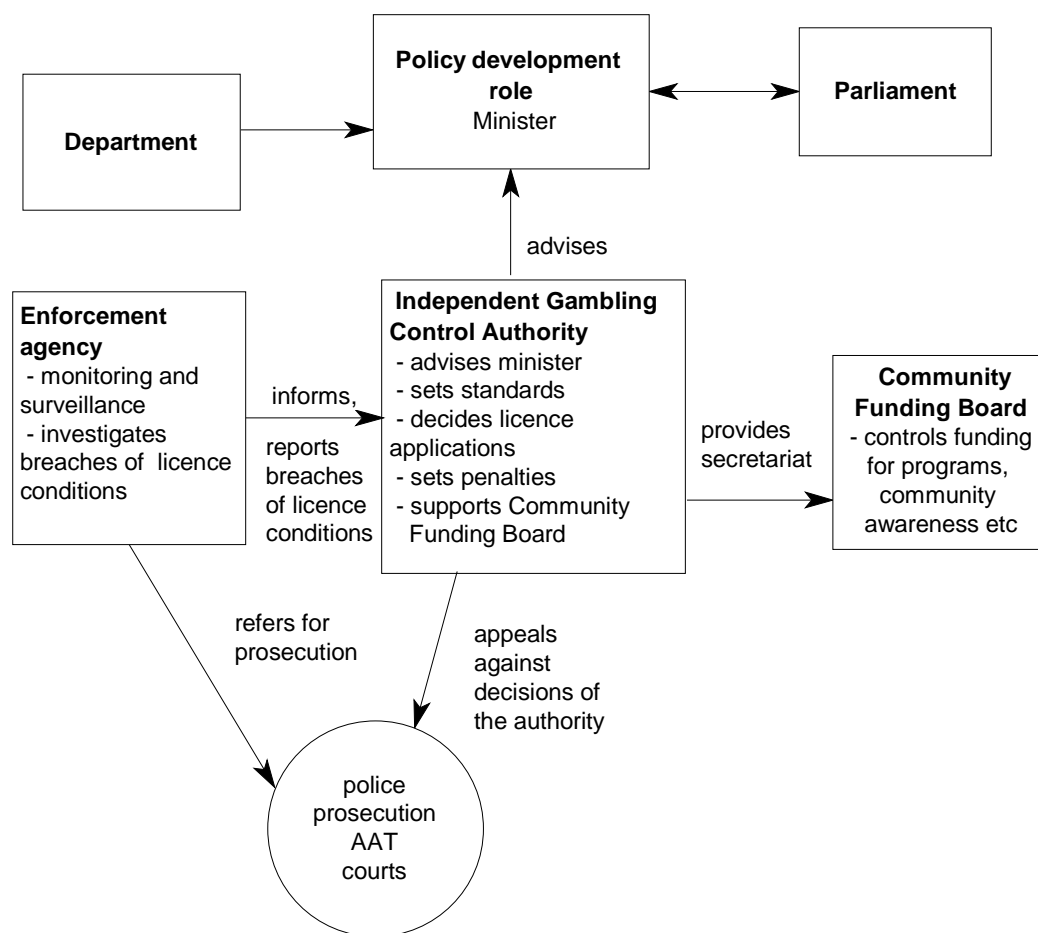
An independent board should have responsibility for:

- **administering the community development fund;**
- **funding counselling, harm minimisation and community awareness programs;**
- **funding research and information gathering and disseminating; and**
- **conducting evaluations of these programs.**

In the case of counselling, harm minimisation and community awareness programs, this board should have responsibility for setting the agenda in each area, in consultation with those groups responsible for service delivery. It should also implement ongoing programs to gather information and evaluate the effectiveness

of the programs implemented (chapter 17). And coordination of activities and sharing of information with boards in other jurisdictions would be likely to enhance the community's knowledge about these matters.

Figure 22.1 Towards a regulatory blueprint for each state and territory
Summary of the Commission's views



And as discussed in the next chapter, similar arrangements should apply with respect of research and information issues. But for these matters, the Commission sees merit in the establishment of a national research facility (chapter 23). There would be additional benefits were each state and territory's independent board to coordinate its activities with that body.

What role for the Commonwealth?

While gambling is primarily a matter for state and territory governments, jurisdictional borders have become increasingly less binding. This is not a recent

development: telephone betting with TABs across borders has been around for 30 years, and lotteries and TABs have entered into interstate pooling arrangements.

More recently, there have been further developments which, some suggest, call for greater Commonwealth involvement. Sports betting (by telephone and internet) and internet gambling, notably casino-type games, are starting to become more important. They are beginning to be offered by both Australian and offshore providers.

Clearly, the Commonwealth has a role with respect to international treaties, payment systems, taxation across national borders and telecommunications matters. For example, internet gambling can really only be effectively regulated and taxed with the assistance of the Commonwealth (chapter 18).

These matters may become more relevant to future developments in gambling. And the involvement of the Territories of Christmas Island and Norfolk Island in gambling activities raises immediate issues for the Commonwealth.

Some participants also pointed to the Commonwealth's interest in the social welfare and community impact aspects of gambling: when some gamblers end up on unemployment benefits or become heavy users of the Medicare system there is some resultant 'cost shifting' between the states and the Commonwealth.

There may also be economies of scale and scope in having some form of national focus for particular issues, such as for the organisation of counselling services. In that case, the program name Break Even is used across Australia, and its objectives are broadly common, although funding is undertaken in a piecemeal manner. There may be benefits in relevant Commonwealth departments and authorities being involved in cooperative arrangements among the states and territories.

And as noted in previous chapters, Commonwealth-State financial arrangements provide the context for the approaches of state and territory governments towards gaming and gambling taxation (chapter 19).

The prime role of the states and territories with respect to gambling is not in dispute. But some of these considerations suggest that there are benefits in the Commonwealth playing some role in cases where its involvement now is minimal or non-existent.

Commonwealth involvement would provide one way of facilitating a more formal process of coordination, notwithstanding that there are already annual conferences of gaming and racing ministers, and other contacts between regulators. This could initially be by way of a forum, such as a Ministerial Council, for reviewing

emerging issues of relevance to all jurisdictions. Increasingly, many issues will have an interjurisdictional and perhaps international dimension, and, in time, other administrative arrangements may develop.

One other area requiring a more significant role for the Commonwealth is in relation to information and research, the subject of the final chapter.