

5 May 2011

The Hon James Wood AO QC
Chairperson
New South Wales Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

Dear Mr Wood

I refer to your invitation of 5 April 2011 to the Casino, Liquor and Gaming Control Authority to make a submission, by 6 May 2011, on the Commission's Consultation Paper 12 - "Cheating at gambling". I am happy to do so.

By way of background, and as the Consultation Paper notes, the Authority was established in July 2008 upon the abolition of the Casino Control Authority, the Licensing Court of NSW and the Liquor Administration Board. It is constituted by the *Casino, Liquor and Gaming Control Authority Act 2007* and has a large number of functions under a variety of liquor and gambling-related legislation - predominantly the *Casino Control Act 1992*, the *Liquor Act 2007*, the *Registered Clubs Act 1976* and the *Gaming Machines Act 2001*.

This submission is largely confined to the several discussion questions contained in Chapter 6 as they relate to the Authority's functions. In particular, the Authority has no formal role in relation to sports or event wagering - a significant part of the Consultation Paper - and hence has not expressed a view about the questions relating to them. I have also appended some brief comments on matters of a formal or editorial nature.

Question 6.1

(1) Should consideration be given to the introduction of a Gaming and Wagering Act that would consolidate, within the one Act, the relevant provisions for the regulation of all forms of gambling, and that would provide for a general offence of cheating and fraud, in relation to gambling, along with specific offences of direct relevance for each of the several specific activities including those concerned with wagering, gaming (including the Casino), and lotteries?

(2) Alternatively, should the *Crimes Act 1900* (NSW) be amended, so as to incorporate within it a specific set of offences concerned with cheating and fraud in the context of gambling, in the place of those currently found in the *Unlawful Gambling Act 1998* (NSW), and in the associated gaming and racing legislation?

The Authority agrees that close and careful consideration should be given to the further consolidation of gambling-related legislation in NSW. While there remains much to do, comparatively recent history indicates there has been a trend in this direction in NSW. For example:

- the *Public Lotteries Act 1996* replaced the *Lotto Act 1979*, the *Soccer Football Pools Act 1975* and the *NSW Lotteries Act 1990*;
- the *Totalisator Act 1997* replaced the *Totalizator Act 1916* and the *Totalizator (Off-course Betting) Act 1964*; and
- the *Gaming Machines Act 2001* consolidated the machine gaming provisions up to then contained in the *Registered Clubs Act 1976* (for gaming machines in registered clubs) and *Liquor Act 1982* (for gaming machines in hotels).

Overall, the Authority sees merit in the adoption of a more consistent approach to core gambling-regulatory measures such as the appointment criteria and powers of inspectors, the keeping of records, the issuing of search warrants, similar maximum penalties for similar offences, consistent terms of licences, and consistent procedures for both the licensing of key industry participants (corporate and personal) and the reporting of changed circumstances by licensees.

Whether this and other potentially beneficial regulatory arrangements are best achieved through an amalgamated 'Gambling Regulation Act', or 'Gaming and Wagering Act', covering all gambling-related matters, or by removing key regulatory measures from their existing legislation and collecting them in a separate enactment (the *Casino, Liquor and Gaming Control Authority Act 2007* is an example of this approach operating on a smaller scale), or by some variation of these arrangements, is properly a matter for debate.

As part of this, it is of note that the Victorian *Casino Control Act 1991* continues to exist alongside that State's otherwise comprehensive *Gambling Regulation Act 2003* in recognition of the regulatory focus of the casino being more than simply its gaming activities.

The Authority has no particular view about the optimal placement of any consolidated cheating-related offences in the Crimes or other legislation, providing it does not inhibit the capacity of inspectors appointed under s.20 *Casino, Liquor and Gaming Control Authority Act 2007* to continue to take action to enforce the existing prohibitions at the casino.

Question 6.2

- (1) Should an offence or offences to the effect of the proposed draft provision in paragraph 6.36, or some variation of it, be adopted?
- (2) If so, should it be inserted as part of the *Crimes Act 1900* (NSW) or added to some other Act or Acts?
- (3) Should it co-exist with the statutory fraud and secret commissions provisions contained in the *Crimes Act 1900* (NSW)?
- (4) Are the proposed definitions for the provision in paragraph 6.39 [sic 6.37] sufficiently wide or too wide?
- (5) What should be the available maximum penalty?

The Authority has no comment about these matters.

Question 6.3

- (1) Are there any limitations arising from the jurisdictional reach of the *Crimes Act 1900* (NSW), or the *Unlawful Gambling Act 1998* (NSW), or of the common law offences of cheating and conspiracy to defraud, that would limit or inhibit the prosecution of cheating in the context of sporting events?
- (2) If so, what is the solution?

The Authority has no comment about these matters.

Question 6.4

- (1) Are there any forms of dishonesty or cheating in connection with gaming that fall outside the reach of the current legislation that regulates gaming?
- (2) If so, what are they?

The Authority is not aware of any gaps in the existing legislative framework as it relates to cheating in the context of the casino. With one exception, the experience to date with the several prosecutions that have been initiated under s.87 *Casino Control Act 1992* have not suggested any shortcomings.

The exception was in 2000, where s.87 was amended to clarify some elements of the cheating offence, and to insert subsection (1A) to create a further offence of dishonestly retaining a benefit that was originally obtained without a dishonest intent, but in contravention of the rules of the game or through error or oversight in the conduct of the game.

Question 6.5

- Should there be, in relation to cheating with respect to lawful forms of gaming:
- (a) an overarching offence of cheating included in either the *Crimes Act 1900* (NSW) or in the *Unlawful Gambling Act 1998* (NSW); or
- (b) a series of cheating offences expressed in consistent terms to be included in the individual Acts concerned with gaming?

The Authority has no particular view about this matter, except to the extent that any reforms that might be proposed should not act to diminish the existing cheating prohibitions as they apply to the casino, nor - as noted above - should they affect the capacity of inspectors appointed under s.20 *Casino, Liquor and Gaming Control Authority Act 2007* to continue to take action to enforce the existing prohibitions.

Question 6.6

- (1) Should the maximum penalties for cheating at gaming be made consistent?
- (2) What should the maximum penalties for cheating at gaming be?

The Authority has no difficulty with the proposition that there should, as a matter of principle, be similar maximum penalties prescribed for similar offences. In this context, cheating offences share similar characteristics with those relevant to fraud, such as dishonestly, by deception, obtaining a financial advantage (e.g. s.192E(1)(b) *Crimes Act 1900*, which carries a maximum penalty of 10 years imprisonment).

It may be, as the Consultation Paper suggests (at 5.152), that a significant increase in the maximum penalties available for the offence of cheating under the *Casino Control Act 1992* (currently 100 penalty units and/or 2 years imprisonment) will provide a greater deterrent to attempts to engage in cheating - especially by highly organised groups.

However (as also reported at 5.166 to 5.168), most cheating offences currently detected in the casino are efficiently dealt with by way of penalty infringement notice. Only a small minority of offences are brought to court, with a further small minority of these attracting a fine. Irrespective of any proposed new maximum penalty, these penalty options should remain available.

Question 6.7

Should the Inspectors under the several Acts concerned with gaming:

- (a) be given a common suite of investigative powers;
- (b) be subject to the same integrity standards and probity checking?

There appears to the Authority to be no reason, in principle, why there should be a divergent approach in either of these areas - subject of course to any common approaches that might be adopted at some future time not leading to a 'lowest common denominator' approach.

The Authority has significant responsibilities in relation to the liquor and gaming industries in this State. Given the risks that the services and products offered by those industries present to the public, and the need to ensure that those associated with the industries are fit and proper to participate in them, they have been for many years, and remain, subject to close regulatory scrutiny.

The Authority is therefore concerned to ensure that those individuals responsible for investigating and enforcing the laws relevant to those industries are equipped with the powers necessary to enable them to properly undertake their functions and that they attain, and maintain, the highest standard of integrity. The Authority has some responsibilities in this regard pursuant to s.14 *Casino, Liquor and Gaming Control Authority Act 2007*.

Question 6.8

Are there additional powers that should be conferred on Inspectors or Police under the context specific Acts mentioned or under a consolidated Act; and if so what should they comprise?

In relation to its regulation of the casino, the Authority is not aware of any deficiencies in the powers currently available to inspectors under the *Casino Control Act 1992*. To date, they have proven to be sufficiently broad to enable all necessary functions to be undertaken.

Question 6.9

Should the powers of racing stewards to investigate and penalise breaches of the rules, or cheating, in the context of thoroughbred, harness and greyhound racing, be amended to apply to non-licensed people?

The Authority has no comment on this matter.

I trust this information is of assistance to your work. Should you or your officers require any further information on these matters, or if the Authority is able to assist you in any other way, please contact Mr David Greenhouse, Chief Executive, Casino, Liquor and Gaming Control Authority

Yours sincerely



Chris Sidoti
Chairperson

Appendix

- Para 1.15 – The reference to “*The Australian gambling revenue in 2008/2009*” of \$19 billion might more appropriately refer to the gambling ‘expenditure’, or ‘losses incurred’, by people who engage in (lawful) gambling activities. The use of ‘revenue’ in this context has the potential for confusion with Government taxation revenue relevant to gambling - a much different figure.
- Para 3.29 – Note that s.154 *Parliamentary Elections and Electorates Act 1912* provides an offence for “*Any person who makes or is concerned in any wager, bet, or other risk of any nature whatsoever upon the result of any election*”
- Para 3.33 – The Authority has formal responsibilities under the *Casino, Liquor and Gaming Control Authority Act 2007*, the *Casino Control Act 1992*, the *Liquor Act 2007*, the *Registered Clubs Act 1976*, the *Gaming Machines Act 2001*, the *Unlawful Gambling Act 1998*, and the Regulations made under most of these Acts, as well as the *Public Lotteries Regulation 2007*, the *Racing Administration Regulation 2005*, and the *Totalizator Regulation 2005*.
- Para 3.34 (and elsewhere) – Communities NSW was abolished with effect from 4 April 2011. Since that time, the Office of Liquor, Gaming and Racing and the Casino, Liquor and Gaming Control Authority fall within the Department of Trade and Investment, Regional Infrastructure and Services (cf. *Public Sector Employment and Management (Departments) Order 2011*).
- Para 4.20 – Note that s.31 *Casino Control Act 1992* also provides for the Authority to undertake comprehensive periodic investigations of the suitability of the casino licensee. The Authority is required to submit a report of its next such investigation to the Minister by December 2011.
- Para 4.22 – The Division Head for the purposes of s.20 *Casino, Liquor and Gaming Control Authority Act 2007* is the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (cf. *Public Sector Employment and Management (Departments) Order 2011*).
