

FINLAYSONS

NAMOA SUBMISSION

**TO THE DEPARTMENT OF TREASURY & FINANCE,
SOUTH AUSTRALIA**

IN RESPONSE TO THE

‘UNLAWFUL INSTRUMENTS OF GAMING’

CONSULTATION PAPER MARCH 2011

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1. This submission is made in response to the Consultation Paper '*Unlawful Instruments of Gaming*' (the **Consultation Paper**), issued by the Government of South Australia in March 2011.

NAMOA

2. This submission is made on behalf of the National Amusement Machine Operators Association Ltd of Australia (**NAMOA**). NAMOA is a voluntary organisation of predominantly self-employed, independent business people, engaged in the operation of all types of coin-operated amusement machine equipment. NAMOA members include Village Roadshow (Intencity), AMF Bowling Australia, TunzaFun, and other nationally-based operators. NAMOA was formed in around 1981 with originating state associations dating back to 1961, and currently has members in all State and Territories of Australia. Such games include those referred to in section 2 ('*Arcade and Other Games*') of the Consultation Paper. NAMOA members are not involved in the manufacture or supply of 'gaming machines', as that term is defined in the *Gaming Machines Act 1992* (SA).

Amusement Machines

3. Amusement machines are conceptually different from gaming machines or devices (eg 'pokies'). The purpose and function of gaming machines or devices is obviously to gamble, ie. to place a bet or wager in money or money's worth, in the hope or expectation that a larger amount of money will be returned or credited to the player.
4. The primary purpose of an amusement machine is the inherent entertainment or amusement value of playing that machine.
5. Amusement machines themselves can be categorised by the type, nature, functioning and attributes of the machine. Thus, a machine may:
 - (a) be for one player or involve two or more players playing against each other (eg. air hockey);
 - (b) operate through one of several different modalities – ball games (eg. pinball machines, basketball games, etc), coin rolling

- machines, claw crane machines, flashing lights, or spinning wheels;
- (c) incorporate different elements and proportions of skill and luck, ie be skill-based or based on a mixture of skill and luck; and
 - (d) be a non-redemption machine, or a redemption machine (eg. claw crane machines in which plush toys or chocolate are prizes), and including a merchandiser game (which displays and dispenses merchandise), or a ticket redemption machine where tickets may be redeemed for prizes.

Amusement Machines, NOT Gaming Machines

6. In categorising machines there is a tendency to ‘conflate’ or lump together gaming or gambling machines on the one hand, and amusement machines on the other. This tendency is observed in the media, among members of the public, and also with the regulatory authorities in their approach to regulation and licensing. 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.
7. This confusion is evident in the Consultation Paper. Thus the Consultation Paper provides:

‘[Pinball machines, basketball games or alley rollers]... are considered to be based on skill. It is not proposed to prohibit [these games].’ (page 4).

Later the Consultation Paper provides:

‘Aspects of arcade and other games that could be considered in declaring instruments of gaming are:

...

- *the presence of a spinning wheel...*’ (page 11).

8. In NAMOA’s view, these statements do not withstand logical scrutiny. It is certainly not axiomatic that all ‘ball games’ are based on skill. Nor does it necessarily follow that simply because a machine has a spinning wheel that it is based on chance or even predominantly on chance. For example, a game may include a spinning wheel which incorporates a ‘brake’ mechanism by which the player may stop the wheel when a pointer is pointing to the desired section or square on the wheel. Likewise, a game may incorporate a spinning wheel designed such that if exactly the same mechanical force is imparted to spinning the wheel, and the pointer always starts opposite the same square on the wheel,

each time the pointer would stop lined up against the same section or square on the wheel in each case.

9. The *Gaming Machines Act 1992 (SA)* defines a gaming machine to mean a device ‘...designed...or....adapted for the purpose of gambling by playing a game of chance or a game combined of chance and skill’. The inference is that games of skill which have no reliance on chance cannot be ‘gaming machines’ within the legislation. It is noteworthy that the Consultation Paper does not (apart from as pointed out above) deal with this distinction. In determining whether a game is based on skill or on chance (or both), it is notable that even the most skill intensive or practice oriented game or activity (eg. chess, or throwing 3-point baskets at basketball) is subject, in some trivial sense, to an element of ‘chance’ or casuistry. In NAMOA’s view, the distinction between games of skill and games of mixed skill and chance is illusory and should be abandoned.
10. If a game is truly skill-based, it would be expected that a novice would be less successful than an experienced, practised player. In practical terms, if an experienced player is successful 9 times out of 10 (or scores a basket at basketball 9 times out of 10) where a novice can only be successful on average 3 times out of 10, the logical inference must be that the game is a game of skill.
11. This argument applies whether or not the game is one which utilises a device or not. For example, in *Police v Jones, Police v Revesie* [2008] SANC 62, the question for determination was whether the playing of ‘Texas Hold `Em’ poker in pubs and hotels involved the playing of a game reliant upon chance, skill, or both. The finding was that it was a game of chance and skill, but that over time skill was the determinant element in the outcome. The chance element found by the Court was the chance of being dealt a bad hand, something completely outside a player’s control.
12. It is unfortunate that such a clear disparity exists between the treatment of games which involve on the one hand the use of a device and those on the other hand that do not.
13. The Consultation Paper appears directed towards making a distinction between games ‘...that are lawful and those that will not be lawful in South Australia as they are considered inappropriate for minors and pose risks for problem gambling’ (page 3). A number of issues arise from this:
 - (a) On a practical level, there is a considerable practical distinction between a 9 year old and a ‘minor’ of 17½ years old. The latter may have left school, drive a car, and be employed full-time. Logically, it is difficult to justify the treatment of the two being identical.
 - (b) No consideration is given in the Consultation Paper to the location of the machines. Thus for example, at least one of the ‘Road Trip’

machines referred to as having been 'removed from venues in South Australia' (page 7 of the Consultation Paper) was situated in the bar of a hotel (pub), access to which is prohibited to unaccompanied minors (because of the applicable liquor licensing laws). There is also a further distinction to be drawn between, for example, shopping malls or arcades (which are 'public'), and specific purpose amusement arcades where the only activity carried on, and the only reason for visiting, is to play amusement machines. The distinction is important because the capacity to regulate the playing of machines in amusement arcades is considerably greater than that in shopping malls or arcades.

14. The anomaly in the current system is clear in considering a skill-based game, where according to the current legislation there would appear to be no limitation on the maximum value of prizes, including cash prizes, (or tickets redeemable for cash). On the analysis shown on page 4 of the Consultation Paper, a pinball machine featuring a tournament in which a prize is offered for a high score, and which might readily be played by a minor, is not considered to be a gaming machine. On the other hand, a game such as 'Road Trip', situated in a pub or hotel, could not lawfully be placed there, or played by an 18 year old, because it was deemed (perhaps because of 'the presence of a spinning wheel') to be a gaming machine.

South Australia

15. A further factor to be considered is that the Australian industry members are generally nationally based. If South Australia is to introduce its own restrictions and specific regime, NAMOA members and other industry participants such as shopping centre landlords, nationally-based pubs and hotel chains, etc will need to deal specifically with the South Australian regime. Given that the population of South Australia is 1,591,900 (ie. only 7.52% of the whole of Australia), the likely inference is that it may be uneconomic or 'too hard' to comply with the proposed SA legislation, and hence NAMOA members (including the various nationally-based operators referred to in paragraph 2 above) may simply not seek to do any business in South Australia, or to supply machines to venues in South Australia.
16. Whilst gaming regulation is of course a state (rather than federal) matter, it is disappointing that South Australia (the State with the second oldest population) should choose to 'go it alone' to regulate an issue relating exclusively to minors, with no apparent attempt to ascertain the position in other States and Territories, or with the other 92.5% of the Australian population. It is not immediately apparent why the problems supposedly identified in the Consultation Paper as being a problem in South Australia have not also been identified as being a problem in other Australian States and Territories.

Training Minors to Gamble?

17. Upon the release of the Consultation Paper by the then Minister for Gambling, Bernard Finnigan, *The Advertiser* carried a report (on 27 March 2011) in which Senator Nick Xenophon was quoted as saying that a study of 2500 teenagers by Adelaide University revealed a correlation between arcade and video gamers and anti-social behaviour that could lead to problem gambling. The only Consultation Paper which NAMOA has been able to find which might fit the description of a Consultation Paper cited by Senator Xenophon is an academic report published in 2007 'Adolescent Gambling in South Australia' by Ms Chrisi Lambos and Associate Professor Paul Delfabbro following a study by the School of Psychology at the University of Adelaide. The report appears to have been prepared on behalf of the Department for Education and Children's Services for the Independent Gambling Authority of South Australia.
18. This study is in fact not a study of the relationship between arcade games and gaming machines. Nor is it a study of 'arcade and video games and anti-social behaviour that could lead to problem gambling', as apparently reported by Senator Xenophon. Rather, it is a study of adolescent gambling that explores a range of gambling activities, the social context of gambling, peer and family approval of gambling, addiction, behavioural and cognitive theories. The report is 180 pages long and the attention given to the role which arcade and video games play in adolescent gambling (if any) is very minor indeed. For convenience, we have prepared a draft summary of the Consultation Paper. This is attached as Attachment 1.

Voluntary Regulation is the Solution

19. NAMOA and its members do not need to express an opinion on whether there is a link between problem gambling in adult life, and the playing of amusement machines as an adolescent. The link appears to NAMOA to be very unlikely. However, in NAMOA's submission, the appropriate and measured response to such a phenomenon should not be the blanket banning of amusement machines which are capable of rewarding a player with a bar of chocolate, a plush toy, or a modest prize.
20. It is also noteworthy that accordingly to NAMOA members the 'pay-per-play' for skill tester games is invariably either \$1 (80% of games) or \$2 (20%).
21. Given that the maximum amount of the prizes is acknowledged as a significant element in any amusement machine, or skill tester game, NAMOA has in association with its members developed a voluntary code which was implemented in 2010. This is based on a categorisation of redemption machines into four different categories as follows:
 - (a) G – general entertainment – suitable for all ages;

- (b) PG – parental supervision recommended;
 - (c) M – suitable for players aged 15 years and over; and
 - (d) MA – suitable for players aged 18 years and over.
22. NAMOA has tentatively considered what the maximum prize value for each of the above categories and machines should be, and there is ongoing deliberation about that issue. NAMOA now proposes that there be maximum prize values which apply to each of the four categories of machines, as follows:
- (a) G – maximum prize value of \$20;
 - (b) PG – maximum prize value of \$50;
 - (c) M – maximum prize value of \$100; and
 - (d) MA – maximum prize value of \$200.
23. A self-regulation approach such as that described removes the cost and administrative burden from government and the public purse, and places it back on the industry.
24. In NAMOA's submission, such a self-regulated scheme is far superior to the proposal simply to place a blanket ban on redemption machines. Such a ban would represent a regressive step which is out of touch with the place amusement machines have in modern society.

Executive Summary

25. It would be inappropriate to impose a 'blanket ban' on 'redemption' or 'merchandise' machines simply because they reward a player with a bar of chocolate, a plush toy, or a modest prize. It is acknowledged that the maximum amount of prizes awarded by a machine is a significant factor in determining its suitability for minors. NAMOA proposes a code of self-regulation. This would categorise redemption machines into four different categories as follows:
- (a) G – suitable for all ages – maximum prize value \$20;
 - (b) PG – parental supervision recommended – maximum prize value \$50;
 - (c) M – suitable for players aged 15 years and over – maximum prize value \$100;
 - (d) MA – suitable for players aged 18 years and over – maximum prize value \$200.

Self-regulation has the significant advantage that it removes the cost and administrative burden from government and the public purse, and places it firmly back on the industry.



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