

17 February 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 letter of 21 January 2010 inviting the Authority to make a submission to the Commission's inquiry into cheating at gambling. I am happy to do so.

By way of background, the Casino, Liquor and Gaming Control 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*.

The Authority's closest and most significant exposure to cheating-related matters has occurred as a consequence of its supervision of the Sydney casino. This submission is therefore confined to the background to, and enforcement of, the cheating offence in s.87 of the *Casino Control Act 1992*. That section provides as follows:

87 Cheating

(1) A person must not, in a casino:

- (a) obtain or attempt to obtain any benefit for himself or herself or another person, or
- (b) induce or attempt to induce a person to deliver, give or credit any benefit to him or her or another person, or
- (c) cause, or attempt to cause, a detriment, whether financial or otherwise, to another person, by the dishonest use of:
- (d) any trick, device, sleight of hand or representation, or
- (e) any scheme or practice, or
- (f) any object or gaming equipment, or
- (g) an instrument or article of a type normally used in connection with gaming, or appearing to be of a type normally used in connection with gaming.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(1A) A person who obtains a benefit from:

- (a) playing a game in a casino in contravention of the game rules, or
- (b) an error or oversight in the conduct of the game, although the benefit was not originally obtained with any dishonest intent, must not dishonestly retain the benefit.

Maximum penalty: 20 penalty units.

- (2) A person must not, in a casino, use any device for the purpose of enabling the person or some other person to count or otherwise record cards dealt in the course of gaming in the casino unless the casino operator approves of its use.
Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.
- (3) A person must not, in a casino or on premises of which a casino forms part, use or have in his or her possession:
- (a) chips that he or she knows are bogus, counterfeit or stolen (within the meaning of sections 188, 189 and 189A of the *Crimes Act 1900*), or
 - (b) cards, dice or coins that he or she knows have been marked, loaded or tampered with, or
 - (c) for the purpose of cheating or stealing—any equipment, device or thing that permits or facilitates cheating or stealing.
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.
- (4) Subsection (3) does not prohibit the possession in a casino of any thing referred to in subsection (3) (a) or (b) by a person in charge of the casino, an agent of the casino operator, a casino employee, an inspector or a police officer, if that thing has been seized by any of those persons from another person for use as evidence in proceedings for an offence.
- (5) If, on a prosecution of a person for an offence under subsection (1), the court is not satisfied that the person is guilty of an offence under subsection (1) but the court is satisfied that the person is guilty of an offence under subsection (1A), the court may convict the person of the latter offence.
- (6) In this section:
benefit includes any money, chips, prize, advantage, valuable consideration or security.

The Bill upon which the Casino Control Act was based was the subject of detailed inquiry by the Hon Sir Laurence Street AC KCMG in 1991. The Street Report – “*Inquiry into the Establishment and Operation of Legal Casinos in NSW*” – observed as follows in relation to the honest conduct of gaming in casinos:

6.3.19 The mechanisms of skilled management and rigorous surveillance, referred to above in the context of minimising the risk of criminal exploitation, apply equally in preventing dishonesty in gaming by patrons, employees and casino management. The proposed legislation contains sufficient safeguards to ensure that gaming is conducted honestly. Primary control derives from the Authority's powers to determine the games and their rules, to direct how gaming is conducted and to approve equipment and casino procedures. These directions must be rigorously enforced. The constant presence onsite of inspectors, and their unrestricted access to all areas of the casino and the camera surveillance system is essential.

6.3.20 It is also in the operator's own interests that no opportunities exist for dishonesty by staff and patrons. Casino management systems commonly in use contain sophisticated procedures to safeguard their own operations. The operator's own extensive surveillance system also has this objective. Measures taken by the operator, and monitored by the regulators, should ensure that cheating does not remain undetected.

The second reading speech for the Bill, delivered by the Chief Secretary to the Legislative Assembly on 5 March 1992, identified the cheating prohibition as one of the key elements of the new regulatory framework for the casino:

There will be extensive controls over the operations of the casinos, including control by the authority over the casino layout, games and rules for games, and gaming equipment, a prohibition on minors being on the premises, strict controls over cashing of cheques and deposit accounts established by patrons, bans on an operator providing credit to patrons and bans on automatic teller machines on casino premises, controls over any promotions of gaming in a casino which involve provision of services on a complimentary basis, provision for orders to be issued excluding persons from a casino, provisions for right of entry to a casino by inspectors and police, and rights of detention of persons suspected of committing an offence against the Act, a prohibition on regulatory officials and casino employees gambling in the casinos and severe penalties for bribery, cheating and forgery.

The only substantive amendment made to the cheating prohibition since the enactment of the Casino Control Act was in 2000, with the insertion of s.87(1A). Its purpose was explained by the Minister for Gaming and Racing in his second reading speech on the *Casino Control Amendment Bill 2000* to the Legislative Assembly on 7 June 2000:

Under the casino legislation, it is an offence for a casino patron to obtain or induce another person to provide any money, chips, benefit, advantage, valuable consideration or security by various fraudulent means including a trick, device, sleight of hand, representation, scheme, practice, the use of gaming equipment, or the use of an instrument or article normally used in connection with gaming. A maximum penalty of 100 penalty units or two years imprisonment, or both, applies.

The requirement in these situations to prove fraud to the satisfaction of a court has resulted in the police and the Director of Casino Surveillance being unable to effectively prosecute patrons for perceived cheating activities in some instances. The bill will, therefore, clarify the elements of the offence of cheating in a casino, and create a further offence of dishonestly retaining a benefit that was originally obtained without a dishonest intent, but in contravention of the rules of a game or through an error or oversight in the conduct of the game. Recognising the lesser evil inherent in this new offence, a maximum penalty of 20 penalty units will apply.

The cheating offences that have been detected in the Sydney casino since its establishment in 1995 occur on the casino's table games significantly more frequently than on its gaming machines. The most common cheating offences have been:

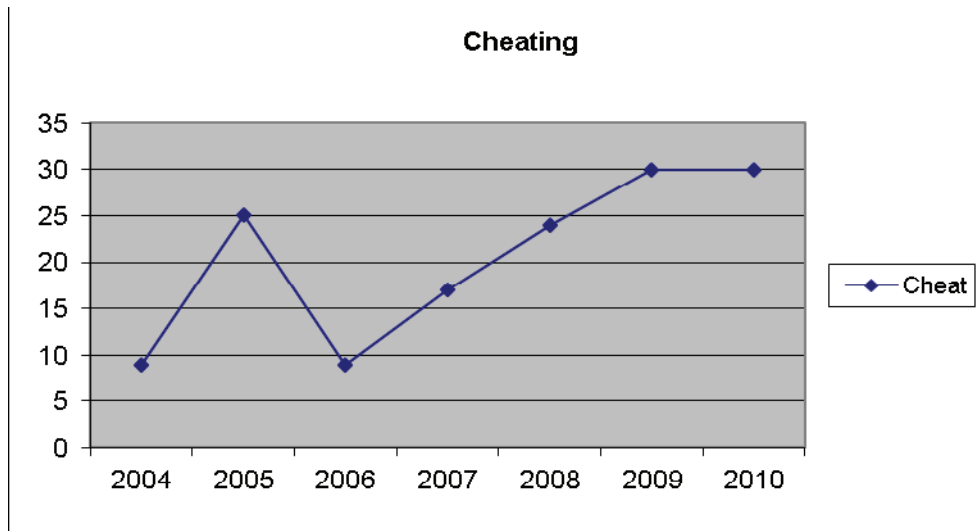
- placing a wager after the result is known (past posting);
- adding additional gaming chips to a winning wager (bet capping);
- removing a losing wager from the layout (bet retraction);
- moving a wager from a losing position to a winning position; and
- a dealer (deliberately) paying a losing wager, not taking a losing wager, or overpaying a winning wager.

From time to time, more significant and sophisticated cheating practices have come to light. These have included a patron who, in 2001, was arrested by NSW Police after using a micro-computer hidden in his shoe to cheat at roulette.

In terms of enforcement, section 168 of the Casino Control Act provides that proceedings for an offence against the Act may be instituted by any person acting with the written authority of the Authority, given generally or in relation to the particular case. Section 168A provides that an authorised officer (police officer or on-site Inspector) may serve a penalty infringement notice on a person if it appears to the officer that the person has committed an offence against the Act, being an offence prescribed by the regulations. Cheating-related offences are so prescribed (cl.54 and Schedule 7, *Casino Control Regulation 2009*).

Any alleged offence of cheating is investigated by an on-site Inspector. Where there is sufficient evidence to support a charge, a penalty infringement notice is usually issued.

The number of such notices issued between 2004 and 2010 for cheating in the casino is as follows:



For each of these years, average casino patronage was several million persons, with 8.5 million in 2010 alone.

It is acknowledged that casinos worldwide have been, and will continue to be, at higher risk of targeting by those who seek to dishonestly obtain financial advantage. However, it appears that the structure of the game rules, the training and awareness of gaming staff, casino surveillance operators and on-site Inspectors, together with the large number of CCTV surveillance cameras (over 1,000) throughout the Sydney casino, have worked to minimise the possibility of cheating incidents occurring.

In conclusion, operational experience to date suggests that the current legislative framework relevant to cheating at the Sydney casino is broadly effective and the Authority is not at this time looking to propose any changes that might alter it.

Should you or your officers require any further information on this matter, or if the Authority is able to assist your work in any other way, please contact Mr David Greenhouse, A/g Chief Executive, Casino, Liquor and Gaming Control Authority on telephone [REDACTED] or at [REDACTED]

Yours sincerely

Chris Sidoti
Chairperson