

**IN THE INQUIRY OF THE INDEPENDENT GAMBLING AUTHORITY
PURSUANT TO S 89(1)(b) OF THE *GAMBLING MACHINES ACT 1992* ON
THE EFFECTS OF THE *GAMBLING MACHINES (MISCELLANEOUS)*
*AMENDMENT ACT 2004***

**WRITTEN SUBMISSIONS OF THE AGENCIES CONCERNED ABOUT
GAMBLING HARM ON THE CONSTRUCTION OF S 11 OF THE
*INDEPENDENT GAMBLING AUTHORITY ACT 1995***

The construction of statutes in South Australia

1. Over the last five years the High Court of Australia has consistently emphasised that it is important that statutory provisions be construed according to their terms taken as a whole so as to carry into effect the purpose of the legislation as it emerges from the provisions enacted: *Victorian WorkCover Authority v Esso Australia Ltd* (2001) 207 CLR 520 at 545 (Kirby J); *Commonwealth v Yarmirr* (2001) 208 CLR 1 at 111-112 [249] (Kirby J); see also *Central Bayside General Practice Association Ltd v Commissioner of State Revenue* (2006) 80 ALJR 1509 at 1528 [86] and the many authorities cited therein (Kirby J).
2. Where a provision of an Act of the Parliament of South Australia is reasonably open to more than one construction, a construction that would promote the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) must be preferred to a construction that would not promote that purpose or object: *Acts Interpretation Act 1915* (SA), ss 4 (definition of 'Act') and 22(1).
3. It is accepted in South Australia that at common law reference may be made to reports of parliamentary debates both to ascertain the mischief sought to be remedied and to discern the underlying purpose of the legislation in question: *Owen v South Australia* (1996) 66 SASR 251 at 255-256 (Cox J) (with whom Prior J at 257 agreed); see also *MSP Nominees Pty Ltd v Commissioner of Stamps (South Australia)* (1999) 198 CLR 494 at 506 (Gleeson CJ, Gaudron, Gummow, Hayne and Callinan JJ).

The construction of s 11 of the *Independent Gambling Authority Act*

4. S 11 of the *Independent Gambling Authority Act 1995* (SA), so far as relevant, is in the following terms:

“11—Functions and powers of Authority

- (1) The functions of the Authority are—
- (aa) to develop and promote strategies for reducing the incidence of problem gambling and for preventing or minimising the harm caused by gambling; and
 - ...
- (2) The Authority has power to do anything that is necessary for, or incidental to, the performance of its functions.
- (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; and
 - (b) the maintenance of an economically viable and socially responsible gambling industry (including an economically viable and socially responsible club and hotel gaming machine industry) in this State.”

5. S 11(1)(aa) was introduced into the *Independent Gambling Authority Act* by s 35(1)(a) of the *Statutes Amendment (Gambling Regulation) Act 2001* (SA). On the occasion of the motion that the *Statutes Amendment (Gambling Regulation) Bill* be read a second time on 5 April 2001 the Hon JW Olsen (Premier) made the following comments:

“With these reforms, Mr Speaker, South Australia will, for the first time, have a regulatory body directly charged with helping to minimise problem gambling. The new Independent Gambling Authority will manage a responsible gambling industry and direct its efforts to minimising harm from problem gambling.”

South Australia, House of Assembly, *Parliamentary Debates* (Hansard), 5 April 2001, page 1338.

6. In construing s 11 it is important to distinguish between the functions (s 11(1)) and powers (s 11(2)) of the Independent Gambling Authority (**Authority**), and the objects that the Authority must have regard to in performing its functions and exercising its powers under the *Independent Gambling Authority Act* or “a prescribed Act” (s 11(2a)).
7. The Authority has a statutory obligation to perform the function in s 11(1)(aa) “to develop and promote strategies” for the twofold purpose of “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” and “the maintenance of an economically viable and socially responsible gambling industry (including an economically viable and socially responsible club and hotel gaming machine industry) in this State”. Power to do anything that is necessary for, or incidental to, the performance of this function is conferred upon the Authority by s 11(2). In performing this function and exercising any power that is necessary for, or incidental to, the performance of this function the Authority must have regard to both of the objects in s 11(2)(a).
8. With one exception, the Authority in performing its function under s 11(1)(aa) and exercising any power under s 11(2) that is necessary for, or incidental to, the performance of this function, is not bound to achieve either or both the objects in s 11(2)(a). The only obligation on the Authority is to have regard to, or consider, these objects. The exception relates to the object of “the minimising of harm caused by gambling” in s 11(2a)(a) because it is a function of the Authority under s 11(1)(aa) “to develop and promote strategies for ... minimising the harm caused by gambling”. There is no difference in meaning between “minimising the harm caused by gambling” in s 11(1)(aa) and “the minimising of harm caused by gambling” in s 11(2a).
9. In *The Macquarie Dictionary*, 4th ed, 2005 the following words have the following meanings:
 - (a) “develop” when a transitive verb– “**1.** to bring out the capabilities or possibilities of; bring to a more advanced or effective state. **2.** to cause

to grow or expand. **3.** to elaborate or expand in detail. **4.** to bring into being or activity; generate; evolve”;

- (b) “strategy” – “a plan for the termination of a project, especially in a military or business context, which meets the objective of maintaining political or financial security.”

10. Having regard to the objects of the *Statutes Amendment (Gambling Regulation) Act*, s 11(1)(aa) of the *Independent Gambling Authority Act* should be construed as conferring upon the Authority the function of bringing into being or generating plans which meet the objective of reducing the incidence of problem gambling, and of preventing or minimising the harm caused by gambling.
11. If, contrary to the primary submission (refer to paragraph 10 above), s 11(1)(aa) is open to more than one construction, one being devising but not carrying into operation the stated strategies, and the other being devising and carrying into operation the stated strategies, the latter construction should be preferred pursuant to s 22(1) of the *Acts Interpretation Act*. As disclosed in the second reading speech in the House of Assembly of the Parliament of South Australia, the object of the *Statutes Amendment (Gambling Regulation) Act* is that the Authority is to be “a regulatory body directly charged with helping to minimise problem gambling” which is to “manage a responsible gambling industry and direct its efforts to minimise harm from problem gambling” (emphasis added). The Authority would not be a regulatory body with management responsibility if it could not bring into being its plans of reducing the incidence of problem gambling, and of preventing or minimising the harm caused by gambling.
12. In *The Macquarie Dictionary*, 4th ed, 2005 the following words have the following meanings:
- (a) “economically” – “**1.** with economy; with frugality or moderation. **2.** as regards the efficient use of income and wealth”;
- (b) “viable” – “**1.** capable of living. **2.** practicable; workable.”

13. The words “economically viable and socially responsible gambling industry” in s 11(2a)(b) of the *Independent Gambling Authority Act* are a composite expression. There are many instances where it is misleading to construe a composite phrase simply by combining the dictionary meanings of its component parts: *XYZ v Commonwealth* (2006) 80 ALJR 1036 at 1044 [19] (Gleeson CJ), at 1060 [102] (Kirby J), at 1075 [176] (Callinan and Heydon JJ). The words “gambling industry” are qualified by two adjectival expressions – “economically viable” and “socially responsible”. The expression “economically viable” in its context means practicable or workable as regards the efficient use of income and wealth.
14. The expression “economically viable and socially responsible gambling industry” refers to the gambling industry as a whole, and not each and every business that comprises the gambling industry. It follows that s 11(2a)(b) on its proper construction does not encompass within the stated object the economic viability of each business comprising the gambling industry. Further, while the stated object of an economically viable and socially responsible gambling industry requires that the industry as a whole be profitable, it does not refer to any level of profitability other than what is sufficient for the industry to be practicable or workable in an economic sense.

The Joint Response of the Australian Hotels Association (SA Branch) and Clubs SA

15. The construction s 11 of the *Independent Gambling Authority Act* contained in the Joint Response of the Australian Hotels Association (SA Branch) and Clubs SA dated 23 May 2006 (**Hotels/Clubs Response**) is erroneous for the following reasons:
- (a) contrary to the **Hotels/Clubs Response** (page 20), that the Authority “is not empowered ... to regulate”, the Authority has the statutory function under s 11(1)(aa) of bringing into being or generating plans to reduce the incidence of problem gambling and to prevent or minimise the harm caused by gambling and may exercise any power necessary for, or incidental to, the performance of that function (refer to

paragraphs 5 to 8 above). In performing this function the Authority has extensive powers to regulate and manage the gambling industry where that is necessary to reduce the incidence of problem gambling and to prevent or minimise the harm caused by gambling;

(b) contrary to the Hotels/Clubs Response (page 21), the Authority is not required to have regard to “the maintenance of an economically viable industry”. S 11(2a) requires the Authority to have regard to both its stated objects, not just the object in 11(2a)(b);

(c) contrary to the Hotels/Clubs Response (page 21), the construction of “an economically viable industry” from an industry perspective involves an incorrect approach to the construction of the section in two respects. Firstly, it is necessary to construe s 11(2a)(b) according to its terms taken as a whole having regard to the purposes of the provision (refer to paragraph 1 above), not from an industry perspective. Secondly, it is inaccurate to construe the words “economically viable” in isolation when they are part of a composite expression (refer to paragraph 13 above).

30 November 2006



GARTH BLAKE S.C.

Counsel for the Agencies concerned about Gambling Harm

Telephone: (02) 9223 9720

Facsimile: (02) 9233 7416