

Submission

Joint Select Committee on Gambling Reform Inquiry into pre-commitments scheme

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I respectfully submit the following to the 'Inquiry into pre-commitments scheme' ('the Inquiry') by the Parliament of Australia's Joint Select Committee on Gambling Reform ('the Committee):

Preamble

1. My name is Dr James Doughney. I am an academic economist at Victoria University in Melbourne. Currently I am seconded to the University's Centre for Strategic Economic Studies. I began researching the effects of poker machines in 1998 and have since authored the appended list of academic publications (appendix 1) on the subject. A special interest in my research into gambling has been ethics, including the 2002 book *The Poker Machine State: Dilemmas in Ethics, Economics and Governance*, Common Ground Publishing, Melbourne. I make this submission in a personal capacity.
2. I note that the Parliament has agreed (a) that the Committee 'Inquire into and report on ... The Productivity Commission report on gambling, released in June 2010' ('PC 2010').¹ I note also that (b) the initial focus of the Committee 'on the design and implementation of a best practice full pre-commitments scheme that is uniform across all States and Territories and machines - consistent with the recommendations and findings of the Productivity Commission'.² This submission will therefore restrict itself similarly.

¹ Information about the Committee, http://www.aph.gov.au/Senate/committee/gamblingreform_ctte/info.htm

² Information about the Inquiry, http://www.aph.gov.au/Senate/committee/gamblingreform_ctte/precommitment_scheme/info.htm

3. My submission will consider the ethical dimension of the issues at paragraph number two (PN 2). This will require it to be *both* evidence-based and combine the evidence and ethical reasoning in arguments that try to offer sound guidance for public policy. Policy without evidence is ill informed. Similarly, policy uninformed or badly informed by ethical reasoning and argument is deficient. Ethics that inform policy are either explicit or implicit, never absent.

Argument

4. The argument of this submission may be set out as follows:

- 4.1. Most harms caused by poker-machine gambling are consequent upon the losses of poker-machine gamblers

Evidence: This claim is uncontroversial. There may well be other harms, but those upon which the Committee will focus derive from losses. It is also uncontroversial that most gambling harms derive from poker-machine gambling (PC 2010, Overview pp. 13-14).

- 4.2. Losses and harms are both severe and concentrated on ‘problem gamblers’³

Evidence: The Productivity Commission (‘the PC’) enumerates harms in the Overview section of its report (p. 16; see also pp. 7.4-7.5). I emphasise to the Committee the link between problem gambling and suicide. For example, a six-month study of 898 suicidal patients who presented to Melbourne’s Alfred Hospital’s emergency department in 2009 found that 20 per cent were problem gamblers.⁴ Harms follow consequentially from the concentration of losses, to which the PC drew considerable attention throughout its report (PC 2010, esp. Overview pp. 16-18, and appendix B). Between 40 and 60 per cent

³ I will use this term for the purposes of this submission as proposed by the Productivity Commission: ‘Overall, problem gambling is probably best characterised as a social and psychiatric issue where a cluster of significant harms are present, and its measurement and policy responses should reflect that.’ (PC 2010, p. 54)

⁴ Hagan, K. 21 April 2010, ‘Gambling linked to one in five suicidal patients’, *The Age* at <http://www.theage.com.au/national/gambling-linked-to-one-in-five-suicidal-patients-20100420-srri.html>. See also Zangeneh, M. 2005, Editorial, *Australian e-Journal for the Advancement of Mental Health (AeJAMH)*, Volume 4, Issue 1, 2005.

of total losses, i.e. the poker-machine industry's⁵ revenues, derive from those with gambling problems. 'The likelihood of harm rises steeply and continuously with the frequency of EGM gambling and expenditure levels' (PC 2010, p. 4.24; see also pp. 4.19-4.30). The essential nature of this industry today is defined in large measure by what it does within its institutional-legislative framework. This includes significantly its dependence on problem gamblers' harm-causing losses. I also emphasise to the Committee the PC's conclusion that poker machines enable gamblers to lose amounts 'up to expected losses (they could be larger in practice) of around \$1200 per hour if ... [machines] are played at a very fast rate ... That bears no comparison with any other form of everyday entertainment' (PC 2010, p. 24).

See also Doughney (2007a), Ethical Blindness and Public Policy: A Tentative Essay Comparing the EGM and Tobacco Industries, *International Journal of Mental Health and Addiction*, 5 (4): 311-9. [Submitted with this submission]

4.3. A defining feature of the current state of affairs is evidently loss of control/dissociation by the gambler over both time and money, and loss of control/dissociation is consequent upon the design of poker machines and the (potentially) addictive properties of this design

Evidence: '...the major source of problem gambling and of loss of control generally is gaming machines' (PC 2010, p. 10.41). 'The conditioning effects of random and intermittent payouts, combined with the capacity for rapid repetition of games — some hundreds per hour — can encourage sustained gambling' (PC 2010, p. 14). Such rapid variable-ratio reinforcement schedules (intermittent payouts) are not contingent but essential design features of poker machines (PC 2010, pp. 11.44-11.53). 'People who gamble regularly have a much higher likelihood (around 30 per cent) of experiencing control problems', and poker machines 'dominate as the form of gambling where dissociation is most likely'. Someone 'playing more than once a week on gaming machines has a nearly twenty-fold increase in the probability of playing at least

⁵ I will use the term 'industry' throughout as a convenient catch-all for the various contributors to the supply of the poker-machine product.

sometimes in a trance than people who play one to six times a year'. (PC 2010, pp. 4.12-4.13) In the words of long-time gambling researcher Professor Mark Dickerson:

... research ... has shown the obvious: when shorn of all words that speak of pathology it seems quite obvious that if the purchase point of an extremely attractive entertainment product is embedded in the same process of the player actually enjoying the emotional stimulation and pleasure that arises, why on earth would any person in their right mind expect them to continue to make rational, informed decisions i.e. to gamble responsibly? Impaired ability to control cash and time expenditure during gaming is not about pathology it is a typical human response that despite all the notices and warnings is commonly reported by almost every other regular player ... If this is taken as a common sense starting point then the obvious question is whether these regular consumers of gaming are getting a fair go? If any other product than gaming were involved then the answer would clearly be 'no'. It would be entirely unacceptable for a product to be sold in an automated, emotionally distracting way that resulted in every other regular consumer buying more than they intended. (Dickerson 2003a⁶)

Dickerson urges a shift in policy focus from 'individual difference(s) inherent in some layers' to the fact that 'loss of control is the common and expected outcome of the interaction between human beings and contemporary forms of continuous gambling' (2003a; see PC 2010, p. 10.4). Inherent in continuous use is the reinforcement process of regular 'wins' ... 'The expectation that the player will be able to continue to make controlled, informed, rational decisions during such a session of continuous gambling is ill-founded.' (2003b) See also the work of Charles Livingstone, Richard Woolley, Jennifer Borrell and colleagues.⁷

⁶ Dickerson, M. 2003a, Submission to the *IPART Review of harm minimization measures*, 14 October. See also (2003b) 'Exploring the Limits of Responsible Gambling: Harm Minimisation or Consumer Protection?', *Gambling Research*, 15: 29–44.

⁷ Livingstone, C. 2009, Submission in response to the call for comment by the Minister for Gaming in relation to the *Gambling Regulation Further Amendment (Licensing) Bill* Exposure Draft. Livingstone, C. and R. Woolley 2007, Risky Business: A Few Provocations on the Regulation of Electronic Gaming Machines, *International Gambling Studies*, 7/3: 361-76. Livingstone, C. and R. Woolley 2008, *The Relevance and Role of Gaming Machine Games and Game Features on the Play of Problem Gamblers*, Adelaide, Independent Gambling Authority. Livingstone, C., R.

4.4. The propositions and evidence at PN 4.2 and PN 4.3 above lead directly to the conclusion that poker machines must be treated as an unsafe, harmful and/or dangerous product and, therefore, liable to controlled supply

Argument: As Dickerson put it, until such time that consumer protection were ensured, any talk of responsible gambling would ‘remain egregious platitudes’. He added that ‘... embedding the purchase point of gambling in a sequence that undermines self-control is not a “fair go”... it appears unethical’ (2004).⁸ Often this is the point at which discussion becomes one-sided and confused by imagined conflicts between gamblers’ ‘rights’ to protection versus freedom of choice. To disentangle such concerns it is necessary first to eliminate one-sidedness. It is a simple fact that poker-machine gambling is a transaction that has two sides. Hence, even if we were to agree in the extreme case when someone claims an unfettered right to choose some dangerous activity or another on the ground that he or she must be fully responsible for harms that result (PC 2010, pp. 20, 27, 3.11-3.15, 10.2-10.6), we must also analyse the other side of the transaction. That is, we must ask whether the supplier should have an unfettered right knowingly to supply the dangerous or harmful products and, in consequence, share in the full responsibility for the harms that result. Of course, limitation of harm and responsibility is precisely the reason for public policy to control the supply of (potentially) unsafe products for which society recognises some need (e.g. pharmaceuticals, firearms, motor vehicles etc.). The question here becomes: should the gambling industry have a right to supply, knowingly, a dangerous and potentially addictive product that the evidence shows causes many gamblers to lose control/dissociate over time and money and in consequence to suffer considerable financial loss and severe harms? No one, not even the gambling industry, would answer yes. The issue therefore becomes: where does society set the limits/controls on supply?

Woolley and J. Borrell 2006, *The Changing Electronic Gaming Machine (EGM) Industry and Technology, Final Report*, Commissioned by Victorian Gambling Research Panel, Australian Institute for Primary Care, La Trobe University. Livingstone, C., R. Woolley, T. Zazryn, L. Bakacs, and R. Sahmi, R. 2008, *The Relevance and Role of Gaming Machine Games and Game Features on the Play of Problem Gamblers*, Commissioned by Independent Gambling Authority South Australia, Australian Institute for Primary Care, La Trobe University.

⁸ Dickerson, M. G. (2004). Measuring and modeling of impaired control: Implications for policy. *Insight International Problem Gambling Conference*. Nova Scotia, Canada, 5 October.

See Doughney (2002, pp. 48-63) for an extensive discussion of these issues, including the application of John Stuart Mill's 'harm principle' concerning dangerous products.

Conclusions

5. I submit that the conclusions below, drawn from PN 4 above, are both evidence-based and combine the evidence with ethical reasoning in arguments that offer sound guidance for public policy:
 - 5.1. That the propositions, evidence and argument at PN 4.2-4.4 demonstrate that problem- and vulnerable poker-machine gamblers bear an unconscionable burden for this industry precisely because of its current (intentional⁹) nature and its institutional/legislative structure
 - 5.2. That Australian governments, whose implicit duty it is to protect vulnerable members of society, claim considerable shares of harm-causing poker-machine revenues accentuates the unethical state of affairs described at conclusion PN 5.1

Evidence: The extent of State Government poker-machine revenues is an uncontroversial matter of fact (PC 2010, p. 2.10). I submit to the Committee that the substantive role of government regarding the vulnerable is also uncontroversial and without need for further argument. The point, therefore, is that governments' role in the prevailing state of affairs layers harm upon harm (insult upon injury).
 - 5.3. That the structure of the PC's recommendation of a full pre-commitment scheme (recommendation 10.4; see also 10.5, 10.6 and 19.2), on the evidence of the report (PC 2010, chapter 10), would constitute the single most important harm-reduction/product-safety/consumer protection measure to address the burden at PN 5.1

⁹ I insert this word because the poker-machine industry is both fully aware of the prevailing state of affairs at PN 4 and is not proposing to do anything likely to reduce revenues (i.e. to remedy it). Claims in extenuation that problem-gambling prevalence is a low proportion of the population are both weak (see Doughney 2007b, [submitted with this submission] and miss the point (PC 2010, chapter 5). Indeed the PC states: 'The Commission's assessment of prevalence surveys undertaken in Australian states and territories over the past few years is that, notwithstanding debates about the exact numbers affected and the likelihood that adult prevalence rates have fallen, there continue to be significant problems experienced by gamblers. This is not isolated to 'problem gambling' though that is the main thrust of research into prevalence. These problems provide a compelling case for regulatory and other measures aimed at reducing these problems.' (2010, p. 5.45)

Argument: A full (i.e. mandatory) scheme seeks to change the current (intentional) nature of the industry by altering its institutional/legislative structure. These alterations address one significant cause of the burden at PN 5.1, namely loss of control/dissociation (see PN 4.3). Insofar as such a scheme reinstates some of the control lost by the vulnerable gambler, it also thereby enhances that gambler's responsibility for his or her conduct. Correspondingly, insofar as such a scheme makes poker-machine use safer (more amenable to control), it constitutes the exercise of greater responsibility on the part of the supplier to supply a safer product (see PN 4.4).

- 5.4. The unconscionable and disproportionate burden for this industry described at PN 5.1, added to the responsibility of government described at PN 5.2, over-ride arguments for a voluntary or opt-out scheme

Argument: Burdens consequent upon the intentional nature of the poker-machine industry and its harmful product require government to employ a form of the precautionary principle. That is, the burdens are so great as to require action to instantiate the most harm-reducing option, regardless of loss of revenues to industry and government and loss of facility to poker-machine users who might not experience harm. The PC makes this case on the evidentiary basis that voluntary and opt-out arrangements would be insufficiently effective (PC 2010, chapter 10 *passim*).

END

Appendix 1 – Academic publications on poker-machine gambling by James Doughney

Books

Commercial publishers

Doughney, James (2002), *The Poker Machine State: Dilemmas in Ethics, Economics and Governance*, Common Ground Publishing, Melbourne.

Non-commercial publishers

Doughney, James, Charles Livingstone, Jan McMillen and Stuart Svensen (2002), *Gambling: Counting the Costs: Research for Local Governments on Assessing the Community Impacts of Gambling*, Victorian Local Governance Association, Melbourne (ISBN 1 876683 66 X), [available at www.vlga.org.au/publications/index.shtml].

Book chapters

Doughney, James (2009), Remove Gaming Operators, in JW Kindt (ed.), *Economic and Social Impacts of Gambling*, United States International Gambling Report Series, research Editors Doctoral Directorate (REDD) on Gambling, William S. Hein & Company, Buffalo, NY, [also available at www.heinonline.org].

Doughney, James (2009), Ethical Blindness, EGMs and Public Policy, in JW Kindt (ed.), *Economic and Social Impacts of Gambling*, United States International Gambling Report Series, research Editors Doctoral Directorate (REDD) on Gambling, William S. Hein & Company, Buffalo, NY, [also available at www.heinonline.org].

Doughney, James (2009), Lies, Damned Lies and ‘Problem Gambling’ Prevalence, in JW Kindt (ed.), *Economic and Social Impacts of Gambling*, United States International Gambling Report Series, research Editors Doctoral Directorate (REDD) on Gambling, William S. Hein & Company, Buffalo, NY, [also available at www.heinonline.org].

Doughney, James (2009), The Poker-machine State in Australia, in JW Kindt (ed.), *Economic and Social Impacts of Gambling*, United States International Gambling Report Series, research Editors Doctoral Directorate (REDD) on Gambling, William S. Hein & Company, Buffalo, NY, [also available at www.heinonline.org].

Doughney, James (2002), Why ‘Consumer’s Surplus’ is Not an Appropriate Measure of Poker Machine Gambling: An Essay on the Limits of Economic Logic, in James Doughney, Charles Livingstone, Jan McMillen and Stuart Svensen, *Gambling: Counting the Costs: Research for Local Governments on Assessing the Community Impacts of Gambling*, Victorian Local Governance Association, Melbourne (ISBN 1 876683 66 X).

Svensen, Stuart and James Doughney (2002), A Critique of *The Economic Impact of Gambling*, in *Gambling: Counting the Costs: Research for Local Governments on Assessing the Community Impacts of Gambling*, Victorian Local Governance Association, Melbourne (ISBN 1 876683 66 X).

Academic journal articles

Doughney, James (2007a), Ethical Blindness and Public Policy: A Tentative Essay Comparing the EGM and Tobacco Industries, *International Journal of Mental Health and Addiction*, 5 (4): 311-9.

Doughney, James (2007b), Lies, Damned Lies and ‘Problem Gambling’ Prevalence Rates: The Example of Victoria, Australia, *Journal of Business Systems, Governance and Ethics*, 2 (1): 41-54.

Doughney, James (2006), The Poker-Machine State in Australia: A Consideration of Ethical and Policy Issues, *International Journal of Mental Health and Addiction*, 4 (4): 351-368.

Doughney, James (2004), Living Off Immoral Earnings: An Ethical Critique of the Victorian Poker Machine Partnership, *Australian Journal of Professional and Applied Ethics*, 6 (1): 20-35.

Academic conference publications

Doughney, James (2006), Ethical Blindness: EGMs and Public Policy, in *Gambling and its Impacts: Policy, Practice and Research Perspectives*, The Auckland University of Technology, Auckland, New Zealand, September 13-15.

Doughney, James (2002), Socio-economic Banditry: Poker Machines and Income, in Tony Eardly and Bruce Bradbury (eds.), *Competing Visions*, University of New South Wales, Sydney, 136-154.

Book reviews

Doughney, James (2007), Review of *The Economics of Gambling* (2003), Leighton Vaughan Williams (ed.), Routledge, London, in *International Gambling Studies*, (7) 1, 147–9.