

Unlawful Instruments of Gaming Consultation Paper

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Government of South Australia

Department of Treasury
and Finance

1 Introduction

Some amusement arcades have installed arcade games that are very similar to gaming machines. Community concerns have been raised that arcade games that are similar to gaming machines could be:

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

A clearer definition that specifies what aspects of arcade and other games are considered to be unlawful instruments of gaming would provide more guidance to industry and reduce the risks of minors being exposed to gambling.

The purpose of this consultation paper is to seek comments from interested parties on:

- aspects of arcade and other games that should be declared unlawful instruments of gaming; and
- the impacts of a clearer prohibition on certain arcade and other games on industry, the community and problem gambling.

2 Arcade and other games

In South Australia, electronic gaming machines are only permitted in licensed premises, in gaming areas that are not available to minors. However, community concerns have been raised about some arcade games that are available to minors yet may be considered to be similar to gaming machines.

It is important to point out that the purpose of this consultation is not to prohibit all arcade games, but to make a clear 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.

For example, it is *not* planned to prohibit coin-operated ride-on toys which are often found in shopping centres. They operate as a 'ride' when coins are inserted; they do not involve prizes. An example of a coin-operated ride-on toy is shown in Figure 1 below.



Figure 1: Coin-operated ride-on toy – not proposed to be prohibited.

This section describes the following types of arcade and other games as a starting point for consultation:

- ball games, for example pinball machines, basketball games and alley rollers;
- billiards and air hockey tables;
- claw crane machines;
- arcade video games;
- redemption games; and
- merchandiser games.

This list of arcade games does not include all the different type of arcade games; it is intended to provide a starting point for this consultation.

Section 3 discusses the legislation that governs arcade and other games.

2.1 Ball games

Ball games include pinball machines, basketball games and alley rollers.

Pinball machines have a tilted, glass-covered play area in which the player uses mechanical flippers to direct a heavy metal ball towards lighted targets. Basketball games test a player's skill in throwing a ball through a hoop, and alley rollers test a player's skill in rolling a ball towards different targets. The games may be coin-operated, and may or may not have prizes based on redemption tickets.

These games are considered to be based on skill. It is not proposed to prohibit pinball machines, basketball games or alley rollers.

Examples of ball games are shown in Figure 5 below.



Figure 5: Ball games – not proposed to be prohibited.

2.2 Billiards and air hockey tables

Coin-operated billiards, air hockey tables or similar games involve players playing against one another. There may or may not be a prize as part of the game (for example, redemption tickets).

It is not proposed to prohibit games that involve players playing against one another where prizes are not part of the game.

An example of an air hockey table is shown in figure 6 on the next page.



Figure 6: coin operated air hockey table – not proposed to be prohibited.

2.3 Claw crane machines

Claw crane machines contain prizes such as plush toys. The machine is operated by manipulating the claw using a joystick after inserting a coin. The claw then drops down and makes an attempt to grip a prize. While holding onto the prize (if any), the claw moves over an opening in the corner to release its contents. The prize (if any) is dispensed through a chute into a hatch for collection.

Examples of claw crane machines are shown in Figure 8 below.



Figure 8: coin operated claw machines

2.4 Arcade video games

Arcade video games include racing games, battle or fighter games and various other games of skill. The games may be coin-operated and may include redemption of prizes.

Some children's play areas in restaurants have arcade video games that do not require coins to operate, or that may require coins but do not include redemption of prizes.

Examples of arcade video games are shown in Figure 4 below.



Figure 4: Examples of arcade video games.

2.5 Redemption games

Redemption games should be games of skill, rewarding a player relative to their score in the game. The reward often comes in the form of tickets, with more tickets awarded for higher scores. The tickets can be redeemed for prizes.

Some games require the player to push a button to stop a flashing light or a spinning pointer. If the light stops at a specified position, the player receives a prize which may be based on redemption tickets. Examples are shown in Figure 7 below.



Figure 7: coin operated game based on flashing lights or a spinning pointer

2.6 Merchandiser games

A variation on redemption games is merchandiser games which display and dispense merchandise such as the one depicted in Figure 2 below.



Figure 2: Example of merchandiser game. The value of the prize is relative to the player's score and may include items of value such as a Nintendo DS, which is dispensed by the machine.

There are examples of redemption or merchandiser games that have been considered to operate like a gaming machine, for example the game depicted in Figure 3 below. This game was removed from venues in South Australia in 2010.



Figure 3: The 'Road Trip' game was removed from venues in South Australia as it is considered to be a gaming machine.

3 Legislative framework

Arcade and other games that are considered to be electronic gaming machines are currently regulated under the provisions of the *Gaming Machines Act 1992* (the **GM Act**), which provides a mechanism for their removal.

The *Lottery and Gaming Act 1936* (the **L&G Act**) prohibits all gambling, except for gambling that is authorised under other Acts such as the GM Act.

The GM Act is considered suitable for the regulation of gaming machines in gaming venues, while the L&G Act is more appropriate to prohibit unlawful instruments of gaming, such as arcade games that are similar in nature to electronic gaming machines.

The sections of the GM Act and the L&G Act that are relevant to the regulation of arcade games are discussed in the following sections.

3.1 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 GM Act. The GM Act 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 GM Act 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 are currently used for arcade games that are considered to be similar to electronic gaming machines, with objects of value as prizes in lieu of money.

3.2 Legislative provisions of the *Lottery and Gaming Act 1936*

The L&G Act prohibits gambling other than gambling authorised under other Acts. Section 59A of the L&G Act provides the Governor with the power to declare any machine, article or thing an unlawful instrument of 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 L&G Act 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 L&G Act. 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 ‘unlawful instruments of gaming’ under section 59A of the L&G Act.

4 What should be declared ‘unlawful instruments of gaming’?

Section 59A of the L&G Act 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 is the protection of minors from being exposed to ‘soft’ gambling. A secondary objective is clearer guidance to industry on what is prohibited.

The outcome of this consultation process is to have a clearer definition of games that should be prohibited. It is not the intention to prohibit all forms of arcade and other games, only those which could be considered ‘soft’ gambling and are therefore inappropriate for minors.

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

- the value of the major prizes;
- the presence of a spinning reel;
- the level of player control over the outcome of the game (i.e. whether there is an element of chance in determining the outcome of the game).

You are invited to provide your feedback on the consultation questions in the box below, to enable a clear declaration of unlawful instruments of gaming to be developed.

Questions for Consultation

1. What *aspects* of arcade and other games should be considered when declaring instruments of unlawful gaming? Please provide examples, including photographs where possible.
2. What would be the *impacts* on industry, the community and problem gambling of declaring certain arcade and other games to be unlawful instruments of gaming?
3. Do you have any other comments about instruments of unlawful gaming?

5 Next steps

The proposed next steps are:

- after this public consultation, the drafting of regulations under section 59A of the L&G Act that declare which machine, article or thing is an instrument of unlawful gaming;
- public consultation on the draft regulations; and
- proclamation of regulations that take into account the issues raised from public consultation.

Interested parties are encouraged to make a submission that answers all or some of the questions posed in this consultation paper or other matters that are considered relevant to the declaration of unlawful instruments of gaming.

Submissions should be sent by email or post by no later than **Friday 13 May 2011** 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/gamblingpolicy>