

26 September 2008

The Committee Secretary
Community Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Mr. Humphery

ATMs AND CASH FACILITIES IN LICENSED VENUES BILL 2008

**FURTHER MATERIALS RE MATTERS RAISED AT HEARING ON
THURSDAY, 11 SEPTEMBER 2008**

**HISTORICAL AND CURRENT NOTES ON CREDIT CONTROLS IN
RELATION TO GAMBLING IN BRITAIN AND AUSTRALIA**

I had resolved to supply the Committee with further materials on the history of legislation in Britain and Australia restricting the availability of credit to gamblers.

This information was to be forwarded with my letter of 19 September 2008 but I found the topic quite voluminous and complex and I did not want to hold that letter up.

This is not a complete account but it does drive home the fact that, for the last few hundred years, British and Australian parliaments have recognised the need to restrict the granting of credit to gamblers and enacted laws to achieve this end.

Early Legislation Designed to Limit Gambling Harm

Charles II had passed the Gaming Act of 1664 which provided that *“all lawful games and exercises should not be used otherwise than as innocent and moderate recreations, and not as constant trades and callings to gain a living or make unlawful advantages thereby.”* Judging from the gambling excesses of the Restoration in which the king himself took no small part¹, one can only suppose the Act had little effect.

The Act of Queen Anne 1710 and the 1845 modification

There are two ways a gambler can get credit.

- From the gambling supplier: bookmaker, casino, gaming operator etc.
- From a third party: a bank or money lender etc.

Queen Anne enacted legislation which was to set the “legislative attitude” for hundreds of years. Her Gaming Act of 1710, (the Act of Queen Anne) rendered gambling illegal and entitled the loser to sue for recovery of the money. It also voided any agreement to lend money for gambling and any security given for such loans.

¹“ *I can never forget the inexpressible luxury and profaneness, gaming and all dissoluteness, and as it were total forgetfulness of God (it being Sunday evening) which this day se’nnight I was witness of, the King sitting and toying with his concubines, Portsmouth and Cleveland, Mazarine &c; a French boy singing love songs in that glorious gallery, whilst about twenty of the great courtiers and other dissolute persons were at Basset round a large table, a bank of at least 2,000 in gold before them ...”* - L. J. Ludovici “The Itch for Play” Jarrolds 1962 at page 72

The Gaming Act of 1845 modified the rigor of the 1710 legislation. It rendered all wagering contracts void which, put very simply, had the effect that neither party could sue the other. The loser no longer had the right to sue for recovery of the lost bet. This meant wagers had to be made in cash and this had the effect that one gambler could not give credit to another – or if he did he could not sue for the debt. In the words of one judge, “*a mere debt of honour, depriving it of all legal obligation, but not making it illegal*”.²

From 1845 on to recent times, statutory provisions maintained this position, effectively prohibiting:

- The gaming supplier from granting credit by preventing the gaming supplier from suing for gaming debts; and
- Third parties from lending moneys to a gambler for gambling purposes.

British legislation carried over into Victorian Acts

Up until recently, the provisions in Victoria were contained in:

- Lotteries Gaming and Betting Act 1966 sections 15, 19, 24 and 67.
- Instruments Act 1958 section 14
- Bills of Exchange Act (Commonwealth) 1909 – 1936 section 34
- Racing Act 1958 (bets with registered bookmakers)

The case law attending this legislation is quite complex: dealing with lawful and unlawful games, innocent third parties and characterization of moneys used for gambling. However, the thrust of these laws were clear – to make problematic gambling illegal and to deny access to the courts where games were legal.

Section 14 of the Instruments Act 1958 continued the prohibition on third parties from lending moneys to a gambler for gambling purposes enacted in the Act of Queen Anne. It did, however, contain a proviso that bookmakers could pay winning bets at racecourses with securities. One 1929 British case illustrates the working of the prohibition against lending for betting purposes.³

Recent freeing up of credit for gamblers

Casinos – cheques as security for chips

In the case of the casino, gamblers can purchase chips with cheques. The following account of the cheque cashing and presentment arrangements in casinos and the reasons for them is set out in the second reading speech to the Casino Control Amendment (Cheques) Bill 1996 where the government was seeking to relax credit controls to bring the Sydney casino more into line with other casinos.

The Hon. R. D. DYER (Minister for Community Services, Minister for Aged Services, and Minister for Disability Services) [12.31]: I move:

That this bill be now read a second time.

The general objective of this bill is to permit a slight alteration to the existing

² Haigh v. Sheffield Town Council (1874) LR 10 QB 102

³ “In 1929 a plaintiff wished to recover money he lent in order to provide more capital for a firm of bookmakers. His loan was secured by a deed. The plaintiff was successful. Lord Justice Scrutton declared that the money so lent was recoverable because it might have been employed for causes that were quiet legal. The defendants had not demonstrated that the loan was knowingly made for betting purposes.” Source: L. J. Ludovici, *The Itch for Play, Gamblers and Gambling in High Life and Low Life* - Jarrolds 1962.

legislative requirement for the presentation of personal cheques

Page 1649

from patrons of the Sydney Harbour Casino. The bill seeks to achieve this objective by ensuring that cheques paid into a patron's deposit account with the Sydney casino operator are banked within 20 working days if the cheques are drawn on an account located outside Australia, banked within 10 working days if each cheque is for \$5,000 or more and is drawn on an account located in Australia, or banked within one working day in all other cases.

Section 74 of the Casino Control Act prohibits the extension of credit to a patron of the Sydney Harbour Casino. Given that problem gamblers may seek to borrow money for gambling, a restriction on credit has always been considered important. It is customary for casino operators to accept cheques from patrons. The Act reflects this practice by allowing the Sydney casino operator to establish for a patron a deposit account to which may be credited cash, a personal cheque or a travellers cheque. Chip purchase vouchers may then be debited against the patron's deposit account. Some of the advantages of a credit restriction are lost if cheques are allowed to be cashed - if there is no money to cover the cheque, in practical terms credit will have been given.

However, the Act addresses this potential problem in three ways. First, the casino operator is required to bank a cheque accepted from a patron within one business day after it is accepted. Second, the operator is specifically prohibited from accepting post-dated cheques or cheques from persons whose previous cheques were not met on presentation to a bank within one working day. Third, the operator may not agree to the redemption of a cheque accepted from a patron for the purpose of avoiding the obligation to bank the cheque within one business day.

As a restriction on general domestic patrons chasing wins, which is common in some areas of gambling, the one-day cheque presentation requirement is an effective means of preventing patrons who can least afford to gamble from gaining de facto credit. However, as a means of permitting the Sydney casino operator to attract high-stakes domestic and international patrons, the current restriction means that the Sydney Harbour Casino is uncompetitive in these limited, but potentially lucrative, markets. The Government has determined that there are no commercial or public-interest reasons for a one-day cheque presentation requirement applying to premium domestic and international patrons of the Sydney Harbour Casino.

In seeking to introduce this change, it should be appreciated that the bill will not interfere with the current arrangements whereby all the risks of a dishonoured cheque would rest with the casino operator. In other words, the State cannot be the loser. The Government will not be affected by any bad debts because the gaming operations funded by those debts will still be included in the calculation of the casino duty and community benefit levy payable to the Government.

The bill will preserve the status quo for cheques of less than \$5,000 in the case of patrons without Australian cheque accounts. On the one hand, this may have the effect of patrons writing cheques for \$5,000 or more, simply to take advantage of available cheque presentation time frames. On the other hand, it is argued that writing a cheque for \$5,000 or more will make many patrons think carefully about

their capacity to afford a cheque of that value - which is just as it should be. It must also be borne in mind that the Sydney casino operator is unlikely to accept a cheque from a person without first establishing whether the person has sufficient available assets to meet the amount of the cheque.

As patrons will be required to establish a rating with the casino operator prior to gambling, the potential for a general patron to cash a cheque for chasing wins is greatly diminished. In the Government's view this is an important public interest safeguard. The new provisions will not apply to cheques accepted by the casino before the commencement of the proposed amendments - except that electronic funds transfer redemption will be allowed for cheques that have already been accepted.

The bill will allow electronic funds transfer as an additional means by which cheques can be redeemed by a patron. Currently this can be done by cash or cheque, including a travellers cheque, or a combination of the three. While the proposed amendments essentially will preserve the status quo for the receipt of cheques by the casino operator, they will also bring the commercial operation of the Sydney Harbour Casino more into line with other casinos around Australia. However, I stress that the proposed increases in the cheque-cashing time frame are still well below the limits set by other casinos in Australia and overseas. The bill provides benefits for important domestic and international casino visitors while, at the same time, includes appropriate safeguards to discourage those who cannot afford large wagers. I commend the bill to the House.

A similar arrangement pertains in Victoria. Cheques can be used for the purchase of chips but must be presented with a period set by the regulator. Cheques can be redeemed prior to presentation.⁴

(Prior to the expansion in the USA, Nevada casinos could extend credit to gamblers. Gamblers signed promissory notes called “markers” in return for chips. The gamblers protection was that these gambling debts were not legally enforceable in Nevada, or in other states. The casinos would send collectors to pressure the gamblers for payment but they had to be somewhat prudent to prevent complaints to the Nevada Gaming Commission.⁵ No doubt Nevada was also concerned not to attract federal intervention.)

Casino ATMs

In Victoria, section 81AA of the Casino Control Act 1961 prohibits ATM credit withdrawals and debit withdrawals of greater than \$200⁶ per transaction within 50 metres of any entrance to the casino (which I take to be the gaming floor and back of house). Limiting withdrawals and advances from cash

Venue ATMs

In Victoria, I recall being told that the banking ombudsman has required, on more than one occasion, banks to forego debts incurred on credit cards where there was a clear pattern of withdrawals from gaming venues immediately after midnight when fresh credit became available. Such withdrawals are a clear indication of problem gambling. I do not know whether these decisions of the Ombudsman (if indeed there

⁴ Casino Control Act 1961 section 68 (Victoria) (I was given to understand that gamblers do not like their bank managers getting too many of their cheques presented for payment by casinos.)

⁵ Mario Puzo “Inside Las Vegas” Grosset & Dunlap 1976 at pages 220 to 230

⁶ This might now be \$400

were decisions) were based on the Act of Queen Anne principle or on grounds of unconscionability. My understanding is that the banks will not now put their own ATMs in Victorian venues but leave this task to independent contractors so as to distance themselves. I do not recall having seen a bank-branded ATM in a venue.

On my reading of the proposed Victorian amendments,⁷ ATMs will be removed from the gaming floors and will be limited to \$400 per day but they will accept credit cards as well as debit cards. (I would have thought most ATMs were already outside the gaming room so as to be available to hotel patrons. I suspect the availability of credit withdrawals will more than offset the \$400 per day limit. Note the \$400 limit applies to each card, not each person.) Also, the venue operator will be able to cash one gambler's cheque of up to \$400 each day. Query whether the venue operator can hold the cheques to enable them to be redeemed or must present them.

Victorian Legislative Controls on Wagering

The current regulations on gambling on credit are contained in the Gambling Regulation Act 2003 which consolidates all of the State legislation regulating gambling other than two Acts specifically relating to the casino. Section 2.1.1 of the 2003 Act repeals the Gaming and Betting Act 1994.

Restrictions on Credit for Wagering

The Gambling Regulation Act 2003 negates - in the case of a complying wagering licensee - any common law and statute law that would have rendered the conduct of a betting shop illegal.

The statutory provision designed to limit wagering on credit is found in section 4.7.6 of the Act which provides as follows.

4.7.6 Offence to extend credit etc.

The licensee or wagering operator or a permit holder, or an agent or employee of the licensee, wagering operator or permit holder, must not—

- (a) accept a bet made otherwise than by means of money or by debiting the amount of the bet from a betting account with a balance sufficient to cover the amount of the bet; or*
- (b) lend money or any valuable thing in connection with wagering or gaming; or*
- (c) accept a bet as part of a transaction involving a credit card; or*
- (d) extend any other form of credit.*

Penalty: 60 penalty units.

⁷ VCGR News – Summer 2008 on www.vcgr.vic.gov.au website

- no automatic teller machine (ATM) will be allowed in the gaming machine area of a gaming venue, a restriction that is already in the VCGR Rules but, by now being in the Act, has the effect of increasing the maximum penalty for any breach from 25 to 60 penalty units;
- no ATM will be allowed anywhere in a gaming venue unless the ATM restricts a person to a cash withdrawal of \$400 per day from any debit or credit card;
- if a gaming venue is situated within a racecourse, no ATM will be allowed within 50 metres of any entrance to any gaming machine area unless the ATM restricts a person to a cash withdrawal of \$400 per day from any debit or credit card;
- a venue operator must not cash more than one cheque per customer per day up to a maximum of \$400

Presumably Tabcorp does not allow individual bets to be paid by credit card. However, to the concern of treatment providers, Tabcorp allows moneys to be paid into a betting account with a credit card. This enables gamblers to obtain gambling moneys on credit.

Northern Territory Bookmakers Can Extend Credit to Gamblers (this will cause immense harm and requires federal intervention)

The whole wagering industry is undergoing change with the freeing up of bookmaking between states following the decision of the High Court in Betfair Pty Limited v Western Australia [2008] HCA 11 (27 March 2008). Bookmakers are setting up in the Northern Territory where taxes are low and there is no restriction on the extension of credit to gamblers. Tabcorp is setting up a bookmaking operation in the Northern Territory to remain competitive and will presumably run two operations.⁸ Tabcorp estimates \$5 billion will be wagered with Northern Territory operators next year.

I have no doubt whatever the ability of the Northern Territory bookmakers to extend credit to gamblers will cause widespread social harm throughout Australia.

Although it is beyond the role of this Committee, there is an urgent need for federal legislation to prohibit the granting of credit by bookmakers to gamblers to prevent widespread harm from Northern Territory bookmakers and also to prevent the “cascade effect” where consumer protection laws are abandoned by the other states to enable their bookmakers to grant credit to gamblers so they can compete on a “level playing field” with NT bookmakers.

Conclusion

The above notes, hurriedly compiled as they are, show clearly that previous generations and governments have been concerned about the hazard of giving credit to gamblers. They have legislated to prohibit or proscribe the giving of credit to gamblers, particularly where the gambler is in the heat of gambling passion and is careless as to the consequences.

The history of the laws limiting the availability of credit to gamblers highlights the pivotal role of credit – in the form of ATM withdrawals – in the social harm being caused by the pokies in Australia.

When considering the evidence on ATMs put to the Committee, I entreat the Committee to have regard to the evidence of the former pokie problem gamblers Gabriela Byrne and Sue Pinkerton and to the treatment providers working at the coal-face: Kate Roberts, Christopher Davidson and Lincoln Poole. As I stated in my evidence, it is these people who are the experts on what is important for the problem gambler in the venue. As Poole pointed out, these problem gamblers behave like alcoholics suffering memory loss and blackouts. These problem gamblers are obviously suffering from a psychological disorder, a special disability, a compulsion or addiction. It is the responsibility of a humane society to protect them and not exploit them.

Lesson to be Learnt from the Street Betting Experience

The attached account of street betting, a scourge in Britain around the late 1800s and early 1900s, shows how housewives gained access to credit by purchasing clothes and

⁸ [Tabcorp](#) move north to reveal how Territory bookies are raking it in John Schell, Herald Sun August 13, 2008

furniture on time payment and pawning these goods to obtain money to bet on horses. Street betting became the target of the York Anti-Gambling League and resulted in the House of Lords Select Committee on Betting (1902) and Lord Davey's Street Betting Bills of 1903 and 1905.

It is clear from the account that the harm caused by the wives' problem gambling was greatly exacerbated by their access to credit. The committee may compare the cold-hearted role of the banks today with that of the "peddling fellows" and pawnbrokers operating in the working-class districts of late-Victorian Britain.

Yours faithfully

Tim Falkiner
Owen Dixon Chambers West

**Extract from "Gambling Among Women" An Essay by J. M. Hogge M.A.
"Betting and Gambling - A National Evil" edited by B Seebohm Rowntree and
published by Macmillan & Co. Ltd. 1906**

I have my health and strength [he said], and I have always plenty of work; the job I'm on now will last another six months. It's true I have seven children, but I make no trouble of working for their support. We used to go to church when we was first married, my wife and I; we lived at Southampton then, and we both thought a deal of Canon Wilberforce. It was him that tied the knot. Since we came North I have not gone to any church: wife was taken up with the children. But I always washed myself, and put on my Sunday suit when Sunday came round; sometimes I'd take the kids for a bit of a walk into the country, and sometimes I'd take a stroll round with a few of my mates. Anyways I held up my head straight and thought I as good as any - my meaning is that I thought I had the right to look anyone in the face, for I believed till a week ago that I did not owe any one a penny piece. It was Saturday even, and up comes to me a bailiff chap, but I did not know then that he was a bailiff; he shoves a paper into my hand and I reads on it "Judgment Summons". Personally served on the Defendant," and there below it I sees my name written in. I said "Take it away, I never have aught to do with such things." I had to take it in, and I found it was an order for £1:2:3, that should have been paid long before to a firm called a "Clothing Company," trading from a town twenty miles away. Not half a dozen words did I say to any one that day, just sits dumb and dazed over the fire; not a wink did I sleep, but by Sunday morn breakfast was over I'd got my plans made.

I gets a bit of lead pencil from one of the lads, turns the children out of the room, spreads out a piece of paper, and sits myself down. Then I says to the wife, "My lass, I have never chastised thee, never; but now thou hast just got to bring me every bill and every pawn-ticket, and thou has just got to think on, and to tell me of every penny I owe, and if I find thou hast kept aught back, I shall feel fit to take off my belt and to thrash thee with it to within an inch of thy life, and if I have to go to goal for it, I'll go."

By tea-time that Sunday I'd got that paper about covered with figures, and reckoned up it comes to £70. There were two doctors' bills, four coal-cart men, there were three lots of goods from the "Clothing Company," and four from the "Furnishing Company," and both these I were told firms of peddling fellows whom I had never seen, because they are such curs they never show their face at a door when the master's in, and when they have sold their goods (all on the weekly payment system) to silly women, they go off home by train, so as the husbands can't follow them home and give then the horsewhipping they deserve.

I found a deal of things that Lord's Day. I went up to look at the children's beds and saw the blankets was gone off them. I looks in the drawers and found them empty where they should have been full of children's clothing and bedding. I understood that day why the two eldest girls were so long getting themselves places; they had naught but what they stood up in. Folks might say I should have looked into things a bit sooner, but I were one that always said, "If the man earned the money and turned it over to the wife, it were the wife's place to lay it out to advantage."

We had not been living in that house above a twelvemonth but it all come about since we'd moved in. I could see nothing wrong with the street when we took the house; it

looked quiet enough. It had not been built so long; the house was clean and airy, and there was an extra room for the lads, that were the chiefest thing we moved for.

How was I to know, when nobody telled me, that the women in this was all a-cheating their husbands, and was just one a bigger gambler than another?

As near as I can make out their practices was like this. They'd all back horses with the money they should have kept in a safe place against rent day, and them that lost would wait while Monday when the pack man come round, and they'd take a suit of clothes or a pair of blankets on the weekly payment system. Straight away they would carry them to the pawn shop, so their husbands having never set eyes on the stuff would never miss it out of the house. I suppose they'd think they'd done a clever thing when they had raised the money for the rent and a bit over besides to back another horse.

Sometimes the Day of Judgment would seem to have come to one or another when county court summonses would come to their house, but so long as their husbands did not see the papers, they'd put off the day of reckoning a bit longer.

My wife says they'd run round to one another's houses and say, "I'm in a deal of trouble, will you oblige me to-day by taking a pair of blankets off the Clothing Company and pledge them for me, and I'll pay you back when I can? And if you get into trouble some day, I'll help you out if you'll just oblige me this once." My wife knew nothing about such ways afore we came to live in this street, but she were a quick learner, and gets into it like a lad gets into his new sums when he gets put up a standard at school.

It's none so very hard when it's put plain - horses, packman, pawn-shop, and a county court; and then over again, more horses, more packmen, more pawn-shops and more county court.

Sorry to trouble you with such a long yarn, but I put it to you as a practical question, How am I to get out of this fix? If I go to goal I lose my work, and rent's running on, and grocery bills and coal bills are running on, for seven bairns can't be fed on air, and I am told going to goal does not clear off the whole of the bill to these pedlar fellows, but only a little bit of the back payments, and you may be taken again as soon as you come out for another bit. I put it to you plain, What is a man in my circumstances to do?