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## R Bankruptcy and gambling

This appendix begins by examining the number of bankruptcies in Australia by cause, age, state and territory and over time. It then looks at the prosecution of bankrupts for gambling related offences under section 271 of the *Bankruptcy Act 1966*. Finally, participants criticisms of section 271 are examined to assess whether the section should be revoked.

### Background

Over 24 000 new business and non-business bankruptcies were declared in 1997-98. Less than 2 per cent, or 317 bankrupts stated that the main cause for bankruptcy was gambling or speculation (box R.1).

- The main self-attributed causes of business bankruptcies were economic conditions, excessive interest and lack of business ability.
- Unemployment, domestic discord and excessive use of credit were the major causes stated for non-business bankruptcies (table R.1).

Table R.1      **Number of new bankruptcies by self attributed cause 1997-98**

<i>Cause</i>	<i>Number</i>	<i>Per cent</i>
<b>Business bankruptcies</b>		
Lack of capital	518	11
Lack of business ability	569	12
Failure to keep proper books	111	2
Economic conditions	720	15
Seasonal conditions	92	2
Excessive interest	520	11
Inability to collect debts	128	3
Excessive drawings	198	4
Gambling or speculation	94	2
Other causes	1 896	39
<b>Total</b>	<b>4 846</b>	<b>100</b>
<b>Non-business bankruptcies</b>		
Unemployment	7 082	36
Domestic discord	2 611	13
Excessive use of credit	2 274	12
Ill health	1 326	7
Adverse litigation	720	4
Liabilities on guarantees	239	1
Gambling or speculation	223	1
Other causes	5 052	26
<b>Total</b>	<b>19 527</b>	<b>100</b>

*Data source:* Inspector-General in Bankruptcy (1998).

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### **Box R.1     Data qualifications**

The bankruptcy data used in this appendix is that reported in the Annual Reports of the Bankruptcy Act of 1966 by the Inspector-General in Bankruptcy. There are two major deficiencies in the data series on bankruptcies caused by gambling.

A number of inquiry participants said that anecdotal evidence suggests that the number of bankruptcies caused by gambling is significantly higher than that reported in the official data. For example, in 1997-98, 57 non-business and 5 business bankruptcies were classified as caused by gambling or speculation in South Australia. The Adelaide Central Mission (sub. 108, p. 3) suggests that the actual number is significantly higher:

During the last twelve months as one financial counsellor in a smaller State I have been involved in 20 petitions for personal bankruptcy totalling \$1.25M which can be directly attributed to the petitioners problem gambling addiction...

I believe that bankruptcy statistics are extremely conservative concerning problem gambling and difficult to identify while the present legislation is in place.

Problem gambling as a reason for personal bankruptcy is often not indicated and reasons given refer to health issues, loss of job, other criminal acts, breakdown in relationship and poor money management.

Reasons suggested by participants, as to why people fail to list gambling as a cause of bankruptcy include fear of prosecution under section 271 of the Bankruptcy act (discussed later) and the stigma attached to being labelled a bankrupt from gambling.

Results from the Commission's *National Gambling Survey* also suggested that there were 2900 people nationwide who were declared bankrupt each year as a result of their gambling activities — significantly more than the 317 reported in the 1997-98 annual report of the Inspector-General in Bankruptcy. However, the standard error on this item of the Commission's *National Gambling Survey* is sufficiently large that it provides an imprecise indicator of bankruptcy levels.

A second problem with the data for gambling research is that it does not distinguish between bankruptcies caused by gambling and those caused by speculation (for example speculation on stock markets).

Despite qualifications the data is the best time series collected on bankruptcies caused by gambling in Australia.

In 1997-98 the majority of new business bankruptcies, both gambling and non-gambling related, were declared by people aged between 35 and 44. For new non-business bankruptcies people aged between 25 and 34 accounted for the majority of gambling and other bankruptcies (table R.2).

At the national level, New South Wales and the ACT recorded the largest number of gambling and non-gambling bankruptcies in 1997-98 (table R.3). However in per capita terms South Australia recorded the largest number of bankruptcies caused by gambling in 1997-98 (table R.4).

**Table R.2 Age profile of bankrupts, (official trustee matters<sup>a</sup>) 1997-98**

Age	Business bankruptcies		Non-business bankruptcies		Total bankruptcies	
	Gambling number (%)	Other causes number (%)	Gambling number (%)	Other causes number (%)	Gambling number (%)	Other causes number (%)
<25	6 (7)	246 (4)	33 (15)	2 511 (13)	39 (12)	2 757 (11)
25 to 34	26 (29)	1 521 (26)	86 (38)	7 132 (37)	112 (35)	8 653 (35)
35 to 44	29 (32)	1 907 (33)	58 (26)	5 032 (26)	87 (28)	6 939 (28)
45 to 54	23 (25)	1 525 (26)	32 (14)	2 732 (14)	55 (17)	4 257 (17)
>54	7 (8)	597 (10)	16 (7)	1 679 (9)	23 (7)	2 276 (9)
<b>Total</b>	<b>91 (100)</b>	<b>5 796 (100)</b>	<b>225 (100)</b>	<b>19 086 (100)</b>	<b>316 (100)</b>	<b>24 882 (100)</b>

<sup>a</sup> Bankruptcy data by age is only available for official trustee matters, bankruptcies administered by registered trustees are not included in the table — in 1997-98 5 per cent of new bankruptcies were administered by registered trustees.

Source: Inspector-General in Bankruptcy (1998).

**Table R.3 New bankruptcies by state, 1997-98**

Jurisdiction	Business bankruptcies		Non-business bankruptcies		Total bankruptcies	
	Gambling number (%)	Other causes number (%)	Gambling number (%)	Other causes number (%)	Gambling number (%)	Other causes number (%)
New South Wales & ACT	64 (68)	1 495 (31)	75 (34)	5 632 (29)	139 (44)	7 127 (30)
Victoria	22 (23)	898 (19)	24 (11)	4 039 (21)	46 (15)	4 937 (21)
Queensland	1 (1)	1 351 (28)	35 (16)	4 918 (25)	36 (11)	6 269 (26)
South Australia	5 (5)	353 (7)	57 (26)	1 983 (10)	62 (20)	2 336 (10)
Northern Territory	0 (0)	45 (1)	0 (0)	82 (1)	0 (0)	127 (1)
Western Australia	1 (1)	472 (10)	29 (13)	1 747 (9)	30 (9)	2 219 (9)
Tasmania	1 (1)	138 (3)	3 (1)	903 (5)	4 (1)	1 041 (4)
<b>Total</b>	<b>94 (100)</b>	<b>4 752 (100)</b>	<b>223 (100)</b>	<b>19 304 (100)</b>	<b>317 (100)</b>	<b>24 056 (100)</b>

Source: Inspector-General in Bankruptcy (1998).

**Table R.4 New bankruptcies per million adults, by state, 1997-98**

Jurisdiction	Business bankruptcies		Non-business bankruptcies		Total bankruptcies	
	Gambling	Other causes	Gambling	Other causes	Gambling	Other causes
New South Wales & ACT	13	303	15	1 143	28	1 446
Victoria	6	259	7	1 164	13	1 423
Queensland	0	538	14	1 959	14	2 498
South Australia	4	314	51	1 766	55	2 080
Northern Territory	0	349	0	636	0	984
Western Australia	1	356	22	1 318	23	1 675
Tasmania	3	397	9	2 595	12	2 991
<b>Total</b>	<b>7</b>	<b>344</b>	<b>16</b>	<b>1 396</b>	<b>23</b>	<b>1 739</b>

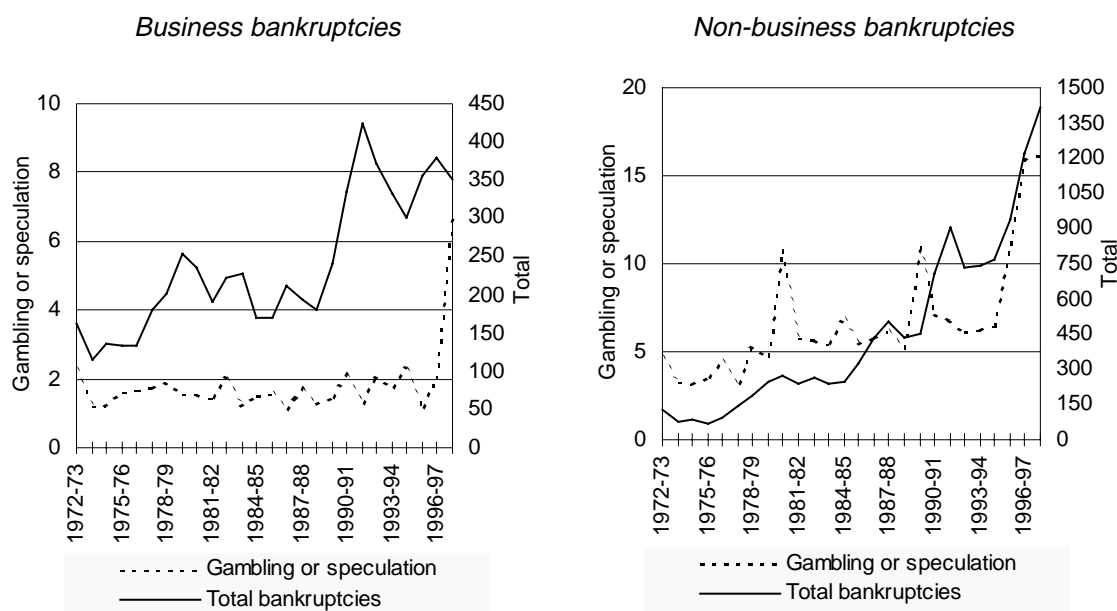
Source: Inspector-General in Bankruptcy (1998).

## Growth in bankruptcies

Total bankruptcies and bankruptcies caused by gambling have increased significantly over time.

- In 1972-73 about 2500 new bankruptcies were declared, or about 300 for every million adults. In 1997-98 the number of new bankruptcies increased to 24 000, nearly 1800 per million adults.
- Over the same period, new gambling related bankruptcies increased from 61, or 7 per million adults to 317, or 23 per one million adults (figure R.1 and table R.5).
- Non-business bankruptcies share of total bankruptcies has increased gradually over time. In 1972-73 non-business bankruptcies accounted for 44 per cent of total bankruptcies compared with 80 per cent in 1997-98. For bankruptcies caused by gambling there is no clear trend. In 1972-73 non-business bankruptcies accounted for 67 per cent of total gambling related bankruptcies. In 1996-97 this share had risen to 90 per cent but in 1997-98 the share was much lower at 70 per cent.

Figure R.1 **New bankruptcies per million adult population, 1972-73 to 1997-98, Australia**



Source: Inspector-General in Bankruptcy (various years).

**Table R.5 New bankruptcies per million adult population, 1972-73 to 1997-98, Australia**

Year	Business bankruptcies		Non-business bankruptcies		Total bankruptcies	
	Gambling	All causes	Gambling	All causes	Gambling	All causes
1972-73	2.3	162.9	4.7	127.2	6.9	290.1
1973-74	1.2	115.0	3.3	75.2	4.6	190.1
1974-75	1.2	136.7	3.2	88.3	4.4	225.0
1975-76	1.6	133.4	3.5	70.5	5.2	203.9
1976-77	1.7	134.1	4.4	97.8	6.1	231.9
1977-78	1.8	181.7	3.2	143.3	5.0	325.0
1978-79	1.9	202.1	5.3	190.4	7.2	392.6
1979-80	1.6	252.7	4.8	244.6	6.4	497.4
1980-81	1.6	235.8	10.7	269.0	12.2	504.8
1981-82	1.4	192.0	5.7	240.1	7.2	432.0
1982-83	2.0	223.3	5.7	268.1	7.7	491.3
1983-84	1.2	227.6	5.4	237.8	6.6	465.4
1984-85	1.5	169.8	6.8	249.4	8.3	419.2
1985-86	1.6	170.5	5.5	321.8	7.1	492.3
1986-87	1.1	213.0	5.8	434.7	7.0	647.7
1987-88	1.7	192.7	6.1	500.3	7.8	693.0
1988-89	1.3	181.8	5.3	437.5	6.5	619.3
1989-90	1.5	240.6	10.9	452.6	12.3	693.2
1990-91	2.1	336.2	7.2	710.9	9.3	1 047.1
1991-92	1.3	423.8	6.8	904.2	8.0	1 328.0
1992-93	2.1	371.5	6.1	733.8	8.2	1 105.3
1993-94	1.8	331.6	6.2	741.5	8.0	1 073.1
1994-95	2.3	302.0	6.5	765.3	8.8	1 067.2
1995-96	1.2	355.5	11.1	937.6	12.3	1 293.1
1996-97	2.1	380.5	15.9	1220.6	18.0	1 601.1
1997-98	6.8	350.4	16.1	1411.8	22.9	1 762.2

Source: Inspector-General in Bankruptcy (various years).

Figure R.2 and table R.6 show trends in bankruptcy at the state/territory level.

- The number of new bankruptcies have increased in all states and territories over the period 1982-83 to 1997-98.
- In New South Wales/ACT, Victoria, Queensland and South Australia sharp increases in bankruptcies caused by gambling were observed from the early or mid 1990s, corresponding to increases in gambling expenditure (chapter 3).
- No trend is apparent in the Northern Territory, Tasmania and Western Australia — the number of bankruptcies caused by gambling in these states and territory has varied considerably from year to year.

**Figure R.2 New bankruptcies per million adults, 1982-83 to 1997-98, by state**

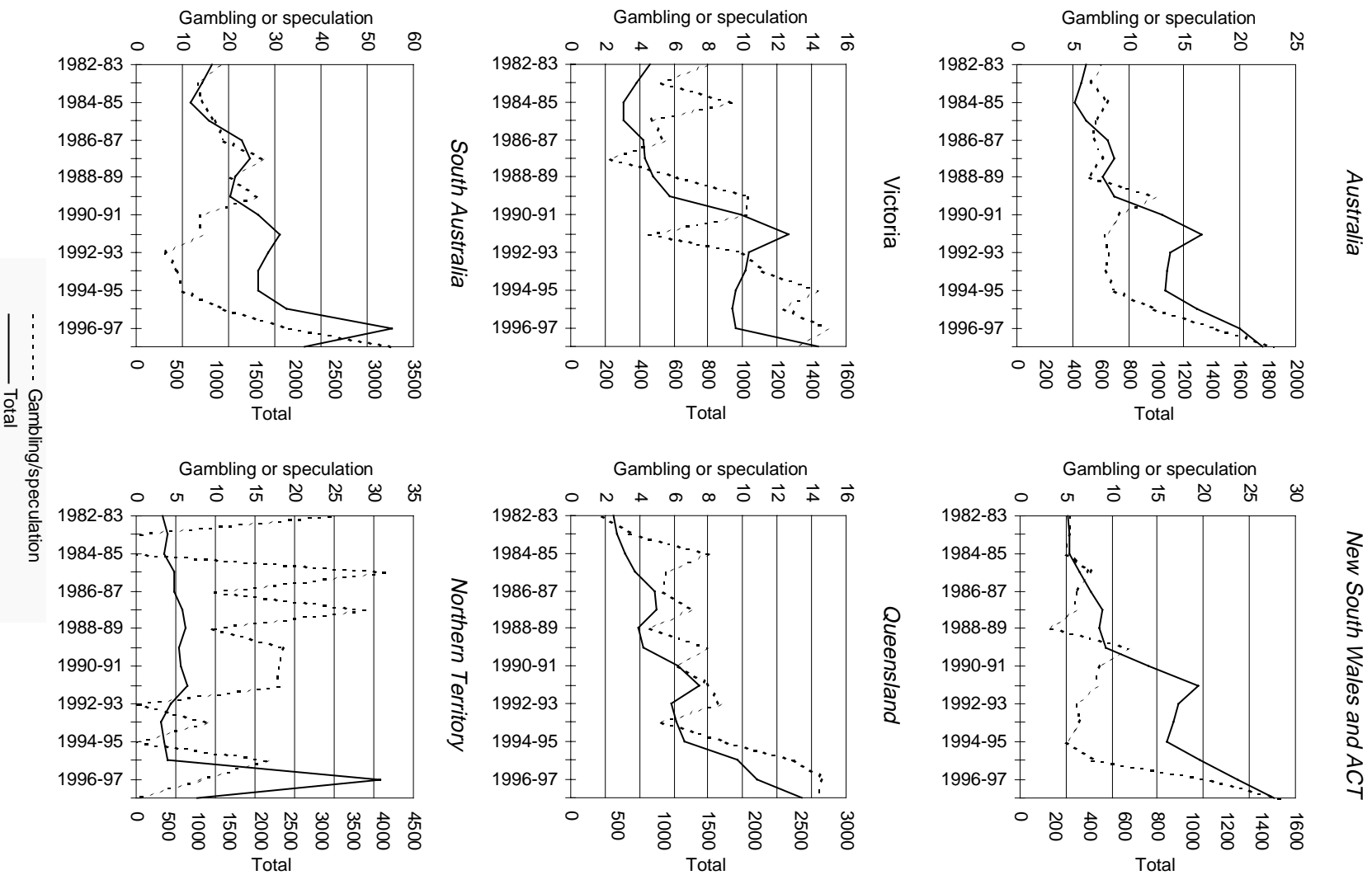
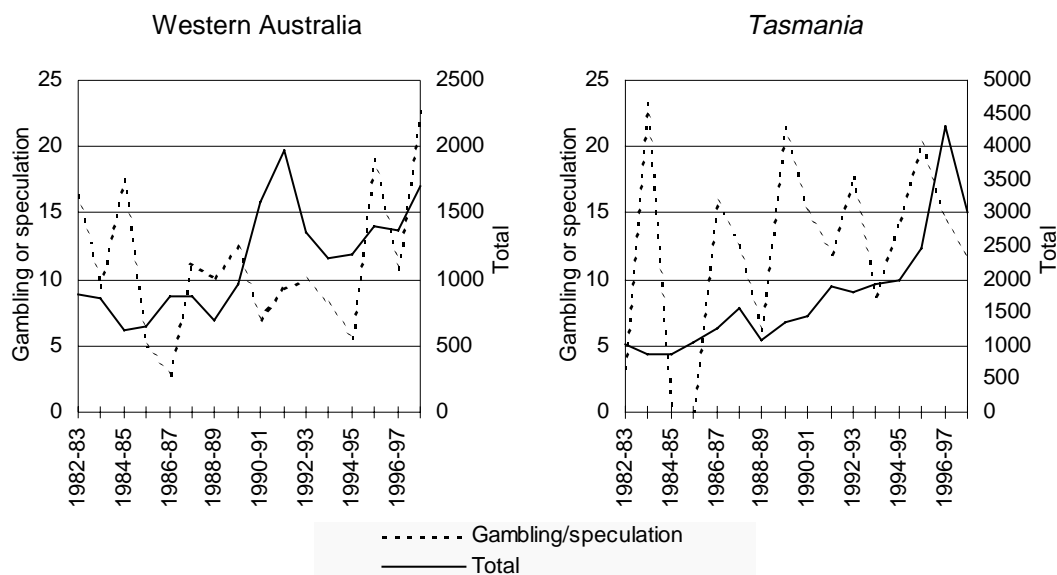


Figure R.2 continued



Source: Inspector-General in Bankruptcy (various years).

Table R.6 New bankruptcies per million adults, 1982-83 to 1997-98, by state

	1982-83	1985-86	1988-89	1991-92	1994-95	1997-98
<b>Bankruptcies caused by gambling</b>						
New South Wales & ACT	5.6	7.5	3.4	8.3	5.1	28.2
Victoria	7.8	4.7	6.1	4.6	14.3	13.3
Queensland	1.8	5.6	4.6	7.9	9.0	14.3
South Australia	17.8	17.0	20.2	13.8	9.9	55.2
Northern Territory	24.4	31.3	9.5	17.9	0.0	0.0
Western Australia	16.2	5.0	10.1	9.3	5.6	22.6
Tasmania	3.4	0.0	6.2	11.9	14.5	11.5
<b>Total</b>	<b>7.7</b>	<b>7.1</b>	<b>6.5</b>	<b>8.0</b>	<b>8.8</b>	<b>22.9</b>
<b>Total bankruptcies</b>						
New South Wales & ACT	279.4	346.5	461.6	1 035.0	855.1	1 474.1
Victoria	460.2	310.7	476.5	1 260.7	960.7	1 436.4
Queensland	460.0	694.1	728.2	1 397.0	1247.9	2 512.0
South Australia	960.2	924.9	1 257.7	1 804.6	1550.1	2 135.4
Northern Territory	426.8	625.0	809.5	821.4	466.1	984.5
Western Australia	892.0	643.9	699.3	1 971.2	1191.6	1 697.4
Tasmania	1 030.2	1 057.9	1 071.4	1 908.0	2002.9	3 002.9
<b>Total</b>	<b>491.3</b>	<b>492.3</b>	<b>619.3</b>	<b>1 328.0</b>	<b>1067.2</b>	<b>1 762.2</b>

Source: Inspector-General in Bankruptcy (various years).

## Prosecutions for bankruptcies caused by gambling

Section 271 of the *Bankruptcy Act, 1966* states that ‘rash and hazardous’ gambling or speculation up to two years before the presentation of a bankruptcy petition is an offence if it materially contributed to or increased the extent of the insolvency. The offence is punishable by up to one year’s imprisonment.

Nearly 100 prosecutions have been made under section 271 since its inception (table R.7).

**Table R.7 Number of prosecutions by state and penalty, 1968-69 to 1998-99**

	1968-69 to 1972-73	1973-74 to 1977-78	1978-79 to 1982-83	1983-84 to 1987-88	1988-89 to 1992-93	1993-94 to 1997-98	<b>Total</b>
<b>State</b>							
New South Wales & ACT	2	12	2	7	1	1	<b>25</b>
Victoria	2	6	4	1	5	3	<b>21</b>
Queensland	2	4	3	2	-	-	<b>11</b>
South Australia & Northern Territory	2	6	14	5	1	-	<b>28</b>
Western Australia	2	1	-	2	3	1	<b>9</b>
Tasmania	-	1	-	-	2	1	<b>4</b>
<b>Total</b>	<b>10</b>	<b>30</b>	<b>23</b>	<b>17</b>	<b>12</b>	<b>6</b>	<b>98</b>
<b>Major penalty</b>							
Letter of caution	-	-	-	-	-	2	<b>2</b>
Good behaviour bond	5	24	17	17	8	3	<b>74</b>
Imprisonment	5	4	4	-	2	-	<b>15</b>
Fine	-	-	-	-	1	-	<b>1</b>
Not convicted/withdrawn	-	2	2	-	-	1	<b>5</b>
Not stated	-	-	-	-	1	-	<b>1</b>
<b>Total</b>	<b>10</b>	<b>30</b>	<b>23</b>	<b>17</b>	<b>12</b>	<b>6</b>	<b>98</b>

Source: Inspector-General in Bankruptcy (various years).

- Over the 30 year period there have been an average of 3 prosecutions a year.
- The number of prosecutions has decreased over time— between 1993-94 and 1997-98 six prosecutions were made under section 271 compared with 12 and 17 in the previous two periods.
- The majority, over 28 per cent of prosecutions were in South Australia and the Northern Territory. New South Wales and the ACT and Victoria also accounted for a large number of prosecutions.
- In over 75 per cent of prosecutions the major penalty was a good behaviour bond and in 15 per cent of cases the penalty was imprisonment.



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- The penalty has become less severe over time. In the first half of the 30 year period 13 prosecutions or 21 per cent involved prison sentences compared with 2 prosecutions, or 6 per cent between 1983-84 and 1997-98.

## **Section 271 — is it needed?**

It is difficult to know how many people are deterred from reckless spending by section 271. On the one hand, it has been claimed that very few people are aware of the provision — in which case it can scarcely have a deterrent effect.

Very few people are aware of this section. If it were vigorously enforced there would be public outcry, but the reality is that the bankruptcy authorities regard it as an embarrassment and are sparing in its application, only prosecuting those who blatantly gamble in anticipation of bankruptcy. The fact is that very few gamblers gamble in anticipation of bankruptcy. They gamble with the belief they will win (Wesley Community Legal Service, sub.46, p.8).

On the other hand, it has also been claimed that the number of bankruptcies caused by gambling are understated, reflecting the concern of the bankrupts to avoid prosecution (box R.1).

Of course these two apparently opposing views could be reconciled if some gamblers were aware of the provisions, while many were not. Either way it appears likely that most gamblers are not deterred by the provision or seek to circumvent it when bankruptcy is imminent. This suggests that the provision is likely to be relatively ineffective in reducing reckless behaviour.

While section 271 may produce few benefits, does it entail large costs? A weak deterrent to recklessness may be superior to none. This is especially relevant when the burden of any asset losses fall on a few individuals — such as a partner. It would be unfortunate if the consequence of a well meaning revocation of section 271 was to further weaken the controls problem gamblers have over their spending (noting that they do exert some control).

However, the view of some participants was that the provision is fundamentally unjust, in that it seeks to punish people with an addiction. Springvale Legal Service (sub. 17, p.10) for example, said that section 271:

... is unjust and anachronistic because it serves to punish and not treat or rehabilitate. It disguises possible statistical links between gambling and bankruptcy. Imprisonment is unlikely to offer any rehabilitation options and so serve little effective purpose other than to keep gamblers out of venues. This section clearly fails to recognise that some gamblers gamble because they have an uncontrollable addiction which will probably recur once they are released from prison.

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Even so the Commission understands that imprisonment typically only occurs when gambling related bankruptcy involve another breach of the law — such as fraud — which would have resulted in a criminal penalty regardless of whether section 271 existed. Accordingly, the apparent severity of some sentences relating to section 271 is overstated.

Some participants commented that section 271 is outdated — introduced in 1966 when the proliferation of gaming machines was not foreseen. Others argued that it is inconsistent with the treatment of other problems, most notably drug addiction.

Why is gambling treated differently to other forms of addiction? Heroin addiction is a very expensive habit and is the cause of some bankruptcies but it does not warrant a special offence under the Bankruptcy Act (Brading, 1999, p.35).

The Wesley Community Legal Service (sub.D215, p.2) commented that bankruptcy had the potential to alleviate some of the drivers and adverse consequences of problem gambling by cutting off likely sources of access to debt finance. They argued that the potential for criminal prosecution served as an obstacle to problem gamblers seeking bankruptcy.

Overall, then a judgement about the value of section 271 needs to weigh up its:

- benefits — the potential gains from reducing moral hazard;
- against its costs — its adverse treatment of people who have a dependency and the fact that it may deter them from taking an action that may substantially reduce their access to finance.

The fact that section 271 is relatively obscure suggests that it will not have large benefits from reducing moral hazard. And in any case the authorities can usually apply other sanctions for clearly fraudulent behaviour associated with gambling. On the cost side, the section may have significant adverse impacts.

In light of these considerations, there may be value in the Commonwealth reviewing the section. It could also examine whether there were grounds for requiring mandatory attendance by a problem-gambling bankrupt to appropriate counselling.