

REVIEW OF THE UNLAWFUL GAMES ACT 1984

POLICY PAPER

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EXECUTIVE SUMMARY

This report on the review of the *Unlawful Games Act 1984* examines and makes recommendations in relation to the major policy issues concerning the regulation of gambling and unlawful gambling in the ACT. It includes interstate comparisons, and where appropriate, issues or comments that were raised in community responses to the Commission's Discussion Paper and draft Policy Paper circulated as part of the review process.

This report does not cover minor or technical issues or changes in drafting policy by Parliamentary Counsel that will be addressed at the time that any new legislation is drafted.

Scope of the Revised Unlawful Gambling Act

- In order to ensure that there is no doubt about the scope of a new Unlawful Gambling Act, the new Act should be comprehensive in its coverage of unlawful gambling and all related issues such as promoting, conducting and participating in an unlawful game and/or unlawful betting.
- Many of the provisions in the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906* either overlap or are inconsistent with the *Unlawful Games Act 1984*. Other provisions are more relevant to current bookmaking or racing legislation. It is suggested that these three related Acts be combined into one Unlawful Gambling Act and matters specifically relating to the regulation of bookmakers and the operation of the racing industry be relocated to the relevant Acts.

Definition of an Unlawful Game

- The current definition of an unlawful game is ambiguous and unclear in its coverage.
- It is suggested that a new definition is required which should be comprehensive while being as clear and precise as possible. It should minimise any uncertainty by specifically providing what is covered and what is not covered in the definition.

It is suggested that an unlawful game should include the following components:

- (i) any game of chance, or mixed chance and skill, in which money or any other valuable thing is offered as a prize or is risked or staked (whether by a participant or otherwise) on an event or contingency that is not authorised by a gaming law (any private game, two-up on Anzac Day or charitable fundraising gaming allowed under this Act would be duly authorised); and
- (ii) a prescribed game that is identified as an unlawful game; but
- (iii) does not include a prescribed game that is specifically identified as not being an unlawful game.

Public Gaming Tournaments

- The issue of whether public gaming tournaments, such as poker, should be permitted outside of the casino was considered as part of the review. Currently in the ACT gaming tournaments can only be played if they do not offend the definition of an unlawful game. Poker can only be played in the casino or in a private residence with less than nine persons involved.
- Most other Australian jurisdictions have allowed (or not prevented) poker and other tournaments from being conducted outside of their casinos. A variety of tournament conditions, including charging entry fees and paying cash prizes, are in evidence in different jurisdictions.
- Allowing poker and other gaming tournaments in the ACT would increase the opportunities for gambling in the community and would also likely increase activity on existing gambling options at the gaming tournament venues, such as with gaming machines. Consequently, it could also lead to an increase in problem gambling.
- Experiences in other states suggest that unregulated poker tournaments are likely to lead to unethical behaviour surrounding some high stake games and are also likely to increase problem gambling issues if the current provisions relating to licensees are not equally applied. It is reasonable to speculate that the same consequences would occur should other forms of gaming tournaments be permitted.
- The current access to gambling opportunities for ACT residents was also considered in the analysis of this issue.
- The report concludes that the status quo should remain such that gaming tournaments outside of the casino should only be conducted if they comply with the definition of an unlawful game. Poker and its variants should be prescribed as an unlawful game and therefore not be permitted outside of the casino except as private games as provided in the definition of an unlawful game.

Charitable or Fundraising Gaming

- Fundraising via charitable gaming and whether it should be allowed to occur was another issue considered as part of the review. Charitable or fundraising gaming embraces circumstances where a recognised charitable organisation (as would be defined in any revised legislation) proposes to raise funds from gaming for a benevolent or charitable purpose. Currently there is no provision for charitable fundraising to occur utilising gaming activity unless it involves lawful gaming such as with an approval under the *Lotteries Act 1964*, is conducted in the casino or with an activity that is outside the definition of an unlawful game.
- The review concludes that charitable gaming, by approved charitable organisations, should be permitted as a fundraising activity for legitimate charitable and philanthropic purposes. It should be conducted under a permit system with appropriate rules and conditions to ensure that the games are conducted fairly and illegal gambling and problem gambling are not increased. Such gaming should not occur in licensed gambling venues. A restriction that an eligible charitable organisation would only be able to conduct two fundraising gaming events per year would ensure this activity was kept as a 'special' event rather than a regular occurrence.

Private or Social Gaming

- Current legislation prohibits private or social gaming if it is currently covered by the definition of an unlawful game. This situation prevents games from being played for even small amounts of money in the privacy of a person's own residence with a small group of family or friends.
- The review determined that private or social gaming be allowed with specified criteria used to differentiate this activity from commercial operations. In this context, 'commercial' means for trade, profit or gain or as a business (or part of, or incidental to, a business).

Exemption for Playing Two-up on Anzac Day

- While current Acts define two-up as an unlawful game, an exemption for playing it on Anzac Day is provided.
- It is suggested that the conditional exemption remain so that the playing of two-up on Anzac Day is not unlawful with minor amendments and to allow community organisations in addition to clubs the opportunity to raise money for charitable purposes through the playing of two-up on Anzac Day.

RECOMMENDATIONS

Scope of the Revised Unlawful Gambling Act

1. The regulation of unlawful gambling should be brought together under a new Unlawful Gambling Act which incorporates a consolidated version of the *Unlawful Games Act 1984*, the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.
2. The *Unlawful Games Act 1984*, the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906* should then be repealed.

Definition of an Unlawful Game

3. An unlawful game should be defined as including the following components:
 - (i) any game of chance, or mixed chance and skill, in which money or any other valuable thing is offered as a prize or is risked or staked (whether by a participant or otherwise) on an event or contingency that is not authorised by a gaming law (any private game, two-up on ANZAC Day or charitable fundraising gaming allowed under this Act would be duly authorised); and
 - (ii) a prescribed game that is identified as an unlawful game; but
 - (iii) does not include a prescribed game that is specifically identified as not being an unlawful game.

Public Gaming Tournaments

4. The status quo should remain that gaming tournaments outside of the casino should only be allowed if the conduct of the game is permitted under the definition of an unlawful game. Poker and its variants should be prescribed as an unlawful game and therefore not be permitted outside of the casino except as private games as provided in the definition of an unlawful game.

Charitable or Fundraising Gaming

5. Charitable gaming by charitable organisations should be allowed as a fundraising activity under a permit or approval system. The following restrictions should apply:
 - the event should not occur in a licensed gambling venue; and
 - a maximum of two sessions per year for any one organisation.

Private or Social Gaming

6. Private or social gaming should be allowed with specified criteria used to assist differentiation between this activity and commercial operations. In this context, 'commercial' means for trade or as a business.

The criterion that could be used to differentiate private gaming from commercial operations should include the following:

- (i) the gaming is not conducted for a commercial purpose;
- (ii) the gaming must be conducted in a person's home;
- (iii) there should be no entry fee into the residence (as opposed to a bet or wager in a game) and no commission or fee is deducted other than as paid to the winner.

Exemption for Playing Two-up on Anzac Day

7. An exemption should be incorporated into the Act so that the playing of two-up on Anzac Day is not unlawful.
8. Any organisation should be permitted, under specified restrictions, to raise funds for a charitable purpose on Anzac Day by way of charging an entry fee, commission or charge.

1. INTRODUCTION

1.1 Historical Overview of Gambling

Original legislation to control gambling activity took the approach to prohibit most, if not all, forms of gambling. While initial laws may have attempted to prohibit the playing of certain games, before such laws there appears to be very little control or concern over the conduct of such gambling activity or the moral, ethical or social consequences.

The principal provisions of a number of the Territory's gambling laws originate, through the medium of NSW, from the law of England. One of the first English enactments involving gambling was passed in the mid-16th century. Other statutes followed and their main purpose was to foster more useful pursuits by restricting the playing of games such as "dicing table" or "carding". Prior to these statutes, the law did not concern itself with gaming or gambling and any activity of the kind was not subject to any restrictions with one exception, cockfighting was illegal. In such an environment, cheating flourished.

It wasn't until the middle of the 17th century that the English Parliament turned its attention to the abuses associated with gambling. It passed an "Act against the deceitful, disorderly and excessive gambling" to ensure that any involvement in lawful games and exercises was for recreational purposes and not constant callings by which to gain a living. The Act imposed penalties for dishonest gambling and made it unlawful for a person to lose more than 100 pounds at any one time. The Act did not achieve what it sought to do.

Further Acts followed for "the better preventing of excessive and deceitful gambling", covering such issues as making void all gaming contracts, removing monetary limits on wins and losses, naming specifically a number of games that were unlawful as well as exempting royal palaces from the application of such laws.

In 1853 England passed its *Betting Houses Suppression Act*, the provisions of which were copied in Australian legislation, for example, the NSW *Gaming and Betting Act 1906* which remains current in the Territory as an ACT statute.

The underlying policies of the earlier legislation require reconsideration in light of current Territorial and societal needs. Much of the applicable case law involving older gambling legislation in the ACT and interstate is littered with adverse descriptive phrases of gaming and gambling, for example, as providing 'great temptations to idleness', attracting 'great numbers of disorderly persons', constituting 'a public mischief, nuisance injurious to public morals', and possessing a 'pernicious tendency'. In modern society, it is unlikely that all but the last description are apt given the many legal gambling facilities available to the public.

Nevertheless, with such perceptions of persons who would engage in gambling, it is understandable that many of the provisions to restrict gambling were associated with or were inherently part of laws to restrict acts of vagrancy and loitering and these laws were the birthplace of "move on" powers, later utilised in a broader context by its inclusion in Police Offences Acts, Ordinances and the like.

History shows that the practice of making gambling unlawful has met with mixed success when looked at from an enforcement perspective. However, it can also be said that the laws have been found wanting in their interpretation, application, enforcement and prosecution. Some of these deficiencies apply to the current ACT legislation in the form of the *Unlawful Games Act 1984* and associated legislation including the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.

1.2 Gambling Policy Objectives

Generally, the policy objectives in providing specific gambling legislation revolve around consumer protection issues, and in some cases, to provide a revenue source for Government.

In general terms, the gaming laws aim to:

- allay community concerns about the conduct of gambling activity;
- suppress illegal gambling by offering a legal equivalent;
- ensure through licensing processes, the probity of the persons and the integrity of the operations involved in the provision of the gambling product; and
- provide economic benefits to the wider community through Government imposed regulatory fees and taxation.

In more recent times the need to address problem gambling concerns was identified. With the establishment of the Gambling and Racing Commission in December 1999, the *Gambling and Racing Control Act 1999* provided how the Commission was to perform its functions. The Commission was tasked, in a way that best promotes the public interest, to:

- (a) promote consumer protection; and
- (b) minimise the possibility of criminal or unethical activity; and
- (c) reduce the risks and costs, to the community and to the individuals concerned, of problem gambling.

To assist in achieving its harm minimisation policy objectives, the Government introduced the *Gambling and Racing Control (Code of Practice) Regulation 2002*. This Code applies to all gambling licensees in the Territory and was the first mandatory code of its kind in Australia.

The outcomes of this review have focused on the ability of the legislation in its present form to achieve these policy objectives. In this context, the review outcomes are consistent with the ACT Government's commitments under COAG to regulatory reform. These commitments recognise that effective regulation is essential to ensure markets operate efficiently and fairly and to protect consumers. However, the benefits from each regulation must not be offset by unduly high compliance and implementation costs or restrictions on competition.

Specifically, in order to achieve the Government's general gambling policy objectives, the review has considered a range of feasible policy options, including self-regulatory, co-regulatory and non-regulatory approaches in the context of their effectiveness and their relative costs and benefits.

1.3 ACT Gambling Legislation

Legitimate gambling, including the operation of gaming machines, a casino, TAB, race and sports bookmakers and various lottery activities, is closely regulated in the ACT under separate legislation specific to each gambling activity.

The purpose of regulatory control is to ensure that:

- gambling operations are conducted fairly, free from criminal influence; and
- the possible harmful effects of problem gambling are minimised.

In order to achieve these public policy goals, a regulatory scheme has been established that restricts gambling activity through the *Unlawful Games Act 1984* (the Act). Essentially the Act provides, with one exception, that all gaming is illegal unless it is permitted under another ACT law. The conditional exception is in relation to the game of two-up played on Anzac Day.

1.4 Unlawful Games Act 1984

The *Unlawful Games Act 1984* (the Act) was originally a Commonwealth ordinance - the *Unlawful Games Ordinance 1984* No 21 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), section 34(4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, section 5 on 11 May 1989.

There is no explanatory statement or other supporting documentation to assist with the interpretation of the current Act or that indicates the intent of particular provisions of the legislation.

1.5 Purpose of the Act

The purpose of the Act is to provide for the control of unlawful gambling and for related purposes.

The Act provides that it is an offence:

- to promote or arrange the playing of an unlawful game;
- to be in charge of, or be the owner, occupier, manager or licensee of any premises and to knowingly permit an unlawful game to be played in or on those premises;
- to conduct, operate or supervise, or assist in the conduct, operation or supervision of, an unlawful game;
- to play an unlawful game without reasonable excuse; and
- with the intent of cheating, to engage in betting, or to solicit or encourage another person to bet on any game, to use a trick of sleight of hand or bet on any game or trick played with any instrument.

The penalties associated with the offences, for an individual, range between a maximum of \$1,000 to \$10,000, imprisonment for 1 year or both. If the person is a corporation, the monetary penalties are five times the penalties applying to an individual.

The operation of the Act takes the practical approach to make all games unlawful except to the extent that they are permitted under a gaming law or exempt under the definition of an unlawful game or other provision of the Act.

This approach prevents unwanted gambling activity from commencing while the legislature catches up and ultimately controls or prevents if considered desirable or necessary. It therefore requires a positive decision to allow a new gambling activity that does not fit into the current criteria rather than a decision to close down an undesirable or risky game at some later date.

This approach is consistent with achieving the Government's gambling policy objectives, particularly in relation to minimising criminal or unethical behaviour and reducing the impact of problem gambling. It is also consistent with the legislative set up in all other Australian jurisdictions.

1.6 Consultation/Development Process

Two periods of community consultation were undertaken where stakeholders and community members were invited to provide submissions in relation to the review of the *Unlawful Games Act 1984*. Taking into account the four responses that were received as part of the first round consultation process, a draft Policy Paper was developed and circulated for comment. Six submissions were received in relation to the draft Policy Paper and the views expressed were taken into account in finalising this paper. The respondents to the consultation process were:

- the Australian Hotels Association (AHA);
- the Australian Poker League (APL);
- Casino Canberra Ltd;
- ClubsACT;
- Lifeline Canberra Inc;
- a researcher from the ANU Research School of Social Science; and
- a member of the ACT community.

Further discussions were held with some stakeholders in order to expand or clarify on the issues that were raised under the formal consultation process.

2. SCOPE OF A NEW UNLAWFUL GAMBLING ACT

2.1 Combining the *Unlawful Games Act 1984*, *Games Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.

The review of the *Unlawful Games Act 1984* has identified two related statutes which need to be considered at the same time. The *Unlawful Games Act 1984*, in combination with the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*, currently provide for:

- the control of unlawful games and unlawful betting;
- the suppression of betting houses and common gaming houses;
- the conduct of two-up on ANZAC Day; and
- other related purposes.

The *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906* have many provisions that overlap or are inconsistent with the *Unlawful Games Act 1984*. These include:

- conducting, operating or playing an unlawful game;
- the prohibition of betting houses or common gaming houses;
- offence provisions for occupying a betting house or common gaming house;
- the prohibition of advertising and/or promoting an unlawful game; and
- the seizure of instruments of gambling.

Many of the definitions used in the various Acts are inconsistent which creates confusion in relation to applying (complying with or regulating) the various provisions.

It is considered prudent to consolidate all three statutes and to enhance and clarify existing policy matters. In addition, other technical matters such as drafting style and penalty provisions should also be updated.

Furthermore, a number of provisions in these Acts relate specifically to regulatory matters associated with bookmaking and the racing industry and it is suggested that they should be appropriately relocated to the relevant *Race and Sports Bookmaking Act 2001* or the *Racing Act 1999*.

RECOMMENDATIONS:

- 1. The regulation of unlawful gambling should be brought together under a new Unlawful Gambling Act which incorporates a consolidated version of the *Unlawful Games Act 1984*, the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.**
- 2. The *Unlawful Games Act 1984*, the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906* should then be repealed.**

3. Definition of an Unlawful Game

3.1 Background

The Commission's regulatory experience indicates that there are flaws in the current definition of an unlawful game. It is considered prudent to examine the definition in detail in order to ensure that its coverage or scope is appropriate. In other words, it is essential that the definition of an unlawful game includes all of those activities that are considered appropriate but does not include unintended or legitimate activities.

The current definition, as outlined below, does not achieve an appropriate scope and does have unintended coverage.

The Act currently defines an *unlawful game* as—

- (a) any of the games commonly known as baccarat, blackjack, craps, fantan, manila, pak-a-pu, pitch and toss, puntobanco, roulette, thimble-rig or two-up; or
- (b) any game similar to a game specified in paragraph (a); or
- (c) a lottery, other than an approved lottery or an exempt lottery within the meaning of the *Lotteries Act 1964*; or
- (d) a pool betting competition conducted otherwise than under and in accordance with an approved pool betting scheme within the meaning of the *Pool Betting Act 1964*; or
- (e) a prescribed game; or
- (f) any other game of skill or chance, or of mixed skill and chance, in which money or any other valuable thing is staked or risked on an event or contingency other than backgammon, chess, Bridge or Scrabble.

3.2 Specifying Unlawful Games

In paragraph (a) of the definition, several games are specified as being unlawful. In addition, paragraph (e) allows games to be prescribed as unlawful.

While it may be helpful to specifically identify certain games that should be unlawful or only operated in a controlled environment (such as under a gaming law), history has shown that such a list cannot be comprehensive or can become dated or inadequate over time.

Therefore, a scheme that provides for some flexibility in identifying and updating this list of games in a timely manner, such as prescribing by declaration, should be used to specify such games or activities.

3.3 Games Similar to an Unlawful Game

At paragraph (b) of the definition, the use of the word “similar” attempts to make the provision as broadly inclusive as possible. Legislation in a number of other jurisdictions has used the same approach.

However, it begs the question as to what extent does one game need to be “similar” to an unlawful game to be deemed unlawful as well. Under the current definition, until some determination of similarity is made, ultimately by the Courts, an individual runs the risk of prosecution because the definition of an unlawful game is all encompassing and unclear. Therefore general descriptions, such as the use of “similar” or “like”, should not be used in the definition of an unlawful game unless it is specifically described or defined.

3.4 Exempt Games

Paragraphs (c) and (d) of the current definition lists certain activities that are not covered by the definition of an unlawful game as they are appropriately approved and regulated under certain gaming laws. It is appropriate to exempt all games that are authorised under another territory law.

It is also necessary to exclude games or activities that are conducted at shows, fetes or fairs for entertainment or recreational purposes. This exclusion should also include amusement devices such as pinball machines that are not gambling devices.

Amusement arcade games are games predominantly of skill and are designed for entertainment or recreation only and not for the purpose of gambling. Some of these devices issue free games, vouchers that can be redeemed for prizes or may issue prizes with a monetary value. They are not gaming machines and are largely unregulated.

Following consideration of this issue, it was concluded that these amusement devices were not a concern in relation to gambling matters and therefore should be explicitly exempted, as declared exempt games, from coverage by a new Unlawful Gambling Act.

3.5 General Description of Unlawful Game (“Catch All”)

Paragraph (f) of the definition of an unlawful game provides a general description or a “catch all” for games not covered elsewhere in the definition. In practice, this paragraph provides the fundamental description of an unlawful game with the other components of the definition modifying or adding to this fundamental description.

As a result of the review, three key changes are proposed for this “catch all” or general description.

3.5.1 Skill or Chance, or Mixture of Both

It is apparent that skill and chance are two of the important elements that attract people to a game irrespective of whether the game is for gambling purposes or for non-gambling recreational purposes. Some games in both categories require high levels of skill and it takes that level of skill exhibited over the longer term for a person to be regarded as an exponent or expert at a particular game. Notwithstanding, some element of chance is often present in many games, for example, in the deal of cards, in a draw to determine who has the first move. There is considerable literature concerning games that are, according to their proponents, games totally of skill. So as not to engage in extended argument about levels of skill, it is noted that some jurisdictions have changed the definitional focus to a “game of chance”; that is, a game in which there is a degree of chance regardless of any degree of skill. That definition excludes any athletic game or sport but would accommodate other games of skill, for example, chess.

Undoubtedly, it is possible to bet on the outcome of any game. However, not all games were designed for betting by its participants. Generally, a game’s structure and rules, the number of possible participants (individuals or teams) and the average time taken to play the game is an indicator as to whether the game was designed as a gambling game or not. Another indicator can be whether the game is a “casino style” game where there is a house edge or commission retained by the operator.

Games or activities that are entirely skilled based with little or no element of chance are considered to be very low risk in terms of requiring consumer protection and in problem gambling considerations. Many games at fetes, fairs and local shows, such as throwing balls or coins at targets, fall into this category. Skill, as described by Casino Canberra Ltd in their submission to the Commission’s Discussion Paper circulated as part of the review, could be considered as any element that controls or influences the outcome of a game or activity that is within the control of a player or players.

It is not considered necessary from a risk management perspective to cover those games or activities that are purely of skill in a new Unlawful Gambling Act.

3.5.2 Staking or Risking and the Offering of Prizes

Inclusion of “non participants”

Any prohibition of a gambling activity should in the first instance be directed to the participants of the game. However, it is also considered relevant that the prohibition should extend to the activities of non-participants, for example, in side-betting on the hands of the participants of the game.

Capturing games where prizes are offered but there is no “betting”

Over the past few years cash free gaming activities, where prizes or rewards are offered, have been marketed to consumers as fun, recreational activities rather than gambling. As the activities are free to enter, nothing is staked or risked on an event or contingency. These gambling activities are therefore not captured as unlawful games under the current definition. However the Commission is of the view that these activities are arguably gambling activities and should be captured by the “catch all” definition of an unlawful game.

Importantly, the proposed definition of an unlawful game will provide for “exempt” games so common activities at fete and fairs which would be captured by the inclusion of offering money or any other valuable thing as a prize would be explicitly exempted. As noted by the Productivity Commission¹, there is a fundamental difference between gambling and investment even when both involve ‘staking’ money where there is an element of risk or uncertain outcomes. Trading in futures or shares should not be included in the coverage of a new Unlawful Gambling Act unless it was part of a game or competition where some prize or additional reward was provided. In addition, it will be necessary to exempt any ballots or draws for the allocation of land or houses.

3.6 Public Consultation

There was very little comment in public submissions received under the consultation process that helped clarify the definition of an “unlawful game”. Casino Canberra Ltd commented that poker should remain as a prescribed game and therefore should not be conducted outside of the casino (this issue is covered in more detail in section 4 of this report).

3.7 Conclusion

It was determined that a new definition was required to clarify the desired coverage of the Act. The definition needs to be comprehensive while being as clear and precise as possible. It should minimise any ambiguity or uncertainty of scope by specifically providing what is covered and what is not covered in the definition.

The definition should not specify in the Act the games or activities that are covered; these games should be prescribed by declaration to provide adequate flexibility for the Commission to amend such a list in a timely fashion.

Examples of games or activities that should be prescribed as unlawful include, but are not limited to: roulette, blackjack, baccarat, all forms of poker, craps, sic bo, pai gow, fantan, manila, pak-a-pu, pitch and toss, thimble rig and two-up.

Games or activities that should be prescribed as not being unlawful include, but are not limited to: chess, Scrabble, Bridge, backgammon in addition to share or futures trading and ballots for allocating land or housing. Games or activities that are commonly played at shows, fairs and fetes for recreation or entertainment purposes, including amusement centre devices such as pinball, should not be included as an unlawful game.

Games or activities entirely of skill that do not have an element of chance in their outcome should not be covered by the definition.

A new definition is suggested that clarifies and simplifies the existing description of an unlawful game. A new definition would remove all ambiguous concepts and would provide greater flexibility in relation to specifying particular games or activities that are to be included

¹ Productivity Commission “Australia’s Gambling Industries” Inquiry Report 26 November 1999, Volume 1, p 5.4.

as an unlawful game. It should also explicitly provide for those games or activities that it is desirable to ensure are not included under the definition.

RECOMMENDATIONS:

- 3. An unlawful game should be defined as including the following components:**
- (i) any game of chance, or mixed chance and skill, in which money or any other valuable thing is offered as a prize or is risked or staked (whether by a participant or otherwise) on an event or contingency that is not authorised by a gaming law (any private game, two-up on ANZAC Day or charitable fundraising gaming allowed under this Act would be duly authorised); and**
 - (ii) a prescribed game that is identified as an unlawful game; but**
 - (iii) does not include a prescribed game that is specifically identified as not being an unlawful game.**

4. PUBLIC GAMING TOURNAMENTS

4.1 Background

In general terms, games in the ACT that involve betting or staking something of value are only permitted if conducted under a licensing or approval scheme. However, chess, Bridge, backgammon and Scrabble are specifically excluded from being an unlawful game as they are not considered gambling based games. Currently, the playing of poker in the ACT is unlawful other than at the casino or in a private residence with less than nine persons participating.

The issue of allowing public gaming tournaments, such as poker, has arisen in most Australian jurisdictions. Tournament gaming is a knockout style of competition that is intended to capture games that are traditionally gambling games and not currently permitted outside the casino other than in a private residence as defined by the Act. It excludes games such as chess, Bridge, backgammon, Scrabble and the like which are not traditionally gambling games, and importantly, in the chess and Bridge tournaments known to have been conducted in the ACT, have not involved gambling despite the fact that there are entry fees and cash prizes on offer.

At this point in time the tournaments of significance in Australia are generally poker tournaments. Most States allow poker tournaments to be conducted in public venues outside of their casinos and despite some restrictions on entry fees and cash prizes are largely unregulated. Of these jurisdictions Western Australia is the only State that regulates the tournament organiser by requiring a permit to be issued in order to issue prizes at these tournaments. All the other jurisdictions allow the tournaments to be conducted unregulated, however some have restrictions on whether or not entry fees are permitted and if cash prizes may be awarded. The conduct of poker tournaments in public venues outside the casino are prohibited in the ACT and the Northern Territory.

In tournament gaming, irrespective of whether it is being conducted in a casino or elsewhere, each participant is allocated tournament chips that have no real monetary value, amounting to the same face value, for example, \$1,000. At the end of a tournament, the aggregate face value of each participant's chips determines their standing in the tournament: the player finishing the tournament with chips totalling the highest face value being the winner and so on in descending order of total face value. There is no cash betting.

Generally, to enter the poker tournaments being conducted outside of a casino, a person needs to register as a member with one of a number of competing organisations, commonly known as leagues. The majority of tournaments are hosted by a participating venue which often has a liquor licence such as a hotel, tavern or club. Most tournaments consist of a series of games scheduled over a period of weeks. Some are free to enter while others require an entry fee to be paid.

Within each league and depending on its size, players are ranked by venue, region, State and nationally through the award of points earned on the outcome of each event a player enters. In some cases, points can be exchanged for merchandise. Prizes may be on offer at each event and may consist of cash, cash equivalent (free entry to higher level events) or merchandise. The Commission is aware that prizes have included things such as a voucher for a 30 minute pleasure session at a local brothel.

A variation on this concept is that of franchising venues exclusively for poker (Poker Dome) with single table tournaments being available on demand (entry fees to \$100) and multiple table tournaments with entry fees up to \$500. These venues operate daily for up to 15 hours from midday, do not utilise a points system and allow play for cash prizes. These operations are currently available only in NSW and are not dissimilar to that of traditional casinos.

At the moment the most popular form of poker played at these tournaments is No-Limit Texas Hold-em. However, there are many poker variations available which could result in the emergence of casino type poker rooms around the country.

Furthermore, while poker tournaments are popular at present, other forms of gaming tournaments may replace and or co-exist with them in the future, for example blackjack, pontoon and traditional games of other cultures, such as pai gow. In this regard, it is important to look at the concept of public gaming tournaments more generally, rather than considering poker tournaments in isolation.

It is important to note that not all poker tournaments are being conducted without criticism or other controversy. Media reports² have identified that because of cheating problems with cash entry games and the potential for corruption, pressure has been mounting on NSW to consider regulation. Reports indicate that some poker tournaments have a prize pool totalling \$1.1 million and involve up to 220 players.

In addition, it has been observed that associated with some 'free entry' tournaments regular side games of cash betting between participants who had been knocked out of the tournament was occurring.

Current gaming in the casino environment is highly regulated through the approval of gaming equipment, game rules, procedures, staff licensing and monitoring through inspectors (both casino and government) and with surveillance of all activity through a CCTV network.

This level of regulation achieves the Government's policy objectives of minimising criminal and unethical behaviour, promoting consumer protection and providing an environment where problem gambling can be monitored. To allow casino type games, such as poker, blackjack or roulette to be conducted for prizes or rewards (i.e. for something of value) outside this controlled environment on a regular and effectively commercial basis, albeit in the form of a tournament style game, introduces all of the risks that have been controlled in a casino setting.

If these risks were to be controlled in venues conducting tournament gaming a similar regulatory regime would be needed. This would create "mini casinos" that would offer games, possibly with a more limited choice, in a similar style to the current licensed casino.

The main objective for the Commission in considering this topic was to determine whether poker and/or other game tournaments should be allowed in the ACT at venues other than the casino and private residences, and if so, whether any conditions or requirements should be specified.

² For example, Sydney Morning Herald, 7-8 July 2007, pages 1-2.

4.2 Inter-State Comparison

It is important to note that poker tournaments have been permitted in most other Australian jurisdictions predominately by default, as either the legislation has not been able to capture these tournaments due to the structure of how they are being conducted i.e. free to enter, or because poker has been defined by that jurisdiction as a game purely of skill. The following is a summary of the conditions poker tournaments being conducted inter-state need to adhere to in order to be permitted/legal.

Free to enter tournaments are available in NSW, Victoria, Queensland, South Australia, Tasmania and Western Australia. However, the prizes permitted vary as follows:

- NSW, Victoria and Tasmania allow non-cash and cash prizes to be awarded;
- Queensland, and South Australia do NOT allow cash prizes to be awarded; and
- Western Australia does not allow any prizes (non-cash or cash) to be awarded for free to enter tournaments, but where a permit has been issued prizes are permissible.

Fee-based tournaments are only permitted in NSW, Victoria and Western Australia. NSW and Victoria allow non-cash and cash prizes to be awarded and are NOT regulated. In Western Australia charitable, social, sporting or community based organisations may apply for a permit to conduct a poker tournament which allows free to enter and fee-based tournaments without any restrictions on the prizes awarded.

As stated previously many of these poker tournaments being conducted in other jurisdictions have not been without controversy:

- Representations from concerned members of the community and problem gambling advocates have been made to the NSW Government to regulate this activity due to accusations of cheating and other integrity issues. Poker Dome is a popular franchise operation available in NSW offering, at five venues, fee-based entry/cash prize tournaments;
- The Queensland Office of Gaming Regulation regulates authorised gambling only. The prosecution of unlawful gambling is the responsibility of the Police Service pursuant to Queensland's *Criminal Code Act 1899*. The Commission is aware of situations where tournament participants who have been knocked out of a tournament have relocated to non-tournament tables at the same venue to participate in unsupervised cash gambling games;
- The popularity/spread of the game in Victoria has caused The Consumer Advocate on Gambling and the Salvation Army to express concern about the spawning of mini casinos and that the tournament game is but a ploy to get people into venues that have gaming machines. A letter from one of the tournament organisations to club managers in the ACT offers to "promote events and get the maximum number of people in each night and thus get the maximum spend in each club" would seem to support these concerns in view that many of the tournaments are free to enter; and
- Other states have also expressed concern about the boundaries being *blurred* by some of these leagues and consequently are contemplating reviewing their relevant legislation.

The table that follows provides an inter-state summary of poker tournament gaming in Australia.

Inter-State Comparison Summary

	ACT	NSW	VIC	QLD	NT	SA	TAS	WA
Cash based gaming is restricted only to the casino.	√	√	√	√	√	√	√	√
Gaming tournaments are conducted in the casino.	√	√	√	X	√	√	√	√
Poker tournaments are permitted outside the casino.	X	√	√	√	X	√	√	√
Where permitted, conduct of poker tournaments outside of the casino:								
➤ free entry		√	√	√		√	√	√
➤ cash entry fees permitted		√	√	X		X	X	√
➤ prizes awarded		√	√	√		√	√	√
➤ cash prizes awarded		√	√	X		X	√	√
➤ in venues other than clubs		√	√	√		√	√	√
➤ regulation of organiser		X	X	X		X	X	√

4.3 Public Consultation

Lifeline Canberra, Casino Canberra and ClubsACT supported the view of maintaining the current status quo and prescribing poker and its variants as an unlawful game.

It is important to note that problem gambling counsellors, such as Lifeline Canberra, have previously advised the Commission that they are opposed to the expansion of gambling beyond the current availability of gambling opportunities on the basis that increased access to gambling is likely to encourage such activity and lead to increases in problem gambling.

The Australian Poker League and the community member that made a submission to this review were in favour of the introduction of public gaming tournaments, specifically poker. The Australian Poker League claimed that their proposal for no entry fee and no cash prize poker tournaments being operated with harm minimisation principles would not bring any additional risk to the community.

The Australian Hotels Association was in favour of making poker tournaments available only if they were undertaken in a controlled regulatory environment, such as in hotels and taverns.

4.4 Conclusion

Experience inter-state indicates that tournament gaming has created its share of issues including game integrity, increased opportunities for illegal cash gaming and the promotion of gambling as a social activity. In regard to the latter, tournament gaming has become a significant commercial enterprise with the activities occurring very frequently in those jurisdictions that have allowed tournament gaming.

In an unregulated environment not only is problem gambling likely to increase from tournament gaming (without proper support mechanisms) but issues associated with the integrity of gaming

(as a consumer protection matter) are more likely to arise. These concerns are a higher risk the more cash is involved and the larger or more attractive the prizes.

Any form of regulation could be resource intensive for Government and while appropriate fees seeking full cost recovery from the industry would be attempted, it may not be achieved. An audit inspection program or the conduct of investigations into non-compliance with the Act are time consuming and could require significant resources.

Free to enter tournaments, especially with no cash prizes, are low risk for game integrity and problem gambling, however inter-state experience indicates that unlawful cash games are often taking place at venues where tournaments are being conducted. The conduct of gaming tournaments creates new opportunities for additional, and sometimes unlawful, gaming to occur that was not previously available. It certainly creates an interest in poker and gambling which is likely to manifest itself through increased (cash) gambling in one form or another. This rationale (and observation) is based on the fact that poker is a game specifically designed for gambling. Many of the inter-state venues that conduct poker tournaments target the particular market that is most likely to gamble, such as young males, particularly those with a lower educational level (research has consistently shown that lower socio-economic areas of the community have a higher propensity to gamble). Importantly, this target group is unlikely to be satisfied with free to enter games offering non-cash prizes as initially proposed by the poker leagues.

Research³ has shown that problem gamblers tend to have higher gambling participation rates across a greater number of gambling activities. This indicates that problem gamblers are more at risk at being involved in multiple gaming activities and causing themselves additional difficulties as a result.

The increased activity would increase compliance costs in ensuring gambling is conducted appropriately and unlawful gaming did not increase.

The overall increase in the level of gaming activity would also be likely to include higher utilisation of the existing gaming options at the gaming tournament venues, such as increased gaming machine activity.

The review determined that the existing opportunities for persons to play tournament games in the ACT at the moment are reasonable and easily accessible. For example:

- the casino provides the opportunity for cash gaming 18 hours a day, seven days a week;
- poker games with less than nine persons can currently occur in private residences; and
- the internet provides the opportunity for people to play casino games such as poker. Some internet gaming sights are regulated and therefore have appropriate game integrity.

The Productivity Commission⁴ in its 1999 report on the gambling industry concluded that:

“Overall, the [Productivity] Commission considers that there is sufficient evidence from many different sources to suggest a significant connection between greater

3 Professor A. Blaszczynski, Department of Psychology, University of Sydney – *Harm Minimisation Strategies in Gambling*

4 Page 8.31 of the 1999 Productivity Commission Report on Australia’s Gambling Industries.

accessibility – particularly to gaming machines – and the greater prevalence of problem gambling.”

As stated above there are many gambling opportunities currently available to ACT residents. Experience interstate indicates an increased likelihood of problems at poker tournament venues by increasing the opportunity for illegal cash games to be held. In addition, the higher the level of prizes on offer at the tournaments the more likely that game integrity issues, such as cheating, may become apparent. Some form of regulation to control integrity and problem gambling issues would be necessary. However, such regulation may not achieve full cost recovery if there is poor compliance by operators or the conduct of illegal games outside of the regulated system increase. Tournament gaming would increase the accessibility to gambling opportunities including possible increased use of existing facilities such as gaming machines.

RECOMMENDATIONS:

- 4. The status quo should remain that gaming tournaments outside of the casino should only be allowed if the conduct of the game is permitted under the definition of an unlawful game. Poker and its variants should be prescribed as an unlawful game and therefore not be permitted outside of the casino except as private games as provided in the definition of an unlawful game.**

5. CHARITABLE OR FUNDRAISING GAMING

5.1 Background

Charitable or fundraising gaming embraces circumstances where a community organisation (as would be defined in any new legislation) proposes to raise funds from gaming for a benevolent or charitable purpose.

If it can be determined that such fundraising based on gaming activity is for charitable or philanthropic purposes and not for private or commercial gain, if appropriate regulatory restrictions are applied the risks associated with this type of activity can be controlled.

Currently there is no provision for charitable fundraising to occur utilising gaming activity unless it involves lawful gaming such as with an approval under the *Lotteries Act 1964*, is conducted in the casino or with an activity that is outside the definition of an unlawful game (such as a game or activity that is usually conducted at shows, fairs or fetes).

The Commission's objective in considering this topic was to determine whether gaming should be permitted as a fundraising source for legitimate charitable organisations, and if so, under what regulatory scheme, if any.

5.2 Inter-State Comparison

Some jurisdictions allow charitable organisations to have fun gaming nights or conduct lotteries as part of, or in conjunction with, their fundraising activities. With the exception of NSW, jurisdictions that allow this to occur do so under a permit or approval system. There is variation between jurisdictions in relation to permitted games/activities and the way in which games are to be conducted. The table on the following page provides a summary of how these activities are regulated across Australia.

Inter-State Comparison Summary

State	Permitted	Regulation
ACT	X	
NSW	√	<p>No permit is required and the game played may be a game defined as unlawful under the <i>Unlawful Gambling Act 1998</i>, i.e. casino type games are permitted, provided that:</p> <ul style="list-style-type: none"> • there must be no charge to participate unless the charge is the fundraising amount; • gaming chips, tokens etc must be distributed fairly to participants; • further chips or tokens may be purchased during the event; • patrons cannot risk a stake on the outcome; • patrons cannot win and cannot lose anything of value while playing the game; • chips cannot be redeemed for money or anything of value; • chips cannot be used to otherwise determine the winner of a prize; • there must be no prizes; and • ‘funny money’ auctions are not permitted.
VIC	√	<p>The rules for conducting a fundraising event are set out in the <i>Gambling Regulation Act 2003</i>, which permits the playing of unlawful games, i.e. casino type games, provided that:</p> <ul style="list-style-type: none"> • a valid minor gaming permit is obtained; and • the organisation must be registered/declared by the VCGR as a community or charitable organisation.
QLD	X	<ul style="list-style-type: none"> • Charitable gaming is unlawful under the <i>Criminal Code Act 1899</i> and it is not possible to obtain a permit or any other form of authorisation to conduct such an activity.
NT	X	
SA	X	
TAS	√	<p>Gratuitous gaming means games played strictly for fun in a club or at a private function:</p> <ul style="list-style-type: none"> • a minor gaming permit is required to allow for the donations to be collected; • no cost to participate; • ‘play money’ shall be used and can be replenished free of any charge; • the sale of ‘play money’ between participants is not permitted; • no cash prizes only individual non-cash game incentives up to \$20 value are permitted; • ‘play money’ auctions are not permitted; • can only play the approved games of – Crown & Anchor, Blackjack, Bingo, Roulette, Poker, Horse Racing, Two-up; and • an individual activity notification must be submitted for each function.
WA	√	<p>Gaming functions are to be conducted with the following requirements:</p> <ul style="list-style-type: none"> • choice from the following prescribed games -Beat the Banker, Cartex Chevaux, Crown and Anchor, Go to the Races, In Between, Joker 7, Money Game, Poker with Cards, Triple Dice, Unders and Overs and Dicett (<i>with the exception of Two-up and Poker with cards any game approved to be played in casino complexes are prohibited</i>); • gaming function permit is required; • only charitable, social, sporting and community based organisations may apply for a permit; • the premises must be approved for gaming purposes; • no charge shall be made for admission to a gaming function; • the game shall be conducted from the hours specified on the permit and cannot exceed 6 hours; • net proceeds shall be applied to the purposes stated on the application form; • a person involved in the conduct of gaming shall not receive any gratuity form a player; • financial returns must be submitted; and • cash or non-cash prizes may be awarded.

5.3 Public Consultation

Casino Canberra and Lifeline Canberra were strongly opposed to the introduction of charitable gaming, citing the possible emergence of mini-casinos and increased unethical gaming activity. This was particularly the case if third party organisations would be permitted to conduct fundraising gaming on behalf of charitable organisations.

ClubsACT and the Australian Poker League supported its introduction with certain regulatory controls and the Australian Hotels Association would support charitable gaming if it was permitted to be conducted by licensed hospitality/industry members on behalf of charitable organisations as part of the Community Contributions scheme.

5.4 Conclusion

Gaming “fun nights” have in some areas been conducted by charitable organisations as part of, or in conjunction with, fundraising events. While it is generally not permitted at the moment in the ACT it is considered that with appropriate regulatory controls some activity could occur with minimal risks to the participants. Any game or activity that did not fit under the definition of an unlawful game would not require any approval or permit.

Many charitable organisations do not support fundraising through gambling activity. In fact, many potential eligible organisations are anti-gambling and provide support for those persons suffering from a gambling addiction.

However, in recognition that some low level ‘fun’ gaming is acceptable as a fundraising activity, it is considered appropriate that this be permitted only for charitable organisations under an approval/permit system. To ensure that charitable gaming events are not used by existing licensed gaming venues as a means of attracting new gaming customers, it is not appropriate for these charitable gaming events to occur in licensed gaming venues.

If such a scheme was to be permitted, it is suggested that an application to the Commission would need to satisfy essential probity issues, such as:

- (a) the applicant is a suitable person to conduct the proposed game in a competent and fair manner;
- (b) the game or activity undertaken is appropriate and conducted fairly; and
- (c) the event is undertaken to raise funds for a charitable purpose with patrons aware of the minimum percentage of funds raised by the event that is to be given for the charitable purpose.

While this is likely to increase regulatory costs in terms of issuing permits and conducting some audits and inspections, appropriate fees may be able to cover these basic costs.

As it is considered that charitable fundraising through gaming activity is a 'special' event and not a regular occurrence, it would be appropriate to limit the number of gaming occasions that could be conducted by any one organisation. A maximum number of two per year may be an appropriate level of restriction to ensure that its status as an occasional event is maintained.

RECOMMENDATIONS:

- 5. Charitable gaming by charitable organisations should be allowed as a fundraising activity under a permit or approval system. The following restrictions should apply:**
- **the event should not occur in a licensed gambling venue; and**
 - **a maximum of two sessions per year for any one organisation.**

6. PRIVATE OR SOCIAL GAMING

6.1 Background

The concept of providing lawful private or social gaming typically envisages a group of persons (such as friends or relatives) arranging and conducting small stake card games in premises to which the general public does not have access. Such occasions may be rare or a regular event.

Currently, private or social gaming is prohibited. To suggest that the population at large complies with this total prohibition would be naïve.

It is important to contrast private or social gaming from the private conduct of gaming activity as a common gaming house. The operation of a common gaming house is unlawful, which is a deliberate policy designed to prevent the conduct of unlicensed or unauthorised casinos within the community.

The difficulty that faces policy makers with explicitly allowing private or social gaming to occur is that unethical or unscrupulous persons may try to abuse the provisions by conducting commercial gambling operations under the guise of private or social gaming.

On the other hand, a difficulty is also faced in trying to prohibit the conduct of legitimate private gaming given that it is known to occur and no doubt will continue to do so into the future. Any sort of regulation or monitoring of private gaming runs into significant questions of privacy and human rights in terms of what people can or can't reasonably do in the privacy of their own residence.

The objective of the Commission in considering this topic was to determine whether private or social gaming should be lawful, and if so, whether any limitations should be applied. If private gaming was to be permitted, it would be necessary to differentiate acceptable private gaming from commercial gambling operations.

6.2 Inter-State Comparison

The majority of Australian jurisdictions permit "private" gaming played for money. The ACT and Northern Territory prohibit it. Where private gaming is permitted, there are prohibitions relating to gaming in public places.

A table summarising private or social gaming in Australia follows.

Inter-State Comparison Summary

State	Permitted	Regulation
ACT	X	
NSW	√	Private/social gaming is permitted within the following limitations imposed: <ul style="list-style-type: none"> • the dealer must be a participant in the game; • a non-participant is not to receive a benefit or payment from the game; • no entry fee or registration is charged to play the game; and • no entry fee is paid to the premises where the game is being played.
VIC	√	<ul style="list-style-type: none"> • It is lawful to play poker for money at a private house or residence, for entertainment purposes only, provided that: <ul style="list-style-type: none"> – no entry fee or registration is charged to play the game; – the function is not for the promotion of a trade or business; and – no person derives a percentage or share of the amount/s wagered.
QLD	√	<ul style="list-style-type: none"> • no entry fee or registration is charged to play the game; • no person derives a percentage or share of the amount/s wagered; • all money bet goes to the player/s who won the hand.
NT	X	
SA	√	<ul style="list-style-type: none"> • no entry fee or registration is charged to play the game; • no person derives a percentage or share of the amount/s wagered; • all money bet goes to the player/s who won the hand.
TAS	√	<ul style="list-style-type: none"> • no entry fee or registration is charged to play the game; • no person derives a percentage or share of the amount/s wagered; • all money bet goes to the player/s who won the hand.
WA	√	<ul style="list-style-type: none"> • provided the game occurs spontaneously, notwithstanding that it may occur regularly, habitually or by arrangement between the persons involved; • is not a prescribed game in respect to which social gambling is prohibited; • is equally favourable to all players; • no entry fee or registration is charged to play the game; • no person derives a percentage or share of the amount/s wagered; • all money bet goes to the player/s who won the hand.

6.3 Public Consultation

ClubsACT and Casino Canberra agreed with the Commission's recommendation provided in the draft Policy Paper that some form of private/social gaming was inevitable and should be permitted in certain circumstances. Lifeline Canberra was strongly opposed to legalising this form of gambling citing that all forms of gambling should only take place in a controlled environment. The Australian Hotels Association was of the same view in that all gambling should occur within a controlled environment.

6.4 Conclusion

To deny that private and social gaming is currently being undertaken would be naive. It would also be unrealistic to assume that a stronger prohibition would prevent its occurrence in the future.

On the basis that it would encourage unlimited commercial gaming in an unregulated environment, it is considered undesirable to allow gaming without any restrictions whatsoever. Gaming integrity and problem gambling would no doubt be significant issues under such a proposal.

Therefore, it is considered that the best solution was to acknowledge the inevitable existence of private and social gaming but have sufficient restrictions or requirements to ensure that commercial gambling is not operated under the guise of “private” gaming. In this context, ‘commercial’ means gambling for trade or as a business (or part of, or incidental to, a business).

In order to achieve this aim of preventing commercial interests from benefiting from such a decision, it is suggested that private gaming be limited to being conducted by a person in the person’s home. In addition, the following criteria should be used to differentiate private or social gaming from commercial activity:

- the only way a participant in the game can make a profit or gain any other benefit as a result of the conduct of the game is by winning a bet; and
- the rules of the game provide the same chance of winning a bet for all participants.

Other criteria that may also be useful in identifying gaming of a commercial nature are:

- whether there is an entry fee charged for entering the premises or to participate in a game (this does not include bets or wagers made); and
- 100 per cent of the bets made are won by a participant in the game (ie no commission or charge is deducted).

While it is acknowledged that some difficulty may occur in identifying some commercial operations, it is suggested that the Commission issue non-mandatory guidelines designed to provide information about the conduct of private gaming and also provide some harm minimisation information.

RECOMMENDATIONS:

- 6. Private or social gaming should be allowed with specified criteria used to assist differentiation between this activity and commercial operations. In this context, ‘commercial’ means for trade or as a business.**

The criterion that could be used to differentiate private gaming from commercial operations should include the following:

- (i) the gaming is not conducted for a commercial purpose;**
- (ii) the gaming must be conducted in a person’s home;**
- (iii) there should be no entry fee into the residence (as opposed to a bet or wager in a game) and no commission or fee is deducted other than as paid to the winner.**

7. EXEMPTION FOR PLAYING TWO-UP ON ANZAC DAY

Currently two-up falls within the definition of an unlawful game, however an exemption is provided in the *Unlawful Games Act 1984* which permits the playing of two-up on Anzac Day.

Currently, while any organisation can play two-up on Anzac Day, only clubs are permitted to raise funds for charity through the playing of two-up on Anzac Day by way of an entry fee, commission or charge. These funds in their entirety must be provided to a charitable purpose.

It is suggested that two-up remain within the definition of an unlawful game and that the exemption be retained so that the playing of two-up on Anzac Day is not unlawful.

Following consultation with the Returned Services League of Australia (RSL), no additional exemptions for Victory in the Pacific Day (15 August) or Remembrance Day (11 November) were supported.

If an organisation (in addition to clubs) wished to raise money for a charitable purpose on Anzac Day it should be allowed to do so by an entry fee, charge or commission provided that:

- the owner or person in charge of the place where the game is being conducted has given their permission;
- advice of the fee or charge and the purpose for which it is provided is clearly indicated to players; and
- all fees or charges are given in their entirety to the nominated charitable organisation or purpose and no portion is retained by the organisation.

RECOMMENDATIONS:

- 7. An exemption should be incorporated into the Act so that the playing of two-up on Anzac Day is not unlawful.**
- 8. Any organisation should be permitted, under specified restrictions, to raise funds for a charitable purpose on Anzac Day by way of charging an entry fee, commission or charge.**