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Our Ref:

Gambling Inquiry  
Productivity Commission  
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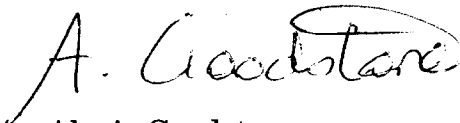
11 May 1999

Dear Sir/Madam

**Re : Gambling Inquiry**

Please find enclosed the Public Interest Advocacy Centre's submission to the Productivity Commission's Inquiry into Gambling.

Yours sincerely  
Public Interest Advocacy Centre



Alexis Goodstone  
Solicitor

**enc**

# PRODUCTIVITY COMMISSION

## Inquiry into Australia's Gambling Industries

### PIAC SUBMISSION

#### 1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to make submissions to this Inquiry and commends the Commonwealth Government for appointing The Productivity Commission as the Commissioners of this Inquiry.

The terms of reference of the Inquiry raise a myriad of important issues, many of which are connected and interrelate. Due to PIAC's limited role in the area of gambling, our submission will be directed to those areas in which we are able to make a useful contribution.

Our main concern has been to extend the debate about 'responsible gambling' to encompass a discussion of the consumer protection issues involved. Currently, governments and the main industry players appear to be primarily concerned with attracting people to play at gaming venues by advertising them as a form of glamorous, safe and fun entertainment. The purpose of this is financial in that both governments and the industry have vested interests in ensuring that people continue to spend money at gaming venues. There is little or no public focus on the damage caused by gaming practices nor on effective ways of containing the sometimes excessive behaviour of some consumers.

Along with other organisations within the community sector, PIAC is concerned at the lack of attention which has been paid to the harm suffered by individuals, groups and the community in general, due to the irresponsible provision of gaming services. The corollary of a focus on promotion rather than protection is a lack of funding and resource support for an independent regulatory body. Such a body could provide substantial regulation of and direction to the ever-increasing gaming industry.

Whilst positive changes are emanating from some individual gaming service providers, this appears to be limited to those which are larger and more reputable. An industry driven approach to regulation can only work if the industry is united. The evidence is the opposite. Whilst there are constructive initiatives occurring in some areas, there is no change elsewhere. PIAC therefore sees it as the role of government to improve regulation across the whole industry.

To date, PIAC's main involvement in the area of gambling has been largely limited to the NSW jurisdiction, through our experience in individual litigation, and also as a participant in the reference group established to guide the policy and program development of the NSW Responsible

Management of Gambling Project. While much of the material we have gathered is anecdotal in nature, the strength of the concerns and validity of the issues it raises remain.

PIAC's submission is limited to discussing the effects of the regulatory structures governing the gambling industry in NSW. We are confident, however, that the issues raised are relevant, to differing degrees, for all States and Territories.

## 2. Lack of Appropriate Action by Current Regulators

It is PIAC's submission that in NSW, the main Government body which is supposed to provide some discipline to the gambling industry is failing in its duties. It appears that, in addition to possible shortfalls in the laws regulating gambling, there is a gap in the regulatory monitoring and enforcement of the law. The focus of the NSW Department of Gaming & Racing ("the Department") appears to be limited to licensing matters and to ensuring appropriate accounting and record keeping. There are some serious matters which the Department apparently does not deal with, despite the fact that the relevant legislation makes provision for them.<sup>1</sup> From anecdotal evidence and our own research, there do not appear to be any cases where the Department has brought proceedings against a registered Club for its actions in relation to individual consumers.

Further, it appears that the Department does not address the social issues raised by gambling in a substantial and considered way. Although there is information about gambling counselling services in the brochures and publications produced by the Department, it is not a primary aim of the Department to focus its work on reducing the number of problem gamblers and assisting those who have already developed a problem. The Department apparently does not handle individual consumer complaints, nor does it monitor compliance with, or even appear to be aware of, relevant consumer protection laws.

### 2.1 Section 9A(5A)

Provisions designed to protect gamblers which fall directly within the Department's responsibility, such as s 9A(5A) of the *Registered Clubs Act* ("the Act"), do not appear to receive appropriate attention from the Department. Section 9A(5A) provides that:

It is a condition of the certificate of registration of a club that the secretary of the club is not to provide a cash advance on the club premises, or permit or suffer a cash advance to be provided on the club premises on behalf of the club, otherwise than as a prize won as a direct or indirect consequence of operating a poker machine in accordance with this Act and the other conditions to which the registration of the club is subject.

It is apparent from matters that PIAC has been involved with, and matters which have been referred to gambling and financial counselling services, that there are systemic breaches of this provision. Despite this, the Department appears to have no complaint handling process in relation to it. Even those complainants who overcome the barriers involved in getting to the Department and making a complaint do not appear to have their problems dealt with in any adequate way. It appears that the Department approaches such complaints as raising licensing issues which then become a

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<sup>1</sup> Section 9A(5A) of the *Registered Clubs Act*, for example.

matter between the Department and the club. The result of this is that there is generally little or no information about the progress of the complaint relayed back to the complainant, and the interests of the individual are neglected if not ignored.

An explanation for the approach taken by the Department in relation to s 9A(5A) may be that there is still some uncertainty about the exact meaning of the provision within the Department. In fact, it appears that the Department takes a very narrow view of what activities it is able to restrict. While such confusion may raise difficulties in the correct application of the law, the continued existence of uncertainty in relation to the legislation is symptomatic of the Department's failure to address the issues involved, or to seek to take any serious action against a club, including prosecution. Where the Department adopts a hands-off regulatory approach, with the most significant action being a letter to club managers asking them to improve their performance, such uncertainty about the meaning of the provisions of the Act is inevitable.

## **2.2 Consumer Protection Legislation**

There are a number of pieces of legislation which provide relevant consumer protection measures to the provision of gambling services. They relate generally to the provision of goods and services, of which the provision of gambling services clearly form a part. They include the *Trade Practices Act*, the *Fair Trading Act*, the *Contracts Review Act* and the *Credit Act*. Such legislation makes reference to prohibitions on misleading and deceptive conduct, unconscionable conduct, false representations, the offering of gifts and prizes and restricting the circumstances and manner in which credit can be offered and provided. In addition, where there are circumstances such as knowledge of a patron's vulnerability or a request to be banned, and possibly more generally, there is a common law duty of care on service providers in relation to patrons.

From PIAC's cases and from the experience of gambling and financial counsellors, it is apparent that a number of providers of gambling services, including registered clubs and hotels, breach these laws on a regular basis. The regulator charged with the responsibility of administering the relevant NSW consumer protection legislation is the Department of Fair Trading. Nevertheless this Department appears, either for resource reasons or as a matter of demarcation, to regard the principle responsibility to lie with the Department of Gaming & Racing. Such might be acceptable if the Department actually accepted that responsibility and was aware of the legislation and sought to ensure compliance with it. However at present it appears that that is not the case.

If the Department were to take a more pro-active approach to consumer protection legislation, it would provide a good starting point for the better management of consumer complaints, as well as a more co-ordinated approach to monitoring the activities of gambling service providers. However, whilst regulatory responsibility remains unclear and resources

inadequate, gambling consumers do not benefit from the existence of relevant consumer protection measures. At present consumers of gambling services with a complaint or dispute have nowhere to go. A central agency with responsibility must be established and its existence and role must be advertised to consumers.

### **2.3 *Role of the Regulatory Body***

There are two other related problems which arise in relation to the role of the Department. The first is the use of voluntary codes of practice, as opposed to mandatory codes, to regulate the gambling industry. The other is the lack of separation between an organisation whose job it is to promote gambling and an organisation whose job it is to regulate gambling.

Looking at the second problem initially, it is clear that any organisation whose duties are both to promote and regulate an industry would find itself in a position of conflict. Nonetheless, this is the position in which the Department is placed. The legislative responsibility to not only regulate the industry in terms of licensing, advertising and management, but also in terms of complaints and possibly litigation, falls on the Department. This does not sit well with a duty to promote the industry and encourage its growth and development.

It is PIAC's submission that unless and until the step of setting up an independent regulatory body is taken, the conflicting roles of the Department will cause internal confusion and a lack of respect for the Department's practices externally.

This conflict in roles contributes to the first problem mentioned above. At present, a voluntary code of practice is being trialed in NSW. The success of any such code is entirely dependent on the continued goodwill of all gambling venues operators and owners. Due to the voluntary nature of the code, the only thing a particular venue has to lose from not abiding by the code is their reputation amongst gambling counsellors and associated organisations. The Department has little or no power to enforce the code, which reduces the effectiveness of the Department as a possible tool in the protection of both the industry and individual consumers.

In addition, whilst mainstream gambling outlets may be happy to set and meet reasonable standards, the quality of a voluntary code is set by the more reluctant members of the industry. The result is a product of the lowest common denominator. The gambling sector is characterised by an enormous range in the size, professionalism and ethical commitment of the service providers. They range from the large, well resourced mainstream providers to many smaller ones which exist on the margins and in which standards are low. It is not an industry where all providers have a commitment to developing best practice. Nor are all providers amenable to positive influence from industry associations. It is therefore unsuited to voluntary regulation. Those who would comply with a voluntary code are not the main source of problems. Those who are the source of the problems would not comply with a voluntary code.

If a mandatory code were to be introduced, it would not only increase the protection available to people who choose to gamble, but also improve the image and public perception of the industry. This would however require a commitment of Government funds beyond that in the current budget. It is our submission that if the Government is serious about taking steps to minimise the harm caused by gambling, it must establish an independent regulatory body which has the power to enforce a mandatory code of practice. Otherwise, the money spent on producing a voluntary code of practice and carrying out this inquiry will be wasted.

We would further recommend that any independent regulatory body have the power to deal with the several issues noted below. We mention these topics in brief as a means of bringing them to the Commission's attention.

### **3. Role of Independent Gaming Commission**

#### *Appropriate Charter*

A new Commission must have a charter which clearly states, amongst other things, that one of its primary responsibilities is to ensure that gambling services in NSW are to be provided without exploiting consumers. The Commission would need to develop principles of operation around that Charter.

#### *Monitoring of Industry and Enforcement of Consumer Protection Provisions*

The Charter would also set out the duty of the Commission to monitor the gambling industry and enforce relevant consumer protection provisions. To this end, the Commission should be given the power to discipline clubs which breach these provisions.

#### *Development and Enforcement of Codes of Practice*

At this stage in the industry's development, a mandatory code of practice is required for compliance and consistency purposes. An independent Commission should be given the responsibility of developing this code, in consultation with the industry, community groups, gambling and financial counselling services, and consumer organisations.

#### *Research on Social and Economic Impacts*

An integral part of maintaining the viability and health of the industry without causing undue harm to individuals and the community is the collection of statistical and other information about the effect of the gambling industry on the community.

#### *Complaint Handling / Dispute Resolution*

The Commission should also have a complaint handling/dispute resolution role which is charged with dealing with individual complaints and to address systemic problems they reveal.

#### *Independent Relevant Community Representation*

An independent Gaming Commission should have representatives who come not only from the industry but also from relevant community and consumer organisations which deal with problem gamblers at first hand. The Commission should play an important role in creating and maintaining links between the different sectors so that there is a healthy flow of information.

#### *Role in Education*

The Commission should be funded to develop and disseminate information about the negative effects of gambling to schools, universities, legal centres and other community centres.



*Provision of Training to Staff*

A standardised program about the problems associated with gambling should be developed which can then be made a mandatory part of any staff training program.

*Banning Orders and Signage*

The Commission should have the power to enforce compliance with banning orders and signage restrictions, with the power to penalise those clubs which breach the provisions.

#### **4. Social Impact Assessment**

The Inquiry's terms of reference indicate that the social impacts of gambling are to be considered in this Inquiry. It is our submission that it is not possible within the context of the current short Inquiry to conduct anything like an adequate social impact assessment of the current level of use of gambling services in Australia. Such an assessment would require extensive and ongoing research over a period of time.

In addition, because of the often hidden nature of problem gambling, it would be important to establish strong links with the relevant community and other organisations which provide services to problem gamblers and their families. This would be an essential element in establishing trust and confidence in the consultation process, as well as developing a network through which information could be provided. If more funding were provided for specialised gambling services then it is likely more data could be collected, and then both the industry and community would benefit from this added information.

Public Interest Advocacy Centre

11 May 1999