



Independent Gambling Authority

Review 2006—Regulatory Functions

**Codes of practice, game approval guidelines
and gaming machine licensing guidelines**

Report

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1. EXECUTIVE SUMMARY

The Review 2006 inquiry has encompassed an examination of the first stage measures implemented in the codes of practice in April 2004, to identify whether any changes were required; the completion of consideration of the second stage issues, to determine which—if any—should be introduced through variations to the codes; and a review of the various guidelines issued by the Authority to the Liquor and Gambling Commissioner in respect of the approval of games and the licensing of premises for gaming.

The Authority has determined, in the light of submissions made to the inquiry and evidence received, to make some minor amendments to some of the existing first stage provisions. These maintain the essential thrust of the uniform codes of practice put in place as a result of the consultation processes which were completed in December 2003.

The Authority has determined to add eight new measures as a result of its second stage issues considerations. They are:

- ◆ all gambling providers will be required to implement a common, mandatory warning in gambling advertising, based on the “Gamble Responsibly” suite of messages;
- ◆ there are to be significant limitations to on- and in-venue signage for venues;
- ◆ gaming machine venues will be required to screen the sights and sounds of gambling so that the activity is not observable either from outside the premises or from non-gambling areas of the premises;
- ◆ inducements to gambling and loyalty programs are prohibited;
- ◆ operators will have to develop relationships with counselling agencies;
- ◆ operators are to establish internal processes for the identification and reporting of potential problem gamblers;
- ◆ automated coin dispensing machines are to be relocated so that they are able to be directly supervised by gaming machine staff;
- ◆ the availability of alcohol is not to be linked to the consumption of the gaming machine product.

Also as a result of its second stage issues considerations, the Authority has recommended to the Government that it take legislative or administrative initiatives in respect of two further matters. Those recommendations are:

- ◆ that there be common closing hours for hotel and club gaming venues—opening to be at 10.00am and closing at midnight, for weekday trading days, and 2.00am, for weekend trading days;

- ◆ that Keno be removed from non-licensed premises;
- ◆ that lottery products only be sold by adults.

In its consideration of issues in both the first and second stages, the Authority has been greatly assisted by the reaching of agreements on a number of issues, as between key representatives of industry on the one part and the Concern Sector on the other. While they do not bind the Authority, these agreements demonstrate a willingness to reach consensus and work towards common objectives; they give confidence that the agreed measures will receive support and have an ameliorative effect.

The Authority has also noted the work undertaken to date on intervention initiatives in the casino and with gaming machine venues, and the promise these initiatives can offer in changing the way licensees and their staff relate to problem gamblers. As set out in detail later, the Authority will implement a system of exemptions from particular second stage measures to offer incentives and supports to licensees to fully embrace the opportunity offered by these intervention initiatives. This is, of course, subject to the intervention initiatives themselves meeting stringent approval criteria.

The review of guidelines has ensured that these instruments work in harmony with the codes of practice measures. Some issues raised in respect of the guidelines will be the subject of separate activity undertaken with the participation of gaming machine manufacturers to more closely examine the design process for gaming machine games.

As part of this inquiry, the Authority has again been made aware of the potential for deployment of advanced technologies to address problem gambling—most notably smartcard technology. In this respect, the Authority notes the leadership of the Government in establishing its smartcard working party and looks forward to the outcome.

The final issue which came to light in the inquiry was enforcement, and the difficulty in obtaining compliance with existing and proposed codes of practice measures with the current level of enforcement in the hotel and club gaming sector. Of course, many licensees will genuinely seek to comply with their obligations and, with the support of organisations such as Gaming Care and Club Safe, will better understand what those obligations are. However, there will always be some licensees who will only take their obligations seriously when confronted with real and immediate sanctions. There were examples of unacceptable conduct of licensed premises presented in the course of hearings for this inquiry, and these highlight the need for more effective and targeted enforcement action. This is not a matter which the Authority can effect through changes to the codes of practice, but it is clearly relevant to the review of the operation of the codes that they are not being effectively enforced.

2. INTRODUCTION

2.1 The present inquiry

This is the report of an inquiry conducted under section 13 of the *Independent Gambling Authority Act 1995*. The inquiry was conducted to enable the Independent Gambling Authority to consult stakeholders about the mandatory advertising and responsible gambling codes of practice approved for commercial gambling enterprises, game approval guidelines issued under the *Gaming Machines Act 1992* and the *Casino Act 1997* and gaming machine licensing guidelines issued for the purposes of the Gaming Machines Act.

As is explained below, the Authority is required to review the codes of practice every two years. While there is no statutory requirement either to consult stakeholders about or to review the game approval guidelines or the gaming machine licensing guidelines, the Authority determined that it should do so. The Authority also decided that it would be convenient to address all of these matters together so that stakeholders would be able to express their views about the detail of the regulatory regime at the same time as considering broader issues of policy.

While it would be possible for the Authority to consult with stakeholders without invoking its formal inquiry powers, holding an inquiry gives the Authority a wider range of evidence gathering options, including the taking of evidence under oath and the ability, where necessary, to compel the production of documents and the giving of evidence.

The present inquiry was announced by newspaper advertisements on 25 January 2006, appeared in both the *Adelaide Advertiser* and the nationally circulating *Australian* newspapers.

A guide for making submissions was prepared for this review. It was referred to in the advertisement and posted on the Authority's website. Any person contacting the Authority's office to request it was provided with a copy.

The guide included general information about the scope of the inquiry, explained that the inquiry was governed by sections 13–15 of the Independent Gambling Authority Act (which were annexed) and also included as annexures the text of the current codes of practice, game approval guidelines and gaming machine licensing guidelines, and a table setting out various issues (the second stage issues) on which the Authority was already deliberating at the time of announcing the inquiry.

The advertisements called for written submissions to be made to the Authority by 1 May 2006, and foreshadowed a two-day hearing on 23 and 24 May 2006.

Written submissions were received from 21 stakeholders with a number indicating a desire to present those submissions at the hearing. The anticipated hearing took place as scheduled on 23 and 24 May 2006.

Following the hearing, a number of stakeholders provided supplementary material as a result of the proceedings at the public hearing. As a result of the complexity of that material, and of the Authority wanting stakeholders to address the issue of external

venue signage in one particular request, a further invitation to address the submissions was extended in September 2006; this included the suggestion that further hearing opportunities might be available if requested.

At their request, the AHA and Clubs SA were afforded an opportunity to make presentations at a supplementary hearing on 22 November 2006.

All of the written submissions and supplementary material have been published on the Authority's website.

2.2 Subject matter of the codes of practice

2.2.1 *First stage codes*

The “**first stage codes**” provisions, which came into effect on 30 April 2004, apply uniformly across the commercial gambling sector except where a different treatment was necessitated by the nature of the product. (For instance, the prohibition of serving alcohol at a gaming machine applies only to the casino, hotels and clubs.) The first stage codes have become known as such because the development and promulgation of codes of practice for the industries has proceeded in two stages. The process of development is recounted under heading 2.4.

The relevant Acts called for the approval of separate codes to address each of advertising and responsible gambling.

The legislative requirement for the review of the codes of practice means that each of the provisions of the existing codes must be examined again in light of the prevailing conditions and having regard to any indication that may be discerned about its effectiveness to achieve its purpose. The Review has been assisted by the receipt of submissions about the first stage measures. Those measures are as follows.

The **Advertising Codes** articulate general propositions about social responsibility in advertising of gambling and the need to not mislead or deceive. They require compliance with other laws and adherence to relevant advertising industry codes and then prescriptively regulate—

- ◆ to protect young people, and the vulnerable and disadvantaged;
- ◆ to proscribe the promotion of gambling by reference to winning and skill, personal enhancement or enrichment, gamblers using the proceeds of gambling for household expenses and the good works which might be done with the proceeds of gambling;
- ◆ the times at which gambling can be advertised on radio and television;
- ◆ the provision of adequate information about the likelihood of winning particular prizes.

The **Responsible Gambling Codes** set out a statement of purpose and advert to the need for operators to comply with relevant legal requirements and to cooperate and assist government agencies in that respect. They go on to—

- ◆ require operators to document how they will comply with the code, draw patrons' attention to its existence and have it available;
- ◆ require operators to display warning messages and multi-lingual responsible gambling material (including helpline cards), ensure that the time of day is visible to all patrons, have available any relevant rules and, in the case of gaming machines, ensure that a person plays no more than one at a time;
- ◆ impose particular measures with respect of alcohol, including in the case of gaming machines that alcohol not be served to patrons at machines;
- ◆ address the risks relating to unattended children;
- ◆ impose protections concerning cheque cashing, with respect to self-exclusion and relating to removal from loyalty databases;
- ◆ establish minimum requirements for training of staff.

2.2.2 *Second stage issues*

The “**second stage issues**” identified in the *Guide for making submissions* are:

- ◆ mandatory warnings in advertising;
- ◆ on- and in-venue signage;
- ◆ mandatory breaks in play;
- ◆ screening of sights and sounds of gambling;
- ◆ six hour break—common closing hours for gaming machine venues;
- ◆ inducements and loyalty programs;
- ◆ co-location of gambling activity;
- ◆ relationship with counselling agencies;
- ◆ reporting of potential problem gamblers;
- ◆ keno in newsagencies, pharmacies and similar environments;
- ◆ age for sale of gambling products;
- ◆ smoking;
- ◆ automated coin dispensing machines, automatic teller machines and cheque cashing facilities;
- ◆ linking the service of alcohol and gambling;
- ◆ facial recognition and smart card technologies;
- ◆ recognition of the casino host responsibility initiative.

The review has also involved a consideration of these measures to determine whether any and if so which of those measures should be imposed upon licensees as a means of addressing harm consistent with the Authority's statutory functions and objects.

2.3 Legislative history of the regulatory functions

In the Autumn 2001 session of the South Australian Parliament, there was introduced and debated a Statutes Amendment (Gambling Regulation) Bill. This Bill was the outcome of a consultative process managed by the Secretary to the Cabinet of the then government.

Those recommendations included some specific measures. First they required a feature known as “autoplay” to be removed. Another measure provided that machines could only be operated by coins or tokens. A third measure was that cash facilities in premises licensed for gaming could dispense no more than \$200 per transaction. There was a further recommendation that there be mandatory advertising and responsible gambling codes of practice for all forms of commercial gambling and the establishment of an independent statutory body. This body was to have responsibility for the codes of practice, for a voluntary barring program and for a research program, to provide advice to government on harm minimisation and responsible gambling generally and to undertake particular inquiries into matters concerning gambling and problem gambling.

The *Statutes Amendment (Gambling Regulation) Act 2001* was assented to in May 2001, with most of its provisions becoming operative on 1 October 2001.

The Statutes Amendment (Gambling Regulation) Act re-established the existing Gaming Supervisory Authority (an unincorporated statutory board of five members appointed by the Governor in Council) as the Independent Gambling Authority (an incorporated statutory body of seven members).

The Statutes Amendment (Gambling Regulation) Act also extended the functions of the Authority by adding harm minimisation and research to the existing requirement that the Authority ensure supervision and integrity of the gambling industry and its independent exercise of discretions under what are called the “Prescribed Acts”. The Prescribed Acts are the separate Acts of Parliament under which particular commercial forms of gambling were authorised.

The new functions, which were added to section 11 of the IGA Act from 1 October 2001 were as follows:

- (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, assist in or co-ordinate ongoing research into matters relevant to the Authority's functions, including research into—
 - (i) the social and economic costs and benefits to the community of gambling and the gambling industry; and
 - (ii) the likely impact, both negative and positive, on the community of any new gambling product or gambling activity that might be introduced by any section of the gambling industry; and
 - (iii) strategies for reducing the incidence of problem gambling and preventing or minimising the harm caused by gambling; and
 - (iv) any other matter directed by the Minister.

The Independent Gambling Authority Act was also amended to make provision for the voluntary barring scheme.

Mirror provisions in each of the *Casino Act 1997*, the *Gaming Machines Act 1992*, the *Authorised Betting Operations Act 2000* and the *State Lotteries Act 1966* made provision for the mandating of advertising and responsible gambling codes of practice.

They do this by, firstly, requiring the relevant gambling operator to adopt and to conform to the codes of practice approved by the Authority; and, secondly, by giving the Authority the power to require a gambling operator to alter an adopted code of practice in the manner set out in a notice given by the Authority.

In the case of gambling operators which hold licences (Skycity Adelaide, SA TAB and each hotel or club with gaming machines) these obligations are enforceable as licence conditions. In the case of the Lotteries Commission (which is not a licensee) it is a statutory obligation to do so.

In the case of gaming machine licensees, some of the obligations were inserted as sections 74A and 74B of the Act, while others were included in the group of statutory licence conditions set out in Schedule 1 of the Act.

Another uniform provision across the Prescribed Acts is the requirement that any notice requiring alteration of the codes of practice firstly have been preceded by a fourteen day consultation notice and secondly be laid before each of the Houses of the Parliament and be subject to disallowance.

Section 29 of the Statutes Amendment (Gambling Regulation) Act also made provision, in respect of gaming machine licensees only, for the Minister to publish a notice in the Government Gazette deeming the licensees to have adopted a particular code of practice at a particular time. A gazette notice was published for the purposes of this section on 28 September 2001.

In addition to inserting provisions for the codes of practice into the Prescribed Acts, the Statutes Amendment (Gambling Regulation) Act inserted into the Independent Gambling Authority Act two statutory objects, for the guidance of the Authority in exercising its discretions. As enacted in 2001, those objects were:

- (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 a sustainable and responsible gambling industry in this State.

The Statutes Amendment (Gambling Regulation) Act also introduced section 37A into the Casino Act and amended section 40 of the Gaming Machines Act. These changes obliged the Liquor and Gambling Commissioner, in considering an application for the approval of a game, to grant the application only if satisfied that this was not likely to exacerbate problem gambling. In conjunction with this, the legislation allowed for the Authority to issue guidelines to the Commissioner when determining, as a matter of fact, whether the approval of a particular game was likely to exacerbate problem gambling. These guidelines are one of the sets of guidelines with which the present inquiry is concerned.

Following the commencement of the Statutes Amendment (Gambling Regulation) Act, the Minister for Gambling in June 2002 directed the Authority to conduct an inquiry into the management of gaming machine numbers. After extensive consultation, the Authority reported, in December 2003, with a series of recommendations.

The government's response to the report was to undertake to introduce a Bill which would enable each of those recommendations to become law.

The Bill was introduced into the Parliament in the Spring 2004 session. Following Parliamentary deliberations, the Royal Assent was granted on 9 December 2004 to the *Gaming Machines (Miscellaneous) Amendment Act 2004* (the 2004 Act).

So far as is relevant to this inquiry, the key changes made by the 2004 Act were to amend paragraph (b) of the objects to which the Authority must have regard when exercising discretions, to provide for the Authority to issue guidelines to the Liquor and Gambling Commissioner with respect to taking into account the social impact of the grant of a gaming machine licence, and making procedural changes with respect to any guidelines given by the Authority under the Gaming Machines Act.

As a result, from 1 February 2005, the objects to which section 11(2a) of the Independent Gambling Authority Act requires the Authority to have regard when performing statutory functions or exercising statutory powers are:

- (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.

The 2004 Act also amended section 15(5) of the Gaming Machines Act to require the Liquor and Gambling Commissioner to take into account the social impact of the grant of a gaming machine licence and to have regard to guidelines issued by the Authority for that purpose.

The procedures for issuing guidelines under the Gaming Machines Act now mirror the procedure for the alteration of codes of practice. The guidelines instrument is required to be laid before each of the Houses of Parliament, and is subject to disallowance.

The 2004 Act also amended Schedule 1 of the Gaming Machines Act adding one additional matter that could be the subject of responsible gambling code of practice. That matter was a program for early intervention in problem gambling.

2.4 Processes for development of the codes of practice

On 1 October 2001 the Statutes Amendment (Gambling Regulation) Act came into operation.

In anticipation of that commencement, and in reliance on section 29 of the Statutes Amendment (Gambling Regulation) Act, the then Minister published a notice in the Government Gazette deeming all hotel and club gaming machine licensees to have

adopted a code of practice in a particular form. The terms of that deemed code of practice were modelled on an existing voluntary industry code of practice.

In the same month, the Authority announced a call for submissions for a public inquiry into the terms of codes of practice to apply to Skycity Adelaide as operator of the Adelaide Casino.

A public hearing was held on 28 November 2001, at which six submissions were received.

Following that public hearing and further consultations with Skycity Adelaide, the Authority published a report of the inquiry on 3 May 2002 and, also on that day, the resulting codes of practice were tabled. The commencement date for those codes was 1 June 2002.

Subsequently, the Authority made calls for public submissions for inquiries and public hearings into the codes of practice to apply to lotteries and wagering activities.

At a hearing on 1 August 2002, six stakeholders presented submissions in respect of the codes of practice to apply to lotteries. At a hearing on 28 August 2002, seven presentations were made of submissions with respect to the codes of practice to apply to SA TAB, licensed racing clubs and licensed bookmakers.

Following these hearings, the Authority determined to integrate the consultations for lotteries and wagering with a review of the existing transitional codes for hotel and club gaming machines, and any consequential impacts upon the casino. A public hearing was fixed for 11 December 2002 and 15 submissions were received on that day.

Following the receipt of supplementary submissions, the Authority published a report on 30 May 2003, attaching draft uniform codes of practice.

The 30 May 2003 report identified certain issues for immediate implementation in codes of practice (the first stage issues) and others on which further consultation would be required before the Authority could make a determination (the second stage issues).

Following the publication of this report and statutory consultation on the instruments which would have implemented the first stage issues, a further public hearing was called for 29 July 2003 at which six further submissions were received. In addition, part of those considerations was adjourned to 10 September 2003 for the receipt of two further submissions from the Australian Hotels Association (SA) and licensed racing clubs.

The Authority produced a supplementary report on 4 December 2003, outlining the terms in which the first stage issues would proceed. Statutory instruments to implement those first stage codes of practice measures were tabled in Parliament and formally provided to gambling operators in February 2004. The commencement date for those codes of practice measures was 30 April 2004.

Following this, the Authority resumed its consideration of the second stage issues in public hearings of 21 July 2004 and 24 November 2004.

Details of all of the public hearings, and the text of all submissions made (including materials tabled) are available on the Authority's website, www.iga.sa.gov.au.

In order to accommodate public inquiries required to be conducted as a result of the passing of the *Gaming Machines (Miscellaneous) Amendment Act 2004*, the Authority did not conduct any further public hearings on the second stage issues during 2005, but instead resolved to combine the taking of further representations on those issues with a review of the first stage issues which was required to be commenced within two years after their commencement (on 30 April 2004). This determination was formalised in the call for submissions for the Review 2006 inquiry in January 2006.

Full written submissions were received on the question of the review of the first stage issues connected with the codes of practice and the second stage issues which were still to be the subject of determination. Hearings which enabled stakeholders to address their written submission and to make further representations were conducted in May 2006 as noted in paragraph 2.1 above.

2.5 The game approval guidelines and gaming machine licensing guidelines

In 2003 and 2005 the Authority made guidelines intended to assist the Commissioner in two of his statutory duties, namely the approval of games for use on gaming machines (in both the casino and in hotels and clubs licensed for gaming) and the licensing of hotel and club premises for the operation of gaming machines.

The process by which those guidelines came to be made was as follows.

The requirement that the Liquor and Gambling Commissioner consider whether the approval of a new game would exacerbate problem gambling became effective on 1 October 2001. In November 2001, the Commissioner indicated that he would approach this by identifying whether proposed games included a new feature, in the sense that no previously approved game had included the feature.

In March 2003, the Authority commenced a written consultation process with stakeholders, and on 2 June 2003, issued guidelines with respect to games to be played on electronic gaming machines under the relevant provisions of both Acts.

The *Gaming Machines (Miscellaneous) Amendment Act 2004* inserted section 86A into the Gaming Machines Act with effect from 1 February 2005. Section 86A required all guidelines issued by the Authority under the Gaming Machines Act (both before and after 1 February 2005) to be laid before the Parliament and be subject to disallowance. The guidelines issued on 2 June 2003 were so laid before the Parliament and the period for disallowance passed.

The requirement that the Liquor and Gambling Commissioner have regard to the likely social effect of the grant of a gaming machine licence on the local community and, in particular, the likely effect on problem gambling within the local community became effective on 1 February 2005, when a new section 15(5) was inserted into the Gaming Machines Act. Section 15(5)(b) requires the Commissioner to have regard to any guidelines issued by the Authority in that regard.

Having reviewed the approaches taken to social impact assessment in other Australian jurisdictions, the Authority issued guidelines on 2 November 2005, and these were tabled on 10 November 2005. No motion for disallowance has been made.

In conducting Review 2006, the Authority considered it desirable to examine the guidelines to determine whether any amendment of them is warranted particularly having regard to possible interrelationships with the codes of practice and to submissions made in respect of harm minimisation measures generally.

2.6 Material before and presentations to the inquiry

Appendix A sets out who made submissions, and the relevant dates. Appendix B sets out, for each of the hearings, who appeared before the Authority and in which capacity.

3. SUBMISSIONS

3.1 Hotels and licensed clubs

3.1.1 Preliminary

The AHA (SA) and Clubs SA made a joint written submission to the review on all issues.

At the hearing on 23 and 24 May 2006, Miss E F Nelson, QC, appeared for both organisations. (Miss Nelson also appeared for Racing SA—the peak body for the three racing controlling authorities—this submission was made immediately after, and separately to, the AHA/Clubs SA submission.)

At the supplementary hearing on 22 November 2006, the AHA and Clubs SA were represented by their respective general managers and an AHA Council member.

3.1.2 The AHA and Clubs SA submission

INTRODUCTORY

The AHA (SA) and Clubs SA written submission was supplemented in a number of ways. At the May hearing, Counsel who appeared (Miss Nelson, QC) filed a further document dated 23 May 2006 dealing with what were described as jurisdictional issues. Those jurisdictional issues are dealt with separately (in the section commencing on page 65).

The written submission identifies that the AHA is one of the oldest employer based associations in South Australia, having operated continuously since 1873. The Association's role is to represent and promote the interests of hotels throughout the State and it receives its incorporation status through registration with the Australian Industrial Relations Commission. The AHA claims more than 80% of the hotel industry in South Australia as its members. Those members range from small country hotels to five-star hotels and resorts. Its members operate under hotel liquor licences.

They include sole traders and partnerships, incorporated associations, trusts, limited and proprietary limited companies. They are owned by individuals, families, partnerships, national corporations, investment companies, superannuation funds, shareholders, venture capitalists and community based not-for-profit structures. The submission identifies the economic profile of the hotel industry and it notes the following points.

- ◆ employment in excess of 24 000 in South Australia;
- ◆ jobs created since introduction of gaming—4 400;
- ◆ capital and commercial value—\$3.1 billion;
- ◆ annual support to charities, sport and community groups—\$9 million plus;
- ◆ expenditure on hotel redevelopment since introduction of gaming—\$563 million;
- ◆ gaming tax paid—\$281.567 million, as part of the total gaming machine tax of \$296.284 million in the financial year 2004–05;
- ◆ electricity and gas consumption—\$29.3 million per annum;
- ◆ local government rates—\$10 million per annum;
- ◆ water rates.

It is also submitted that each year, retail sales exceed \$1.7 billion represented as:

- ◆ nearly 28 million meals;
- ◆ more than 80 million litres of beer;
- ◆ more than 12 million litres of wine;
- ◆ more than 3.5 million cups of coffee;
- ◆ more than 6 million litres of soft drink;
- ◆ annual live band performances—21 000.

The AHA/Clubs SA submission goes on to set out the details of community grants, donations and support and a supplementary document was provided dealing with this. In previous submissions filed with the Authority in the course of dealing with the question of codes of practice for hotels and clubs, the AHA had submitted a good deal of evidence relating to its members' support of charities, sporting and community groups. In total it is submitted, on behalf of the hotels and clubs, that their collective donations exceed \$9 million annually.

The submission then goes on to identify that Clubs SA is the trading name for the Licensed Clubs Association for South Australia Inc, which was founded in 1919. Clubs SA is the industry body that represents the interests of licensed clubs in South Australia. The Association's philosophy has changed little over the years. Its major platform over that time has been to promote changes to government legislation so as to give clubs a more equitable position to become totally self-sufficient in the long term and to provide the necessary infrastructure to promote sport and community related enterprises with the industry. The submission suggests that the activities of the Association have reflected the hopes and aspirations and lobbying activity of

Clubs SA. The submission notes however, that Clubs SA has a number of other objectives and purposes concerned with the interests of its members. The submission identifies that Clubs SA is part of a national structure made up of various state associations throughout Australia and New Zealand. Membership of Clubs SA is open to all sporting, ethnic, social and community clubs in South Australia who have a common interest bond, both within their club and within the association. The purpose of the association is to promote and protect the interests of its members and to provide direct services to it.

The submission identifies that under the heading of economic profile, the following benefits:

- ◆ \$37 million per annum in benefits to the community;
- ◆ \$30 million per annum in taxes, including \$14.717 million in gaming tax;
- ◆ \$350 million in asset support;
- ◆ employment of 2 500 persons;
- ◆ added value of \$12.90 for every dollar spent;

and social contributions in the following form:

- ◆ 56% of clubs are in rural areas, where 26% of the population lives;
- ◆ 77% of clubs are key venues for social meals and recreation for South Australians;
- ◆ there are over 350 000 members of clubs, and clubs have an average membership of 324;
- ◆ 23 800 volunteers contribute approximately 1 million hours of activity per annum to the clubs.

The submission goes on to assert that the AHA and Clubs SA have demonstrated a strong commitment to fostering a culture of responsibility, and therefore a socially responsible club and hotel gaming machine industry, since 1994. The submission asserts that the industry has displayed enormous leadership in the area of harm minimisation strategies, demonstrated in many Australian first initiatives. One of these referred to is *Smart Play*, said to have been established in early 1996. The submission asserts that *Smart Play* was established in consultation with certain welfare agencies, including the Salvation Army, Adelaide Central Mission and the Catholic Centacare. The submission reports that Professor Mark Dickerson, who was at that time Executive Director of the Australian Institute of Gambling Research, suggested that the initiative has the potential to set the standard for the industry in all states. This followed an earlier offer in 1994 by the industry, of a voluntary contribution of \$1 million per annum through the Independent Gaming Corporation to the then Minister for Family and Community Services for the establishment of a funding mechanism for gamblers' rehabilitation services. The Gamblers Rehabilitation Fund, which it later became, has of course been the principal source of funds for the Break Even counselling network. This industry contribution was additional to its taxation obligations.

There can be no doubt that the GRF has been a very useful initiative. However, the submission seems to suggest that multiple harm minimisation strategies have come from hotels and clubs, while identifying (at page 4) only one of these and seeking to gain support by a reference to the National Framework on Problem Gambling 2004–2008.

It must be said that this part of the submission is not strong. While the hotels and clubs have contributed from their revenue, they cannot be said to be responsible for the conduct of this initiative.

GENERAL COMMENTS ON THE CODES

The AHA/Clubs SA written submission deals with a number of matters relevant to Review 2006.

The first submission is that the codes of practice lack clarity and certainty of interpretation. The submission says that the fact that the Liquor and Gambling Commissioner felt obliged to provide guidelines to assist in the interpretation of the codes is evidence that the codes lack clarity and certainty of interpretation. The submission makes several summary points, as follows:

- (a) The advertising and responsible gambling codes of practice pursuant to the Gambling Machines Act, which came into force on 30 April 2004, lack clarity and are creating confusion to members and regulators.
- (b) The codes create offences that were not envisaged by Parliament.
- (c) Licensees are unnecessarily being put at risk of penalty through the lack of clarity and interpretation of the codes.
- (d) The codes are defective and difficult to interpret in their current form because the language used is inconsistent with that used in other legislation.
- (e) Their ambiguity has been compounded by the Commissioner's circular. The Commissioner's guidelines, however well intentioned, cannot broaden the interpretation, create further offences or provide defences.
- (f) The AHA and Clubs SA support the intent and spirit of the codes; however they need to be modified to ensure that they clearly and definitively convey their intent.
- (g) The codes of practice are subordinate to the principal legislation and care should be taken that in cases involving this statutory interpretation, they are not construed in a way to override or conflict with legislation.

The submission does not detail precisely where the difficulties arise; these seem to be dealt with at various points in addressing the codes themselves.

Next the submission goes on to assert that a different approach to the interpretation of section 11 of the Independent Gambling Authority Act should be adopted. The submission says that under the amended section 11(2a)¹, the Authority must have

¹ Section 11(2a) of the *Independent Gambling Authority Act 1995* 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:

regard to the economic viability, in the first instance, of the gambling industry as a whole and, specifically, an economically and socially responsible club and hotel gaming machine industry. In this context, the submission sets out the provisions of section 11(2a) and urges upon the Authority due consideration of what is described as a new legislative responsibility to have regard to the maintenance of an economically viable industry.

The submission then contains the following proposition:

What does an economically viable industry mean? From an industry perspective it can only mean the ability to experience continued economic growth of a magnitude that enhances its ability to employ more South Australians and pay taxes. **Economic viability** should mean the ability to reward effort and entrepreneurial skills to remain attractive as an investment opportunity to provide to owners, investors and shareholders returns comparable with national industry standards and experience and ensure a degree of regulatory and business stability that maintains and encourages confidence in the long term viability of the industry amongst financiers and including banks and other financial institutions.

[Original emphases retained.]

No authority of any kind is cited for this definition. The submission does not address the relationship between the references to “economic viability” and “social responsibility” in paragraph (b), nor is the meaning of the word “viable” examined. The intended meaning of the word “economically” is not explained. The AHA/Clubs SA definition does not simply assert the need for the Authority to take into account the object of maintaining an industry that is able to operate in a financially sustainable way, rather, the definition envisages that there ought to be continued economic growth of a kind that would ensure expansion. The submission does not explain how the proposed meaning of “economically viable industry” relates to the other parts of section 11 of the IGA Act and does not deal with the relationship between functions and objects provided for under the Act.

FIRST STAGE ISSUES

The submission then goes on to deal with specific concerns related to the first stage of the codes of practice.

Advertising code, clause 3(2)(f)—household staples. The submission notes that the Liquor and Gambling Commissioner has interpreted the reference to “household staples” in the code as being broad and applying to food and drink, electrical goods for example—but that the list is not exhaustive. The AHA and Clubs SA submit that this was much broader than was intended in the code, although the submission does not identify how the intention of the code is to be discerned. The submission asserts that household staples should be equated to GST free supplies and that educational expenses, rent or mortgage commitments and utilities could be added.

Advertising code, clauses 6(3) and 6(4)—“win” and “\$”. The submission contains the following assertion:

-
- (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.

The code provides that the use of either expression is deemed to be an offence against clause 3(2)(g) if it contains material which is not reasonably believed to be factual or opinion which is reasonably held. This is inconsistent with clause 6(4) (see below) where the use of those symbols is permissible in a sign or display, which is in or is visible from a gambling area in certain circumstances.

These two observations misstate and misunderstand the code provision. The code provision is quite clear. It provides that advertising will be regarded as offending against clause 3(2)(g) if it contains material which is neither information reasonably believed to be factual nor opinion reasonably held *and* which includes one or more of the expressions “win” and “\$”. Further, sub-clause 6(4) is expressed to be an exception to 6(3) and must therefore operate to that extent inconsistently with 6(3).

Responsible gambling code, clause 2(a)(i) and 5(1)—documents. The submission asserts that these provisions potentially require facilities to post relevant documents in more than one place at a venue or to have, in one place, multiple copies of essentially the same document. (The reason for this is that multiple gambling products are offered in the one facility.) The AHA and Clubs SA complain that this is unreasonable and that a provision of the kind found in clause 12(2)(b) of the Lotteries Responsible Gambling Code (allowing training given for the purposes of the gaming machines code to be recognised for the purposes of that code) should be contained in the gaming machines code.

Responsible gambling code, clause 4(3)(a)—playing more than one machine. In respect of the prohibition upon playing more than one gaming machine at a time, the submission asserts that this should be redrafted to provide that:

... a person is not playing a gaming machine if—

- (a) he or she has pressed collect and is therefore awaiting attendance by an approved gaming employee to pay winnings;
- (b) while playing a gaming machine a fault occurs where the player is unable to continue to play, or collect coins and the machine requires attendance by an approved gaming employee, or
- (c) the machine has been reserved, provided there are no credits left on the machine.

Responsible gambling code, clause 6(1)(c)—alcohol and gambling. In relation to the responsible gambling code provision requiring licensees to ensure alcohol is not supplied to reward, promote or encourage continued gambling, the submission suggests that the clause be redrafted with the following provision:

... to ensure that complimentary alcohol is not supplied for consumption in a designated gaming area to reward, promote or encourage continued gambling.

Responsible gambling code, clause 6(2)—alcohol not served at machine. This provision requires that the licensee ensure that a person is not served alcohol whilst seated or standing at a gaming machine. The submission asserts that the word “serve” is not defined in the code and that the concept of service has been expanded by the Commissioner’s guidelines. It is submitted that there is uncertainty as to whether or not a person can order alcohol whilst seated at a gaming machine, even though that alcohol is not supplied to that person at the gaming machine. The Liquor Licensing Act 1997 which deals with the sale and supply of liquor in licensed premises does not use, in any of the relevant sections, the word “serve”. There is nothing in the Gaming Machines Act which assists with the interpretation. The word “serve” by dictionary definition connotes the delivery of a drink to a person seated or standing at a gaming

machine. The AHA/Clubs SA submission says that licensees are aware that they are at risk and no-one can predict which interpretation would prevail in a court of law. If the intention was to encourage someone playing a machine to break the play by leaving the machine to take delivery of alcohol elsewhere, ordering at the machine but collecting the drink elsewhere would have that effect.

The submission contends that the code was intended to ensure that any person playing a gaming machine must leave the machine in order to obtain alcohol and the submission goes on further to say that sub-clause 6(2) should be redrafted to read:

The gambling provider shall not deliver any alcohol to a person who is seated or standing at a gaming machine.

Responsible gambling code, clause 10(5)—staff and training. In relation to staff and training, the AHA and Clubs SA submit that the majority of venues use external training organisations to provide recognised training courses and that many of those courses are nationally recognised and are delivered by a registered training organisation (RTO). It is submitted that there are conditions attached to gaming licences which require that training be conducted by an RTO approved by the Commissioner, but that clause 10(2) of the code requires that the external provider must be appropriately accredited in a manner acceptable to the Authority. The AHA and Clubs SA submit that this is an apparent contradiction, which needs to be remedied. There is no contradiction. It is also submitted that the requirement for individual venues to have the external organisations and the training courses audited annually is particularly onerous. The submission goes on to say that the audit process should be clarified because it is not clear how this should be done. The submission notes that the AQF (Australian Quality Framework) auditing process should be considered to be sufficient.

SECOND STAGE ISSUES

The AHA/Clubs SA submission then proceeds to deal with the second stage codes of practice issues. As a preliminary, the submission says that harm minimisation strategies should not be initiated on an ad hoc basis or introduced on the strength of one stakeholder's urging in the absence of supportive evidence of its efficacy in addressing harm minimisation and problem gambling. The submission asserts that there should be strong evidence that it would be effective or that there would be strong stakeholder support for it. The submission also refers to in a supportive way conclusions drawn in the IPART report². In particular, the submission quotes from the IPART report where it says:

...research and evaluation are essential to ensure that initiatives are likely to minimise problem gambling without unintended negative consequences for the community.

The submission then deals with specific measures proposed for consideration as part of the second stage code of practice. These are reported in the order in which they are dealt with in the AHA/Clubs SA submission.

² Independent Pricing and Regulatory Tribunal of New South Wales, *Gambling: Promoting a Culture of Responsibility*, June 2004. See also comments starting on page 40 about the terms of reference and review process.

Mandatory warnings in advertising—second stage issue 1. The AHA/Clubs SA submission asserts that there is no need for any other responsible gambling message than the existing voluntarily adopted practice that materials include the tag “gamble responsibly”. The submission seems to draw support from the proposition that no other mandated tagline has been required in Queensland or New South Wales.

On- and in-venue signage—second stage issue 2. The AHA/Clubs SA submission asserts that it is unacceptable to restrict legitimate business operations being advertised by appropriate signage, and further that—provided that on- and in-venue signage is not misleading and complies with the advertising code—there should be no limitation; after all, that is the purpose of an advertising code. Any restrictions as to signage in terms of size or position will incur significant costs for licensees. The submission goes on to suggest that there is no evidence that signage encourages problem gambling and further, that since New South Wales banned venue signage in 2002, there has been no suggestion of a reduction in problem gambling.

Mandatory breaks in play—second stage issue 3. The AHA/Clubs SA submission asserts that there is no evidence that this measure will have any effective benefit. The submission also draws attention to the fact that while it will have no harm minimisation effect, it will severely impact upon the enjoyment of recreational gamblers. The submission relies heavily upon the IPART report conclusion that “compulsory shut down of individual machines should not be introduced”. The AHA and Clubs SA also refer to the Liquor and Gambling Commissioner’s submission that there are myriad conflicts and unworkable technicalities involved in closing down any or all gaming machines for 5 minutes every 2 hours.

Here, the AHA/Clubs SA submission also asserts that the manner in which machines are to be utilised is a matter which is within the discretion of the Liquor and Gambling Commissioner. There is probably no scope in the Gaming Machines Act for either the Authority or the Liquor and Gambling Commissioner to so act. However, the Authority would always be able to make a recommendation to Parliament to this effect. The submission goes on to draw attention to New Zealand legislation which requires all new machines after October 2005, and in any event all machines operating after July 2009, to interrupt play for at least 15 seconds each 30 minutes to display warning message; it notes that there are not yet any machines which operate this way.

Screening of sights and sounds of gambling—second stage issue 4. The submission asserts that there is no evidence to support the screening of sights and sounds of gambling and in particular, reference is made to the IPART report to the effect that insufficient research has been conducted to determine the effect of sounds of gaming machines on problem gambling. It was claimed that the IPART report also recommended against the introduction of any limits or standards relating to the sounds made by gaming machines, the requirements in relation to natural light in gaming areas and the requirement that gamblers be visible from outside the gaming area. The submission notes that each of these measures were rejected by the IPART report on the basis that “the tribunal considers that due to insufficient evidence, little or no stakeholder support or negative stakeholder response, the measure should not be introduced in the short to medium term in New South Wales”.

The submission says that one unintended consequence of adopting the measure might be that hotels and clubs simply increase the size of the gambling area. The submission notes that the Liquor and Gambling Commissioner already has considerable discretion in determining whether or not gaming venue designs are to be approved, and this operates in relation to new developments. The submission makes further reference to the capacity the Commissioner has to ensure that the design and layout of gaming facilities is appropriate. The submission does not, however, identify any decision by the Commissioner in relation to any venue or facility that might be said to fall within the scope of moderating design and venue layout in order to address concerns about responsible gambling and problem gambling. The submission refers to Schedule 1 of the Gaming Machines Act, noting the ample authority of the Commissioner to address these matters.

The submission identifies that the AHA and Clubs SA do not support a measure to screen the sights and sounds of gambling. The submission draws attention to what it says is agreement between the industry and the Concern Sector that, if such a measure were introduced, it should not be retrospective. A specific submission was made here by Clubs SA that any prospective application of the measure would severely impact on future development opportunities of club facilities through Club One and the current practice of relocating existing club premises. The submission asserts that the costs associated with screening all sights and sounds as a retrospective requirement would run into tens of millions of dollars and would cause many venues to become economically unviable. The submission does not identify evidence to support the assertion. The submission questions the Authority's jurisdiction to impose the provision.

Six hour break—common closing hours—second stage issue 5. The AHA/Clubs SA submission rejects a common six hour break across all hotels and clubs. It asserts that the six hour break which has been in place since 1 July 1996 was the result of lengthy Parliamentary consideration and debate. The submission also refers to the submission made by the Commissioner to the effect that the times during which a six hour break may be imposed are at the discretion of the Commissioner pursuant to section 27 of the Gaming Machines Act. The submission then reproduces section 27. The submission asserts that the discretion contained in section 27 would be overridden if the Authority recommended codes which provided for six hour breaks. The submission goes on to assert that the issue of closing hours is one of great significance to all stakeholders and further...

... The Parliament itself has set minimum conditions, but has thereafter vested the power to deal with such issues and the Commissioner presumably to be exercised on a case by case basis. It was clearly not within the contemplation of the Parliament that the Authority should be able to effectively override these provisions by way of codes of practice.

The submission goes on to refer to a New South Wales study into the previous 3 hour shut down of gaming machines in which, it is asserted by the AHA and Clubs SA, most of the representatives from counselling services who were interviewed suggested that the three hour shut down was not the most effective harm minimisation measure. It is asserted that New South Wales currently has a six hour shut down. It was submitted that the IPART report recommended that research be conducted to determine whether the longer shut down period was effective in reducing gambling

related harm. In essence then, the submission is that the current six hour break has not been reviewed elsewhere in Australia, and that there is no justification for further modification without evidence as to the impact on problem gambling and economic viability of the club and hotel gaming machine industry.

Inducements and loyalty programs—second stage issue 6. The submission notes that the AHA and Clubs SA have reached agreement with the Concern Sector to support a ban on inducements. The submission defines inducements as any action that provides an offer in a non-gambling environment of an opportunity to gamble for free. That is to say, they are offers to entice a person to commence gambling when they may not have intended to do so, or encourage a person to continue gambling beyond the extent that they had intended. Nevertheless, the AHA/Clubs SA submission asserts that promotional activities would be deemed to be acceptable provided that they complied with the codes of practice. A promotion was said to be an activity that is intended to change a gambler's gambling behaviour and is harm neutral. The submission goes on to say that an inducement may be defined as the provision of an opportunity to gamble with the purchase of a non gambling product, the supply of tokens for gambling free of charge, and the provision of a non gambling product without charge intended to promote continued gambling, but not intended to capture food or refreshments other than alcohol in the gaming room; provided that the definition shall not include random refunds on any gambling product or the purchase or acquisition of an entry ticket for a lottery or raffle. As an alternative, the submission suggests that perhaps regulation 48 of the New South Wales Gaming Machines Regulation 2002 might be appropriate. Based on that regulation, the AHA and Clubs SA suggest the following wording:

A gambling provider must not:

- (a) offer or supply any free or discounted liquor for consumption on the premises as an inducement to play or to play frequently gaming machines or,
- (b) offer free credits to players or as an inducement to person to become players of gaming machines by means of letterbox fliers, shopper docketts or any other similar means.

It is further submitted by the AHA and Clubs SA that such a provision would render redundant responsible gambling code clause 6(1)(c), and thereby deal with ambiguity which it said surrounds that clause. The submission goes on to say that it is agreed between the AHA and Clubs SA and the Concern Sector that inducements should be separated from loyalty programs.

The submission affirms that the AHA and Clubs SA do not resile from their total opposition to the abolition of loyalty programs for hotel and club gaming machine venues, and also questions whether the Authority has jurisdiction through the codes to so provide. The submission identifies that modifications could be made to loyalty programs without fundamentally destroying what is a now recognised business tool for most sectors of business. The modifications that are suggested are:

- (a) no inducements to gamble associated with loyalty;
- (b) no loyalty rewards to include household staples;
- (c) loyalty members may choose to have access to six monthly statements of their gambling activity;
- (d) barred persons are to be removed from loyalty database mailing lists.

The difficulty, of course, with some of these measures is that household staples are not defined, despite the earlier submission by the AHA and Clubs SA, and no measure is recommended as a way of ensuring or policing the proposition that loyalty database mailing lists be purged of the names of barred persons (which is, in any event, an existing code of practice requirement).

The submission refers to some research conducted by New Focus. This research had been provided to the Authority for an earlier hearing by Worldsmart Technology (the operator of the J Card loyalty program) and was based on telephone interviews with 200 J Card members and 300 members of the general public. The submission goes on to say that the vast majority of patrons who have loyalty cards already gamble responsibly.

Co-location of gambling activity—second stage issue 7. The submission here asserts that co-location raises the same concerns as the proposal relating to the screening of sights and sounds of gambling in that it relates to the physical layout and design of designated gambling areas.

Relationship with counselling agencies—second stage issue 8. The AHA/Clubs SA submission here asserts that establishing and maintaining relationships between gaming venues and counselling agencies is desirable. The submission seeks to draw support from initiatives which it says were undertaken in 1994. The submission supports the principles of the National Framework on Problem Gambling 2004–2008, and the principles are set out in full.

Reporting of potential problem gamblers—second stage issue 9. The AHA and Clubs SA submit that this is a matter that is more appropriately included in the documentation required as part of clause 2(2)(b) of the responsible gambling code. It is asserted that the proposal has the potential to breach the national privacy principles pursuant to the Privacy Act enacted by the Commonwealth. It is submitted that while this consequence may be unintentional, it nevertheless has the potential to impose on venues a requirement under the codes that cannot be complied with under Commonwealth law.

Keno to be banned in newsagents and similar outlets—second stage issue 10. The AHA and Clubs SA do not support the proposal because it is asserted that the measure would not be a harm minimisation tool or be likely to have any impact on problem gamblers. Again, an assertion is made that the vast majority of people who purchase Keno and other lottery products do so responsibly. No evidence of any kind is submitted to support that assertion.

Age for sale of gambling products—second stage issue 11. Noting that the proposal that Keno be required to be sold by persons aged 18 years and above affects them the least, the AHA and Clubs SA submit that there is no evidence that the sale of gambling products by minors poses any difficulties and, in addition, remark that such a requirement would unnecessarily prohibit young family members of licensees and small business outlets from assisting by selling those products.

Smoking—second stage issue 12. The submission supports the Authority's proposal not to proceed given that the matter has been addressed by legislation.

The submission then goes on to deal with additional matters raised by the Authority for discussion and as a preliminary seeks to make the point strongly that each of the matters which are thereafter dealt with have not been properly researched as to their effectiveness of harm minimisation tools and should not be initiated on an ad hoc basis, or introduced on the strength of one of the stakeholders urging in the absence of supportive evidence of its efficacy in addressing harm minimisation of problem gambling.

GAMING CARE AND CLUB SAFE

The submission also refers to an initiative known as Gaming Care. Neither the primary written submission nor any submissions advanced prior to the public hearings dealt with, in any detail, any attempt by the hotel sector to address the need for early intervention programs. At an early stage, the AHA had announced the establishment of what was known as Gaming Care, a project coordinated by Ms Rhonda Turley. At earlier hearings connected with these questions, Ms Turley gave evidence about the activities of the Gaming Care program. Those activities tended to be focused upon visits to hotels and sending material to them dealing with their obligations under the existing codes of practice and addressing the need for a responsible approach to the conduct of gaming facilities. The evidence given by Ms Turley made it clear that there were, at that stage, only two staff actively involved in the work of the program and that Gaming Care did not see its role as seeking to provide direct and compulsory early intervention where a patron was assessed to have developed a problem. Nor did Ms Turley's evidence at that stage suggest that any more than a small number of hotels were receiving visits, or that any kind of enforcement function was involved.

In the written submission advanced ahead of the hearings in this inquiry and in the course of the presentation made by representatives on behalf of the AHA at the May 2006 hearings, no very substantial advance was made upon the earlier evidence of Ms Turley. No submission was advanced by Counsel on behalf of the AHA at the May 2006 hearings, attempting to grapple with the question whether Gaming Care was able to be treated as an initiative directed to ensuring compliance with codes of practice, much less providing a mechanism of early intervention where a patron had been assessed to have developed a problem.

However, since the May 2006 hearings, and in the light of submissions advanced on behalf of the Concern Sector, and questions raised by members of the Authority in the course of the hearing, the AHA has taken the step of presenting further material addressing the role and function of the Gaming Care initiative. The AHA submissions directed to Gaming Care have been accompanied by parallel submissions prepared and presented by Clubs SA and directed to its comparable program known as Club Safe. The submissions were in writing and were helpfully presented by Mr Ian Horne, the General Manager of the AHA. Mr Horne was accompanied by Mr Wally Woehlert, an AHA council member and a person well experienced in the gaming industry. Ms Helen Martin, the General Manager of Clubs SA and a person with considerable direct experience in the club gaming industry, presented the submissions of Clubs SA concerning the Club Safe program. Ms Martin was able to answer all of the questions posed by members of the Board.

In essence, the issue arose in this way. During the course of the hearings, the Presiding Member raised with stakeholders and, in particular, representatives of the licensees, whether or not it might be said that the existence of a functioning and effective early intervention scheme could be taken into account in determining the question whether or not the obligations upon licensees and in turn the Authority, to work towards, and to ensure, a culture of responsibility in gaming were discharged. The Presiding Member drew attention to the fact that Skycity Adelaide had instituted a program in which 4 full time officers employed and paid by the casino licensee were engaged to monitor, and observe, patrons at the casino for the purpose of discerning whether any particular patron might be manifesting behaviours indicative either of an existing or developing serious gambling problem. It was put to stakeholders that the existence of that program, which involves considerable allocation of resources by the casino licensee and a commitment to responsible gambling culture, should tell heavily in favour of the casino when the Authority determines the precise content of the codes of practice, particularly in connection with second stage issues. Put simply, the question which was raised was whether or not second stage codes measures which might otherwise be seen to impose an administrative, financial and organisational burden upon licensees, might be put to one side if it could be established that real and effective early intervention was in place to protect the community and individuals where it had become apparent that a problem had developed.

Mr Horne and Ms Martin provided brief written submissions in support of the oral presentation made at the November hearing. The written material consisted principally of promotional material and powerpoint slides which were to guide the oral presentations. Mr Horne announced that at the time when Gaming Care was first promulgated by the AHA there were organisational difficulties which prevented real attention being paid to it but that he had himself ensured that the matter was now the subject of concerted effort. It appears that Gaming Care now has 4 full time officers responsible for what might be described as “field work”. Some of those officers were present at the hearing in November and each of them was referred to in the promotional material in some detail.

Mr Horne explained that Gaming Care aimed to achieve a number of outcomes. First, the intention was that Gaming Care and its staff would seek to distribute to all hotel gaming licensees (not just the members of AHA) material drawing to the hoteliers’ attention the need for their compliance with all regulatory requirements associated with their licences, and in particular, responsible gambling and advertising codes of practice. This material addressed these questions from a number of points of view, and was followed up by visits which were to be conducted by the Gaming Care officers. In the first instance, Mr Horne explained, and Ms Martin agreed that this was the case in respect of Club Safe, that Ms Turley and the officers would be concerned to gain the confidence of licensees and to provide a bridge of information and understanding between the hoteliers and the regulatory bodies. Mr Horne acknowledged that among some AHA members there was a degree of resistance to compliance with regulatory requirements. He explained that this might have been born out of a lack of understanding, or possibly other motivations, and that Gaming Care would be providing an effective service if this matter was addressed by information and direct personal contact. The submissions identified that, in some

cases, Gaming Care officers were able to identify problems being experienced by hoteliers and to direct them to appropriate assistance or information. In the oral presentation, Mr Horne at first suggested, by implication, that this program provided a form of early intervention, in the sense that if Gaming Care officers were present at a hotel where there was a patron experiencing difficulty then if the staff member or the hotelier had asked for assistance, the Gaming Care staff would be able to refer them to counselling services and agencies. However, upon close questioning, Mr Horne acknowledged frankly and properly that the Gaming Care officers would not achieve success in the program if they sought to exercise rights without the co-operation of the licensees. Rather, their intention was to encourage co-operation from the hoteliers so that they in turn would ensure proper education of their staff, and an encouragement of their staff to draw attention where a patron was clearly in need of assistance. Principally this would involve Gaming Care officers in facilitating improved relationships between licensees and the Break Even and other counselling services, empowering staff to provide information to patrons who might have been experiencing difficulty, and to encourage licensees to a responsible approach to these matters. Ms Martin identified that the program, Club Safe, with its 2 field officers, was adopting the same approach.

Some interesting examples were given by Mr Horne and Ms Martin about the formative work of these programs, including—

- ◆ while a Gaming Care officer was present in a venue, a player sought support about where to go for help and the Gaming Care officer was able to identify the appropriate agency, give the person a particular name to ask for and then follow it up with the agency to expect a call;
- ◆ at another venue in the northern suburbs a person indicated a wish to be barred and the officer helped in that process.

3.2 Lottery related submissions

3.2.1 Preliminary

The Authority received three submissions specifically related to the codes of practice in force under section 13B–13E of the State Lotteries Act. These were from the Lotteries Commission (SA Lotteries) which conducts lotteries under the statutory mandate of that Act; the Australian Newsagents Federation (SA Branch) whose members make up a significant number of SA Lotteries' agents; and Mrs June Carter, the proprietor of the Glenside Newsagency and other newsagencies.

SA Lotteries is bound, by operation of statute, to adopt and conform to the codes of practice approved by the Authority. As distinguished from the other forms of gambling to which codes of practice relate—which are conducted under licences subject to the constant scrutiny of the Liquor and Gambling Commissioner—SA Lotteries is obliged to police its own compliance with its Act and the subordinate instruments made under it.

SA Lotteries distributes its products through an agency network. Some of these agencies are located in hotels and clubs also offering liquor, gaming machines and

SA TAB products; others are located in newsagencies, with a small number in pharmacies, shopping centre kiosks and other retail environments. These lottery outlets are not subject to any form of direct regulation by the Authority, the Liquor and Gambling Commissioner or any other regulatory agency; rather they are controlled through the terms of the agency agreements they have with SA Lotteries.

3.2.2 *Lotteries Commission of South Australia*

The material before the Authority was provided in the form of a written submission, a presentation by an executive of SA Lotteries and additional material provided following the hearing.

SA Lotteries submitted that it is an agency of the South Australian Government conducting a business provided for by Parliament. The profit from its activities is principally directed to the Hospitals Fund (which has received \$1.6 billion since 1967) and the Recreation and Sport Fund (which has received \$7.6 million since 1987). Hospitals Fund contributions in 2003–04 (the last full financial year prior to the date of hearing) were \$89 million. (While this is a significant amount of money, it is clearly not the only state funding that hospitals in South Australia received.)

SA Lotteries also pointed out that, since it commenced operations, it has paid more than \$2.3 billion in prizes. Its products are familiar: Lotto, Oz Lotto, PowerBall, the Pools, Super 66, Instant Scratchies and Keno. SA Lotteries also pointed out that its strategic plan is aligned to the Government-endorsed South Australian Strategic Plan.

The SA Lotteries submission documented a rigorous program of implementation for the codes of practice since they first became applicable to lotteries (on 30 April 2004). This has included a rewriting of the relevant agency agreements to ensure that the agency network conforms to the codes of practice, the delivery of purpose specific training for the whole of its network, a tailored under-18 responsible training program, the establishment of a formal process for the reporting of problem gambling incidents (against which there had been 7 reports made), incorporation of compliance with codes of practice in two levels of agency supervision (by the marketing department and the compliance department) and independent audit of compliance with training requirements (undertaken by KPMG).

SA Lotteries urged upon the Authority that it position itself similarly to IPART in terms of imposing measures where there is either strong evidence or strong stakeholder support for the measures. In addition, SA Lotteries pointed out that its products are widely consumed in the community with a very low prevalence of problem gambling. SA Lotteries comments on particular issues were confined to the second stage issues.

Mandatory warnings—second stage issue 1. SA Lotteries has already incorporated “Gamble Responsibly” into all of its marketing materials. It argues that the need for a tagline, such as “don’t let the game play you”, is not proven and should not be adopted. It notes that, even in Queensland where the “Gamble responsibly, don’t let the game play you” campaign was devised, there is no obligation to use a tagline.

The SA Lotteries submission also responded to the suggestion that rotating messages would require comment based on the experience of smoking campaigns. The point was made that, while there is a case for all smokers to stop smoking—thereby necessitating a rotating message, most lottery players are able to play without difficulty, and therefore this form of reinforcement of message is not necessary.

On- and in-venue signage—second stage issue 2. SA Lotteries argues that existing lotteries agency signage is essentially directional and necessary for the distribution of the product. (The Authority noted from a range of the material before the inquiry that SA Lotteries rigorously enforces uniform presentation standards throughout its agency network.)

Screening the sights and sounds of gambling—second stage issue 4. SA Lotteries argues that sight is an important part of the marketing of SA Lotteries games; the Authority infers from this that screening the sight and sound of lotteries products would be expected to have a significant negative effect on turnover. SA Lotteries opposes the screening of sights and sounds of lottery gambling from the general public. As a supplementary submission, the SA Lotteries submitted that its Keno monitors had been reduced in size and were being positioned less prominently. (The Authority was not satisfied that the changes to Keno monitors were not simply incidental to a generational change in technology from cathode ray tube monitors to liquid crystal displays.)

Inducements and loyalty programs—second stage issue 6. SA Lotteries pointed out that, if it were required by a code of practice to stop offering inducements to purchase lottery products, this might put it in conflict with a statutory obligation to promote lottery products and, particularly, to return unclaimed prizes to players via promotions.

Relationship with counselling agencies—second stage issue 8. SA Lotteries submitted that it has already established strong and ongoing relationships with counselling agencies (although it was not claimed that there was a direct relationship between each of its agencies and a counselling agency). The submission also recounted the engagement of a training agency associated with a Break Even service provider and its participation in Break Even orientation programs.

Reporting of potential problem gamblers—second stage issue 9. SA Lotteries submitted that it already has a voluntarily established process for the reporting of problem gambling incidents. In relation to this, it was observed that the State Lotteries Act does not provide for self-exclusion from lottery products. (The Authority observes that there would be nothing to prevent agents of SA Lotteries from simply refusing to deal with patrons who were identified as potential problem gamblers.)

Keno in newsagencies, etc—second stage issue 10. SA Lotteries submitted that there should be no restriction on the forms of agency where its continuous Keno game is available. It pointed out that this proposed measure would apply unevenly across its agency network, comprised of 335 “retail” agents and 198 hotel or club agents. Despite the disparity in numbers, the retail agencies represent only 51% of Keno turnover presently.

The Authority was told that, on an average weekly basis, Keno contributes \$2 143 to each of its retail agencies' turnover. For Keno, the annual average commission paid to retail agents is \$9 253 (in aggregate 3.1 million across the retail network). While some Keno business would transfer from the retail to the hotel and club sector, the present annual contribution to the Hospitals Fund of Keno from the retail sector is \$5.4 million, and this was regarded as the "worst case" state revenue consequence of the proposal.

The Authority understood that there might also be secondary effects of the removal of Keno from businesses, such as reduced foot traffic into retail and reduced consumption of other SA Lotteries products. There was also discussion, during the course of the hearing, that those players who chose to follow Keno into the hotel and club sector might be introduced to more problematic forms of gambling, such as gaming machines.

Age for sale of gambling products—second stage issue 11. SA Lotteries was similarly concerned as to the impact of a code measure which would preclude the sale of its products by people under the age of 18. SA Lotteries pointed out that it had specific training tailored to the under-18s selling its products and that it had conducted some research as to impacts to a ban on sales by under-18s in agency outlets. Just under half of SA Lotteries retail outlets employ under-18s in tasks that include the selling of lottery product and just under half again indicated that those staff would need to be replaced by over-18s. It was submitted that, weekly, around 150 employment opportunities would no longer be available to young people in retail and hospitality.

3.2.3 *Australian Newsagents Federation*

The material before the Authority from the South Australian branch of the Australian Newsagents Federation Limited comprised:

- ◆ a 14-page submission document (lodged by the required deadline);
- ◆ an oral presentation from Ms Lindy Powell QC, made at the hearing on 23 May 2006;
- ◆ a 10-page supplemental submission tabled at the hearing;
- ◆ further written submissions (4 pages) which the Authority had invited concerning the distinction between prohibition of and interference with an activity and the significance of a code of practice being directed at the Lotteries Commission rather than individual newsagents; and
- ◆ a response to material not previously circulated (provided at the general invitation of the Authority).

While expressly not adopting the submissions made on behalf of hotels and licensed clubs with respect to the scope of the Authority's powers, the Newsagents Federation drew attention to the particular statutory framework applying to state lotteries. Under the general supervision of the relevant Minister, the Lotteries Commission is empowered to conduct and promote lotteries and to make rules (with the particular approval of the Minister) with respect to a number of specified matters, including the products it offers and the terms of its arrangements with its agents. The authority

given by these powers was characterised as being broad and general. The Authority has, by virtue of sections 13B–13E of the State Lotteries Act, particular powers to make codes of practice, subject to the other provisions of the State Lotteries Act and to the IGA Act.

It was submitted that the Authority is obliged to act within the bounds of its legislative authority and that there is a question of reasonable proportionality in the balancing of the benefits of a particular regulatory measure and the costs or detriments of that measure.

It was submitted that, in respect of each of the proposed second stage issues, adoption would have a financial impact on the members of the Federation whether through additional costs of implementation or losses of revenue. The Federation has no knowledge of an assessment or analysis of success or otherwise of the first stage issues and, given what it described as their potentially significant effect, the second stage issues should not be proceeded with before the first stage had been the subject of a proper analysis. (The submission did not address the basis on which the first and second stage issues had been divided when the Authority initially reported in May 2003.) It was also submitted that, in the Federation’s view, the second stage issues address only one of the two objects set out in section 11(2a) of the IGA Act—specifically that they do not address the object of “maintaining an economically viable gambling industry”.

In relation to the first stage issues, it was submitted that the Lotteries Commission had worked closely with the Federation’s members on initiatives to assist compliance with the codes, including with respect to training (including “train the trainer” and specific training for employees aged under 18 years), developing formal relationships with counselling agencies, and compliance with the codes. It was submitted that the Federation supports these initiatives. It was also noted that there had not been regular dialogue between “interested parties” about first stage issues; the Federation believed that such dialogue would be beneficial.

The Federation then turned to particular discussion of second stage issues which had been identified as relevant to its members.

Mandatory warnings—second stage issue 1. Referring to what was said to be a mandatory warning presently in use (“Gamble responsibly”), it was submitted that there should be no change until after this message had been researched and been the subject of consultation with marketing professionals and other interested parties. (The Authority notes that “Gamble responsibly” has been *voluntarily* adopted by SA Lotteries; the manner in which this was done may have appeared to newsagents to be mandatory.)

On- and in-venue signage—second stage issue 2. Reference was made to the present practice of SA Lotteries to impose and enforce strict requirements in relation to display, design and placement of signs and to the fact that these were regarded as being directional only. The submission was that the status quo should be maintained.

Screening of sights and sounds of gambling—second stage issue 4. It was submitted that newsagents had cooperated with the Lotteries Commission in its initiatives to screen sights and sounds of gambling through the display of the “Gamble

responsibly” message on Keno monitors between draws and through the reduction in size of Keno monitors (with the introduction of liquid crystal displays to replace cathode ray tube monitors). It was submitted that these measures were adequate and that there should be no further screening of the sights and sounds of gambling in relation to lotteries products.

Keno in newsagencies, etc—second stage issue 10. It was submitted that there was no code of practice head of power to impose a requirement to withdraw Keno from retail environments (not even under section 13C(a)(iii)—“any other matters designed to reduce the incidence of problem gambling determined by the Authority”). It was further submitted that, even if there were a head of power, such an imposition would be tantamount to prohibiting an activity rather than regulating it. It was submitted that a power to regulate cannot be used as a power to prohibit except with specific statutory authority (cases were cited in support of this proposition). Further, such an imposition would be characterised as being a direction to the Lotteries Commission not to engage particular agents to sell the particular product of Keno (for which there was said to be no power).

It was further submitted that there was no evidence that would support the withdrawal of Keno from retail environments as a harm minimisation measure. In particular, reliance was placed on material which suggested that there was a very low prevalence of problem gambling among lottery players in South Australia, that adolescent gambling is no higher in South Australia than in other jurisdictions and that Keno sales are still lower than they were, in real terms, prior to the introduction of gaming machines in 1994. It was further submitted that there would be serious financial consequences for members of the Federation in the order of an annual average loss of revenue of \$9 800, with an associated reduction in staff hours of 11.6 per week. In addition, it was explained that the removal of Keno would have flow-on effects to other lottery and non-lottery sources of revenue for newsagents.

Age for sale of gambling products—second stage issue 11. It was submitted (similarly to the submissions for Keno) that there was no head of power to support a code of practice provision requiring a product to be sold by an adult (not even section 13C(a)(iii)).

It was submitted that there was no evidence of a connection between deleterious effects of gambling and the age of the person selling the product (noting that the law presently permits products such as tobacco and restricted publications to be sold by people under the age of 18 years). It was further submitted that, whatever negative impacts there might be, the enhanced training and support provided to under age sales staff in lotteries environments are more than compensated for them. The proposition was put that an alert and trained 17-year old would be more able to deal with a range of issues in selling lotteries products than a 21-year old who had not been trained.

3.2.4 *Glenside Newsagency*

Mrs June Carter, a newsagent of some 30 years standing, provided a written submission prior to the published deadline and also appeared to present that submission in person at the hearing on 23 May 2006.

Her submission was accompanied by a number of questionnaires which she had arranged for lottery patrons, at her agencies and a number of others, to complete.

In her written submission, she drew a parallel between the removal of Keno from retail premises and other initiatives which might be taken in the interest of harm minimisation, namely the banning of motor vehicles (in the interests of eliminating the road toll), the banning of alcohol from premises (in the interests of reducing domestic violence) and a number of other similar examples.

It was her view that people should be responsible for their own actions and for their own children, rather than the State having to intervene. She equated the removal of Keno from retail premises to the making of “sacrificial lambs” of hard working newsagents. She also pointed out that the proposal would incidentally give more power to a tightly held group of so called “beer barons”.

As part of her oral presentation, Mrs Carter described the strict compliance regime, with particular reference to the checklist lotteries field staff use and the manner of their visits to premises.

Mrs Carter also cited an instance of a customer who was a problem gambler and who committed suicide. This person was one of her larger gamblers but, based on the person’s profession, an assumption had been made that the amount being spent each week (thought to be \$250) would not be causing any harm. This was an exceptional case and Mrs Carter has been “on red alert” ever since. She does not have any customers who would spend similar amounts.

3.3 Skycity Adelaide

The written submission of Skycity Adelaide Pty Ltd was detailed.

In its introduction, the Skycity submission expresses its intention to make submissions about the responsible gambling code of practice and the advertising code of practice which apply to the Adelaide Casino. In its background, Skycity notes that it has worked closely with the Head of Churches Gambling Taskforce and the Break Even network to develop a common ground for the second stage codes of practice hearing. It is noted that co-operation resulted in a joint position which was outlined in a letter to the Authority dated 15 September 2003. That expressed joint position is defined as the agreed position. The letter dated 15 September 2003 was attached to the Skycity Adelaide submission. The agreed position is signed by the relevant parties.

The Authority notes that the parties to the agreement stand by the agreed position and all request that the Authority enact codes of practice in the terms that have been agreed.

The submission then goes on to deal with Skycity’s early intervention program which is lead by Host Responsibility Co-ordinators (HRCs) and which was launched in December 2004 as a one year trial. The submission notes that the program has since become permanent. The following portion of the Skycity Adelaide submission is worthy of recitation:

Since the inception of the HRC program Skycity has operated in accordance with both the agreed position and the IGA current position. That is, we voluntarily adopted these practices without being

mandated to do so by government.

Skycity notes that since the date of the agreement the Skycity HRC program has continually improved as a result of the close collaboration between Skycity and counselling agencies.

Skycity invites the IGA to consider the benefits arising from industry/concerned sector collaboration. Both have learnt from each other's experiences and Skycity believes we are now better able to identify and assist problem gamblers and potential problem gamblers. We understand that counselling agencies will make submissions detailing the benefits they have obtained from collaborating with Skycity.

Skycity has taken this approach because of the positive outcomes for customers with difficulties. Any important factor leading to our collaborative approach is the prospect of regulatory certainties. The various stages of the codes of practice have been under review now for several years. This regulatory uncertainty has an impact of Skycity's ability to make big investment decisions and hence our profitability.

The Skycity submission then proceeds to deal with the second stage codes issues. The submission notes, however, as an introductory proposition that an assumption is made that the current codes will remain in their current form but that if the Authority intended to depart from that position, Skycity would not unreasonably request an opportunity to make additional submissions. No doubt this is because the combination of particular provisions, the addition of some and the reduction of others, might have unintended effects about which the Authority should be informed before making a decision.

Mandatory warnings—second stage issue 1. Skycity notes that the agreed position provides that the signatories support gambling advertisements carrying one clear message. Skycity for its part is comfortable with “gamble responsibly” and does not see added value from the insertion of additional words. Skycity notes that clause 5 of the current advertising code of practice requires certain advertising to contain information about the odds of winning. Skycity expresses concern that there should be one message relating to responsible gambling whether this is mandated by the responsible gambling codes of practice or in the advertising codes of practice. It is inherent in the Skycity submission that certainty and clarity is sought in relation to this and further that those restrictions do not apply to advertisements or communications made by Skycity to its customers about particular products where the customer has requested that information. It must be noted that this part of the submission does not identify evidence or advance argument as to why more than one message or warning should be required. Nevertheless it carries with it the authority that derives from being part of the agreed position. As such, the Authority will give it some weight.

On- and in-venue signage—second stage issue 2. Again here, Skycity confirms that its position is reflected in the agreed position. That position is to the effect that restrictions should be applied to on-venue signage but that given the nature of the casino venue, in-venue signage should not be restricted. The specific restriction proposed in sub-clause 5(6) is that on-venue signage should not refer to or promote gambling products. What will be permissible is signage that refers to the name of the business and/or venue including use of the word “casino” and any other non-gambling activity or product.

Mandatory breaks in play—second stage issue 3 (regular short breaks) and second stage issue 5 (six hour break). The Skycity submission next deals with the question of

what are described as mandatory breaks in play and confirms that Skycity's position is the one that is reflected in the agreed position. It appears that the agreement that has been reached is that neither form of break should be included in the code, that is to say, five breaks of 5 minutes every 2 hours and/or breaks of 6 hours every day. The reasons given for this include the nature of the casino venue, issues of practicality, contractual agreements entered into by the State Government and also the fact that the provisions of codes which are being proposed by the parties in respect of the casino provide a range of measures that would be more targeted from a harm minimisation perspective. The agreed position document notes that the Heads of Churches Taskforce has asked Skycity Adelaide to consider not opening until 9.00am on Boxing Day and Easter Saturday after Christmas Day and Good Friday shutdowns due to the importance of these days for Christians. There is no statement in the submission or the agreed position as to whether that request has been acceded to.

Screening of sights and sounds of gambling—second stage issue 4. This measure is also the subject of agreement as expressed in the agreed position. The submission notes that Skycity already operates consistently with this proposed provision.

Inducements and loyalty programs—second stage issue 6. Inducement and loyalty programs are the next measure dealt with in the submission. Skycity's position is that which is reflected in the agreed position document. The document contains the following proposition.

The Skycity loyalty program will continue to operate in line with the following criteria:

- in a manner that is consistent with the provisions of the Advertising and Responsible Gambling Codes of Practice.
- it was also agreed however, that consideration would be given to how the program could be adapted and/or utilised to contribute to harm minimisation objects. Specifically the agreement includes an undertaking by Skycity to implement a system whereby customers can use a card to a specific daily (24 hour) expenditure limit on gaming machines. Once this limit is reached the customer will be notified and unable to continue to earn points off gaming machines during the remainder of the limit period; and
- there will be no association whatsoever linking gambling promotions with prizes of household staples and necessities.

The Skycity submission asserts that loyalty programs should be permissible provided that they are conducted in a responsible manner. Skycity currently has a project underway considering the potential benefits and operational issues associated with player cards and loyalty programs and the related privacy and technology constraints. Skycity commits itself to continuing to liaise with relevant authorities and stakeholders when they have further information. The agreement between the parties is clearly expressed and the submissions advanced in relation to this matter are readily understood.

Relationship with counselling agencies—second stage issue 8. Skycity submits that all of the members of its HRC team communicate with members and representatives of the Concern Sector and in particular Break Even services counsellors. Productive working relationships have been established with 9 Adelaide area Break Even agencies as well as other agencies in rural South Australia including Mount Gambier and Port Pirie. Skycity's submission is that the HRCs and staff of counselling

agencies have learnt much from each other and that significant levels of trust have been established. The submission notes that the primary beneficiaries of this close relationship are of course problem gamblers, because HRCs are now more experienced in referring customers to the appropriate counselling service, whether that be problem gambling, financial, alcohol abuse or relationship counselling. They can explain what customers should expect and how the counsellor can help them and thereby the process is demystified. Similarly counsellors can obtain valuable information about the customer and their needs from HRCs.

Reporting of potential problem gamblers—second stage issue 9. The submission advanced by Skycity is to the effect that its HRC program in effect provides compliance with the requirement that there be reporting of the kind envisaged.

Smoking—second stage issue 12. The submission deals with the question of smoking in venues. The submission notes that the Authority's current position is that this has been a matter to be determined by the Parliament and also notes that the casino has complied with each phase of the restrictions as they have come into effect.

Automated coin dispensing machines, etc—second stage issue 13. In respect of automated coin dispensing machines, ATMs and cheque cashing facilities, the submission confirms that Skycity's position is reflected in the agreed position. In summary Skycity submits that provided a gambling provider has harm minimisation measures in place, the provider should be permitted to provide a range of cash access facilities to customers. The agreed position document deals with automated coin dispensing machines in the following way:

This was an issue that was discussed in detail and at length. The agreement that has been reached is that the May 2003 clauses that would have resulted in complete prohibition of coin dispensing machines at Skycity Adelaide should be removed. There were a number of reasons behind this conclusion. In part it reflects the significant logistical issues that a prohibition would impose on Skycity Adelaide but also the extent to which harm minimisation objectives would be advanced by the aggregate impact of the initiatives contained in the proposed codes. It is also noted that the removal of the relevant clause from the casino code would mean that the impact of the code in relation to coin dispensing machines would be broadly similar to the impact of the clause contained in the May 2003 codes relating to operators licensed under the Gaming Machines Act 1992. It is our submission that this is a fair outcome.

So far as the cashing of cheques is concerned, the parties agree with the IGA May 2003 determination and the related clause. The agreement does not deal with questions relating to ATMs

Linking of the service of alcohol and gambling—second stage issue 14. The Skycity submission is that any questions concerning incidents referred to in the current position have been resolved and that its position is as is reflected in the agreed position. The agreed position records that the parties did not reach agreement on this issue. Skycity considers that there should be no prohibition on alcohol being served to customers at machines or tables. In part this reflects the extent to which harm minimisation objects are advanced by a range of initiatives included in the codes and the importance of remote service given the size and nature of the venue. A further reason relates to the issue of compliance. The Concern Sector expresses in the agreed position its sympathy with the Skycity's view particularly noting that the level of compliance monitoring is dramatically higher for the casino than for any other gambling provider in South Australia. However, the link between drinking alcohol

and a reduced capacity for patrons to maintain control of their gambling continues to be an issue of concern for the Concern Sector, particularly in the case of gaming machines. The agreed position notes the exclusion of two provisions concerning alcohol and gambling from the May 2003 IGA report.

Facial recognition and smartcards—second stage issue 15. The Skycity submission notes the issue has been considered by Government and has not found support. The submission goes on to say that there is no adequate smartcard or facial recognition technology available. There are some developments in this area which might give rise to an amended position so far as this question is concerned.

Finally, the Skycity submission sets out some more detailed information and submissions concerning the Host Responsibility Co-ordinator initiative. The submission notes that a report has been provided to the IGA together with a separate report detailing problem gambling training within Skycity. At present the IGA requires Skycity to provide a report on the HRC program on the first anniversary of its initiative and Skycity considers that it has already complied with this condition. Skycity accepts that it is appropriate that it should report regularly to the IGA on the HRC program through its regular meetings with the IGA Director and written reports from time to time. For this reason Skycity believes the level of liaison with the IGA is sufficient and therefore does not consider that this requirement should be mandatory. The submission goes on to say that while there is wide acceptance of the value of the HRC program there is no necessity for the provision of the program to be made mandatory.

The Authority assumes that where the Skycity written submission does not deal with, in terms, a matter that is referred to in the agreed position, that is the agreed position so far as responsible gambling and advertising codes of practice are concerned, that the Authority should take Skycity's position to be that expressed in the agreed position. The Authority has adopted that approach and has taken the agreements into account.

3.4 Wagering

3.4.1 SA TAB

SA TAB Pty Ltd made a written submission and also responded by letter dated 9 October 2006 to an invitation to comment on the material not previously circulated. No oral presentation was made, although it was noted that SA TAB executives were in attendance at the public hearing.

SA TAB holds the major betting operations licence, which entitles it to conduct off-course totalisator and fixed-odds betting on races and other events (subject to the approval of the relevant contingencies) throughout South Australia. SA TAB's product is sold through an agency network which includes both dedicated (or standalone) agencies and outlets in hotels and licensed clubs.

The SA TAB written material addressed both the first stage issues and the second stage issues.

In general, SA TAB believed it had been successful in adapting its business practices. It noted that there had been a significant increase in the number of self-exclusions from SA TAB products and a much greater awareness of problem gambling issues by staff and agents. The submission dealt with a small number of individual issues of concern in the first stage.

Responsible gambling code, clause 5(2)(b)—helpline cards. SA TAB has experienced significant practical difficulty in maintaining supplies of helpline cards throughout gambling areas. It reports that its customers use these cards to make notes of betting preferences, thereby consuming the stocks of cards more quickly than they can be replenished. SA TAB has asked that the requirement with respect to Helpline cards be to maintain supplies of them at a selling counter near the point of sale terminals.

Responsible gambling code, clause 8(1)—cheques. SA TAB has requested the code be amended to enable it to cash its own cheques. It was explained that this request was driven, in part, by management practices with respect to the levels of cash held in agencies. It was recited that where cash levels in an agency are low, insubstantial amounts of winnings would sometimes be paid by cheque, with an undertaking that when the cash float increases in the normal course of business, the cheque will be cashed (or, alternatively, on the understanding that the customer will be able to cash the cheque at a nearby agency). SA TAB expressed no desire to cash any other form of cheque.

Responsible gambling code, clause 13—application to agents. SA TAB reported that it had had some difficulty in maintaining appropriate levels of compliance where its agencies were located in hotels and licensed clubs. It was recited that almost all breaches of compliance observed by inspectors from the Office of the Liquor and Gambling Commissioner had been observed at PubTAB or ClubTAB premises, and not at dedicated agencies. It was noted that these breaches were often detected within a matter of days following a visit from SA TAB's own site audit staff. It was submitted that the "third party relationship" SA TAB has with Pub- and ClubTABs does not always ensure that the licensees and staff share SA TAB's commitment to compliance with the code. A "reasonable control" clause was requested for inclusion in clause 13 of the responsible gambling code.

SA TAB also included a submission about inspection and reporting processes so far as statutory defaults were concerned—that SA TAB be given an opportunity to rectify a matter prior to formal action or referral to the Authority being undertaken.

The SA TAB submission then turned to second stage issues.

Mandatory warnings—second stage issue 1. SA TAB supported the adoption of "Gamble responsibly" as the mandatory warning for advertising. It did not support the adoption of the tag lines that go with it in the Queensland campaign, and observed that there is no mandatory warning in Queensland. The submission also pointed out that Radio TAB, controlled by Unitab, regularly plays responsible gambling messages.

On- and in-venue signage—second stage issue 2. Noting that this issue did not expressly apply to outlets other than gaming machine outlets, SA TAB reiterated its existing external signage policy and policy on the use of sandwich boards outside

premises. It was argued that these positions were reasonable and necessary in the circumstances.

Screening of sights and sounds of gambling—second stage issue 4. SA TAB argued against screening the sights and sound of gambling in its dedicated outlets, noting that sight and sound of the event were an intrinsic part of wagering. It was also noted that many existing dedicated outlets use glass frontages for the incorporation of natural lighting. It was noted there were no particular sounds of wagering activity itself. In hotel and club outlets it was noted that “common sense has prevailed” in most premises to avoid a conflict between wagering customers and others in the premises, with the result that there has been a separation of Pub- and ClubTAB facilities from the rest of the premises.

Inducements and loyalty programs—second stage issue 6. SA TAB does not operate a turnover based inducement program but it does offer rewards to those of its customers who use an automated telephone betting system. This is known as TERP, for Telebet Express Rewards Program. TERP offers no instant or same day rewards and its customers can only use reward points on two specified days of each year. It is only available to account customers and its effect is to encourage patrons to choose an advanced technology method of placing their bets.

SA TAB also noted that its agency network operates by it paying commissions to agents, on a sliding scale, depending on sales. It was submitted that the agency commission arrangements are not an inducement or loyalty program contemplated by the codes of practice.

SA TAB also described a promotion called “trifecta giveaway” when, during particular periods of betting, free trifecta³ bets are given away for a period of one hour leading up to a major carnival race. The purpose of the promotion is ostensibly to migrate customers from lower yielding “win” and “place” bet types to the higher yielding trifecta product. This was said to deliver benefits to the state by improving SA TAB revenue, and therefore product fees and taxes. It was submitted that this was not conducted to encourage players to bet more than they would otherwise have bet.

Relationship with counselling agencies—second stage issue 8. SA TAB reported that it has established good relationships with a particular Break Even agency, and that it wishes to maintain that relationship at “the corporate level”. SA TAB would manage the need for contact with counselling through the way in which its central office manages its agents. The submission goes on to raise some queries concerning the relationship between hotel and club agents and counselling agencies, particularly where the same agent is operating gaming machines.

Reporting of potential problem gamblers—second stage issue 9. SA TAB implied that it supported this initiative by indicating that it was prepared to accept advice from the Authority and other stakeholders as to the best way of implementing an internal process for identifying problem gamblers.

³ In a trifecta bet, the customer selects the first three runners in the order of finishing.

Keno in newsagencies, etc—second stage issue 10. SA TAB indicated that it would be willing to host Keno as a product in its dedicated SA TAB agencies.

3.4.2 *Licensed racing clubs*

Racing SA Pty Ltd (the peak body for the three racing controlling authorities—for thoroughbred, harness and greyhound racing) made a submission on behalf of all licensed racing clubs.

The material before this inquiry, on behalf of Racing SA, comprised a written submission; submissions made in person by counsel, Miss Nelson, QC; and a letter dated 21 June 2006, taking up an opportunity provided in the hearing to put further matters in writing.

In South Australia, there are 47 racing clubs to which on-course totalisator betting licences have been granted and are in force. Three of those licensees are designated racing controlling authorities under the Authorised Betting Operations Act—one for each of the thoroughbred, harness and greyhound racing codes. Each of the racing controlling authorities represents the interests of the racing clubs licensed for its code, and collectively they are represented through the peak body Racing SA Pty Ltd.

An on-course totalisator betting licence serves dual functions: in addition to allowing the licensee to conduct totalisator betting on races, it also authorises the licensee to conduct racing on which it is intended that betting take place (including betting by SA TAB and licensed bookmakers).

It is a statutory condition of an on-course totalisator betting licence that the licensee adopt and conform to an advertising code of practice and a responsible gambling code of practice approved by the Authority.

In both its written submission and in Miss Nelson's opening remarks, Racing SA indicated that it believed there were limits to the matters which could be addressed in codes of practice approved by the Authority. In addition, the submissions directed the Authority to what was said to be a responsibility with respect of the maintenance of a sustainable and responsible gambling industry. These remarks were tied to observations that much of the activity of the racing industry is conducted by volunteers and on a not-for-profit basis.

The Authority was also directed to the nature of the on-course wagering environment, and to the distinction between the weekly operations at the major metropolitan racecourses and the less frequent operations at country and provincial racecourses. It was also pointed out that licensed racing clubs' wagering operations were conducted on their behalf under contract by SA TAB Pty Ltd, which coincidentally holds the major betting operations licence.

Racing SA identified a number of issues in Review 2006 as not affecting the racing industry. Its submissions on those issues said to affect the racing industry were as follows.

Mandatory warnings—second stage issue 1. Racing SA has no objection to mandatory warnings, but submitted that the scope of the advertising code of practice

should be restricted to the advertising of gambling, rather than the advertising or promotion of the event on which the gambling takes place. The submission also asserted that there was a public duty to provide information about such events.

On- and in-venue signage—second stage issue 2. Racing SA stated a belief, from discussions with the Concern Sector, that venue signage for racing venues was not of relevant application to racing. The submission echoed an earlier submission concerning a perceived public obligation to provide information about events and (apparently by reference to the sorts of signs which customarily appear on the outside of racecourses) asserted rights for the public to be informed about venues, dates, events and entertainment.

Responsible gambling code, clause 2—venue responsible charter. This clause presently obliges the licensee to place signs in gambling areas advising that gambling operations are subject to a code of practice. It also requires the licensee to compile a document setting out for each gambling area various matters concerning staff, intervention with problem gamblers and responsibilities for implementation of the code. The primary submission was that the clause has no practical application and should be deleted. It was not articulated how the clause had no practical application, although it might be inferred that because the wagering operation is outsourced the licensee believed that it had no responsibility or capacity to influence the conduct of wagering operation. An alternative proposal was to confine the operation of the clause to the Secretary's office on the racecourse rather than the gambling areas.

It was further suggested that the relevant material would be comprised by the SA TAB training manual. (The Authority observes that, if it were the case that the contents of the SA TAB training manual would satisfy the requirements of clause 2, no change to the code would be necessary.)

Responsible gambling code, clause 4(2)—time of day to be prominently displayed. It was submitted that there was no effective application for a requirement to display the time of day in a racing environment; that the nature of racing naturally informs participants of the passage of time, particularly with betting cycles being based on race times. Miss Nelson elaborated on difficulties presented by this requirement on country racecourses, with reference to a particular race meeting at Streaky Bay. It was suggested that a potential breach of the code of practice had been observed by an inspector and that this had the potential to put the racing club's licence in peril.

Responsible gambling code, clause 4(3)—gambling rules to be available for inspection. It was submitted that the clause was not required and should be reworded to require a copy of the rules to be available from the office of the racing club Secretary on request. (The Authority observes this position is very similar to the present requirement.)

Responsible gambling code, clause 5(1)(a)—responsible gambling materials to be displayed in gambling areas. Racing SA submits that this should only be made to apply to the "main gambling area" on a racecourse and not to "remote one-off totalisator situations". It is noted that these gambling areas are established for special functions on an event-by-event basis.

Responsible gambling code, clause 5(2)—display of helpline stickers. Racing SA submitted that the responsibility to display helpline stickers should rest with its contracted wagering provider (SA TAB), although it did not indicate how this might be achieved within the regulatory framework.

Responsible gambling code, clause 5(3)—referral to gambling help service. Racing SA makes an observation that this clause, which requires the licensee to take reasonable steps to draw the name and telephone number of the gambling help service to the attention of a person who demonstrates difficulty in controlling personal expenditure, might raise privacy issues. No suggestion is made that the clause be deleted or amended. (The Authority understands that the purpose of this clause is to require licensees to take some step, rather than ignore, problematic behaviour. It may be that there is no privacy issue when a person “demonstrates” a difficulty.)

Responsible gambling code, clause 5(4)—filing and publication of responsible gambling material. Racing SA submits that the clause should be deleted, noting that some racing clubs do not have websites. (Noting the particular requirements of this clause—to publish material on a website if there were one—it was not clear where the difficulty arose.)

Responsible gambling code, clause 9—self exclusion. It was submitted that, at least so far as non metropolitan clubs were concerned, there were significant practical difficulties in conducting a self-exclusion facility in relation to a racecourse. No example of a difficulty was provided.

Mandatory breaks in play—second stage issue 3. Racing SA submitted that this initiative was not particularly addressed to racing and that, in any event, the nature of racing provided natural breaks in play.

Screening the sights and sounds of gambling—second stage issue 4. Racing SA argued that this measure should not be relevant to racing, noting that it would be “impossible” to screen the sights and sounds of a racecourse.

Relationship with counselling agencies—second stage issue 8. Racing SA expressed general support for the development of relationships with counselling agencies, and observed (both in its written submission and through Miss Nelson) that there should be some accreditation process for counselling agencies. This latter point appeared to the Authority to be made as a suggestion, rather than as a precondition to the establishment of the relationship. It was not suggested that the codes of practice would themselves provide the regulatory instrument for requiring accreditation of counselling agencies.

Report of potential problem gamblers—second stage issue 9. In both its written submission and through Miss Nelson, Racing SA asserted difficulties in identifying problem gambling behaviour and that an onus to do so would be unreasonable and disproportionate. It appeared that, in making these submissions, Racing SA regarded SA TAB as an independent actor in the gambling environment, rather than as the direct contractor of the licensee entitled to conduct the gambling activity. The submission did not appear to address the specifics of the proposition, namely that a register be established within the organisation in which staff would be expected to note problematic behaviour.

In the course of Miss Nelson's submission, a question was posed to as whether one way of addressing this difficulty would be to dedicate staff resources on race days to observing the behaviour of patrons in the field. It was put to Racing SA that—for a cost of, say, \$40 000 annually—it would be possible to proactively engage with wagering patrons in a manner similar to the host responsibility coordinator initiative at Skycity Adelaide. It was noted that, if such a measure were effectual, it might reduce the need for other, less well targeted but nonetheless onerous requirements. Miss Nelson indicated that such a measure would require specific instructions from the constituent bodies of Racing SA, and indicated that if there were support for such a proposal, it would be communicated in writing.

3.5 Technology providers

3.5.1 Australasian Gaming Machine Manufacturers Association

The Australasian Gaming Machine Manufacturers Association (AGMMA) provided a written submission and its executive officer (Mr Ross Ferrar) attended the May hearing to present to the Authority.

In the written submission, AGMMA identified itself as a not for profit industry association established in 1990 for the purpose of promoting the development of manufacturing resources of Australia. It not clear to the Authority whether there is any significance in AGMMA's own not for profit character, as its purposes are manifestly directed to the advancement of the profitability of its members.

The submission lists the members of the association, which include a number of companies involved in producing gaming machines, software and related technology. It is claimed that those companies provide technology and equipment to what is described as 250 jurisdictions around the world. The submission states that four of AGMMA's members are active in South Australia without specifically naming them.

The submission is expressed to be directed to the Advertising Codes of Practice, the Responsible Gambling Codes of Practice, Game Approval Guidelines and Gaming Machine Licensing Guidelines. The submission claims that AGMMA supports the submissions of the venue representative bodies (which the Authority takes to be a reference to the AHA and Clubs SA). The submission also expresses its support for the submissions advanced on behalf of Skycity, operator of the Adelaide casino. All of these are customers of AGMMA's members.

The submission tells us that the most thorough review of gambling harm minimisation measures undertaken recently in Australasia was that done by the Independent Pricing and Regulatory Tribunal in NSW, commonly called IPART. It refers to the IPART report published in July 2004, the consequential report on governance structures presented in February 2005 and the NSW Government response published in May 2005. AGMMA states that it participated in the IPART review process and claims to have found it an objective and transparent process resulting in voluntary acceptance of the recommendations by stakeholders whether or not the NSW Government chose to implement them.

AGMMA goes on to say that the IPART review provides a definitive model by which an exercise should be undertaken.

Here it should be noted that the Authority has, through a perusal of the IPART report and other enquiries, ascertained that the terms of reference and review process, while requiring IPART to examine and document particular harm minimisation measures in NSW (“key government policies” were excluded), directed IPART to recommendations for change where there was a clear stakeholder consensus for the change. One outcome of this is that, if a substantial industry body, such as AGMMA, were not to support a new measure, it would be unlikely to be recommended by IPART. This aspect of the IPART report approach would explain, to an extent, why AGMMA found the process satisfactory.

IPART made it clear that the constraints within which it was working did not allow for it to conduct any research of its own for the purposes of the report. The Authority notes further that, while IPART is a regulatory body, its functions differ significantly from those of the Authority, which require the Authority to regulate for the minimisation of gambling related harm (among other things).

It is clear to the Authority that the IPART report has made a major contribution to the body of knowledge in Australia and, when understood in its true context, has much to offer to the responsible gambling policy debate.

The AGMMA submission also referred extensively to the Australia and New Zealand Gaming Machines National Standard on a number of occasions expressing a preference for that document over the game approval guidelines. At the May 2006 hearing, the Authority sought clarification from Mr Ferrar about the status of this “standard” and how it should be taken into account. At his request, he was allowed to provide a response following the hearing.

As it turns out, this “standard” is a statement of the conventions which have been agreed between the regulatory bodies responsible for gaming machines in Australia and New Zealand, in conjunction with the members of AGMMA. It provides standard language and concepts and sets out the standard approaches regulators will take when making regulatory decisions concerning the approval of games and machines. However, it is not legislative in nature and does not bind the regulators. While it plays a very important process role, it is better characterised as a description of existing policy than as an instrument of policy.

The submission makes observations concerning the game approval guidelines. In doing so AGMMA notes that 6 of what it describes as the “8 game characteristics” referred to in the game approval guidelines are considered, and/or specified in the national standard. The AGMMA submission then questions whether the guidelines are necessary given that they largely duplicate the national standard. The difficulty with this aspect of the submission is that it misconceives the role and purpose of the national standard; something which was not clarified for the purposes of this inquiry until well after Mr Ferrar had finished his presentation.

In essence, the AGMMA submissions on game approval guidelines come down to no more than that, in AGMMA’s opinion, AGMMA members produce games and

machines which comply with the standard and that they prefer that status quo position to one where they would have to accommodate the requirements of the guidelines.

The AGMMA submission also contests what it describes as the presumption that game design can be changed so as not to exacerbate problem gambling. The AGMMA submission says that this presumption is a false one and that it “seriously doubts that the guidelines as they are currently provided have addressed or achieved the objectives set out in section 11(2a) of the Act”. The difficulty with this aspect of the submission is that section 40 of the Gaming Machines Act and section 37A of the Casino Act give the Authority and the Liquor and Gambling Commissioner no choice but to accept the presumption that game design can be changed so as not to exacerbate problem gambling.

A specific observation is made that members of AGMMA do not believe that a non-linear pay table is likely to exacerbate problem gambling. The reasons given are that the number of credits bet is always a matter of choice for the player and that there will necessarily be compensating payouts elsewhere in the pay table in order to achieve the required overall return to player. This presents a difficulty: the choice of the number of credits to bet does not guarantee that this will be done rationally or that the non-linear pay table is therefore not likely to exacerbate problem gambling. It is however reasonable to infer that a non-linear pay table would be likely to create a higher risk of expenditure beyond the means of a player who was experiencing a problem with their gambling than would otherwise be the case.

The AGMMA submission discusses the “illusion of control” issue, which AGMMA says should be regarded as a “player fairness” issue and again refers to the national standard which is neither prescriptive nor detailed about how such fairness may be achieved. No evidence was advanced of any game or group of games where this provision of the national standard was shown to address problem gambling.

In dealing with “feature entry bet”, the “paid for feature” game and the “metamorphic game”, AGMMA states that it is aware of no evidence that such structural characteristics exacerbate problem gambling. This argument misunderstands the role of the guidelines in providing guidance to the Liquor and Gambling Commissioner in what is effectively a reverse onus situation (where he is precluded from approving a game unless satisfied that it is safe).

The submission deals with “free spins”; the AGMMA argument is that free spins have been part of game design for many years and different numbers of free spins are permitted in various jurisdictions. Again AGMMA says that it is not aware of any evidence that free games exacerbate problem gambling. The same submissions as are advanced above may be advanced in relation to this part of the AGMMA submission.

The submission then goes on to deal with “rate of play”. Rate of play and the provision in the guidelines concerning the rate of play and reel spin including reel spin intervals pose different questions. Here the so-called national standard does no more than say in sub-paragraph 3.8.30 that “each microprocessor controlled reel must spin at least one revolution per play”. The AGMMA submission says:

reel spins considered in the only thorough independent research that has taken place on gaming machines and technical issues of this nature the Sydney University study of 2001 which it is said

concluded;

'there is evidence from the present study that a reduction in reel spin speed would not be an effective harm minimisation strategy. Not only would it be unlikely to reduce problems associated with electronic gaming machines, it may result in an increase in indirect social/family harm associated with problem gambling for a small proportion of problem gamblers'.

The Authority is aware of the University of Sydney study, of its methodology and of the context in which its findings must be understood. On that basis, the conclusion quoted by AGMMA is unlikely to be persuasive.

In its summary, AGMMA claims to have reviewed the guidelines and found that they duplicate the national standard and should be revised so that the Liquor and Gambling Commissioner is requested to determine that gaming on gaming machines occurs in a manner that is fair, secure and auditable in approving them. It is the Authority's understanding that the Commissioner is already obliged to ensure that games are fair, secure and auditable; if this aspect of the submission were adopted, the guidelines would have no work to do.

The submission requests that the Authority disclose AGMMA's views to the South Australian Parliament.

The AGMMA submission lacked the support of compelling evidence and reasoned argument. No detailed analysis of what are said to be the deficiencies of the guidelines are advanced and reference is made to the IPART report and another study without detailed examination of either. Although it argued that the national standard should be followed, once the true character of the standard became apparent, it was clear that this standard is not suitable for that purpose. Overall, the submission was unhelpful.

3.5.2 *Maxetag*

Maxetag is a technology vendor, selling account based loyalty systems which use smartcard technology. Its submission to the Authority comprised 11 PowerPoint slides (received within the required timeframe) presented at the public hearing on 23 May 2006 by the company's managing director.

Maxetag confined its submissions to second stage issue 6—inducements and loyalty programs, arguing that a loyalty program is an essential ingredient to a (highly desirable) pre-commitment system. This submission was supported by an explanation of the nature of the Maxetag technology and the way it has been, and is able to be, deployed in gaming venues.

A "maxetag" is a flexible smart proximity device. Being a proximity device means that there is no need for it to make physical contact with any part of the system with which it interacts. Being a "smart" device means that it is able to not only store, transmit and receive data, but also able to execute software to process data. Being physically flexible means that it is both soft and durable, making it suitable to be attached to a keyring.

Maxetag has deployed its system in a number of venues in Queensland, the Northern Territory and South Australia. In Queensland, the system is used as part of a cashless gaming system. Being cashless means that the player uses the maxetag rather than

notes or coins to play a gaming machine. In the trials being undertaken in Queensland, this also enables the player to set a limit at which the system will no longer transfer money to the gaming machine, thereby limiting the gambling. In all the places where the Maxetag system has been deployed in this way, adoption of the system has been an option or choice for the player. It is at this point that the availability of a loyalty program associated with the card has improved the acceptance of the card as a means of gaming.

It was submitted that the system offers significant commercial benefits for gaming operators: eliminating or significantly reducing cash handling, making savings in management and accounting costs; mitigating certain risks—security, occupational health and safety. It also provided a means for the gambling operator to offer its patrons a means for gambling responsibly; this particular aspect has not been specifically articulated by operators to Maxetag, but was understood to underlie operators' motivation.

It was also submitted by Maxetag that there was another benefit in allowing the continuation of loyalty systems, or at least those which systematically record individual players' activity. That advantage is that these systems are potentially a rich source of data, capable of being analysed to detect patterns of problem gambling play. In this respect, the submission drew support from gambling researcher Tracy Schrans of Focal Research Consultants in Nova Scotia, Canada. An email from Ms Schrans was tabled and included in the material before the Authority.

Incidental to the submission, the Authority sought and obtained from Maxetag a number of responses concerning the functionality and cost of a widely distributed account based loyalty and pre-commitment system. It was suggested that, depending on the scale of the roll out, the installation cost per gaming machine would be in the range of \$800–\$1 000. It was submitted that the technology is viable in the field as has been established in recent operations in the Northern Territory and Queensland. Maxetag was, at the time of the hearing, about to launch a venue in South Australia. Maxetag was also aware of the J-card system already operating in South Australia.

3.5.3 *Worldsmart Technology*

The Authority had before it a written submission from Worldsmart Technology Pty Ltd. At the request of the Authority, Worldsmart's general manager—attending the inquiry as an observer—answered some questions from members.

The Worldsmart written submission has been received within the required timeline. Worldsmart is one of a number of entities comprising the R D Jones Group. This group's interests include South Australian hotels with gaming machines, and the Jackpot Club marketing program (with which Worldsmart's J Card loyalty program is associated).

Worldsmart's J Card system is installed in over 90 hotel and club gaming venues in South Australia. It uses a smart card. Sized similarly to a credit card, this card device has some storage capacity and processing capacity. It is used in conjunction with a card reader terminal placed next to each gaming machine. The loyalty card system receives a flow of information from the local venue site controller (data such as the

amounts bet and won on particular gaming machines in the venue) but is not capable of communicating with the gaming machine (such as would allow it to disable the machine when a pre-committed level of expenditure was reached). It was explained, during the hearing, that this was a factor of the machine monitoring protocol in use in South Australia, rather than the capabilities of the Worldsmart system.

A significant part of the Worldsmart submission repeated material which has been submitted to the Authority in relation to its inquiry into smartcard technology⁴. That material explains how the smartcard system could be used for harm minimisation purposes, including pre-commitment and the provision of player activity statements. It also asserted the technical robustness of the system and the extent to which it has been deployed.

It was submitted that the best way to introduce pre-commitment strategies to the South Australian market would be through encouraging the development of loyalty programs which offered that option. In support of this proposition, market research was cited which (on a sample survey basis) suggested that cards with mandatory limits would not be used, but that 70% of the general public believed that it would be a good idea to restrict the length of play and amount spent through a card and that 21% of the general public would use such a feature. It was also noted that 45% of existing J Card holders would use such a feature. (There are 300 000 such cardholders in South Australia.)

The submission argued that the Commonwealth Privacy Act does not prevent the adoption of pre-commitment schemes as part of loyalty programs, on the basis that a voluntary decision to use such a system would include a consent to the personal information being used in a manner consistent with the scheme.

The submission concluded by arguing against the banning of loyalty programs on the basis that this would be a significant infringement of the rights of responsible gamblers in the context of only 2% of adults being problem gamblers and therefore needing to be protected.

Worldsmart is aware of the Maxetag product, and of Maxetag's indicative costings which were described as "very moderate". The products offer equivalent features.

3.6 Major Concern Sector bodies

3.6.1 Preliminary

This section summarises five submissions made by groups or bodies which, together, have been the principal advocates of increased responsibility in gambling and proponents for action to reduce problem gambling in South Australia. Three of the submissions are from bodies which have contracts to provide services as part of the program funded from the Gamblers Rehabilitation Fund. A further submission is made on the behalf of a number of the agencies, collectively, which provide GRF funded services—"Break Even Services SA" or BESSA. Finally, there is the

⁴ See report tabled 5 July 2006 (*Parliamentary Debates*, Assembly, p. 3062; Council, p. 2284). Published at www.iga.sa.gov.au.

submission of the Heads of Churches' Gambling Taskforce, a body which has taken a lead role in the Authority's public consultations since 2001.

The five individual written submissions were the subject of a joint presentation at the hearing on 23 and 24 May 2006.

3.6.2 Heads of Churches' Gambling Taskforce

The Gambling Taskforce is a body appointed to advise the Heads of South Australia's Christian Churches on gambling matters.

The submission commences by identifying a number of involvements that members of the Gambling Taskforce have had with the gambling industry in bilateral harm minimisation endeavours. Members of the Taskforce have collaborated with Skycity Adelaide for the development of its Host Responsibility Coordinator program. In addition, a member of the Taskforce, in an employed capacity, has provided training services to SA TAB and SA Lotteries. Finally, the Gambling Taskforce has nominated a person to sit on the advisory committee for the AHA Gaming Care Program. (This advisory committee had met twice in the 15 months preceding the hearing.)

The submission made by the Gambling Taskforce addresses the existing codes of practice provisions (first stage issues), the identified second stage codes of practice issues, the game approval guidelines and the gaming machine licensing guidelines.

The submission extends, in the case of measures which have already been implemented, to observations as to effectiveness, enforcement and compliance. In that respect, the submission disclosed visits to 22 hotels licensed to operate gaming machines.

The submission states that its principal focus is on hotels with gaming machines—on the dual bases that the majority of problem gambling occurs with gaming machines and that compliance with codes of practice has been poorest in hotels.

FIRST STAGE ISSUES

Responsible gambling code, clause 2—signs. The Gambling Taskforce suggested some improvements to the first stage requirement that venues display a statement that gambling operations were governed by a code of practice. It was said that the sign should include information about actions patrons could take should they believe there is a failure to comply with the codes, including a telephone number to call. It was also noted that, in some places, the signs were not in a prominent place. The measure was otherwise regarded to be clear and unambiguous, and therefore capable of easy compliance and enforcement.

Responsible gambling code, clause 4—gambling areas. While observing good compliance with the requirement for a helpline sticker to be placed on each machine, the Gambling Taskforce expressed the view that there was poor compliance with the signage requirements concerning play of multiple gaming machines. It was submitted that playing more than one gaming machine was a clear sign of problem gambling, and should be an important focus for venues.

To reinforce the importance of this multiple machine play issue, the Taskforce submitted that there be an additional requirement to maintain a register of warnings given to patrons regarding the play of more than one machine. The Gambling Taskforce expressed concerns about compliance with the requirements to have a supply of helpline materials prominently displayed and to have multi-lingual responsible gambling material available.

These were regarded as measures where compliance was “simple to enact”.

It was recommended that there be increased compliance activity, by the Liquor and Gambling Commissioner, in this area.

It was further recommended the codes be amended to require the placement of helpline stickers or warnings on automated coin dispensing machines.

Responsible gambling code, clause 6(2)—service of alcohol. The Gambling Taskforce recommended continuation of the code measures preventing the service of alcohol to persons seated or standing at a gaming machine. Members of the Gambling Taskforce observed alcohol being served to persons at gaming machines during their brief visits. They also observed venue staff providing assistance to a person apparently so intoxicated as to be unable to insert a coin into the gaming machine.

It was recommended that the requirement not to serve alcohol at a gaming machine be widened to a 5 metre area around the gaming machine. In addition, it was recommended that a blood alcohol level of 0.05% be adopted as the point at which service should be refused, and that a further sign be required to be displayed prominently concerning the consequences of gambling while intoxicated.

The Gambling Taskforce recommended that a minimum penalty for a breach of the alcohol and gambling provisions of the codes be a licence suspension of one month.

Responsible gambling code, clause 7—children. The Gambling Taskforce expressed the view that the codes of practice measure intended to protect children from being harmed by being left unattended by their problem gambling parents was being complied with.

Responsible gambling code, clause 8—cheques. With respect to the codes’ provisions concerning the cashing of cheques, the Gambling Taskforce emphasised that a request for cash was an indicator of a potential gambling problem. The Gambling Taskforce requested strengthening of the codes in this area.

Responsible gambling code, clause 9—self-exclusion. Concerning venue support for self exclusion, the Gambling Taskforce noted that some venues did not appear to have a regular staff presence in the gaming area. It argued for a requirement that there be at least one person on duty at all times in a gaming room with 15 or more machines. It was also suggested that venues be required to keep a register of approaches for self exclusion.

Responsible gambling code, clause 10—training. The Gambling Taskforce regarded the requirements for staff training to be clear and capable of a ready implementation, monitoring and enforcement. It was recommended that the Authority publish aggregate data on the extent of training of staff.

Advertising code—general. Concerning advertising requirements, the Gambling Taskforce observed that standards of advertising for gambling products had improved since the introduction of codes of practice, with one exception relating to SA TAB advertising.

Advertising code, clause 3(2)(f)—household staples. The Gambling Taskforce commented that difficulties expressed by industry with household staples did not pose a major issue. The Gambling Taskforce set out what it believed was the commonly accepted definition of staples.

Code compliance. The Gambling Taskforce made a number of observations about compliance issues generally, including those with respect to mandated limitations on smoking in gaming venues. The Gambling Taskforce suggested that the Authority should specify, in the codes of practice, practical measures for the implementation of the smoking reductions.

The Gambling Taskforce also expressed dissatisfaction with hotel gaming venues' implementation of first stage codes of practice measures and the enforcement of compliance with those measures.

The Gambling Taskforce cited examples of inconsistent compliance with codes measures across different industry sectors. It noted that SA Lotteries and Skycity Adelaide appeared to work hardest to comply with the codes of practice and other regulatory measures, and provided a basis for those remarks.

In observing that gaming machine venues' compliance was worse than the other industry forms, the Gambling Taskforce noted that these venues will, on average, receive between one and two compliance visits annually. It was also understood that visits were notified in advance. The Gambling Taskforce made a number of suggestions for increased enforcement measures and enforcement techniques. These include "mystery shopping" and a process of weekly briefings on the compliance activities of the Office of the Liquor and Gambling Commissioner. The Gambling Taskforce recommended a clarification and streamlining of complaint processes, to ensure that the making of legitimate complaints can be effectively used in the enforcement and compliance regimes.

SECOND STAGE ISSUES

Mandatory warnings in advertising—second stage issue 1. The Gambling Taskforce supported a mandatory warning, citing expert opinion that all problem gamblers have some mistaken understanding of how gaming machines operate. It was submitted that warning messages can help address this.

The Gambling Taskforce recommended that all advertising and promotion include a mandatory warning, that the warning should change every two years, that different warnings should be used for different gambling activities, and that the warnings be approved by the Authority. The Gambling Taskforce also made suggestions concerning clarity and prominence for warnings in advertising.

The Gambling Taskforce supported the proposed “Gamble Responsibly” suite of warnings, but was also supportive of other messages such as “think of what you are gambling with” and “...there is no system”.

On- and in-venue signage—second stage issue 2. The Gambling Taskforce argued that external gambling related signage should be made discreet, minimalist and informative. It argued that large neon signs flashing “Pokies” are an inducement to play, and inconsistent with discreet minimalist signage.

The Gambling Taskforce argued that internal signage should be directional only, and modestly sized.

Mandatory breaks in play—second stage issue 3. Concerning mandatory breaks in play, the Gambling Taskforce endorsed a continuation of the proposal to monitor progress with the regulatory requirement in New Zealand that gaming machines shut down every 30 minutes.

Screening of sights and sounds of gambling—second stage issue 4. The Gambling Taskforce argued that the sights and sounds of gambling should be screened from areas outside gaming rooms. Such a requirement should apply immediately to venues being renovated, and that all venues should have, in place by June 2009, partitioning which screens the vision, and substantially reduces the sound, of gambling.

It was also argued that there should be at least one gambling free area in each venue.

Six hour break—common closing hours—second stage issue 5. The Gambling Taskforce argues that gaming machine venues should be required to close from midnight to 9.00am, Sunday to Thursday, and 2.00am to 10.00am Saturday and Sunday. If that is not accepted, the Gambling Taskforce argues that there should be a common 6-hour closure, or at least a prohibition on the staggering of closing hours in venues under common ownership, with club venues being regarded as all under common ownership.

The Gambling Taskforce argues for transparency in opening hours, with them being published on the website of the Liquor and Gambling Commissioner.

The Gambling Taskforce expressed the view that much of the gambling taking place in the early hours of the morning would be problem gambling. Indicating an awareness of industry claims that there is a demand for access to gaming machine product from midnight to mid-morning from shift workers, the Gambling Taskforce indicated that it had not seen any evidence of such a demand.

Inducements and loyalty programs—second stage issue 6. The Gambling Taskforce’s position is for a complete ban on loyalty programs, and that venues will not use direct mail or telephone or email as a marketing measure, that they will issue change in large notes, cease the practice of offering free “Pokies tokens”, not provide food or drinks exclusively to gambling areas and not provide door prizes or other lottery style inducements for gambling.

Relationship with counselling agencies—second stage issue 8. The Gambling Taskforce supported a requirement that gaming venues form a relationship with a

local counselling agency but noted that there would be resource implications of this for the Break Even services.

It suggested that each gambling industry group be required to lodge a negotiated implementation plan by a date 6 months after the measure was mandated.

Reporting of potential problem gamblers—second stage issue 9. The Gambling Taskforce supported a requirement for there to be a reporting mechanism of potential problem gamblers in venues. Such measures would include a requirement for a documented identification plan, clearly documented process and written registers.

Keno to be banned in newsagents and similar outlets—second stage issue 10. The Gambling Taskforce recommended that Keno be able to be retained generally in the SA Lotteries network, but with the minimum age for purchase of products being increased to 18 years (from the present 16), with active compliance measures being implemented, and with the speed of play of Keno being reduced to one game every 7 minutes.

Age for sale of gambling products—second stage issue 11. The Gambling Taskforce supported the general proposition that gambling products only be sold by adults. However, noting particular issues faced by employers, would accept sale by employees aged between 16 and 18, if specific under-18 training is provided, an adult is present whenever a young person is serving a lottery product and the approval of the Authority has been granted for the specific case.

Automated coin dispensing machines, etc—second stage issue 13. The Gambling Taskforce submits that there be no ATMs or automated coin dispensing machines within gambling venues.

The Gambling Taskforce argues that the ready access these devices provide to cash is a major factor contributing to high levels of problem gambling. The Gambling Taskforce notes the argument made by the AHA that hotels act as pseudo-banks and rejects the argument.

Linking of the service of alcohol and gambling—second stage issue 14. The Gambling Taskforce recommended serious enforcement of requirements to provide alcohol without a person being required to gamble.

Facial recognition and smartcards—second stage issue 15. The Gambling Taskforce reaffirmed its commitment to facial recognition and smartcard technologies in support of barring and pre-commitment schemes.

GAME APPROVAL GUIDELINES

With respect to the game approval guidelines, the Gambling Taskforce identified 5 areas of concern in gaming machine game design. It recommended that:

- ◆ multiple line betting be restricted to 25 lines per spin;
- ◆ no further games using the “Reel Power” option be approved until the option has been subjected to public scrutiny and proven safe;

- ◆ games featuring game bonus banks and similar elements be prohibited and that games not be allowed to be approved with names including expressions such as “cash”, “luck”, “money” and “dollars”;
- ◆ games not be allowed to be approved with themes based on television, films and cartoons (such as *Zorro* and *The Simpsons*);
- ◆ manufacturers be required to inform the Liquor and Gambling Commissioner of the basis on which games are expected to have high player appeal (and other promotional language) by furnishing research used in game development at the time of submission of the game for approval.

In addition the Gambling Taskforce identified a concern that games were being programmed to highlight “near miss” scenarios, and that this should be prohibited through the gaming approval guidelines.

The Gambling Taskforce developed some tables identifying the possible cost of the gaming entertainment experience for use in comparison with other forms of entertainment (such as cinemas, visiting botanical gardens and libraries, etc). In this regard the Gambling Taskforce recommended mandating, through the gaming approval guidelines a cap on potential player loss of \$500 per hour.

In final comment on the game approval guidelines, it was recommended that games be made to stop for 10 minutes every two hours and that all new games include flashed warning screens, reiterating the randomness and independence of every spin of every game.

GAMING MACHINE LICENSING GUIDELINES

The Gambling Taskforce commented on the gaming machine licensing guidelines.

The Gambling Taskforce was generally supportive of the existing guidelines, and made a number of a suggestions for improvement.

A definition of “local community” was suggested as being a 5 kilometre radius from the proposed venue or, in rural areas, a 45 minute drive.

In addition to applicants for licences being required to consult with local government and gambling rehabilitation providers, it was also suggested that applicants contact the three closest churches to the proposed venue.

It was suggested that the contents of applications would be enhanced by the inclusion of a statement explaining the applicant’s understanding of problem gambling behaviours and potential impacts, outlining how the venue will prevent underage people from becoming involved in gambling; and where the social profile of the community indicated significant indigenous or culturally and linguistically diverse communities, evidence of further consultation with bodies appropriate to those community interests.

The Gambling Taskforce concluded its observations on the guidelines by recommending that the Liquor and Gambling Commissioner be guided in his deliberative process by consultation with the local government association and the South Australian Council of Social Service.

3.6.3 *Break Even*

The Break Even submission was provided on behalf of the liaison group of heads of counselling practices in rehabilitation services funded by the Gamblers Rehabilitation Fund. This group identifies itself as Break Even Services SA (BESSA).

In preparation for the submission, BESSA members had conducted a survey of 79 problem gambling clients. The submission summarised the survey outcomes:

- ◆ 35.4% of respondents reported being served alcohol while at a gaming machine in the previous 12 months;
- ◆ 8.8% reported being able to obtain credit or cash while playing gaming machines;
- ◆ 21.5% reported they were encouraged in their gambling behaviour by accruing loyalty points;
- ◆ 43% reported that their gambling behaviour was encouraged by the prospect of winning a jackpot or accruing loyalty points;
- ◆ 46.8% reported that they had played more than one machine at a time in the past twelve months;
- ◆ 27.8% reported that they had gambled in venues from which they had been barred;
- ◆ 8.8% reported that they had gambled under the legal age limit.

It was argued that these outcomes supported the need for more Liquor and Gambling Commissioner compliance staff, hotels and clubs to take further steps concerning service of alcohol and provision of credit, further investigation concerning smartcards or other technology to support barring, and further discussion between all stakeholders, including BESSA, the Liquor and Gambling Commissioner, the Department for Families and Communities and the Authority.

The BESSA submission argued for a mandatory warning to be included in all advertising.

The BESSA submission stated that warning messages in gambling areas were regarded as effective. Current helpline stickers were, nonetheless, regarded as being too discreet, and it was noted that the design of the helpline stickers should be revised.

The BESSA submission reported that placement of multi-lingual material in venues was effective in generating referrals.

The BESSA submission argued that the present obligations of hotels with respect to children in venues should be upgraded, including a minimum level of staff training, the recognition of a duty of care for the gambling provider and provisions directed towards reporting of child neglect based on “reasonable suspicion”. The submission also argued that the same requirement should be extended to SA TAB, racing clubs and SA Lotteries.

The BESSA submission made a number of observations, from the counselling perspective, with respect to the operation of various barring and self-exclusion systems, and identified a number of considerations to be taken into account by those administering those schemes. There was support for the continuation of the code

requirement that a request for self-exclusion include provision for immediate referral to a counselling agency. The BESSA submission identified, with respect to common closing times, that the 2.00–8.00am period was critical for over spending on gaming machines.

The BESSA submission supports the prohibition of inducements to gamble (including loyalty programs).

The BESSA submission made a number of observations concerning the potential benefits of there being liaison between gambling providers and local Break Even services, but also identified that there were resource implications for the agencies providing the rehabilitation service.

The BESSA submission was supportive of the Skycity Adelaide Host Responsibility Coordinator program.

3.6.4 *Anglicare*

Anglicare SA is one of the contracted Break Even service providers, funded from the GRF Program.

Anglicare services the northern metropolitan area of Adelaide and the Barossa Valley region, with over 10 years' experience.

After discussing a number of issues concerning mandatory warnings, including raising some reservations with the proposed “Gamble Responsibly” suite of messages, Anglicare recommended:

- ◆ adoption of up to three mandatory warnings to be used across all gambling codes;
- ◆ the mandatory warning to be included in all advertising and promotion associated with gambling and gambling products;
- ◆ the choice of message to be one undertaken by the relevant industry providers;
- ◆ the Authority to be responsible for enforcement and compliance.

After reciting client testimony as to the impact of, on- and in-venue signage, Anglicare recommended a complete ban on external advertising, with a three month “shade-in” period and a \$1 000 fine for failure to comply.

Anglicare discussed issues concerning mandatory breaks in play, citing research (by Schrans and Schellinck⁵) showing positive influences following mandatory breaks, and recommended adoption of the New Zealand approach.

Anglicare discussed the impacts of requiring venues to screen the sights and sounds of gaming from other areas of the venue, including a discussion of funding requirements. It also cited client testimony on the impact of the sights and sounds on problem gamblers. It recommended that all gambling activity be screened so as not to be

⁵ Atlantic Lottery Corporation, *Video Lottery Responsible Gaming Feature Research—final Report*, Focal Research Consultants Ltd (Principal Investigators: Dr Tony Schellinck and Ms Tracy Schrans), October 2002

visible outside the licensed gambling area and that gaming areas be segregated by walls and fixtures.

With respect to the issue of common closing hours for gaming machine venues, Anglicare reported client testimony of problem gamblers who gamble while their partners sleep and lie about the times they have returned home. Anglicare also cited studies showing the negative health effects of night time working on shift workers.

Anglicare supported the idea of a common closure between midnight and 9.00am, while allowing for late closing of 2.00am following Saturday and Sunday trading.

Anglicare argued for a prohibition on all forms of inducements, incentives and loyalty programs, citing numerous instances of client testimony and the way promotions have influenced people to gamble irresponsibly.

With respect to mandating a relationship between operators and counselling services, Anglicare reported on its efforts to forge links with venues in a voluntary environment. Despite some relationship building initiatives, there was no apparent increase in contact or referrals by venue staff to the Break Even service. Anglicare also raised some concerns about inadequacies in the approaches made by gaming staff to patrons, which could point to the need to enhance training.

Anglicare supported a requirement that gambling providers make relationships with Break Even services, noting that resources would be required for this. Anglicare also recommended that Break Even services be involved in problem gambling training provided to venue staff.

Anglicare discussed issues concerning a mandatory reporting regime within venues. It concluded by supporting the establishment of protocols and guidelines, accompanied by relevant training for staff, on the detection and management of problem gamblers. It was also recommended that the training include facilitation by experienced Break Even counsellors.

Anglicare argued that it should be an offence to sell any gambling product (including Keno) to a person under the age of 18 years, and that Keno be withdrawn from non-licensed premises (newsagencies, shopping centre kiosks and pharmacies) over a period of 5 years.

Anglicare also argued that lotteries products should not be able to be sold by persons under the age of 18.

With respect to automatic teller machines and automated coin dispensing machines, Anglicare cited client testimony as to the role of these devices in problem gambling and the potential benefit of having to go to a cashier. Anglicare argued for a ban on ATMs and automated coin dispensing machines, and their removal from venues within 6 months.

Citing client testimony about the effect of alcohol on their gambling, Anglicare argued for a ban on the sale and consumption of alcohol in gaming area.

Anglicare also commented on the gaming machine licensing guidelines.

Anglicare endorsed an involvement for both local government and counselling agencies in the licence determination process and requested a direction that the Liquor and Gambling Commissioner advise Break Even services and local government of all trading and new licence applications.

3.6.5 *Relationships Australia*

Relationships Australia is one of the contracted gambling rehabilitation service providers under the Gamblers Rehabilitation Fund Program. It provides its services in the metropolitan area from a city office and an office at Ridgehaven. It also conducts visiting services in the Riverland, at Murray Bridge and at Mount Barker. Relationships Australia describes itself as an independent, non-government organisation providing counselling services on a not-for-profit basis.

In respect of first stage issues, Relationships Australia made a number of observations for enhancement of existing processes mandated by the codes of practice. It was noted that multi-lingual warning messages could be complemented by “responsive information and education services” and noted that there are emerging needs in Middle Eastern and African communities not presently met by the mandated languages.

Reference was made to the client survey undertaken and reported in the BESSA submissions with particular reference to service of alcohol at a gaming machine and the provision of credit in venues. Some recommendations were also made with respect to self-exclusion processes to which clause 9 of the responsible gambling code draws licensees’ attention. Retention of the requirement for referral to a counselling agency was supported, as was the investigation of smartcard and the facial recognition technology.

Observations concerning mandated training programs included client reporting of staff remarks such as “you won’t win big if you don’t bet big” and gaming patrons being advised of large amounts of money being put into a machine earlier in a day.

Relationships Australia commented on second stage issues. Relationships Australia supports the “Gamble Responsibly” suite of messages as a mandatory warning.

Relationships Australia agrees with the proposition that on-venue signage be discreet and minimalist, and in particular that there be no sandwich boards, flashing lights or roadside signs.

In respect of breaks in play, Relationships Australia supported reviewing the New Zealand experience of the machine initiated mandatory break.

Relationships Australia supported the screening of the sights and sounds of gaming, and noted that to do it prospectively only (that is, to not require any modification to existing venues) would not address the issues adequately.

Relationships Australia recommends the abolition of inducements and loyalty programs, citing client testimony as to the effectiveness of being given free gaming tokens.

Relationships Australia supports a requirement that venues establish a relationship with counselling agencies, but notes resource limitations. It stated that Relationships Australia would have over 100 hotels to build a relationship with in its designated metropolitan area.

Relationships Australia also indicated that it was important to have relationships with SA TAB for problem gambling punters.

Relationships Australia supported the need for the codes to mandate internal reporting processes identifying problem gamblers.

Relationships Australia supports the removal of automatic teller machines and automated coin dispensing machines from gaming venues. Relationships Australia notes that, as EFTPOS is available for the purchase of food and drink, the removal of ATMs would affect only gambling patrons of hotels and clubs. The time to travel outside the venue to an automatic teller machine for more money provides time to reconsider actions.

A client survey was relied on to support the proposition that automated coin dispensing machines enable clients to not be embarrassed by returning to a cashier for change as they chase losses. The removal of the automated coin dispensing machines would therefore be an effective harm minimisation strategy.

Relationships Australia supports continuing work on facial recognition and smartcard technologies, particularly to support barring initiatives.

3.6.6 UnitingCare Wesley Adelaide

UnitingCare Wesley Adelaide, an agency of the Uniting Church in Australia, is one of the contracted service providers to the GRF Program. It was formerly known as the Adelaide Central Mission.

The submission opened by citing experiences of visiting venues and consultation, leading UnitingCare Wesley to conclude that compliance with codes of practice is extremely and consistently poor. Serious breaches had been noted including inebriated persons being assisted to play gaming machines and patrons being allowed to play more than one machine at a time.

UnitingCare Wesley commented on second stage issues.

UnitingCare Wesley submitted that current harm minimisation messages are often overshadowed by promotional messages in venues. In addition, the design of gambling helpline signage required improvement. Further mandatory warnings should be made into catchy jingles and played on television. It was also recommended that the tune of such a jingle then be incorporated into gaming machine games and be required to play without the words every 30 minutes.

UnitingCare Wesley argues that gaming activities should be screened from the rest of the licensed premises, and that that this should apply to all venues.

The experience of UnitingCare Wesley Adelaide counsellors is that a significant percentage of people gambling after midnight exhibit problem gambling. A common closing time between midnight and 10.00am is recommended.

UnitingCare Wesley argues for the abolition of inducements and loyalty programs that are specific to gambling. (It noted that some patrons feel that free food and other incentives make up for their gambling losses.)

UnitingCare Wesley is supportive of a requirement that venues develop relationships with the local counselling agencies, and cites examples of its own activities in developing relationships with providers in the Southern suburbs of Adelaide and on the Fleurieu Peninsula. It expresses a reservation about its current resource level and its capacity to service larger numbers of operators.

The submission also details 8 elements of an ideal working relationship between a gambling provider and a service provider.

UnitingCare Wesley supports a requirement for there to be in-house mechanisms for reporting problem gamblers.

With respect to Keno, UnitingCare Wesley expresses great concern at the exposure of children to the Keno game arguing that, not only should it be withdrawn from newsagencies and pharmacies, it should also not be present in dining areas of hotels. Alternatively, UnitingCare Wesley suggests that Keno not be made available between 3.00pm and 4.30pm when large numbers of school children might be present in shopping centres and retail outlets.

UnitingCare Wesley supports the proposition that gambling products should be sold only by adults.

UnitingCare Wesley made observations about the relative lack of effectiveness of smoking bans in gaming areas.

Relying on the observations of others as to the number of automated coin dispensing machines in venues, and their placement, UnitingCare Wesley recommends the banning of all automated coin dispensing machines and ATMs from gaming venues.

On the subject of compliance and enforcement, UnitingCare Wesley refers to the annual report of the Office of the Liquor and Gambling Commissioner, with respect to statements as to venues being inspected regularly and the number of inspectors available (10). It has submitted that it might be necessary to look at funding to employ and train more inspectors.

In closing, the UnitingCare Wesley submission suggested that some of the venues visited for the purposes of the submission were unsuitable to house gaming machines and that other issues observed in venues could be addressed by a greater frequency of staff training.

3.7 Other concerned bodies

3.7.1 *Duty of Care*

Duty of Care Incorporated describes itself as a national, non-profit consumer protection association representing gaming machine consumers and their families. The submission states that Duty of Care currently has 300 members, having been founded in January 2005 by three people with first-hand experience of the problems which excessive access to gaming machines can cause. Duty of Care's principal aim is to remove gaming machines by lobbying ministers and challenging gambling legislation.

ADVERTISING CODES OF PRACTICE

Duty of Care's principal position is that there should be no advertising of gaming machines. The submission gives examples of the ways in which various forms of advertising might be said to fail to comply with existing code requirements (such as the one seeking to protect vulnerable populations or recovering problem gamblers).

Duty of Care submitted that the morning radio advertising blackout should be extended to cover periods when mothers are driving their children to school.

Mandatory warnings in advertising—second stage issue 1. Duty of Care submitted that “Gamble responsibly” was an inappropriate message as it was an instruction rather than a warning. Examples of warning statements which Duty of Care would prefer are:

Gambling can be addictive.

Gambling can harm your relationships.

Gambling can harm your finances.

Gambling can cause mental illness.

Gambling can lead to depression.

One in four regular players of gambling machines develops gambling problems.

RESPONSIBLE GAMBLING CODES OF PRACTICE

It was suggested that internal signage requirements should be amended to require indicators of problem gambling behaviour to be posted on walls in venues.

Mandatory breaks in play—second stage issue 3. Duty of Care submitted that proper messages such as those used in Nova Scotia should be mandated to enable gamblers to “step out of the “zone””. These breaks should be periods of at least 3 minutes after each 30 minute period of continuous use; among other things, they should inform the gambler of the current rate of loss per hour and invite the gambler to cash out.

Screening of sights and sounds of gambling—second stage issue 4. Duty of Care submitted that there should be total screening of both sights and sounds of gambling in hotels and clubs, and that this should apply to all venues.

Six hour break—common closing hours—second stage issue 5. The submission detailed a number of patterns of behaviour believed by Duty of Care to be an accurate description of what problem gamblers do when venues close. Duty of Care proposes a common closing period between 1.30 a.m. and 9.30 a.m. In respect of the need for shift workers to have access to entertainment, it was submitted (on the basis of the author’s experience) that shift workers are more likely to socialise prior to work, not late night or after work.

Inducements and loyalty programs—second stage issue 6. Duty of Care argued for the banning of all promotional activities that require the participant to gamble on machines in order to win prizes or participate in competitions. It also submitted that all loyalty programs for gaming machines be prohibited; if the Authority did not prohibit loyalty programs, Duty of Care submitted that it should impose additional requirements on licensees. These would include mailing monthly statements of gambling activity and cancelling the cards of members requesting exclusion.

Reporting of potential problem gamblers—second stage issue 9. A real-life example of a person who spent in excess of \$1900 in a single session from 7.30a.m. to 9.30a.m. was given as evidence of the need for there to be a mandatory reporting regime, supported by significant fines.

Automated coin dispensing machines, etc—second stage issue 13. Duty of Care submitted that automatic teller machines should be removed from any gaming venue within a 50 kilometre drive of the nearest non-gaming ATM or electronic funds transfer facility. It was argued that, ranked after the removal of gaming machines, the removal of ATMs will prove to be the most effective strategy.

Based on the experiences of the problem gamblers known to Duty of Care, it was also submitted that automated coin dispensing machines should be removed from gaming venues because of the strong influence of facing a cashier when engaging in prolonged play.

Facial recognition and smartcards—second stage issue 15. Duty of Care supports a smart card precommitment scheme.

GAME APPROVAL GUIDELINES

Duty of Care submitted that future gaming machine design should allow for smart card technologies, take into account longitudinal research that would indicate whether the new game or machine will or will not increase the level of problem gambling, be such that a player could lose no more than \$100 per hour, be such that the games operate 50% slower than current machines in South Australia, allow for no more than 5 lines to be played at a time, provide for a maximum bet of \$1 in hotels and clubs, include pop-up screens, and preclude a “gamble” facility⁶. The submission does not explain how the game approval guidelines would be amended to achieve these outcomes.

⁶ The “gamble” facility offers a 50/50 bet (that is, 100% return to player over time) when the player wins the prize. The player is able to double his or her winnings usually on the chance of choosing whether a dealt card will be red or black.

GAMING MACHINE LICENSING GUIDELINES

In the context of the existing gaming machine licensing guidelines, Duty of Care submitted that a licence applicant's business plan should include a comprehensive assessment of potential positive and negative impacts of increased access to gambling opportunities upon the residents identified as the business's targeted patron group.

3.7.2 *City of Port Adelaide Enfield*

In a short submission, the city of Port Adelaide Enfield addressed one matter concerning venue signage and two matters concerning gaming machine licensing guidelines.

The council agreed that on or in venue signage should be discreet and minimalist, and offered its detailed signage policy as an example of the way in which signage might be controlled.

The council supported the notion that local governments should be involved the gaming machine licensing process, and sought greater specificity about consultation periods and the criteria for consultation.

3.7.3 *Wattle Range Council*

The issues set out in the Guide for making submissions had been considered by the Social Issues Sub-Committee of Wattle Range Council, which offered a number of comments to the inquiry.

The committee supported the "Gamble Responsibly" message with a tagline, noting that in the absence of a tagline the message was ambiguous.

It was suggested that a standardised sign indicating the presence of a gambling facility would be preferable to the wide variety of signage presently evident, including some which was described as "obtrusive in the extreme".

It was suggested that training for venue staff should be undertaken by the local counselling agency, and that this would help foster the necessary links between help services and gaming machine venues. It was also suggested that this would assist in the identification and referral of problem gamblers.

Concerning Keno, the Council expressed concern at the manner in which Keno was heavily promoted and the widespread distribution of gaming forms within licensed premises, including the dining rooms of hotels. It was suggested that a model similar to the way SA TAB outlets operate would be preferable.

The council argued for either no or restricted availability of automated coin dispensing machines and better separation between gaming areas and cash facilities.

3.8 Hon. Nick Xenophon MLC

Hon. Nick Xenophon MLC opened his submission by reiterating his primary position that the total removal of poker machines from South Australia was the most effective way to dramatically reduce the harm caused by gambling. He went on to acknowledge

that there exists a legislative framework governing gambling activity and its regulation in South Australia, and that the codes of practice and guidelines form part of that framework.

FIRST STAGE ISSUES

Advertising code—compliance generally. Mr Xenophon argued that, in a number of respects, actual practice is not conformable with the aspirations of the advertising code:

- ◆ Advertising which stimulates demand is said not to be “socially responsible”.
- ◆ Upon presentation to the Liquor and Gambling Commissioner of examples of advertising said to associate gambling with families and young children, of advertising which associates gambling with meeting ordinary domestic expenses and statements by venue staff about machines “not having paid out for a while” and so being ready to pay, all have been assessed as not contravening the codes, on what Mr Xenophon says is a narrow interpretation.

Advertising code, clauses 3(2)(g) and 6(3)—“\$” and “win”. Mr Xenophon argued that the unqualified use of these expressions is inappropriate, and that the code wording should be amended to remove any doubt as to the intention of the codes.

Advertising code, clause 5—odds of winning. The existing code provisions should be amended to require the odds of winning to be apparent on all gambling products.

Responsible gambling code—compliance. Mr Xenophon argued that there needs to be widespread checking of compliance of venues with the codes, that there should be prescriptive sanctions for breaches and that there should be smartcards to enable enforcement of barring.

Responsible gambling code, clauses 6 and 10—alcohol and gambling. Mr Xenophon argued that the training provisions should prescribe the recognition of researched links between alcohol and problem gambling behaviour.

Responsible gambling code, clause 8—cheque cashing. Mr Xenophon argued that the present proscription of the cashing of cheques should be extended to the whole of licensed premises (not just the gaming room).

Responsible gambling code, clause 10—training. The existing training requirements should be extended to protect from dismissal staff members who intervene to assist a problem gambler and the training requirements should also prescribe minimum threshold requirements to trigger such interventions.

Responsible gambling code—minors in SA TAB outlets. Mr Xenophon argued that the responsible gambling code should be amended to prevent children from being in SA TAB agencies.

SECOND STAGE ISSUES

Mandatory warnings in advertising—second stage issue 1. Mr Xenophon submitted that there should be mandatory warnings, that they should be the subject of regular

review by independent experts and that they should send messages about the impact of gambling on families and friends.

On- and in-venue signage—second stage issue 2. Mr Xenophon advocated that there be no on-venue signage and, if there is, it should be of a prescribed size and colour simply alerting the public to the existence of gaming machines on premises.

Mandatory breaks in play—second stage issue 3. Mr Xenophon agreed that the New Zealand experience should be monitored.

Screening of sights and sounds of gambling—second stage issue 4. Mr Xenophon argued that the screening of sights and sounds of gambling should be made effective for all gambling venues.

Six hour break—common closing hours—second stage issue 5. Mr Xenophon urged the Authority to commission research on the prevalence of problem gamblers using machines at particular hours.

Inducements and loyalty programs—second stage issue 6. Mr Xenophon argued that there be no inducements to gambling or loyalty schemes. In particular, Mr Xenophon argued for specific penalties for loyalty schemes which continue to send material to patrons who requested to be removed. He also argues that loyalty schemes should not be used to provide inducements to “gamble on special occasions”.

Relationship with counselling agencies—second stage issue 8. Mr Xenophon agreed that venues should be required to form a relationship with a counselling agency, and argued that the codes should include safeguards to ensure the independence of the agencies.

Reporting of potential problem gamblers—second stage issue 9. Mr Xenophon concurred with a proposal that there be processes for the reporting of potential problem gamblers within venues, and that this be tested through an approach such as a “mystery player approach”.

Keno to be banned in newsagents and similar outlets—second stage issue 10. Mr Xenophon does not support the removal of keno from non-licensed premises, in the context of there being available a package of reforms for keno outlets, including restrictions on visibility of screens, the rate of play and the amount which can be bet.

Automated coin dispensing machines, etc—second stage issue 13. Mr Xenophon argued that there should be no automatic teller machines in licensed premises (with limited exemptions for remote locations), and that the existence of automated coin dispensing machines is inconsistent with the policy approach of keeping ATMs out of gaming areas. Mr Xenophon argued that human contact involved in a patron changing notes into coins is important as a point for intervention with people who have problems. Mr Xenophon further argues that removal of automated coin dispensing machines would provide a brake on gaming turnover.

GAME APPROVAL GUIDELINES

Mr Xenophon made a number of observations about the operation of the game approval guidelines and the test which the Liquor and Gambling Commissioner is

obliged to use when considering an application for approval of a game. He further argued that the game approval guidelines should be expanded to include the impact of sounds and lights on machines.

GAMING MACHINE LICENSING GUIDELINES

Mr Xenophon argued that the guidelines should operate so that the Liquor and Gambling Commissioner is obliged to obtain independent expert evidence on the social impacts of an application before forming a view about the grant of a licence. He also argues that the guidelines should be structured in such a way that enforceable licence conditions with respect to responsible gambling programs should be incorporated in the grant of any new licence.

LEGAL ISSUES

Mr Xenophon responded to other stakeholders' submissions as to the legal framework within which the Authority operates and the extent of its powers.

He did this both when addressing the Authority at the hearing, and in a subsequently provided written opinion authored by Mr Andrew Tokley of counsel. In summary, those arguments were supportive of the approach presently taken by the Authority to its consultative processes and the scope of the proposed codes of practice measures.

3.9 Liquor and Gambling Commissioner

The Liquor and Gambling Commissioner provided a detailed set of observations about the operation of the codes of practice and guidelines.

FIRST STAGE ISSUES

With respect to advertising codes of practice, the Commissioner identified practical difficulties in compliance and enforcement with—

- ◆ *clause 3(2)(f)*, concerning the association of gambling products with payment for household staples, education and rent or meeting mortgage commitments (setting out what he believed was the motivating event for this particular measure), and indicating interpretational difficulty which could be resolved by merely prohibiting particular promotional practices;
- ◆ *clause 5*, concerning prize advertising, observing that “prize” is not defined in the code and that he has applied a wide meaning to the expression;
- ◆ *clause 6*, concerning “\$” and “win”, observing that legal advice available to him suggested that the clause did not have the intended effect of prohibiting the unqualified use of these expressions, and suggesting a different drafting approach.

With respect to the responsible gambling code, the Commissioner principally commented upon—

- ◆ *clause 4(2)*, requiring the time of day to be prominently displayed, reporting that there is argument by some licensees as to what is a prominent position;
- ◆ *clause 4(3)*, concerning the play of more than one gaming machine at a time, reporting that many licensees had expressed confusion about how to enforce this

and suggesting that the measure might be more effective if enacted as a statutory offence;

- ◆ *clause 6(1)(c)*, concerning the supply of alcohol to reward continued gambling, noting that non-compliance is difficult to prove and that licensees have identified some ambiguity as to its meaning;
- ◆ *clause 6(2)*, concerning service of alcohol at a gaming machine, reporting licensee conjecture as to the meaning of “serve”, and his approach to interpretation;
- ◆ *clause 8(2)*, concerning provision of prizes by cheque, observing that it would not be unreasonable to require cheques to be provided forthwith (rather than within 24 hours);
- ◆ *clause 10*, concerning staff and training, making a number of technical observations.

SECOND STAGE ISSUES

The Commissioner made the following comments concerning second stage issues—

- ◆ agreeing with the proposal for mandatory warnings;
- ◆ advocating that external signage be minimalist and that expressive statements such as “highest payouts in SA” should be prohibited;
- ◆ cautioning against mandating breaks in play without appropriate technical infrastructure support;
- ◆ advising that the screening of sights and sounds of gambling would require alterations to a significant number of gaming venues;
- ◆ on a common six hour break, reporting that the majority of hotels in Adelaide close within one to two hours of each other;
- ◆ supporting the prohibition of inducements and loyalty programs;
- ◆ supporting the reporting of potential problem gamblers;
- ◆ arguing that automated coin dispensing machines should either be placed in a prominent location within a gaming room or prohibited altogether.

GAME APPROVAL GUIDELINES

The Commissioner made a number of technical observations and requests, supporting some of the existing provisions of the game approval guidelines, arguing for the refinement of guidelines concerning the number of free spins and suggesting that the guideline concerning rate of play be removed as the Commissioner did not believe that the rate of play was relevant to problem gambling.

GAMING MACHINE LICENSING GUIDELINES

The Commissioner referred to legal advice upon which he had formed the view that the present formulation of the guidelines was beyond the guideline issuing power in the Gaming Machines Act.

GENERAL OBSERVATIONS

The Commissioner recommended that the codes provisions be drafted by Parliamentary Counsel to avoid what he saw as interpretational issues.

4. LEGAL CONSIDERATIONS

4.1 The legislation

In considering the codes first stage review and the second stage issues, the starting point must be the empowering legislation. What powers does the Authority have in relation to these matters and by reference to what limitations or constraints should those powers be exercised? This matter has received a good deal of attention in recent years particularly in connection with the processes which led to recommendations made by the Authority to the Parliament for a reduction in the numbers of gaming machines in South Australia but also in connection with the promulgation of codes of practice. Some stakeholders have made submissions and, to some extent, joined debate about the scope of the Authority's jurisdiction and power to develop and promote codes of practice and in so doing observations have been made about the meaning and effect of section 11 of the IGA Act. The functions and some of the powers of the Authority are set out in section 11 which also provides that in exercising its functions and powers the Authority is to have regard to two objects.

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
 - (aab) to undertake, assist in or co-ordinate ongoing research into matters relevant to the Authority's functions, including research into—
 - (i) the social and economic costs and benefits to the community of gambling and the gambling industry; and
 - (ii) the likely impact, both negative and positive, on the community of any new gambling product or gambling activity that might be introduced by any section of the gambling industry; and
 - (iii) strategies for reducing the incidence of problem gambling and preventing or minimising the harm caused by gambling; and
 - (iv) any other matter directed by the Minister; and
 - (a) to ensure that an effective and efficient system of supervision is established and maintained over the operations of licensees under prescribed Acts; and
 - (b) to advise, and make recommendations to, the Minister on matters relating to the operations of licensees under prescribed Acts or on any aspect of the operation, administration or enforcement of prescribed Acts; and
 - (c) to perform other functions assigned to the Authority under this Act or a prescribed Act or by the Minister.
- (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.
- (3) The Authority may require the Commissioner to furnish the Authority with a report on any matter relating to—
- (a) the operations of a licensee under a prescribed Act; or
 - (b) the operation, administration or enforcement of a prescribed Act.
- (4) The Authority may give the Commissioner directions in relation to the discharge by the Commissioner of his or her responsibility to the Authority under a prescribed Act, but is not empowered to direct or in any way influence the Commissioner in the exercise by the Commissioner of a discretion under a prescribed Act.

While the structure of the Act so far as functions, powers and objects are concerned has remained the same since major legislation was passed in 2001⁷, section 11 has been the subject of amendment including very recent amendment enacted at the time that the Parliament was considering legislation providing for the reduction in the numbers of gaming machines by 3000 throughout the State⁸. In an earlier report to the Parliament concerning gaming machine numbers the Authority expressed a view about the construction and application of section 11 and, in particular, the objects. The amendments to section 11 require that the matter be revisited.

The functions expressed in section 11 are obligatory; the Authority must direct its efforts to the performance of those functions. The Authority does not have discretion as to whether or not to carry out its functions. However the time at and the manner in which they are carried out will be a matter involving discretion. The objects operate differently. The objects seek to express desired outcomes but they are not functions and the achievement of the outcomes they express is not obligatory. In carrying out its functions and exercising its powers the Authority must have regard to the objects and if possible achieve them but if it cannot do so in each case then that of itself does not render the exercise of powers or the performance of functions invalid. The primary consideration is the performance of the functions, having regard to the objects. In the present case the functions expressed in section 11(1)(aa) loom large (as does the express reference in section 11(1)(c) to functions assigned to the Authority under other Acts⁹). The Authority must develop and promote strategies for reducing problem gambling and minimising harm. In doing so the Authority must have regard to the objects of harm minimisation and the maintenance of an industry as it is there described. The objects themselves contain limitations. The industry object provides

⁷ *Statutes Amendment (Gambling Regulation) Act 2001*, No. 18 of 2001, 31 May 2001.

⁸ *Gaming Machines (Miscellaneous) Amendment Act 2004*, No. 46 of 2004, 9 December 2004.

⁹ As defined in section 3 of the IGA Act, “prescribed Act” means “(a) the *Casino Act 1997*; or (b) the *Gaming Machines Act 1992*; or (c) any other Act that assigns functions to the Authority”.

that the industry to be maintained is one that is both sustainable and socially responsible.

In public hearings conducted by the Authority, some industry stakeholders, and in particular the AHA, have urged upon the Authority an interpretation of section 11 of the Act aimed at having the Authority give pre-eminence to a concern broadly described as the “maintenance of the industry”. In its earlier report the Authority rejected a construction that would have given supremacy to the object directed to the maintenance of the industry. In the present inquiry, the AHA has repeated its submission that the “maintenance of the industry” object should be accorded pre-eminence. Although sub-section 11(2a) has been amended, the Authority does not consider that the amendment has had the effect contended for by the AHA. The amendment did not include any measure aimed at giving industry object pre-eminence. Moreover, the amendment retained the feature of the industry object that it contains a reference to the concept of social responsibility. The main focus of the amendment seems to have been to ensure that the object was directed to the maintenance of an industry that includes the hotel and club gaming sector. On that basis, the Authority has not accepted the submission.

Counsel for the AHA made a further submission to the effect that the Authority does not have power to devise codes of practice. That submission was not adopted by any other party; in particular, counsel for the Newsagents’ Federation, Ms Powell QC, did not adopt the submission. The submission is rejected for the reasons set out in the sections which follow and which include the observation that section 11(2) provides that the Authority has power to do anything that is necessary for, or incidental to, the performance of its functions.

4.2 The codes of practice powers

4.2.1 Issues raised by the hotels and licensed clubs peak bodies

The joint submission filed by the AHA and Clubs SA addressed the codes of practice, and each issue under consideration, and also addressed the game approval and gaming machine licensing guidelines.

At the May 2006 hearing Miss Nelson QC handed up a written outline dated 23 May 2006 dealing with what was styled “jurisdictional issues” which she then addressed. Miss Nelson submitted that the Authority does not have power “to devise codes of conduct” (paragraph 2 of her outline). The written submission went on to say that the Gaming Machines Act does not empower the Authority “to devise codes of practice” (paragraph 5 of her outline) and that the power to include matters in any code “is limited by the scope of Schedule 1 (*na*)(*nb*) (*sic*)” of the Gaming Machines Act (paragraph 6 of her outline). The submission contended that “the regulation contained in (*nb*)(C) (*sic*) is ultra vires”. Miss Nelson then submitted that there is no enabling power in either the Gaming Machines Act or the IGA Act which authorises such a regulation (paragraph 6 of her outline).

These submissions were specifically answered by Mr Andrew Tokley of Counsel on behalf of Mr Xenophon.

The Authority is required to develop and promote strategies for reducing problem gambling and for preventing or minimising harm (section 11(1)(aa)), to conduct research (section 11(1)(aab)) and to advise and make recommendations to the Minister (section 11(1)(b)). The Gaming Machines Act including Schedule 1 envisages the existence of codes of practice which have been approved by the Authority. Codes of practice which are directed to the reduction of problem gambling and/or minimising harm are strategies of the relevant kind and they fall squarely within the functions and powers allocated to the Authority. The fact that the different legislative frameworks for the regulation of the different sectors of industry prescribe the powers in different ways does not entail a conclusion that one or other of them cannot be the subject of codes of practice.

Counsel submitted that the licence condition imposed by Schedule 1, clause (nb)(i)(C) is ultra vires and did so in these terms.

... those are two examples that we would take the authority to, together with inducement and loyalty programs which, on no reading of schedule 1, fall within of the provisions in (na) and (nb) (*sic*), although there is a catch-all provision in (nbc) (*sic*) which we say is clearly ultra vires because there is no corresponding enabling power within either the Gaming Machines Act or the Independent Gambling Authority Act which authorises such a regulation, and I think in respect of the racing there is no enabling section in the relevant legislation which would enable the authority by subordinate legislation to purport to impose that type of similar regulation.

There does not seem to be a basis for saying that the licence condition imposed by Schedule 1, clause (nb)(i)(C) is ultra vires. The provision is not a regulation (contrary to the express assertion advanced by counsel), it is a legislative provision—see *Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth* (1977) 139 CLR 54. There is no warrant for suggesting that it is subordinate or delegated legislation.

Schedule 1 of the Act does not preclude other matters being the subject of codes. It provides as follows:

The conditions to which a gaming machine licence will be subject are as follows:

...

- (na) that the licensee—
 - (i) must adopt a code of practice on advertising approved by the Authority; and
 - (ii) must ensure that advertising by the licensee conforms with the code of practice approved under this paragraph; and
- (nb) that the licensee—
 - (i) must adopt a code of practice approved by the Authority dealing with—
 - (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; and
 - (AB) a program for early intervention in problem gambling designed to promote—
 - (a) early identification of persons engaging in problem gambling, including through active observation of the attendance patterns, behaviour and statements of gamblers; and

- (b) the provision of information relating to responsible gambling and the availability of services to address problems associated with gambling to persons so identified; and
 - (c) the use of the barring procedures under this Act in relation to persons so identified; and
 - (d) the referral of persons so identified to the Department within the meaning of the *Problem Gambling Family Protection Orders Act 2004*; and
- (B) the provision of training to staff relating to the early intervention program and generally to responsible gambling on gaming machines and the services available to address problems associated with gambling; and
- (C) any other matters designed to reduce the incidence of problem gambling determined by the Authority; and
- (ii) must ensure that operations under the gaming machine licence conform with the code of practice approved under this paragraph; and
- (nc) that the licensee must ensure that any alterations required to be made to a code of practice by the Authority pursuant to the Act are duly made; and

...

Miss Nelson QC argued that Schedule 1 prescribes in full the conditions that may be attached to a licence and that the authority has no power to devise codes of practice. This must carry with it the assumption that while Schedule 1 assumes the power of the Authority to “approve” codes of practice this does not extend to devising them. The argument seems also to assert that Codes of Practice approved by the Authority must not deal with matters beyond those specified in clauses (na) and (nb) but that in any event clause (nb)(i)(C) is ultra vires.

Even if it could be said that Schedule 1 of the Gaming Machines Act does not extend to authorising the formulation of a code of practice, the Authority does not see in that Act an intention to exclude or limit the operation of the functions of the Authority which are set out in section 11 of the IGA Act.

The promotion of codes of practice where it is directed to the minimisation of relevant harm must be a strategy of the kind envisaged by section 11(1)(aa) of the Act. In order to promote a code it may either be necessary to accept one that has been devised by a licensee or to seek variations to such a code and suggest amendments. It may be necessary to devise a code and seek the comments of licensees upon it. The process of devising may be partial or otherwise and it may involve consultation with licensees. The scope of the harm minimisation function of the Authority and the enabling or incidental power granted to give effect to it is very wide. The function and power are not limited by the fact that regulation of each of the major industry sectors is achieved by separate Acts of Parliament. The IGA Act contemplates that industry specific regulation will be the subject of industry specific legislation and the role of the Authority is recognised in each of the industry specific Acts, with the Gaming Machines Act being no exception. The fact that the Gaming Machines Act does not, in those words, empower the Authority to devise codes of practice does not limit the operation of the functions and powers specified in the Act. The content of the codes may be very broad as is envisaged by clause (nb)(i)(C). So long as the content of the

code conforms to the requirements of the function specified in section 11 and is designed to reduce the incidence of problem gambling then it will be valid.

4.2.2 Issues raised by the newsagents' peak body

The submissions advanced by Ms Powell in respect of Keno stand in a very different light to those general jurisdictional propositions advanced on behalf of the AHA and Clubs SA. Ms Powell's submission was expressed carefully saying that while the Authority may have power to devise and approve a code for the conduct of lottery operations this would not extend to prohibiting the licensee from retailing its product from newsagents as against hotels or other possible outlets or venues. That is to say that the power is one of regulation not prohibition and that what was proposed by way of restricting Keno sales and disallowing them in newsagents would amount to an impermissible prohibition. The distinction between a power to regulate by the imposition of conditions and a power which extends to disallowing the activity has been examined many times in the courts. Ms Powell's submission dealt with several of these authorities.

Those authorities establish a number of principles:

- ◆ the substance of the regulatory activity needs to be analysed against the head of power (that is, the terms of the authority given by the statute);
- ◆ the substance of the regulatory activity cannot conflict with what is otherwise expressly authorised by statute;
- ◆ particular care must be applied in the case of subordinate legislation conferring a discretion on the rule maker (or other decision maker).

The scope of a head of power will not necessarily be narrowly construed. For example, a power to make regulations for the preservation of the peace and maintenance of order in Northern Ireland supported an offence of being a member of a body describing itself as a republican club, without it being necessary to prove any unlawful or seditious intent. (It was assumed that the regulation was made in good faith.)¹⁰

However, a municipal council's general power to make by-laws did not allow it to prohibit bookmaking on races in circumstances where a betting statute expressly allowed it; and a statutory right to a refund of overpaid customs duty could not be circumscribed by a regulation requiring a claim for the refund to be made within a particular number of days or weeks.

Although the proposal being considered by the Authority does not include the grant of a discretion, the cases concerning discretions are instructive. This is so because, first, it is these cases which have primarily considered the distinction between regulation and prohibition and, second, the way in which the discretion has been framed is what has led to the regulation being held in excess of power by prohibiting rather than regulating conduct. A by-law which required a person to obtain a building permit from the local council before starting to build was regarded as prohibiting—and not

¹⁰ *McEldowney v Forde* [1971] AC 637

regulating—the activity because it did not set out the decision making criteria to be applied by the council. As the statute spoke only of regulating and restraining building, the by-law was bad. It was similarly found that a power to regulate processions did not authorise a by-law which made it illegal to conduct a procession without a permit. Again, the difficulty was that the by-law did not set out the criteria for the grant of the permit.

In respect of the particular issues raised on behalf of the Newsagents' Federation by Ms Powell, it is helpful to examine the head of power relevant to the proposals concerning Keno, which is found in section 13C(a)(iii). Paragraph (a) of the section requires the Lotteries Commission adopt a code of practice approved by the Authority dealing with (i) venue responsible gambling signs and information and (ii) staff responsible gambling training and then—

- (iii) any other matters designed to reduce the incidence of problem gambling determined by the Authority

In contrast to the heads of power considered in the cases which deal with the distinction between regulating and prohibiting, these words allow codes of practice provisions to have a broad scope, subject of course to the Authority having designed the relevant matter to reduce the incidence of problem gambling. There is therefore a parallel between the present question and the matters considered in respect of regulations to be made for the preservation of the peace in Northern Ireland.

Paragraph (b) of section 13C—which requires the Lotteries Commission, in performing its functions, to ensure that it conforms with the code—is relevant to the particular issue raised by Ms Powell that the proposed code of practice measure was effectively a prohibition on the Lotteries Commission appointing particular people as its agents. If the measure were such a prohibition, it was submitted that it would represent an invalid exercise of the power to approve or require the alteration of a code of practice because the appointment of agents was expressed, by section 18 of the State Lotteries Act, to be the domain of rules made by the Lotteries Commission with the approval of the Minister. However, the wording of paragraph (b) establishes a hierarchy of application. The making of rules by the Lotteries Commission is clearly a function of the Commission and therefore something over which the codes of practice can apply.

With the benefit of these submissions, it is clear to the Authority that great care will need to be taken to ensure that the codes of practice are a valid exercise of power and, in particular, that the Authority must satisfy itself, if determining to include matters other than those dealing with signs and training, that those matters are properly said to be designed to reduce the incidence of problem gambling.

4.3 The power to issue guidelines

The Authority has functions of issuing the following guidelines to which the Liquor and Gambling Commissioner must have regard:

- ◆ guidelines for the purposes of applications for approval of games to be played in the Casino (game approval guidelines—Casino);

- ◆ guidelines for the purposes of applications for approval of gaming machine games for play in a hotel or licensed club (game approval guidelines—gaming machines);
- ◆ guidelines for the purposes of the Commissioner having regard to the likely social effect of the grant of a gaming machine licence in respect of hotel or club premises (gaming machine licensing guidelines).

The function of issuing game approval guidelines was added by amendments in the *Statutes Amendment (Gambling Regulation) Act 2001*. Those amendments did not make specific provision for the power to issue the guidelines, but they did comprehend the Authority doing so. The Authority's power to issue the guidelines derives from the incidental power which is expressed to enable the Authority to carry out its functions—see section 11(2) of the IGA Act (which gives the power “to do anything that is necessary for, or incidental to, the performance of [the Authority's] functions”).

The function of issuing gaming machines licensing guidelines was added by amendments in the *Gaming Machines (Miscellaneous) Amendment Act 2004*. The same Act also inserted section 86A, which expressly grants a power to issue guidelines under that Act and renders all such guidelines subject to disallowance within 12 sitting days after tabling in Parliament. Section 86A applies not only to gaming machine licensing guidelines, but also to game approval guidelines issued under the Gaming Machines Act (but not those issued under the Casino Act).

4.4 Other relevant considerations

There is a further matter which may be taken into consideration by the Authority in coming to its conclusions. For some years now the Authority has urged upon the stakeholders the course of reaching agreement about measures which might be said to impose administrative, financial and logistical burdens upon operators but which might also minimise harm and reduce problem gambling. The first occasion upon which the Authority publicly urged the stakeholders to strive for such agreements was at its public hearings in December 2002. That exhortation was repeated on further occasions. It is understood that the stakeholders met in a number of negotiation forums during the course of 2003, 2004 and towards the end of 2005. Some of the stakeholders reported to the Authority that agreements had been reached. It is worthy of note that the stakeholders seriously endeavoured to reach such agreements and that a measure of agreement was achieved. The stakeholders are to be commended for these efforts.

The Authority was notified during the course of September and October 2003 of a number of agreements which had been reached. Those agreements and their key elements are detailed below.

10 September 2003—racing industry agreement on first stage. This was advised to the Authority in a letter from Racing SA, signed on behalf of each licensed racing controlling authority and countersigned on behalf of the Gambling Taskforce and the Break Even Network. It annexed draft advertising and responsible gambling codes of

practice based on the documents released by the Authority on 30 May 2003. The key points of difference were:

- ◆ references in the advertising code to advertising being conducted in a manner which is socially responsible and references to social and sexual prospects were omitted;
- ◆ electronic media blackouts were omitted;
- ◆ a specific exemption for advertising of prize moneys and runners' subsidies was included;
- ◆ definitions in the advertising code were amended to narrow its application and to remove reference to a prohibition on the unqualified use of "\$" and "win";
- ◆ reference to the display of time was removed from the responsible gambling code;
- ◆ reference to service of alcohol while gambling was omitted;
- ◆ reference to unattended children was omitted;
- ◆ responsibility for training of on-course staff was transferred to SA TAB.

15 September 2003—casino agreement. This was advised to the Authority in a letter from Skycity Adelaide, countersigned on behalf of the Gambling Taskforce and the Break Even Network. The letter annexed a preferred version of the advertising and responsible gambling codes of practice based on the documents released by the Authority on 30 May 2003, including second stage issue inclusions, and set out a series of propositions explaining the agreed approach to the second stage issues. The key points were:

- ◆ it was agreed to include mandating an intervention scheme premised on there being at least one adequately trained staff member on duty at all times to focus exclusively on harm minimisation issues;
- ◆ it was agreed not to prescribe the wording of a mandatory warning but to include a provision setting out minimum specifications for warnings;
- ◆ it was agreed to include a provision restricting on-venue signage (so as to not advertise gambling products while still allowing the use of the word "casino");
- ◆ it was agreed to remove a prohibition on automated coin dispensing machines being in the casino;
- ◆ it was agreed to make minor modifications to the 30 May proposal concerning unattended children;
- ◆ it was agreed to pursue relationships with counselling agencies and the reporting of potential problem gamblers through the intervention scheme, and also to pursue an agreement on an electronic media blackout;
- ◆ it was agreed that there should be no major restriction of loyalty programs, no mandating of breaks in play.

18 September 2003—SA Lotteries agreement on first stage. The Authority was provided with a copy of a memorandum of understanding between the Lotteries

Commission, on one part, and the Gambling Taskforce and the Break Even Network, on the other. The memorandum largely accepted the first stage measures proposed to apply to SA Lotteries products, with minor modifications to provisions concerning unattended children and minor qualifications with respect to the meaning of particular terms in the context of the State Lotteries Act.

19 September 2003—SA TAB agreement on first stage. This was advised to the Authority in a letter from SA TAB countersigned on behalf of the Gambling Taskforce. It annexed draft advertising and responsible gambling codes of practice based on the documents released by the Authority on 30 May 2003. The key points of difference were:

- ◆ a reference to SA TAB sponsorship not being directed at minors was included;
- ◆ definitions in the advertising code were amended to narrow its application;
- ◆ reference to service of alcohol while gambling was omitted;
- ◆ SA TAB could cash its own cheques;
- ◆ reference to unattended children was omitted;
- ◆ SA TAB was not to be responsible for compliance with the responsible gambling code in agencies which were also licensed as hotels.

1 October 2003—hotels agreement on first stage. This was advised to the Authority in a letter from the AHA countersigned on behalf of the Gambling Taskforce and the Break Even Network. It annexed a statement concerning unattended children in venues and draft advertising and responsible gambling codes of practice based on the documents released by the Authority on 30 May 2003. The key points were:

- ◆ definitions in the advertising code were amended to narrow its application and to remove reference to a prohibition on the unqualified use of “\$” and “win”;
- ◆ the standard of compliance with some obligations was expressed using the concept of taking reasonable steps, rather than the more onerous “to ensure” test used in the Authority’s draft;
- ◆ the proposed provisions concerning unattended children were replaced with a requirement to display signs;
- ◆ a number of obligations of licensees would be able to be discharged on their behalf by an industry body;
- ◆ there was no agreement about the service of alcohol to a person seated or standing at a gaming machine;
- ◆ it was agreed that automated coin dispensing machines would remain in gaming areas but that they would be monitored.

29 October 2003—*industry (other than casino) agreement on second stage*. This was initially presented as a report of progress towards an agreement by representatives of all industry stakeholders (other than Skycity Adelaide) and the Concern Sector. The finalised terms of that agreement were provided on 21 July 2004. The key points were:

- ◆ mandatory warnings would not be progressed until the Parliament had resolved a suggestion that the gaming machine numbers legislation would ban all advertising of gaming machines¹¹;
- ◆ it was agreed not to proceed with breaks in play;
- ◆ it was agreed that the obligation to screen the sights and sounds of gaming machines would apply only to hotels and clubs with more than 15 gaming machines and then only to those developed or redeveloped after the codes were made;
- ◆ it was agreed that hotels in common ownership would not seek to stagger their opening hours across 24 hours, but that otherwise there would not be a common six-hour break in opening;
- ◆ it was agreed to ban all inducements to gamble (as distinguished from loyalty programs);
- ◆ it was agreed to consider modifications to loyalty programs to exclude household staples from them, to allow for participants to receive 6 monthly statements and to require the removal of barred persons from the programs;
- ◆ it was agreed that it would be desirable for the various gambling operators to have relationships with counselling agencies, but that this should not be mandated in the codes of practice—the possibility of an early intervention agency was raised by the AHA;
- ◆ it was agreed that the Concern Sector was reconsidering its support for the withdrawal of Keno from non-licensed premises;
- ◆ it was agreed that all gambling products should be restricted to persons aged 18 and above, and that there should be special training for non-adults who would be selling lotteries products.

The key consideration here is whether the agreements are matters which can properly be taken into consideration by the Authority in its deliberations. The Authority is obliged to develop and promote strategies aimed at minimising gambling related harm. The measures comprehended by the codes first stage and second stage are to the extent that has been determined by the Authority in the first stage and will be determined in this decision relevant to that purpose.

What then can be the relevance of agreements which might have been reached between the stakeholders as to such measures? The argument may be put in this way. first, the process by which the stakeholders reached agreement on these matters has

¹¹ As enacted on 9 December 2004, the *Gaming Machines (Miscellaneous) Amendment Act 2004* did not include an amendment to that effect.

involved critical assessment of those measures. The Concern Sector representatives have access to their own research, to data and experience. They also have access to practitioners in the field, including those engaged by the Break Even services, and other agencies. That current experience and acquired understanding may be said to enable them to form views about whether particular measures have merit and would be likely to be effective in minimising the relevant harm. The Authority has been assisted by the opinions expressed by the Concern Sector and will take them into account when determining which particular measures are likely to minimise harm. Secondly, if there is agreement between the stakeholders it is more likely that there will be a mutual goodwill between operators and those who provide commentary upon the industry but are also engaged in providing counselling and other rehabilitation services. It is axiomatic that if the relationships between those organisations are good relationships then there is more likely to be co-operation in referring those who have problems to counselling agencies. Agreement between the stakeholders will necessarily reduce conflict, distress and antipathy to the provision of rehabilitation services.

It should not be thought, however, that the mere fact that the stakeholders have reached agreement on a particular measure would of itself commend it as an outcome for the Authority. The Authority cannot delegate its responsibility for determining whether a measure meets the objectives set out in the legislation, nor can it determine upon a measure simply because the stakeholders are in agreement about it. The desirability of agreement per se might be collateral to the proper purpose specified in the legislation—if it did not enure to some harm minimisation purpose, or did not enure to the maintenance of a sustainable industry.

Thirdly, it may be said that agreement between the stakeholders would be a matter likely to assist in the maintenance of a sustainable and viable industry.

In all the circumstances the Authority has determined that the existence of agreements is a matter which can be taken into account and has been taken into account by the Authority in reaching its determination.

The measures contained in the first stage codes of practice were considered by the Authority to be measures which would minimise, or would be likely to minimise, relevant harm. The Authority will adopt the same approach in relation to proposed alterations to the first stage measures and to the second stage issues, namely that they will be adopted to the extent that they are likely to minimise relevant harm.

4.5 Legal representation

Some of the stakeholders instructed counsel to appear before the Authority and to provide written submissions. The legal representatives predominantly addressed themselves to the structure and articulation of substantive material, but also specifically tackled the questions of jurisdiction and power that were raised.

The Authority acknowledges that it has been greatly assisted by the presence of those members of counsel in the course of conducting this inquiry.

5. ISSUES

5.1 “First stage” codes

5.1.1 *Observations on the “spirit of the codes”*

It was submitted to the Authority during the course of the hearing that some stakeholders appeared to be unclear about the intent and purpose of the codes of practice and that it might be possible to rectify this position by adding some words to the codes of practice.

It is clear that the codes of practice are principally directed at influencing the way in which gambling operators conduct their gambling businesses. In addition to the individual value of particular codes requirements, it should be expected that the requirement to comply with the codes of practice would make gambling operators more aware of a range of issues which generally relate to problem gambling and, in particular, that many of their customers are vulnerable.

The extent to which particular operators’ customers are vulnerable will depend on the nature of the activity.

For instance, in the case of SA Lotteries products, prevalence studies suggest that approximately 60% of adults will buy a lottery product in any given year. The generally accepted 2% prevalence rate among adults means that, in a given year, maybe 3.3% of SA Lotteries customers will be problem gamblers (even if their lottery spending is not itself problematic).

By contrast, only 36% of adults use gaming machines in any given year and, in terms of people who play at least monthly, the percentage is 9%. On the basis that the 2% of adults who are problem gamblers would be playing gaming machines at least as often as once per month, the numbers of problem gamblers using gaming machines at any one time could be as high as one in five.

On that basis, there is a very real opportunity to ameliorate harm by measures which can be taken in venues.

It is not clear to the Authority how adding words to the codes of practice will encourage gambling operators to not only seek to comply with the individual provisions for the codes but to also seek to appreciate the nature of the problem gambling phenomenon they confront. For that reason, the Authority is not presently minded to add to the codes of practice in respect of the “spirit of the codes”.

What has been clear, from material before this inquiry, is that industry has not universally and whole-heartedly embraced the “spirit of the codes”. Much of what industry has had to say deals with the facility of particular provisions, with an emphasis on perceived difficulty (often not placed in context) rather than with opportunities to improve the codes to achieve more responsibility in the provision of the product and better outcomes for problem gamblers.

Despite the absence of specific amendments to promote the “spirit of the codes”, the Authority expects that licensees will seek to identify that spirit and to understand the codes as more than a collection of unrelated compliance requirements.

5.1.2 Household staples

The present wording of the advertising code of practice clause (3)(2)(f) prohibits advertising which suggests that gambling is a way of paying for household staples.

A concern has been raised by the AHA that, by including articles such as toasters, legs of ham and Christmas puddings in their promotional prize cabinets, they are advertising gambling as a means to pay for household staples. It was suggested that, instead of referring to “household staples”, the codes of practice should prohibit advertising as a means of paying for goods and services which do not attract the goods and services tax.

The Authority could see that the use of a definition developed for taxation purposes might bring about a greater level of certainty about the class of goods and services affected. However, the Authority also noted that there might be some unexpected complexity in applying the GST law definition as it is set out over 54 separate sections (although not all of these would address the sorts of goods and services which a gambling operator might seek to use in conjunction with advertising of the gambling product).

While not satisfied that the prohibition on advertising gambling as a means to pay for household staples necessarily prevents a gambling operator offering, as a prize, a toaster or a leg of ham, there might be some point in combining provisions of paragraph (f) with those of paragraph (d) which presently precludes advertising which promotes gambling as a means of relieving financial or personal difficulties.

The Authority notes that the objections to household staples have been reflected in concerns about the offering of inducements to gambling. Elsewhere in this report, the Authority deals with inducements to gambling.

5.1.3 Radio advertising times

One stakeholder submitted that the current radio advertising blackout should be extended beyond 8.30am, on the basis that many mothers are still out, driving their children to school, at this time.

The original rationale for the radio and television advertising blackout was to provide a haven from gambling advertising at times when families were undertaking family activities, such as preparing for the day or enjoying an evening meal. If there are times when advertising of gambling products is not permitted on radio or television and if those times correspond with the times when families are likely to be together, then this will provide a space in their time together when there is no extraneous stimulus to gamble which might affect a person vulnerable to a gambling problem.

That remains the rationale for the blackout. The Authority is not satisfied that a further extension of the blackout is warranted on the basis proposed.

5.1.4 Odds of winning particular prizes

Skycity Adelaide made a submission with respect to clause 5 of the advertising code which deals with circumstances where advertising centres on particular prizes (such as the opportunity to win a motor vehicle in a gaming machine jackpot). The clause obliges the operator to include in the advertising the odds of winning the particular prize.

There is an exclusion from this for trade promotion lotteries where, by reason of the structure of the lottery, the odds of winning a particular prize cannot be determined. An example of such a lottery is one in which any number of people can enter—by SMS message or dialling a 1900 number—but which offers only one prize.

The submission was that the odds of winning particular prizes should not need to be disclosed if the advertising was going to be subject to a generic mandatory warning.

The Authority sees two separate and distinct issues here. Regardless of the inclusion of a general warning, it is considered that the attraction of winning a particular prize should still be balanced by a statement as to the likelihood of that prize being won.

In circumstances where operators choose to emphasise or highlight a particular prize which can be won, compliance with this requirement is not regarded as being unreasonable.

5.1.5 The use of “\$” and “win”

Clause 3(2)(g) of the advertising codes prohibits advertising which makes claims about winning which are non factual or are exaggerated. Clauses 6(3) and (4) sought to make a statement that any unqualified use of “\$” or the expression “win” in advertising would be regarded as a statement about winning which offended this clause.

At the time this clause was introduced, the Authority was particularly concerned about illuminated signage on the outside of gaming venues which featured numerous dollar signs and the word “win”. Whether or not this sort of signage affects the decision making of potential problem gamblers, it is clearly inconsistent with the notion of gambling as a form of entertainment.

There is some history to this first stage measure which it is appropriate to recount.

In the consultation and drafting process for the first stage of the codes of practice, an issue was raised whether an unintended consequence of this clause was that a hotel which offered both gaming machines and a PubTAB facility might be said to be in breach of the advertising code by reason of the display of approximate TAB dividends. Such a display would necessarily include both the dollar sign and the word “win”. To resolve those concerns, clause 6(3) of the codes (as originally published in May 2003) was amended and clause 6(4) was added. It was understood by those involved in the discussions that the combined effect of clauses 3(2)(g), 6(3) and 6(4) was to prohibit the expressions from external hotel signs (which typically featured “\$ \$ \$ WIN WIN WIN”).

In July 2004, three months after the measure became effective, the continued use of these signs was reported in the media. A senior officer of the Office of the Liquor and Gambling Commissioner was quoted as saying that the fact of a sign including a dollar sign did not necessarily mean that it offended the code.

The Authority was advised of these matters, and of a legal advice provided by the Crown Solicitor in September 2004 that the combined operation of the clauses did not prohibit the unqualified use of the dollar sign and “win”. It appeared to the Authority that this conclusion related to the drafting changes made to resolve the concerns about unintended consequences of an SA TAB agency being located in a hotel. The matter itself had not been tested in any proceedings for disciplinary action.

After becoming aware of the Crown Solicitor’s opinion, the Authority sought further advice from the Crown Solicitor on drafting which would achieve the original purpose. That advice was provided.

It is accepted that the desire to narrowly define the unqualified nature of the use of these expressions might have given rise to some ambiguity. With the benefit of the drafting advice of the Crown Solicitor, the Authority will amend the codes of practice to prohibit the unqualified use of the dollar sign and the expression “win” without giving rise to unintended consequences.

5.1.6 A 24-hour complaint line?

A key issue for Concern Sector stakeholders was compliance with the codes of practice, and what was regarded as an uneven and unsatisfactory level of compliance with the codes of practice.

It was suggested that one way of encouraging more and better compliance with the codes was the establishment of a 24-hour complaint facility.

While the establishment of such a facility is not strictly the subject-matter of the codes of practice, it was submitted that the responsible gambling document and signage which gambling operators are required to have in gambling areas could be required to make reference to a 24-hour complaint line number if such a facility were established.

The Authority is attracted by the prospect of a 24-hour complaint facility. It has initiated a discussion with the Liquor and Gambling Commissioner on the subject. If such a facility is implemented, the requirements with respect to the responsible gambling document will be amended to require the complaint number to be included on the sign.

5.1.7 SA TAB and helpline cards

SA TAB has submitted that, in the nature of its business, it has become impractical to keep supplies of helpline cards at any place in a gambling area other than next to the terminal. SA TAB has found that patrons will use helpline cards for the purposes of taking notes and that this gives rise to significant difficulty in maintaining stocks of helpline cards throughout gambling areas. The Authority accepts SA TAB’s submission that its patrons are likely to use helpline cards in a manner which makes it difficult for SA TAB to comply with this requirement.

The code of practice for SA TAB will be amended accordingly.

5.1.8 *Revision of the Helpline card and sticker*

It was submitted to the inquiry that the present format and layout of the helpline card and helpline sticker could be improved.

This is not a matter which can be dealt with in the codes of practice, which refer to helpline cards in a non-prescriptive manner.

The Authority nonetheless accepts that there is potential for improvement in the design and layout of the card and sticker and will refer the matter to the Department for Families and Communities.

5.1.9 *Playing more than one machine at a time*

Clause 4(3) of the responsible gambling code applying to the casino and to gaming machine venues deals with playing more than one gaming machine at a time.

The clause requires the gambling provider to take all reasonable and practicable steps to ensure that this does not occur. It includes two prescriptive requirements—the display of a warning sign and that action be taken in respect of patrons playing more than one machine at a time.

A submission was made on behalf of hotels and clubs that the concept of playing more than one machine at a time was not sufficiently clear. Examples were given of things which should not be regarded as playing more than one machine at a time. One of these was starting to play one machine while waiting for an attendant to attend a payout on another.

The Authority considers that the implementation of this code provision is one which requires a degree of common sense taking into account the spirit of the codes.

The Authority noted the list of activities said to be consistent with playing no more than one machine at a time. It was not satisfied that this list demonstrated a clear appreciation of the spirit of the codes. Rather, this list suggested a focus on peripheral issues when there was evidence before the Authority that blatant breaches were going undetected or being deliberately ignored.

The Authority was not persuaded that the present wording is ambiguous or incapable of implementation. There will be no change to this code of practice provision.

5.1.10 *Mandatory languages other than English*

It was submitted by Relationships Australia (an agency which provides a multicultural service as part of its Break Even offering), that there was a need for responsible gambling messages and material to appear in additional languages other than English. At present, clause 5(1)(b) of the responsible gambling codes mandates the following languages: Arabic, Chinese, Greek, Italian and Vietnamese. The submission was that there should be inclusions for Middle Eastern and African languages.

The demographic profile of the respondents to the recently published gambling prevalence study¹² is that, for 94.6% of them, English is the main language spoken in the home. The largest non English speaking background group is Italian speakers (1.1%), followed by a grouping of Arabic, Farsi, Afghan and Turkish (0.6%) and Greek (0.5%). African languages themselves represent only 0.1% of main languages spoken at home.

Despite the large sample size (nearly 18 000 adults were interviewed), the number of moderate and high risk gamblers is still too small to obtain helpful language demographics of problem gamblers, other than to say that only 2.8% of problem gamblers did not speak English at home.

While it is unquestionable that non English speakers are particularly vulnerable to all forms of harm in the community, including gambling related harm, the choice of languages to be mandated for this purpose requires the balancing and weighing of competing factors. One of these exercises relates to whether the numbers of at risk gamblers who will be additionally reached by the inclusion of new languages (or their substitution for existing languages) is justified by the cost to gambling providers and the logistical risk that all non English language information will be impaired by a “swamping” effect—where an individual language message is lost in a “sea” of other languages.

The Authority is conscious and mindful of the excellent work done by multicultural services. However, in this case, it would appear that a more effective approach would be to target particular areas and groups, rather than require additional languages to be used across the whole of South Australia.

5.1.11 Intoxication and gambling

In the course of submission by Concern Sector stakeholders, evidence was provided that intoxicated persons were being allowed to gamble. One example was given of positive assistance being offered to an intoxicated person to continue gambling—a gaming employee feeding coins for a person observed to be incapable of doing so.

It was submitted that the test of intoxication in a gaming room should be the same as for driving a motor vehicle—blood alcohol not to exceed 0.05% as measured by an approved breath analysing instrument. The observations reported by the Concern Sector stakeholders are of significant concern. The regulatory regime requires the holder of a gaming machine licence also to hold a liquor licence. Liquor licensees have long been subject to requirements with respect to intoxicated persons and, in recent years, have been required to adopt standards for the responsible service of alcohol.

For many years, members of the AHA have had to ensure that a person who is intoxicated is not served alcohol. It may be assumed that hoteliers have approached this matter in a conscientious way and in a responsible way. There is no reason why they should not have a similar approach in relation to the service of gaming to

¹² Department for Families and Communities (South Australia), *Gambling Prevalence in South Australia October to December 2005*, November 2006.

intoxicated persons. The dearth of prosecutions in this area might be taken to indicate understanding, comprehension and compliance.

It is not, in the Authority's view, difficult to make a determination about when a person is intoxicated. What might be difficult is the conversation involved in withdrawing the service of alcohol or a gambling product from someone who is intoxicated. However, that is a difficulty which comes with the territory of being a licensee.

Gaming licensees already have significant obligations under liquor licensing laws to ensure that intoxicated persons are not served, and the issues raised by the Concern Sector clearly arise from the standard of compliance with those obligations. The events described in the Concern Sector submissions are not acceptable, even as an example of "worst case" non-compliance. However, with enforcement and better industry direction, the existing requirements should still be capable of genuine compliance.

Therefore, despite the Authority's concerns about intoxication, the mandating of a road safety standard of compliance with respect to intoxication is not yet justified.

5.1.12 Service of alcohol at gaming machines

Clause 6 of the codes of practice deals with alcohol and gambling. A uniform provision in all of the gambling codes is a requirement that the gambling provider keep intoxicated persons away from gambling products. An additional clause in the casino and gaming machines codes prohibits the service of alcohol to persons seated or standing at gaming machines.

It has been submitted by the hotel and club industry that this gives rise to compliance and implementation difficulties for licensees.

Among the questions asked is whether a licensee is, for the purposes of the codes, serving alcohol to a person seated at a gaming machine when the person's spouse purchases the alcohol at a bar and takes it to the gaming machine. The clause clearly does not attach that situation. In that example, neither the licensee nor the licensee's staff have served alcohol to a person seated or standing at a gaming machine.

Clause 6(2) was the subject of significant discussion between industry stakeholders and the Concern Sector during extensive stakeholder discussions in the second half of 2003. Clause 6(2) was accepted by the industry stakeholders at that time.

The clause was accepted on the basis that it promoted the real and useful concept of a break in play (noting that the other provisions of clause 6 should prevent alcohol from being provided to a person who is intoxicated).

In seeking to effectively implement clause 6(2), licensees should look to practical applications of the clause which promote the concept of a break in play.

The industry has pointed out that there is a body of developed concepts in liquor licensing legislation and case law which might usefully be employed in this provision. It has been suggested that the already defined concept *supply* rather than service of alcohol be used.

However, supply is not the appropriate concept and, in any event, the implementation of codes of practice provisions for their intended purpose should not need to be reliant on a body of case law. The Authority is confident that, were disciplinary action to be initiated in respect of an alleged breach of this requirement, a licensee who made genuine attempts to abide by the requirement within the spirit of the codes would not be at risk.

5.1.13 Provision of cheques

Clause 8(2) of the responsible gambling code requires a gambling provider to provide a winnings cheque, upon patron request, within 24 hours.

It was submitted by the Liquor and Gambling Commissioner that gambling operators should be able to provide a cheque immediately, thereby removing the requirement of a gambler to return to the venue at some later time.

The Authority accepts that the majority of gambling operators should be able to provide a cheque for any prize in excess of \$1 000 immediately. The clause will be amended to require this, but will also allow for such exemptions as can be justified by individual operator's circumstances.

5.1.14 Cashing of cheques

Clause 8(1) prohibits the cashing of a cheque in a gambling area (subject to an exemption in writing).

SA TAB has submitted that its agents should be allowed to cash cheques drawn on SA TAB's own account in its agencies.

The Authority, taking into account the less continuous nature of SA TAB's gambling product, distinctions which can be drawn between the liquidity of TAB agencies and gaming machine venues and distinctions which can be drawn between SA TAB's cheques and Centrelink or wages cheques, is satisfied that SA TAB's request should be granted.

A related issue was raised by the Gambling Taskforce, concerning the availability of cash generally in gaming venues.

The present preclusion only applies to gaming areas. In a hotel there are many areas where a cheque can be cashed and the proceeds then easily used for gambling.

The Authority notes that this is consistent with other forms in which cash can be provided in hotels and clubs—most particularly by means of automatic teller machines. The Authority was not persuaded that the preclusion of cashing cheques should be extended to all areas of hotel or club premises licensed for gaming machines.

Although the Authority was not satisfied that cheque cashing should be prohibited throughout hotel and club premises, it would be a clear indicator of problem gambling behaviour if a person were persistently cashing cheques (particularly Centrelink cheques or wages cheques) to fund gambling activities.

5.1.15 Register of self-exclusion requests

Clause 9 of the responsible gambling codes applying to all industries apart from Lotteries relates to facilitation of indefinite voluntary exclusion. The code itself does not provide for exclusion, but directs the licensee to existing venue based exclusion options. It was submitted that the addition of a requirement to keep a register of requests for self-exclusion would assist in inspection of compliance with this requirement and in increasing licensee awareness of the requirement to comply with clause 9.

The Authority was satisfied that there might be some benefit from such a requirement, but that it might also be a marginal benefit only. The Authority was not persuaded to proceed with this requirement at this time.

5.1.16 Audit of training

Clause 10 of the codes of practice deals with training requirements.

One of its provisions requires there to be an audit undertaken each year with respect to whether training programs used actually meet the requirements of the codes of practice.

Since the implementation of the first stage of the codes of practice SA Lotteries, SA TAB and Skycity Adelaide have, either wholly or in part, complied with the requirement that the training programs be audited for compliance and have reported on this. The Authority has not received a report from the holder of a gaming machine licence or a racing club licence.

Submissions were made on behalf of gaming machine licensees and licensed racing clubs that this clause was unnecessary, because training programs were required to be provided by providers appropriately accredited in a manner acceptable to the Authority. It was also submitted that training providers which were registered training organisations could be expected to deliver training which did comply.

It was submitted that it is onerous for individual licensees to be required to audit training programs which are provided by third parties. There is a distinction between relying on reasonable expectations of quality in a training provider and being satisfied that the training delivered actually complies. Ensuring that a training provider is a registered training organisation provides a high measure of confidence that the training provided will be correct. However, a requirement for audit is complementary to this approach, rather than being inconsistent.

The language chosen when drafting clause 10 was intended to allow a range of options and flexibility for gambling operators. In particular, a provision was included to enable a peak body for gaming machine licensees to undertake such actions as were necessary to cause an audit to be conducted and to provide a report to the Authority.

Had an approach been made by a peak body or individual licensee, there would have been a discussion about practical means to ensure that an audit was conducted as would satisfy the substantive purpose of clause 10(5).

The history with Lotteries, SA TAB and Skycity suggests that audit is practicable. The Authority regards audit as an important complementary measure to ensure that training does comply.

There will be no amendment to the clause.

5.1.17 Application to agents

SA TAB and SA Lotteries offer their gambling products through networks or agents. Some of these agents are also the holders of gaming machine licences (that is, hotels and clubs). In the case of SA Lotteries, others of these agents are newsagents, pharmacists and kiosk operators, while SA TAB has dedicated (specific-purpose) agency outlets.

The relevant provisions (clause 8 of the advertising code and clause 13 of the responsible gambling code) oblige the gambling provider to ensure that an agent conforms with the code as though the agent were the gambling provider.

SA TAB has asked to be relieved from this obligation, other than in respect of its dedicated TAB agency outlets.

In its submission, SA TAB has noted that the majority of reported breaches of compliance occur at PubTAB and ClubTAB outlets.

These breaches have often been observed by liquor and gambling inspectors within days after SA TAB has itself conducted a codes compliance audit at the site. SA TAB suggests that the “third party relationship” it has with PubTAB and ClubTAB operators does not always ensure that those operators share SA TAB’s commitment to the codes. SA TAB states that it has extreme difficulty in controlling what happens in these venues.

Under the present statutory regulatory regime, the only way that codes of practice provisions can be imposed on SA TAB outlets is through SA TAB ensuring that its agents comply. There is no regulatory mechanism by which SA TAB’s agents can be made directly responsible for compliance with codes of practice provisions.

The Authority has no reason to reject SA TAB’s claim that its PubTAB and ClubTAB agents do not share its commitment to compliance with the codes of practice to the same extent as SA TAB’s commissioned agents. However, this is essentially a management issue for SA TAB.

The Authority notes that most PubTAB and ClubTAB operators are also gaming machine licensees. Noting that the codes of practice provisions are largely uniform between SA TAB and gaming machine licensees, there should not be great difficulty in venues complying with the codes of practice requirements.

SA TAB’s submission did observe that there might be a difference in attitude between Pub TAB/ClubTAB and commissioned agency customers, and that this is the source of much of the compliance difficulty. Again, this is a management issue for SA TAB.

The Authority notes that SA TAB and SA Lotteries are in a similar position in that many hotels and clubs operate as agents for both SA TAB and SA Lotteries. The Authority notes that this does not appear to have been a problem for SA Lotteries.

There will be no change to clauses 8 and 13.

5.1.18 Opportunity for reasonable rectification of breaches

SA TAB raised, in its submission, a concern about the manner in which codes of practice breaches are reported to the Authority.

Although compliance and disciplinary processes are important to the operation of the codes of practice, they are not dealt with in the codes.

The Authority is working, on an ongoing basis, with the Office of the Liquor and Gambling Commissioner with respect to compliance reporting across all forms of commercial gambling. The Authority's practice has been to recognise genuine efforts to comply with the codes of practice, and has taken into account the practical difficulties which confront operators seeking to work through distributed agency networks.

It should be noted that the only matter in respect of which activity of a disciplinary nature has been undertaken has concerned advertising by SA TAB itself.

5.2 “Second stage” codes

5.2.1 Mandatory warnings

One of the determinations, in principle, in the first stage process was that there should be mandatory warnings in all gambling advertising. The proposition was put that the same warning should appear in all gambling advertising, across all forms of commercial gambling. What was deferred to the second stage process was the identification of the text of the warning.

In the supporting material provided for subsequent discussion of second stage issues, the Authority identified a suite of messages which had been developed in Queensland around a common theme “Gamble Responsibly”. This suite of messages had been extensively market researched prior to being launched, in a primarily print media campaign.

The messages used in the Queensland campaign are:

- ◆ Don't chase your losses. Walk away. Gamble responsibly.
- ◆ Don't let the game play you. Stay in control. Gamble responsibly.
- ◆ Stay in control. Leave before you lose it. Gamble responsibly.
- ◆ You know the score. Stay in control. Gamble responsibly.
- ◆ Know when to stop. Don't go over the top. Gamble responsibly.
- ◆ Think of the people who need your support. Gamble responsibly.

In its submission in November 2002 the Festival of Light has suggested a suite of six messages as follows:

Warning! The more you gamble, the more you lose.

Warning! Gambling may lead to health problems.

Warning! Gambling may cause financial troubles.

Warning! Australians are the world's biggest gamblers.

Warning! Gambling may lead to addiction.

Warning! Gambling may damage your family.

The Authority had also received a suggestion from a voluntarily barred person that the following message be adopted:

YOU MAY LOSE MORE THAN YOU THINK!!!

Including your:

- MARRIAGE
- FAMILY
- HOME
- SUPERANNUATION
- EMPLOYMENT

You could face:

- EVICTION
- BANKRUPTCY
- SUICIDAL THOUGHTS
- UNABLE TO BUY FOOD
- DEPRESSION
- ELECTRICITY CUT OFF

THINK BEFORE YOU GAMBLE!!!

REMEMBER: ONE POKER MACHINE IN A SOUTH AUSTRALIAN HOTEL NETTED THE OWNER \$410,506 IN ONE YEAR

A number of factors require consideration when identifying appropriate mandatory warnings.

One is that it is important that the message be refreshed from time to time. There is some experience that, after a period of time, messages lose their prominence and blend into the background. Accordingly, it is important that there be points of difference from time to time to allow the messages to retain their prominence.

It is also important that the target group for the message not be alienated by the message. Some experience in New South Wales has suggested that the inclusion of helpline information in a mandatory warning encourages some at-risk people to ignore the message because they form the view that they are not the sort of people who need helplines.

Similarly, there is some experience which suggests that, in the gambling context, it is important that the mandatory warning be a message that moderate to at-risk gamblers are able to agree and identify with.

On these bases, and with the support of a number of the stakeholders who participated in Review 2006, the Authority has determined to adopt the “Gamble Responsibly” suite of messages. The codes of practice will be drafted in a way which requires the messages to be rotated on a six-monthly basis over a period of three years.

It is noted that the Lotteries Commission has already voluntarily adopted the tag-line “Gamble Responsibly” in its advertising.

5.2.2 *On- and in-venue signage*

The guide for making submissions set out a starting point for discussion that signage should be discreet and minimalist, and sufficient only to enable a person looking for a gambling establishment to locate the venue.

In the course of the public consultation, the Authority has observed that much signage—particularly hotel gaming machine venue signage—is neither minimalist nor discreet.

At the public hearing, some stakeholders submitted that there should be no external advertising of gaming machines—as is the case in New South Wales. This submission did not generate much interplay at the hearing; however, as the Authority commenced its deliberations on this issue, it became clear that it would be necessary to ask the stakeholders to specifically address it.

Further submissions, particularly addressing that issue, were sought from stakeholders and received in mid-October.

Having considered all of the material concerned, a substantial majority of the members of the Authority is of the view that, in respect of hotel and club gaming machine venues, there should be no reference to gaming machines on any advertising on the outside of the premises or within the immediate environs of the premises.

In coming to this conclusion, the Authority has taken into account the following considerations:

- ◆ Gaming machines are in 80 per cent of hotels.
- ◆ The nature of existing gaming machine venue signage suggests that there might be some confusion and difficulty surrounding what is regarded as discreet or minimalist (or, for that matter, tasteful). There is support from the Concern Sector, and from the Authority’s own experience of barring interviews, that some at-risk and problem gamblers make spontaneous decisions to gamble when confronted with certain gaming machine signage.
- ◆ The high penetration of gaming machines into hotels means that, from a practical point of view, a member of the public looking for a gaming machine needs only to find a hotel. Indeed, it has been speculated by some stakeholders that a form of

reverse advertising will occur; that hotels without gaming machines will proclaim that fact an external sign.

It might be observed that this last premise does not apply for licensed clubs. However, it has been a constant and continuing theme of club stakeholders that they exist for the benefit of their members and are essentially non-commercial operations. Those who are members of, or closely associated with, licensed clubs will be well aware of the gaming facilities available within them. It is said that licensed clubs are a more benign environment because they are not actively competing commercially for the gambling dollar.

The Authority sees consistency between this advertising code of practice measure and the licensing criterion contained in section 15(4)(e) of the Gaming Machines Act, which states:

(4) A gaming machine licence will not be granted unless the applicant for the licence satisfies the Commissioner, by such evidence as the Commissioner may require—

...

(e) that the size of the proposed gaming operations on the premises would not be such that they would predominate over the undertaking ordinarily carried out on the premises...

This is a licensing provision which applies equally to hotels and clubs.

The Authority has determined that, in respect of the Adelaide Casino, SA TAB and Lotteries outlets, external signage should be required to be appropriate and proportionate to the activity conducted.

In the case of the Casino, it has been long-standing parliamentary policy that the site is licensed primarily for the purpose of gambling and that there should only be one in the State. The nature and placement of the Casino site is such that it is much more likely to be a deliberate destination for gambling rather than a place where gambling opportunities are taken on impulse. Accordingly, most of the cogent reasons for removing external signage from gaming machine venues are not applicable to the Casino.

In the case of SA TAB and SA Lotteries outlets, these are not universally associated with any particular other form of business in the way that gaming machines are associated with hotels. It is therefore appropriate that there be external signage which assists members of the public wishing to have those gambling experiences to do so.

As part of the further consultation, a query was raised as to whether the prohibition of gaming machine signage on gaming machine venues would apply to SA TAB or Lotteries signage. It will not be the case that these signs will be prohibited on the outside of those venues, but the signs will need to be appropriate to the scale and scope of the activity.

In addition, the existing first stage requirement that advertising not emphasise winning as a reason for gambling will remain, as will the associated preclusion on the use of “dollar” and “win”.

The Authority also considered in-venue signage. The codes of practice will be amended, across all forms of gambling, to require internal signage to be directional only.

5.2.3 *Mandatory breaks in play*

There is strong support for breaks in play as a means to support at-risk and problem gamblers in avoiding a loss of control and to make appropriate decisions about the length of time and amount of money to be spent in a gambling session. This second stage issue related to so-called “micro breaks” of, say, 30 seconds per half hour of play.

Over the period of the codes of practice consultation, the Authority has been mindful of the administrative and practical difficulties that would be presented for “micro breaks” to be implemented through manual processes of intervention in venues. It is clearly attractive for breaks in play to be built into the systematic way of operation of gaming machines.

These positions were clearly set out in the Guide for Making Submissions.

It is also significant that at least one jurisdiction, New Zealand, has regulated for mandatory breaks in play to be built into the design of gaming machines. Transitional arrangements in that jurisdiction mean that it will still be some time before the results of that initiative are observable. It is anticipated that very helpful information about the efficacy of this measure will be received when that happens.

It was accepted by Concern Sector stakeholders that it would be appropriate to await the outcome of the New Zealand initiative.

On that basis, the Authority will not proceed to require, by codes of practice, that there be manually or externally instigated breaks in play in gaming venues. The Authority will, in the meantime, look for opportunities to promote breaks in play through other measures—such as provisions relating to accessibility of coin and cash in gaming venues.

5.2.4 *Screening of the sights and sounds of gambling*

It has been argued to the Authority that, similarly with external signage, there is a significant stimulus effect of sights and sounds of gaming emanating from gaming areas and observable in other parts of gaming venues.

Patrons of hotels and clubs who are dining, or using other non-gaming facilities, would be well aware of the existence of the gaming machine entertainment opportunity within the venues; it would not be necessary for them to be able to see or hear the gaming machines in order to be able to decide to use them for entertainment purposes.

Screening the sights and sounds of gaming would also be consistent with the licensing objective set out in section 15(4)(e) of the Gaming Machines Act.

The Authority is aware that there will be a cost to licensees in many venues to screening of sights and otherwise make the sounds of gaming less obtrusive within the whole premises.

Balancing the arguments in favour of screening the sights and sounds with the cost to licensees, a substantial majority of the members of the Authority concluded that gaming machine licensees should, within three years, undertake such works as are necessary to screen the sights and sounds of gaming from other parts of the premises where patrons will attend for non-gambling purposes.

This initiative is also consistent with requiring patrons to make a conscious decision to undertake a responsible gambling activity.

5.2.5 Six hour break—common closing hours for gaming machine venues

Presently, the Gaming Machines Act requires all hotel and club gaming machine venues to be closed for gaming for at least six hours per day—whether in one block of six hours, two blocks of three hours, or three blocks of two hours.

This second stage issue was whether the six hours of closure should be contiguous, and common across all gaming venues. There was a concern that gaming venues might be open at times when people were particularly vulnerable and, in any event, that a staggering of hours ensured that gaming was available 24 hours a day. It is noted that the AHA, as part of a second stage issues agreement, noted the potential for opening hours to be staggered across hotels in common ownership and that this was undesirable.

While this issue was initially about whether the existing six hours of closure should be contiguous hours and common hours, some stakeholders have submitted also that the closure period should be longer.

During the course of submissions, those in favour of a common break have largely supported the view that such a break should be in the early hours of the morning. Some submissions have suggested that the common break should be longer than a period of six hours, such that gaming venues would not be open for business until after 10.00am and that they would close at midnight on trading days that start on a weekday or at the 2.00am following trading days that start on a weekend.

It has sometimes been suggested to the Authority that venues which choose to be open in the early hours of the morning are catering to shift workers. The Authority does not accept that there is a special case to be made for the gambling entertainment option to be made available to shift workers whose recreation time notionally started at or after midnight.

The Authority is satisfied that there should be a common break.

The Authority was also satisfied that, regardless of whether the codes of practice provisions allowed the Authority to mandate such a requirement, this was a decision which should be made by the Parliament.

Accordingly, it is the recommendation of a substantial majority of the members of the Authority that the Gaming Machines Act be amended to require all hotel and club

gaming rooms to open no earlier than 10.00am and to close at midnight on trading days which commence on a weekday and at the 2.00am following a trading day which commences on a weekend.

5.2.6 *Inducements and loyalty programs*

It is clear from the extensive material available to the Authority that inducements to gambling cause some people to make poor decisions about when and where to gamble, and for how long.

It is also clear that the impact of inducements is more pronounced on those who are not recreational gamblers.

As a matter of principle, the Authority is of the view that gaming machine licensees should not be allowed to offer inducements to gamble, or to offer so-called “loyalty programs”.

The Authority is aware of the significant submissions made, particularly by stakeholders Worldsmart Technology and Maxetag, that certain forms of account-based loyalty programs can include harm minimisation features. The Authority is also aware that, in at least one other Australasian jurisdiction—Victoria—loyalty programs are only permitted where harm minimisation features are included (the Crown Casino *PlaySafe* Program provides for Crown Club members to receive statements as to their gaming activity, and to cease to accumulate loyalty points once they have reached predetermined limits).

For those reasons, the codes of practice will be amended to prohibit inducements to gambling and loyalty programs, except in relation to card-based systems which include harm minimisation features (such as pre-commitment and player activity statements).

There will be an 18 month phase-in period.

This determination will also resolve issues surrounding household staples and gambling. The factual scenarios used to articulate issues arising from the prohibition of advertising of gambling as a means to pay for household staples exclusively related to what could be offered as prizes or rewards in gaming rooms. The elimination of inducements and non-account based loyalty programs incidentally deals with this issue in practice.

5.2.7 *Co-location of gambling activity*

A suggestion had been made, very early in the consultation process for the initial codes of practice activities, that the creation of one controlled gambling area within hotel and club gaming venues would enable much more effective harm minimisation intervention.

However, it has been common among both industry and Concern Sector stakeholders that the different natures of the gambling products, the physical challenges of implementing such an initiative in venues, and the potential for gamblers to be

recruited from less intensive to more intensive forms of gambling, made this an unattractive harm minimisation measure.

The Authority will not proceed with any amendments for co-location of gambling activities.

5.2.8 Relationship with counselling agencies

At present, codes of practice requirements for the availability of gambling help line cards will, if followed, ensure that persons needing help are aware of the 24 hour telephone service offered by the Gambling Helpline. This is an important feature of the gambling environment and one which enables many problem gamblers to receive some immediate advice and support.

However, there are clear and obvious limits to the assistance which can be provided by an anonymous telephone service. There is clearly scope for more problem gamblers to be brought into contact with the counselling services supported from the Gamblers Rehabilitation Fund, which offer a tailored and on-going level of assistance to problem gamblers.

While it is possible for the Gambling Helpline to refer problem gamblers to individual services, this approach is susceptible to potential breakdowns in communication, particularly where the initiative must be taken by the problem gambler to act on information provided over the telephone.

It is on that basis that the issue of how venues can facilitate ready access to the local BESSA service has been under consideration. The suggestion has been that each venue develop a relationship with its local Break Even service. There are concerns about what is practicable, and the Authority has noted observations that some Break Even services would, as a result of such an initiative being mandated, receive contact from over 100 venues.

The Authority is not a management body for Break Even services, nor is it their funding body. It is not able to resolve resource implications which might arise from the mandating of a requirement that venues form a relationship with the local Break Even agency. However, the Authority is satisfied that such a requirement would be an appropriate one, and that it is a matter for the service sector to respond to it.

In that respect, the Authority in its report into the effectiveness of gambling rehabilitation services (tabled in July 2005) observed that the current rehabilitation services are estimated to deal with 2 000–3 000 people per annum, meaning that the service sector currently reaches only 10 per cent of the likely problem gambler population (based on prevalence estimates).

If, as a result of an initiative by which hotel and club venues were directed in a more focused way to refer clients, each venue on average referred one client per month, the number of potential problems gamblers being brought into contact with the service sector would be trebled.

It is anticipated that the implementation of this, as a codes of practice initiative, would facilitate as a gambling regulatory measure a significant improvement of the capacity

of the service system to reach its target audience. The Authority would encourage those responsible for the management and funding of the service sector to devise practical and user-friendly methods for the establishment of the appropriate relationship between gaming machine venues and the Break Even agencies and to carefully monitor emerging trends and appropriately respond to requests for assistance.

Accordingly, there will be an amendment to the codes of practice applying to hotel and club gaming venues to require them to form a relationship with the local Break Even agency and to keep a register of referrals. The purpose of this register will be to enable appropriate monitoring of compliance with the requirement.

There will be a phase-in period of 18 months, and the obligation on venues will be to take reasonable steps to form such a relationship. Accordingly, there should be no penalty for licensees if the service sector is unable to respond.

5.2.9 Reporting of potential problem gamblers

The proposal to require reporting of potential problem gamblers originates from the information document circulated for the purposes of the December 2002 codes of practice hearings.

The proposal originated from a premise, which had been confirmed by contact with gaming venue staff, that staff in venues were well aware of those patrons who had gambling problems but that this knowledge was not acted upon. Apparently, staff were not always confident to make an approach and felt that to do so would not be encouraged by their management. The Authority is sensitive to the proposition that frontline gaming venue staff might not have the necessary skills, or feel that they have the authority, to approach potential problem gamblers.

The Authority is aware that it is the industry position that it does not wish to profit at the expense of problem gamblers—that licensees do not want problem gamblers in their venues. On that basis, it is fair to conclude that the licensee, or person in charge, of a venue would be prepared to approach a person identified as a potential problem gambler. It is also to be expected that senior employees in gaming venues will have extensive “people management” skills to enable them to deal with any number of confrontational circumstances (particularly those concerning consumption of alcohol).

There are many calls upon the time and attention of licensees and the people in charge of venues. It is not reasonable to expect these senior people to become aware of problematic gaming behaviour on their own observation alone. However, what is reasonable is for them to take some action when a member of staff draws a matter of concern to attention.

Accordingly, the codes of practice will require the establishment in venues of documented processes for the reporting of suspected problem gambling activity, for the noting of that activity by the person in charge of the venue and for the recording of follow-up action taken.

5.2.10 Keno in newsagencies, pharmacies and similar environments

There has been extensive discussion and debate about the game of Keno, and its availability in non-traditional gambling environments.

Keno is a distributed electronic form of bingo, played every 3.5 minutes. There are certain fixed prizes for spotting particular numbers of outcomes out of 80 balls drawn, some of which (particularly, Spot 10) have large jackpot prizes associated with them.

Elsewhere in Australia, Keno is either a gaming machine or TAB product. It is therefore available only in premises with significant contact with commercial gambling (hotels, clubs, casinos and off-course totalisator outlets). These are controlled environments where, by and large, children are not permitted.

In South Australia, Keno is a Lotteries product. It is generally available wherever SA Lotteries products are sold, meaning that approximately half the physical distribution is through newsagencies, pharmacies, shopping centre kiosks, and similar environments.

It differs from traditional weekly-draw lotteries products in that it can be played, and won or lost, every 3.5 minutes. While its immediacy of outcome makes it similar to instant lottery or scratch tickets, it differs from scratch tickets in that the nature of the product encourages the gambler to remain on site while playing. (The draw is “broadcast” on video screens at the point of sale.)

It is of concern to the Authority that this continuous gambling product is so immediately available and accessible to children.

In the course of consultation, it has been submitted to the Authority that removing Keno from non-licensed environments will force Keno players into places where they will be attracted to more intensive forms of gambling (such as gaming machines). The Authority has also been directed to what the newsagents representatives have said will be a significant financial penalty upon small business if Keno is removed. It has also been suggested that, in practice, more rigour is applied to the sale of Lotteries products in non-licensed premises than to the way those products are sold in hotels and clubs (despite them being more heavily regulated gambling environments).

The Authority was not satisfied that removal of Keno from non-licensed premises would, to any significant extent, cause Keno patrons to travel to licensed premises solely for the purposes of playing the game. It was therefore not satisfied that the removal of Keno from non-licensed premises would, to any significant extent, recruit people whose only gambling activity was Keno to more intensive forms of gambling.

The Authority was also not satisfied that the economic arguments of themselves were a bar to proceeding with removal of Keno from non-licensed premises. That is, if it could be shown that removal of Keno from non-licensed premises would reduce problem gambling, economic arguments would not justify inaction.

In the course of consultation, the Authority became aware that SA Lotteries does exercise great rigour in the way that its agency outlets are controlled. SA Lotteries is to be commended on its approach to monitoring compliance with requirements and enforcing those requirements.

Many of the submissions made to the Authority on Keno focused on whether the Authority actually had the necessary regulatory power. Regardless of the correctness or otherwise of those submissions, the Authority has concluded that this is an issue more appropriately resolved by the Government or by Parliament. The Authority notes that the Government owns and controls the Lotteries Commission. It is also open for Parliament to legislate to allow Keno in licensed premises only. The Authority further notes that, any action taken by it under a code of practice measure, would be the subject of parliamentary disallowance.

It is the view of a substantial majority of the Authority that Keno should not be available in newsagencies, pharmacies, supermarket kiosks and other similar environments. Accordingly, the Authority has written to the Minister for Gambling recommending that action be taken to remove Keno from those environments. That action might be administrative or legislative.

5.2.11 Age for sale of gambling products

The Authority has adopted a general position that gambling is an activity for adults.

The laws relating to gaming machines, casinos and wagering make it clear that consumers and sellers of gambling products must be of or above the age of 18. However, at the time of the submissions and hearings for this inquiry the laws relating to state lotteries allowed the product to be purchased by a person of 16 years or more, and are silent as to the age of a sale. Since then legislation to raise the minimum age for the purchase of lottery products to 18 has been presented to Parliament and enacted.

Submissions made to the Authority in this inquiry indicated general support for the proposition that purchase and sale of all forms of commercial gambling should be restricted to those of 18 years or more. One exception to this was the submission that, in family operated businesses (such as newsagencies), SA Lotteries products should be able to be sold by persons aged 16 or above, with appropriate training being given.

It is arguably open to the Authority, in the code of practice, to require that lottery products only be sold by people aged 18 or older. However, it is not possible for the Authority to influence the age for consumption of the lottery product, as this is a matter fixed in the legislation. There might be some incongruity about fixing a higher maximum age for sale of the product than for consumption of it.

The Authority has therefore resolved to recommend to the Government that the minimum age for purchase and sale of lotteries products be mandated at 18. The Authority has written in these terms to the Minister for Gambling.

5.2.12 Smoking

It has been submitted to the Authority, since the very first consultation processes for casino codes of practice in October 2001, that the Authority should use the responsible gambling codes of practice to prevent the consumption of tobacco products in gaming areas.

On that first occasion, the Authority articulated the view that smoking was primarily a public health issue, and that it was not inclined to address it through a gambling harm minimisation measure.

On further submissions being made in subsequent consultations, the Authority undertook to hear the merits of arguments concerning the co-morbidities of smoking and problem gambling, and arguments that a restriction in smoking would have a material impact on problem gambling.

At or about the same time, there were parliamentary processes underway dealing with smoking in licensed premises. The outcome of those legislative processes was that smoking will be completely outlawed in licensed premises, including the Adelaide Casino and hotel and club gaming areas, by October 2007. The same legislation included provisions designed to make it clear that the regulation of smoking would be under the aegis of public health legislation, rather than gambling legislation.

In the most recent consultations, it has been submitted to the Authority that the responsible gambling codes of practice should be used as an aid to the enforcement of the present legislated public health measures restricting smoking in gaming areas.

Noting that the issue has been comprehensively dealt with by Parliament, and that careful thought would have been given to the manner of the implementation, monitoring and enforcement of those provisions, such action should not be necessary.

There will therefore not be any changes to codes of practice with respect to the consumption of tobacco products in gambling areas.

However, it should be noted that the Authority sees restrictions on smoking in gaming areas as an important aid to managing problem gambling. To the extent that there is a correlation between smoking and problem gambling, the requirement to leave a gaming area to consume a cigarette will provide a useful break in play. To the extent that there are co-morbidities between problematic gambling and problematic tobacco consumption, the existing regulatory measures which prevent them being undertaken simultaneously will also be of benefit.

5.2.13 Automated coin dispensing machines, automatic teller machines and cheque cashing facilities

A responsible gambling code of practice measure to require the removal of automated coin dispensing machines from gaming areas was one of the first stage initiatives announced in May 2003. Following further consultations with industry as part of the formal code making process, the Authority decided not to proceed with that measure at that time.

However, various Concern Sector stakeholders requested that there be further opportunity to argue in favour of some form of restriction on automated coin dispensing machines in venues. Accordingly, it was included as an additional second-stage issue.

The Gaming Machines Act contemplates that there will be “cash facilities” in premises licensed for gaming. The principal type of cash facility is an automatic teller

machine. Such an ATM enables a person to gain access to cash, in the form of bank notes, from his or her cheque or savings account. In this State, it is not possible to operate a gaming machine with a bank note. Machines can only be operated by coins (or approved tokens). Accordingly, there is always a demand for coins in a gaming venue. Coins can either be provided by a cashier or by an automated coin dispensing machine. The Gaming Machines Act does not address how coins will be provided.

A concern which has been raised about automated coin dispensing machines is that they enable a problem gambler to avoid human contact for an extended period of time. This is especially the case when the automated coin dispensing machine is located in the gaming area but away from the entrance and away from the cashier.

Automated coin dispensing machines are attractive to licensees because they address an otherwise labour intensive task.

From a policy point of view, it may be desirable to increase the options for human contact for people playing gaming machines.

Having considered all of these issues, a substantial majority of the Authority sees real benefit being obtained from the placement of automated coin dispensing machines near a cashier so that they are able to be observed and monitored. The relevant responsible gambling code will be altered to require this.

Similar considerations apply to the Casino, although the nature of that licensed area makes the notions of “a cashier” and “a gaming area” inappropriate. The casino responsible gambling code will be altered to require the casino licensee to engage in active monitoring of its automated coin dispensing machines.

5.2.14 Linking of the service of alcohol and gambling

A matter had been raised for the Authority’s consideration in respect of a particular incident in which a person, seeking alcohol in a venue, had been required to enter the gaming area and play gaming machines.

The Liquor and Gambling Commissioner responded to this particular complaint by imposing a licence condition.

The Authority notes that the particular incident has been addressed appropriately by the licence condition, but also believes that there is a general principle which can be comprehended in the responsible gambling code of practice.

Accordingly, there will be an alteration to the responsible gambling code of practice for gaming machine venues to prohibit licensees from requiring a person on the premises to enter a gaming area in order to purchase a non-gambling product.

5.2.15 Facial recognition and smart card technologies

After the initial identification of second stage issues in May 2003, certain Concern Sector stakeholders requested that further consideration be given to the mandating of facial recognition and smart card technologies as aids to harm minimisation.

Enquiries made by the Authority since that time have indicated, in relation to facial recognition technology, that this technology is not yet sufficiently advanced to make it a viable means for enforcement of barring orders.

The Authority is aware that there have been promising developments in facial recognition technology, particularly in respect of identity verification processes. Identity verification is where a facial recognition system matches a person asserting an identity with an existing trusted record and establishes that the record matches the person.

There has been less progress made in relation to facial recognition systems where an unidentified person is sought to be matched against a database of many people. Some of the technical constraints include the size of the databases required to retain large numbers of facial images and environmental factors, such as the different angles at which a person entering a venue might be observed by a camera.

Accordingly, the codes of practice will not be used to mandate the adoption of facial recognition technologies for the identification of barred people.

There are different issues concerning smartcard technologies. The principal purpose to which a smart card might be put is for an account-based, pre-commitment scheme for gamblers. Since this was raised as a second-stage issue, Parliament made a direction that the Authority should separately report on the subject. The Authority undertook an inquiry into smartcard technologies in the first half of 2005, and its report was tabled in Parliament in July 2005.

The Government's response at the time was that it would be premature, noting the early stage of development of the technology, to mandate a system-wide smartcard implementation.

While standing by the findings of its smartcard inquiry, the Authority recognises and respects the basis upon which the Government has formed its decision.

While it might be technically legally possible to mandate the adoption of smartcard technology through a series of codes of practice measures, the Authority is aware there would be significant implementation and compliance costs associated with such measures and that it would, in all the circumstances, not be appropriate to use the codes of practice as a vehicle for the implementation of smartcards.

The Authority remains of the view that, were an account-based gaming system to be introduced with associated pre-commitment features and community education strategies directed to the appropriate use of such pre-commitment options, the benefits would allow for significant relaxation in other forms of responsible gambling regulation of hotel and club gaming venues.

5.2.16 Recognition of the casino host responsibility initiative

Running in parallel with the first and second stage codes of practice consultations, Skycity Adelaide has been developing a host responsibility coordinator initiative.

Under this initiative, Skycity has undertaken to have on premises at any time the Casino is open at least one host responsibility coordinator whose purpose is to ensure the responsible service of alcohol and gambling products in the licensed casino.

Skycity has submitted, both in this process and separately to the Authority, some of the detail of the HRC initiative, and how it has improved the culture of the Casino.

This initiative is an important in-venue step towards making the delivery of the gambling product safer. It leverages off the natural advantages that one large, highly supervised site has in terms of being able to manage the behaviour of its patrons.

It has been in light of the protective nature of this initiative that the Authority has refrained from applying to the Adelaide Casino some of the provisions in the second stage which will be applied to hotel and club gaming environments.

5.3 Proactive initiatives

For some time now the Authority has been urging upon the stakeholders the importance of developing early intervention schemes or programs. Why is it that these are seen as important?

The legislation directs itself in general terms to the minimisation of harm caused by gambling or gambling related harm. More specifically the legislation also draws attention to problem gambling or problem gamblers. In the Authority's view problem gambling, particularly serious problem gambling and problem gamblers, are a subset of an overall objective directed to the minimisation of gambling related harm. The Productivity Commission in its report in 1999¹³ concluded that in all probability some 2.8% of the adult population experience problem gambling as measured by reference to accepted clinical tools, in particular the DSM standards, and accepted population measures, such as the South Oaks Gaming Screen and (more recently as adopted for population work in Australia) the Canadian Problem Gambling Index.

There has been considerable debate about the correct measure for serious problem gambling, but it is apparent that the parties and stakeholders generally agree that where a person is spending more than they can reasonably afford upon gambling, and where this results in them neglecting their own proper needs and those of their dependents, and when, in addition to this, their concern about gambling and the time and energy spent upon gambling has begun to interfere with their other proper functioning in relation to their work, their leisure time activities, their family relationships and their general social functioning, then it is likely that such a person might be described as a problem gambler. This might also be associated with obsessive behaviour or serious depression or anxiety. In any event, a therapeutic and clinical assessment would be warranted.

The Authority considers that while there may be considerable debate about the desirability of a range of generalised measures directed to the minimisation of gambling related harm in all forms, it is unlikely that there will be much debate about the desirability of identifying and assisting a person, no matter what the assessment

¹³ Productivity Commission, *Report No. 10 Australia's Gambling Industries*, November 1999.

tool, who may fairly be described as displaying serious problem gambling behaviour. The Concern Sector has made very clear its attitude in respect of this matter and the industry itself has generally claimed not to be interested in having as its customers persons who are serious problem gamblers.

This is so despite the Productivity Commission's opinion that as much as 40% of gambling industry turnover may be attributed to persons who may be described as problem gamblers. It is commendable that the industry has steadfastly insisted that it does not wish to have as its customers serious problem gamblers. The stakeholders also agree that it is important to identify as early as possible a person whose behaviour has become seriously problematic in relation to their gambling and to refer that person to appropriate, competent and effective counselling or clinical and therapeutic services as soon as possible. It is apparent that making this identification and enabling a referral is not without difficulty.

First there is the question of how such assessments are to be made and secondly, how intervention may be achieved without otherwise disturbing the enjoyment of functional ordinary patrons, and without impeding the conduct of a business, one that is lawful in South Australia.

The Authority urged upon the stakeholders discussions aimed at identifying ways in which such early intervention might be achieved. On a number of occasions during the course of past inquiry hearings and in private consultations the Authority urged the stakeholders to consider ways in which they themselves may develop their own early intervention mechanisms. The same was done in the two public hearings for this particular inquiry.

As an encouragement to that purpose, the Authority made it very clear to the stakeholders that, where an operator or a sector of the overall gambling industry instituted an effective early intervention program, the Authority might regard that as a very powerful argument in favour of focussing attention on that early intervention program and putting to one side measures which, although they may be directed to harm minimisation, also involve substantial administrative, financial, and logistical impediments to the conduct of the business.

The Authority has given careful consideration to these matters, and has determined that it is appropriate to take into account the existence of an effective early intervention mechanism when considering which other adjectival and collateral measures should be imposed on operators who are licensees. The Authority considers that addressing serious problem gambling is so important and that the evidence of the benefit of early intervention schemes, where a person is appropriately identified, is so compelling that every encouragement should be given to the industry to embark upon such schemes.

Skycity Adelaide gives a very good example of what can be achieved in this area. Its Host Responsibility Co-ordinator scheme provides, at considerable expense, for the full time presence of at least one Host Responsibility Co-ordinator (HRC) in the licensed casino during its hours of opening. This has required the engagement of at least four full time staff. Skycity has done this under the leadership of its recently

departed general manager, Michael Silberling, and without direct regulatory intervention.

These HRCs work in the casino and have access to all areas in the casino and to surveillance equipment. They have the opportunity to observe the behaviour of patrons and, where appropriate, the obligation to approach a person who is demonstrating serious problem gambling behaviour. The reports received by the Authority about the operation of the host scheme are most encouraging.

It is very apparent that the scheme has considerable benefits. More belatedly the hotel and club sectors have addressed themselves to this concern.

We have been informed about two programs—Gaming Care and Club Safe. Mr Horne and Ms Martin explained the programs to us in this way. It appears that when Gaming Care was first considered the AHA was distracted by other issues and was not able to direct all the attention it would have liked to direct to this program. Since the appointment of Mr Horne and Ms Martin serious endeavours have been made in this regard.

The Authority considers that it would not, at this stage, be correct to describe Gaming Care or Club Safe as early intervention programs in the same way as the Skycity program may be. That is not, however, a basis for diminishing the significance of these two programs, which clearly provide for the following:

- ◆ improved communication between the AHA and Clubs SA and their members about the detail of the regulatory environment in which this sector of the industry is conducted;
- ◆ regular communication with those operators about the requirements of the legislation, regulations, guidelines and the codes of practice;
- ◆ an opportunity for the 6 field officers to provide direct advice, not only to operators themselves but also to staff members of operators who may be faced with a serious problem gambler and need advice as to how that matter should be approached.
- ◆ greatly improved relationships between licensees and the counselling agencies.

The experience of the casino host program is that it enjoys a very high regard from the Break Even services. It is to be hoped that Gaming Care and Club Safe will likewise significantly improve relationships between the Break Even services and operators. It is in the best interests of this sector of the industry that such relationships be improved. All of this enures to, not only the minimisation of the harm associated with gambling, but also enures to the maintenance of a sustainable and viable industry.

The Authority has also given serious consideration to the way in which it might approach the significance of these programs and the sorts of impact those programs might, and ought to, have upon measures to be instituted by way of the review of codes first stage and the introduction of codes second stage measures.

A recent letter from Mr Horne and Ms Martin has made the following undertakings in relation to the program.

1. We commit to the ongoing maintenance of Gaming Care and Club Safe as the Industry's **principle** response to embracing harm minimisation as a key focus and philosophy of the Industry. It is our ambition, and subject to necessary funding agreements, to expand the Gaming Care and Club Safe staffing structures by at least three additional officers within the first six months of 2007 to better support venues, their staff, counselling agencies and our customers. Further expansion beyond that is contemplated if the outcomes anticipated can be capitalised on. Those further expansion plans should see regionally based support established and if all stakeholders are sincere and prepared to act in good faith, additional skills and experience can be gained through secondment arrangements between Government agencies, counselling services and Industry
2. We will invite IGA to work with both agencies to establish a mechanism to share our data collection in a manner that maximises our collective understanding of the market place and which leads to a greater level of cooperation and collaboration between the IGA and the Industry for the benefit of all stakeholders and our customers specifically. As part of this package we would accept the IGA offer of working with a nominated IGA director to facilitate this undertaking in cooperation with our agencies.
3. We will advocate and implement an accreditation system for all gaming venues either via the current licensing system i.e. a condition of every gaming license or as a commercial arrangement between the agencies and venues, that will amongst other requirements and expectations require participating venues to guarantee access to gaming facilities to Gaming Care/Club Safe staff.
4. Further and subject to a case being put to IGC as part of an Industry solution, we will seek to make a further significant allocation of Industry funds to the Gamblers Rehabilitation Fund but that such funds be exclusively for allocation to counselling or treatment service providers who enter into binding arrangements with Gaming Care and Club Safe with measurable outcomes. Such arrangements to be administered by the Office of Problem Gambling but subject to advice and consultation with the Industry and a panel of Counselling service representatives.
5. Finally, we have already committed ourselves to developing and trialling voluntary pre-commitment arrangements within the hotel and club sector through our participation in the Minister for Gambling's working party. That group has already met with counselling services... and is ably chaired by Australian Gaming Council CEO Cheryl Vardon, a former state Director of Consumer Affairs familiar with the issues and the state. Our participation signals an acceptance of our important role in focusing energies on the problem gambler verses introducing draconian measures that will frustrate recreational gamblers and that are untested, lack any evidentiary basis and are too often enthusiastically pursued as a means of doing damage to our industry.

While Gaming Care and Club Safe do not operate in the same way or with the same direct effectiveness as the Skycity program, it must be acknowledged that the hotels and clubs are dealing with a huge number of venues disparately placed across the state and operating as individual businesses without the kind of corporate structure that enables Skycity to operate its program. If, however, Gaming Care and Club Safe were to provide certain enforceable guarantees, it might be said that significant concessions in relation to codes measures should be entertained. Those guarantees would be as follows:

- ◆ a direct and specific guarantee from the AHA and Clubs SA expressing their commitment to the program for the long term;
- ◆ a direct and specific guarantee that there will be no reduction in the number of operational field staff and a direct and specific guarantee about an increase in the number of operational field staff during the course of 2007 and 2008, noting that there are some 470 hotels and 110 clubs that need to receive visits;
- ◆ a commitment by the AHA and Clubs SA to providing comprehensive annual reports of the activities of the two programs, including an account of the numbers

of staff employed during the period, the number of visits to licensed facilities and a description of the licensed facilities visited, an account of the level of compliance with the codes by each facility visited, a report on the extent of problem gambling observed or of problem gamblers observed and any action taken in relation to the same, and a report of the numbers of referrals from hotels and clubs to Break Even services;

- ◆ an undertaking to require of each licensee that they will accede to, or commit to, a right of access to their premises by Gaming Care or Club Safe staff, such access to include the right to advise staff members and to approach a person manifesting problem gambling behaviour and refer that person to assistance;
- ◆ an undertaking that each licensee will provide a guarantee that staff members who make reports of problem gambling behaviour will in no way be prejudiced in their employment or treated less favourably by reason of making such reports;
- ◆ an undertaking by each licensee to establish and implement a smartcard program if such a program is endorsed by the Authority and by the Minister for Gambling.

Where such guarantees are able to be given and evidenced in writing, the Authority has determined it appropriate to take that matter into account in identifying which measures in the codes of practice should apply to such licensees.

5.4 Game approval guidelines

By comparison with the submissions made in respect of the codes of practice—both first stage review and second stage issues—those made in respect of the game approval guidelines were less fully developed and supported by evidence. This observation applies equally to the industry and the Concern Sector.

The Authority has raised the possibility of requiring the production of material from gaming machine manufacturers and, while logistical issues have made it impractical to pursue that within the scope of the present inquiry, the Authority has not dismissed that option. It will certainly be necessary for the Authority to be provided with more information about gaming machine game design before all of the issues raised in respect of the game approval guidelines can be resolved.

Accordingly, the Authority will be deferring resolution of some of the matters raised by the stakeholders. Other issues can be resolved immediately and the Authority will do so on the basis of what is presently before it.

Multiple-line betting—25 line restriction. Resolution of this submission will await the exercise of engaging with manufacturers.

Reel power—proposed prohibition. This issue should be resolved as part of the resolution of the multi-line betting issue.

Game bonus banks and similar elements. A number of members of the Authority have serious concerns with these elements of gaming machine design. As the role of the guidelines is to highlight issues for the deliberative process of the Liquor and Gambling Commissioner, it is not possible for the Authority to prohibit these features as was requested. However, the game approval guidelines will be amended to ensure

that such elements attract appropriate scrutiny in the process of identifying whether their inclusion will exacerbate problem gambling.

Games with “cash”, “luck”, “money”, “dollars”, etc in the name. The Authority was not satisfied that the inclusion of such expressions in the name of a game was, of itself, enough to warrant special scrutiny of the game.

Game themes based on television, films and cartoons. Similarly, the Authority was not satisfied that the mere fact of a game theme being based on television, films and cartoons, would of itself warrant special scrutiny of the game.

Near miss. It had been submitted to the Authority that games were being programmed to highlight “near miss” scenarios so that gamblers gained the sense that they were about to win and therefore might gamble longer than they had intended. However, the Authority understands that a game which, in a random pattern of play, produced more “near miss” outcomes than was statistically justified would fail the standard game fairness and integrity tests. Accordingly, it should not be necessary for the guidelines to direct the Commissioner’s attention to the “near miss” phenomenon.

This matter will be revisited by the Authority if it can be reliably demonstrated that the integrity approval process will allow such games to be approved.

Slowing the betting cycle and capping player expenditure. It was submitted to the Authority that the guidelines should require games to operate at a maximum rate of one game each 14 seconds (or 4 spins per minute) and to earn no more than \$500 per hour. The practical impact of inserting such a provision into the game approval guidelines would be to require every new game submitted to be the subject for a submission by the applicant as to why a faster spin rate and a greater capacity to take money would not exacerbate problem gambling. In the context of the present regulatory framework for the guidelines, the Authority doubts the value of this measure as proposed.

As a separate policy measure, there may be merit in capped hourly expenditure levels. However, the suggestions made that certain games be removed from the environment within 12 months cannot be achieved through changes to the game approval guidelines as the guidelines apply only to the approval of new games—they have no retrospective operation. What would be required to properly assess the suggestion is beyond the scope of the Review 2006 exercise. This does not mean that it could not be pursued in a separate exercise, should it be found that the harm minimisation measures which are supported by the existing regulatory framework are inadequate.

Advice of basis of game appeal. The Authority is satisfied that it will be of assistance to the Commissioner in performing his statutory duty for the applicant to state the basis on which the proposed game is expected to appeal to players and how it will not be likely to exacerbate problem gambling, and that it is reasonable that applicants do so. The guidelines will be amended accordingly.

Existing elements of the guidelines. The Authority was not persuaded by any of the submissions which urged it to remove items from the guidelines. In particular, and contrary to submissions which have been made to the Commissioner about how the guidelines must be interpreted, the Authority is of the view that paragraph 2(2)(h)—

rate of play raises an important issue for consideration in the approval process. The paragraph is to be followed despite supposed evidence that approval of a game which plays faster than 17 times per minute does not exacerbate problem gambling.

5.5 Gaming machine licensing guidelines

5.5.1 Preliminary

Section 15(5) of the Gaming Machines Act requires the Liquor and Gambling Commissioner to take into consideration, in an application for a licence, any guidelines issued by the Authority in regard to the likely social effect on the relevant local community and, in particular, the likely effect on problem gambling within that local community.

Section 86A of the Gaming Machines Act expressly gives the power to the Authority to issue the guidelines. Section 86A also imposes some procedural requirements with respect to tabling in Parliament and also makes the guidelines disallowable by either House of the Parliament.

The present gaming machine licensing guidelines were issued to the Liquor and Gambling Commissioner on 2 November 2005. They were duly tabled in Parliament and the period for disallowance passed without action being taken.

The gaming machine licensing guidelines have yet to be fully tested, due principally to the very small number of new licence applications being made since they were issued and to a suggestion made, in one of the first two applications, that the guidelines as made were incapable of being followed.

This suggestion arose in a submission made by the AHA in the application for a gaming machine licence by the Adelaide Juventus Sports and Social Club Incorporated apparently to the effect that the guidelines were “*ultra vires*”, provide no guidance and should not be followed. Without going into the fine detail of that submission, it was put to the Commissioner that the guidelines should have been confined to setting out broad criteria for social impact rather than, as they do, directing the Commissioner to avenues of investigation for the social impact.

The Liquor and Gambling Commissioner, in the course of granting the application for the licence, indicated that he accepted the submission that the guidelines were *ultra vires* and that he had not had regard to them when considering the social effect of the grant of the licence.

It is the Authority’s understanding of the law that there is a presumption of regularity in the exercise of powers granted by the Parliament and that general declarations of validity are matters for the courts¹⁴. The benefit of this presumption, again as the

¹⁴ As per Lord Pearson in *McEldowney v Forde* [1971] AC 637, at 655: “When the Minister has made a regulation, and purports to have made it under section 1(3) of the [Civil Authorities (Special Powers)] Act [(Northern Ireland)], the presumption of regularity (*omnia praesumuntur rite esse acta*) applies and the regulation is assumed *prima facie* to be *intra vires*. But if the validity of the regulation is challenged, and it is contended that the regulation was made otherwise than for the specified purposes, the courts will have to decide this issue, however difficult that task may be for them in some circumstances.”

Authority understands it, is that inferior tribunals and administrative decision makers need not generally be concerned with the validity of subordinate instruments unless a superior court has ruled on the matter.

Whether or not the Commissioner is correct in asserting that the guidelines are ultra vires, he has granted a licence and has done so in a way which indicates that, as the sole inferior tribunal or administrative decision maker to which licence applications could be made, he would not now, nor in future, have regard to the guidelines as required by section 15(5).

It is unfortunate that doubt as to the operation of the guidelines has been raised in this way. While the Authority has not been satisfied that the propositions accepted by the Commissioner are supported by the arguments put to him or by his reasons for accepting them, the Authority can see that there is a need to act for the avoidance of doubt. The Authority will therefore reissue guidelines for the purposes of section 15(5). The form in which the guidelines are reissued will deal with the bases on which it has been said that the present guidelines might be ultra vires or, alternatively, repugnant to the terms of the Gaming Machines Act.

The substance of the guidelines, in seeking to direct the Commissioner's considerations to relevant factors for consideration in regard to social effect, will be essentially unchanged.

5.5.2 Substantive measures within the guidelines

While there is little material with which to assess the substance of the existing guidelines, the Authority was persuaded by a submission that the Liquor and Gambling Commissioner would be assisted, in deciding whether to approve a particular application for a licence, by having the applicant for a licence articulate his or her understanding of problem gambling behaviours and how those behaviours would be identified and addressed if a licence were to be granted.

The Authority is also exploring other regulators' social impact assessment models in detail, and this work may form the basis for further modification to the gaming machine licensing guidelines in the future.

A number of essentially procedural insertions to the guidelines were urged upon the Authority—that the Local Government Association, the SA Council for Social Service and nearby churches be consulted, and that particular time periods be allowed for contributions to be made. Not only is it likely that such measures would not be supported by the statutory framework, but they are also not necessary to enable the participation of those stakeholders.

There already exist a number of notification requirements for applications for gaming machine licences. It is open to any person aware of a licence application to seek to intervene in the process. Once engaged in the process, it is then open to those stakeholders (subject to them establishing an appropriate interest in the outcome of the application) to request such time as is necessary for them to prepare for the hearing of the merits of the matter.

Accordingly, those matters will not be made part of the guidelines at this time.

5.6 Issues outside the scope of regulatory functions

5.6.1 *Monitoring and enforcement*

The submissions made by the Heads of Churches Gambling Taskforce highlighted the great importance of monitoring, compliance and enforcement activities.

It is axiomatic that the best rules will fail to achieve their objective if they are not followed, and enforcement is a key to ensuring that rules are followed. Similarly, a successful regime of monitoring, compliance and enforcement can achieve significant results even when the rules are less than perfect. While the Authority can contribute to the effectiveness of enforcement by making good codes, it cannot compensate for poor enforcement by making the codes provisions more draconian.

The responsibility for monitoring, compliance and enforcement rests, at least in the first instance, with the Liquor and Gambling Commissioner. This is because, under section 11 of the Independent Gambling Authority Act the Authority is required to ensure that an effective and efficient system of supervision is established and maintained ... The Prescribed Acts envisage that the Commissioner will supervise compliance with licence conditions and they give him the relevant powers and authorities for enforcement. The Prescribed Acts make the Commissioner responsible to the Authority for constant scrutiny of the relevant gambling businesses.

Compliance with codes of practice is not best achieved by an inspection system which does no more than have inspectors tick boxes on a short form checklist. This will be the more so where a handful of inspectors are attempting to monitor and inspect approximately 600 venues across the State. The Authority is concerned that the Commissioner's reports do not reflect an optimum system of inspection and enforcement of the existing codes of practice and the related licence conditions. The Authority has been pleased to learn that the Commissioner has recently sought to implement a more contemporary system of inspection which incorporates elements of self-assessment, prospective risk assessment and crisis area targeting. This model was recommended to the Commissioner by the Authority more than three years ago.

In the context where it is contemplated that an extensive range of codes measures should be introduced, the state of monitoring and enforcement is a very relevant factor. In the Authority's opinion, there is still a good deal of work to be done before it might be said that compliance and enforcement in South Australia in this area has reached an optimum level. These circumstances provide an additional reason why the Gaming Care and Club Safe initiatives should be encouraged; because they show real promise in being able to change the regulatory environment towards co-operation and voluntary compliance—that is, compliance in substance, not merely in form.

5.6.2 *Smartcards and account based gaming*

Submissions were made concerning smartcard technology and the impact of a smartcard or pre-commitment program upon codes generally.

This is a matter which requires serious attention. Technology now exists which would enable a person to be required to hold an electronic card with pre-commitment facility

upon it prior to gambling. Such technology was examined in the inquiry conducted by the Authority into what was described then as smartcard technology. The recommendations of the Authority at that time were as follows.

1. The Government should procure amendments to legislation to require of the regulatory regime that when people play gaming machines, they do so in a way which ensures that—
 - (a) their play is systematically tracked over time;
 - (b) they are able to set limits on their play; and
 - (c) they are able to be excluded (whether at their own request, by the licensee or under the Problem Gambling Family Protection Orders Act 2004).
2. As a separate question subsequent, the Government should ask the Parliament to remove the requirement that gaming machines be operated by the insertion of a coin or token, for the purpose of enabling a smartcard scheme to offer cashless gambling as an option to licensees.
3. There should be a competitive tender process for the provision of the smartcard technology infrastructure and the rules of the pre-commitment schemes. Among other things—
 - (a) the tender should not be prescriptive as to the means of identification—card (smart or otherwise), biometric, keypad, etc;
 - (b) the tender should not be prescriptive about the financial model for the technology;
 - (c) the preferred technology solution is to ensure a high degree of flexibility in the structure of the pre-commitment and exclusion schemes.
4. The Government should procure amendments to legislation to impose a licence condition on the IGC¹⁵ to require it to participate in a smartcard tender process and otherwise to facilitate the most cost-effective means of implementation. If, on consultation following the receipt of this report, it is regarded as necessary for the Minister to have special powers to direct the IGC in this regard, those powers should be included in the amendments.
5. There should be further consultation on the nature and structure of pre-commitment schemes.

The Parliament found it was unable to proceed to make any requirement in relation to smartcard technology because the cost at that time was said to be prohibitive and there were doubts whether the technology was developed to a stage where it could be guaranteed effectiveness.

It would appear that these two problems have to some extent been ameliorated and it is noted that the Government has established a working party convened by the chief executive officer of the Australian Gaming Council to take the issue of smartcards and account based gaming further.

While the Authority's position on smartcard technology is unchanged, it accepts that the codes of practice are not the appropriate regulatory instrument for pursuing the initiative.

¹⁵ The IGC is Independent Gaming Corporation Limited, the holder of the sole gaming machine monitoring licence in South Australia.

6. CONCLUSIONS

As detailed above, the Authority has identified and discussed each of the major issues raised in respect of the codes of practice and the guidelines and has set out its proposed outcome for each. What now remains is the manner of resolution of those issues.

This gives rise to a key question in respect of hotels and licensed clubs; of whether the Authority will recognise the intervention initiatives proposed in Gaming Care and Club Safe, and the extent, if any, to which licensees' adoption of Gaming Care and Club Safe could justify a less than full application of the Authority's proposed second stage outcomes.

There are three clear options here:

- ◆ accept the AHA and Clubs SA submissions as a basis for not proceeding at all with second stage issues;
- ◆ implement in the codes a process by which certain second stage issues will not apply to a licensee subscribing to an approved intervention program; and
- ◆ regulate to require licensees to adopt an intervention program and also to comply with all the second stage measures.

It is anticipated that both the Gaming Care and Club Safe programs, as described to the Authority in the course of the consultations, would meet the approval criteria to be contained in the codes.

The Authority, after careful deliberation, has chosen the course of implementing in the codes a process by which certain "exemptible" second stage issues will not apply to a licensee subscribing to an approved intervention program. This choice reflects a number of considerations.

First, the very positive approach taken by the AHA and Clubs SA—in identifying ways of upgrading their existing Gaming Care and Club Safe programs from where they are at present to what might be seen as a genuine intervention effort, and in securing the necessary funding for that from Independent Gaming Corporation Limited—has given the Authority assurance that the industry will seek to achieve real change through proactive measures. The position put by the AHA and Clubs SA has proven to be a powerful argument that certain second stage measures are not necessary at present for licensees which embrace the intervention initiative. That being the case, the Authority will not require licensees to both adopt an early intervention program (as licence condition *(nb)*(i)(AB) would allow) and also comply with the whole of the second stage issues.

Next, while it might indeed be said that the comprehensive nature of the industry response would justify the Authority in holding off action on the second stage issues altogether, it is clear that if the two proposed industry schemes are to reach their full potential, there will need to be some official linkage between them and licensees' legal obligations. One reason is that, not only do the AHA and Clubs SA not represent all licensees, their representative authority does not extend to making legally enforceable agreements on behalf of their members in matters such as the codes of

practice. Another consideration is that, while the Authority hopes and expects that the vast majority of licensees will subscribe to an approved intervention program, that is not a certainty. The approach of formally recognising Gaming Care and Club Safe in the manner proposed gives a powerful reason for licensees to adopt such a program.

The second stage measures from which licensees will be exempt by reason of subscribing to an approved intervention program are:

- ◆ the total ban on external venue signage (second stage issue 2);
- ◆ the requirement to screen the sights and sounds of gambling (second stage issue 4);
- ◆ the requirement to close during common hours (second stage issue 5);
- ◆ the prohibition on loyalty schemes (second stage issue 6); and
- ◆ the requirement to relocate automated coin dispensing machines (second stage issue 13).

In respect of the second stage measures requiring the establishment of a relationship with a local counselling agency and the requirement for the reporting of potential problem gamblers, the revised codes will allow a subscribing licensee to achieve this with the assistance of the intervention program operator (that is, Gaming Care or Club Safe).

This then leads to the questions of formalisation and implementation. Where the Authority has determined a second stage issue by way of a recommendation to Government, the necessary correspondence is being issued at the same time as this report.

In the balance of the matters, where the Authority has determined to exercise its statutory powers to give effect to a second stage decision, the next stage in the process is the issuing of the formal notices which will vary the text of the codes of practice and the issuing of new guidelines. Drafts of these documents will be placed on public exhibition, for comment, for one month before the Authority proceeds with the final formal steps. (This process will run in parallel with the 14-day notice process contained in the Prescribed Acts for giving notice of, and seeking comment upon, variations to codes of practice.)

The principle of the changes is clearly set out in this report and there is no reason why those affected should not immediately start their thinking about what the new changes will mean in practice. Once the detail is published in the drafts, the Authority considers that six months time from publication will be ample lead time for most of the new requirements. This is, of course, subject to such comments as the Authority receives on the drafts, especially in respect of timing issues associated with the increase in the scope and resources of Gaming Care and Club Safe.

GLOSSARY

Authorised Betting Operations Act	The <i>Authorised Betting Operations Act 2000</i> provides for the licensing and regulation of off-course betting (by SA TAB under the major betting operations licence), of on-course totalisator betting (by licensed racing clubs) and of on-course fixed odds betting (by licensed bookmakers).
AHA and AHA (SA)	The Australian Hotels Association (SA) is the peak body representing most of the hotel entities licensed under the Gaming Machines Act.
Break Even	“Break Even” is the common name under which the agencies contracted by the South Australian Department for Families and Communities to provide funded gambler rehabilitation services identify those services.
Casino Act	The <i>Casino Act 1997</i> provides for the licensing of one casino, at Adelaide; the present holder of the casino licence is Skycity Adelaide Pty Ltd.
Clubs SA	The Licensed Clubs Association of South Australia Inc is the peak body representing most of the non-profit entities licensed under the Gaming Machines Act.
Gaming Machines Act	The <i>Gaming Machines Act 1992</i> provides for the granting of gaming machines licences in respect of premises licensed (for liquor purposes) as hotels and clubs, and for the granting of other incidental licences (such as the gaming machine monitor licence, the special club licence, the gaming machine supply licence, gaming machine service licences and gaming machine dealers’ licences).
GRF	The Gamblers Rehabilitation Fund (re-established as a statutory fund under section 73BA of the Gaming Machines Act on 1 February 2005) receives the first \$3.84 million of each year’s gaming tax and industry contributions (presently \$1.5 million per year from IGC) to be applied to various programs aimed at the amelioration of gambling related harm. The principal program is the provision of rehabilitation services through Break Even.
IGA Act	The <i>Independent Gambling Authority Act 1995</i> establishes the Independent Gambling Authority as a statutory corporation and sets out its overarching functions, powers and objects. It also defines as a “prescribed Act” the Casino Act, the Gaming Machines Act and any other Act under which the Authority exercises functions or powers.

IGC	Independent Gaming Corporation Limited, a joint venture of the AHA and Clubs SA, holds the sole gaming machine monitor licence for South Australia. All holders of gaming machine licences are required to have a monitoring agreement with IGC; the fees payable under these agreements (levied per machine per month) are regulated through a Ministerial approval process. While the majority of the funds raised from these fees are applied to the provision of monitoring services on a not for profit basis, a proportion of these funds is applied to purposes such as gambler rehabilitation (through payments into the GRF).
IPART	The Independent Pricing and Regulatory Tribunal of New South Wales was commissioned to report to that State's Government on a range of existing harm minimisation measures.
prescribed Act	The prescribed Acts, for the purposes of the IGA Act, are the <i>Authorised Betting Operations Act 2000</i> , the <i>Casino Act 1997</i> , the <i>Gaming Machines Act 1992</i> , the <i>Problem Gambling Family Protection Orders Act 2004</i> , the <i>Racing (Proprietary Business Licensing) Act 2000</i> and the <i>State Lotteries Act 1966</i> .
State Lotteries Act	The <i>State Lotteries Act 1966</i> establishes the Lotteries Commission of South Australia and authorises it to conduct public lotteries.

APPENDIX A

Submissions made to the Review 2006 inquiry

<i>Submission detail</i>	<i>Date received</i>
Anglicare SA, dated 1 May 2006	9 May 2006
Australasian Gaming Machine Manufacturers Association, dated 27 April 2006	28 April 2006
Australian Gaming Council, dated 28 April 2006	2 May 2006
Australian Hotels Association (SA Branch) and Licensed Clubs Association of South Australia Inc (Clubs SA) (<i>joint</i>), dated 1 May 2006	1 May 2006
Australian Newsagents Federation Ltd (SA Branch), dated 1 May 2006	1 May 2006
Break Even Services (SA), dated 27 April 2006	9 May 2006
Duty of Care Inc, dated 1 May 2006	1 May 2006
Glenside Newsagency, dated 1 May 2006	5 May 2006
Heads of Christian Churches Gambling Taskforce, dated 7 May 2006	9 May 2006
Liquor and Gambling Commissioner, dated 15 May 2006	16 May 2006
Lotteries Commission of South Australia, dated 1 May 2006	1 May 2006
Maxetag Pty Ltd, dated 5 May 2006	5 May 2006
City of Port Adelaide Enfield, dated 28 April 2006	1 May 2006
Racing SA Pty Ltd, dated 28 April 2006	2 May 2006
Relationships Australia (SA), dated 27 April 2006	1 May 2006
SA TAB Pty Ltd, dated 11 April 2006	13 April 2006
Skycity Adelaide Pty Ltd, dated 1 May 2006	1 May 2006
UnitingCare Wesley Adelaide, dated 9 May 2006	9 May 2006
Wattle Range Council, dated 1 May 2006	5 May 2006
Worldsmart Technology Pty Ltd, dated 27 April 2006	28 April 2006
Hon Nick Xenophon MLC, dated 1 May 2006	1 May 2006

APPENDIX B

Appearances before the Review 2006 inquiry

23 and 24 May 2006

<i>Who appeared (listed in order of appearance)</i>	<i>capacity in which appearing</i>
Miss E F Nelson, QC, with Mr Ian Horne and Ms Helen Martin	representing, the Australian Hotels Association (SA Branch) and Licensed Clubs Association of South Australia Inc (Clubs SA) in a joint presentation
and with Mr Ian Hart (instructions from J J B Cooper, Esq, Solicitor)	representing Racing SA Pty Ltd in its capacity as an umbrella body for the licensed racing controlling authorities and licensed racing clubs
Ms Lindy Powell, QC, with Mr Tom Kidman (Mr Kidman instructing for Fisher Jeffries, Solicitors)	representing the Australian Newsagents Federation (SA Branch)
Mr Brian Hayes, QC	representing Skycity Adelaide Pty Ltd
Mr Ross Ferrar	as executive officer of the Australasian Gaming Machine Manufacturers Association
Mr Jeremy Hearne	as managing director of Maxetag Pty Ltd
Mr Wally Woelherth	as general manager of Worldsmart Technology Pty Ltd
Ms Helen Carrig, Mr Mark Henley, Ms Janet Firth and Ms Belle Cheney	severally representing the Heads of Christian Churches Gambling Taskforce, UnitingCare Wesley Adelaide, Break Even Services and Relationships Australia
Ms Sue Pinkerton	as secretary of Duty of Care Inc
Mrs June Carter	as proprietor of the Glenside Newsagency
Mr David Hardy	representing the Lotteries Commission of South Australia
Hon. Nick Xenophon MLC	Independent No Pokies Member of Parliament

 Appendix B: Appearances before the Review 2006 inquiry—
 continued

22 November 2006

<i>Who appeared</i> <i>(listed in order of appearance)</i>	<i>capacity in which appearing</i>
Mr Ian Horne, with Mr Wally Woelherth, and Ms Helen Martin	representing the Australian Hotels Association (SA Branch) and the Licensed Clubs Association of South Australia Inc (Clubs SA)
Ms Sue Pinkerton	as secretary of Duty of Care Inc
Mr Mark Henley, Ms Helen Carrig and Mr Garry Raymond	severally representing UnitingCare Wesley Adelaide, the Heads of Christian Churches Gambling Taskforce and the Salvation Army (Break Even Service)



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