



**Dr Anne Twomey**  
Professor of Constitutional Law

Ms Lyn Beverley  
Committee Secretary  
Joint Select Committee on Gambling Reform  
PO Box 6100  
Parliament House

8 November 2012

Dear Ms Beverley,

#### **Inquiry into proposed gambling reform laws**

As discussed with your Secretariat I have looked at the AGS legal advice on 'Measures to address problem gambling – Commonwealth power to legislate' dated 27 January 2010. I broadly agree with it (although I am not absolutely convinced about the use of the 'currency' power in relation to ATMs, but this is not really a significant matter). I agree that the corporations power would cover direct regulation in relation to most entities that own or operate gaming premises. This will largely turn on whether or not they are incorporated, as if they are incorporated, it would seem likely that they would be regarded as trading corporations. It would be interesting to see statistics as to how many of such entities are not incorporated (eg those that are partnerships) and would therefore not be affected by direct regulation. I also agree that all such entities may be affected by a stick and carrot tax regime that gives people incentives to comply in order to avoid having to pay an onerous tax. Such an approach was previously successfully taken in relation to the training guarantee legislation.

As a matter of principle, however, I am of the view that gambling is fundamentally a State matter that should be dealt with by State laws. While I am personally supportive of measures to limit the pernicious effects of gambling on poker machines (or indeed, to get rid of them altogether), it would be more consistent with the federal system and with the principle of subsidiarity for such laws to be applied at the State level.

I have not looked closely at the Bills as I simply do not have the time at the moment. However, one thing that did strike me while glancing at the beginning of the *National Gambling Reform Bill* 2012, was that s 20 says that there must be a precommitment



system 'for the gaming machine' in order for it to be compliant. In contrast, s 21 and later provisions speak in terms of a 'precommitment system for a State or Territory'. No doubt this is unclear to me because I have not read the Bill in its entirety (for which I apologise), but it appears to imply that an obligation is imposed upon each State and Territory to establish a precommitment system for the State or Territory which would potentially apply to all gaming machines within the State or Territory. It would seem that it is not a matter of each gaming machine having its own precommitment system or each gaming operator establishing its own system. It makes me wonder why the Commonwealth on the one hand asserts that it has power to make national laws on this subject while at the same time applying those laws in a State-based manner and impliedly requiring the States to establish the system that underpins the law. This seems most peculiar to me. I trust there is an adequate explanation.

The other thing that struck me, as a purely practical matter, was that the definition of a gaming machine in s 6 seemed rather broad. It would seem likely to cover games of chance at fairgrounds, school fetes, agricultural shows and the like. I have vague recollections of those machines where you put ping-pong balls into the mouths of turning clown heads and won a prize if the ball then rolled into a particular slot. I can't remember if you operated them by inserting a coin, but if you did, they would seem to be covered. Equally, almost every shopping centre seems to have machines in it where you insert a coin and then use levers to try and lift out a prize (being a game of mixed chance and skill). Would this make every shopping centre a gaming premise, with consequential effects for ATMs? Would we have to have pre-commitment for 6 year olds using such machines? Again, this may well be excluded elsewhere in the Bill, but I thought I should raise it just in case.

Yours sincerely,

Anne Twomey  
Professor of Constitutional Law  
University of Sydney