

# Responses to Questions on Notice

## CatholicCare Hearing at the Inquiry into the Impact of Gambling on Friday the 11<sup>th</sup> of April

**The Hon. ERNEST WONG:** You have probably already answered my first question which was also asked by my colleague. I want some confirmation. Do you see there is an increase in younger problem gamblers and that this situation is becoming normal?

**Mr PANAMBALANA:** There is research. I am looking at some of it now and I am more than happy to forward it.

### **Youth Gambling Statistics**

It is estimated that approximately 10-14 percent of young people are at risk of developing serious gambling problems and that between approximately 5-7 percent of young people are problem gamblers. These findings have been broadly correlated between studies in North America, UK, Australia, New Zealand and the Nordic countries. As such, they are widely regarded internationally as the accepted prevalence rate for young people's problem gambling.

Young People are up to five times more susceptible to issues with gambling than adults e.g. 2.4 to 5 per cent have a problem which is a higher rate than adults. Although the majority of YP gamble infrequently

Source: UK Gambling Commission (2008): Lit Review of Childrens & Young Peoples Gambling Research

### **The connection & risk factors associated with adolescent video game playing and gambling**

Very few studies so far examine the relation between screen type behaviour (Xbox, computer etc) and gambling.

Video games & gambling contain similar elements : both provide intermittent rewards, elements of randomness and simulate similar brain centres. On a **psychological & behavioural** level slot machine gambling and video game playing share the same features for example both provide visual and auditory feedback to the player. Both have similar intermittent reinforcement schedules and use sound & lighting to enhance this.

Fruit machines and video games have **similar structural characteristics** for example auditory & visual rewards, electronic display of points gained or money won. Reinforcement through rewards for 'winning' moves.

Both activities can be experienced as arousing or relaxing creating a distraction from normal lives (Brain Centre stimulation too).

Source: Video game playing and gambling in adolescents: Common risk factors. (2004) Wood, R.T.A., Gupta, R., Derevensky, J.L., & Griffiths, M *Journal of Child & Adolescent Substance Abuse, Vol. 14 (1) 2004*

Source: Problem gambling in adolescence: Relationships with internet misuse, gaming abuse and emotional intelligence. Parker, J., Taylor, R., Eastabrook, J., Schell, S., Wood, L

There is an assumption that gaming skill can be used to influence gambling randomness and outcomes. Although video games involve the learning of specific skills & gambling games are associated with randomness (not skill) there is the potential for adolescents to believe they can apply the same skill to gambling and influence the outcome or eventually master skills that will help them win in their gambling activity.

**Relevant Study: Video game playing and gambling in adolescents: Common risk factors. Wood, R.T.A., Gupta, R., Derevensky, J.L., & Griffiths, M 2004.**

This study examined whether adolescent gamblers are more likely to be excessive gamers and to explore the factors that are common in both activities.

Participants: Nine hundred and ninety-six students (549 females, 441 males, 6 unknown) from five English speaking schools in Montreal –grades 7-11 (10 – 17 yr. olds) completed questionnaires on video gaming and gambling.

Results: there is a clear relationship between video game playing and gambling in adolescents. PG's were notably more likely to spend excessive time on video games than non PG's or non-gamblers. PG's also noted to find video games to be arousing/relaxing and provide dissociation compared to non PG's or non-gamblers.

### **Simulated gambling facts**

Fast facts about online simulated gambling games:

- Gambling content sometimes appears in a game by linking to another site that lets you win extra credits for your game.
- Casino-style games are available for video game consoles, on social media sites, and as apps that allow you to practice gambling without betting money (e.g. blackjack and poker games). Often these games give free credits, but encourage you to purchase more.

- Some commercial internet gambling sites offer demo/practice modes that allow young people to practice gambling before playing for real.
- Published in February in the journal *Computers in Human Behaviour*, a study found that the most common simulated gambling was through video games, including *Grand Theft Auto V* and *Pokemon*, Facebook gambling applications such as *Zynga Poker*, and smartphone gambling apps such as *Slotomania*.
- Some types of simulated gambling are more risky for children than others. Some of the key factors that make a game risky are:
  - a realistic gambling environment – a game might look like a casino or real poker machine
  - frequent simulated gambling – a game might only involve playing slot machines or blackjack
  - it is easy to win at the gambling activity – a game might make sure that you win more than you lose
- There may be hidden costs in the games a child/young person is playing. While many games are free to download, some can include in-game costs that can be easily purchased, often without parents being aware.
- It is possible for children to buy online without needing a parent's credit card or password. For example, a child can buy pre-purchased 'load and go' cards from the post office or supermarket, and use these for in-app purchases.

Research shows that:

- Almost one third of teenagers have tried one or more types of simulated gambling online
- Around one in 10 teenagers has tried gambling games on Facebook such as poker
- One in 20 teenagers has tried simulated gambling apps on a smartphone
- One in 10 teenagers has played simulated electronic slot machine games

Lending weight to these findings is a Gambling Research Australia Gambling and Young People in Australia 2011 report that found in the 12 months preceding the study that:

- 3.6% of 10-14 year olds were classified as problem gamblers
- 8.2% of 10-14 year olds were classified as 'at risk'
- 2.7% of 15-17 year olds were classified as problem gamblers
- 8.4% of 15-17 year olds were classified as 'at risk' [2]

While current research has not demonstrated that engaging in simulated gambling causes someone to be a problem gambler, experts have identified there is evidence of a link

between exposure of some children to simulated gambling and the development of problem gambling in adulthood.

Teenagers who use gambling-style games on phones and other devices are up to three times more likely to engage in real gambling.

Young people who become problem gamblers are also at risk in other areas. International studies have identified a link between adolescent gambling and other risk-taking activities, with broader problems in social development and educational performance.[3]

Source: King, D. L., Delfabbro, P. H., Kaptsis, D., & Zwaans, T. Adolescent simulated gambling via digital and social media: An emerging problem. *Computers in Human Behavior* (February 2014, Volume 31, pages 305-313)]

<http://www.sciencedirect.com/science/article/pii/S0747563213003981>

Source: Purdie, N et al (2011) *Gambling and Young People in Australia*, Gambling Research Australia, p.61 <http://www.gamblingresearch.org.au/>

Source: Fisher, 1999; Delfabbro et al., 2006 cited in Delfabbro, P. (2011) *Australasian Gambling Review – Fifth Edition – prepared for Independent Gambling Authority* <http://www.iga.sa.gov.au/pdf/agr-2011-5.pdf>

Source: *Gambling and young people: impacts, challenges and responses* Victorian Responsible Gambling Foundation 2013

### **E-Culture and Marketing**

- Changes in gambling environment: promotions & opportunities increased along with new mobile devices with internet access and embedded marketing and advertising by sports betting companies. Even though marketers argue young people are not the targets of this advertising, they are still susceptible to the messages.
- There is also an increase in promotion of gambling on social media sites, mobile apps & kid's video games.

As gambling product features were found to have a substantial influence on young people, the introduction of more sophisticated, hi-tech poker machines, as proposed during the recent Future Trends in Gaming Conference in Queensland, may increase the appeal of poker machine play for some young people. The fact that new, technologically superior machines that match other digital devices with young people are familiar and interact on a daily basis also suggests that, as a demographic, they are being deliberately targeted.

- Gambling by young people has links to other risk-taking and harmful behaviours.

- Because gambling is illegal it makes it harder for YP to get help, they may also not be aware that they have a problem...
- Evidence suggests that having parents who gamble frequently, or have pro attitudes toward it gamble more frequently themselves.

Source: The Virtual Jackpot! The socio-cultural and environmental context of youth gambling (2008) By Karina Allen, Jenny Madden & Dr Karen Brooks, PhD.  
In Conjunction with Prof Jake Najman, PhD, University of Queensland

### **South Australian Research: What are young Australians playing online? The lines between games and gambling are blurring**

Problem gambling for adults is widely recognised but it is increasingly becoming an area of concern for young people. Research suggests that one in five adults who are problem gamblers started gambling before they were 18.

A recent study of 1,287 South Australian young people aged 12 to 17 years old found that a significant proportion of young people had engaged in a range of simulated gambling activities via internet gambling sites, social media, smartphone applications and video games.

- 39% of students who played simulated gambling games also bought scratchies with real money, but only 11.6 per cent of the remainder did.
- Almost 33% of those who played simulated gambling games bet with real money on horses, but only 6.9 per cent of the remainder did.
- One in five students who played simulated gambling games paid money for card games, while just 7.5 per cent of the remainder did.
- A similar proportion who played simulated gambling games bought lottery tickets with real money. Only 3.2 per cent of the remainder did.
- Almost 18% who played simulated gambling games bet on sports with money, compared to only 3.8 per cent of the remainder.
- 9% of students who played simulated gambling games also paid money on electronic gaming machines. Only 2.4 per cent of the remainder did.
- One in five students aged 12 to 17 gamble at least once a year.
- A large proportion of young people have direct experience of gambling before age 18.
- Young people are five times more susceptible to issues with gambling than adults e.g. 2.4 to 5 per cent have a problem which is a higher rate than adults. Although the majority of YP gamble infrequently

Published in February in the journal Computers in Human Behaviour, the study found that the most common simulated gambling was through video games, including Grand Theft Auto V and Pokemon, Facebook gambling applications such as Zynga Poker, and smartphone gambling apps such as Slotomania.

Headed by Dr Daniel King, the Adelaide University study divided students into those who played gambling-style games and spent money on real gambling, and those who didn't play such games, but engaged in real gambling.

Simulated gambling was found to be a "popular activity". Thirteen per cent of the students had taken part in the past 12 months, and 32 per cent at least once in their life.

"This study examined the potential risks of simulated gambling via digital and social media in terms of its association with monetary gambling and pathological gambling," Dr King said.

"Card games and scratch tickets - which had the strongest link to simulated gambling - were three times more prevalent among simulated gamblers as compared to adolescents who did not engage in simulated gambling.

"Simulated gambling activities were three or more times as popular among those adolescents who recorded measures of pathological gambling."

<http://www.adelaidenow.com.au/news/south-australia/teen-gambling-games-grooming-kids-for-real-cash-betting/story-fni6uo1m-1226773767907>

Source: Adolescent simulated gambling via digital and social media: An emerging problem , Computers in Human Behaviour, Vol 31, February 2014, pages 305-313. *Daniel L. King, Paul H. Delfabbro, Dean Kaptsis, Tara Zwaans*

A report by The Social Research Centre, prepared for the Communities and Social Inclusion Department, found 52 per cent of problem gamblers started gambling in their teens.

The Gambling Prevalence in South Australia 2012 survey of 9402 adults

found that people aged under 35 "exhibited higher prevalence for almost all of the gambling activities" except buying lotto tickets. Electronic gaming machines, sports and internet betting were the most popular among young people.

In the study, there were 1050 subjects who did not play simulated gambling games and 164 who did. Seventy-three responses were excluded.

Among students surveyed, the most common types of monetary gambling were scratchie tickets (186 students), horse racing (126), card games (114), sports betting (69), lotteries (66) and electronic gaming machines (40).

South Australian Premier Jay Weatherill released a Children, Technology and Gambling policy in December 2013. This policy is an Australian-first online "watch-list" to guide parents on gambling-like apps and games and new laws that apply classifications. The policy includes a public awareness campaign and includes newspaper, online and radio advertisements.

**Excerpt from 'Is Internet / Screen gaming Addictive?': 'The Kids Are Alright' Website 2014. Sean Panambalana**

A state of 'addiction' can be the result of a complex interplay between physiological, emotional, environmental and stimulus factors. Neurological processes can provide some insight as to how these variables interact.

What is happening is that the brains reward system is being directly and intensely activated at times when an individual is engaging in his / her substance or activity of choice. This can trigger an accelerated learning process, telling us that 'this is a good thing': amplifying the positives and in a way 'overriding' contemplation of the negatives. This can then lead to a range of both physical and psychological effects, which drives an ever increasing need to engage in the activity, and a decreasing ability to recognise the mounting adverse impacts of doing so.

Research out of Stanford University (2012) indicated that a number of American gamers between ages 8 and 18 studied might indeed meet psychiatry's diagnostic criteria for addiction. Yet, while mental health professionals do recognise and diagnose alcohol and other drug-related addictive disorders (and problem gambling), excessive or impulsive internet gaming is not formally categorised as an addiction - yet.

The very important reason for this is that, while gamers who play at intense levels for prolonged periods of time - at the apparent expense of other activities, relationships and pursuits - do exhibit some of the characteristics of 'addiction', there has not yet been sufficient research into the complexities of such internet gaming behaviour for it to be formally classified an 'addictive disorder'. Research in this area has only recently commenced. What we do know though is that many e-games and gambling machines do powerfully stimulate the reward centres of the brain.

The American brain studies cited revealed changes in the neural reward system of e-gamers which were, while they gamed, akin to those found in problem substance users. Such impacts on the reward system - while highly enjoyable - can be so stimulating that many alternative activities can become bland, and difficult to pay attention to.

E-games are designed to provide strong stimulation and a sense of challenge. However, the more time kids spend naturally sustaining attention and resisting distraction through a variety of healthy activities and relationships engaged in in real-time in the real world, the more connected and extensive their pre-frontal circuits grow. By the same token, the more often they give in to *over*-stimulation and avoidance of the bland or the challenging in 'real life', that ability to focus, be curious and be more satisfied with simpler things may diminish.

#### **References:**

Rob West, associate professor of psychology and director of the Cognitive Psychology Program at Iowa State University Examining the Link between Video Game 'Addiction' and ADD (2011)

Peter Ferentzy, W. J. Wayne Skinner, Flora I. Matheson. Illicit Drug Use and Problem Gambling. *ISRN Addiction*, 2013;

Dr. Flora Matheson, Research scientist at St. Michael's Hospital's Centre for on Inner City Health NY, with colleagues from the Centre for Addiction and Mental Health, conducted a review of existing literature on drug use and problem gambling. The results were published online in the journal *ISRN Addiction*.

Yale University study into Gaming and Problematic Behaviour (2010). Comments by lead researcher and associate professor of psychiatry and public health Rani Desai, in Health Today, NOV 15 2010. ©2013 Everything Addiction.

Links between E-gaming and Cognitive Impairment as reported in Proceedings of the National Academy of Science, New Zealand 2011.

Parker, D., Taylor, R., Eastabrook J., Schell S., Wood, R. (2008) Problem gambling in adolescence: Relationships with internet misuse, gaming abuse and emotional intelligence. Department of Psychology, Trent University, Peterborough, Ontario, Canada K9J 7B8



**Dr JOHN KAYE:** For all that effort, are you seeing a lower rate of problem gambling among patrons at clubs that are doing the right thing, or are trying to do the right thing, than at other clubs?

**Mr PANAMBALANA:** To be really clear—and this is why we are having no media about this; we do not want this co-opted, although we will get criticism anyway, into clubs or hotels with fanfare, "Oh, look how wonderfully they're going." This is a pilot and we are half way into the implementation of it. We have done a lot of training. What I can tell you is what is borne out by South Australia's research. If you want to see how it goes, have a look at what is happening in South Australia which is ahead of the game, as well as Canada, and I am happy to send the research on this as well, and Switzerland.

### **Research Regarding What is Working Now**

#### **Recommended International Research:**

1. Insight 2011 Project, The Responsible Gambling Council's (RGC) of Alberta Centre for the Advancement of Best Practices (Canada)
2. Recommended Practice from Ontario Office of Lotteries & Gaming, as researched by Janine Robinson and the team at Advanced Practice Clinician/Educator, Problem Gambling Institute of Ontario Centre for Addiction and Mental Health
3. Swiss Casinos Advisory Committee for Responsible Gaming – Counseling Center and Clarification Point Dr. Med. Andreas Canziani, MD / psychiatrist and psychotherapist

#### **Recommended Australian Research:**

1. South Australian Hotels & Clubs – Putting Policy in to Practice: Office for Problem Gambling. Dept for Communities and Social Inclusion. Govt of South Australia. Contact Giselle Berriman.
2. Assisting problem gamblers in the gaming venue: an assessment of practices and procedures followed by frontline hospitality staff (2011)
3. Customer Liaison Officers and Gambling Support Services to Problem Gamblers in the Venue Centre for Gambling Education & Research, Southern Cross University, Queensland → Advising the QLD Office of Regulatory Policy. (Professor Nerilee Hing and Dr Elaine Nuske) 2009
4. Stigma and Help Seeking for Gambling Problems, 18 November 2013 - Prepared by Annie Carroll, Bryan Rodgers\*, Tanya Davidson and Sharryn Sims. Centre for Gambling Research, School of Sociology, Research School of Social Sciences, College of Arts & Social Sciences, The Australian National University

5. Workplace Factors that Encourage and Discourage Gambling Amongst Gaming Venue Employees: An Employees' Perspective (2014) Dr Nerilee Hing and Dr Helen Breen  
Centre for Gambling Education & Research, Southern Cross University
  
6. Identifying Problem Gamblers in Gambling Venues: Final Report  
Dr. Paul Delfabbro, Dr. Alexandra Osborn - University of Adelaide  
Dr. Maurice Nevile, Dr. Louise Skelt - University of Canberra  
Professor Jan McMillen.
  
7. Victorian Responsible Gambling Foundation 2013

Dr JOHN KAYE: If you had one thing you could do to change the regulation of gambling in New South Wales, what would you do—and it cannot be to ban electronic gaming machines; that is the one you cannot do?

Mr PANAMBALANA: Okay, one thing.

Dr JOHN KAYE: If you could make one change to New South Wales laws or regulations, what would be that one thing you would do? It could be two; I am not trying to make this difficult.

Mr PANAMBALANA: If we look at the clubs and hotels setting, I would like to clarify for them their privacy and duty of care responsibilities. The world is heading towards a greater duty of care in this area. I think that is one of the things we need to spell out and have frameworks around as well. They need to be supported. I am not being naive; they earn a lot of money from these things, but if we are going to expect change, we are going to have to support them in setting the structures.

Dr JOHN KAYE: Can I have an answer from Wesley Mission?

Dr GARNER: Yes.

Dr JOHN KAYE: Before that, could I ask you to take on notice to provide the Committee with more details on how you would pursue that and what you mean by that?

Mr PANAMBALANA: Okay.

## **‘Are Problem Gamblers Owed Anything?’ Case Law, Social Policy and the Evolution of a Duty of Care. What is Happening Now?**

### **Duty of Care & Responsible Gambling: Public Health Perspectives**

Since the Productivity Commission report in 1999, Australian policy makers and some regulators have generally supported a public health approach to the minimisation of harms associated with gambling. A public health approach encourages a whole-of-government and industry response to reducing problem gambling.

If viewed according to this approach, the industry can be seen as having a duty of care to protect their patrons from the harmful consequences of problem gambling.

Duty of care provisions are starting to **be implemented at different levels**: as part of

- legislation,
- mandatory codes of practice,
- voluntary codes of practice, and
- statements of business ethics or operational principles.

Responsible gambling is emphasised in gambling legislation in every Australian State and Territory and also in New Zealand.

Only South Australia (SA), the Australian Capital Territory (ACT) and Northern Territory (NT) have **mandatory codes of practice** that include **legislatively enforceable sanctions for non-compliance**.

Queensland applies a system of co-regulation in which industry, community representatives and Government have collaborated to develop codes of practice that are subject to periodic review. In other States such as New South Wales (NSW), Victoria (VIC), Western Australia (WA), and Tasmania (TAS), responsible gambling provisions are applied largely via industry **self-regulation**.

Almost every industry group in Australia has a voluntary responsible gambling code of practice or statement of principles that supports responsible gambling and/or harm minimisation.

Most research information currently available concerning the effectiveness of responsible gambling codes suggests that these have significant limitations, including: a lack of compliance by some venues, non-membership in peak bodies who co-ordinate the codes, and the absence of mandatory penalties for non-compliance. With the exception of the ACT and SA, there is no mandatory requirement or expectation that venue staff make active attempts to identify problem gamblers in gaming venues.

Source: Identifying Problem Gamblers in Gambling Venues Associate Professor Paul Delfabbro, Dr. Alexandra Osborn (University of Adelaide), Dr. Maurice Nevile, Dr. Louise Skelt (University of Canberra), Professor Jan McMillen.

### **Duty Of Care & The Law As Currently Applied**

Duty of Care in the traditional Common or Civil Law sense appears to have taken a different route, focussing upon likelihood or otherwise of **liability for damages for breach**.

The legal framework within which the existence of a novel tort of negligence in respect of problem gamblers must be considered is the so-called "Anns test", flowing from the decision of the House of Lords in *Anns v. London Borough of Merton*<sup>31</sup>, as applied and restated in Canada in *Cooper v. Hobart*<sup>32</sup> *Anns v. London Borough of Merton*, [1977] 2 All E.R. 492, [1977] W.L.R. 1024 (H.L. *Odhavji Estate v. Woodhouse*.

These cases stand for the proposition that in order to establish the existence of a duty of care, a person must establish:

- (i) that the harm complained of is a reasonably foreseeable consequence of the alleged **breach**;
- (ii) that there is sufficient proximity between the parties that it would not be unjust or unfair to impose a duty of care on the defendants; and
- (iii) that there exist no policy reasons to negative or otherwise restrict that duty.

### **Australia**

Although it has been traditionally understood that no duty of care is owed to problem gamblers to prevent them from suffering gambling loss, recent Australian case law suggests that there may be instances where a successful claim in negligence might be brought. In addition to this there are emerging calls for the recognition or establishment of a Duty of Care in this area as a matter of social policy.

#### Negligence: When Can A Claim Be Made?

Four recent cases have considered this issue in detail and, whilst in both instances the plaintiff gamblers have lost their cases, the courts have left the door open for a claim to be made successfully in negligence for economic loss incurred through gambling in an 'extraordinary' case. In each of these cases, the plaintiff alleges active encouragement and exploitation to gamble by the relevant gaming operator.

*Reynolds v Katoomba RSL All Services Club Ltd* [2001] NSWCA 234 ('*Reynolds*'), Spigelman CJ stated that a duty of care to a gambler should only be held to exist after careful consideration, as "loss of money by way of gambling is an inherent risk in the activity and cannot be avoided." Despite this, it was held that "whether a duty arises in a particular case must depend on the whole of the circumstances, even in the case of an inherent risk", leaving open the possibility that a claim of negligence in an extraordinary case may be successful.

One area where a duty of care may arise to enable a plaintiff to recover economic loss occurs where a plaintiff is sufficiently vulnerable to harm resulting from a defendant's conduct. In *Perre*, the High Court stated that a plaintiff will be more vulnerable if they are induced to act in a way that prevents them taking steps to protect themselves from the risk of pure economic loss

Decisions by Wood CJ at CL (on appeal from an interlocutory decision of Master Harrison) in *Preston No. 2* and by Hoeben J (in a later interlocutory decision) in *Preston No.3* provide some clarification concerning the boundary between ordinary and extraordinary circumstances. In *Preston*, Mr Preston sued the Sydney casino (then called Star City) for gambling losses of approximately \$3 million. He alleged that they had breached their duty of care to only allow him to gamble responsibly in plying him with alcohol and other inducements.

Wood CJ at CL made the following remarks: "The precise limits of the duty of care owed in the present case, and of any breach, are likely to depend on the facts proved – most particularly upon the extent to which the defendant had knowledge of any propensity on the part of the plaintiff to be a problem gambler, and upon the extent to which it sought to take advantage of him...I am of the view that it is strongly arguable that a duty of care would extend to a prohibition on the provision of further liquor to a problem gambler, who is seen

to be intoxicated, or to be behaving in a manner that is obviously totally rash...Equally arguable in my view, is its extension to the provision of significant credit facilities or excessive encouragement through incentives, of a person who has specifically asked to be barred or to go beyond a limit that he has asked the casino to set..."

Wood CJ stated that the existence of a duty of care to problem gamblers in respect of gambling losses would not necessarily create a danger of indeterminate liability so long as the duty is confined to known problem gamblers. In other words, the imposition of a duty of care to problem gamblers does not place an unreasonable burden upon the autonomy or commercial enterprise of the casino, and there is good reason to give effect to the concerns as to the 'deleterious' social impact of gambling in permitting a right of recovery at general law where the controls laid down in the casino legislation or regulations are contravened to the detriment of the gambler.

Any damages that might be awarded if a duty of care was imposed would not necessarily be 'unfair, or unreasonable or disproportionate' in all of the circumstances<sup>17</sup> considering the capacity of common law to 'place brakes on unlimited recovery' through principles such as the defence of contributory negligence or a cross-claim that the plaintiff's conduct was foolhardy or reckless.

In *Foroughi*, the limits of a hypothetical duty of care in respect of "problem gamblers" were further explored. Mr Foroughi sued Star City for over \$600,000 in gambling losses after he was able to continue visiting and gambling at the casino despite have instituted a voluntary exclusion order. Mr Foroughi argued that Star City owed him a duty of care to detect and remove him from the casino as soon as possible. Jacobson J held that the casino did not owe Mr Foroughi any such duty. Moreover, his Honour held that, even if Star City had owed such a duty, it had not breached it. Jacobson J was satisfied that Star City had in place reasonable mechanisms to detect and prevent Mr Foroughi from entering and gambling on the premises.

### **Breach of Statutory Duty**

The High Court of Australia held in *Byrne & Frew v Australian Airlines* that a breach of statutory duty will arise: "...where a statute which imposes an obligation for the protection or benefit of a particular class of persons is, upon its proper construction, intended to provide a ground of civil liability when the breach of the obligation causes injury or damage of a kind which the statute was designed to afford protection."

The authorities suggest that it is difficult for problem gamblers, when seeking recovery of their gambling losses and other damages from gambling operators, to succeed in a claim for breach of statutory duty. Mr Reynolds alleged a breach of statutory duty under the *Registered Clubs Act 1976* (NSW) and both Mr Preston and Mr Foroughi alleged breaches of

statutory duty under the *Casino Control Act 1992* (NSW). Each of those claims failed (or were not pressed), with the respective Courts holding on each occasion that, in the circumstances, the particular provisions did not confer a private right of action for damages against the gambling venue.

### **Unconscionable Conduct**

Section 21 of the *Australian Consumer Law* provides that, in the context of the supply or acquisition of goods or services, a person must not engage in conduct that is, in all the circumstances, unconscionable. Moreover, section 22 of the *Australian Consumer Law* lists a number of factors that a court may have regard to when determining whether unconscionable conduct has occurred.

These factors include:

- the relative bargaining strengths of the business and the consumer;
- whether the business required the consumer to comply with conditions that were not reasonably necessary to protect the legitimate interests of the business;
- whether the consumer understood any documentation that may have been provided;
- whether the business used undue influence, pressure, or unfair tactics; and the price and terms on which the consumer could have acquired the same or equivalent goods elsewhere.

### **Conclusion**

In Australia, no decision has been handed down recently in which a problem gambler has recovered losses from a gambling operator.

To the extent that claims are based on negligence, the Australian courts are yet to recognise an “exceptional case” in which the courts are prepared to depart from the proposition that the law should not permit recovery of *economic* loss resulting from gambling.

That said, the findings in the above cases do not completely rule out potential future claims. In light of the decisions in *Preston*, *Kakavas* and the *Kakavas Appeal*, it would appear that the following considerations are material:

- knowledge by venue operators of a plaintiff’s vulnerability to gambling; and

- conduct by the gambling operator which takes advantage of that vulnerability in ways that cause harm to the plaintiff. Such conduct may include:
  - excessive and/or extraordinary inducements; and
  - failing to prevent an identified and afflicted problem gambler from gambling.

**Collated and concluded by Sean Panambalana**

Bulk of information on Australian Case Law:

For more information on Australian Case Law please contact:

## **The Way Forward**

“As the law stands, there is precious little incentive for clubs and casinos to do anything to help. The civil courts refuse to penalise even their worst behaviour and gaming regulators appear not to give a damn. The Victorian Council for Gambling Regulation had an observer in court during the Kakavas trial, and claims to be “investigating”; yet it agreed to a 43% increase in Crown’s table numbers while the case was still running. Victoria’s politicians showed a similar lack of concern by agreeing to Crown’s expansion just days before the verdict; they formally approved it a week later.

But there is pressure for change. In November 2008, the federal government asked the Productivity Commission to conduct a public inquiry into gambling and to make recommendations on what might be done to minimise harm. Its final report is due late February, but the draft version, released in October 2009, has already suggested tough new measures. One of these would be to give problem gamblers like Harry Kakavas and Chris Reynolds a statutory right to seek damages from casinos or clubs if they behave badly, by, for example: failing to enforce a self-exclusion order, supplying alcohol to a gambler who is intoxicated, or helping someone who is self-excluded to gamble by breaching or revoking a self-exclusion order.

Some want the duty of care to be even broader. Richard Brading, who is principal solicitor at Sydney’s Wesley Community Legal Service and who initiated the Reynolds case, believes that clubs and casinos should be required to identify problem gamblers, monitor their gambling and give them an enhanced level of consumer protection. Furthermore, he argues



clubs and casinos should be obliged by law to ban such gamblers if they “reach a point of crisis”.

The gaming industry’s response to this sort of proposal is that you can’t identify such people with any certainty, but in Canada the Saskatchewan Gaming Corporation, which runs the casinos in that state, believes otherwise. It already employs software called iCare that (it claims) identifies problem gamblers with “97% accuracy”. It must be said that the SGC doesn’t generally ban them, though it does offer counselling.

The industry would also use the defence that you can’t interfere with individual freedom, and here it would have Justice Harper on side. But why is it such an awful thought to ban people from a club or casino if they’re doing themselves severe financial harm? And why shouldn’t the gaming industry, which makes so much money out of people’s misery, be required to do this?”

Extract from “The Biggest Losers: Harry Kakavas and Problem Gamblers”, Paul Barry - The Monthly. FEB 2010

### **Legislated Codes of Conduct and Duty of Care**

The Inter-Church Gambling Taskforce 2012 – 16 wants a law that would allow a venue to be prosecuted for not demonstrating a duty of care towards their gambling patrons to shift industry culture to one where they have to worry about the possibility of prosecution if they fail to take reasonable action to curb problem gambling. This is probably best done through legislated Codes of Conduct for gambling providers, that specify measures against which gambling providers can be held accountable to provide a duty of care.

MPs Want Venues To Extend Duty of Care: Richard Willingham: State Political Correspondent for The Age, October 12, 2012.

”With problem gambling becoming a growing problem across Australia, local MPs believe that gaming venues should assume more responsibility. After all, they host the games that could potentially attract addicted players. So, MPs in 2012 proposed a new bill that would allow venue operators to be easily sued if they failed to fulfill their duty of care and prevent punters from becoming problem gamblers.

Poker machines and other forms of gambling are not inherently addictive, as not everyone who plays becomes a problem gambler. There are environmental and other elements involved, so it is argued that it is up to gaming venue operators to help ease the player away from developing addictive habits and behaviour.

The MPs behind the new initiative are Andrew Wilkie, Nick Xenophon, Richard Di Natale and John Madigan. They state that many gaming operators are not doing their part to prevent gambling addiction. In fact, in cases where addictive behaviour is obvious, many pub and club owners fail to act. The new bill would aim to change this, ensuring that employees of pubs would put the best interests of the players first.

So, if a player develops addictive behaviour and the venue fails to intervene, the operator could be held responsible and, in some cases, be sued. As such, the group of MPs believe that venue operators would be more willing to help, if they know that they are being held accountable.

"We believe this would result in a change of behaviour from venues," a statement from the group of MPs reads.

Self-exclusion programs are currently available, allowing players to sign themselves up to be banned from gambling venues – and the MPs would like to see these programs extended. In addition to having the program extended across state borders, they would also like to see players punished for transgressions. So, venues are not the only ones that would be responsible, as self-excluded players would be forced to forfeit their winnings.

Since pokie reform no longer seems to be a possibility, this seems to be a positive alternative. Wilkie and his associates are looking for new ways to reduce problem gambling rates, and this seems to be a step in the right direction."

### **Progress Internationally**

It is useful to consider recent overseas decisions which address duty of care principles.

In *Calvert v William Hill Credit Ltd*, an **English** case, the Court held that a duty of care to exclude identified problem gamblers could arise. A breach would occur where the gambling operator (the holder of the duty) negligently fails to prevent foreseeable breaches of that duty.

A recent decision of the Seoul Central District Court in **South Korea** is also relevant. In this case, two South Korean problem gamblers sued a "foreigners only" casino operator for losses of over \$2 million incurred whilst gambling at the venue. One of the allegations apparently made by the two gamblers was that the casino had provided them with the opportunity to gamble by issuing free Bolivian residency cards. The Court held that the casino bore 50 percent of the responsibility as it solicited the two men to gamble with the knowledge that the men were problem gamblers. The Court ordered an award of over \$1 million in favour of the problem gamblers

## Canada

Sasso, Sutts, Strosberg & Kalajdzic (2007) provide an excellent overview of the development of Canadian case-law in this area. [Do Ontario and its Gaming Venues owe a Duty of Care to Problem Gamblers? 2007 Final Report Submitted to the Ontario Problem Gambling Research Centre]

Canadian courts started by asking are there policy reasons for denying the existence of a duty of care? In *Cooper v. Hobart* at paragraphs. 37-38, the Supreme Court of Canada articulated several criteria to be considered under the second branch of the *Anns* test (cited on p2 above). Does the law already provide a remedy in respect of the loss complained of? Would recognition of the duty of care create the spectre of unlimited liability to an unlimited class? Is the impugned conduct operational in nature, or is it in the nature of governmental or legislative policy making? Did the impugned conduct take place in the performance of a quasi-judicial function?

There are no alternative remedies provided at law to the problem gambler.

In circumstances where the casino operator knows the problem gambler and his need for assistance but, rather than assisting, continues to profit from the gambler's addiction, the recognition of a duty of care to the problem gambler would not appear to create the spectre of unlimited liability to an unlimited class.

Finally, the conduct is operational in nature relating to the management of gaming venues in the public interest in accordance with the principles of honesty and integrity.

In summary, none of the policy arguments mentioned in *Cooper v. Hobart* appear to favour casino operators' immunity from the law of negligence.

When a problem gambler claim is brought to trial in an **Ontario** court, one of the first questions that will be asked is whether the principles of law applicable to commercial **host liability** with respect to the sale of alcoholic beverages in Ontario may evolve into the arena of gambling liability.

It has been confidently predicted that the law will fashion remedies for the problem gambler "that will be needed to bring this risky behaviour into line with the responsibilities that have been imposed upon the alcohol industry."<sup>1</sup> That confident prognostication requires careful analysis.

<sup>1</sup> H.B.T. Hillyer, "Representing Injured Parties: Alcohol, Social Host and Gambling Liability Today" in *Tort Law: New Trends and Causes of Action* (Toronto: LSUC, 2003).

The leading Canadian case on commercial host liability for those who are licensed to serve alcohol is *Jordan House Limited v. Menow*.<sup>2</sup> Over three decades have passed since the Supreme Court of Canada delivered this landmark decision in which the court determined that an innkeeper and his staff owed a duty of care<sup>3</sup> in certain circumstances to its patrons. That decision provides a useful framework to consider the issue of whether the operator of a casino may be charged with a similar duty of care to a known problem gambler to take reasonable care to safeguard that gambler from the likely risk of economic loss and other harm or damage.

Laskin J. stated that the applicable principles of law were as follows:

The common law assesses liability for negligence on the basis of breach of a duty of care arising from a foreseeable and unreasonable risk of harm to one person created by the act or omission of another. This is the generality which exhibits the flexibility of the common law; but since liability is predicated upon fault, the guiding principle assumes a nexus or relationship between the injured person and the injuring person which makes it reasonable to conclude that the latter owes a duty to the former not to expose him to an unreasonable risk of harm.<sup>4</sup> Moreover, in considering whether the risk of injury to which a person may be exposed is one that he should not reasonably have to run, it is relevant to relate the probability and the gravity of injury to the burden that would be imposed upon the prospective defendant in taking avoiding measures.<sup>5</sup>

Laskin J. observed that Menow created a risk of injury to himself by excessive drinking on the night in question and stated that, if the hotel's only involvement was the supplying of the alcohol consumed by Menow, it would be difficult to support the imposition of common law liability for the injuries suffered by him.

Laskin J. further commented that a special relationship is required before a duty of care can be imposed at law and that, as an example, the mere observance of an intoxicated person by other patrons or users of the highway imposes at law no common law duty upon them to be a Good Samaritan and steer the intoxicated person out of harm's way. Rather, liability was imposed in the circumstances because the hotel was in an invitor-invitee relationship with Menow as one of its patrons, and it was aware, through its employees, of his intoxicated condition, a condition which, on the findings of the trial judge, it fed in violation of applicable liquor licence and liquor control legislation.<sup>6</sup>

<sup>2</sup> [1974] S.C.R. 239

<sup>3</sup> A full analysis on duty of care and novel causes of action has been examined by the Supreme Court of Canada in *Kamloops (City) v. Nielson*, [1984] 2 S.C.R. 2

<sup>4</sup> *Jordan House v. Menow* ;

<sup>5</sup> *Jordan House v. Menow*, *ibid.* at 244.

To found liability on *Menow* principles, the casino management and/or employees would be required to have specific knowledge of the propensities of the problem gambler advancing the claim. *Menow* was well known to the hotel owner/operator and its employees and, similarly, there will be problem gamblers who have identified themselves as such to the casino management and/or employees and have either sought their assistance through the execution of the Self-Exclusion Request or in some other manner.

There will also be persons who have been identified as problem gamblers by their doctors, families, employers or law enforcement authorities or who have been observed by casino management staff as having the control problems exhibited by problem gamblers. Regardless of the manner in which the casino operator and its staff become aware of the identity of the problem gambler and his need for assistance, that knowledge would appear to be a prerequisite for founding liability on *Menow* principles.

A less conservative approach on the issue of knowledge of the casino operator would be to impute knowledge on the basis of data available to casinos by reason of the Winner's Circle and other preferred customer or loyalty programs. By virtue of those programs, a gambler's frequency of visits, gambling losses and duration of play are all known to the casino operators. That casino operators ignore such data may be no more a defence than is a barkeeper's installation of a screen between the bartender and his patrons.

In *Picka Estate v. Porter*,<sup>7</sup> the Ontario Court of Appeal confirmed a finding of liability against the Legion club stating it had a duty not to supply the patron with so much beer as to intoxicate him and that it had "*failed in its duty by making no effort to see Mr. Porter's condition and by having a system of distributing beer which made seeing the condition of Mr. Porter extremely difficult.*"<sup>8</sup>

Second, the court will be required to consider the issue of the responsibility of the problem gambler for his own actions. Similar to *Menow* and other persons with a drinking problem, the problem gambler is not being forced to either drink or gamble or do both. The problem gambler goes to the casino because he wishes to gamble. His gambling losses are self-imposed. Like *Menow*, the problem gambler advancing the claim will be required to overcome the natural propensity of judges to, quite understandably, require the claimant to provide some cogent reason why he should not be required to assume full responsibility for the consequences of his own actions.

6. *Jordan House v. Menow*, *ibid.* at 247.

8 *Picka Estate v. Porter*, [1980] O.J. No. 252 (C.A.).

Ontario judges may be more inclined to provide remedies where, on the facts of a particular case, the casino operator may be found to be taking advantage of persons whose condition renders them less capable of helping themselves. A

middle ground may be to apportion liability for the gambler's harm between the problem gambler and the casino; the extent of the problem gambler's contributory negligence would necessarily depend on the circumstances of the case.<sup>9</sup>

Like the hotel operator, the casino operator has the power to eject patrons. In the case of the hotel operator, he has not only the power but the duty to eject intoxicated patrons. Yet is an opportunity being missed if the only practical way to prevent harm to the problem gambler appears to be his or her exclusion from the gaming venue. If that is correct, does the casino operator have a corresponding duty to eject problem gamblers for their own safety, *or to confront the gambler, express concern about his level of losses and facilitate access to a treatment program?*

Having particular regard to the probability and the gravity of injury to the problem gambler, the burden that would be imposed upon the casino in taking this avoidance measure does not appear to be unduly onerous. But this duty to take affirmative action to eject or refer would be confined either to self-identified problem gamblers and any other person who has clearly demonstrated to the casino operator and staff that he or she is a problem gambler with impaired ability to resist the impulse to gamble even after suffering significant financial losses.

In this paper the authors have examined the legal framework within which these issues will be decided by the court, both by reference to the statutory framework within which Ontario casinos operate and in light of existing jurisprudence, particularly vis-à-vis commercial hosts.

On balance, it is the authors' view that a problem gambler will likely succeed in establishing that the casino operator, and vicariously the Ontario Government, owes him a duty of care in circumstances where the casino operator knew or ought reasonably to have known based on the existence of a Self- Exclusion Request or other evidence, that the gambler was a problem gambler.

Whether a breach of that duty gives rise to liability for a pure economic loss claim is more problematic. Given the current uncertain state of the law, the outcome of any problem gambler's claim is by no means a safe bet, but it is at least certain that an Ontario court will permit such a claim to proceed to trial. To use the words of the Supreme Court of Canada, "only in this way can we be sure that the common law in general, and the law of torts in particular, will continue to evolve to meet the legal challenges that arise in our ... society."<sup>10</sup>

<sup>9</sup> Ibid, at para. 13, per Zuber J.A.

<sup>10</sup> *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 990-991.

## **New Zealand**

**The Responsible Gambling Bill: being pro-active at a gaming site with problem gambling. Dr Sean Sullivan PhD, Alison Penfold, Mike Goulding, Mary Anne Cooke**

### **Requirements of the Bill around problem gambling**

Part 4 of the Bill applies to harm prevention and minimisation of problem gambling. Outside of a casino there will be a uniform age restriction for licensed gambling of 18 years or over. The venue operator must also develop a policy for identifying problem gamblers and promptly issue an exclusion order to them. An exclusion order must also be issued to anyone who identifies themselves as having a gambling problem.

Regulations to prevent harm from problem gambling and to minimise its consequences may be made to:

- Maximum stakes, prizes
- Design/layout of venues
- Intensity of gambling at a specific site
- Content of messages and information
- Codes of advertising
- Training for those supervising the gambling regarding problem gambling awareness
- Systems associated with the gambling e.g. monitoring
- Any other matters 'related to harm prevention or minimisation...to give full effect to the Act'. In addition the Minister retains the right to cap the total number of machines, their prizes, and performance of machines.

### **Optional regulations**

In respect of the exclusion of problem gamblers from venues, regulations may be made to:

- Require specific procedures to be carried out to identify problem gamblers
- Require identified problem gamblers to be prevented from accessing the venue
- Set procedures for the venue manager for removal of patrons where there are reasonable grounds to think they may be problem gamblers
- Restrict access to problem gamblers by the procedures
- Require certain steps to be completed before problem gamblers are re-admitted at some future time.

If such regulations are to proceed then they must contain:

- Grounds upon which a patron may be identified as a problem gambler. This suggests that this would be a minimum description rather than exclusive criteria
- Steps that must be taken to identify a person as a problem gambler
- Set qualifications for staff authorised to identify and exclude problem gamblers. This suggests certain standards of training are contemplated and will be necessary
- Set out appeal rights

It is suggested that exceeding rather than just meeting the Bill's requirements will have a number of benefits.

These include:

- Improving the public's (and therefore the government's) perception of the gaming industry. It is clear that the industry has received considerable bad press to date and this has, to some extent, culminated in the current Bill
- Avoiding considerable penalties, including licence cancellation and fines
- Avoiding being sued by the problem gambler or their family for failing to identify and exclude them; *a 'duty of care' appears to be created by the Bill and the gambler's losses may be viewed as arising from the venue operator not meeting their obligations under the legislation*
- Having an input into the direction of future regulations
- Avoiding further regulation of the industry through the development of co-operatives and voluntary codes that rely upon mutual aims

### **Switzerland**

The most comprehensive and strictly enforced responsible gambling initiatives exist in Switzerland. Under legislation, casinos are required to identify problematic gambling behaviour, approach gamblers and impose exclusions or probationary periods if gamblers continue to display visible signs of distress or other indicators of problem gambling.

Under the current *Swiss Federal Gaming Act*, casino operators are required to make every effort possible to minimise the *incidence* of gambling problems by trying to prevent the problems before they arise, or before they become very serious. As in Holland, casinos require patrons to show identification cards each time they enter the venue so that it is relatively easy to identify people who have been previously banned from entry (Hafeli & Schneider, 2006).



Information concerning the risks of gambling and treatment services is provided within the casino, and Swiss casino staff are specifically trained in how to detect and approach people who might be experiencing gambling problems and to refer them for further assistance.

A particularly important component of this system is that Swiss casinos also have a mandate to impose involuntary bans on patrons who the casino believes to be gambling beyond their means. Such a ban would then apply to all casinos in Switzerland and for an indefinite period, or until such time that the person applies to have it lifted (usually after 12 months). To facilitate and formalise these provisions, Swiss law now also requires that casinos establish a consistent methodology for monitoring, detecting and excluding patrons. Casinos are required to develop a checklist of monitoring criteria, record incidents, and then take action if certain specified criteria have been satisfied

### **Summary:**

#### **The Civil Law 'Tort' approach vs. Social Policy / Harm Minimisation principals**

It is the authors opinion that Case Law in Australia reveals an approach to problem gambling which emphasises **liability / responsibility and access to pecuniary damages**. That case law to date maintains that the problem gambler is not being forced to either drink or gamble or do both. The problem gambler goes to the casino because he / she wishes to gamble. His / her gambling losses are self-imposed. Like Menow, the problem gambler advancing the claim will be required to overcome the natural propensity of judges to require the claimant to provide some cogent reason why he should not be required to assume full responsibility for the consequences of his / her own actions.

Canadian judges however may be more inclined to provide remedies where, on the facts of a particular case, the casino operator can be found to be taking advantage of persons whose condition renders them less capable of helping themselves. It could be argued that a middle ground may be to apportion liability for the gambler's harm between the problem gambler and the casino: the extent of the problem gambler's **contributory negligence** would necessarily depend on the circumstances of the case.

Some venue operators may choose to turn a blind eye to signs of problem gambling in order to somehow avoid liability by claiming 'blissful ignorance' of the patrons problem. It can be argued that this in itself could be seen as a breach of duty of care in relation to public health / harm minimisation. Such behaviour may also help build a case for unconscionable conduct.

Meanwhile, as research into causes and costs of problem gambling increases and as public and political questions as to the role of the gambling industry grow, social policy considerations and the tenets of harm minimisation are seeing the evolution of an another

notion of Duty of Care. This perspective envisages a duty not necessarily characterised by liability of the defendant and the awarding of damages to the plaintiff. Rather it is one emphasising a duty to take reasonable steps to help reduce the likelihood of reasonably foreseeable harm being experienced by individuals who may become vulnerable to problem gambling, by the very venues actively promoting the gambling activity.

Within such a paradigm, it may become more appropriate to impose fines and penalties upon venues who breach, payable to an independent statutory authority which monitors the conduct of gambling venues. This may short-circuit some of the difficulties courts find with extracting damages to be awarded to a problem gambling plaintiff: in fact it may take the issue out of the courts altogether in the first instance at least.

Collated and Concluded by Sean Panambalana

***DRAFT – Not For General Distribution***

**CatholicCare Sydney GAINS Project**

**Building the Bridge 2: Key Policy & Infrastructure Considerations**

**Patron Care / Harm Minimisation and Patron Privacy**

The arrowhead of the GAINS project is of course the role(s) played by all levels of venue staff.

Gaming venue staff are often conflicted about what to do when they see patrons who may have problems. Yet these same staff can play a critical role in responding to patrons, often regulars, who they suspect may have gambling problems.

### **What the Gamblers Say**

Most of the gamblers involved in focus groups (eg. *Australian Government Parliamentary Inquiry into Problem Gambling 2012; Insight 201: Responding to Patrons with Potential Gambling Problems. Responsible Gambling Council, Alberta Canada*) indicated they supported being approached by trained venue staff about their gambling - **as long as it was carefully and competently managed**. At the same time, many acknowledged that they might resent the attention in the short term but that it may “plant a seed.” There was unanimity in the belief among the gamblers, however, that it is always better to do something rather than nothing.

## **A Clear Set of Guiding Principles Is Critical**

There is no denying that the issues and challenges inherent in responding to patrons with potential gambling problems are many. **First and foremost, a suspicion is not a fact until carefully assessed and verified.** It is critical that any response to patrons who are demonstrating problems with their gambling is **respectful, responsive and systematic.**

GAINS, like the Canada's recent *Insight* project, identifies a response framework built on 3 primary pathways to assistance, and then examines the hallmarks of an effective response system.

### **A patron may disclose or request assistance**

While this may be relatively rare, it's important that - since any venue employee may be approached - all employees must have a clear set of instructions on how to respond in a manner that is simple, helpful and direct.

### **A third party indicates a patron has a problem**

In this case, a friend or family member of a patron may approach the venue staff with concerns. It is important that staff members are sensitive in their response to the fact that problem gambling has a devastating impact on significant others in a gambler's life. With understanding of and access to family support programs like Holyoake, families can be linked up to appropriate referral and information sources, without generating additional conflict with the problem gambler.

### **A patron exhibits signs of a potential gambling problem**

These "**red flag**" events can be significant incidents such as leaving a child unattended or falling asleep, or observable behaviours (such as dramatic changes in frequency of gambling or numerous ATM withdrawals).

While gaming staff generally have very clear instructions regarding the required response to a wide range of incidents, most are uncertain about what to do when they observe red flag behaviours.

In fact, with each pathway to concern, frontline staff, and their supervisors, need clear instructions on the appropriate response. As such, training in and regular reference to the GAINS 'Building the Bridge' Roles & Protocols Manual is essential.

## **Clear Policies and Instructions**

It is important for gaming organizations to have clear **policies and procedures** for responding to patrons with potential gambling problems, including:

- Clearly defined roles and responsibilities for all positions
- A clear decision-making process
- Specialized personnel well trained to assess and interact with players who may have problems
- Staff training for all employees
- A process for documentation and feedback
- ***A communication plan that informs patrons of the venue's commitment, policies, and practices***

### **Monitoring of Patrons' Behaviour**

GAINS has stressed the need for staff to remain vigilant for signs of problem gambling in their Club, and to continue observe patrons so that the correct intervention could be activated.

The *Insight* review found strong support for **monitoring** patrons who show patterns of a potential gambling problem.

“The capacity to monitor and document interactions with patrons serves three functions.

- It establishes a baseline to see if observed signs are persistent or a onetime occurrence
- It provides the gaming venue with systematic information for any further decisions
- It can be used in combination with other information (i.e., play data) to create a more complete picture of player behaviours”

### **Establish Clear Protocols for Patron Interactions**

If after a period of monitoring a decision is reached to **initiate a conversation** with the player, there are characteristics deemed essential in all patron interactions:

- Do not interrupt play
- Ensure privacy is protected
- Approach in a respectful and non-judgmental manner
- Be informed about the patron's circumstances
- Have the appropriate training to deal with resistance
- Provide take-away materials
- Be prepared to follow up

It is quite possible that a patron could recognize problems and make changes in their gambling. But, what happens if gaming staff and supervisors take the steps noted above and continue to see the same or escalating problems?

At that point, the report recommends a corporately mandated and managed response that involves:

- Monitoring patrons with potential gambling problems
- Assembling all relevant data regarding behaviours, incidents, and play history
- Consulting with knowledgeable venue staff about strategies to manage the customer interaction
- Devising interactions tailored to their circumstances

### **Formalize the Documentation System**

At present, there are a variety of customer information systems in place in gaming venues. Some of these systems already effectively monitor, record, and communicate information related to observing and interacting with patrons. Most do not.

**Systematic records** will help staff better assess patron risk levels and determine appropriate actions. There are existing information systems that can do this right now. In future a variety of play analytic systems can allow for even more accurate assessment of potential play problems.

### **Privacy Overview**

- Personal information of patrons is often collected by licensed venues in the normal course of business, for example, for competitions, promotions or membership.
- Specific personal information is often collected and stored by an ID scanner.
- If a venue imposes a patron ban or other sanction, personal information is needed to make the ban effective.
- The community is becoming more aware of privacy laws and increasingly concerned about possible misuse of their personal details, for example, identity theft or unsolicited, inappropriate contact of patrons by venue employees.
- Good privacy practices can be beneficial to a venue and can lead to increased consumer confidence and trust.

### **Best practice**

- Commit your venue to conforming to the national privacy principles when collecting, using and managing personal details of patrons, regardless of whether the Act applies to your business.
- Develop and maintain a privacy policy.
- You should inform patrons of:
  - the purpose for collecting their personal details
  - how their personal details will be used, managed and kept secure
  - how, and to whom, privacy concerns can be raised and promptly addressed.
- Ensure employees are aware of the venue's privacy policy and of the responsibilities that apply.

### **Remember**

- Where these best practice principles are consistent with a legal standard under the Liquor Act or Liquor Regulation that specifically applies to your venue, including a condition of licence, then you are obligated to follow that legal standard.

*Towards best practice for safety in licensed venues. QLD Office of Gaming and Liquor Regulation 2012.*

## **Implementation**

A privacy policy should include:

- your organisation's name
- position title and direct contact details for inquiries or complaints
- your primary purpose for collecting the information
- to whom access to the personal information will be given
- assurance the information will be kept confidential and secure from misuse
- assurance the information will be retained only for as long as necessary
- assurance the information will be accessible to the individual upon request.

### **Management**

- Nominate a person to be the privacy contact for the venue.
- Regularly review the implementation of the privacy policy and ensure:
  - there is limited access to the secured area where the information is stored
  - the personal details are not being used for anything other than their primary purpose, unless the patron has consented otherwise
  - ID scanner operations are password protected and CCTV system operations are secure
  - redundant information is destroyed.

### **Staff**

- Staff induction and training sessions should include information on the privacy policy and their obligations in dealing with confidential personal information.

### **Patron information and inquiries**

- Display privacy policy or a summary of this policy at each entry point.
  - Signage should include contact details for the privacy manager.
  - Promote the privacy policy on the venue website.
  - Disseminate information re. the GAINS 'Our Club Cares' theme on signage, e-newsletters, membership packs etc., with an explanation of the pro-active elements of the Problem Gambling Harm Reduction strategy (*Refer Conclusion below*).
  - Ensure staff at entry points are informed and able to handle basic questions about the venue's privacy policy.
- 
- Set a timeframe and a process to ensure that specific privacy concerns, including access to or the correction or destruction of information, are handled promptly.

## **CONCLUSION**

In conclusion, it can be argued that if information **about gambling-related behaviour** is gathered about a patron which:-

- Is recorded in an objective manner against specified criteria;
- Is used to attempt to support / assist the patron and reduce potential harms experienced by him or her;
- Is accessed by venue staff only authorised by specific protocols to so access it;
- Contains an identification code known only to those venue staff;
- Is stored in a secure environment for a limited period of time;
- Is gathered, collated and stored in a manner that has been disclosed / explained / advertised to all patrons as part of a broader harm reduction strategy;
- The patron has otherwise consented to the collection of ...

the collection and use of that data should not infringe the Australian Privacy Principles.

As such, it is recommended that GAINS Clubs clearly inform their patrons that – as part of the '**Our Club Cares**' theme – GAINS consultants will be **pro-active** in asking patrons if 'they need assistance with any gaming related matters'. In addition they will be **actively monitoring** patrons to assess if any assistance is required, and to better implement the GAINS Clubs **Problem-Gambling Harm Reduction Strategy**.

Finally, verbal feedback received by the writer from the Office of the Privacy Commissioner in FEB 2014 indicated that:-

- If it can be shown that the central purpose behind the observation of patrons and the subsequent collection of data within the GAINS initiative is to promote the health and well-being of / reduce the likelihood of harm experience by that patron, it is likely that such behaviour would not be considered as contravening any of the Australian Privacy Principals.

While this was reassuring feedback to receive, clearly more detailed written advice will be sought very shortly from the OPC.

Sean Panambalana