Reform of Federation and the Need for a National Approach to Gambling

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I INTRODUCTION

Australians are no strangers to gambling. In 2009, 70% of all Australians participated in the gaming industry in some way.¹ Though seemingly a national pastime, the forms of gambling which Australians commonly engage are diverse. From the annual punt at the races, to the occasional spin of the poker machines, there are many ways, and varying degrees, in which modern Australians can choose to gamble.

Equally diverse is the range of gambling regulations that can be found across the Federation. Regulating gambling has traditionally been the responsibility of each state and territory government,² which has each established a dedicated organisation tasked with regulating all gaming activities within its own jurisdiction.³ The result of this is a highly fragmented and, at times, inconsistent approach to gaming regulation consisting of multiple sets of legislations that may differ from jurisdiction to jurisdiction.⁴ However, it must be noted that, though the regulations may differ in forms and structures, they all generally seek to impose considerable monitoring and control systems aimed at minimising the harm of gambling to the individual and Australia society in general.⁵

Unfortunately, it is questionable whether the rather piecemeal regulatory approach to gambling is capable of achieving this shared goal. Indeed, it is estimated that there are currently close to

³ The relevant bodies are as follows: the ACT Gambling and Racing Commission; the New South Wales Office of Liquor, Gaming and Racing; the Northern Territory Licensing Commission; the Queensland Office of Liquor and Gambling Regulation; the South Australian Independent Gambling Authority; the Tasmanian Gaming Commission; The Victorian Commission for Gambling and Liquor Regulation; the Western Australia Department of Racing, Gaming and Liquor.
400,000 Australians who are either are - or are at risk of being - problem gamblers.\(^6\) Problem gamblers are individuals who are often unable to control the amount of time and money they spend gambling.\(^7\) From an economic perspective, problem gambling is a social issue which is estimated to cost Australian society up to 4.7 billion AUD a year.\(^8\) As well as the economic cost is the human toll: problem gambling behaviour can leading to devastating consequences for an individual, as it is likely to negatively affect their financial standing, participation, social relationships and - ultimately - their mental health. Framed in this way, as impacting on communities and on health, it seems clear that problem gambling is a serious public health issue.\(^9\)

It has also been recognised, by both governmental and grassroots organisations, that a significant part the broader issue of problem gambling is the prevalent use of electronic gaming machines (‘EGMs’).\(^10\) Multiple reports have confirmed that that these EGMs – which are colloquially known as ‘poker machines’ or ‘pokies’ - are the main form of gambling for approximately 95,000 Australian problem gamblers.\(^11\) This means that EGMs account for at the significant proportion of problem gamblers in the country. The Productivity Commission estimates that regular EGM players can lose an average of 7,000 - 8,000 AUD per annum.\(^12\) This amount of expenditure can represent up to 5.5% of the average Australian household income, and inevitably leads to the negative social/health consequences highlighted above.\(^13\)

\(^{6}\) Productivity Commission, above n 1, 2.
\(^{8}\) Ibid.
\(^{10}\) Public Health Association Australia, above n 9, 2.
\(^{11}\) Productivity Commission, above n 1, 2.
\(^{12}\) Ibid 13.

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As the rate of problem gamblers and the social costs have remained consistently high, there is a need to re-examine the current state of gaming regulations and - more specifically - the regulation of the use of EGMs in Australia. This paper takes a public health approach, first broadly framing the issue of problem gambling in a 'Social Determinants of Health' (‘SDOH”) framework, and then briefly examining the relevant legislation in each state and territory. Second, the paper will conduct a comparative analysis of the different sets of gaming regulations, and evaluate as to what has been considered as the 'best practice' approach to gambling regulation in Australia. Finally, the paper will conclude by arguing that a national approach that adopts the 'best practice' at the Federal level of government is needed in order to effectively deal with problem gambling, and suggest that the Reform of Federation Papers represent a promising platform upon which this 'national approach' may be discussed.

II PROBLEM GAMBLING FROM A PUBLIC HEALTH PERSPECTIVE

A What is Problem Gambling?

In 2005, the Ministerial Council of Gambling commissioned a report to determine a 'national definition' of problem gambling. After extensive consultation with stakeholders, the authors of the report defined problem gambling as 'being characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others, or for the community.' The advantage of this particular definition is that it refers to both the behaviours and consequences of problem gambling, and de-stigmatises problem gambling by placing everyone on the same continuum of gambling behaviour. This is significant, as it raises awareness of problem gambling as a public health issue that not only affects troubled

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14 Productivity Commission, above n 1, 15.
15 Neal, above n 7.
16 Ibid 126.
17 Ibid 124.
individuals, but also the community at large. Though the report did concede in the end that 'it would be impossible to find a definition [of problem gambling] that would be acceptable to all stakeholders', this proposed 'national definition' has received general approval from the majority of relevant stakeholders,\(^{18}\) and may thus be a good starting point in this paper's discussion on the issue.

Considering the difficulties in definition, it is perhaps unsurprising that finding consistent measurements of problem gambling is also not easy. Indeed, in Australia, problem gambling tends to be measured using one of three different standards: the Canadian Problem Gambling Index ('CPGI'), the South Oaks Gambling Screen ('SOGS') and the Diagnostic and Statistics Manual of Mental Disorders ('DSM').\(^ {19}\) While the CPGI is the preferred measurement for population-level research into the prevalence of problem gambling,\(^ {20}\) the SOGS and DSM approach problem gambling from a counselling and assessment purposes.\(^ {21}\) Of the latter two, the DSM is often preferred over SOGS as the clinical standard by which Australian mental health professionals seek to assess and treat problem gambling in clinical health settings.\(^ {22}\) As this paper is approaching problem gambling from a health perspective, it may be useful to understand the issue through the DSM assessment criteria.

The newest edition of the DSM – known as the DSM-V - renames 'problem gambling' as 'gambling disorder', and measures gambling according to several criteria, including restlessness or irritability when having to stop gambling, repeated unsuccessful attempts to stop gambling, preoccupation with gambling, lying to concealing loses and jeopardizing significant personal and professional opportunities because of gambling.\(^ {23}\) More significantly however, the DSM-

\(^{18}\) Ibid 126.
\(^{19}\) Ibid 3.
\(^{20}\) Productivity Commission, above n 1, 12.
\(^{21}\) Neal, above n 7, 3.
\(^{22}\) Ibid 72–3.
V also recognises that problem gamblers suffer from the same addictive disorder as people addicted to other material substances.\textsuperscript{24} Indeed, experts have noted that 'brain imaging and neurochemical testing [make] a strong case that [gambling] activates the reward system in much the same way that a drug does'.\textsuperscript{25} This means that problem gamblers – like people who experience addiction to alcohol or other drugs – are \textit{physically} unable to control the impulse and craving to gamble.\textsuperscript{26} Further, the DSM-V recognises gambling addiction also 'runs in families, often alongside other addictions',\textsuperscript{27} thus indicating that individuals may be genetically predisposed to having gambling disorders.\textsuperscript{28}

\textbf{B Consequences of Problem Gambling}

The detrimental effects suffered by problem gamblers due to their addiction are undeniable. For example, problem gambling can have adverse effects on an individual’s mental health. The Problem Gambling Research and Treatment Centre reports that problem gamblers were approximately \textit{18 times} more likely to display severe psychological distress.\textsuperscript{29} A Victorian survey conducted in 2009 also found that, when compared to non-problem gamblers, problem gamblers have a 'significantly higher rate' of depression/anxiety and were 'more likely' to have severe mental disorders.\textsuperscript{30} Aside from mental health issues, it is also well documented that problem gambling can increase the risk of other social harms such as 'relationship breakdown, lowered work productivity, job loss, bankruptcy and crime'.\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{24} Christine Reilly and Nathan Smith, 'The Evolving Definition of Pathological Gambling in the DSM-5' (Issues Paper, National Centre for Responsible Gaming, 2013) 3.
\item \textsuperscript{25} Ibid.
\item \textsuperscript{26} Ibid.
\item \textsuperscript{27} Ibid.
\item \textsuperscript{28} Nicki Dowling, 'The Impact of Problem Gambling on Families' (Discussion Paper No.1, Australian Gambling Research Centre, November 2014).
\item \textsuperscript{29} Dan Harrison, 'Gambling Linked to Depression', \textit{The Sydney Morning Herald} (online), 15 June 2008 <http://www.smh.com.au/national/gambling-linked-to-depression-20080614-2qo2.html>.
\item \textsuperscript{30} Sarah Hare, 'A Study of Gambling in Victoria - Problem Gambling from a Mental Health Perspective' (Research Report, Department of Justice, Victoria, September 2009) 18.
\item \textsuperscript{31} Productivity Commission, above n 1, 16; see also Crofts, Penny, 'Problem Gambling and Property Offences: An Analysis of Court Files' (2003) 3(2) \textit{International Gambling Studies} 183.
\end{itemize}
Unfortunately, problem gambling causes harm not only to individuals, but to those around them as well.32 A report published by the Australian Gambling Research Centre clearly showed that family environments which involve problem gamblers are often 'characterised by high levels of anger and conflict as well as...a lack of commitment and support...33 This conflict may be attributed to common gambling-related harms such as financial hardship, communication breakdown, and [neglect of family responsibilities].34 Family violence, and especially violence against children, also appears to be more prevalent in families dealing with gambling issues, with anywhere between 34-53% of families involving problem gamblers reporting some form of family violence.35 Considering this, it is unsurprising to note that family members related to problem gamblers are likelier to suffer from depression, anxiety and addictive behaviour such as alcoholism, drug dependency and, of course, problem gambling.36

Though all forms of gambling may be harmful, EGMs in particular have often been identified as causing the most gambling-related harm.37 In fact, the 2010 Productivity Commission report on gambling specifically stated that ‘the risks of problem gambling increases significantly with the frequency of playing EGMs’, and that expenditure on EGMs account for 62% of total gambling expenditure.38 This high risk of problematic gambling and expenditure means that EGM players often suffer the most severe consequences of their addiction, thus leading many organisations to call for stronger regulations in relation to EGMs usage.39

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34 Ibid.
35 Ibid.
36 Ibid.
38 Productivity Commission, above n 1, 13.
39 Public Health Association Australia, above n 9, 2.
C Causes of Problem Gambling

It is a traditional view still held by a significant portion of the Australian population that problem gamblers should take complete ‘personal responsibility’ for their behaviour.\(^{40}\) Unfortunately, such a simplistic view of the issue not only overlooks the medical reality of addictive disorders as outlined in the DSM-V, but it also ignores the reality that environmental factors could influence an individual’s gambling behaviour. Indeed, societal factors and forces can have a decisive impact on an individual's gambling behaviour, and this relationship perhaps best understood through the ‘Social Determinants of Health’ framework.

1. The Social Determinants of Problem Gambling

The SDOH framework is predicated on the belief that ‘the conditions in which people are born, grow, work and age’ effectively determine whether an individual will have a particular health issue.\(^{41}\) These conditions (including culture, gender, education and income) are – in turn – influenced by socioeconomic and political forces such as policy and legislation.\(^{42}\) In essence, the model attempts to link issues of health to the welfare and disadvantage caused by socioeconomic forces, thus opening a new perspective and approach on public health policy change and reform. Conceptually, the Australian Institute of Health and Welfare describes the SDOH model as being focused on two key questions: (1) which societal factors (i.e. income, education and employment) influence a particular health issue and (2) which socio-economic forces (i.e. economic, social, and political) shape the quality of these factors?\(^{43}\) These questions will now be applied to the context of problem gambling.

(a) What Societal Factors Influence Problem Gambling?

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\(^{40}\) Productivity Commission, above n 1, 13.


\(^{42}\) Ibid.

An intersectional analysis of problem gambling has shown that certain groups within society are particular vulnerable to this health issue. For example, the ACT Gambling and Racing Commission reported that there is a ‘striking’ association with gambling frequency and an individual's level of education.\(^44\) The report found that individuals who had attained an education level of Year 10 equivalent or less 'showed the lowest proportion of non-gamblers (19.8%) and the highest proportion of high frequency gambling (32.0%)'.\(^45\) In comparison, the most educated group within the study showed the 'highest proportion of non-gamblers (48.0%) and lowest proportion of high frequency gambling (8.6%)'.\(^46\) Though the study itself is limited to the ACT jurisdiction, this stark contrast is arguably sufficient to indicate that education may be a societal factor that has a significant influence on gambling behaviour.

Another relevant societal factor is level of income. In 2012, a report commissioned by UnitingCare Australia investigating gambling frequency and losses with regards to EGMs in select districts of the ACT, NSW, Victoria and Queensland found that areas with the lowest median individual income tended to exhibit the highest levels of EGMs losses, with the converse being true for areas with the highest individual income.\(^47\) The report confirmed a long-held belief proposed by previous studies that 'disadvantaged areas exhibit high poker machine losses, both in absolute terms and as a proportion of median individual income',\(^48\) thus strongly indicating that income levels are yet another societal factor within the SDOH model that could shape the public health issue of problem gambling.

\(^{45}\) Ibid.
\(^{46}\) Ibid.
\(^{48}\) Ibid.
Finally, there has been a great emphasis in recent years on the relationship between problem gambling and indigeneity. The Australian Gambling Research Centre reports that 40% of the Aboriginal and Torres Strait Islander (ATSI) population engages with the gaming industry at least once a week. In particular, the rate of Indigenous Australians who are weekly EGM players is *six times* higher than that of the general population. Unsurprisingly, the high prevalence of gambling activity has resulted in proportionally higher rates of problem gambling, with up to one-fifth of Indigenous individuals being identified as having gambling-related problems. It is also important to note that these issues are suffered by ATSI individuals against a backdrop of incredible social disadvantage which only serves to amplify the negative consequences suffered.

(b) What Social-Economic Forces Shape the Quality of These Factors?

The next step of the SDOH requires an analysis of which socio-economic forces contribute to quality of these factors. This step focuses attention on Australian culture and societal values, as well as the wide effect of governance (i.e. the implementation of social, education, health and housing policies). Of course, the study of which socio-economic forces influence societal factors such as education, income status, culture and race has been subject of extensive research. For instance, income management policies can often discriminate against those from ATSI cultural backgrounds and thus aggravate the issues already faced by Indigenous problem gamblers. Unfortunately, these relationships are highly complex and cannot be adequately

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50 Hing and Breen, above n 49.

51 Ibid.

52 Ibid.

53 See generally, St. Vincent de Paul National Council, Submission No 9 to the Senate Standing Committee on Community Affairs) Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015, 18 September 2015.
covered within the scope of this paper. Instead, it may be more helpful to focus on the socio-economic force that has the most direct impact on these factors in the context of problem gambling - *gaming regulations*. Of all the relevant socio-economic forces, gaming regulations have the most immediate and direct impact on how Australians gamble, and thus, have the potential to impact upon the prevalence of problem gambling within the community. Therefore, it may be concluded that any attempt to tackle the issue of problem gambling must first began with a review of gambling regulations. As EGMs are often considered to be the most ‘harmful’ form of gambling in Australia, this paper will focus its review on gaming regulations which monitor and control the use of EGMs.

III CURRENT GAMBLING REGULATIONS

Australia's response to regulation of the gaming industry has been fragmented at best. This is reflected by the fact that the responsibility of implementing gaming regulations lies solely with the state and territory governments, each of whom appears to have taken different approaches.

For example, Western Australia is the only state to have imposed a ban on EGMs outside of the casino. In 2003, it was reported that there were only 1,318 machines in the whole state, all of which were located in the Burswood Casino. Such a severe restriction on the accessibility of EGMs is in stark contrast from the far more liberal approach taken by other states, and the effective ban arguably has had great effect, as Western Australia also has the lowest rate of problem gambling out of all the states/territories not just in regards to EGMs, but across all forms of gaming.

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55 South Australian Centre for Economic Studies, above n 54.

56 Ibid 36–8.

57 Ibid.
On the other hand, NSW does not impose any physical restrictions on where EGMs may be located. Rather, it seeks instead to impose a framework that would 'minimise harm associated with the misuse and abuse of gambling activities'.\textsuperscript{58} This framework includes the implementation self-exclusion schemes, ensuring the availability of product information guides and supervising the support programs available to problem gamblers.\textsuperscript{59} Further, the \textit{Gaming Machines Act 2001} (NSW) also imposes several restrictions regarding the actual use of EGMs,\textsuperscript{60} including measures such as cash input limits, maximum bet limits and players' alerts.\textsuperscript{61} Unfortunately, it is unclear as to whether the approach taken up by the NSW government is effective, as EGMs continue to dominate the NSW gambling market by accounting for 66.3\% of total gambling expenditure.\textsuperscript{62} An analysis of a prevalence study done in 2009 also revealed that problem gamblers within NSW spent, on average, $20,642 on EGMs per year.\textsuperscript{63} This incredible amount certainly puts into question whether NSW's current approach is effective in tackling the social harms of problem gambling.

Finally, Victoria is another state that has long struggled with EGMs and problem gambling. Since the Victorian Parliament passed legislation enabling the introduction of EGMs in 1991, the proportion of household expenditure that was spent on gaming activities has more than doubled.\textsuperscript{64} This represents an explosive rate of increase that can be largely attributed to the expenditure on EGMs.\textsuperscript{65} According to a report published by the Victorian Department of Justice, 91\% of problem gamblers in Victoria gambled on EGMs, while 65\% identified EGMs as their main source of expenditure.\textsuperscript{66} This finding was reaffirmed in a follow-up study which

\textsuperscript{58} NSW Select Committee on the Impact of Gambling, 'The Impact of Gambling' (Research Report, NSW Legislative Council, 14 August 2014) 27.
\textsuperscript{59} Ibid.
\textsuperscript{60} Ibid 36–40.
\textsuperscript{61} Ibid.
\textsuperscript{62} Ibid 25.
\textsuperscript{63} Ibid.
\textsuperscript{64} South Australian Centre for Economic Studies, above n 54, 25–7.
\textsuperscript{65} Ibid
\textsuperscript{66} Hare, above n 30, 13.
showed that 96% of all Victorian problem gamblers played EGMs at some point during the year.\(^{67}\)

In response, the Victorian government has taken significant steps in recent years to regulate the usage of EGMs. For example, in July 2012, the government banned ATMs from gaming venues (aside from the Crown Casino) as part of a broader harm minimisation approach in order to discourage high risk gamblers from overspending.\(^{68}\) More significantly however, the Victorian Parliament recently passed the *Gambling Regulation Amendment (Pre-Commitment) Act 2014* (Vic) which made it the first Australian state to officially introduce a pre-commitment scheme for the usage of EGMs.\(^{69}\) Pre-commitment schemes are systems installed into EGMs that allow players to 'set limits on both the time they spend playing gaming machines and on their losses' before they start playing.\(^{70}\) EGM players are given a playing 'card' on which they are able to set a spending limit.\(^{71}\) Once they reach that limit, the player will no longer be able to gamble on that card.\(^{72}\) However, as the Victorian model adopts a 'double voluntary' pre-commitment scheme, EGM users are still able to choose for themselves whether they wish to either use the scheme and/or set a limit on their gambling.\(^{73}\)

Due to its recent introduction, it is uncertain what impact the pre-commitment scheme would likely have in tackling problem gambling. Indeed, trials of similar schemes run in South

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\(^{67}\) Sarah Hare, 'A Study of Gambling in Victoria - A Longitudinal Study of Gambling and Public Health' (Research Report, Department of Justice, Victoria, September 2011) 12.


\(^{69}\) See *Gambling Regulation Amendment (Pre-Commitment) Act 2014* (Vic).

\(^{70}\) Parliamentary Library, 'Gambling Amendment (Pre-Commitment) Bill 2013' (Research Brief No. 7, Parliament of Victoria, November 2013) 3.


\(^{72}\) Ibid.

\(^{73}\) Jamie Nettleton and Kate Eaglen, 'Victoria is Set to be the First Australian State to Introduce a Pre-Commitment Scheme for Gaming Machines' (Focus Paper, Addison Lawyers, 19 December 2013).
Australia and Queensland were met with limited success, as the voluntary opt-in system meant that less than 1% of all trial participants actually chose to sign up; and of the participants who did sign up, only a low proportion decided to actually set limits.\footnote{Parliamentary Library, above n 70, 16–9.} Further, academics have noted that problem gamblers addicted to EGMs were the least likely group to volunteer any form of limit-setting prior to playing.\footnote{Lia Nower and Alex Blaszczynski,'Gambling Motivations, Money-Limiting Strategies, and Precommitment Preferences of Problem Versus Non-Problem Gamblers' (2010) 26 Journal of Gambling Studies 361, 369.} Therefore, it is questionable as to whether a completely voluntary pre-commitment schemes would have much effect.

**B The Question of 'Best Practice'**

A comparison of the various EGM regulations inevitably invites questions of 'best practice'. Unfortunately, there is no simple answer as the gambling regulations of each state/territory are often determined by a unique set of circumstances. For example, it may be suggested that that Western Australia's approach of banning EGMs is the 'best practice' in this area as it clearly is a highly effective method of limiting the prevalence of problem gambling. However, it must also be noted that the only reason that such a ban is currently in place in Western Australia is likely because, unlike other jurisdictions, EGMs were never openly introduced into the state in the first place.\footnote{South Australian Centre for Economic Studies, above n 54, 2.} Considering the current size of the EGM gaming industries in the other states/territories, as well as the considerable taxation revenue that the industries generate for their respective governments,\footnote{Productivity Commission, 'Gambling Revenue' (Technical Paper No 10, 12 April 2005) 6–8.} it is difficult to see how a comparable ban would be welcomed in the other jurisdictions.

However, an argument can also be made that none the other approaches taken by other state and territories can really be seen 'best practice' either. This is because each approach has demonstrated only limited effectiveness in addressing the issue of problem gambling within
their communities. This fact was noted by the Productivity Commission in its report, which stated that a lot of the measures used by government to address gambling-related harms 'lack bite'.

Instead, the Commission proposes that 'an effective and coherent package' of policy measures is needed in order to effectively combat problem gambling as it relates to EGMs. This policy 'package' comprises of an assortment of measures which not only regulate the usage of EGMs, but also seeks to change 'the particular aspects of the environment' that can lead to problems for gamblers vulnerable to harm. Such measures include a $20 limit on the amount of cash that can be put in at one time, a $1/button push' betting limit and, most significantly, the introduction of a 'full' pre-commitment scheme. Unlike the Victorian model, a 'full' pre-commitment scheme means that all EGM players are required to sign up. Players are still able to decide the limits that they want to for themselves, but once those limits have been exceeded, the system would automatically exclude them from gambling at the same level. It is predicted that this more 'binding' form of pre-commitment would be much more effective in tackling problem gambling, as it acts as a sort of external impulse control when problem gamblers are experiencing the drug-like 'highs' associated with addictive gambling.

Further, it is important to note that the Commission appears to have adopted the more holistic SDOH model of analysis towards problem gambling, as its recommendations looks beyond gaming regulation reform and seeks to implement other macro-policies that could influence the prevalence of problem gambling. For example, the Commission recommends that gaming regulations be supplemented by the provision of appropriate counselling and support services

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78 Productivity Commission, above n 1, 20.
79 Ibid.
80 Ibid 22.
82 Ibid 27–8.
83 Ibid.
84 Ibid 28–9.
for problem gamblers.\textsuperscript{85} Such a recommendation not only demonstrates the Commission's understanding of problem gambling as a public health issue, but it also highlights the recognition that structural determinants such as the support of professional counsellors and networks could significantly influence the behaviour of problem gamblers in a positive way. Not only that, the Commission also considered the implementation of school-based educational programs to raise awareness of the risks of problem gambling.\textsuperscript{86} Though the report ultimately decided against this recommendation, its consideration of education policies as a possible structural determinant which influences the health and well-being of problem gamblers again reflects a SDOH-modelled understanding of the issue.

Of course, the Commission's recommendations are not without criticism. For example, the strict enforcement of the mandatory limits within a 'full' pre-commitment scheme is likely to attract accusations of paternalism.\textsuperscript{87} However, this criticism is largely outweighed by the potential social benefits that could be reaped from the measures being implemented. Indeed, measures such as ‘full’ pre-commitment trials have proven to be at least somewhat effective,\textsuperscript{88} and 'even a [10\%] reduction in the costs associated with problem gambling...would generate benefits to society of just under $500 million a year'.\textsuperscript{89} Not only that, the Commission's holistic SDOH approach allows it to make recommendations which not only address the symptoms of problem gambling, but its structural determinant causes as well. This comprehensive approach will likely lead to the development of policies which are more effective and sustainable in addressing the harms caused by addictive gambling behaviour. Considering this, it is understandable why many grassroots and governmental organisations have recognised the

\textsuperscript{85} Ibid 22.
\textsuperscript{86} Ibid 33.
\textsuperscript{88} Productivity Commission, above n 1, 27–9
\textsuperscript{89} Ibid 21.
approach taken by the Productivity Commission in its 2010 report as 'best practice' when it comes to problem gambling in Australia.\textsuperscript{90}

IV THE NEED FOR A NATIONAL APPROACH

Pragmatically speaking, 'best practice' measures are only effective if they are implemented in areas where they are needed. As every state/territory is reportedly home to significant populations of problem gamblers, it is arguable that these 'best practice' measures must be equally applicable to all jurisdictions. However, as illustrated above, this is not the case as Australia is currently left with a highly fragmented gaming regulation system which can differ quite drastically from jurisdiction to jurisdiction. It is arguable that such a piecemeal response to what is clearly a national public health issue is not only inefficient, but it also leaves problem gamblers in certain areas of Australia unnecessarily exposed to gambling-related harm.

A The Responsibility of the Commonwealth

One possible remedy for this situation is for the Federal government to take the lead in developing a nation-wide 'best practice' regulatory framework that is consistent across all jurisdictions. Indeed, it is arguable that the Commonwealth Parliament did exactly that in 2012 when it passed the \textit{National Gambling Reform Act 2012} (Cth).\textsuperscript{91} Among the implementation of a host of other reforms, the act introduced a version of the mandatory pre-commitment scheme that was recommended by the Productivity Commission across the whole of Australia.\textsuperscript{92} Although the scheme never truly came into effect before the act was repealed, its brief implementation clearly showed that the Federal government has the \textit{capability} to

\textsuperscript{90} See e.g., St. Vincent de Paul National Council, above n 37.
\textsuperscript{92} Ibid.
influence state/territory governments’ adoption of what the Commonwealth considers to be the 'best practice' model.

However, simply having the capability is arguably poor justification for why the Federal government should push for this national approach. Instead, there are at least three other persuasive reasons as to why the Commonwealth should take such a course of action. First, problem gambling is a nationwide issue that is not confined to any particular jurisdiction. Each state and territory has struggled with problem gambling in its own way, and has implemented policies with varying degrees of effectiveness. Nevertheless, it is apparent that there remain flaws in the existing measures adopted by each state/territory, and it is exactly the purpose for an overarching Commonwealth law to step in to address those flaws.93 The role of Federal intervention is especially crucial considering the common law’s reluctance to extend problem gamblers any significant amount of protection.94

Second, the Federal government is best placed to direct consistent, policy-orientated research into problem gambling and determine what the 'best practice' model may be. While there has been an impressive amount of research done on problem gambling, it is clear that the direction of the research has been rather ad hoc and limited in jurisdiction.95 Further, different methodologies and sampling strategies have been used by different researchers in different jurisdictions, thus reflecting the same type of inconsistency and fragmentation that is found in the gaming regulations.96 It is arguable that this disjointed research practice is simply due to a lack of national focus. Indeed, studies on problem gambling are often commissioned and undertaken by state/territory governmental organisations whose focus lies internally on the

93 Ibid.
95 Productivity Commission, above n 1, 39.
96 Ibid.
population within its own borders. However, this form of tunnel-vision can be cured by the Federal government, whose obligation to address issues at a national level allows it to develop nationally-consistent research frameworks and identify broad research targets within which state/territory governments can conduct their own research.

Also, the very definition of federation means that the Federal government is ‘best placed’ to determine what the ‘best practice’ model towards problem gambling may be. This is because the Commonwealth is most able to gather and consolidate the experiences that the states and territories have collected through their various experimentations with problem gambling policy. For example, the Federal government was able to draw on trials of pre-commitment schemes run in South Australia and Queensland in order to evaluate and justify their own proposal of a similar scheme that is to be implemented as ‘best practice’ at the national level. It is perhaps not too far-fetched that say that the same process could be repeated if the Victorian pre-commitment scheme achieves a significant amount of success.

Finally, state and territory governments have a conflict of interest when it comes to implementing and enforcing gaming regulations simply due to the fact that they receive a considerable amount of taxation revenue from the industry.97 The statistics show that EGMs account for the majority (roughly 62%) of total gambling revenue,98 and 42.3% of EGM revenue is being contributed to by problem gamblers.99 By implementing effective strategies to counter problem gambling, state and territories are going to have to expect a significant reduction in this revenue, and thus, the amount of tax that they collect on it. While there is certainly no concrete evidence to suggest that state/territory governments are unwilling to proceed with this trade-off, the very nature of their position arguably constitutes an

98 Ibid.
99 Ibid.
 unacceptable conflict of interests. However, this conflict (whether actual or perceived) could be completely avoided if states and territories simple follow a 'best practice' model that is designed by a Federal government which has no vested financial interests in the gaming industry.

B Recommendations and Reform

Considering the justifications above, it seems apparent that the Federal government should take a leadership role in the research, design and implementation of gaming regulations, especially as they pertain to EGMs. However, this is not to say that there is a need to intervene by re-introducing legislation similar to the National Gambling Reform Act 2012 (Cth). Instead, it is perhaps more important that the Commonwealth first develop a nationally consistent problem gambling research framework that would ensure that all research into problem gambling employs comparable methodologies and is broadly directed towards the same goals. Taking such a step would increase both the consistency and utility of the research as there could be an easy comparison of data collected from the various jurisdictions. The Productivity Commission study on the national prevalence of gambling activities in 1999 and the establishment of the Australian Gambling Research Centre are positive steps in this direction, but a more concerted effort in uniting the direction of research in this area is required in order to gain the most accurate picture of problem gambling in Australia.

Another priority that should be the Commonwealth’s focus is arguably to develop and emphasis a holistic, SDOH-centred approach to the design of problem gambling policy. In particular, the Federal government should reconsider implementing school-based education programs before Year 10 that raise awareness of gambling-related harm. This measure would be in direct recognition of the fact that a low-education level is often a structural determinant that

100 Productivity Commission, above n 1, 39.
influences problematic gambling behaviour. Further, the Commonwealth should also continue to implement free, accessible and culturally-appropriate counselling and support services for problem gamblers, especially those from ATSI backgrounds or low-socio economic backgrounds. If problem gambling is to be dealt with effectively, these measures should be considered supplementary, but also necessary, to gaming regulation reform.

Finally, the Federal government should take the opportunity presented by the Reform of Federation process (‘ROF’) to initiate a national discussion on how best to implement a ‘national approach’ to problem gambling. Indeed, the Terms of Reference for the ROF White Paper on Health includes a review of ‘national interest considerations, so that where it is appropriate, a national approach [to a particular health issue] is adopted in preference to diversity across jurisdiction’.\(^{102}\) This appears to be exactly the case here as it is in the national interest that the diversity of gaming regulations relating to EGMs be streamlined to ensure that problem gamblers from across Australia receive the benefits of the ‘best practice’ model of problem gambling policy. Unfortunately, the current ROF White Paper makes no mention of problem gambling, thus representing a missed opportunity for this crucial discussion to happen.

V CONCLUSION

Problem gambling is a serious public health issue that has plagued Australian society over the past few decades. The harm related to addictive gambling not only negatively influences an individual’s own mental health, but it also detrimentally affects those around the gambler, and the community at large. Contrary to conventional wisdom, problem gambling is not solely caused by the inability of individuals to control their own behaviour. Instead, gambling behaviour – as understood through the SDOH framework – is often determined by structural

\(^{102}\) Department of the Prime Minister and Cabinet, ‘Roles and Responsibilities in Health’ (Issues Paper No 3, Australian Government, December 2014) 2.
determinants such as culture, education and income levels, which are, in turn, influenced by socio-economic forces like policies and legislation.

In the context of problem gambling, gaming regulations are probably the most pertinent socio-economic forces which influence gambling behaviour. Unfortunately, Australia has experienced a chequered history when it comes to regulating gaming and, in particular, the usage of EGMs. Each state/territory has taken a slightly different approach, all with mixed success. However, in its 2010 report, the Productivity Commission did propose recommendations which not only draw on the previous experiences of the states/territories, but also take the holistic approach to problem gambling as demanded by the SDOH model. The Commission’s approach has commonly been recognised as ‘best practice’ in this area.

Nevertheless, ‘best practice’ is only truly ‘the best’ if it can be implemented to aid those who need it. As problem gambling is a national issue, the responsibility for this implementation must fall on the Federal government. Not only does the Commonwealth have the capability to carry out this responsibility, it is also the best placed to direct research on problem gambling and design effective policies which benefit problem gamblers without having to consider other vested financial interests. Thus, it is crucial that the Federal government takes up the responsibility of designing nationally-consistent policies to counter the harms caused by problem gambling, and the upcoming ROF consultations seems to be a perfect platform upon which the discussion of this ‘national approach’ could begin.

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