

A BREACH OF TRUST

Dissenting Report by Senator Nick Xenophon

- 1.1 Following the 2010 election, Prime Minister Julia Gillard announced on 2nd September 2010 she had struck a deal for poker machine reform with independent Member for Denison Andrew Wilkie (a copy of which is attached). Those who have been fighting for real reform in this area have been waiting to see if the Government would live up to its promise. With the introduction of this legislation, it is finally clear that they have not.
- 1.2 At the outset, Mr Wilkie pushed for the Government to commit to introducing \$1 maximum bets and maximum average \$120 hourly losses on poker machines, in line with the Productivity Commission's 2010 report.¹ That unambiguous recommendation is set out as follows:
Recommendation 11.1
Governments should require that by 2012, all new EGMs include the capability of being played at a maximum intensity of \$1 per button push, with this being activated in 2016.

*In 2016, all EGMs should be limited to a \$1 bet, with an exemption until 2018 for venues with less than ten machines that also face significant implementation costs relative to revenue.*²
- 1.3 Instead, the Prime Minister offered to implement a mandatory pre-commitment scheme, which was a secondary recommendation from the Productivity Commission³, in exchange for Mr Wilkie's support to an ALP Government. In good faith, Mr Wilkie agreed to this arrangement, and relied on the Prime Minister's written word.
- 1.4 In response, Clubs Australia and the Australian Hotels Association launched what was nothing more than a scare campaign against the reform, targeting Government members in marginal seats. Assertions from these organisations included the claim that people would need a 'licence to punt', that the Government was going to track people's gambling activity, and that any type of gambling reform would see clubs no longer able to make contributions to their local communities. I have attached a letter sent from Mr Wilkie and myself to all Members of Parliament in 2010, refuting those claims.
- 1.5 It is worth noting at this point that several studies, including one by the Productivity Commission, have raised concerns about how much sporting clubs actually return to

¹ Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 11.29

² Ibid

³ Ibid, p. 10.44

their local communities in exchange for the tax breaks they receive as not-for-profit organisations. Most recently, a report commissioned by Uniting Care and undertaken by Charles Livingstone, Chebiwot Kipsaina and Angela Rintoul of the School of Public Health and Preventative Medicine at Monash University found that, on average, clubs in New South Wales returned the equivalent of only 1.3 per cent of their poker machine losses to the communities they claim to support.⁴

- 1.6 However, in early 2012, the Government gave in to the pressure from the gambling industry, following the recruitment of the Member for Fisher, Peter Slipper MP, into the Speaker's Chair. No longer in need of Mr Wilkie's support to stay in government, the ALP withdrew support for mandatory pre-commitment and instead said it would trial mandatory pre-commitment in the Australian Capital Territory, and work towards implementing a form of voluntary pre-commitment across Australia. This was a blatant breach of the agreement Mr Wilkie had entered into with the Prime Minister.
- 1.7 It is also important to note that the Opposition has sided with the industry throughout this process. It did briefly consult with the intention of forming its own policy for reform, but it appears this has not progressed.
- 1.8 Ultimately, this issue must be about problem gamblers and those directly affected. I acknowledge the Committee for the time they have taken to speak to people who have been affected by addiction, either directly or indirectly. I thank the Committee for its efforts in this area, because those discussions have played a vital part in informing Committee members and putting a human face on this issue.
- 1.9 Sadly, however, what should have been about human suffering and a dangerous product has now become all about vested interests. Instead of being a fight for what is right, it has become a fight for what is least offensive to those with the most money.
- 1.10 I wish to formally note that I consider both Mr Wilkie and the Australian Greens have acted in good faith throughout this process. I believe them when they say this is only the first step and they will continue to fight for reform.
- 1.11 However, I am fundamentally unable to support this bill. I cannot support legislation that is so qualified and conditional, and fraught with technical difficulties. It will also not help problem gamblers in any significant way. Further, this legislation is a direct result of a fundamental breach of trust on the part of the Government and, as is set out below, the Government cannot credibly explain its position.

⁴ Livingstone, C., Kipsaina, C., & Rintoul, A. *Assessment of Poker Machine Expenditure and Community Benefit Claims in Selected Commonwealth Electoral Divisions*, April 2012, p. 4. Available online: http://www.unitingcare.org.au/images/stories/resources/120412_research_poker_machine_expenditure_and_community_benefit.pdf

- 1.12 Voluntary pre-commitment does not work. Formal studies have repeatedly shown that these systems are not effective at limiting losses.
- 1.13 A study into poker machine pre-commitment schemes prepared for the Nova Scotia Gaming Foundation in Canada found that voluntary schemes consistently failed because they relied on the willpower of players.⁵
- 1.14 The Nova Scotia study found that high risk players were unlikely to use a voluntary system. It also found that high risk players would often continue to gamble beyond their limits unless they were locked out of play and that they lost more money than they intended "most times they play".⁶
- 1.15 The take-up of voluntary pre-commitment schemes has also been shown to be woeful. In South Australia, Worldsmart Technology's J-Card loyalty scheme allows a player to set self-imposed limits on time and spending. After reviewing Worldsmart's scheme, the Productivity Commission reported:
*"Relatively few consumers have enabled their loyalty card for pre-commitment features. By mid-September, 233 of just under 32,000 loyalty card members (or 0.7 percent) had enabled pre-commitment options."*⁷
- 1.16 Ultimately, the idea of voluntary pre-commitment seems to be based on how governments believe people *should* behave, rather than how they *actually* behave.
- 1.17 Beyond this fundamental issue, it is important to note that the bills also contain significant flaws and weaknesses. I will be moving a number of amendments in the Senate to highlight these, but my main concerns relate to the structure of the pre-commitment systems and the lack of incentive for any party to establish such a system. For example, the penalty provisions in the National Gambling Reform Bill 2012 contain an exemption for where 'there is not an approved pre-commitment system for a State or Territory'.⁸ A similar exemption applies to the gaming machine regulation levy, which is designed to encourage compliance among organisations that are not constitutional corporations.⁹

⁵ T Schellink, et al, 'Evaluating the Impact of the "My-Play" System in Nova Scotia', Nova Scotia Gaming Foundation, October 2010, http://www.nsgamingfoundation.org/uploads/Research/Technical%20Report%20Phase%201%20My-Play%20Benchmark%20Final%20%20_Focal_%20Jan%2028%202011.pdf (accessed 19 November 2012).

⁶ T Schellink, et al, 'Evaluating the Impact of the "My-Play" System in Nova Scotia', Nova Scotia Gaming Foundation, October 2010, http://www.nsgamingfoundation.org/uploads/Research/Technical%20Report%20Phase%201%20My-Play%20Benchmark%20Final%20%20_Focal_%20Jan%2028%202011.pdf (accessed 19 November 2012).

⁷ Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. c2-3.

⁸ National Gambling Reform Bill 2012, Section 58(2)

⁹ *Ibid*, Section 85(4)

- 1.18 The the only place FAHCSIA could point to a requirement for a pre-commitment system to apply across a whole state or territory (and therefore cover all machines in that state or territory) is in the Explanatory Memorandum to the bill.¹⁰ Further, the penalty provisions to require compliance do not apply if there is no system, so it is hard to see how this legislation could be enforced at all.
- 1.19 Most importantly, this legislation will not provide immediate assistance to problem gamblers, or those at risk of problem gambling. The fact that the voluntary systems are not required even to have a default loss limit is very problematic.
- 1.20 I would have been more inclined to support this legislation if it had also mandated that machines at least should be capable of being limited to \$1 bets and hourly losses of \$120, as recommended by the Productivity Commission.¹¹ This measure was intended to work in conjunction with pre-commitment, and is vital in reducing the intensity of play. Poker machines in Australia operate at an incredibly high intensity, which many consider increases their addictiveness.
- 1.21 For a product that is touted as ‘entertainment’, it seems unbelievable that gamblers can lose up to \$1,200 an hour.¹² This cost can hardly be considered a form of recreation. Limiting losses to \$120 an hour will not only reduce the harm caused by these machines, but bring them more into line with an average person’s idea of ‘recreational spend’. The Commission’s research indicates that some 88 per cent of recreational players and about 80 per cent of all players never spend more than \$1 per button push.¹³
- 1.22 Not only has the Government disregarded this key reform, it refuses to give the reasons for this policy position. Previously, it has claimed that the cost of implementation will be excessive, with the Minister for Families, Community Services and Indigenous Affairs, the Hon. Jenny Macklin MP, claiming in January this year that it would cost \$1.5 billion.¹⁴ However, despite promising at that press conference that the Department would release the basis for those figures, they have never been publicised.
- 1.23 Indeed, two Freedom of Information requests from my office failed to reveal the basis for that figure, and resulted in documents that were more redactions than information.

¹⁰ Department for Families, Housing, Community Services and Indigenous Affairs, response to Question on Notice 26.

¹¹ Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 11.29

¹² *Ibid*, p. 11.5

¹³ *Ibid*, p. 11.12

¹⁴ Press conference with Minister Macklin and the Prime Minister, 21 January 2012. Online: <http://jennymacklin.fahcsia.gov.au/node/1706>

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- 1.24 Further, the Government has not explained with any credibility how it willing to make the machines mandatory pre-commitment ready (at the ‘flick of a switch’) but refuses to do the same for maximum \$1 bets. The maximum \$1 bets reform was the primary reform recommended by the Productivity Commission, yet the Government refuses to even have machines capable of supporting it.
- 1.25 I understand that this has become a difficult political issue for the major parties. Tragically, it appears this has now become a ‘tick and flick’ exercise for the Government, just to get the ‘problem’ off the table.
- 1.26 However, this issue will not go away. Earlier this year, the Stop the Loss Coalition released data from a survey by AMR Research that revealed over 70 per cent of Australians want poker machine reform, and only two in ten believe no further action is needed. Further, over 80 per cent supported the introduction of maximum \$1 bets, which rose to a massive 90 per cent for intending ALP voters.¹⁵
- 1.27 To put this in context, most Australians would know of someone who has been affected by poker machine addiction. The Productivity Commission figures from 2008/09 indicate that over \$10 billion a year is lost on poker machines,¹⁶ with problem gamblers accounting for between 22 to 60 per cent of that figure, with 40 per cent the accepted average. Also according to the Productivity Commission, there are between 80,000 and 160,000 adult Australians who are suffering from ‘significant problems with their gambling’, with a further 230,000 to 350,000 at risk of developing further problems.¹⁷ On average, each of these problem gamblers affects seven other people.¹⁸
- 1.28 Too many Australians are have first-hand knowledge of the damaged caused by poker machines for the issue to disappear from the political radar, as perhaps both the Government and the Opposition hope.
- 1.29 Ultimately, to use gambling terminology, in my view this legislation is a ‘loss disguised as a win’. It will not do enough to help existing gamblers or curb problem gambling in the future, and those measures it does contain may not be enforceable.

¹⁵ Stop the Loss Coalition. Online:

https://www.dropbox.com/s/wmeyw1fs1u5x933/STOP%20THE%20LOSS_SURVEY%20REVIEWS%20MAJORITY%20SUPPORT%20FOR%20STRONGER%20POKER%20MACHINE%20REFORM.pdf

¹⁶ Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.1

¹⁷ *Ibid*, p. 5.1

¹⁸ Productivity Commission, *Australia’s Gambling Industries*, Commonwealth of Australia, Canberra, 1999, p. 2.

1.30 To that end, I call on the Government and the Opposition to support a plebiscite on the issue of maximum \$1 bets and \$120 maximum average hourly losses to determine the will of the Australian people.

1.31 The Government has not explained why it is willing to have machines mandatory pre-commitment ready but not maximum \$1 bet ready, which is arguably a cheaper, simpler, and easier to explain option that will be more effective. The Government's failure to support this measure as recommended by the Productivity Commission is, I believe, a cynical act of bad faith on their part.

Recommendation 1: That the bills not be passed unless amended to include provisions for the implementation of maximum \$1 bets and hourly losses of \$120 on all gaming machines in Australia.

Recommendation 2: That there be a plebiscite to be held at the next Federal Election to determine the will of the Australian people on the maximum \$1 bet and \$120 hourly loss recommendation of the Productivity Commission.

NICK XENOPHON

Independent Senator for South Australia

The Hon Julia Gillard & Mr Andrew Wilkie ('the Parties') - Agreement

Between:

The Hon Julia Gillard MP Prime Minister

And

Mr Andrew Wilkie MP - elect MP Denison

1. Purpose

- 1.1 This agreement establishes a basis for stable and effective government.
- 1.2 Mr Wilkie will maintain his right to vote on all legislation according to the needs of his electorate and his conscience, but undertakes to involve himself in negotiations with the Government before exercising that right.
- 1.3 Mr Wilkie will vote with the Government to ensure supply.
- 1.4 Mr Wilkie will oppose any motion of no confidence in the Government unless the motion is moved or seconded by Mr Wilkie.

2. Principles

- 2.1 The Parties agree to work together to pursue the following principles:
 - a) transparent and accountable government;
 - b) improved process and integrity of parliament; and
 - c) policies which promote the national interest.

3. Promoting open and accountable government

- 3.1 The Parties will work together and with other parliamentarians to promote open and accountable government.
- 3.2 The Parties acknowledge specifically that reform proposals are being developed on:
 - a) Online registering of lobbyists
 - b) Establishing a Leaders' Debate Commission

- c) Funding of political parties and election campaigns
- d) An Information Commissioner and public interest disclosure
- e) Producing a Statement of Legislative Intent at the beginning of each Parliamentary Sitting to set out the Government's legislative program
- f) Holding referenda during the 43rd Parliament or at the next election on Indigenous constitutional recognition and recognition of local government

3.3 The Parties agree to work collaboratively with each other and other parliamentarians on the reform proposals detailed in Clause 3.2.

3.4 The Parties agree to introduce legislation to protect whistle blowers and seek to have such legislation passed by 30 June 2011.

4. Improved processes and integrity of parliament

4.1 The Parties agree to work together and with other parliamentarians to implement parliamentary reforms.

4.2 The immediate reforms include:

- a) Improving Question Time in the House of Representatives by setting fixed time limits for questions and answers with supplementary questions given at the discretion of the Speaker.
- b) A fixed and fair allocation of questions for independent and minor party members with the first question no later than the 6th question in each Question Time.
- c) At least 2.5 hours dedicated for debating and voting on private members' bills including a fixed and fair allocation of time for independents and minor party members in every full sitting week in both houses.
- d) In addition to clause 4.2(c), dedicated time for voting on motions from independents and minor party members in every full sitting week in the House of Representatives.
- e) The House of Representatives will debate and vote, during Government Business time, private senators' bills as passed by the Senate within 6 sitting days of the message being received by the House.
- f) Amending the Standing Orders of both Houses so that there can be a recommittal of any vote within one sitting day where a member was absent from that vote due to inadvertence.
- g) Agreeing that in the House of Representatives, 'pairs' may be made by private arrangement during votes, similar to the arrangements which currently occur between Whips in the Senate or that another arrangement to facilitate Members who cannot attend due to ill health, family circumstances or performing Government or electorate business be agreed.

- h) Providing for 90 second statements and three minute electorate statements in the chamber and main committee.
- i) Establishing a Code of Conduct and behavioural standards for Members of the House and Senate.
- j) Reforming and strengthening parliamentary committees by reducing the number of general purpose committees, enhancing the role of cross-bench members, conducting an external review of committee staffing and establishing a new cross-party committee on staffing and appropriations.

4.3 Further reforms include:

- a) Establishing within 12 months a Parliamentary Budget Office within the Parliamentary Library with the structure, resourcing and protocols being the subject of decision by a special committee of the Parliament which is truly representative of the Parliament.
- b) Establishing within 12 months a Parliamentary Integrity Commissioner, supervised by the Privileges Committees from both houses to:
 - i. provide advice, administration and reporting on parliamentary entitlements to report to the Parliament;
 - ii. investigate and make recommendations to the Privileges Committees on individual investigations, to provide advice to parliamentarians on ethical issues; and
 - iii. uphold the Parliamentary Code of Conduct and to control and maintain the Government's lobbyists register.

5. Working relationships

- 5.1 The following arrangements will govern the working relationship between Mr Wilkie and Ms Gillard for the duration of the 43rd Parliament. These arrangements may be altered by mutual agreement.
- a) When Parliament is in session, Ms Gillard will meet with Mr Wilkie each sitting week, principally to discuss and negotiate any planned legislation.
 - b) When Parliament is not in session, Ms Gillard, or her delegate, will meet with Mr Wilkie, or his delegate, at least once each fortnight, principally to discuss the upcoming legislative agenda.
 - c) The Government will endeavour to give at least six working days notice of the introduction of legislation to the House.
 - d) The Parties will ensure that the Government's budget is subject to an exchange of information and views between the Parties as follows:

- i. Mr Wilkie receiving economic and financial briefings from the Treasurer and the Minister for Finance and the Secretaries of the Departments of Treasury and Finance and Deregulation at regularly agreed times.
 - ii. Mr Wilkie having regular discussions with the Treasurer and the Minister for Finance on economic circumstances, fiscal strategy and budget preparation.
- e) Should Mr Wilkie wish to propose new policies, these proposals may be formally submitted to the Office of the Prime Minister and forwarded to the appropriate Department and Minister for analysis. Where the proposal is likely to involve costs, it may also be sent to the Department of Treasury, and the Treasurer, and the Department of Finance and Deregulation, and the Minister for Finance, for costing.
- i. The number of proposals that may be considered in this way is not limited in number but the Parties will ensure that the workload arising is reasonable.
 - ii. Every endeavour will be made to provide required advice within ten business days.
 - iii. The Parties acknowledge that during the six week period leading up to the Federal Budget, the turnaround time may be greater than ten business days.
- f) The Parties acknowledge that the above mechanism can be used to have any of Mr Wilkie's policies for the 2010 election considered.
- g) Senior staff members of the Office of the Prime Minister and Mr Wilkie's Office will liaise to ensure that Mr Wilkie has access to Ministers, key public servants and Ms Gillard, as outlined above.
- h) The Parties recognise that providing appropriate staffing support to Mr Wilkie requires urgent consideration and the Parties will work to ensure this task is undertaken at the earliest opportunity by the new cross-party committee on staffing and appropriations, which will be formed the first week that Parliament sits.
- i. Until such time as the staffing review is complete, Mr Wilkie will be allocated two staff, both of which will be personal staff, in addition to his electorate office staff.

6. Royal Hobart Hospital

- 6.1 The Parties agree that the redevelopment of the Royal Hobart Hospital is of vital importance to the people of Tasmania.
- 6.2 The Labor Government will contribute \$100 million upfront to enable the construction of the Women and Children's Hospital in Hobart to commence by the end of 2010.
- 6.3 The balance of the Labor Government's contribution to the \$565 million redevelopment of the Royal Hobart Hospital announced during the Tasmanian State election campaign will be delivered from and following a new national round of the Health and Hospitals Fund

- 6.4 The Labor Government will open a new round of applications to the Health and Hospitals Fund (HHF) for investments in major hospital projects, commencing 1 October 2010. All States and Territories, major hospitals, health research institutes and universities will be able to apply for funding to upgrade hospital infrastructure.
- 6.5 The Tasmanian Government will be invited to make an application to the HHF for up to \$240 million (for a total contribution to the RHH redevelopment of \$340m), to be used towards the \$565 million redevelopment of the Royal Hobart Hospital.
- 6.6 The Parties acknowledge that the Tasmanian Government's application for funding for the Royal Hobart Hospital redevelopment will be assessed by the HHF Advisory Board, alongside other submissions which may be received from any other parties.
- 6.7 The Parties acknowledge that the Tasmanian Government's application for funding will need to meet the HHF evaluation criteria in order to receive funding, including that the proposal:
- a) addresses national infrastructure priorities (including that it will contribute to meeting the Government's health reform targets);
 - b) demonstrates high benefits and effective use of resources;
 - c) efficiently addresses infrastructure needs; and
 - d) meets established standards in implementation and management.
- 6.8 The Parties acknowledge that the Tasmanian Government has previously applied for funding for the Royal Hobart Hospital from the HHF, but that circumstances surrounding the Tasmanian Government's plans for the Royal Hobart Hospitals have since changed:
- a) In early 2009, the Tasmanian Government submitted an application to the HHF for \$60 million for improvements to the existing Royal Hobart Hospital site.
 - b) The Parties acknowledge that the HHF Advisory Board recommended against the application at the time, on the grounds that the Tasmanian Government's business case could not stipulate what the longer term solution for the Royal Hobart Hospital would be.
 - c) The Parties acknowledge that the Tasmanian Government has undertaken further work on a long term solution to the Royal Hobart Hospital.
 - d) The Parties acknowledge that the Tasmanian Government is now in a position to make a submission to the HHF board for a long-term project solution to the Royal Hobart Hospital.
 - e) The Parties note a new call for applications to the HHF for major hospital projects was envisioned under Clause 13 (d) of the National Health and Hospitals Network Inter-governmental Agreement.
 - f) The Parties acknowledge that the new call for applications for the HHF funding is occurring in this time frame because of this agreement.

- g) The Parties acknowledge that all spending out of the Health and Hospitals Fund would need to be fully offset, consistent with the Government's fiscal rules.
- 6.9 The Parties acknowledge the unique circumstances of the Royal Hobart Hospital redevelopment, in that a small state like Tasmania does not have the financial capacity to invest in a major hospital infrastructure project without assistance from the Commonwealth Government.
- 6.10 The Parties acknowledge that the National Health and Hospitals Network Agreement states that in addition to the Commonwealth's 60 per cent contribution to public hospital capital, the Commonwealth may also choose to invest in national priority areas, or in geographic or functional areas of identified capital under-investment, following consultation with relevant states or territories.
- 6.11 The Parties agree that this investment in the redevelopment of the Royal Hobart Hospital is intended to, and will lead to, the provision of extra hospital services in Tasmania.
- 6.12 The Parties agree that the National Health and Hospital Network agreement struck on 20 April 2010 (which would be terminated by a Coalition government) provides an unprecedented opportunity to permanently lock in more Commonwealth support for Tasmanian hospital and health services, and associated capital investments, into the future, including at a redeveloped Royal Hobart Hospital. This is because:
- a) the redevelopment of the Royal Hobart Hospital will increase the Hospital's service capacity, attracting a greater Commonwealth contribution under its reforms to provide 60 per cent of the efficient price of each public hospital service;
 - b) the Commonwealth's contribution towards 60 per cent of capital funding is automatically linked to the number of services delivered, according to a pre-determined formula; and
 - c) accordingly, greater capacity for service throughput will also expand support to the Tasmanian Government for maintenance, ongoing refurbishment and other capital needs into the future, beyond any one-off contribution to the redevelopment of Royal Hobart Hospital.

7. Poker Machines

- 7.1 The Parties agree that problem gambling, especially through poker machines, is an important issue which must be addressed by all governments.
- 7.2 The Parties acknowledge that given gambling is predominantly regulated by State and Territory governments that addressing problem gambling requires co-operation between the Commonwealth and State and Territory Governments.
- 7.3 The Parties also acknowledge that the Commonwealth may be able to exercise greater legislative authority, if required, and agree to commission and receive no later than 1 February 2011 comprehensive legal advice about the Commonwealth's constitutional competence and prospects for successfully legislating in this area.

- 7.4 The Parties also acknowledge and agree that any approach taken to address problem gambling must be evidence based and that the Government has commissioned and received a comprehensive Productivity Commission report on problem gambling.
- 7.5 The Government commits to adopt a Commonwealth Government position on gambling reform that will include the initial response released on 23 June 2010 to the Productivity Commission report and further commits to the following additional measures:
- a) Implementing a best practice full pre-commitment scheme – that is uniform across all States and Territories and machines – consistent with recommendations and findings of the Productivity Commission. Implementation of pre-commitment arrangements will commence in 2012, with the full pre commitment scheme commencing in 2014, working with States and Territories to achieve this outcome. The full pre-commitment scheme will include the use of technology that is expected to have the best chance of reducing problem gambling.
 - b) Supporting the Productivity Commission recommendations in relation to poker machine dynamic warning displays and cost of play displays.
 - c) Implementing a \$250 daily withdrawal limit for ATMs in venues with poker machines (excluding casinos).
- 7.6 The Parties agree that the Government should seek agreement of all jurisdictions to the reforms detailed in Clause 7.5, including a timetable, and then each jurisdiction would amend their own State and Territory laws to implement the agreement. Regulation of the gambling industry would remain a State and Territory responsibility.
- 7.7 In the absence of agreement with the States by 31 May 2011 on any of the reforms detailed in Clause 7.5, the Government will unilaterally seek to legislate in order to achieve these reforms, subject to the legal advice received in accordance with Clause 7.3. If required, the Government will support Commonwealth legislation through the Parliament by Budget 2012.
- 7.8 The Parties acknowledge the need for an evidence based approach addressing problem gambling.
- a) Therefore, the Parties agree that it is appropriate to commission an independent study of the impacts of a reduction in problem gambling on other revenue flows and individual spending behaviour to report by the end of 2011.
 - b) The Parties also agree that it is appropriate to task the Productivity Commission to conduct a thorough examination of the impact of the pre-commitment scheme on problem gambling from 2014 and to determine what further harm minimisation measures may be necessary.
 - c) The terms of reference for the Inquiry will be set by no later than 30 June 2013.
 - d) The Government agrees that it would rely on the Productivity Commission's further advice in determining further action on problem gambling.
- 7.9 The Government agrees that as soon as practicable, it will seek to establish a Select Committee of the Parliament to act in an advisory role to the Minister for Families, Housing, Community Services and Indigenous Affairs, the Assistant Treasurer and the Prime Minister

to progress a national response to the full set of recommendations in the Productivity Commission report.

- a) The Select Committee will include wide representation, including Mr Wilkie, Senator Xenophon and other parliamentarians.
- b) The Select Committee will be advised on the legal advice obtained under Clause 7.3 and will be able to inquire into the reasoning that supports the legal advice and the consequences which flow from it.
- c) The Select Committee will be able to provide direct input in to the Commonwealth position Ministers will take to the COAG Select Council on Gambling Reform.
- d) The Select Committee will inform the design of the full pre-commitment scheme outlined at 7.5 (a).
- e) The Select Committee will be able to provide direct input in to decision making about any Commonwealth legislation, the terms of reference of the further Productivity Commission process and the monitoring of the impact of the reforms detailed in Clause 7.5.

8. Administration

- 8.1 The agreement will come into effect on the day the Government is established and last for this parliamentary term of the Gillard Government.

Signed on this 2nd day of September 2010.

The Hon Julia Gillard MP
Prime Minister

Mr Andrew Wilkie MP -elect
Member-Elect for Denison



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Wednesday 29 September 2010

Dear Member,

RE: Response to claims by Clubs Australia regarding poker machine reform

You may be aware of recent reports that Clubs Australia Executive Director, Anthony Ball, has been leading what has been described as a highly organised campaign against poker machine reform.

We write to provide some background surrounding this issue, and to offer to meet with any Member or Senator who wishes to discuss this matter further.

We also seek to provide some additional information relating to unsubstantiated claims made by Clubs Australia in recent weeks.

On 23 June 2010, the Government released the Productivity Commission's Report into Gambling.

What the Productivity Commission said –

The Productivity Commission concluded that *"the number of Australians categorised as 'problem gamblers' ranges around 115,000, with people categorised as at 'moderate risk' ranging around 280,000"*¹.

The PC concluded that *"most policy interest centres on people playing regularly on the 'pokies'. Around 600,000 Australians (4 percent of the adult population) play at least weekly"*².

The PC also found that *"around 15 percent of these regular players are 'problem gamblers'," and "their share of total spending on machines is estimated to range around 40 percent"*³.

¹ Productivity Commission Inquiry Report into Gambling 2010, pg 2

² Productivity Commission Inquiry Report into Gambling 2010, pg 2

³ Productivity Commission Inquiry Report into Gambling 2010, pg 2

This is because, as the report pointed out, using an average poker machine, *"it is easy to lose \$1200 or more in one hour"*⁴.

The PC concluded that the social cost of problem gambling was *"at least \$4.7 billion dollars a year"*⁵.

What the PC report recommended –

As a result the PC made a number of recommendations, including:

- * That the amount of cash that players can feed into machines at any one time should be limited to \$20 (currently it is up to \$10,000);
- * There are strong grounds to lower the bet limits to \$1 per button push, instead of the current \$5 and \$10;
- * Shutdown periods for gaming in hotels and clubs should commence earlier and be of longer duration;
- * There should be a progressive move over the next six years to implement full 'pre-commitment' systems which allow players to set binding limits on their losses;
- * There should be increased 'warning displays' and 'cost of play displays' on poker machines which tell individual gamblers how much they will lose in a set time period if they continue playing at their current level of gambling intensity; and,
- * ATMs should be relocated away from gaming floors and a \$250 daily cash withdrawal limit should be imposed.⁶

What the Government has agreed to –

The Gillard Government has agreed to implement *"a best practice full pre-commitment scheme – that is uniform across all States and Territories and machines – consistent with the recommendations and findings of the Productivity Commission"*⁷.

Implementation will commence in 2012 with the full pre-commitment scheme commencing in 2014. The Government also agreed to support the recommendations of the Productivity Commission in relation to warning displays and cost of play displays on machines and to implement a \$250 daily withdrawal limit for ATM with poker machines (excluding casinos).

The Federal Government acknowledged that these reforms should initially be attempted through consensus with the States and Territories, but if this consensus could not be reached by 31 May 2011 the Federal Government agreed to act unilaterally, passing the necessary legislation by Budget 2012.

⁴ Productivity Commission Inquiry Report into Gambling 2010, pg 2

⁵ Productivity Commission Inquiry Report into Gambling 2010, pg 2

⁶ Productivity Commission Inquiry Report into Gambling 2010, pg 2 and 3

⁷ The Hon Julia Gillard & Mr Andrew Wilkie Agreement, 02 September 2010

What Clubs Australia has been claiming –

Clubs Australia has frequently made the claim that only 0.5 percent of Australians are problem gamblers.

According to the Productivity Commission statistics like this are "*misleading*"⁸.

As the Productivity Commission concluded:

*"It is common to report prevalence as a proportion of the adult population, but this can be misleading for policy purposes, given that most people do not gamble regularly or on gambling forms that present significant difficulties."*⁹

The PC report is unambiguous. Of those who regularly play poker machines, "*15 percent are 'problem gamblers' and they are responsible for 40 percent of the money lost*"¹⁰.

Clubs Australia has also claimed that a system of mandatory pre-commitment for all poker machines would be "*completely untested*"¹¹. Again, this is not true.

There have been results on full pre-commitment in Norway, as well as studies of optional pre-commitment in Nova Scotia. There are also optional pre-commitment schemes being tested here in Australia, in Queensland and South Australia. Clubs Australia would be aware of these studies.

Clubs Australia Executive Director, Anthony Ball, has also claimed that problem gambling is higher in Tasmania where ATMs are banned from venues, compared with other states such as NSW, Queensland and South Australia.

What he has failed to point out is that there are two recognised categories of problem gamblers; 'problem gamblers' and 'those at moderate risk of becoming a problem gambler'.

The number of people at 'moderate risk of becoming a problem gambler' is higher in all of those states and if you count those groups together, Tasmania actually has the lowest rate of problem gambling.

Clubs Australia has also argued that a full pre-commitment scheme would be an unfair burden on recreational gamblers. They offer no evidence to support this claim.

However, there is significant evidence to prove that this claim is simply wrong.

For example, a Victorian Government study titled 'Impact of Gambling Machine Characteristics on Play Behaviour of Recreational Gamblers, released in September 2009 concluded:

*"From a recreational gambler perspective, it is quite apparent that the new policy decision of compulsory limits during play is not likely to adversely impact the gaming experience of recreational gamblers, as most indicate that this would only very marginally affect their play. Similarly, the same applies to the concept of having a compulsory set limit past a certain expenditure point – this was not seen as a major issue for recreational gamblers and hardly affected play enjoyment."*¹²

⁸ Productivity Commission Inquiry Report into Gambling 2010, pg 2

⁹ Productivity Commission Inquiry Report into Gambling 2010, pg 2

¹⁰ Productivity Commission Inquiry Report into Gambling 2010, pg 2

¹¹ Media Release: Clubs Australia, 02 September 2010

¹² Impact of Gambling Machine Characteristics on Play Behaviour of Recreational Gamblers, September 2009

Clubs NSW has also claimed that if their machines were made safer they would have to reduce their community contributions.

Much is made by Club Australia about these contributions, but the Productivity Commission has questioned the value of these claimed contributions, making the following conclusions:

- * Many of the benefits go to members, not the public at large; and,
- * The gross value of social contributions by clubs is likely to be significantly less than the support governments provide to clubs through tax and other concessions.¹³

In other words, according to the PC, the clubs industry takes much more tax breaks than it gives back in community benefits.

Clubs Australia has also tried to argue that any move to make machines safer would cost jobs. The Productivity Commission also rejects this.

It says:

*"Many people are employed in the gambling industry. However, most are highly employable and would be in demand in other parts of the service sector were the gambling industry to contract. In that sense, the gambling industries do not create net employment benefits because they divert employment from one part of the economy to the other."*¹⁴

A report commissioned by the Tasmanian Department of Treasury and prepared by the South Australian Centre for Economic Studies found that:

*"Gambling facilities employed an average of 3.2 persons per \$1 million in gambling income, 8.3 persons per \$1 million income from sales of liquor and other beverages and 20 persons per \$1 million income from meal and food sales."*¹⁵

Clubs Australia Executive Director, Anthony Ball, has rejected the PC's claim that around 40 percent of poker machine revenue comes from problem gamblers.

In a submission to the New South Wales Independent Pricing and Regulatory Tribunal, Clubs Australia argued that the figure was 23.1 percent.¹⁶ They offered no evidence to support this.

But even if we did accept this seemingly arbitrary figure, the clubs industry is conceding that at least \$800 million in poker machine losses in their own clubs is coming from problem gamblers – people who shouldn't be on their machines.

Mr Ball is on the record as saying he supports *"people's right to set their own limits on what they can afford to spend gambling"*¹⁷.

A full pre-commitment system, as proposed by the Government, will achieve this.

We would respectfully suggest to Mr Ball and clubs around Australia that if they truly support a person's right to set their own limits, they must also support a person's right to set those limits before they enter a venue and for those limits to be binding.

¹³ Productivity Commission Inquiry Report into Gambling 2010, pg 6.1

¹⁴ Productivity Commission Inquiry Report into Gambling 2010, pg 6.1

¹⁵ South Australian Centre for Economic Studies, June 2008, pg vii

¹⁶ Clubs Australia Submission to Productivity Commission Inquiry Report into Gambling 2010, pg 92

¹⁷ Media Release: Clubs Australia, 02 September 2010

We would once again like to extend our offer to meet with any Member or Senator who would like to discuss this issue further.

Alternatively we are happy to work towards making ourselves available to sit in on any meetings you may be having with clubs, if you see value in that option.

Please do not hesitate to contact our offices if you have any queries at all.

Yours Sincerely,

NICK XENOPHON
Independent Senator for South Australia

ANDREW WILKIE
Independent Member for Denison

