



Instruments of Unlawful Gaming Final Policy Paper



Government of South Australia
Department of Treasury
and Finance

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Published February 2013

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1 Introduction

Some arcade games are very similar to gaming machines. There are community concerns that some arcade games are:

- offering unlawful gaming to the public;
- inappropriate for minors; and
- a pathway to problem gambling behaviour.

A consultation paper on instruments of unlawful gaming was released in March 2011 to arrive at a clearer definition of games that should be prohibited. A prohibition under Section 59A of the *Lottery and Gaming Act 1936* was proposed. Section 59A provides the Governor with the power to declare any machine, article or thing to be an instrument of unlawful gaming.

The main objective of a declaration of an instrument of unlawful gaming would be the protection of minors from being exposed to 'soft' gambling. A secondary objective would be clearer guidance to industry on what is prohibited.

It was not intended to prohibit all forms of arcade and other games, only those which could be considered 'soft' gambling and are therefore inappropriate for minors.

Submissions to the consultation paper were received from:

- The Hon Robert Brokenshire MLC, Family First supported the proposed prohibition of arcade games that are similar to gaming machines.
- The National Amusement Machines Operators Association (NAMOA) proposed industry self-regulation based on the maximum prize value.
- TopGun International was concerned about the impact on business if arcade amusement games were prohibited, and advised that its machines are purely skill-based.

A copy of these submissions is available from:

<http://www.treasury.sa.gov.au/economy/gambling-regulation>

2 Objective

South Australian gambling legislation recognises risks for gambling and prohibits the provision of commercial gambling products to persons below the age of 18 years.

Studies have identified that problem gamblers started gambling at a younger age than non-problem gamblers (Delfabbro et al 2005). The vast majority of problem gamblers commence their activities before the age of 20 years, some as early as 8 to 12 years of age (National Gambling Impact Study Commission 1999). Griffiths and Wood (2000) note that 'a number of studies have shown that when people gamble as adolescents, they are then more likely to become problem gamblers as adults'.

Policy position

The provision of commercial gambling products to persons below the age of 18 years is prohibited in South Australia.

In the UK, slot (fruit) machines have been available to children, and 'slot (fruit) machines are associated with probable pathological gaming in children' (Fisher 1993 and 1995, quoted in Fisher and Griffiths 1995).

Griffiths (1990) identified that adolescents addicted to 'fruit machines' (low prize value electronic gaming machines available to minors in the United Kingdom) played for the sake of playing, spending all their money. Some of the addicted adolescents stole to finance their playing; others displayed aggressive behaviour, emotional disturbance and truancy.

While 'fruit machines' are not available in South Australia, there may be customers for whom arcade games that display characteristics of gaming machines that are similar to fruit machines, become a pathway to problem gambling.

Family First said that:

Family First's principal concern about arcade games are those that condition children towards (a) machine that entices them to take risks akin to gambling, encourage addictive behaviour or that condition children to the characteristics or operations of poker machines.

At least one study has pointed out that it was not possible to show that there is a causal relationship between *all* arcade amusement games or video games and gambling (Delfabbro et al 2009). Delfabbro et al (2007) found that, compared with video games, arcade games were played infrequently and for short periods by South Australian adolescents, and that higher rates of involvement in various electronic games (in particular TV, phone and arcade games) tended to be associated with higher involvement in gambling. There is very little evidence to support the view that video-game playing is an avenue by which young people come to be involved with gambling.

As there is convincing evidence that exposure to gambling should be prohibited for children, arcade amusement machines that are similar to gaming machines should also be prohibited. This supports the current policy that commercial gambling products are not made available to minors in South Australia.

3 Options

The following options have been identified to address amusement machines that are similar to gaming machines:

- Do nothing;
- Industry self-regulation; and
- Declaration as instruments of unlawful gaming.

These options are discussed in the following sections.

3.1 Option 1 – Do Nothing

Under the 'do nothing' option, there would be no change to current business practices.

South Australian businesses are currently providing amusement machines with the characteristics of gaming machines to children. This would not change under the 'do nothing' option.

Businesses have been introducing amusement machines that are similar to gaming machines to South Australia, as the legislation has not been clear. For example, the 'Road Trip' game was available in South Australia, but was removed in 2010 when the Liquor and Gambling Commissioner advised that it was considered to be a gaming machine.

Option 1 has the following disadvantages:

- amusement machines with the characteristics of gaming machines would still be provided to children; and
- less clarity for businesses. Businesses may continue to introduce unlawful machines to South Australia, only to find that the machines must be removed.

Therefore, option 1 is not recommended.

3.2 Option 2 – Industry Self-Regulation

NAMOA proposed industry self-regulation through its voluntary code which was implemented in 2010. NAMOA acknowledged that:

the maximum amount of prizes awarded by a machine is a significant factor in determining its suitability for minors.

Therefore, NAMOA recommended that children of different ages should be treated differently, and that amusement machines should be located in areas restricted according to age. NAMOA proposed the following categories:

- G: suitable for all ages, maximum prize value \$20
- PG: parental supervision recommended, maximum prize value \$50
- M: suitable for 15 years and over, maximum prize value \$100
- MA: suitable for 18 years and over, maximum prize value \$200

NAMOA stated that:

There is often an (incorrect) assumption that simply because a machine looks like gaming equipment (or a gaming machine), and the method of playing the machine has certain similarities with the method of playing a gaming machine, then for those reasons a machine should be treated as a gaming machine and licensed accordingly. This appears to be so even where the functionality and redemption characteristics of the machine are quite different from those of a gaming machine.

While industry self-regulation is encouraged, it is not a suitable replacement for formal regulation of amusement machines with the characteristics of gaming machines. Industry self-regulation lacks the ability to effectively apply to all potential providers of amusement machines, and lacks an effective compliance regime.

Policy position

Industry self-regulation would complement formal regulation of amusement machines with the characteristics of gaming machines.

3.3 Option 3 – Declaration as Instruments of Unlawful Gaming

The Government considers that, if it looks like a gaming machine and its play is similar to a gaming machine, it should be treated as a gaming machine.

This can be achieved by declaring devices with the characteristics of a gaming machine to be instruments of unlawful gaming under section 59A of the *Lottery and Gaming Act 1936*. All such machines would then be prohibited machines in South Australia, unless they are treated as gaming machines under the *Gaming Machines Act 1992*. Gaming machines may only be provided in licensed gaming venues, in areas that are prohibited to persons under 18 years.

More background about the legislative framework is provided in Appendix 2.

Option 3 is recommended, as this would achieve the objective of prohibiting the provision of amusement machines with the characteristics of gaming machines to persons below the age of 18 years. Option 3 would also provide certainty to businesses as the requirements would be clearer.

Policy position

Prevent the provision of amusement machines with the characteristics of gaming machines by declaration as instruments of unlawful gaming under section 59A of the *Lottery and Gaming Act 1936*.

The following are considered to be characteristics of a gaming machine:

- a spinning reel.
- markings or description of the machine as a 'gaming machine' or 'pokie'.
- use of a word associated with gambling, such as 'gambling', 'bet' or 'jackpot'.

Policy position

Declare a device that is described as a gaming machine or pokie, or that uses words associated with gambling, or a spinning reel, as an instrument of unlawful gaming:

The proposed draft Regulations for the declaration of instruments of unlawful gaming (Appendix 1) specify that an amusement machine with the characteristics of a gaming machine would be declared to be an instrument of unlawful gaming.

An amusement machine would be declared an instrument of unlawful gaming if it is:

- a device that simulates the operation of a gaming machine by the use or depiction of a spinning reel;
- a device that is marked or described as a ‘gaming machine’ or ‘pokie’; or
- a device that uses or displays a word associated with gambling, such as ‘gambling’, ‘bet’ or ‘jackpot’.

The draft Regulations also make it clear that a gaming machine that is not approved under the *Gaming Machines Act 1992* would be an instrument of unlawful gaming. This includes a gaming machine with a note acceptor.

Examples of amusement machines that would be declared unlawful are shown in Figure 1 below, as they simulate the operation of a gaming machine by the use of a spinning reel.



Figure 1: Examples of amusement machines that simulate the operation of a gaming machine by the use of a spinning reel. Such amusement machines would be declared unlawful.

Arcade amusement machines displaying words associated with gambling, such as ‘gambling’, ‘bet’ or ‘jackpot’, would also be prohibited, as well as amusement machines marked or described as a ‘gaming machine’ or ‘pokie’.

Most arcade amusement games are not similar to gaming machines, and would not be included in the proposed prohibition.

The declaration of instruments of unlawful gaming will:

- prevent children from being exposed to amusement machines that are like gaming machines, which may be pathway to problem gambling; and
- provide certainty to businesses and reduce the risk to businesses of introducing unlawful machines to South Australian venues.

4 Next steps

The proposed next steps are:

- amend the Regulations if needed (after public consultation);
- proclamation of Regulations under section 59A of the Lottery and Gaming Act 1936 that declare which machine, article or thing is an instrument of unlawful gaming; and
- commencement of the Regulations four months after the Regulations are proclaimed.

Interested parties are encouraged to make a submission on the draft Regulations for a declaration of instruments of unlawful gaming.

Submissions should be sent by email or post by no later than **Friday 8 March 2013** to:

e-mail: gamblingpolicy@sa.gov.au

post: Gambling Policy
Department of Treasury and Finance
GPO Box 1045
Adelaide SA 5001

Submissions should include contact details of the person making the submission.

Submissions may be placed on the Department of Treasury and Finance website and/or quoted in subsequent policy and/or consultation papers.

Additional copies of the consultation paper can be downloaded from:

<http://www.treasury.sa.gov.au/economy/gambling-regulation>

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Appendix 1: Draft Regulations for the declaration of instruments of unlawful gaming

South Australia

Lottery and Gaming Variation Regulations 2013

under the *Lottery and Gaming Act 1936*

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-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Lottery and Gaming Variation Regulations 2013*.

2—Commencement

These regulations will come into operation 4 months after the day on which they are made (see *Subordinate Legislation Act 1978* section 10AA).

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Lottery and Gaming Regulations 2008*

4—Insertion of regulation 4A

After regulation 4 insert:

4A—Instruments of unlawful gaming

- (1) Pursuant to section 59A of the Act, an amusement machine with the characteristics of a gaming machine (within the meaning of the *Gaming Machines Act 1992*) is declared to be an instrument of unlawful gaming.
- (2) For the purposes of this regulation—
 - (a) an amusement machine includes any device designed or adapted for the purpose of enabling a person to participate in a game of amusement; and
 - (b) an amusement machine will be taken to have the characteristics of a gaming machine if—
 - (i) it is a gaming machine, but not an approved gaming machine, within the meaning of the *Gaming Machines Act 1992*; or
 - (ii) it would be a gaming machine within the meaning of the *Gaming Machines Act 1992* except for the fact that it is capable of being operated by the insertion of a note (whether in the machine or another device to which it is linked); or
 - (iii) it is capable of being operated by the insertion of a coin, note or other token (whether in the machine or another device to which it is linked) and—
 - (A) it simulates the operation of a gaming machine by the use or depiction of a spinning reel; or
 - (B) it is marked as a gaming machine or pokie or is described in any advertising, instructions or packaging as a gaming machine or pokie; or
 - (C) in the instructions for its operation, or in its operation, it uses or displays a word associated with gambling such as gambling, bet or jackpot or a derivative of such a word.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2013

MGA0002/12CS

Appendix 2: Legislative framework

Arcade and other games that are considered to be electronic gaming machines are regulated under the provisions of the *Gaming Machines Act 1992*, which provides a mechanism for their removal. In the future, devices (including arcade amusement machines) with characteristics of gaming machines will also be regulated under Regulations under the *Lottery and Gaming Act 1936*.

The *Lottery and Gaming Act 1936* prohibits all gambling, except for gambling that is authorised under other Acts such as the *Gaming Machines Act 1992*.

The *Gaming Machines Act 1992* is considered suitable for the regulation of gaming machines in gaming venues, while the *Lottery and Gaming Act 1936* is more appropriate to prohibit instruments of unlawful gaming, such as arcade games that are similar in nature to electronic gaming machines.

Legislative provisions of the *Gaming Machines Act 1992*

The supply and operation of gaming machines in South Australian club and hotel venues is regulated under the *Gaming Machines Act 1992*. The *Gaming Machines Act 1992* provides the following definition of a gaming machine:

gaming machine means a device –

(a) *that is designed or has been adapted for the purpose of gambling by playing a game of chance or a game combined of chance and skill; and*

(b) *and that is capable of being operated by the insertion of a coin or other token (whether in that device or another device to which it is linked) or by the electronic transfer of credits accrued on some other gaming machine;*

Gaming machines are highly regulated in South Australia. They may only be located in an approved area of a licensed gaming machine venue, provided that the venue possesses sufficient gaming machine entitlements to cover the number of machines operating at the venue. Access to the gaming area must be restricted to people above 18 years old.

All machines must be monitored via a central monitoring system that ensures that the machine operates according to specifications (for example, the return to player rate) and ensures that taxation rates are calculated accurately. Machines may only accept coins. Gaming machine managers and employees must be approved by the Liquor and Gambling Commissioner.

Section 45 of the *Gaming Machines Act 1992* provides that it is an offence to possess, manufacture, sell or supply a gaming machine without being licensed to do so:

45 – Offence of being unlicensed

A person must not –

(a) *have possession of a gaming machine on any premises; or*

(b) manufacture, sell or supply a gaming machine or a prescribed gaming machine component; or

....without being licensed to do so.

The maximum penalty for an offence under section 45 is \$35,000 or 2 years' imprisonment.

These provisions have been used for arcade games that are considered to be similar to electronic gaming machines, with objects of value as prizes in lieu of money.

Legislative provisions of the *Lottery and Gaming Act 1936*

The *Lottery and Gaming Act 1936* prohibits gambling other than gambling authorised under other Acts. Section 59A of the *Lottery and Gaming Act 1936* provides the Governor with the power to declare any machine, article or thing an instrument of unlawful gaming:

59A – *Certain things declared instruments of unlawful gaming*

(1) The Governor may, by regulation, declare any machine, article or thing to be an instrument of unlawful gaming.

(2) For the purposes of this Act, a declaration may be made under subsection (1) notwithstanding that the machine, article or thing is not specifically designed for gaming.

(3) For the purposes of this Act, the playing of or with any machine, article or thing declared under subsection (1) to be an instrument of unlawful gaming shall be deemed to constitute the playing of an unlawful game, whether or not any person derives or is intended to derive any money or thing as a result of the playing.

The *Lottery and Gaming Act 1936* specifies penalties for unlawful gaming, which is defined in the Act as:

***unlawful gaming* means –**

(a) the playing at or engaging in any game with cards or other instruments, or with money, in or as the result of which game any person or persons derives or is intended to derive (other than in his capacity as a player) any part or percentage of any money or thing played for, staked, or wagered; and

(b) any contravention of or failure to observe any provision of this Act, whether that provision relates to unlawful gaming as hereinbefore defined or not.

The penalties for unlawful gaming are specified in sections 51, 52 and 61 of the *Lottery and Gaming Act 1936*. Section 51 makes it unlawful for a person to gamble in a public place:

51 – *Extending provisions to gaming with coin etc*

Any person who in any public place at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of wagering or gaming –

(a) plays at any game or pretended game of chance;

...

shall be guilty of an offence.

Maximum penalty: \$1 250.

Section 52 makes it unlawful for a person to provide an implement or article for unlawful gaming in a public place:

52 – Gambling etc in public places

No person shall in any public place –

(b) exhibit any implements or articles for unlawful gaming, in order to induce or entice any person to engage in any unlawful gaming;

...

Maximum penalty: \$10 000 or imprisonment for 2 years.

Section 61 makes it unlawful for a person to take part in unlawful gaming:

61 – Unlawful gaming and playing of unlawful games

(1) No person shall be guilty of unlawful gaming.

Maximum penalty: \$2 500.

(2) No person shall play at any unlawful game.

Maximum penalty: \$2 500.

(3) No person shall –

(a) be present at any unlawful gaming or at the playing of any unlawful game; or

(b) be in any place in which any unlawful gaming is taking place, without lawful excuse (the proof of which excuse shall be upon him).

Maximum penalty: \$750.

The Government proposes to make it clearer which games and instruments are unlawful by declaring 'instruments of unlawful gaming' under section 59A of the *Lottery and Gaming Act 1936*.