

**Duty Of  
Care**

**Duty of Care  
Submission  
To**

**Independent Gambling Authority  
Inquiry Into Barring Arrangements**

**February 2009**

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## Self – Barring

- Form of control of excessive gambling
- Frequently undertaken only in the wake of serious negative consequences that have arisen due to excessive gambling
- NOT a panacea as it requires people who have lost control of their gambling to assume a level of control
- In most states failure of venues with gambling machines to provide self barring or self-exclusion on demand incurs a financial penalty
- The necessity for self-barring programs should give rise to major concerns about the safety of this so-called “entertainment”
- No imposition upon occasional, non-problem gamblers
- Differing expectations from barring contract by gamblers and venues

## Current systems operating in SA...

- Are not user-friendly for venues and gamblers alike
- Predominantly aim to hinder access to gaming
- Are not beyond circumvention
- Do not seek to prevent excluded gamblers from collecting large wins thereby lowering the reward from gambling participation
- Impose onerous responsibilities on gambling venue staff with regard to identifying, monitoring, approaching and removing lapsed barred customers
- Are difficult to police
- Are regulated in such a way that breaches are seldom reported (due to conflict of interest by venues and gamblers alike)
- High rate of compliance in countries where all venue entrants must produce identification – eg the Netherlands

## An ideal system would,

1. Allow gambling access cards to be collected from any gambling venue or authority on presentation of photo ID

2. Allow individuals to obtain one access card that will allow unlimited access to all forms of gambling
3. Would contain a photo of the valid card holder
4. Require gamblers wishing to bar themselves (or people taking out a Family Protection Order) to forfeit their right of access to any/all gambling rooms in the state
5. Enable at risk gamblers to temporarily limit access to gambling venues - before their lives are seriously affected
6. Restrict an individuals access to forms of gambling they find particularly problematic eg lotto only, wagering only, bingo and pokies only
7. Allow the gambler to set the duration of any access restriction they apply for
8. Would be difficult but not impossible to revoke
9. Would facilitate venue operators and program administrators conducting random identification check of customers inside a gambling area (as occurs with the random checking of bus and train tickets).

Duty of Care thank the IGA for the opportunity to make a submission. Sue Pinkerton will be available to speak to our submission at the hearing to be held on the 24<sup>th</sup> February 2009

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## Synopsis

### ***Visitors of Holland Casino*** **Effectiveness of the policy for the prevention of compulsive gambling**

The Addiction Research Institute, commissioned by the Netherlands Gaming Control Board, has studied the effectiveness of Holland Casino's policy for the prevention of compulsive gambling. The study was supervised by a commission of representatives of the Netherlands Gaming Control Board, the Ministry of Health, Welfare and Sport, the Ministry of Economic Affairs, the Ministry of Justice, the Research and Documentation Centre of the Dutch Ministry of Justice, the Netherlands Mental Health Association, and Holland Casino, under chairmanship of board member Dr M.W.J. Koeter. This synopsis lists the study's most important findings.

The study aims to give an insight into the effectiveness of Holland Casino's policy for the prevention of compulsive gambling. The term effectiveness can be used in many ways, and in this study is used as follows:

1. With regard to the degree to which visitors are aware of the prevention policy.
2. With regard to the degree in which the prevention policy actually reaches problem gamblers.
3. With regard to possible behavioural changes as a result of requesting a ban from the casino or a visit limitation.

During the course of the study different methods were used to find answers to the above mentioned research questions regarding the effectiveness of the policy for the prevention of compulsive gambling. Firstly, nearly 1,000 visitors of Holland Casino were interviewed on location with the help of a questionnaire. The information was obtained from a random sample and can be generalised to all Holland Casino visitors. Secondly, 40 problem gamblers were interviewed in-depth about the development of problematic gambling behaviour and the influence and effects of interventions, if any, by care providers, or Holland Casino's prevention policy. Since this group of problem gamblers wasn't selected randomly, the results cannot be generalised. However, they do provide certain indications about the effects of the prevention policy. Thirdly, 10 experienced Holland Casino employees were interviewed about developments within the prevention policy, the current state of affairs and their impression of the policy's effects. Lastly, an analysis took place of the records of 7,000 Holland Casino visitors, who requested a ban or a visit limitation between 1 January 1998 and 1 April 2000.

## *Results*

Holland Casino's policy regarding compulsive gambling has a long history. While some form of prevention policy was introduced when the first Holland Casino establishments were opened, it was not until the start of the nineties that it developed into an integrated policy. An important element of Holland Casino's prevention policy is the option for visitors to request a ban or a visit limitation on a voluntary basis (up to a maximum of 8 visits a month). Because visitors are required to prove their identity on entry, this protective measure can be enforced in all Holland Casino establishments throughout the Netherlands. The enforcement is made possible with the help of OASE, a computer system holding the records of visitors who have requested a ban or visit limitation. OASE is linked to the visitor registration system so that the history and visiting frequency of any visitor can be checked at any time at all Holland Casino establishments.

Holland Casino offers games of chance that carry a risk, just like the alcohol industry offers products that carry a risk. Holland Casino's policy for the prevention of compulsive gambling is unique because in no other prevention policy does the provider of a hazardous product offer visitors the option to request a ban or a visit limitation on a voluntary basis. Holland Casino appears to have found a workable balance between efforts to prevent compulsive gambling and making a profit. It would appear that good visitor care is not an obstacle to a profitable turnover.

### *Prevalence of problem gamblers*

The study tried to determine the prevalence of problem gambling among casino visitors. The SOGS (South Oaks Gambling Screen), an internationally validated instrument based on the DSM-III-R criteria for 'pathological gambling', was used to measure problem gambling. A score of 5 or higher on the SOGS indicates problem gambling. This was the case for 5% of our sample. Because the sample was made up of people visiting Holland Casino on a randomly chosen day, this means that on an average day, at an average Holland Casino establishment, 5% of visitors can be classified as problem gamblers.

For the results of the study to be generalised to all Holland Casino visitors, the results must be weighted on basis of visiting frequency. After this weighting the estimated number of problem gamblers falls to 2.2 %. With 1,8 million visitors, this means that an estimated 40,000 problem gamblers (SOGS 5+) visit the establishments of Holland Casino. It must be stressed that problem gambling is not synonymous with pathological gambling. In the case of relatively rare phenomena (like pathological gambling) the absolute number of false positives will always be greater than the number of false negatives. This means that the estimated prevalence based on a screener (in our case the percentage of problem gamblers) is an exaggeration of the true number of pathological gamblers. Once the percentage of false positives, false negatives and cases with SOGS5+ are known, the true number of pathological gamblers can be estimated with the help of a formula based on Bayes' theorem. In the case of Holland Casino this means an estimated percentage of pathological gamblers (based on the DSM-III-R criteria for pathological gambling) of 1.3%. This amounts to approximately 24,000 casino visitors in the Netherlands.

### *Awareness of the prevention policy*

About half of the respondents indicate that they are aware of the existence of Holland Casino's prevention policy. However, the term prevention policy does cause confusion, as 74% of respondents, when asked, are aware of the option of requesting a ban voluntarily. Visitors are less aware of the option of requesting a visit limitation - 48% know about this option. A minority of visitors (42%) are aware of the brochure '*The Risks of the Game*'. Based on the available data it could be concluded that the brochure had a direct influence on gambling behaviour in 3% of respondents. Because of the limited but positive effects of the brochure, it is recommended that it is more prominently displayed or otherwise supplied to visitors. Perhaps in the future the brochure could be offered to all new visitors, for example as part of a more comprehensive information package explaining Holland Casino's house rules and the rules of games that are on offer.

### *Detecting and approaching problem gamblers*

An important part of the prevention policy is the detection and approach of visitors who show signs of problem gambling. This part of the policy appears to be improving steadily, as over the last few years an increasing number of Holland Casino employees have talked to visitors who display such behaviour. On the other hand, the majority of problem gamblers say they have never been approached by employees, even though they feel they have displayed clear signs of problem gambling behaviour.

### *Reach*

The questionnaire that was conducted among Holland Casino visitors shows that approximately 4 out of 10 respondents with a value of SOGS5+ are reached by the policy for the prevention of compulsive gambling, meaning that respondents have asked for a protective measure to be imposed or have been approached by Holland Casino employees about their gambling behaviour. Of respondents with a value of SOGS5+ who were not reached by the policy (60%), more than a quarter are not aware of its existence. The remainder are aware of the different options offered by the prevention policy, but have not yet asked for protective measures to be imposed.

To increase policy effectiveness the following extra efforts could be made:

1. Increasing awareness of the option to request a voluntary ban or a visit limitation.
2. Improving the detection, approach and encouragement of problem gamblers to modify their behaviour.
3. Streamlining the enforcement of the prevention policy at all Holland Casino establishments.

### *Effect of protective measures*

The prevention policy's effectiveness was also assessed by looking at the effect that protective measures had on gambling behaviour. A small minority thought the protective measures had a positive effect. Even though the effect is only felt temporarily by some of the respondents, protective measures usually provide some kind of break, if only financially. A large percentage of people who request a protective measure to be imposed eventually return to the casino. The majority however are able to control the frequency of their visits either sufficiently or well. This is partly because of the aftercare provided by Holland Casino.

The study shows that in the period leading up to a protective measure being imposed, the visiting frequency increases. People with the highest frequencies are more likely to ask for a protective measure for 6 months than for a year. In many cases a relapse occurs after the period of restriction, i.e. the visiting frequency in the following 6 months shows a sharp increase. Over time the visiting frequency of most people stabilises at less than 8 visits a month. People who requested a protective measure for an indefinite period of time have the lowest and most stable visiting frequencies compared to others.

The reason behind the decision to take protective measures appears to play an important role in the success rate. If the decision is taken after due consideration and is combined with some sort of care or support, the chances of sustained success will increase. In this respect, more attention could be given to the teaching of conversational techniques (to encourage problem gamblers to take action) at the compulsive gambling training sessions that are run for Holland Casino employees. Another useful action could be to intensify and improve relations between Holland Casino and care institutions at a regional level.

### *OASE*

Holland Casino has developed an excellent computer system, OASE, designed to enable the enforcement of requested and imposed protective measures. The system makes it possible to call up, at any time and at any Holland Casino establishment, the individual history of visitors with regard to their visiting frequency. The system can also generate reports of the number of protective measures requested, signs of compulsive gambling, the number of talks with visitors about compulsive gambling, and aftercare effectiveness. However, it should be understood that the system is not primarily designed as a scientific tool, i.e. it is not designed to translate individual developments in gambling behaviour into general trends. In the future, the system could be utilised more efficiently to gain more insight into the prevention policy's effectiveness.

### *Primary prevention*

One remarkable finding is that a relatively large percentage of requests for protective measures are made by visitors who have never had any problems with gambling, but who would like to prevent problems (primary prevention). Others request protective measures to conquer existing problems and break through the cycle of addiction (secondary prevention).

### *Problems at a visiting frequency of less than 8 visits a month*

The study has shown that a relatively large percentage of problem gamblers start experiencing problems with gambling even at low visiting frequencies. 'Low' in this case means less than 8 visits a month, the cut-off point used by Holland Casino, which is also the maximum number of visits allowed when a visit limitation is imposed. It is possible that rather than an absolute number of 8 visits per month, a sudden increase in visits could be a better indicator. This new indicator has now been integrated into Holland Casino's computer system, causing a message to be shown when the visiting frequency (suddenly) increases.

### *Lower stakes*

As a possible protective measure Holland Casino could change the settings of their games. Whilst gaming machines in bars, cafes and amusement arcades are set to a maximum average loss of 50 guilders (\$20) per hour, Holland Casino visitors loose, according to their answers, on average 171 guilders (\$70) per hour. Additionally, Holland Casino's decision to remove low stake gaming tables (minimum stake 5 guilders (\$2)) from their establishments – because they were not profitable – appears to be at odds with the prevention policy. Lower stakes can slow down the addiction process, slowing the rate at which people get into problems (financial or otherwise).

### *No alternatives*

The effectiveness of the prevention policy is enhanced when gamblers do not have access to alternative ways of gambling whilst being banned from Holland Casino establishments. Nearly half of all problem gamblers look for alternatives, finding these in the illegal circuit, abroad or in amusement arcades. Additionally, at present a number of developments in the gaming market could (further) undermine the effectiveness of Holland Casino's prevention policy, such as a possible increase in gambling licenses, product differentiation in amusement arcades, and gambling through the Internet. The aim for the future should be to tune the policy to take into account the policies of other existing and new providers of games of chance, with the goal of producing an integrated policy.

Overview of the study results

Holland Casino visitors (N=972)	Average day at an average establishment	Holland Casino visitors
<b>Prevalence of problem gamblers (SOGS5+)</b>	5.1%	2.2%
<b>Reach of prevention policy</b>		
Been approached at some time	2.8%	1.5%
Have requested a ban at some time	4.9%	2.2%
Have requested a visit limitation at some time	3.0%	1.4%
TOTAL (affected by prevention policy)	9.1%	3.4%
<b>Awareness of</b>		
Prevention policy	46.7%	35.7%
Ban	73.8%	54.2%
Visit limitation	48.1%	27.4%
Brochure	41.6%	27.5%
<b>Problem gamblers (N=50)</b>		
<b>Awareness of prevention policy among problem gamblers (SOGS5+)</b>		
Prevention policy	48%	
Ban	84%	
Visit limitation	54%	
Brochure	42%	
<b>Reach of prevention policy among problem gamblers (SOGS5+)</b>		
Been approached at some time	16%	
Have requested a ban at some time	24%	
Have requested a visit limitation at some time	18%	
TOTAL (affected by prevention policy)	40%	
<b>Experience of:</b>	<b>Positive/negative/other</b>	
Being approached about problem behaviour	63%	19%
Ban	54%	28%
Visit limitation	50%	27%
<b>Frequency of visits</b>	75% of problem gamblers visit casino less than twice a week	
<b>Records (N=6754)</b>		
Between 1 January 1998 and 1 April 2000	9,878 protective measures	
Since 1990	25,000 protective measures	
Type of protective measure	60% ban / 40% visit limitation	
Who?	75% males (average age 39)	
	25% females (average age 46)	

## **Self-exclusion programs for problem gamblers in Australia.**

Publication: Journal of Academy of Business and Economics

Publication Date: 01-JAN-05

Author: Croucher, Rosalind F. ; Croucher, John S.

### **ABSTRACT**

In recent times self-exclusion programs for problem gamblers have experienced a significant increase in patronage in Australia. With the runaway success of these schemes, problems have been encountered in how to deal with the associated complications of implementing them effectively and techniques to improve them. These include dealing with complex legal situations and detection of those in the program who still try to gamble. The specific self-exclusion program discussed involves the largest group of gambling institutions in the country where over 2000 premises are covered. The type of gambling covered is slot machines within Australia, while having only 0.3 percent of the world's population, also being home to 20 percent of these devices.

### **1. INTRODUCTION**

Although there are many definitions of a 'problem gambler', they all have the common theme in that they refer to a person who spends money on gambling irresponsibly that affects themselves, their partner, their family and their friends. For example, according to the Nevada Council on Problem Gambling (2003) a problem gambler is simply one who has an 'uncontrollable obsession with gambling'. Another similarly appropriate definition, quoted by The Australian National University (1999) as originating from the Department of Health in Victoria, Australia, reads that a 'problem gambler can be defined as a person who is spending time and money gambling in a way that may be harmful to them, and potentially, to those around them'. A popular method of detecting problem gamblers is the South Oaks Gambling Screen ('SOGS') described in Lesieur and Blume (1987). SOGS is a questionnaire developed by Dr Henry Lesieur and Dr Sheila Blume to pick out people with serious ("pathological") gambling problems among a group of people receiving treatment for substance abuse. It has since been used for detecting gambling problems in general, but is usually treated with caution since it can only provide an indicator at best.

There has been much research on the issue of problem gambling

excellent general references include early papers by Lesieur (1987) and Lorenz and Yaffe (1986 and 1987). Typical Australian output includes the works of the Australian Institute of Gambling Research (AIGR) (1997) and Dickerson et al. (1997) while the situation in New Zealand is covered by Abbott and Volberg (1991 and 1992) and Alexander (1999). There has also been considerable input regarding the Canadian position as typified by the report of Wynne Resources Ltd (1998) while the USA has produced reports such as those by Baseline Market Research (1992) and the National Council on Problem Gambling (US) (1997) while journal research includes that by Volberg and Stuefen (1991). For consistency, all monetary figures quoted in this paper are in US\$.

The Productivity Commission, an independent advisory body to the Australian government on microeconomic policy, noted in its December 1999 report (Productivity Commission, 1999), that 290,000 Australians were 'problem gamblers' losing about \$2.8 billion annually. The Commission's key findings, summarised by AIGR (2000), included conclusion that problem gamblers lose on average around \$10,000 each per year, compared with just under \$500 for other gamblers. They also claim that the prevalence of problem gambling is related to the degree of accessibility of gambling, particularly gaming machines.

It is widely reported that Australia has around 20% of the world's slot machines despite having only 0.3% of the world's population. In fact, with a \$56 billion annual turnover in Australia on slot machines each year and only 14 million adults, this represents an average of \$4000 per adult with a loss of around \$400. A report by Smith (2003) reveals that Australians have gambled away about \$120 billion during the past 30 years with current annual losses at over \$11 billion. Slot machines now account for almost 60 percent of gambling industry income in the country.

Gambling is largely a state matter in Australia and each one has its own laws governing it. The only exception is Internet based gambling, which is the responsibility of the Federal government (Interactive Gambling Act 2001). Since about half of the country's 200,000 slot machines are in the state of NSW (and therefore about half of all money is lost there as well), an effort was made by the politicians there to deflect the often made criticism that they were the 'gambling state'. Measures were introduced via the Gaming Machine Act 2001 to restrict the numbers of slot machines to their then current levels and even to reduce them marginally. The state's only casino, Star City in Sydney, has 1500 machines while the vast majority of the 1500 registered clubs and over 2000 hotels each have somewhere between fifteen to several hundreds of them.

Quite sensibly, it was felt by NSW government advisory bodies that it was not good enough simply to keep the status quo and so other restrictions were also introduced related to slot machines. Some of these included shutting down their slot machine operations between the hours of 6am and 9am on each day of the week, making it an offence to cash a prize winning cheque, cease all externally visible or audible slot machine advertising and conduct a self-exclusion program.

Other measures either adopted or still under consideration include the placing of visible clocks on the wall in all slot machine venues, limiting the maximum currency accepted by bill acceptors on the machines and slowing down the reels on the machine. There are warning signs on the dangers of gambling and where help can be obtained on every machine. All of these innovations are designed to assist the problem gambler, and indeed any gambler, in taking a serious look at their gambling activities.

In this regard, essentially all gambling organisations in the country have been required to introduce a program of responsible gambling practices. This reflects a public interest concern to contain, or minimise the harm, from irresponsible individual action.

## 2. SELF-EXCLUSION PROGRAMS

Of all these practices, it is the mandatory program of self-exclusion in NSW that is one of the most rapidly growing in the country. Self-excluded players are ones who recognise they have a problem and want to do something about it by having the gambling institution effectively barring them from playing. Specifically, these patrons self-exclude themselves from playing slot machines (sometimes referred to as 'gaming machines' if card machines are included). The programs administered by hotels and registered clubs in NSW are of the most interest since slot machines are by far the major form of gambling available in them. A report on a responsible gambling trial program for NSW Registered Clubs is given by McMillen and Toms (1999).

There are self-exclusion programs operating in other parts of the world, such as the voluntary scheme operated by the Missouri Gaming Commission in the USA since 1997. This scheme has severe penalties for those patrons who breach their agreement since they are arrested for trespassing upon discovery in a Missouri casino. Despite this, about 100 gamblers each month decide to enter the program and by the end of it was reported by the National Centre for Responsible Gaming in 2004 that over 5125 people had joined

the program. There are also self-exclusion programs operating in Canada where for example, all gaming facilities in Ontario have programs where patrons can exclude themselves from all Ontario Lottery and Gaming Corporation (OLGC) venues indefinitely.

'Game Change' is the name given to the NSW hotel industry's harm minimisation program with a major element of it being the conducting of a statewide self-exclusion program. The most innovative and successful implementation is that run by the NSW branch of the Australian Hotels Association (known as AHA (NSW)) where any patron may make a request to be self-excluded. This can be done in one of four ways, usually by first contacting a gaming counsellor directly or via a hotline. There is no cost for participation in the program and the rules are basically the same in that self-exclusion is entirely voluntary since an individual enters on his/her own initiative.

When a patron contacts the organization and arranges an interview time, they will be asked to come in and discuss their situation with a gaming counsellor or a representative lawyer. They will go through a self-exclusion agreement, in the form of a 'Deed', clause by clause, and explain to the patron exactly what the Deed entails. It is a legal document with a set of conditions to which the patron must agree. At the end of the interview, the patron is asked if he/she wants to be self excluded, and is then invited to sign the Deed.

In the case of the program conducted by the AHA (NSW), he/she will be asked to nominate by name, the venue/s that he/she wishes to exclude him/herself from since there are more than 2000 possibilities. (In the vast majority of cases it is less than ten per person.) Alternatively, the patron may simply nominate the districts where he/she lives and/or works. They will also be asked which venue/s, if any, have provided the patron with membership cards, in order that the patron can be removed from venue/s' mailing list.

A self-excluded person cannot play the machines at the venue from which he/she has nominated to be self-excluded. Furthermore, the self-excluded person is not permitted to enter the restricted gaming area for any reason or purpose. However, they are permitted to go to the venue from which he/she is self excluded for the purpose of having a meal or a drink. If the patron does enter the restricted gaming room, or use slot machines at the venue, they will be approached by a staff member who will remind them of their undertakings and ask them to leave the restricted gaming room, and/or the venue.

Typically, patrons in such programs are asked to sign the Deed that will exclude them for between six months and twelve months. Surveys of similar programs in Europe and Canada suggest that periods of up to five years are not unusual. At the end of that time the patron is free either to sign another Deed or simply do nothing. Breaking the Deed before its expiry time is no easy matter and the organization must be convinced that the patron no longer has the gambling problem perceived at the time of signing. This usually means convincing at least one gaming counsellor that this is indeed the case.

The Deed used in New South Wales is by the gambler alone. The Deed is kept by the Hotels Association as a record of the patron's self exclusion. It is in the form of an expression of desire 'to be denied entry from the area in designated venues set aside for gaming purposes or in which there are gaming machines'. It authorises the hotel to keep a photograph of the self-excluded person at the designated venues and to remove the patron in accordance with the Deed and to use reasonable force to do so. It also releases the hotel from actions that could otherwise be brought by the patron.

### 3. LEGAL CONSIDERATIONS

There are important legal and clinical considerations that must be addressed in any self-exclusion program. In the case of AHA (NSW), having signed a Deed as outlined above, the next question is that of enforcement if the patron fails to comply with its terms. If they do so, they have not broken the law as such and therefore are not subject to prosecution.

There are many permutations and combinations of facts that can be imagined. What about wins and losses during the period of self-exclusion where a patron breaches the terms of the Deed? For example, a self-excluded patron enters an establishment and wins a considerable amount of money. They are then 'spotted' by staff who ask them to leave. Is the patron entitled to keep the winnings since they have gained it in contravention of the Deed? Second, a self-excluded patron enters an establishment and loses a considerable amount of money. They then identify themselves to staff and blame them for not recognising them and stopping them gambling. The patron then asks for the return of all their losses. Are they entitled to do so since the establishment does not appear to have fulfilled their commitment to the patron under the Deed? And what if the staff did recognise them but were too busy/uninterested to stop them gambling--does this make a difference to their claim?

And then, what about problems arising when staffs seek to remove a self-excluded gambler from the premises? A section in most Deeds is that 'reasonable force' may be used to remove a self-excluded patron from the gaming room. This term is far from well defined. What if a patron is injured while being removed? What if an innocent bystander is injured when staff is trying to remove a self excluded patron? How does this fit in with the general law on such matters? Are staffs indemnified if they are considered too vigorous in removing a suspected self-excluded gambler, particularly if they are mistaken and cause injury? And what about mistaken identity? Suppose that a patron is incorrectly identified as a self-excluded gambler. He/she cannot prove otherwise at the time and is asked to leave the premises but they refuse. Reasonable force is then used to remove the patron who suffers no physical injury but extreme embarrassment and humiliation in front of their friends, family and others in the process. Is the establishment liable or the staff member involved liable in a damages claim?

All such questions must be considered in the context of the general law--both statute and case law--and in the light of the Deed. Which, if any, of the clauses in the Deed override or modify common law rights?

There is some law on the subject, but it is rather underdeveloped, so principles must be drawn from broader areas of contract and tort law. One example is a case from 2000 in New South Wales, *Reynolds v Katoomba RSL* (2000) Aust Torts Reports 81-545. This involved a problem gambler, Reynolds, who was attending Gamblers Anonymous. He had reached an agreement with the club's secretary manager that his cheques not be cashed on the premises and that he was not to be given credit. The club did cash his cheques and he lost in the vicinity of \$50,000 over a four-year period. Reynolds sued the club in negligence. He lost. It was held that the club did not owe a duty of care to the gambler to prevent harm to him from his gambling. He was a 'free citizen' and 'responsible for his own actions'. The Court of Appeal held that it would only be in extraordinary cases that economic loss caused by gambling would be accepted to be a form of loss for which the law would permit recovery. It was the deliberate and voluntary nature of the activity that took it out of the arena of compensable loss.

But once you introduce the Deed of self-exclusion, is there a basis of arguing that this is in the area of the 'extraordinary case'? There is law developing in the area. Where the hotel knows of the problem and can be said to have taken advantage of this, for example plying the known problem gambler with alcohol (Wolfe, 1995).

These are just a few of the legal aspects among many others that have yet to be tested in law since these programs are relatively new in Australia, but it is only be a matter of time before test cases may arise. That is not to say that the programs are without other problems since their success is also perversely contributing to their downfall in that they are becoming so labour intensive in other ways that they are becoming difficult, if not impossible, to manage.

#### 4. THE CURRENT SITUATION

By 2005 the self-exclusion program at Star City casino in Sydney had over 1500 patrons while Crown casino in Melbourne had over 3000. The AHA (NSW) scheme, in operation since 2001, has already exceeded nearly 1000 gamblers signed from around the state with numbers expected to double within the next two years. Some hotels may have no patrons at all who have nominated them or, in the case of the larger inner Sydney hotels, well over 100 patrons. At the moment the identification system is very much a manual one and consequently prone to serious error. The current technique is that a passport size photograph of self-excluded patrons is sent to each of the relevant hotels. These are placed discreetly behind the bar and it is up to the hotel staff to identify these patrons if they enter the gaming area.

Identification by anyone of a stranger for whom they only have one small photograph is very difficult, and made even more so when they have no idea when or if a self-excluded person may appear among the hundreds of other patrons that arrive on a daily basis. When there are a significant number of self-excluded gamblers to spot the problem multiply in difficulty. If the number gets over, say, twenty, it is essentially impossible to catch them all on every occasion.

To make matters worse, it is not uncommon for a self-excluded patron who is trying to gamble in one of these establishments to wear a disguise. This can be in the form of a wig, glasses, beard, a variety of different hairstyles or a combination of all of these. In extreme cases there have been instances of patrons dressing as members of the opposite sex to avoid recognition. It is clear that this type of manual detection system is rapidly becoming unworkable since it is prone to a high error rate in poor identification.

#### 5. FURTHER RESEARCH

To help rectify the situation, the authors are currently investigating other means of conducting an effective self-exclusion program with

regard to the cost, accuracy, legal implications and acceptance being the main criteria to be satisfied. A pilot survey of twenty-five randomly selected self-excluded gamblers revealed some interesting preliminary statistics. These include the fact that nearly sixty per cent have stolen money, the majority had broken their Deed and there is widespread substance abuse among the participants. When several options were presented to them as a remedy to assist them not to break their Deed, nearly three-quarters said they would wear at least one of an ankle or wrist bracelet or even an implant that would emit a signal if they tried to enter a gaming room.

These aspects, along with biometric options such as face recognition, retina and iris scanning and finger printing are all under consideration. Each of these, however, currently brings its own difficulties. There will have to be a trade-off in cost and feasibility of any system used with the outcomes compared to the current manual techniques.

## 6. REMARKS

Self-exclusion programs have shown themselves to be an effective method of assisting problem gamblers, but its success is also becoming part of its difficulties. The current situation of detecting self-excluded gamblers by manual means is rapidly becoming unworkable due to the large numbers of patrons involved. It may well be that, if nothing suitable can be found, then the status quo may well have to suffice until the situation changes or if technology improves. It may also be that privacy issues swamp everything and render any such solution impotent.

Cooperation with and acceptance by government agencies will be an important aspect of securing endorsement for any goals of a self-exclusion program. Gambling institutions in Australia are strongly committed to having a self-exclusion program that is effective and are constantly striving to find areas for improvement.

In the meantime, it may not be very hard for a self-excluded gambler to sneak in if that is what they really want to do. And working out the implications of such breaches of their self-exclusion arrangements will need to be conducted in the courts, unless government and the gaming industry act to introduce legislation to cover the field. Until such time, the law can only change by the slow and incremental consideration of issues such as those listed above through the courts. This will be a long and painful process.

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Draft. Comments Welcome  
April 28, 2008

### **Self-Exclusion**

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**Abstract:** Gambling jurisdictions around the world have adopted self-exclusion programs in which gamblers can voluntarily agree to be barred from further gambling. The popularity of self-exclusion stems from its aid in combating problem or pathological gambling, along with its non-coercive nature. To bolster the self-control of problem gamblers, exclusion programs combine physical inaccessibility and reward diminution: bettors are supposed to remain (or be kept) away from gambling sites, and the gambling winnings of excluded bettors can be confiscated. Other elements of program design that can affect the workings of a self-exclusion program include the duration of an exclusion, its revocability, and the breadth of gambling activities to which the prohibition applies. Self-exclusion or broader user licensing programs can be helpful for control of vices other than gambling. I argue that self-exclusion should form an integral component of drug regulatory frameworks that offer substantial improvements over drug prohibition.

## Self-Exclusion<sup>1</sup>

Jim Leitzel

### 1. Introduction

In 1989, a casino opened in Manitoba, Canada. No one was forced to gamble there, no one was compelled into being a customer – the usual story with businesses. But the Canadian casino went beyond non-coercion: it provided a mechanism that allowed customers – often the casino’s best customers – to commit to becoming non-customers. Bettors were given the opportunity to agree to be barred from the casino’s premises: they could choose to be “self-excluded.”

From this modest beginning, self-exclusion has spread to gambling venues around the world, including state lotteries and cybercasinos. Provisions for self-exclusion have become part of the licensing requirements for gambling establishments ranging from the United Kingdom to Australia, from Sweden to South Africa. Gambling providers often establish self-exclusion schemes where they are not required, or adopt their own programs supplementing the public mandates. In Missouri, since a Gaming Commission initiative in 1996, more than 11,800 people have agreed to a lifetime, statewide ban on riverboat casino gambling, while additional gamblers have signed up with casino-sponsored exclusion plans.<sup>2</sup>

The popularity of self-exclusion stems from its aid in combating problem or pathological gambling, conditions marked by a focus on gambling so intense as to crowd out most other interests or a continued pursuit of gambling even in the face of profound adverse impacts.<sup>3</sup> Self-exclusion does not solve all problems with compulsive gambling, of course; indeed, it is frequently undertaken by a gambler only in the wake of serious negative consequences from betting. Nevertheless, self-exclusion does help to bolster the self-control of some problem gamblers, and a policy of self-exclusion possesses at least two appealing features: self-exclusion is voluntary on the part of individual gamblers, and it does not impose upon gamblers who are

uninterested in being excluded.<sup>4</sup> The appeal of self-exclusion goes beyond problem gamblers: many of those who volunteer for exclusion seemingly do so for pre-emptive purposes, taking the step before signs of pathological gambling are evident.<sup>5</sup>

The purpose of this paper is to look more closely at self-exclusion, and to speculate about its potential with respect to the control of currently illicit drugs. Section 2 notes the two main features of self-exclusion programs, hindering access to wagering and lowering the reward from gambling participation. Section 3 examines other dimensions of exclusion schemes, such as the duration of exclusion and the scope of the voluntary ban. Section 4 then moves away from gambling to scrutinize vice self-control problems more broadly. Section 5 looks at the connection between consumer licensing and exclusion policies. In the concluding section, I argue that self-exclusion or broader user licensing programs should form an integral part of drug regulatory frameworks that offer substantial improvements over drug prohibition.

## 2. Inaccessibility and Reward Diminution

The precise rules concerning gambling self-exclusion vary from jurisdiction to jurisdiction and among types of gambling, such as lotteries and online casinos. Features that the rules tend to share, however, and that seemingly are fundamental to the effectiveness of self-exclusion, are physical inaccessibility and reward diminution. For bricks-and-mortar casinos, physical inaccessibility means that gamblers on the excluded list are barred from entering the premises, or those portions of the premises in which gambling is conducted. For online wagering, inaccessibility (more virtual than physical) consists of closing the account under which gambling is undertaken for the duration of the exclusion.

The reward diminution element of self-exclusion comes about by preventing excluded gamblers from collecting large wins. To receive a sizable jackpot at a casino, a gambler not only needs to hit the jackpot, but also must provide identification, in person, to the casino officials. (US federal tax law requires documentation for slot-machine payouts of \$1200 or more,

facilitating the comparison of winners' identities with the self-excluded list.) Bettors who have self-excluded, therefore, are unable to collect appreciable jackpots. So self-exclusion from gambling takes away much of the potential monetary reward from betting, in addition to rendering gambling inaccessible – and the absence of monetary rewards significantly diminishes the excitement of gambling.<sup>6</sup>

Neither the physical inaccessibility nor the reward diminution brought about by self-exclusion programs are beyond circumvention. Some self-excluded gamblers return to their favorite betting locales and manage to avoid detection. Nevertheless, many gamblers abide by the exclusion rules – there can be serious penalties if they do not, including being convicted of trespass. In the Netherlands, where all casino entrants must present identification, thereby facilitating enforcement of self-exclusion rules, there is a high rate of compliance.<sup>7</sup>

### 3. Other Dimensions of Exclusion Programs

While inaccessibility and reward diminution mark most gambling exclusion programs, by themselves these features fall well short of characterizing any specific exclusion plan. Detailed provisions along a host of dimensions determine which gamblers will benefit from an exclusion plan, and the extent to which they will be aided.<sup>8</sup>

First, a self-exclusion plan needn't be an all-or-nothing proposition; rather, an exclusion scheme can be employed to license temperate gambling consumption. A person might voluntarily place enforceable limits on the total amount wagered within some period of time – a single session, a day, week, month, or year – and on the amount of any single wager. (Sweden's state-owned internet poker game requires that all players choose total bet and time limits for play over the course of a day, week, and month.) In the Netherlands, casino customers can voluntarily limit themselves to eight casino visits per month. Other limitations that could voluntarily be imposed include a renunciation of gambling on credit, or of access to those games – slot machines or blackjack, perhaps – that a player has found most reinforcing.

Possibilities for full versus partial bans mimic controversies in treatments for substance abuse and other vices between abstinence versus non-abstinent, harm reduction approaches. It may be that for the most committed gambling addicts, anything short of abstinence will not prove sustainable – any attempt to partake in moderation will result in a complete loss of self control. On the other hand, many people appear to be addicted to substances or activities at some point in their lives but are able to consume moderately at other times. For these people, policies such as consumption limits that can promote a shift towards temperance at low cost could be valuable.

Another important dimension of self-exclusion agreements concerns their duration. Should a gambler be able to choose a ban of any length? Alternatively, should bans only be available for a handful of time periods – 24 hours, a month, a year, five years, lifetime? An advantage of the option of short-term bans is that they might prove of use to players who want to control their gambling, but are not willing to do so if they are required to renounce forever their opportunity to wager. People who enter drug or alcohol treatment often do so without any intention of remaining permanently abstinent; rather, they use treatment to corral a habit that they intend to indulge, but that currently is spiraling out of control (or is in danger of doing so). Nevertheless, short-term bans expire, and the gambler might quickly return to pathological forms of gambling; certainly many alcohol or drug users relapse into excessive use when they leave a treatment program.

Breadth matters, too. There is much to be said for a person to be able to exclude from all gambling venues of a given type (casinos, say) with a single application. The default might be just such a broad ban, with the gambler able to opt out of the constraint – that is, to continue to gamble – in selected sites. (The possibility to select exceptions to the exclusion, presumably, would only be made available at the inception of the voluntary ban, to prevent the exceptions from undermining the precommitment feature of self-exclusion schemes.) Missouri provides for a statewide casino ban with a single application, and that application does not itself require a

visit to a casino. Perhaps a gambler should be able to exclude from both casinos and lotteries simultaneously, without multiple applications.

Self-exclusion programs also must deal with situations in which someone who has agreed to be self-excluded changes his or her mind. Exclusion cannot be too easy to revoke, or otherwise the commitment that it provides to bolster self-control is undermined. But provisions can be made for early revocation of long-term exclusions without compromising the overall program. Presumably such provisions would include a waiting period between the indication of an intention to revoke and the restoration of the privilege to gamble, with the possibility to withdraw the application for revocation during the waiting period.

A related issue concerns restoration of consumption privileges following the expiration of a temporary exclusion agreement. It might be sensible for the default provision to consist of an automatic renewal of exclusion. This default setting hinders impulsive return to wagering, while considered sentiments to resume gambling could be honored via a simple process of indicating that renewal is not desired. A more significant barrier, one employed by the state of Illinois's casino exclusion plan, is to require certification from a psychiatrist that controlled gambling is possible before a self-excluded person can have gambling privileges re-instated.

Casinos already exclude people for card counting or other reasons. There might be additional circumstances in which exclusion might be compelled in the absence of the consent of the excluded person. One thorny issue concerns the possibility of excluding someone from vice participation based on requests from his or her friends or family. (Defining legal and moral limits to intervention possibilities is a profound issue for other types of addictive behavior, too.) Should a casino or state lottery take any action when a spouse asks that her husband be excluded from gambling? Should it matter if a gambling venue met with such a request has independent evidence of potentially pathological gambling?

A standard element of pathological gambling recovery programs, as well as in addiction recovery more generally, is for the participant to accept personal responsibility for his or her loss

of control, and for its restoration. Accordingly, there is some fear that exclusion programs will undermine this acceptance of responsibility, by transferring the duty to prevent excessive gambling from the gambler to the casino or lottery operator. Exclusion programs typically highlight that the responsibility for avoiding gambling still remains with the excluded gambler, and exclusion schemes can work adequately without engendering a transfer of responsibility. Nevertheless, lawsuits have been brought against casinos by excluded gamblers and their families for the continued gambling of excluded patrons who avoided the enforcement of the ban.<sup>9</sup>

#### 4. Vice and Self-Exclusion

People are motivated both to satisfy their desires and to make sure that they do not satisfy their desires. The typical source of this tension is the recognition that short-term interests are not identical with long-term interests. As a result, the satisfaction of a short-term interest can come at the expense of long-term interests. But sometimes, it seems, it is hard to give long-term interests their full due, when making decisions in the short-term here and now.<sup>10</sup>

The struggle between these opposed drives tends to be particularly salient for traditional vices such as alcohol, nicotine, other drugs, gambling, and some eating and sexual behaviors. Much of the reason that these goods and activities are associated with vice lies precisely in their connection to lapses in self-control. In extreme cases, addictions develop in which long-term interests seem to be almost completely sacrificed to current urges.

Private policy towards temptations often involves commitment devices to reduce or eliminate the possibility of satisfying short-term desires. Placing an alarm clock far away from the bed is one common tactic, undertaken at a time when one is not exposed to an acute temptation towards laziness. The point of this tactic, of course, is to override the short-run interest rightly expected to emerge in the morning, that of staying in bed.<sup>11</sup>

As with gambling self-exclusion, commitment devices to limit vice participation frequently involve placing barriers to availability. A person might opt not to keep any alcohol, cigarettes, or ice cream around the house. Perhaps a home internet connection will be eschewed, to raise barriers to the consumption of web pornography or cyber-betting.

Other types of anti-vice commitment devices rely on the second dimension of self-exclusion, that of reward diminution. An alcoholic might take the drug disulfiram, which induces nausea in the event that alcohol is consumed. Opioid agonists methadone and buprenorphine help to fill the brain's receptors with drugs that provide much of the same punch of heroin and ease the ability to function normally, while also lowering the hedonic benefit that is available from supplementary heroin. A low-speed internet connection makes surfing the web less fun.

Verbal or mental commitments are common methods of reducing the payoff from vice indulgence. People adopt personal rules – no drinking before sundown, no more than two cigarettes per day – to help bolster their self-control. These rules have the effect of lowering the reward to any current consumption that violates the rule, by increasing feelings of guilt: while there is little objective difference between two and three cigarettes per day, knowledge that one has broken a personal pledge amplifies the perceived difference in rewards.<sup>12</sup> Many such rules invoke complete abstinence, in part because the salience between zero and any positive amount (one cigarette, say) is larger than between any two similarly differentiated positive amounts (such as two and three cigarettes).<sup>13</sup> A public abstinence pledge also raises the costs of consumption, as any open or discovered transgression can harm the pledger's reputation for trustworthiness. Co-opting others into aiding with your self-control difficulties takes many different forms. Software programs can be installed, for instance, that automatically inform someone else of your visits to pornographic websites.<sup>14</sup> Alcohol monitoring devices can record and make available to others (including courts) the extent of your imbibing. Using stickk.com, a website that allows you to stake money to achieve goals such as losing weight, you can harm

your bank account if you fail to fulfill your plan, while designating a referee who verifies your progress.

When personal rules are combined with measures to limit physical availability of the vice good, the standard features of formal self-exclusion programs, inaccessibility and reward diminution, can be mimicked. Nevertheless, few commitment devices in isolation combine both of these control-boosting dimensions. Perhaps the private vice policy most closely-related to self-exclusion programs consists of the stomach-reduction surgery undertaken by some obese people. This operation can reduce the urge to eat, while also raising a physical barrier to large scale food consumption.

Physical unavailability and reward diminution are directly connected when the reward in question concerns anticipated reward, or “wanting,” as opposed to experienced reward, “liking.”<sup>15</sup> Many addictions are maintained by acute cravings in which a person’s desire to consume his or her drug of choice is almost overwhelming, nearly impossible to resist. Nevertheless, the certain knowledge of physical unavailability, knowledge that a craving simply cannot be satisfied, goes a long way towards lessening the power of cravings: what is credibly out of reach might be rendered out of mind. The physical unavailability brought about by self-exclusion can diminish the (forecast) hedonic reward, even in the absence of a casino-style jackpot confiscation.<sup>16</sup>

## 5. Self-Exclusion and Licensing

Mark Kleiman has drawn a useful distinction between negative and positive licences.<sup>17</sup> To employ a concrete case, consider marijuana. A negative marijuana license system automatically grants the right to consume marijuana to any adult; however, the license to use marijuana can be withdrawn if a user misbehaves or causes harm to others under the influence of marijuana. In the United States, alcohol operates under a sort of (very unrestrictive) negative licensing scheme for adults. Everyone who is 21 or older can procure and drink alcohol, but

some people who have acted badly in association with alcohol might be required to abstain under the terms of a probation, parole, or pre-trial release agreement.

A positive license system, alternatively, involves the satisfaction of certain requirements before a license is issued. Acquiring a positive license for marijuana might necessitate passing a test on the dangers of different modes of marijuana consumption and how these dangers differ with the type of marijuana, as well as details of the regulatory regime under which marijuana is controlled. Legally driving a motor vehicle on public roads requires a positive license; a license holder generally must pass an eye test and an exam covering road rules, and demonstrate at least a modicum of driving skill. Driving also contains elements of a negative license, in that a driver's license can be taken away following inappropriate operation of a vehicle.<sup>18</sup> Positive licenses more generally include negative licensing elements: licenses once acquired typically can be revoked following specified misbehavior.

Self-exclusion programs are types of negative licenses. A person on a gambling self-exclusion list attempts to limit or revoke his privilege of wagering. Further varieties of negative licenses in addition to self-exclusion exist for vice-related behaviors. The possibility that an alcohol-involved offender will temporarily lose his right to consume alcohol has already been mentioned. Dram shop laws, which hold alcohol providers responsible for damage subsequently caused by intoxicated guests, can be considered to be a mechanism whereby intoxicated people are automatically placed upon a (self-?) excluded list, with hosts drafted into enforcing the exclusion. Dram shop laws establish a form of negative licensing, where a state of intoxication amounts to a temporary withdrawal of an individual's right to drink.

Enforcement issues are central to the prospects for vice-related self-exclusion schemes or other types of negative licenses. The default setting for adults typically is that they can participate in legal vice (without a license); this default renders it hard to identify those (relatively few) who are self- or otherwise-excluded. The visibly intoxicated stand out, though some bar patrons might well be intoxicated but not visibly so. In the case of gambling self-

exclusion, in the absence of checking the identities of all participants against the excluded list, self-excluders might blend in with the crowd, and their knowledge that this is the case will reduce the commitment provided by self-exclusion. But demanding identification of all vice consumers militates against one of the attractive properties of self-exclusion, namely, that it doesn't impose upon those who do not desire to be excluded.

A requirement for positive licenses for adult vice participation likewise imposes upon vice consumers. Simultaneously, however, a positive vice licensing scheme automatically establishes a self-exclusion system. A decision not to acquire the license becomes a form of self-exclusion, of the barrier-to-availability variety. In other words, positive licensing subsumes an implicit self-exclusion program. A system of fines for those who engage in the vice in the absence of a positive license adds the reward diminution element of gambling self-exclusion to vice licensing more generally.

Positive licenses, beyond age requirements, are rarely required for consumers of legal vices. If a vice is legal for adults, then typically any adult who cares to can indulge as much as he or she chooses, without having to acquire any special qualifications. Alcohol, tobacco, fatty foods, caffeine, gambling, video games, strip clubs, and so on, are available in virtually unlimited quantities to any age-appropriate participants, even those who are woefully misinformed about the vices in question. One exception to the lack of positive licensing concerns drugs that are legally available only by prescription: the acquisition of a prescription provides the positive license to consume limited quantities of the drug.

Sellers of legal vices like alcohol, tobacco, and gambling are ordinarily licensed and required to abide by age restrictions for buyers. These features ease the path towards a positive licensing regime for vice consumers, as sellers already are well-placed to provide the first line of enforcement of an explicit buyer licensing regime.<sup>19</sup> For people who appear sufficiently young, ID's are checked for age verification;<sup>20</sup> the additional effort, then, of checking names against a licensed (or self-excluded) list needn't be all that burdensome.

Technological advances more generally hold profound effects for positive and negative licensing, and for self-exclusion. Credit card-style technology facilitates checking identification against databases, which could be used to keep track of markers of vice consumption (alcohol purchases, say). Again, certified sellers of vice goods can then be enlisted to enforce the buyer licensing system. The electronic cards that are used by participants in frequent player programs operated by casinos could also be put to use to help enforce gambling limits. (A standard feature of gambling self-exclusion, incidentally, is that the excluded must be removed from such loyalty programs, as well as mailing lists for promotional materials.)

Vice, almost by definition, implicates self-control difficulties. People concerned about their self-control problems put substantial resources towards limiting their future vice consumption, and many people sign up for gambling self-exclusion programs. There is no reason to think that the best default setting for adult vice is free availability, as opposed to blocked availability, as long as the requirements for obtaining a vice license are not overly restrictive. Some current vice participants will choose to restrict their access by not acquiring a license. Vice non-participants, too, might want to cement their status: about one-third of adults in the US do not drink alcohol over the course of a year, and nearly as many refrain from all forms of gambling. License possession (or non-possession) can be a more reliable signal of future vice consumption than the verbal indications that the current policies necessitate. The presence or absence of a vice license might be used as a basis of discrimination by insurance companies, employers, and potential roommates or romantic partners.<sup>21</sup> And a vice licensing system could itself be supplemented with a meta-self-exclusion program, whereby people put themselves on a list precluding their future acquisition of a license.

## 6. Licensing Currently Proscribed Vices

A buyer licensing approach perhaps sounds heavy-handed with respect to legal vices, some of which are effectively controlled without licensing, but it could prove helpful in

developing a regulatory regime towards currently illegal substances such as cocaine or heroin. These drugs wreak havoc upon addicted users, so consumers might welcome programs (short of arrest and incarceration) that limit their consumption. Legal channels of supply can also standardize purity and improve quality control, thereby reducing unintentional overdoses, while sellers again can serve to implement regulations. One of the costs of a broad vice prohibition is that it is hard to induce sellers to behave as gatekeepers, restricting sales to kids, addicts, or the intoxicated. An illegal drug seller is unlikely to request that a potential buyer show identification to verify that he or she is eighteen or older. But licensed sellers of legal, controlled products, can be induced more easily into enforcing age and other regulations.

In the case of heroin, many jurisdictions already operate a very restrictive licensing regime, even within the current prohibitory framework. Heroin maintenance centers in countries such as Switzerland, Canada, and Australia, ‘license’ long-term addicts to have access to pharmaceutical heroin and/or to safe sites for injecting – an approach that has demonstrated effectiveness in reducing many of the negative consequences of heroin addiction.<sup>22</sup> The qualification for receiving a heroin license at these centers is both strict and unattractive: it requires the establishment of a verifiable long-term addiction, generally supplemented by previous failure at alternative drug treatment programs. Broader positive licensing schemes, which automatically encompass a self-exclusion regime, have much to recommend them in improving the regulation of heroin and other currently illegal drugs.

Our current prohibition against some drugs sets up a sort of exclusion regime for would-be drug consumers, one that includes both elements of gambling self-exclusion programs, physical unavailability and, via the prospect of arrest along with the uncertain purity and danger of black-market supply, reward diminution. The exclusion program implemented through prohibition is not well targeted, in that it applies just as well to those without drug self-control problems as to those who are struggling with self-control, to those whose drug use involves high social costs as well as to those whose drug use carries no negative social consequences. In some

respects, drug prohibition is perversely targeted, as physical availability of illicit drugs often is greatest for those whose consumption is most problematic. The collateral effects of prohibition, including baleful consequences for policing, inner-city neighborhoods, and civil rights, couple the poor targeting with high cost.

Positive and negative licensing that encompasses a self-exclusion regime offers a better alternative for drug control than does prohibition.<sup>23</sup> Under such a system, adults would have to apply for a license, and demonstrate knowledge of the potential dangers of the drug and the regulatory framework. They would have to choose the maximum amount of the drug that they could purchase over a period (or multiple periods) of time. (Presumably the maximum amount allowed by law would be enough to sustain the most ardent addict, but some limit can restrict diversion into residual black markets.) Users concerned about their own self-control problems might choose a relatively low limit. Sellers would be licensed or the government would operate monopoly outlets, and waiting periods for drug acquisition might be required. (That is, license holders might have to order their drugs in advance, while given the opportunity to revoke the order during the ensuing waiting period.) Drug sales would be taxed, though not prohibitively, and the purity would be regulated. Advertising would be prohibited or controlled and solicitations aimed at non-license holders banned. Individuals who misbehave under the influence of the drug would have their licenses revoked. One could even imagine a requirement of annual evaluations for drug license holders, to determine how they are coping with the drug, and to counsel lower limits, complete self-exclusion, or treatment admission for those whose drug use appears to be getting the better of them. Though voluntary, self-exclusion programs do not have to be passive. In the Netherlands, casino employees identify and approach potential problem gamblers; many are persuaded to self-exclude during the course of the encounter. Drug sellers, likewise, could be co-opted into looking for signs of compulsive use, and initiating interventions.

Among the advantages of the licensing/exclusion system outlined above are that it allows resources to be targeted at problematic drug use, not at the majority of use which is benign. The black market would be undermined, so that for many people, the availability of drugs would decrease. People who are concerned with their own self-control would have options available to limit drug availability – more and better options than those generally available to alcoholics today. And the negative collateral consequences of drug criminalization could largely be dispensed with.

## Appendix: The State of Missouri's Gambling Self-Exclusion System<sup>24</sup>

In 1996 Missouri became the first US state to provide for gambling self-exclusion when the Missouri Gaming Commission established its "Voluntary Exclusion Program." People who enlist in the program are banned from all eleven of the state's riverboat casinos. It is a lifetime ban, with no provision for revocation. The ban does not extend, however, to casinos operated in neighboring states, to gambling operations on Native American reservations, or to the state lottery. Nevertheless, excluded gamblers are likely to find that they will be barred from casinos at other locales, too, due to measures taken by the (private) casino operators.

Each of the riverboat casinos contains a Missouri Gaming Commission office where a gambler can self-exclude. Other offices are available at non-gambling locations. Family members or friends cannot exclude a gambler, though an applicant can be accompanied for much of the process of initiating the ban.

People on the excluded list are supposed to remain away from gambling premises; they can be arrested and charged with trespassing if they are caught in an off-limits location. The responsibility for keeping away from casinos rests with the excluded gambler: "Under the rules of the program, the problem gambler accepts responsibility for staying out of Missouri excursion gambling boats, and agrees that it is not the responsibility of the boats nor the Commission to prevent them from entering the gambling boat."<sup>25</sup>

Casinos are charged with removing excluded gamblers (who are said to be placed on the "List of Disassociated Persons") from any direct marketing campaigns and frequent player programs, and with revoking check-cashing privileges. The names of winners of jackpots above \$1200, who must fill out a federal tax form, are checked against the List. Names on the List are not disclosed to the public; however, trespassing arrests are public information.

More than 11,800 people had signed up to be excluded by the end of fiscal year 2007. The Missouri Gaming Commission is looking into starting additional exclusion programs with limited durations. Among the Commission's other activities are trying to direct problem gamblers and their families towards treatment resources, and educating young people about the perils of addiction.

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## Endnotes

1. An earlier version of this paper served as the basis for Leitzel (2008b); sections 2 and 6, in particular, closely track Leitzel (2008b). Many of the ideas raised here also have appeared on posts on the Vice Squad ([vicesquad.blogspot.com](http://vicesquad.blogspot.com)) blog. Those posts most on point can be located at <http://vicesquad.blogspot.com/search/label/self-exclusion>.
2. See Missouri Gaming Commission, *Annual Report 2007*, and Brokopp (2006). The Appendix contains a brief description of Missouri's "Voluntary Exclusion Program."
3. The American Psychiatric Association lists ten gambling behaviors, such as "chasing losses" (continuing to gamble in an effort to make good previous gambling losses) and withdrawal symptoms, and classifies as pathological any gambler who exhibits five or more of these behaviors. Using a slightly different (and less stringent) standard, the 1999 "Gambling Impact and Behavior Study" found that some two and a half million American adults could be considered to be pathological gamblers, with an additional three million classified as problem gamblers.
4. Self-exclusion thus meets the criteria of vice policy robustness, libertarian paternalism, asymmetric paternalism, or related concepts. See Leitzel (2008a), O'Donoghue and Rabin (2003), Thaler and Sunstein (2003, 2008), Sunstein and Thaler (2003), Camerer et al. (2003), and Loewenstein, O'Donoghue, and Rabin (2003).
5. De Bruin et al. (2001, p. 4).
6. See, for instance, Ladouceur et al., (2003).
7. See the discussion of compliance in Nowatzki and Williams (2002, p. 10).
8. Nowatzki and Williams (2002) suggest some ways in which current gambling self-exclusion schemes might be improved.
9. See the June 20, 2007 post by Walter Olson on the blog *Overlawyered*, at [www.overlawyered.com/2007/06/oz-gambler-loses-sues-casino.html](http://www.overlawyered.com/2007/06/oz-gambler-loses-sues-casino.html) (accessed April 27, 2008). (Gamblers who have not chosen to self-exclude also have sued casinos for failing to recognize and halt their putatively pathological behavior.) It is easy to imagine that absent significant oversight, casinos might have significant financial incentives to encourage the continued participation of problem gamblers. One study in Australia indicated that casinos earned about one-third of their gambling winnings from the 2.1 percent of the population who fit the criteria for problem gaming; see *Australia's Gambling Industries* (1999).
10. For an economic model of this phenomenon, see Loewenstein and O'Donoghue (2005).
11. See Schelling (1996).
12. See Ainslie (1992, pp. 142-162).

13. Schelling (1971 [1960], p. 112).
14. See the November 1, 2004 Vice Squad post at [http://vicesquad.blogspot.com/2004\\_11\\_01\\_archive.html#109935743847274844](http://vicesquad.blogspot.com/2004_11_01_archive.html#109935743847274844).
15. Forecast (wanting) and actual (liking) hedonic reward can differ, and addictions might be driven by the influence of previous consumption on forecast reward. See, e.g., Robinson and Berridge (1993, 2001).
16. See the Vice Squad posts at [http://vicesquad.blogspot.com/2007\\_05\\_01\\_archive.html#5564467542627924231](http://vicesquad.blogspot.com/2007_05_01_archive.html#5564467542627924231) and [http://vicesquad.blogspot.com/2007\\_05\\_01\\_archive.html#1619393672830655713](http://vicesquad.blogspot.com/2007_05_01_archive.html#1619393672830655713).
17. Kleiman (1992, pp. 98-101).
18. Age restrictions in isolation constitute a sort of minimal positive license, where the license is granted automatically when the specified age is reached.
19. See Kleiman (1992, pp. 98-101) and Kleiman (2007).
20. Kleiman (1992, pp. 98-101). In Illinois, casinos are supposed to require identification from any patrons who appear to be 30 years of age or younger.
21. Kleiman (1992, pp. 99-100). In many US states it is not legal for employers to discriminate on the basis of off-the-job legal activities such as drinking and cigarette smoking.
22. Small, Drucker, and Editorial for Harm Reduction Journal (2006).
23. Chapter 3 of Leitzel (2008a) provides further justification for such a regulatory approach towards currently illegal drugs.
24. The information in this Appendix is drawn primarily from Missouri Gaming Commission, *Annual Report 2007*, from the Frequently Asked Questions webpage for the Voluntary Exclusion Program, at [www.mgc.dps.mo.gov/prob\\_gambling/pg\\_faq.htm](http://www.mgc.dps.mo.gov/prob_gambling/pg_faq.htm) (accessed April 27, 2008), and from “Missouri Gaming Commission Assesses and Enhances Voluntary Exclusion Program,” n.d., available at [www.888betsoff.org/alliance/member\\_roles/mgc.pdf](http://www.888betsoff.org/alliance/member_roles/mgc.pdf) (accessed April 27, 2008).
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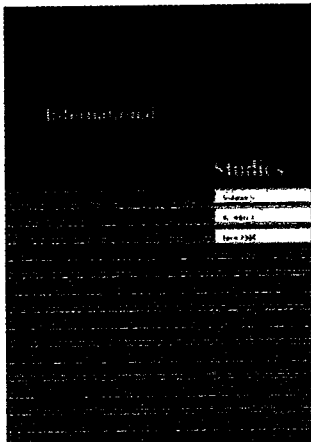
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### International Gambling Studies

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### Casino self-exclusion programmes: A review of the issues

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Online Publication Date: 01 July 2002

To cite this Article Nowatzki, Nadine R. and Williams, Robert J.(2002)'Casino self-exclusion programmes: A review of the issues',International Gambling Studies,2:1,3 — 25

To link to this Article: DOI: 10.1080/14459790208732297

URL: <http://dx.doi.org/10.1080/14459790208732297>

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