

**Australian Hotels Association (SA),
Clubs SA
&
Racing SA Pty Ltd**

Jurisdictional issues submission

Tabled at Review 2006 public hearing—23 May 2006

OUTLINE OF SUBMISSIONS TO THE IGA
JURISDICTIONAL ISSUES

1. The *Independent Gambling Authority Act* (as amended) sets out the functions and powers of the Authority in Section 11;
 - (aa) to develop and promote strategies for reducing the incidence of problem gambling and for preventing or minimising the harm caused by gambling; and
 - (aab) to undertake or research including research into;
 - (iii) strategies for reducing the incidence of problem gambling and any other matter directed by the Minister; and
 - (b) to advise and make recommendations to the Minister; and
 - (c) to perform other functions assigned to the Authority under this Act or a prescribed Act or by the Minister.
2. It does not give the Authority power to devise codes of conduct. The Authority is a creature of statute and its powers are restricted to those confined by statute
3. Section 11 prescribes that the Authority must have regard to 2 objects including;
 - (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.
4. In the information document with respect to the approval of codes of practice under Section 41A and 41B of the *Casino Act 1997* the Authority said:-

“Legislation

The Authority’s ability to approve codes of practice is limited to what the relevant sections of the *Casino Act* allows for. For example, the codes cannot require the removal of gaming machines from venues”. (Page 2).

This document was issued for discussion prior to the hearing in relation to Casino Codes of 20th November 2001.

The information review with respect to codes of practice for gaming machines venues in South Australia, the Casino, Racing and Lotteries (page 11), says:-

“Legislation

The Authority’s ability to approve codes of practice is limited to what the relevant sections of the *Gaming Machines Act* say”.

5. The *Gaming Machines Act* does not empower the IGA to devise codes of practice. Section 74A authorises the IGA to review codes of practice every 2 years. There was in place a voluntary code of practice which became a transitional code of practice. The wording of the *Gaming Machines Act* differs significantly from, for example, the *Racing (Proprietary Business Licensing) Act*.
6. The Authority’s power to include matters in any code of practice is limited by the scope of Schedule 1(na) and (nb). It is submitted that the regulation contained in (nb) (C) is ultra vires. There is no enabling power within either the *Gaming Machines Act* or the *Independent Gambling Authority Act* which authorizes in such a regulation. The power granted to the Authority in Section 11 (aa) is no more than developing and

promoting strategies for “reducing the incidence of problem gambling”. It is not empowered in either act to regulate.

7. It is therefore submitted that the Code of Practice regulatory frame work is (in the present context) limited to;

“(A) The display of signs, and the provision of information at the licensed premises relating to responsible gambling and the availability of services to address problems associated with gambling”, (that regulation is conjunctive not disjunctive).

It is therefore submitted that in relation to the various matters submitted for consideration that the IGA’s power to review in the context of codes of practice would encompass mandatory warnings and in the context of regulation (nb) relationships with counselling agencies and reporting potential gamblers. Other matters including inducement/loyalty, 6 hour break, mandatory breaks in place, screening sights and sounds, alcohol/gambling, co-location of gambling, smoking coin machines and smart card are ultra vires the power of the IGA.

On and in venue signage may be the subject of a code of practice on advertising as contemplated in (na).

8. It is submitted further that certain proposals are clearly not matters able to be considered by the IGA in the context of S74A. Matters relating to mandatory breaks in play, six hour break and screening sights and sounds and co-location of gambling are clearly matters which fall within the discretion of the Commissioner. The

Commissioner's discretion is derived from legislation and it would be beyond power if the IGA were to purport by regulation to override or interfere with his discretion. Further in relation to coin machines it is to be noted that Parliament has seen fit to deal with "cash facilities", by way of legislation, i.e. EFTPOS and ATM's. It evidences an intention on the part of Parliament to deal with such issues by way of legislation and not by way of regulation. Further issues such as limit on credit have also been dealt with by way of legislation. A further illustration of the intention of Parliament to deal with issues by legislation is the *Tobacco Products Regulation Act 2004*, which specifically excludes any power of the IGA in section 4A

9. Insofar as various submissions to the Authority seek increased penalties by way of fine and suspension of licence, such submissions are misconceived in that the Authority could not purport by way of subordinate legislation to seek to deal with penalties for offences which are currently dealt with by way of legislation.

DATED This 23rd day of May 2006

Signed.....

E F NELSON QC