



Independent Gambling Authority

Inquiry concerning casino codes of practice Report



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1. INTRODUCTION

1.1 Context

While there have been many benefits to communities, both from the economic activity generated by the development of gambling facilities and the addition to the revenues of Governments, there have also been costs, as some vulnerable members of the community started spending more money than they either intended or could afford. Some spent not only their money, but their families', friends' and employers' money.

Over the past decade, perceptions of the propensity for gambling to be a problem and of the extent to which it is have shifted significantly. In the 1970s and 1980s, the pressure on Governments and Parliaments was to allow a liberalisation of gambling. Governments and Parliaments moved cautiously, but then the predominant (but not sole) concerns related to honesty and integrity. Now, the principal concern is the harm done in the community and, in particular, the need to reduce the extent to which vulnerable individuals are affected by what is a legitimate and legal social activity.

In a number of jurisdictions, Governments' policy responses have included asking the existing regulatory agencies to address the minimisation of harm in the exercise of their independent regulatory discretions. In South Australia, the Parliament has gone further, by entrusting a regulator—this Authority—with a suite of specific harm minimisation instruments in the form of codes of practice for each of four forms of commercial gambling activity—casino, wagering, lotteries and hotel and club gaming.

This report accompanies the first set of codes of practice—those relating to the SkyCity Adelaide Casino—and provides the Authority's reasoning behind them. The Authority has sought, in that reasoning, to articulate certain over-arching principles of general application.

The Authority recognises that these codes are but a starting point on what it expects to be a long journey to making the way in which commercial gambling is promoted, and the places in which it is conducted, safer for the members of the South Australian community and more supportive of the community's current expectations for the minimisation of harm.

These codes are particularly a starting point in respect of certain issues raised in the public consultation on which the Authority has determined to defer consideration until the time when it will review of the codes of practice applying to hotel and club gaming.

One underlying principle is that, to the greatest extent possible, all commercial forms of gambling should be treated in the same way. The casino codes are intended to be a blueprint or template for the other forms of gambling. To the extent that a stakeholder

would seek to have the codes for lotteries or wagering depart from the casino codes, the stakeholder will need to argue either a genuine and legitimate exception or that the principle set out in the casino codes requires revision.

That is not to set the casino codes in stone, or to deny that the development of codes of practice will be a learning exercise for the Authority and stakeholders. However, if it is appropriate to restrain SkyCity Adelaide in the way it depicts players winning, or to require it to disclose the odds when advertising a particular prize, then the same is probably also appropriate for the Lotteries Commission, the TAB and racing clubs, and hotel and club gaming licensees.

1.2 The consultative process

It has taken longer, and been more difficult, to reach the point of finalising this inquiry than the Authority had at first envisaged. This has been in part due to the nature of collective decision making, but also to the rich stream of suggestions and initiatives received as part of the public consultation. Those thoughtful submissions have been appreciated.

The Authority has also appreciated the mature and positive approach taken by SkyCity Adelaide, exemplified in its formal concession that a commercial gaming licence is to be characterised more as privilege than as a right. The Authority looks forward to a similar experience as it deals with the other codes.

2. BACKGROUND

2.1 Legislation and purpose of codes

The *Statutes Amendment (Gambling Regulation) Act 2001* was debated in the South Australian Parliament in the first half of 2001, and received Royal assent on 31 May 2001.

The bill for this Act was developed following a consultative process managed through a committee convened by the then Secretary to Cabinet, the Hon. Graham Ingerson. That consultative process was prompted by public and parliamentary concern with respect to harm caused in the community by problem gambling.

The Statutes Amendment (Gambling Regulation) Act addresses these concerns in a number of ways:

- ◆ direct harm reduction initiatives (such as the abolition of auto-play facilities on gaming machines);
- ◆ changes to institutional arrangements (such as the expansion of the board of this Authority, and the inclusion in the *Independent Gambling Authority Act 1995* of a harm minimisation object);
- ◆ creation of new regulatory instruments directed at harm minimisation (which instruments include the codes of practice with which this report is concerned).

Prior to the introduction to the Statutes Amendment (Gambling Regulation) Act, the South Australian Parliament had considered the concept of advertising and responsible gambling codes of practice for the wagering industry. Sections 47 and 48 of the *Authorised Betting Operations Act 2000* (not in operation at the date of this report) provided for codes of practice for the major betting operations licensee (TAB) and licensed racing clubs.

These sections were the basis for codes of practice provisions to be inserted in the *Casino Act 1997*, the *Gaming Machines Act 1992* and the *State Lotteries Act 1966*.

In adapting the Betting Operations Act model, a decision was made to expand the concept of a responsible gambling code of practice and to provide for parliamentary review of the codes. The consequence was that amendments were required to the Betting Operations Act. The other three Acts had inserted into them provisions almost identical to those in the Betting Operations Act.

On 1 October 2001, the responsible gambling codes of practice provisions relevant to the Gaming Machines Act came into operation. This was possible because a voluntary code of practice, which was already in place for the gaming machines industry, was capable of modification to be imposed as a transitional code of practice. None of the other codes of practice provisions is, at the time of writing, in operation. The operation of these provisions has been suspended to enable the Authority time to inform itself and conduct the appropriate community consultations to enable a proper decision to be made.

The relevant provisions of the Casino Act say:

41A. Advertising code of practice

It is a condition of the casino licence—

- (a) that the licensee must adopt a code of practice on advertising approved by the Authority; and
- (b) that the licensee must ensure that advertising by the licensee conforms with the code of practice approved under this section.

41B. Responsible gambling code of practice

It is a condition of the casino licence—

- (a) that the licensee must adopt a code of practice approved by the Authority dealing with—
 - (i) the display of signs, and the provision of information, at the casino relating to responsible gambling and the availability of services to address problems associated with gambling; and
 - (ii) the provision of training to staff relating to responsible gambling and the services available to address problems associated with gambling; and
 - (iii) any other matters designed to reduce the incidence of problem gambling determined by the Authority; and
- (b) that the licensee must ensure that operations under the licence conform with the code of practice approved under this section.

41C. Review and alteration of codes

- (1) The Authority must, in consultation with the casino licensee, review the codes of practice referred to in this Division at least every 2 years.

- (2) The Authority must seek and consider written submissions from the public when reviewing a code of practice under subsection (1).
- (3) The Authority may, by written notice to the licensee, require a code of practice adopted under this Act to be altered as set out in the notice.
- (4) Before the Authority makes a requirement under subsection (3), the Authority must, unless it considers it contrary to the public interest to do so—
 - (a) give written notice to the licensee of the proposed requirement; and
 - (b) consider any representations made by the licensee about the proposed requirement within 14 days after the notice is given or a longer period allowed in the notice.

41D. Codes of practice and alterations to be disallowable by Parliament

- (1) On approving a code of practice under this Act or requiring an alteration to be made to a code in accordance with this Act, the Authority must forward a copy of the code or alteration to the Minister.
- (2) The Minister must cause a copy of the code or alteration to be laid before both Houses of Parliament as soon as practicable after receiving it.
- (3) Sections 10 and 10A of the *Subordinate Legislation Act 1978* apply to a code, or an alteration to a code, laid before Parliament under this section as if it were a regulation within the meaning of that Act.
- (4) A code of practice or alteration to a code of practice may provide for the whole or any part of the instrument to come into operation on the day on which it is adopted by the licensee or on a later day, or days, specified in the instrument.

It is clear from these provisions that these codes of practice impose what are effectively licence conditions under the Casino Act, which are subject to compliance action by both the Liquor and Gambling Commissioner and the Authority.

While the initial approval, or subsequent amendment, of a code of practice becomes operative on the day the Authority makes its decision, that approval or amendment is required to be laid before both Houses of Parliament and is subject to disallowance by either House. This review provision provides an opportunity for a robust public and political debate over the contents of codes of practice, which the Authority welcomes.

2.2 Process for determining codes of practice

The Authority determined that it would be of great assistance in determining the contents of codes of practice to seek submissions from interested parties and receive them at a public hearing.

To facilitate a structured approach, the Authority sought an initial submission as to a workable draft from the operator.

This draft was then incorporated in an information document which was made available in both physical and electronic form by mail and on the Authority's web site. On 27 October 2001, an advertisement was published in the *Advertiser* seeking submissions, and giving notice of a date of public hearing on 28 November 2001.

On 28 November 2001, a panel of six members of the Board of the Authority convened to receive submissions in person and to afford the operator an opportunity to comment.

Following those submissions, the Authority deliberated in private, identifying 54 issues for decision in relation to what should be included in the advertising and responsible gambling codes.

In relation to issues where the Authority, on initial evaluation, was considering making a finding adverse to the expressed views of the operator, the operator was afforded a further opportunity to comment. These comments were taken into account by the Authority in coming to its final determination.

2.3 Reasons for convening an inquiry

Under the Independent Gambling Authority Act, the Authority has the power to convene an inquiry. This gives the Authority the capacity to summon witnesses and send for papers. It also obliges the Authority to provide a report to its Minister which, in the normal case, will require tabling in Parliament.

Accordingly, not only does the inquiry process afford the Authority the maximum capacity to inform itself, but it is also a highly transparent process. In view of the significant community interest in responsible gambling and harm minimisation issues, the Authority believes that its consultative processes must be transparent.

Although there will be times when people providing information to the Authority will only be prepared to do so in private, and although the candour required for effective decision making for effective decision will require the Authority's deliberative process to be confidential, the Authority believes that the requirement to report in detail to Parliament on its processes imposes an important discipline which is necessary to retain the confidence of the public.

The Authority is mindful that it has a greater prospect of success if there is public confidence in the processes that have been undertaken.

2.4 Terms of reference

For the purposes of the public consultation, the following terms of reference were published:

The purpose of the inquiry is—

- To receive, in public, draft advertising and responsible gambling codes of practice from SkyCity Adelaide Pty Ltd, as licensee of the casino, along with a public explanation of their perceived role and purpose, and the basis on which they were prepared;
- To receive, in public, submissions from members of the public, including groups with a special interest in the minimisation of harm associated with gaming or responsible gambling, concerning what should constitute a code of practice in general and in relation to the draft before the Authority, within the constraints of the legislation;
- To allow SkyCity an opportunity to respond, in public, to the public submissions;
- To test the claims made in public explanations or public submissions—

with a view to subsequently approving the codes of practice for the purposes of sections 41A and 41B of the *Casino Act 1997*.

2.5 Submissions received

The Authority received submissions by or on behalf of the following.

- No Pokies Campaign Inc (Hon. Nick Xenophon MLC);
- The gambling taskforce of the South Australian Heads of Churches;
- Adelaide Central Mission;
- Ms Julie Gunn of the Department of Human Services;
- Mr Michael McCabe, social worker;
- Australian Hotels Association (SA).

Copies of the written submissions have been placed on the Authority's web site—www.iga.sa.gov.au.

2.6 Public hearing

A public hearing was convened at 12.00 midday on Wednesday 28 November 2001.

The Authority members present were David Green (presiding member), Juliet Brown, Jane Jeffreys, Lynette Rasheed, Wayne Stokes and Dale West.

Mr James Bews-Hair and Mr Paul Mason represented SkyCity Adelaide Pty Ltd (the operator).

Hon. Nick Xenophon addressed the Authority on the No Pokies Campaign submission.

Mr Stephen Richards addressed the Authority in relation to the submission of the gambling taskforce of the South Australian Heads of Churches.

Mr Mark Henley addressed the Authority on behalf of the Adelaide Central Mission.

2.7 Post-hearing deliberations

Following a structured review of all the issues raised in the written submissions and at the public hearing, the Authority reached an in-principle provisional position on the contents of the codes of practice.

To the extent that this position was contrary to submissions that had been made by the operator, the Authority afforded the operator further opportunities to comment, by way of letter.

The Authority received comments in writing in respect of each issue so identified, and those comments were then taken into account in reaching the final decision as to the contents of the codes of practice.

This process applied only to matters actually included in the codes of practice approved at this time. Other matters discussed in these reasons of decision have not been referred to SkyCity as its interests are not presently affected. Should these matters ultimately be considered for inclusion in the casino codes, the operator will

consulted in a comprehensive manner consistent with good practice, and as required by law.

3. GOVERNING PRINCIPLES

3.1 The codes as licence conditions

3.1.1 The desirability of certainty

It is a statutory requirement that the operator adopt each code of practice and conform to the code of practice. This effectively makes the terms of the casino codes terms of the licence. A breach of a code of practice is a failure to conform with the code, and therefore a breach of the licence condition.

It goes without saying that it is important to the holders of major licences, such as a casino licence, to have certainty about their compliance requirements.

Accordingly, the Authority is keen to ensure that these codes of practice are expressed in plain clear language, and that there can be no confusion or room for doubt as to the obligations of operators under these codes of practice.

Another consequence of the codes of practice being effective licence conditions is that the codes of practice can only impose obligations on the operator.

The Authority was invited to frame the codes so that certain matters would be referred back to the Authority on an on-going basis. For example, it was suggested that the responsible gambling code require training programs to be approved by the Authority. The Authority is concerned that to take up such opportunities could constitute a breach of the legal principle that a power should only be delegated when there is clear authority to do so. The process of putting in place a code of practice involves not only approval by the Authority, but also review by Parliament. If a code requirement allowed the Authority to make the effective decision with respect to a particular matter without reference to Parliament, this would be an infringement of that principle.

As a matter of good practice the codes should be complete on their face. The operator should be able to read the code of practice and understand exactly what it is the operator is obliged to do. It is therefore not appropriate for a code of practice to purport to confer a power on a third party. While the distinction may appear semantic, it is one thing to oblige the operator to consult with or obtain the opinion of a person in doing something. It is an entirely different matter for the operator to obtain the consent or approval of a third party. The Authority has attempted to adhere to these principles in formulating the codes of practice.

3.1.2 Enforcement and penalties

Because a breach of the casino codes would be a failure to conform with a licence condition, the full weight and range of disciplinary measures set out in the Casino Act apply to breaches of the codes.

Some concern was expressed at the public hearing that the casino codes themselves should contain penalties for breaches. The argument was that it is easier for regulators to impose small penalties for small breaches than to try to deal with imposing harsh penalties for what may be regarded as relatively trivial infractions.

There is no legislative warrant for penalties in the nature of on-the-spot fines for breaches of the code of practice. However, within the range of disciplinary options there are compliance notices, censures and penalties.

It would not be appropriate for the Authority to give an opinion in advance as to what a particular breach of the code of practice would incur as a fine. To do so would be to prejudge an unknown situation.

However, the Authority is confident that the range of actions will ensure that there is no regulatory reluctance to enforce compliance with codes of practice.

3.1.3 Matters dealt with under other legislation

In the course of the discussions on the contents of the codes of practice, a number of submissions have been made that relate to matters which are also dealt with under other legislation. For instance, the Commonwealth *Trade Practices Act 1974* contains general provisions restraining corporations from misleading and deceptive conduct. Other submissions have touched on issues such as work place safety, which are also the subject of state and federal legislation.

The general principle which the Authority has adopted is to avoid duplicating the requirements of other legislation unless there is an identified specific need to do so.

One such justification is that the prosecution of misleading and deceptive conduct matters is something committed to other authorities. With the greatest of respect for the ACCC's prosecution priorities, it may not be acceptable to a casino regulator to merely observe a casino operator engaging in apparently trivial, but equally patent, misleading and deceptive conduct.

3.1.4 Layout and style

The preferred layout and style for the codes of practice mirrors that used by the Authority in the Bookmakers' Licensing Rules and is very similar to that used in legislation.

3.1.5 An evolving process

There is a number of issues raised in this consultation which are common to all gambling operations. In discussing these issues, the Authority has sought to give guidance to other gambling providers as to the approach it will take in relation to the codes of practice for wagering, state lotteries and, ultimately, gaming machines.

The Authority intends to engage in public consultation with each code of practice that it approves or reviews and, if a matter arises in the course of a particular consultation which affects more than one code of practice, to broaden the scope of the process to ensure that the codes of practice are kept as uniform as possible.

In addition, the Authority has in some cases expressed a preliminary opinion that deferred final consideration of an issue, with a view to returning to the issue when all of the relevant gambling providers are involved.

3.2 The harm minimisation object and the sustainable industry object

Section 11(2a) of the Independent Gambling Authority Act was inserted by section 35 of the Statutes Amendment (Gambling Regulation) Act, with an effect from 1 October 2001. It says:

- (2a) In performing its functions and exercising its powers under this Act or a prescribed Act, the Authority must have regard to the following *objects*:
- (a) the fostering of responsibility in gambling and, in particular, the minimising of harm caused by gambling, recognising the positive and negative impacts of gambling on communities;
 - (b) the maintenance of a sustainable and responsible gambling industry in this State.

This provision was referred to in submissions made to the Authority on 28 November 2001. By requiring the Authority to take into account the object set out in paragraph (a), the Authority will for the first time have the capacity to take into account social concerns with the prevalence of gambling in the community. In the absence of this provision, the Authority has been obliged by law to exercise its discretions within the strict confines of the integrity of gambling operations and the suitability of the operator.

Paragraph (b) of the section requires the Authority to recognise that regulated gambling is a legal activity and that the industry has a right to reasonable expectations of ongoing commercial viability. The paragraph also alludes to the reality that an industry with reasonable commercial prospects is more likely to behave in a responsible fashion.

In responding to some of the submissions made, the operator suggested that requirements of the codes of practice which would reduce the operator's profitability were in conflict with the object set out in paragraph (b).

3.3 Basis on which non-agreed requirements should be imposed

While the Authority requested the operator to produce a draft code of practice, and has deliberately sought to structure the consultation process around that draft, the contents of the code of practice are ultimately a matter for the Authority to decide.

While it would be highly desirable for the code of practice to be derived entirely by consensus, there will be circumstances when the Authority is satisfied the code of practice should contain an obligation with which the operator does not agree. If that were not the case, there would be no need for the Authority to be involved in the settling of the code of practice nor for the code of practice to be mandatory.

Nonetheless, the Authority remains mindful at all times that the operator is engaged in a business. The operator has paid a significant sum for the opportunity to operate the business, and has significant capital and human resources involved in the operation of that business. The operator has shareholders who also have legitimate expectations of a return on their investment.

Accordingly, the Authority has been, and will remain, at great pains to ensure that the operator is given the opportunity to respond to proposals with which it may not agree, and to propose an alternative. Of course, the Authority recognises that the operator is under no obligation to agree with proposed harm minimisation measures.

By the same token, the Authority is not obliged to obtain any stakeholder's agreement to a code. If, after giving all submissions their due weight, the Authority believes a harm minimisation measure is required, the Authority will proceed to impose it.

Where there is evidence, the Authority will use that evidence as a basis for its decisions. Because of the immediacy of the gambling problem in the community, there will be some occasions when action is warranted, despite the absence of evidence. On those occasions, to the extent that there is a want of evidence, the Authority will rely on the judgement of its members.

4. ISSUES

4.1 Mandatory warnings in advertising

The Authority received strong submissions that advertising of the casino should include a mandatory warning about the nature of gambling.

The Authority notes that gambling providers actively position their business as providing a legitimate entertainment activity. It is therefore not unfair to characterise what gambling providers offer as "an opportunity to enjoy oneself by losing money".

The Authority is not aware of any promotion or advertising of gambling which describes the activity as such.

Accordingly, the Authority is satisfied that some sort of warning message would be an appropriate complement and counterpoint to the promotional message encouraging people to gamble.

The Authority also accepts that the operator of the Adelaide Casino is in direct competition with hotel and club gaming machine licensees. The Authority accepts that it should not impose such an obligation on the casino operator in isolation.

To do so would possibly give the casino operator's competitors an unfair advantage.

Further, to impose a limitation on the 800-odd machines in the casino, would still leave unfettered the 15 000-odd machines outside the casino which, by their nature, are in much closer proximity to the general community.

Accordingly, the Authority has decided to put all gambling providers on notice that this matter is on the agenda for consideration and decision by the time the Authority completes its initial program of approval and review of codes of practice.

When the time comes, the Authority will expect gambling providers to be in a position to either accept the proposition or to show cause to the Authority why it would be inappropriate or ineffective for a mandatory warning to be included in all advertising.

In addition, the Authority will expect each gambling provider to address, in a substantive way, how those warnings should be formulated.

4.2 Disclosure of the odds in advertising

It was also argued persuasively to the Authority that when prizes are advertised, the odds on winning those prizes should be disclosed or meaningfully explained.

This suggestion was strenuously resisted by the operator on a number of bases, including that it would put gambling providers in a position of competing for business on the basis of price. The operator has also suggested that to impose this obligation on it in isolation would put it at a disadvantage.

The Authority notes that, in the general community, products are often differentiated on price. The Authority further notes that widespread knowledge of the nature of gambling product has not always drawn players to the lowest priced product. Much of the discussion on the disclosure of odds at the public hearing related to the offering of jackpot prizes. The offering of jackpot prizes, in particular the ability to give away motor vehicles, is not an option for the hotel and club gaming machine industry. It is almost entirely the province of the casino operator (although the Authority does accept that certain lottery products have elements of jackpot in them).

Accordingly, the Authority is of the view that this issue can be distinguished from the broader issue of mandatory warnings, and has determined that the code of practice should oblige the disclosure of information about the odds of winning where a prize is advertised.

SkyCity was invited to submit a workable formula for the disclosure of odds, but declined. In the course of further, final consultation, a formulation developed by the Authority was provided to SkyCity and accepted.

The requirement to disclose the overall return to player or odds of winning in relation to the advertising of a prize has been incorporated in the advertising code of practice as clause 5.

4.3 Advertising and recovering problem gamblers

A specific submission was made to the Authority that the advertising code of practice should prohibit a licensed gambling provider from encouraging recovering problem gamblers to return to gambling.

The Authority, agreeing in principle with this proposition, referred it to the operator and received qualified acceptance of the proposition.

The draft codes submitted by the operator already included an undertaking not to explicitly or exclusively direct advertising to vulnerable or disadvantaged groups. The Authority believes that recovering problem gamblers could be characterised as one of those groups. However, in order to make the point clear, the Authority has included a reference to recovering problem gamblers in the relevant provision, being clause 4(c) of the advertising code of practice.

4.4 Selection of media, time and technique of advertising

A number of submissions to the Authority suggested prohibitions on the time advertising could be shown, the media (for instance, billboards) which should be available for gambling advertising and techniques for promoting the product (for instance, the use of particular sounds).

The ostensible purpose of these proposed prohibitions was to protect vulnerable groups (including children) from exposure to the gambling message.

The Authority has given this matter some consideration.

The Authority has not been satisfied that constraining advertising from “G” time, and the removal of advertising from external signs will prevent children from becoming aware of the existence of a casino or the opportunities for gambling.

The Authority is much more concerned that whatever gambling message is put out in the community is an appropriate and safe message.

The Authority notes that the draft code of practice submitted by the operator would have restrained it from advertising during “G” time, but with a carve-out for news, sports and current affairs programs. In many respects, the carve-out makes the exclusion of “G” time an insignificant impediment. The Authority is satisfied that to include in the approved code of practice a prohibition on advertising during “G” time could have the counter productive effect of endorsing it as a valid harm minimisation measure.

Accordingly, the Authority has removed from the approved code of practice any restriction on the timing of advertising, and has declined to insert any restrictions on the use of particular sounds or the media through which advertising can be disseminated.

The same principle would apply to codes relating to other providers of gambling.

In doing so, the Authority is not saying that gambling providers should advertise during “G” time or otherwise act in any way they believe to be irresponsible.

The Authority notes that these issues will be a good subject for future research.

4.5 Advertising and inducements to gambling

A number of submissions related to loyalty schemes.

The Authority accepts that, while loyalty schemes may have a legitimate role to play, there is a significant risk that particular loyalty schemes will exacerbate problem gambling.

In particular, the Authority is sympathetic to the suggestion that loyalty schemes should not reward gambling turnover, or turnover over a particular threshold. In addition, the Authority sees real risks with in-venue rewards being in the form of free or discounted alcohol.

However, the Authority was not, at the time of the hearing, provided with sufficient detail of the operation of existing loyalty schemes to fully understand the

implications. In addition, the Authority is aware that loyalty schemes operate in both the hotel and club gaming industries as well as in the casino, and that the fairness and parity issues referred to in relation to advertising also apply.

As with the Authority's position on mandatory warnings, the Authority puts both the casino operator and gaming licensees on notice that inducements to gambling in the form of loyalty schemes are to be the subject of review. Licensees should note the in-principle positions referred to.

4.6 Training requirements

The core training provisions in the responsible gambling code of practice have been reworded from the draft submitted by the operator. The operator has been consulted, and has not objected to the core re wordings.

Submissions were made to the Authority that training should be required to be accredited or otherwise approved.

It would not be appropriate for the code of practice to require the Authority to approve training courses, not only because this would be a delegation of power, but because the Authority does not have the particular expertise required to make the necessary assessments.

It is desirable that there be some independent oversight of training courses, to ensure that they do meet the requirements of the code of practice. The Authority consulted with SkyCity as to accreditation. The operator responded that it had no present intention of having its training programs accredited, and cautioned that such a requirement could prove counter-productive due to implementation issues.

However, the operator suggested that its training programs could be subject to independent audit. The Authority accepts this submission, and has incorporated a requirement for audit as clause 5(5) of the responsible gambling code of practice.

4.7 Publication and review of harm minimisation materials

Submissions to the Authority included that harm minimisation materials should be subject to approval by the Authority, and that expert external assistance should be obtained by the operator in formulating them.

For the same reason as the Authority has declined to require approval of training requirements by it, it is not appropriate for the operator to be required to obtain the Authority's approval for harm minimisation materials.

Likewise, the Authority is not satisfied that a case has been made that the operator should be required to obtain external expert assistance.

However, requirements of transparency dictate that the operator should be required to publish harm minimisation materials on its web-site and that all of its harm minimisation materials be filed, from time to time, with the Authority.

These requirements have been included as clause 4(6) of the responsible gambling code of practice.

These views are not concluded views of the Authority. On review of the operations of the casino codes, it may be that the harm minimisation materials are inadequate, in which case it may be necessary for them to be amended.

The Authority did consult with the operator on subject of using “new media” for more innovative delivery of the harm minimisation message. While the Authority supports the use of new media and encourages the operator to be as innovative as possible, it also accepts the operator’s submission that it has introduced a range of harm minimisation materials and messages which previously did not exist, and that there is not yet a case to impose this as a mandatory requirement of the casino codes.

4.8 Problem gambling warnings and automatic teller machines

The Authority has accepted submissions that automatic teller machines in the immediate vicinity of the casino should carry a problem gambling warning, and that such warning should also be associated with any place, in the casino, where funds can be obtained by electronic funds transfer.

This has been reflected in the definition of “ATM” in clause 4(4) of the responsible gambling code of practice.

A submission had been made that there should be no automatic teller machines in the casino. The Authority understands that there are no ATMs in the casino. There are ATMs in the Marble Hall, adjacent to the casino, but these machines are not within the licensed premises. In the case of these machines, the Authority understands that the casino operator will be able to comply with a code requirement to place a helpline sticker on or adjacent to these ATMs either as the legal occupier of the space or otherwise by arrangement with the owner of the machines.

With respect to proximity, the Authority notes from its own observations that these machines are a significant distance from the gaming area. It understands that the usual argument for the exclusion of automatic teller machines from gaming venues relates to the easy availability of additional cash, and the need for there to be a break in play. The Authority is satisfied that the present location of ATMs in the vicinity of the Casino allows for a break in play.

With respect to submissions made concerning problem gambling warnings, the definition of “helpline sticker” in clause 4(7) of the responsible gambling code of practice has been prepared so as to require the name and telephone number of a widely available gambling referral service to be identified by its usual name.

This requirement was not opposed by the operator, and the Authority believes that this formulation will achieve the desired end.

4.9 Requirements for informal barring processes

The casino codes as proposed included provisions for exclusion of patrons in a process parallel to the statutory exclusion processes. The Authority accepts these processes as useful parallel measures to the statutory processes, particularly as they avoid the imposition of a liability to prosecution for an excluded person.

The Authority has given consideration to the submission that the informal self-exclusion facility require the operator to ensure follow up by a counselling service within eight weeks. The Authority has not been satisfied that it is necessary to impose this requirement upon the operator.

The Authority notes that the revised wording, in clause 6 of the approved responsible gambling code of practice, deals with the self-exclusion facility including referral for counselling.

4.10 Rate of loss on electronic gaming machines

The minimum return to player is a matter already dealt with by statute, with most machines in the Adelaide casino being required to meet a minimum return to player of 85 percent, and more recently approved games 87.5 percent. The Authority understands that the vast majority of machines in the casino have a theoretical return to player above both of these requirements.

In terms of encouraging responsible gambling, return to player is only one factor. Reel speed, maximum bet per line and maximum lines bet, are also factors which are highly relevant to the rate at which a person can lose.

Section 40 of the Gaming Machines Act has been amended to enable the Authority to give guidelines to the Liquor and Gambling Commissioner with respect to the approval of gaming machine games. It appears to the Authority that this statutory instrument is a more appropriate way of dealing with the technical characteristics of machines in both the casino and the hotel and club gaming industry.

The Authority will, as time and resources permit, deal with technical issues relating to problem gambling within the context of section 40 of the Gaming Machines Act.

4.11 Targeting of advertising

It had been submitted to the Authority that the code of practice should oblige the operator to make it clear to whom in particular its advertising and promotions are targeted.

The Authority understands the reason for this submission being made, but doubts that it is strictly a matter which could or should be dealt with in either an advertising or a responsible gambling code of practice.

However, it is certainly a matter on which the Authority would seek to be informed when conducting a review of advertising codes of practice generally.

4.12 Dispute resolution and complaint services

Submissions before the inquiry suggest that the codes of practice should make specific provision for the resolution of disputes, and for the making of complaints concerning the operation of the codes of practice.

There already exist dispute resolution mechanisms which involve the casino inspectorate which operates under the jurisdiction of the Liquor and Gambling Commissioner.

The Authority is generally satisfied with the way the Commissioner's dispute resolution mechanisms operate and, with respect to the Commissioner's general obligation to monitor and enforce compliance by the operator with all statutory requirements, is satisfied that an adequate mechanism is already present for enforcement of the codes of practice.

The Authority has also approached the Commissioner about providing a 24 hour telephone facility for members of the public wishing to make complaints of a regulatory nature.

4.13 Other matters

Discussion at the public hearing included whether the concept of reasonableness, when applied in relation to the operator's obligations, was sufficiently certain to ensure the desired level of compliance. At the time, the presiding member indicated that there was a significant body of legal precedent on the way in which the concept would be applied in particular circumstances. While there have been occasions when legislators have had to resort to highly prescriptive requirements, the Authority believes that, where it is used in the casino codes, the concept of reasonableness is appropriate.

A number of other submissions were made to the Authority which, while having some possible merit, were not appropriate for inclusion in the codes of practice and, in particular:

- In relation to the casino being a smoke free environment, the Authority is aware that this matter was debated and rejected in the last Parliament. In view of there being recent and unequivocal parliamentary opinion on this matter, the Authority is reluctant, as a problem gambling measure, to deal with the matter which is more legitimately characterised as a health issue.
- The Authority was not satisfied that there would be any significant change in problem gambling by the removal of the winning number display for roulette.

5. CONCLUSION

The Authority has approved an advertising code of practice and a responsible gambling code of practice. They accompany these reasons for decision.

Signed, for and on behalf of the Authority

A handwritten signature in black ink, appearing to read 'D J Green', is written over a horizontal line.

D J Green
Presiding Member

Adelaide 3 May 2002

GLOSSARY

- ACCC the Australian Competition and Consumer Commission.
- Betting Operations Act a shorthand expression for the *Authorised Betting Operations Act 2000*
- casino codes a shorthand expression to cover both the advertising code of practice and the responsible gambling code of practice to apply under the *Casino Act 1997*.
- gambling provider a shorthand expression to cover, in South Australia, the licensee of the casino, hotel and club gaming licensees, the Lotteries Commission, the holder of the major betting operations licence and the licensed racing clubs (NB: bookmakers are not included for technical reasons).
- the TAB SA TAB Pty Ltd, a wholly owned subsidiary of TAB Queensland Limited, held the major betting operations licence under the *Authorised Betting Operations Act 2000* as at the date of this report.
- wagering that form of gambling which involves either totalisator or fixed odds betting on horse, harness or greyhound races or on sporting contingencies.



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