

Dissenting Report by Senator Nick Xenophon

Schedule 1 – Encouraging responsible gambling

1.1 Never before have problem gamblers and their families been so cruelly abandoned by those with the power to put in place a framework that would help to limit the harm caused by poker machine addiction. The Federal Government's proposed 'Encouraging responsible gambling' policy will do nothing to curb the extent of problem gambling in our communities. It will only further stigmatise those who suffer from this addiction and make it harder for problem gamblers to control their spending and limit their losses.

1.2 I was unable to support the Labor Government's gambling reforms in 2012 because I believed there was still room to negotiate a more comprehensive and effective package of reforms. The reforms eventually passed by Parliament in November last year were a disappointing watered down version of what had been promised to the independent Member for Denison Andrew Wilkie in exchange for his support for an ALP Government. The Labor Government's reforms fell well short of the aims espoused by then Prime Minister Julia Gillard:

"I want to get a big reform done on problem gambling... Not getting change is too big a risk for those Australians and their families that struggle day to day with the pressures that problem gambling puts on their shoulders."¹

1.3 I could not support the former Government's 2012 watered-down reforms because they were in fact giving cover to a broken promise made by former Prime Minister Gillard. I did not want to a party to that cynical breach of trust. It was very much a Hobson's Choice for me back then.

1.4 However, we now have legislative changes before us that will likely take Australia backwards in terms of tackling problem gambling. Prime Minister Tony Abbott has made his aversion to mandatory pre-commitment clear. In an interview on 2 November 2011 at the Canberra North Bowling Club Mr Abbott remarked:

"Now, it's very important that we do what we can to address problem gambling but you've got to have the right policies, not the wrong policies and mandatory pre-commitment would impose hundreds of millions of

¹ Prime Minister Julia Gillard, Press Conference, 12 January 2012, available at <http://australianpolitics.com/2012/01/21/gillard-poker-machines-reforms.html> (accessed 9 December 2013).

dollars of additional costs on community clubs without necessarily improving the predicament of problem gamblers.”²

1.5 Mr Abbott went on to say:

“It’s important to get maximum help for the problem gambler with minimum disruption for community organisations and that’s the difficulty with mandatory pre-commitment, it’s taking a sledgehammer to crack a nut”.³

1.6 The Government’s reliance on the assumption that problem gamblers are able to set their own limits and stick to them as the basis for these reforms is fundamentally flawed. Furthermore, by removing the proposed ATM withdrawal limits the Government is further enabling problem gambling behaviour.

ATM withdrawal limits

1.7 An all too common theme when I meet with problem gamblers and their families is the ease with which the gambler is able to exceed the spending limit they have set themselves for that particular day. Accessibility to ATMs within gaming machine venues plays a huge role in this.

1.8 In their submission to this inquiry, the Australian Churches Gambling Taskforce told the committee of research conducted by the Victorian Gambling Research Panel in 2005 which found that:

“the proximity of ATMs to EGMs means that money could be withdrawn and then inserted into a machine without sufficient time for thought of consequences. EGM gamblers who use an ATM at gaming venues rarely access it for the purpose of purchasing food and beverages (11.7%). Of those EGM gamblers who withdrew money from an ATM, 74% did so for the purposes of gambling. Those who accessed an ATM more than twice did so exclusively to gamble”.⁴

1.9 In relation to ATM withdrawal limits the Productivity Commission in 2010 found that:

“While causality is hard to prove, easy access to ATMs/EFTPOS facilities appears to increase spending by problem gamblers. Problem gamblers use

² Prime Minister Tony Abbott, door stop interview, Canberra Bowling Club, 2 November 2011, transcript available at <http://engage.wa.liberal.org.au/general/the-coalitions-policy-discussion-paper-on-gambling-reform-kevin-rudd-european-debt-crisis-industrial-relations-tony-abbott-doorstop> (accessed 9 December 2013).

³ Prime Minister Tony Abbott, door stop interview, Canberra Bowling Club, 2 November 2011, transcript available at <http://engage.wa.liberal.org.au/general/the-coalitions-policy-discussion-paper-on-gambling-reform-kevin-rudd-european-debt-crisis-industrial-relations-tony-abbott-doorstop> (accessed 9 December 2013).

⁴ Australian Churches Gambling Taskforce, Submission 10, p. 4.

these facilities far more than other gamblers, and say they would prefer to see ATMs removed from venues so they can better control their spending.”⁵

1.10 In line with this, the Productivity Commission recommended that ATM/EFTPOS facilities in gaming venues be limited to \$250 a day.⁶

1.11 While imposing a limit on ATM withdrawals would not be as effective in curbing problem gambling behaviour as removing ATMs altogether, I believe this measure would have enabled those experiencing difficulty controlling their gambling to think twice about withdrawing extra cash. By removing ATM withdrawal limits the Government’s bill will only serve to exacerbate problem gambling behaviour.

Pre-commitment

1.12 Through this bill the Government plans to remove the requirement for gaming machines to be pre-commitment ready by 2016. This is in complete contradiction to and defiance of the Productivity Commission who in 2010 recommended:

“Each state and territory government should implement a jurisdictionally-based full pre-commitment system for gaming machines by 2016.”⁷

1.13 In fact, the Productivity Commission was so confident in its recommendation that it did not believe a trial was necessary. The trial of mandatory pre-commitment in the Australian Capital Territory will be abandoned should this bill pass. The Government is foregoing not only an opportunity to make a difference to the lives of problem gamblers but also the opportunity to contribute to vital research in an area which is sorely lacking.

1.14 The former Joint Select Committee on Gambling Reform repeatedly heard from former problem gamblers who say that a mandatory pre-commitment system is necessary in order to limit losses and reduce the harm caused by poker machines, such as Ms Julia Karpathakis:

“If there had been another option, there is no way I would have been an addict. If there had been a pre-commitment card or an opt-out card there is no way I would be an addict. You get your pension and you know you have three kids and rent to pay, but you look at that money and it is not even

⁵ Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, p. 57.

⁶ Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, Recommendation 15.2, p. 58.

⁷ Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, p. 56.

real—it is just something to play with. That is free rein. Your brain does not think properly, but if there were a block there I would not think like that.”⁸

1.15 In a submission to the Joint Select Committee on Gambling Reform Ms Karpathakis also stated:

“I believe that pre-commitment has the potential to help people, especially the ones who can’t seem to stop. At least they will be able to curb their addiction or at least not cause such extreme damage. I believe that if we had had a pre-commitment scheme when I began to play I would have been a recreational gambler and not an addict. A pre-commitment scheme, including pre-commitment cards and the opt-out system, could result in many benefits. These could include preventing new people from becoming addicted, reducing the incidence of child neglect, as well as a reduction in crime. I find the idea of preventing future pokie addicts with the help of the pre-commitment scheme exciting.”⁹

1.16 Based on the views of problem gamblers, the very people this legislation is purportedly supposed to help, it is difficult to form the view the Federal Government is sincere about limiting gambling losses and preventing harm.

1.17 Formal studies have repeatedly shown that voluntary pre-commitment systems are not effective at limiting losses. A study into poker machine pre-commitment schemes prepared for the Nova Scotia Gaming Foundation in Canada found that voluntary schemes consistently failed because they relied on the willpower of players.¹⁰

1.18 The Nova Scotia study found that high risk players were unlikely to use a voluntary system. It also found that high risk players would often continue to gamble beyond their limits unless they were locked out of play and that they lost more money than they intended "most times they play".¹¹

⁸ Ms Julia Karpathakis, Joint Select Committee on Gambling Reform, *Committee Hansard*, 1 February 2011, p. 11.

⁹ Joint Select Committee on Gambling Reform, Inquiry into pre-commitment schemes, Pokies Anonymous, *Submission 34*, p. 3.

¹⁰ T Schellink, et al, 'Evaluating the Impact of the "My-Play" System in Nova Scotia', Nova Scotia Gaming Foundation, October 2010, http://www.nsgamingfoundation.org/uploads/Research/Technical%20Report%20Phase%201%20My-Play%20Benchmark%20Final%20%20_Focal_%20Jan%2028%202011.pdf (accessed 9 December 2013).

¹¹ T Schellink, et al, 'Evaluating the Impact of the "My-Play" System in Nova Scotia', Nova Scotia Gaming Foundation, October 2010, http://www.nsgamingfoundation.org/uploads/Research/Technical%20Report%20Phase%201%20My-Play%20Benchmark%20Final%20%20_Focal_%20Jan%2028%202011.pdf (accessed 9 December 2013).

1.19 The take-up of voluntary pre-commitment schemes has also been shown to be woeful. In South Australia, Worldsmart Technology's J-Card loyalty scheme allows a player to set self-imposed limits on time and spending. After reviewing Worldsmart's scheme, the Productivity Commission reported:

“Relatively few consumers have enabled their loyalty card for pre-commitment features. By mid-September, 233 of just under 32,000 loyalty card members (or 0.7 percent) had enabled pre-commitment options.”¹²

1.20 However, players who had opted into the pre-commitment system were found to have engaged with the feature extensively, with spending reduced dramatically.¹³

Responsibility of the states

1.21 The cornerstone of the Government's legislation is the reliance on the cooperation of states, territories and indeed individual venues to implement a voluntary pre-commitment scheme. Surely the track record of the states, who are too reliant on poker machine revenue to be expected to implement any kind of meaningful reform, demonstrates the urgent need for a comprehensive national approach to tackling problem gambling. We cannot have Dracula guarding the blood bank.

1.22 Given the cynical abandoning of these minimalist reforms by the former Government and the aggressive commitment by this Government to unwind them, it seems a realistic option now available is for the Australian people to have a say on poker machine reform. Independent surveys indicate a vast majority of Australians want significant poker machine reform, and in particular the implementation of the Productivity Commission's recommendation of \$1 bets and maximum \$120 hourly losses. A plebiscite to be held on this issue, on or before the next federal election would, if passed, give politicians from the major parties the courage to finally reflect community opinion in any future gambling reform legislation.

Schedule 1A – Charities

1.23 I recall distinctly the guillotining that took place in June 2013 when the *Charities Act 2013* was first debated. At that time I indicated my broad support for this legislation but flagged that certain provisions may need fine tuning in the future.

1.24 Charities meet the otherwise unmet, ignored and underestimated needs of Australian society. Often they step up to the plate and help people and animals who the private sector deem too uneconomical to help. Charities do wonderful

¹² Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, p. c2-3.

¹³ *Ibid.*

work that is not easy and they must be recognised for doing so. That is why a definition of a charity is so important. We need to be able to define a ‘charitable purpose’ and a ‘public benefit’ to ensure genuine charities are able access appropriate Federal Government assistance, but also to stop those unscrupulous organisations purporting to be charities from accessing that assistance.

- 1.25 Australia has been relying on a 400 year old definition of charity from England’s Charitable Uses Act 1601. We have seen the success of clearly defined charitable purposes frameworks in other jurisdictions like the United Kingdom and New Zealand.
- 1.26 The benefits of a definition of ‘charitable purpose’ together with a charities commission was made clear in 1999 when the Charity Commission for England and Wales refused to grant the Church of Scientology charitable status because the Commission was not satisfied Scientology was a religion within the meaning of English law. Furthermore the Commission held that no public benefit arising from the practices of Scientology had been established.¹⁴ This was based on the Commission’s conclusion that the private nature of Scientology’s auditing, training and practices resulted in a private benefit to its members only, rather than a benefit to the public.
- 1.27 The delay in implementing a statutory definition of a charity will provide additional time for further stakeholder consultation. However, this time must be used wisely with genuine attempts made to address specific concerns about the definition. The focus of the consultation must not be on whether we need a statutory definition at all, but rather how the definition is framed.

Recommendation:

Schedule 1 of the Social Services and Other Legislation Amendment Bill 2013 not be passed in its current form, particularly without significant alternative and effective gambling reforms in place.

Senator Nick Xenophon

¹⁴ Charity Commission for England and Wales, Decision of the Charity Commissioners for England and Wales (on the) Application for Registration as a Charitable Entity by the Church of Scientology (England and Wales), 17 November 1999, available at: <http://www.charitycommission.gov.uk/Library/start/cosfulldoc.pdf>, accessed 11 December 2013.