

**Review 2006 – Regulatory Functions – Codes of Practice conducted by the
Independent Gambling Authority**

Response to material not previously circulated

Introduction

1. The Australian Newsagents' Federation Limited (South Australian Branch) ("the **Federation**") has made written and oral submissions to the Independent Gambling Authority in connection with the Review being carried out by the Authority of Codes of Practice under the *State Lotteries Act 1966*.
2. The Authority has allowed stakeholders the opportunity to respond to or comment on material that the Authority received after its public hearings on 23-24 May 2006. That material includes submissions prepared by counsel, Mr Andrew Tokley, on behalf of the Honourable Nick Xenophon MLC (dated 14 June 2006), on the subject of the scope of the Authority's powers.
3. The Federation takes this opportunity to respond to those parts of Mr Tokley's submissions that concern the scope of the Authority's powers under the *State Lotteries Act 1966 (SA)*.

Response

4. With respect, the conclusions contained at paragraph 26 of Mr Tokley's submissions do not follow from the arguments set out in the preceding paragraphs.
5. The Federation accepts that Codes of Practice under the State Lotteries Act form part of the "law of the land" for reasons set out at paragraph 16 of Mr Tokley's

submissions. In the present circumstances, however, that is neither here nor there. What matters is what can properly be the subject matter of, or included in, a Code of Practice.

6. As to paragraph 18 of Mr Tokley's submissions, it simply does not follow that the Authority can deal with certain matters in a Code of Practice because it is not expressly prohibited from doing so. With respect, that argument is facile and the extract from section 13C(a) of the State Lotteries Act that Mr Tokley has included does not assist the argument.
7. Indeed, Mr Tokley appears to misread or misunderstand section 13C(a). The inclusion of the words "*and agencies of the Commission*" in sub-section 13C(a)(i) does not mean that a Code of Practice can deal generally with the activities of agents. Rather, those words are used to indicate that agencies of the Commission are one of the locations (along with offices and branches) at which a Code of Practice will operate to regulate the "*display of signs, and provision of information . . . relating to responsible gambling and the availability of services to address problems associated with gambling;*"
8. Mr Tokley has also overstated the scope of the Authority's powers under section 11(2) of the *Independent Gambling Authority Act 1995 (SA)* to do "*anything that is necessary for, or incidental to, the performance of its functions.*"
9. As submitted in paragraph 7 (above), Mr Tokley has misread or misunderstood section 13C(a) of the State Lotteries Act. Accordingly, the general power under section 11(2) of the Independent Gambling Authority Act does not permit the

Authority to regulate the appointment of agents (much less prohibit newsagents selling tickets in Keno).

10. The general power under section 11(2) of the Independent Gambling Authority Act is to be understood by reference to the Authority's functions as specified under that statute or elsewhere. For present purposes, the relevant functions are set out in section 11(1) of the Independent Gambling Authority Act and sections 13B to 13E of the State Lotteries Act, namely:
 - 10.1 developing and promoting strategies for reducing the incidence of problem gambling and for preventing or minimising harm caused by gambling;
 - 10.2 undertaking, assisting in or co-ordinating research about certain matters;
 - 10.3 ensuring an effective and efficient system of supervision over the operations of certain licensees;
 - 10.4 advising and making recommendations to the Minister;
 - 10.5 performing other functions assigned to the Authority under the Independent Gambling Authority Act or another Act or the Minister;
 - 10.6 approving Codes of Practices under the State Lotteries Act;
 - 10.7 reviewing Codes of Practice under the State Lotteries Act;
 - 10.8 forwarding Codes or alterations to them to the Minister so that the Minister can lay them before parliament.
11. Regulating the appointment of agents is not "*necessary for, or incidental to,*" any of these functions.
12. The Authority's powers under section 11(2) of the Independent Gambling Authority Act are analogous to the powers that Parliament grants to other

instrumentalities, such as the WorkCover Corporation and the Motor Accident Commission. The purpose of such powers is to enable, in a practical way, the relevant instrumentality to carry out its functions, such as by entering into contracts, establishing office facilities, etc. Such powers are not a general grant of power.

13. Finally, and again with respect, it is quite wrong to assert that the authorities on which the Federation relies are to be read in the light of the particular legislation being considered. In each of the authorities, the relevant Court enunciated principles of general application and that is apparent from the judgments.

Fisher Jeffries