

**INQUIRY OF THE INDEPENDENT  
GAMING AUTHORITY**

**REVIEW 2006 – CODES OF PRACTICE,  
GAME APPROVAL AND GAMING  
MACHINE LICENSING FUNCTIONS**

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**SUBMISSIONS BY AUSTRALIAN NEWSAGENTS' FEDERATION LTD – SA BRANCH**

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**Australian Newsagents Federation Ltd – South Australian Branch**

1. The Australian Newsagents' Federation Ltd is a national association of newsagency businesses with branches in each State and Territory.
2. The South Australian Branch of the Australian Newsagents' Federation Ltd (**"the Federation"**) presently has 310 members that operate newsagency businesses. This represents over 80% of newsagency businesses in South Australia.
3. Newsagencies are small retail businesses. They are typically family owned and operated with few additional employees, most of whom work on a part-time or casual basis.
4. Of the Federation's 310 members in South Australia, 186 are agents of the Lotteries Commission.
5. Lottery sales constitute a significant proportion of the turnover of newsagencies. In 2005, newsagents generated \$180,338,906 in terms of gross sales of lottery products.<sup>1</sup>

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<sup>1</sup> Lotteries Commission of South Australia 2004 2005 Annual report – pg. 12 – Gross Sales Year ended June 30 – Table, Distribution of agents by business type as at 30 June 2005 - % of Gross sales column.

## Scope of submissions

6. These submissions address the following matters:
  - 6.1 The State Lotteries Advertising Code of Practice and the Responsible Gambling Codes of Practice;
  - 6.2 Issues that the Authority has identified as “Stage Two Issues”.
7. As to the Stage Two issues, the Federation will make submissions of both a general nature and submissions that address particular issues that the Authority has identified.

## Statutory Framework for the Review

8. The State Lotteries Act 1966 (SA) (“**Lotteries Act**”) requires the Lotteries Commission of South Australia (“**the Lotteries Commission**”) to adopt and comply with certain codes of practice promulgated by the Independent Gaming Authority (“**the Authority**”).
9. In particular, section 13B of the Lotteries Act provides that the Lotteries Commission must:
  - “(a) adopt a code of practice on advertising approved by the Authority; and*
  - (b) ensure that advertising by the Commission conforms with the code of practice approved under this section.”*
10. Similarly, section 13C provides that the Lotteries Commission
  - “(a) must adopt a code of practice approved by the Authority dealing with—*
    - (i) the display of signs, and the provision of information, at offices, branches and agencies of the Commission relating to responsible gambling and the availability of services to address problems associated with gambling; and*
    - (ii) the provision of training of 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) *must ensure that, in the performance of its functions, the Commission conforms with the code of practice approved under this section."*

11. Section 13D of the Lotteries Act requires the Authority to review codes of practice at least every two years. The Authority is now reviewing various Codes of Practice that were promulgated on 30 April 2004 under the Lotteries Act and also under the Authorised Betting Operations Act 2000 (SA), the Casino Act 1997 (SA) and the Gaming Machines Act 1992 (SA). In doing so, the Authority has identified particular issues for consideration, which it refers to as "Second Stage Issues".

12. Section 11(2) of the Independent Gambling Authority Act 1995 (SA) ("**Independent Gambling Authority Act**") requires the Authority to have regard to the following objects when performing its functions and exercising its powers:

(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.*

13. The Federation submits that the Authority, in carrying out the present Review, must only have regard to matters that are relevant in the context of the statutory framework.

## **State Lotteries Advertising Code of Practice and the Responsible Gambling Codes of Practice**

14. Since the introduction of each Code of Practice, the Lotteries Commission has worked closely with newsagencies that are agents of the Lotteries Commission on initiatives to assist compliance with the Codes. These initiatives include the:
  - 14.1 development of a “train the trainer” module with specific training for existing employees aged under 18 years;
  - 14.2 development of a formal relationship with a counselling agency;
  - 14.3 training of employees (on and off site) in the compliance requirements for the sale of lottery products in newsagencies;
  - 14.4 introduction of an induction program for new newsagency employees including refresher courses for existing employees; and
  - 14.5 monitoring of compliance by newsagencies with the Codes of Practices.
15. The Federation supports these initiatives and appreciates the assistance that the Lotteries Commission has provided to newsagents.
16. The Federation notes that there has not been any regular dialogue between interested parties about issues in relation to the existing Codes of Practice. The Federation believes that such dialogue would be beneficial.

### **Stage Two Issues – General Submissions**

17. It is apparent that all of the Stage Two Issues that have been identified for discussion, along with each “starting point for discussion”, largely contemplate a tightening of the level of regulation and control of gambling activity. In particular, they contemplate:
  - 17.1 the possible addition of a tagline to the standard warning message “Gamble Responsibly”;

- 17.2 the use only of "discreet and minimalist" signage;
  - 17.3 the screening of the sights and sounds of gambling;
  - 17.4 the prohibition of inducements and loyalty schemes;
  - 17.5 a requirement that gambling establishments form a relationship with counselling agencies;
  - 17.6 the eventual withdrawal of Keno from non-licensed premises; and
  - 17.7 the setting of a minimum age of 18 years for staff who sell any form of SA Lotteries product.
18. Each of these proposals would, if implemented, (to the extent that such is not already undertaken by newsagencies) impose further obligations that would involve significant costs for newsagents or, if Keno is withdrawn from non-licensed premises such as newsagents as contemplated by the Authority, have a significant detrimental effect on business revenues of newsagencies.
19. To the knowledge of the Federation, there has been no assessment or analysis of the success or otherwise of the "First Stage" Codes of Practice that came into effect on 30 April 2004. Given the potentially significant effect on newsagents of the "Stage Two" proposals, the Federation considers that the Authority should not consider them further, much less implement them, before a proper analysis of the "First Stage Codes of Practice" has occurred.
20. The Federation considers that the Stage Two Issues that have been identified address only the objects set out in section 11(2a)(a) of the Independent Gambling Authority Act. That is, fostering responsibility and minimising harm. They do not address the object of maintaining an economically viable gambling industry, which is an object that the Authority must also have regard to when performing its functions.

**Submissions in relation to particular Stage Two Issues***Codes Issue 1 – Mandatory warnings in advertising*

21. Members of the Federation believe that the mandatory warning presently in use - “Gamble Responsibly” – has been successful in that it contains a succinct and familiar message that customers associate with all forms of gambling.
22. The Federation is not aware of any evidence that the effectiveness of the mandatory warning has been diminished or could be appreciably improved.
23. The Federation submits that any change to the terms of the mandatory warning should occur only after:
  - 23.1 establishing through research and consultation with marketing professionals that its effectiveness has diminished or could be appreciably improved; and
  - 23.2 after consultation with interested parties.

*Codes issue 2 – On- and in-venue signage*

24. The Lotteries Commission presently imposes and enforces strict requirements in relation to the display, design and placement of signs. Internal and external corporate signs are directional only.
25. The Federation supports the present requirements for corporate fit outs, advertising displays and corporate signage that the Lotteries Commission impose on newsagents.

*Codes issue 4 – Screening of sights and sounds of gambling*

26. The Lotteries Commission has already undertaken a number of initiatives in relation to the screening of gambling at newsagencies and other agencies. These include:
  - 26.1 the mandatory warning “Gamble responsibly” is displayed on all Keno monitors between draws;

- 26.2 monitors have been redirected and shielded in all retail agencies to reduce visibility;
- 26.3 the introduction of LCD screens for all retail agency monitors, which reduce distance and peripheral visibility;
- 26.4 the reduction of the size of Keno monitors in all non-licensed agencies from 68cm to 51cm.
27. Members of the Federation have co-operated with the State Lotteries Commission in the introduction of these initiatives and supports them. Further, the Federation understands that the same initiatives have been supported by the "Concerned Sector". In the circumstances, the Federation submits that no further screening measures are required for newsagencies.

*Codes Issue 10 - Keno in newsagencies, pharmacies and similar environments*

28. The Federation considers that the withdrawal of Keno from non-licensed premises cannot be the subject of either an Advertising Code of Conduct under section 13B of the Lotteries Act or a Responsible Gambling Code of Practice under section 13C of the Lotteries Act.
29. Section 13B of the Lotteries Act is concerned with, and only with, the regulation of "advertising". The section requires the Authority to formulate a code of practice in relation to "advertising" and the Lotteries Commission to comply with any such code. The Lotteries Act is clearly concerned here with advertising in the sense of marketing activities rather than "advertising" in the sense, for example, of calling for applications.
30. What a code of practice will require will depend on the particular context. For example, there are private codes that members of industry groups adopt on a voluntary basis as part of a scheme of "self-regulation". Alternatively, a code of conduct can operate as a form of delegated legislation, such as under the Lotteries Act. Either way, a code of conduct seeks to regulate conduct by providing guidance on a particular matter.

31. The Federation submits that any proposal by the Authority to withdraw Keno from non-licenses premises is well and truly beyond the scope of what could reasonably be included in an advertising code of practice because it is not concerned with advertising. It would, in the Federation's view, be beyond the power of the Authority to force the withdrawal of Keno from non-licenses premises under the auspices of an advertising code of practice promulgated under section 13B of the Lotteries Act.
32. Nor, in the Federation's view, can the withdrawal of Keno from non-licensed premises properly be the subject of a responsible gambling code of practice under section 13C of the Lotteries Act.
33. Section 13C requires any code approved by the Authority to deal with:
- 33.1 certain specific matters set out in sub-sections 13C(a)(i) and (ii) of the Lotteries Act, namely:
    - 33.1.1 the display of signs and the provision of information relating to "responsible gambling" and the availability of services to address problems associated with problem gambling;
    - 33.1.2 the provision of training of staff relating to responsible gambling and the services available to address problems associated with gambling;  
and
  - 33.2 "any other matters designed to reduce the incidence of problem gambling determined by the Authority".
34. The Federation submits that, on any reasonable view, the withdrawal of Keno from non-licensed premises is a measure that cannot fall within the scope of the specific matters referred to in sub-sections 13C(a)(i) and (ii) of the Lotteries Act. Quite simply, withdrawing Keno has nothing to do with either the display of signs and provision of information relating to responsible gambling and the availability of services to address problems associated with gambling, or the provision of training of staff in these matters.

35. Nor for various reasons, in the Federation's view, would the withdrawal of Keno be a proposal that falls within the scope of the matters referred to in sub-section 13C(a)(iii).
36. Firstly, the Authority has merely expressed a concern about the widespread availability of Keno. The expression of a concern is not a "matter designed to reduce the incidence of problem gambling".
37. Secondly, given that sub-section 13C(b) requires the Lotteries Commission to conform with a responsible gambling code of practice, the proposal to withdraw Keno is in effect a proposal to prohibit the offering of Keno in non-licensed premises. The Federation submits that the powers of the Authority do not extend to prohibiting activities as such.
38. In the absence of some other relevant power that the Lotteries Act confers on the Authority (of which there is none), the scope of sub-section 13C(iii) is to be understood by reference to the functions and powers of the Authority set out in section 11 of the Independent Gambling Authority Act. The functions of the Authority under that section are advisory in nature and its powers extend only to the gathering of information in connection with that function.
39. Finally, it is submitted that the prohibition of a particular activity cannot be a "matter" for the purposes of sub-section 13C(iii) because that would go beyond what is contemplated by a "code of practice." In the Federation's view, a code of practice under section 13C of the Lotteries Act can regulate the manner in which an activity is carried on only if it is relevant to the matters referred to in sub-section 13C(iii). It cannot prohibit an activity in a particular class of establishment.
40. Even if section 13B or 13C does allow the Authority to promulgate codes of practice that would force the withdrawal of Keno from non-licensed premises (which the Federation does not accept is the case), the Federation submits that there is no evidence that there are any circumstances that would justify such a code of practice. In particular, the Federation relies on the following factual matters:

- 40.1 South Australia does not have a higher incidence of problem gambling than other States, notwithstanding the availability of Keno in non-licensed premises. In the most recent report prepared for the Gamblers Rehabilitation Fund (GRF) South Australians are reported to spend less than many of their interstate counterparts on gambling.<sup>2</sup> Australian Gaming Council Fact Sheets highlight that South Australian adults ranked equal fifth behind other states and territories in terms of the average proportion of Household Disposable Income (HDI) spent on gambling during 2001 - 02.
- 40.2 only 0.28% of lottery players in South Australia are problem gamblers.<sup>3</sup>
- 40.3 adolescent gambling is no higher in South Australia than in other countries that have been the subject of comparative studies.<sup>4</sup> The Delfabbro study indicated that the prevalence of problem gambling among South Australian adolescents is considerably lower than in New Zealand, The United States, the United Kingdom and Canada.
- 40.4 as the Federation understands, as at 30 June 2005, Keno sales were approximately four per cent below the pre-gaming machine introduction level in 1994.
41. Based on data provided to the Federation by the Lotteries Commission, the Federation anticipates that the removal of Keno from non-licenses premises would:
- 41.1 lead to a loss of revenue of approximately \$3,100,000 to the sector each year and an average loss of \$9,800 for each agent each year;
- 41.2 lead to a loss of revenue for the State Government of at least \$5,400,000;

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<sup>2</sup> SA Department for Families and Communities for The Gamblers Rehabilitation Fund – *The Prevention and Treatment of Problem Gambling in South Australia through the Gamblers Rehabilitation Fund: A Strategic Review*, March 2005. pages 3 – 5 and Tables 1 & 2.

<sup>3</sup> Productivity Commission. 1999. *Australia's Gambling Industries*. Productivity Commission. Canberra. ACT. Table 5.7 – Section 5, p15. As cited in the South Australian Heads of Churches – Gambling Task Force, submission to IGA Lotteries Codes of Practice. 28/7/2002.

<sup>4</sup> Delfabbro P. Dr. *Gambling – Related Harm in Metropolitan Adelaide*.

- 41.3 Result in the approximately <sup>5</sup>87% of non-licensed lottery agents surveyed in the Synovate research company, would reduce staff hours an average of 11.6 hours per week if Keno is withdrawn.
- 41.4 cause a significant decline in sales of other newsagency products to purchasers of Keno tickets who will purchase those tickets elsewhere, with a consequent reduction in profitability.

*Codes Issue 11 – Age for the sale of gambling products*

42. The Federation does not support a requirement that lotteries products sold in non-licensed agencies be sold only by staff who are over 18 years of age.
43. Firstly, the Federation considers that such a requirement cannot be the subject of either an Advertising Code of Conduct under section 13B of the Lotteries Act or a Responsible Gambling Code of Practice under section 13C of the Lotteries Act. This is for similar reasons that the withdrawal of Keno from non-licensed premises cannot be the subject of such Codes of Conduct.
44. Firstly, in the Federation's view, a requirement that lotteries products only be sold by adults is clearly not concerned with advertising, as required by section 13B of the Lotteries Act and so cannot validly be included in an Advertising Code of Practice under that section.
45. Secondly, such a requirement is clearly not concerned with any of the specific matters referred to in sub-sections 13C(a)(i) and (ii) of the Lotteries Act.
46. As to whether there are "any other matters" of the kind contemplated in sub-section 13C(a)(iii), the Authority has not identified any.

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<sup>5</sup> Synovate, 2006, *SA Lotteries Agent Survey Second Stage Issues*, report 22177, April 2006. As quoted by the South Australian Lotteries Commission – submission *SA LOTTERIES SUBMISSION*, April 2006.

47. Finally:

47.1 requiring that lotteries products sold in non-licensed agencies by staff who are over 18 years of age will result in almost 46% of retail outlets, who employ staff under the age of 18 years, replacing those staff with staff over 18 years of age. Extrapolating this impact across the non-licensed network we are likely to see 150 employment opportunities lost to young people (less than 18 years of age);

47.2 the Federation is unaware of any evidence that discloses a connection between the deleterious effects of gambling and the age of the person selling the relevant product;

47.3 in the absence of any such evidence, it makes no sense to distinguish between the sale of lotteries products and other products such as tobacco and restricted publications that can be sold by minors.

48. The Federation is, however, aware and concerned that the gambling age for SA Lottery products remains at 16 years of age. The Federation has repeatedly asked for that age limit to be raised to 18 years of age, in line with all other forms of gaming. This proposition has been, and is still, supported by every group and individual that the Federation has approached over the past four years, however Government has apparently failed to take any initiative in this area. The Federation is concerned at the Government's apathy on this issue.