

Yes, see Discussion and 29 November Submission.

Yes, see in particular 29 November Submission.

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A distinction based on the presence or absence of a spinning wheel (or indeed, distinction between mechanical and electronic devices) is nonsensical and an example of highly formalistic reasoning: see Discussion and 29 November Submission. A distinction based on the interactivity of the game appears more plausible, if it means that the game closely resembles natural play: again, see Discussion. But I emphasise that, come what may, any such factor should not be a bright-line (or tick a box) rule. A principled, purposive approach must be taken. Illustrative factors may be contained in soft-law guidelines supplemented by appropriate objects and purposes clauses that enable (indeed require) a substantive, purposive approach to this question to be adopted: see Discussion and 29 November submission.

Normal approaches to statutory interpretation should apply. But it is preferable to have the legislative framework articulate the values and protective purposes of the statutes to govern its evolving operation than have to resort to extrinsic materials: see Discussion and 29 November submission.

Although I prefer not to have to rely on extrinsic materials, for the reasons discussed, I think it is clear that the socially highly undesirable nature of 'pokies' is the mischief standing behind their prohibition - and that this remains a key and widely supported approach. So, yes.

No, see Discussion and 29 November Submission.

and likely to find and engage in equivalent online gambling activities. If that is the case, it must be proven.

It is, by contrast, uncontested that the formal ban on poker machines is very widely supported Western Australians. The onus, surely, lies on Crown to demonstrate why that ban should be removed or restricted, on the basis of detailed and cogent expertise evidence and with the support of the Western Australian community.

Finally, if (as one suspects) the real reason for the vigorous attempts by C(w)-5(i)4(4(w)-5(n)1

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Nor does rules-based regulation necessarily promote greater certainty, compared to principles-based regulation. Much will depend on the clarity of drafting and interpretive approach taken to its application (a matter to which I return below). As a general observation, principles-based regulation encourages engagement with the substantive purpose of the law's intervention and enables those principles to connect to, inform and be informed by related norms and doctrines. By contrast, rules-based regulation can encourage formalistic reasoning on the part of not only those administering and enforcing the law, but those subject to its operation.

This not only can contribute to rigidity and uncertainty in the law. It can also encourage unhelpful forms of strategic behaviours, which rest on plausible, literal distinctions that ignore the substance of the law's concern. As Commissioner Finkelstein noted in the Victorian Report into Casino Operator and Licence (the Victorian Report) in Chapter 18, 62 [49]-[59], there are already too many examples of cases where legal advice relating to Crown's casino activities has focused on what may be arguable, rather than what is required in substance for honest, ethical, lawful and prudent conduct. Such strategic, legalistic reasoning is encouraged by rules-based formulations.

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Principles-based regulation can usefully be coupled with 'soft law' guidelines that show how these principles operate in different contexts. This combination may well provide a better means of satisfying demands for certainty on the part of industry stakeholders than incorporating this sort of particularised guidance within the legislation itself, through highly articulated rules. For discussion and examples, see Bant E and JM Paterson, 'Statutory interpretation and the critical role of soft law guidelines in developing a coherent law of remedies in Australia' in R Levy et al (eds),

who provide financial services' (s760A(b)). This ties in to the financial services licensing obligation under s912 A to provide services 'efficiently, honestly and fairly'. While these address financial service providers, further objectives under s760A (d) relate to 'fair, orderly and transparent markets for financial products'. That is, there are objects clauses for both regulated actors, and for the industry in which they operate. The ASIC Act then provides purpose clauses for the regulator:

(2) In performing its functions and exercising its powers, ASIC must strive to:

(a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

(b) promote the confident and informed participation of investors and consumers in the financial system; and

(d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and

(e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and

with protecting intellectual property rights, such as copyright and trademarks, which routinely operate in circumstances involving misleading conduct.

directions regarding enforcement attitudes (such as 'why not litigate', discussed at 425-