

The Western Australian Gaming Legislation

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

Background to the legislation.

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

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

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

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

In 1932 the Lotteries Control Act was proclaimed as a response to the increasing numbers of private lotteries, art unions and sweepstakes which were being promoted throughout the State. The number of cases of malpractice and fraud that were found in connection with lotteries had aroused public concern. The Act created the Lotteries Commission which was empowered (with the prior approval of the Minister) to conduct lotteries in order to raise money for charitable purposes as well as to issue permits to eligible organisations to conduct lotteries on their own behalf. Subsequent amendments to the act granted the Commission unfettered powers to grant or refuse applications to eligible organisations without reference to the Minister.

Permits for lotteries were not issued for commercial purposes. Successive Governments have maintained this philosophy and have excluded permits being issued for lotteries that are conducted for commercial purposes or that result in private gain to individuals. Over the years the Lotteries

Commission has moved into different forms of lotteries but its underlying aim is still to accumulate monies for “good” works and to provide grants to community-based organisations.

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

In 1982 the provisions for the playing of bingo was extended to licensed clubs (licensed under the Liquor Act) and in 1984 the law was further extended to allow the game to be played in other licensed premises. The legalising of bingo was a response to community demand for this type of gaming which had been conducted by legitimate and respected organisations, albeit illegally. The Government viewed the legalisation of bingo as an avenue for non-profit organisations to raise funds not as an activity for commercial interests. Successive Governments have maintained this philosophy. The extension of bingo to non-profit organisations resulted from recommendations of the Royal Commission into Gambling 1974 as part of its examination of gambling in Western Australia. The Commission found that many forms of gambling were being conducted by clubs as a method of raising funds. Although the activity was illegal clubs were prepared to take the risk and conduct gambling functions as an avenue to raise funds. The Commission reported:

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

Recommendations of the Commission included:

- Permitting certain further forms of gambling was not likely to have any significant adverse effect on the social and economic well being of the people of the State generally
- It would be in the best interest of the people of the State to permit further gambling under strict licence and regulation.
- Non profit bodies formed for sporting, social, charitable, cultural or other lawful purpose should be allowed to apply for approval to conduct “gaming nights” for their own fundraising purposes.
- It should not be unlawful for members and their guests of clubs to play cards for money, nor for the club to conduct sweeps on horse racing for the entertainment of the members and their guests.
- A public statutory authority should control all gambling and for this purpose a Gaming and Betting Board should be established. The Commission suggested that this could possibly be achieved by restructuring and reconstituting the Totalisator Agency Board and/or the Lotteries Commission and combining their functions and conferring additional powers.

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

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

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

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

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

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

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

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

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

As part of security and assurances in a casino development agreement the Commission recommended that the State should undertake to the casino developer not to grant another casino licence in the State until after the casino had been operating for a period of at least fifteen years. The Commission considered that the developer (or in the case of a company, its directors and shareholders) of the casino should be persons of good repute and be able to demonstrate to the satisfaction of the State that he or it has the financial resources required to complete the project. The Commission also recommended that on any breach of the casino licence the State should have the power to either cancel the licence or suspend it.

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

and State run lotteries, that is, the T.A.B. and the Lotteries Commission, and that a separate authority be established to regulate the new forms of gambling. The Committee also noted that most interviewees agreed that a casino should be established in Perth and that an overwhelming number of interviewees did not favour the introduction of poker machines.

The Back-Bench Committee recommended that “non-profit” making clubs should be allowed to conduct sweeps and their members should be allowed to play cards for money as they had been doing for many years. It also noted that after country racing events were finished, race clubs had been playing two-up to “round off” the race meet and that consideration should be given to the legalisation of this situation. Consideration should also be given to legalising the use of “beer ticket” machines, “chocolate wheels” and other forms of fund raising equipment. The Committee recommended that a Gaming Commission be established in order to licence and control any gambling authorised by legislation. This body should be an entirely separate body from either the Lotteries Commission or the Totalisator Agency Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

The GCAC was instructed that the Government's broad objectives were public control of the facilities; the highest standard of casino facilities and operation; the maximum enhancement of the tourist industry and contribution to the area in which it was located and related community benefits. Relevant findings and recommendations of the GCAC included that a casino incorporated into a large tourist/convention type hotel complex should be established in Western Australia. The GCAC reported:

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

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

The GCAC recommended against public ownership of the casino and opted for private ownership of the casino under strict licensing conditions. The GCAC reported that all major reports produced in Australia at the time had recommended against Government ownership of casinos because there is no guarantee of success and the morality of using tax payers money to gamble is called into question and the GCAC

agreed with that view. The Committee supported a view put to it by Mr Ron Hurley, a former casino executive who stated to the GCAC:

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

The GCAC considered licensing and control as an essential element of permitting casinos. The major concerns were ensuring that the games were conducted with integrity, that organised crime was unable to gain control of casinos and that the State received its correct amount of taxation revenue. The GCAC concluded that a regulation system that allowed for a form of inventory control. This would ensure the accountability of cash and chips and the determination of the gross profit and loss for the casino as a whole (as well as for each individual table) would be most suitable to safeguard revenue. A regulatory regime that included inspection, audit and review would assist in ensuring the integrity of gaming. On the question of keeping organised crime from being involved in casino ownership or operations, the GCAC was acutely aware of the potential for organised crime to infiltrate gambling and paid particular attention to evidence provided to the Victorian Inquiry into Gambling by Mr Powis, Deputy Assistant Commissioner, New Scotland Yard who stated in relation to casinos;

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

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

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

The Current Legislative Framework

The Casino (Burswood Island Agreement) Act, 1995

In 1985 the Government legislated to enact the Casino (Burswood Island Agreement) Act to ratify an agreement with the developers of the planned Burswood Island casino resort complex. The Government viewed the project as providing a major boost to the economy of the State. The agreement committed the resort developers to spending \$220 million on the project. The Government regarded the project as a method to create jobs in the construction industry and at the casino complex and also through a broad

section of industry and commerce. The development was expected to increase tourism resulting in further increases in income and employment across many businesses. The Government also saw that the State's revenue would be boosted by a tax of 15 per cent of gross casino revenue; an annual licence fee set initially at \$400 000 and increased each year by CPI change; \$30 million for land and consideration of the State signing the agreement; and by the establishment of a public park funded by revenue from the operations of the casino.

The Casino (Burswood Island Agreement) Act is divided into seven parts. Part II covers the obligations of the developers to construct the whole resort complex on Burswood Island. This part also provided for the establishment of the Burswood Park Board to manage the public park on Burswood Island. Part IV provided for payment by the developer of fifteen per cent of gross revenue to the Treasurer and the annual licence fee of \$400 000 to the Casino Control Committee (later the Gaming Commission). Provisions were also made for the Burswood Park Board to be paid one per cent of gross casino revenue or \$1 million per annum, whichever was the higher figure. This part also provided the machinery for the grant of a casino licence and the review of the tax rate, which could grow to a maximum of twenty per cent and not be increased by more than one per cent per year. In consideration of the rate of tax and the licence fee, the Government acknowledged that the establishment of the complex was a very large project requiring very large capital expenditure (with the developers committed to spending \$220 million dollars).

A number of competitive restrictions exist in this Act in favour of the casino operator. These are not related to gaming in casinos per se, but to the specific issue of securing a viable casino operation. In the latter context the then Government agreed to the developers being granted exclusive rights to casino gaming in Western Australia for a period of 15 years. The casino has the exclusive rights to certain games except the games of poker with cards and two-up. The game of two-up may be allowed to be played outside a radius of 200 kilometres from the casino. After the 15 years exclusivity period the agreement provided that the State shall not grant another casino licence within a radius of 100 kilometres of Perth unless it is in a hotel and casino of comparable size and standard to the Burswood casino. Outside of the 100 kilometres a hotel and casino need only to be built to international standards. Nothing in the agreement prevented the playing of games which were currently approved under the provisions of the Lotteries (Control) Act and other Acts, including chocolate wheels and raffles.

Casino Control Act, 1984

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

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

Part III of the Act provides the Minister with the power to enter into agreements for the construction and establishment of casinos. The Minister may also agree to a period during which further casino licences will not be granted. Part IV of the Act provides the powers of the Commission and Minister when considering applications for casino licences and outlines the procedures to be followed in the determination process. Part V of the Act details provisions for the control of gaming operations within casinos in Western Australia. Part V provides that the games played in casinos must be authorised by the Commissions and that the rules of play are required to be approved by the Commission prior to the games being played in casinos. Part V further provides powers for the Commission to issue directions to casino licensees in respect of casino gaming operations, account keeping, the production of records relating to the casino gaming operations and the supervision and control of casino gaming operations. The Casino Control Act 1984 is aimed at casino gambling generally.

The Gaming Commission Act, 1987

In 1987 the Government acted upon the recommendations of the Committee appointed to inquire and report upon gaming in Western Australia. The Gaming Commission Act 1987 was enacted to

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

The Act created the Gaming Commission. The duties of the Commission are to administer the law relating to gaming and betting; to keep under review the conduct, provision, use and location of gaming and betting facilities; and to formulate and implement policies for the scrutiny, control and regulation of gaming and betting, taking into consideration the requirements and interest of the community as a whole. The Commission also became responsible to administer the Casino Control Act; Casino (Burswood Island Agreement) Act and the Casino Control (Burswood Island) (Licensing of Employees) Regulations. Part IV of the Act transferred (the then) existing provisions of the Police Kalgoorlie Two-up Regulations and the Police Act dealing with unlawful gaming; common gaming houses and cheating. Part V of the Act provided for the lawful conduct of certain types of gaming by permit. This part also provided for the lawful conduct of gambling which was spontaneous (even though it may occur regularly), was not promoted and for which no charge was made to be considered to be social gambling and was lawful without a permit being required to authorise its conduct.

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

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

Overview of Current Legislative Position

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

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

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

The Totalisator Agency Board, the Lotteries Commission and the Gaming Commission are the statutory authorities charged with the responsibility of administering the legislation pertaining to gaming and betting. The Gaming Commission is responsible to administer the Casino Control Act 1984, the Casino (Burswood Island Agreement) Act 1985 and the Gaming Commission Act 1987. The development of

public policy pertaining to gaming in Western Australia has resulted in inter-relating provisions contained across individual Acts. A review of the gaming legislation administered by the Gaming Commission is most appropriately performed by consideration of the various Acts as one package of legislation. Inherent in the approach described above is the need for a large and complex regulatory structure based on a number of restrictions on the operation of the gaming market. The major focus for the Acts is the creation of a licensing system covering all those involved in the supply of gaming products. These licences have appended to them a wide variety of associated restrictions. These restrictions relate to the particular form of gaming being covered by the licence as set out in the Acts.

Gaming is a unique industry. There appears to be little compatibility between the gaming industry product and the products of other industries. Gaming offers a unique product. The value of the product can far outweigh the initial outlay - or it can result in the total loss of the initial outlay. The random laws of chance must determine the result of a purchase. One outcome of this is that while the consumer may have an intuitive understanding of the game, the basic products do not appear to be well understood and there is not the same direct relation (as there is with other products) between what is tendered (the price paid) and what is received (the expected win and the pleasure of playing) as in other product markets.

Of particular significance for gaming is the possibility of manipulation. There are a variety of ways in which the result of a game can be manipulated and the buyer has no means of knowing whether this in fact is happening. The possibilities of manipulation occur at a variety of levels from the manufacture of equipment through to the design of game rules and the operation of games. The nature of the industry is such that consumers are open to abuse from unscrupulous persons who may cheat or defraud them. The gaming industry is a cash industry. Once transactions occur they are gone, often without any record of them occurring. This is particularly the case with table games, but not so much with lotteries or keno where printed transaction receipts are produced. One consequence of the cash orientation of the industry is that the industry is susceptible to criminal activity at various levels. Where the activity involves high volumes of cash, the industry also provides an incentive for organised crime to attempt to become involved.

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

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

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

4. Tax Base. The gaming industry is a major tax revenue source for governments.

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

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

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

The prohibition on private gain confers the following benefits.

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

These licensing requirements are not considered excessive. Compliance costs appear to be minimal and are very small in relation to the substantial amounts raised. Although operating gaming for purely private gain is not allowed the community gaming market is still extremely competitive. The licence system is non-exclusive. So long as the basic requirements and the probity checks are passed, permits are issued. As a consequence, there are a large number of participants in the community gaming sector and professional fundraisers are involved in organising gaming for the large number of permit holders. Securing a community gaming sector that is free from criminal influences and in which games are run fairly for the protection of consumers and operators and beneficiaries is a substantial benefit. On this basis, it is not considered unduly restrictive to assess a person's suitability through a basic licence requirement and associated probity check.

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

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

Alternatives to the current licensing system.

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

Self regulation

Self-regulation would depend on the gaming industry setting and enforcing standards through membership rules or a code of practice, the application of which would be voluntary. Self-regulation is the least restrictive method of industry regulation, but one that has significant defects. Self-regulation by an industry body excludes consumers from the regulatory process; it can create inherent conflicts of interest with the industry body both drafting and enforcing the rules; and industry organisations can have a reluctance to recognise that members' standards are inadequate.

The gaming industry consists of several distinct market segments with different types of organisations active within each market segment. The Lotteries Commission, the Totalisator Agency Board and licensed casinos each have a different purpose, method of operation and reason for existing. It is likely

that self-regulation would result in different peak bodies in each of the gaming market segments operating differing codes of conduct. If one body was established to administer self-regulation it is possible that the most lucrative segment of the gaming industry would seek to control that body to protect (or expand) its own interests. Further, it is unlikely that unscrupulous gaming operators would become members of industry associations, and far less likely, that such persons would adhere to a voluntary code of conduct. Under self-regulation, the presence of organised crime would more difficult to police, if it could be policed at all. Self-regulation is not regarded as a satisfactory alternative to formal licensing. It is incapable of addressing the potential problems inherent in the gaming industry and is unlikely to maintain the current standard of integrity of the gaming product.

Co-regulation

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

Registration

Registration is a means of combating the information asymmetry that favours the gaming operator over the consumer. Registration provides a public record of relevant information about service providers. However, the granting of registration is a purely administrative act with no real discretion to refuse to register. A register of gaming operators would provide consumers with information as to the identity of gaming service operators and could include information about the qualification, training and experience of individual gaming operators. Requiring all persons conducting gaming to be registered would enhance registration as an option. However, the actual process of becoming registered would still have to be automatic on provision of the relevant information; otherwise registration becomes a de facto form of licensing.

Registration would require legislative support to operate and a registering authority to administer it. Legislative provisions making it an offence to provide false or misleading information for inclusion on the register could enhance the integrity of the register. Registration does not establish minimum standards for entry to the market. Registration will not mean that the casino gaming service provider necessarily possesses the management skills or financial capability to operate casino gaming enterprises. Mere registration will not address issues of probity and integrity. The potential for unscrupulous operators to be active in the gaming industry will not be addressed by a process of registration as opposed to a process of licensing involving detailed probity checks. Registration does not stand alone as a viable alternative to a system of licensing for the gaming industry.

Accreditation

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

Accreditation provides consumers with enhanced information about the standards and qualifications of service providers and can be used by employers as a means of judging potential employees. Accreditation can be a powerful marketing tool in establishing credibility in the market. Accreditation preserves freedom of choice. It enables service providers and consumers to negotiate a balance between the standard of the service provided and the cost of that service. Licensing does not permit the negotiating of lower cost/lower standard service other than within the confines of the standards set by the licensing regime. Accreditation can provide consumers with more information than licensing because licensing merely records that the minimum standards have been met. Accreditation can provide sophisticated levels of information about the qualifications, experience and capability of the gaming operator to manage operations. Further, accreditation can provide a means of recognising improvements

in those criteria after accreditation is granted by reflecting those changes in the accreditation documentation.

Accreditation requires value judgements to be made about applicants and a decision making body is required to assist in the administration of the accreditation process. This body could be an industry body or a government body. Either way its role would need to be recognised in legislation. Accreditation offers a feasible alternative to licensing. The main drawback of a system of accreditation in the gambling market is that it would be dependent on the market entrant being willing to follow the accreditation process. Governments have recognised the need for gambling to occur only in an environment of strict control with the highest levels of integrity and probity applying to the industry. Unless all gaming operators were accredited before operating in the market, the integrity of the gaming industry could still be questionable. Unscrupulous operators are unlikely to follow the accreditation path. If all operators needed accreditation, the system may still offer some advantages over licensing but mandatory accreditation becomes a de facto licensing system. Accreditation does not offer the protection afforded by the current licensing system, particularly in the area of probity considerations. It is considered that accreditation does not offer a full satisfactory alternative to the current licensing regime.

Negative licensing

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

This approach is likely to be more costly to government and less costly to the business operators. The gambling industry requires checks to ensure only those operators with integrity and capability are able to enter the market. Probity checks before market entry are the most effective way of ensuring the integrity of the gaming product. On balance, negative licensing does not present a viable alternative to the current licensing system.

Summary

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

The Gaming Commission Act establishes the basis for controls over the conduct of community gaming. Specific conditions, standards and procedures in order are required to satisfy the objectives of the Act in relation to community gaming. Without these restrictions the Act would be limited in its effectiveness. One of the prime objectives in legalising the conduct of certain gaming activities was to ensure that the community as a whole benefits from the funds generated through this type of gaming. This is achieved by restricting this segment of the gaming market to charities and community based organisations. It is considered on balance that it is in the public interest to retain a licensing system for organisations conducting community gaming. While there are alternatives to licensing, none offer the efficiency and benefits regarding probity and security as the current up-front licensing system.