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TRANSCRIPT
OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO GAMBLING

MR R. FITZGERALD, Commissioner
MS L. SYLVAN, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 2 DECEMBER 2009, AT 10.34 AM

Continued from 1/12/09

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MR FITZGERALD: Good morning, everybody. I'm sorry about the delay today. We just had to reschedule some of the participants. It's only a short morning. We have only got two participants at this stage. There might be one other. If I could call the first participant. Stafford, if you can give your name, the organisation you represent and then we'll move from there.

MR SANDERS (ASH): Certainly. My name is Stafford Sanders and I'm speaking on behalf of Action on Smoking and Health and also the SmokeFree Australia workplace coalition. Thanks to the commission for the opportunity to address this hearing. We will also make a final written submission before 18 December. I speak on behalf, as I said, of Action on Smoking and Health, ASH Australia, which is a non-government national health promotion charity committed to reducing the deaths, illness and costs caused by tobacco smoking and smoke exposure.

I also coordinate the SmokeFree Australia workplace coalition, which consists of 11 non-government health and employee organisations working to achieve 100 per cent smoke-free workplaces in which no-one works in any area contaminated by toxic carcinogenic tobacco smoke. Some of our member organisations represent people working in just such unsafe conditions: bar workers, gaming workers and entertainers.

Our organisations are concerned, commissioners, that the draft report presented by the commission in October 2009 does not deal, in our view, adequately with the problem of tobacco smoke as a poisonous workplace contaminant, with the unacceptable health risk to employees and patrons, the impact of smoking on problem gambling or the compounding negative impact on gamblers' finances, all with the question of how to fix these problems.

When we read the draft report we found several mentions of smoking, but mostly it's limited to discussing the impact of smoking bans on gaming revenues. We note that the term "smoking bans" is always used in the report in preference to smoke-free laws or policies, though the latter term is a much fairer representation of the impact on the majority of the community, including staff, of these reforms. The term "smoking bans" is deliberately and quite relentlessly used by the tobacco industry and its allies in the hospitality and gambling industries to portray these policies and prohibitive and draconian. We'd suggests the commission might reconsider its choice of terms in this light.

There are other mentions of smoking in the report on the effectiveness of quit campaigns, brief references to higher smoking rates of problem gamblers and possible impacts of enforced outdoor smoking breaks. In only one place in the report is the harm minimisation impact of smoke-free policies alluded to and it's not really discussed substantially. We believe there are compelling reasons for the commission to address this issue specifically in its final report and to make appropriate

recommendations on it.

Tobacco smoke exposure is a serious, preventable public health risk and an OHS hazard that needs to be dealt with as a matter of overriding urgency, not subordinated to financial quibbles. The following gaming workplaces have a smoke exposure problem. First, high roller premium private gaming rooms in casinos are exempted from smoke-free laws in New South Wales, Victoria, Queensland, Western Australia and Northern Territory. Such areas are totally or nearly enclosed, they expose staff and patrons to intense levels of smoke. New South Wales currently has eight such exempt rooms, we understand.

Also in New South Wales specifically there are partly or mostly enclosed smoking areas, some of them as much as 75 per cent enclosed, in which there are gaming machines, there is a regular staff presence and there are measured unacceptable smoke levels. Commissioners, our recommendations are that all smoke-free exemptions for gaming rooms at casinos should end quickly, if necessary by the remaining jurisdictions agreeing together on an early end date. All working areas of licensed venues, including gambling areas, should be 100 per cent smoke-free by law, consistent with OHS and international treaty obligations.

No-one should be permitted to work in any area, however enclosed or otherwise, that is contaminated by tobacco smoke, and any remaining smoking-permitted area should be effectively separated from any working area or other non-smoking area, whether by impervious wall or by buffer zone; they should not immediately adjoin with doors or windows opening to each other. There are two compelling reasons, we suggest, for 100 per cent smoke-free policies for all gaming areas: (1) for the general health of employees and patrons in such settings; and (2) as a significant harm reduction measure to reduce problem gambling.

Let's look briefly at the health evidence, if we can. The overwhelming weight of independent research evidence says unequivocally second-hand smoke is harmful, it kills. Latest evidence will be included and referenced in our written submission. It shows increased risk of serious health harm, even at typical low-level exposure, irrespective of enclosure, and especially when repeated, as it is with gaming employees and regular patrons. Several studies have shown significant measured smoke exposure of employees in licensed venues, including gambling venues.

We cite a 2008 New South Wales Health Department survey of 40 random licensed venues in New South Wales; not just some but most of these smoking-permitted areas had poor air quality constituting public and workplace health hazard well over recommended limits. We have some pictures of some of these so-called outdoor smoking areas in New South Wales, there are very many of them and they are clearly predominantly enclosed. The definition of them as being "outdoor" is extremely dubious and these are areas, we feel, of Dickensian levels of

smoke exposure; it's very unacceptable stuff.

So there is that New South Wales study. Thousands of workers in such areas are still being denied proper OHS protection. They include bar and food service workers, cleaners, machine maintenance technicians, musicians and other entertainers and more. Smoke also threatens the health of regular patrons, especially the most frequent gamblers. The managers of gaming venues are, we suggest, fully aware of the health risks of tobacco smoke for staff and patrons, but they fear separating smoking from gambling might have an adverse impact on gambling profits, at least in the short term.

This impact has been very much exaggerated by opponents of smoke-free policies and should be assessed very carefully according to its independence, its duration and its consideration of other relevant influences; but in any case this is not an acceptable defence. Revenue drawn from exploiting the nicotine addiction of gamblers, what one gaming industry report called the "trans-inducing ritual of smoking and gambling," is not ethically defensible; even less so when it depends on wilful and repeated exposure of staff and patrons to more than 250 toxic compounds, including over 40 known human carcinogens.

Nor is it acceptable for venues to provide voluntary provisions, letting employees opt out of working in smoke-contaminated areas. This merely exploits the vulnerability of those in greatest financial need or with least job security. We wouldn't permit this for areas contaminated by airborne asbestos; neither should be contemplate it for tobacco smoke.

As well as health problems, there's increased financial impact of combined smoking and gambling. This combination can cause a heavy health and financial burden, particularly on lower SES families. We will also provide evidence of that in our submission. Of course smoking is associated with problem gambling; people who gambling are more often smokers, and those classified as problem gamblers even more so. Evidence again will be referenced. Problem gambling referral and treatment services have expressed strong support for 100 per cent smoke-free gambling venues as a measure to reduce problem gambling and especially to provide a healthier environment for patrons and staff.

There are many other arguments for a smoke-free gambling policy. Australia has obligations under international law as a signatory to the framework convention of tobacco control. Article 8 says all people should be protected from second-hand smoke, with no exceptions, and all workplaces of any enclosure should be 100 per cent smoke-free.

A smoke-free policy would help prevent disability discrimination, in both employment and access, against the estimated 10 per cent of people who suffer

underlying health conditions; for example, heart and respiratory diseases. As the Human Rights Commission said in one case, "A smoky room is as much a barrier to an asthmatic as is a flight of steps to a person in a wheelchair."

A smoke-free policy would reduce health costs to the community, and big costs they are too, tobacco currently draining over $30 billion a year from the Australian economy. Going smoke-free would mean savings to venues; less early retirement. sickness absence, productivity losses; and reduced risk of expensive legal actions by employees or patrons against venues for second-hand smoke health harm. There have already been some of those.

We should eliminate inconsistency between jurisdictions on this issue. We should support public health initiatives, including the recent National Preventative Health Taskforce recommendations. Not least, we should enact the will of the public; many surveys have shown strong public support for 100 per cent smoke-free licensed venues. So to summarise, commissioners, a comprehensive smoke-free gaming policy would save lives, health and money, would give employees their right to a safe, healthy smoke-free workplace and would reduce harm and hardship to gamblers. We ask the commission to so recommend in its final report.

Commissioners, while we have no objection to gambling in principle, there are two games we do object to: (1) Russian roulette, played with the health of staff and patrons; and (2) pass the buck, with various authorities shrugging off the problem on onto somebody else. We suggest the problem is so serious, so urgent, that any authority with a part to play should not miss any opportunity to recommend to government to ensure that all jurisdictions separate smoking and gambling immediately. Thank you very much for your time and consideration and I welcome any questions.

MS SYLVAN: If I can start. We took a look at a range of the information campaign surrounding gambling and we did some comparisons with alcohol-related campaigns and some others. There has been a lot of information, delivery campaigns and so on, in relation to smoking.

MR SANDERS (ASH): Yes.

MS SYLVAN: I don't assume that you've had a look at some of the gambling information, or you may have, but I wondered if you would like to offer a comment on the effectiveness of information campaigns leading to quitting for people who are addicted to tobacco and the analogy that there might be in relation to gambling campaigns.

MR SANDERS (ASH): Yes, I think a lot of other campaigns in the public interest area have looked closely at some of the successes that have been registered by quit

smoking campaigns, and the research has shown very strongly and there has been a lot of research on the effectiveness of the quit campaigns, particularly I'm thinking of the sort of stuff done by Prof Melanie Wakefield and others. It has been found to be very effective stuff. I think in the case of tobacco we are dealing with a population that is very receptive, very much on the brink of quitting.

You have got something like various estimates ranging from 66 to 85 per cent of smokers really want to quit; I think it's 85 per cent of them say, "I would really like to quit smoking," and something like 66 per cent say, "I intend to attempt to quit within the next 12 months." So you have got a population there that is very receptive to messages which hit the mark. I don't know what the research is in terms of gambling; whether your gambling cohort community is as receptive to change as that. If so, then the evidence from the tobacco campaign certainly suggests that well-directed, well-targeted mass media campaigns can be very effective.

MS SYLVAN: This nexus that you pointed to between smoking and gambling, and there's certainly some evidence that the prohibitions on smoking when they came in had a quite dramatic effect on gambling revenue; probably a very effective harm minimisation outcome, though that obviously wasn't the intent of it. But you said you have some evidence about this that you are going to present to us. Can you just elaborate a little bit on what is going on there and why it is that normally, as far as I could see, and often problem gamblers are smokers as well? There a very high correlation, I gather, between these two things.

MR SANDERS (ASH): Yes, we understand there is quite a strong correlation between gambling, and particularly high levels of gambling, with smoking; and as I say, we will provide the sort of written references of that in our written submission. There has been a large amount of research on the economic impact of smoke-free laws and policies on licensed venues.

Something like I think at least 100 international studies have been done on this, and they have been assessed very carefully, in terms of their credibility, their independence, their longevity, etcetera, their duration. They essentially have all found that there has been no adverse impact on licensed venues, with the exception of gaming impact.

The gaming area is the only area in which the whole of the licensed businesses have lost, have suffered any hit at all from smoke-free changes, and this is often overlooked in the public debate and we get the licensed venue lobby sort of implying somehow that smoking bans - they always call them smoking bans, not smoke-free laws - "have wrecked our businesses" sort of thing. Well, they haven't, they have only hit specifically gaming revenue, there has been no loss of food service revenue, no loss of drink sales revenue, no loss of general patronage; only gaming has been hit.

As I said, we feel that the evidence for the hit on even the gaming area has been pretty selectively presented by the opponents of smoke-free laws; you know, every fall since the fall of the Roman Empire essentially has been blamed on the smoking bans, as they call them. There are many factors clearly that have been involved in this and the impact has been rather more temporary than they have made out. Nevertheless, there has been an impact.

We would suggest that there is a problem, and there's obviously a particular problem where you have got somebody who is essentially addicted to nicotine and who also is intensely involved in the business of gambling. We can't see any problem at all with a policy that says, "Look, if the impact of making you go outside, properly outside, to have your smoke is that also in the process of that you have a temporary break in your gaming and this allows for a bit of a think break, well, what, for goodness sake, could be possibly wrong with that? In terms of responsible gambling policy, it has to make sense to provide such a think break for a person who is otherwise potentially in that trans-inducing ritual.

MR FITZGERALD: Can I deal with a couple of issues there. One is, are we correct in saying that New South Wales is the only jurisdiction that has allowed poker machine to be placed in outside smoking areas? They have the smoke-free policy, and, as you say, they then require smokers to be outside; but as you, rightly, say, they are semi-enclosed areas.

MR SANDERS (ASH): Yes.

MR FITZGERALD: But New South Wales seems to us to be the only state - we would think, perversely so - that has allowed poker machines to actually go into those outdoor spaces under canopies and roofs.

MR SANDERS (ASH): Yes, as far as we are aware, that is the case, New South Wales is the only jurisdiction that has done that. The New South Wales government at the time when the smoke-free laws were determined in late 2004 promised that that would not happen. They reversed that decision; the gaming minister just gave the okay to a lot of venues to put poker machines out into the smoking areas. There has been a bit of a flood ever since; as we have seen, there have been an enormous number of venues that have taken that course.

MR FITZGERALD: The second thing is, you made comment of the fact that gaming revenue is affected by introducing smoke-free policies. But you also indicated that it may only be temporary. I was wondering whether you have any contemporary research in the Australian context that would give us some understanding of what that pattern is. From the discussions we have had over the last several months, it seems to us that there is an initial hit, a significant hit. But then

the story becomes a bit more confused.

It appears in many of the jurisdictions that over time that revenue hit reduces almost back to a normal state; with one exception, and that seems to be very small venues, and that may be because they can't provide adequate amenities for smokers outside. But I was wondering whether there was any research that actually shows us what this pattern is, whether it is a permanent hit, whether it's a temporary hit and what is likely to transpire.

MR SANDERS (ASH): Look, our understanding of the research is much the same as what you have outlined and it's drawn from looking at solid turnover figures, you know, 12 months, two years down the track and so on and. We will be referencing what we understand of that evidence in our written submission. I haven't got all the references here, but that's the way we understand it, that essentially it's a hit at first and then it tends to recover over the next year to two years, pretty much back to a normal level.

The experience of smokers and smoke-free changes has been, in pretty much all social circumstances, that smokers don't stop doing the other thing that they're wanting to do because of the thing going smoke-free. Smokers haven't stopped travelling on aeroplanes, they haven't stopped riding in buses, they haven't stopped going to workplaces, they haven't stopped going to cinemas. They haven't stopped going to any of the places. Gaming has been the singular exception where for a time, there's been a drop-off, and that's tended to slowly go back to where it is because essentially smokers are like any other people, they have their life patterns, they have their places that they like to go and sooner or later, whether it's temporary or takes a little bit longer, they will tend to want to revert to that pattern. Again, the large majority of smokers, what they really want to do is quit the smoking. If they get an extra nudge in that direction, they're much more likely to do that than they are to quit the other thing that's been made smoke-free.

MR FITZGERALD: Can I then just deal with your recommendation to us that the current smoke-free exemptions that relate to your casinos which I think you've indicated are across all jurisdictions - - -

MR SANDERS (ASH): No, some.

MR FITZGERALD: Most of them, are they?

MR SANDERS (ASH): Some, yes.

MR FITZGERALD: Can you just clarify: do you know which ones do not allow smoking in any part of the casino?

MR SANDERS (ASH): The ones without the exemptions. I think you will find South Australia doesn't have an exemption, the ACT doesn't have an exemption, Tasmania doesn't have an exemption; I think those three.

MR FITZGERALD: Those three?

MR SANDERS (ASH): Yes. Now, Queensland interestingly indicated a few years ago that it wanted to try and reach agreement with other jurisdictions that did have the exemption and say, "Why don't we all get together and agree on an end date so none of us are feeling disadvantaged?" but that hasn't been taken up and no agreement has been reached between the remaining jurisdictions. The situation in New South Wales is bizarre. Under the Smoke-Free Environment Act it provides that the minister can make exemptions and the sole ground given for making the exemptions is parity with other jurisdictions. So if you had different jurisdictions all having that process at different times of the year, none of them would ever change it because they would all go, "The other ones haven't changed yet, so we can't." So clearly there's a legislative change that's needed here to change that.

MR FITZGERALD: Have you had dialogue with the casino industry and if you have, what do you believe to be the justification for the retention of exemptions in Queensland, New South Wales and Victoria, for example?

MR SANDERS (ASH): One of our members, the Liquor, Hospitality and Miscellaneous Workers Union is very much involved in that neck of the woods and have many people working in gaming facilities and they are involved in negotiations all the time about various aspects of this and quite recently there's been, we understand, negotiations with the casino industry about the future of the smoke-free situation and we understand the industry has put the position of offering a kind of voluntary of opt-out provision which the LHMU feels and all of our organisations feel is an unacceptable situation. Again, the test would be: would you do this for something like airborne asbestos? Would you allow people, if they happened to feel particularly desperate and really need the work, to go, "Okay, I'll volunteer to work in a contaminated area"? That's what's involved here and it shouldn't be involved. I think there's purely a revenue concern kicking in here which is driving the slowness of this reform and the continuation of these exemptions.

MR FITZGERALD: But if your data is right in relation to, say, clubs, and pubs as well but particularly clubs, that over time it has minimal impact on revenue, why would they therefore continue to be concerned?

MR SANDERS (ASH): I think people will get touchy about even a temporary impact on revenue and they will try and defend that and argue for it. I think that's the reality.

MR FITZGERALD: If you look at Penrith Panthers in Sydney, which is as large as some of the casinos in the rest of Australia, I find it somewhat perplexing to understand why you would not exempt that large venue and you would exempt a casino when you look at it. So there must be another reason why we do that. Is it simply that as the tourism industry indicated to us yesterday, that any impediments that you put in the way of enjoyment would have a deleterious effect on our international and interstate trade of tourists?

MR SANDERS (ASH): I understand that those arguments have been made. I don't know to what extent their fears are justified. The trend towards smoke-free venues is a worldwide trend. It's not just happening in Australia, it's happening in all the other countries that people are coming from. There's been an awful lot of research indicating that patrons tend to be much more attracted to smoke-free venues than deterred by them. If the situation in the high-roller rooms is somehow dramatically and totally different from that - I doubt that it is as different as is being suggested - frankly, we always suspect the hand of the tobacco industry in these arguments behind the scenes. We know that the tobacco industry is very influential in the hospitality and gaming industry. We know that there are connections between hospitality associations and the tobacco industry, sponsorships and vending machine deals and all sorts of things going on and we think that influence is being felt and we think it is disproportionate to the real impact of these policies on those venues.

MR FITZGERALD: Just on that, you're not aware of any studies or research that would give greater strength to your argument for casinos to be exempted? There's been no studies of the impact on casinos where there have been smoke-free policies introduced, either in the three states that you've indicated or internationally? In other words, is there any robust evidence that rebuts the case put by the casinos for the exemption to continue?

MR SANDERS (ASH): Again we don't claim to say that there's no financial impact of smoke-free policies on specifically gaming venues.

MR FITZGERALD: Sure.

MR SANDERS (ASH): We accept that there has been an impact. We don't think that that justifies continuing those exemptions because when was it that we started to make a revenue argument for exempting somebody from an occupational health and safety responsibility? Again, would we do that with asbestos? Would we say to an asbestos company, "Okay, sorry, you might lose a bit of profit, therefore we'll allow you to continue. We'll allow you to say, 'We might knock out one wall and then put everybody back in asbestos-contaminated workplaces and make them work in there,'" or say that, "We're going to have some rooms that only rich punters from overseas can go into," but mind you, they will still be staffed. There's no good public health policy reason for making an exception for tobacco in these circumstances. It

is a toxic contaminant and it needs to be removed from all these workplaces. So we just feel that the health arguments need to be the overriding considerations.

We also point out that any money that people don't spend in a gaming area, the research shows pretty strongly that people spend that money somewhere else, so it's not money lost to the economy. It may be money lost from gaming but people spend it on other things.

MR FITZGERALD: My last point of clarification is at the present time, is it the case that if you work in a casino or other venue that has exemptions, it's only that workers have to voluntarily agree to work in those smoking environments or is there a requirement in those venues that don't have smoke-free policies that they have to work in those environments?

MR SANDERS (ASH): It would vary widely from venue to venue, I would think. There would be very, very many venues where it would just be accepted that if you worked in some pub or club that you just work in all areas. You have to understand that the nature of employment of a lot of people working in this whole sector is that a lot of these workers are casuals, contractors, people working in fairly low security situations and people who are very, very reluctant to make individual complaints about the conditions that they are working in, so that you get a situation where somebody who just needs the shifts and desperately needs the money is just going to bite their tongue and work wherever they are put and they won't raise a peep about the smoke hazard. I've spoken to people working in pubs and clubs who were just about crying with frustration at the situation and very worried about their health but they don't dare to raise their voices against it because they feel that one way or another the boss will find out where the complaint has come from and they might lose the job or the shift.

MR FITZGERALD: Can I ask this question: given that there has been some litigation both here and overseas in relation to passive smoking claims by employees of venues, why would employers continue to require workers to work in those venues? I can understand why they might say, "It's voluntary, you make that choice." But isn't the risk to employers too great now because of the potential duty of care arguments that have been mounted?

MR SANDERS (ASH): I think it's possible that some cynical people in a venue which has very large turnover and very high profits might see that as a blip on the radar. They go, "Oh, well, if we've got to make a half a million dollar payout once a year, okay, we can afford that rather than make this change." I don't know the details of that economics but I just wouldn't be giving the option. But certainly I think the risk of expensive lawsuits is only going to increase because people have become more and more aware about this issue and there are a lot of workers out there who are just losing patience with the slowness of the change and the slowness of the

reform.

MR FITZGERALD: Okay. Louise, anything else?

MS SYLVAN: No, thanks.

MR FITZGERALD: Thank you very much for that and we look forward to receiving the submission.

MR SANDERS (ASH): Thank you.

MR FITZGERALD: Our next participants are running late so we will just take a break. They are due to be here at 11.20 apparently.

MR FITZGERALD: If we could have our next participants, the Public Interest Advocacy Centre. If you could give your names, position and the organisation your represent and then your opening comments.

MS BAILEY (PIAC): Brenda Bailey, senior policy officer, Public Interest Advocacy Centre.

MS SIMPSON (PIAC): Elizabeth Simpson, solicitor at the Public Interest Advocacy Centre.

MS BAILEY (PIAC): Thank you for your invitation to speak today. The Public Interest Advocacy Centre is an independent non-profit law and policy organisation and PIAC identifies public interest issues to advocate for affected groups and individuals. Through the preparation of the submission on gambling to the Productivity Commission, PIAC identified potentially unsafe practises in the delivery of gaming products and deficient laws for protecting consumers. PIAC considers the matter of gambling products and the gaming industry as an issues of public interest due to the potential harm that can arise from the product and particularly the effect of the product on the most marginalised in our community.

In its submission PIAC sought to show how the community can be protected from adverse effects and how those with the least capacity to seek redress can seek justice when a provider fails to deliver the product in a responsible manner. Taken as a whole we believe the implementation of the recommendations in the Productivity Commission draft report would create a safer environment for consumers and their families. Today we had planned to go systematically through the draft recommendations but unfortunately, Lizzie, our solicitor from PIAC, has to leave at 12.00. So we're going to start with the draft recommendation number 8.2 because that is the question that we think we can provide the most expert advice on. If we start to run out of time, I can - because Lizzie has to go and I can't answer the legal questions - take questions on notice and then we will incorporate our responses into a written submission and then after we deal with 8.2 I will go back to a few of the other recommendations that we would like to comment on.

MS SIMPSON (PIAC): Beginning with the issue of whether a statutory cause of action should be introduced, PIAC strongly supports the commission's recommendations that government's need to enhance gamblers' capacity to obtain judicial redress against gambling providers that behave egregiously by introducing a statutory cause of action. PIAC is of the view that creating a statutory cause of action is consistent with the stated position of governments that the revenue, income and profits generated by the gambling industry must be balanced against the community's interest in protecting individuals against the harm caused by excessive gambling.

PIAC submits that the protections that currently exist to protect individuals from the harms of excessive gambling are inadequate. In particular, as we highlighted in our written submission to the commission, there is a void in the law in respect of providing adequate protection for individuals in case where a gambling provider has behaved particularly egregiously. The leading case on the duty of care that a gambling provider owes to a problem gambler is Reynolds v Katoomba RSL in 2001 in which we actually acted for Mr Reynolds. In that case the New South Wales Court of Appeal held that the RSL club did not owe a duty of care to the appellant, notwithstanding that the club was advised that the appellant was a problem gambler and was specifically requested both by Mr Reynolds and his family not to cash his cheques or extend him credit.

In rejecting that idea that the club was negligent towards the appellant, it was clear that the Court of Appeal was heavily influenced by notions of free will and autonomy and was, therefore, extremely reluctant to impose any liability on a gambling provider for losses suffered by the consumer. Indeed, the court said that, "Save in an extraordinary case, economic loss occasioned by gambling will not be accepted to be a form of loss for which the law permits recovery. " Furthermore, while the suggestion by Spigelman J in that case that there may be extraordinary cases that would allow for recovery, I suggest that may be some possibility in the future of finding an extraordinary case. Firstly, Spigelman J himself couldn't actually conceive of a particular case and, furthermore, if you look at both that decision and the facts of that decision and the subsequent decisions of Foroughi, Preston and so on. There hasn't actually been a decider case where anyone could actually mark out that territory of the extraordinary case.

So if you look at, for example, the case of Mr Reynolds, it was acknowledged by the Court of Appeal: (1) that he found it difficult, if not impossible to resist gambling, furthermore that the club was aware that Mr Reynolds had a gambling problem and finally that he had specifically asked that they not cash his cheques. However, the Court of Appeal said that neither the club's knowledge of his problem, nor his request made the club liable. Instead, the Court of Appeal said that at the end of the day there was nothing that prevented him from staying away from the club and, furthermore, that if he chose to cash his cheques he would do so essentially one way or another. If you look at, say, the case of Mr Foroughi, similarly, the fact that he continued to gamble notwithstanding that he was subject to an exclusion order that was essentially being breached by himself and that there was some evidence that the casino was aware of it, was again not sufficient to make his case extraordinary and again, the court was extremely reluctant to impose any kind of liability on the gambling provider.

So based on our experience of litigation in this area, including representing Mr Reynolds, we agree with the commission's assessment that:

> It is apparent that the courts will generally not find in favour of a problem gambler suing a venue for negligence, breach of statutory duty or unconscionable conduct other than in a prescribed and very narrow set of circumstances. Moreover, given the expense and time in litigation, very few gamblers will be in a position to take action against gambling venues in the first place.

Furthermore, while the commission noted in the report that as more and more cases come before the courts the potential circumstances that gamblers are able to seek redress will be clarified and this in turn will create specific incentives for venues to respond appropriately. PIAC is concerned that the development of the law so that it adequately protects those exceptional cases such as people with a mental illness who gamble partly because of other problems that they may have may take a long time, if it ever actually happens at all.

The issue of problem gambling in Australia is not new and yet there are remarkably few decisions, let alone successful cases. We do believe that the fact that there are now extremely low prospects for litigants bringing it means they are unlikely to want to bring it. There are other problems associated with the expense and time of litigation and also when one looks at the interlocutory decisions, there does appear to be a bit of a pattern of cases being settled before they reach final decisions which all makes it very difficult to develop the law in this area. As a result, we strongly support the recommendation of introducing a statutory cause of action.

This brings us to the third reason for supporting the introduction of a statutory cause of action, namely that it would provide greater certainty and uniformity by clarifying the rights and responsibilities of all the parties. In so doing it would not only provide consumers with better protection, but it would also assist gambling venues and other providers to understand the scope of their obligations allowing them to predict whether or not their conduct would give rise to legal liability and allowing them to put in place adequate procedures to minimise the risk of breaches.

Finally, we believe that ensuring that there is adequate protection for consumers is particularly serious when one bears in mind that there are a number of very vulnerable groups in the community that are particularly likely to become problem gamblers, including indigenous Australians, young people, people with intellectual and physical disabilities and low income earners. As we set out in our submission the rates of problem gambling among these groups is extremely high and given their vulnerability it is extremely concerning that there aren't better forms of protection in the law for these individuals.

Turning to the second issue of what criteria should be used to define the statutory cause of action, I only propose today to make a number of preliminary

points but what we'd like to do is put in more detail in our follow-up submissions to the commission about this issue. I think starting from what kind of precedents can be used, there are a number of useful precedents out there that governments could use. In particular, there has been recent proposals by both the Australian Law Reform Commission and the New South Wales Law Reform Commission to introduce a statutory cause of action for breach of privacy that could be usefully considered and potentially amended and modified.

Turning to the question of how to define the cause of action, we agree with the commission's preliminary view that the cause of action should be limited to those cases where it is established that a gambling provider has behaved egregiously. In particular, if you look at, for example, the New South Wales law reform model for an action for invasion of privacy, there has been a preferred approach of adopting a general definition of a cause of action and then providing a non-exhaustive list to give some sense of what we're talking. Again, PIAC believes that the types of situations that the commission has set out in their report at 8.23 will be a very useful starting point for that non-exhaustive list of the types of egregious behaviour which should attract some form of compensation.

Additionally, PIAC believes that a gambling provider should be in breach of a statutory cause of action when it fails to remove a person from a casino or other venue when it becomes aware that that person is on the premises and is subject to an exclusion order and then the gambling provider or venue fails to do anything to actually physically exclude or remove that person or engage them at all.

The other issue that we thought we would just make a couple of quick comments about was that the focus of the cause of action should be on the actions of the provider and not simply limited to those cases where perhaps the provider is alerted to the fact that the consumer suffers from a particular vulnerability. We think that's more consistent with the kind of compliance regime that we're talking about and trying to match up a form of compensation and a compliance regime because it does still continue to focus on the actions of the provider rather than on the particular vulnerabilities, if there are any, of the consumer.

Finally, we also believe that a statutory cause of action for egregious behaviour shouldn't be limited to intentional acts but should be extended to, at the very least, reckless if not negligent acts. There is no doubt that a person or a provider that deliberately and wilfully engages in egregious behaviours toward problem gamblers should be liable. However, limited liability to intentional acts would narrow the scope of the cause of action unacceptably. PIAC is of the view that it should at the very least extend to reckless acts; for example, where a gambling venue deliberately ignores a risk of harmless consequences arising from an action or fails to give any thoughts to such a risk. So, for example, if there is a regime of exclusion orders and no training is given to any staff as to what to do to deal with people who come in but

are already subject to exclusion orders - for example, as to how to remove them or how to deal with them - then that may be sufficiently reckless that if it's then shown that someone is continuing to gamble, notwithstanding that they're subject to an exclusion order, that that perhaps then suggests that they should be liable under a statutory cause of action.

The other reason that we believe that it should extent do, at the very last, reckless if not negligent acts, is that many systemic breaches by gambling venues and providers are often due to more reckless behaviour and negligent acts rather than intentional acts. For example, inadequate screening procedures to exclude a person is more likely to be a reckless oversight rather than a very intentional or deliberate decision on behalf of the provider. Restricting liability to intentional acts only could discourage organisations from taking steps to ensure that their harm minimisation strategies are actually adequate and may even encourage indifference to the issue.

Finally, while PIAC agrees that a statutory cause of action should allow the plaintiff to obtain damages for a loss, PIAC submits that additionally the action should include potentially a possibility of introducing non-monetary remedies, such as giving courts or tribunals a power to order implementation of a policy or procedure to protect against a repetition of a breach. A precedent for that can be found in section 108(2)(e) of the Anti-Discrimination Act New South Wales which allows the ADT to order a respondent in a discrimination complaint to actually develop or implement a policy to eliminate discrimination in the future, so looking forward as well as looking simply at the issue of damages. Thank you.

MR FITZGERALD: Thanks very much for that. I know you're going to comment on some of the other recommendations but can I just deal with this: one of the constant themes I think we hear is that where a venue is aware that a person is breaching a self-exclusion order - and it seems to me that that particular event is one that we hear about occurring on a more regular basis than others - can I just ask, should the starting point be in fact that self-exclusions should in fact have a statutory penalty attached to it? In some jurisdictions this is the case, that if a problem gambler self-identifies as such and excludes, then in fact if the venue does in fact allow that person back in, there is a statutory breach. So whilst we've indicated a strengthening of the self-exclusion regime and this statutory cause of action, some might say that what you need to do is simply improve the self-exclusion regime; if the penalties were increased for that, then a large number of the cases that you might contemplate under a statutory cause of action would not be required.

MS SIMPSON (PIAC): I'm certainly familiar with the statutory penalty under the New South Wales Casino Control Act and certainly in relation to self-exclusion orders, the penalty actually only is imposed on the individual gambler, rather than on the casino. There is some distinction with non-voluntary exclusion orders in New South Wales but the reality is the penalty still tends to be stronger for the individual

than the casino provider. Certainly the feedback we've had from individuals who have approached us about this very issue is that it's simply not enforced and not only is the actual terms of the order not enforced but that also the penalty is not enforced.

I think the concern that we have about increasing penalties rather than offering opportunities to individuals to perhaps pursue a statutory cause of action is that once it's simply a penalty regime, it actually no longer involves the individual. So if I compare it to a Trade Practices type situation, for example, once you make a complaint to ASIC, ASIC can pursue the matter and can impose a penalty, an offence and so on. What our experience of that is and the problem that we find with our individuals in that situation is they're not actually involved and they quickly unfortunately dropped out of the scenario and so they often don't even get feedback about what has happened to the provider. They are very rarely involved in the decision-making process, often, as I say, unaware of what happens. So they still actually end up quite separate and very rarely is their situation actually taken into account.

MS SYLVAN: If I can just follow that up, in opposing a statutory cause of action, it's been put to us that first of all, it's not necessary to discipline the providers because things are going reasonably well and they're taking their responsibilities more seriously, but putting that to one side - and that may well be the case for many venues - but a regime that doesn't involve litigation would be far preferable and that the alternative there would be for the gambling regulator to be able to fine, where the purpose is to discipline the provider. The second purpose of the statutory cause of action was compensation for the gambler and that an alternative would be for the gambling regulator to be able to not only fine the provider but to direct part of that fine to the consumer in compensation and that would be preferably a non-litigious way of dealing perhaps more effectively with egregious behaviour on the part of a provider. Now, you haven't had any notice of that but it's an interesting alternative. Would you give me an initial view on that?

MS SIMPSON (PIAC): In relation to the idea that it's not necessary, I wonder if I could tell you quickly about our case study that particularly deals with the issue about exclusion orders and how effective or ineffective they are and where they're leaving some particular consumers. We were actually approached late last year by an individual and I'll call him John for the purposes of today. He suffered from severe schizophrenia and obsessive compulsive disorder and as a result was on a disability support pension. He in about 2005 began regularly attending Star City casino with his friends and quickly developed quite an obsessive habit on the roulette tables. He in 2006 lost $3000 in one session and as a result, when he talked to his doctor, because he was very distressed, the doctor actually wrote to the casino and asked that he be excluded. When John was approached about the issue, he didn't want to exclude himself and so Star City in that situation made a non-voluntary exclusion order against him. From that time, from 2006 to 2008, on over 30 occasions at least -

so almost once every couple of weeks - John would continue to go back into the casino and continue to lose money.

There were actually incidents where he was clearly approached by staff so staff recognised him, there were occasions where staff had even mentioned that he should leave but didn't follow that through. So it was clear that there was also a level of awareness by the casino that he was breaching the order and in fact at one stage he was written to to say, "Please stop breaching the order." They didn't actually do anything else, no penalty was imposed on himself or the provider but he was told not to in correspondence but that's as far as it went. So clearly there was a gap where this exclusion order wasn't working. As a result he lost $40,000 which doesn't seem like a lot of money when you compare it to the bigger commercial cases but when you think about the fact that that was all his savings and he was on a disability support pension, that was quite serious in his particular case.

However, given the state of the law John wasn't able to pursue any form of action and beyond going to counselling hasn't actually been able to get any other kind of redress in the situation. So I guess in relation to the idea that there is no need to deal with the situation and that it's been adequately dealt with, I think something like John's case really strongly suggests otherwise and that's not the only case we've had people come to us with concerns they have about vulnerable people in the community who are gambling, who are problem gamblers and just can't get adequate protection under the law or any kind of compensation.

MS SYLVAN: If the providers don't believe it's necessary, why would they be concerned about it because they're not risking anything. The other thing, it's about the level playing field as well. If there are providers who are using resources to remain compliant and be responsible providers, it seems a bit uneven that you can basically get away with any other action and there will be no recourse, there will be no penalty or certainly not penalties that will be enforced.

MR FITZGERALD: Just to pursue Louise's issue a bit further if I can. If you were to in fact increase the penalties for the provider, in this case the casino, and that the regulator obviously enforces those penalties, it assumes, of course, that the regulator would act. But putting aside and that will be different across the jurisdictions, would that not induce behavioural change on the parts to the providers? In a sense what we're trying to do, I suppose, is to get providers to change their behaviours, to enforce the exclusion orders and to recognise that where someone is particular harm-inducing behaviours, stop that so I just want to go through it.

As Louise said, the opponents to our suggestion would say that our suggestion is complex, it's not going to be accessed very much. It changes the duty of care. But a statutory intervention might be a cleaner, simpler but also reasonably effective way of getting behavioural change. Louise's option of allowing a fine to come back

potentially to the gambler may provide some sort of compensatory mechanism, and I appreciate not to the same extent that a successful litigation might. But I was wondering if we could just explore that a little bit further; or are they in fact not mutually exclusive, you could do both.

MS SIMPSON (PIAC): We will certainly have a bit more of a think about this, but I don't imagine that we would say they'd be mutually exclusive. Certainly it's often useful to have a number of different ways of achieving compliance. If you look at Consumer Protection for example, there is a regime where you have fines and you have causes of action. So I don't think that we'd say they're mutually exclusive and you have to choose one over the other.

As far as the simplicity or complexity that a cause of action would introduce, to a certain extent that depends on the legislation. If, for example, people worried that you were going to have too many cases, I mean, you create a narrow cause of action. Similarly, if you want to make it relatively simple, you do things like set out a non-exhaustive list that clarified the law, and in many ways that's no more complicated than having a fine situation, because you still have to go through the elements of proving various things to impose a penalty and a fine situation.

So I'm not sure that it is introducing another layer of complexity into the situation. But it may perhaps provide that stronger incentive, because certainly if a statutory cause of action didn't have a cap you're much more likely in litigation potentially, depending on the circumstances, for a litigant to be asking for a bigger amount of compensation, which is always going to be more of an incentive to deal with a situation, as opposed to a penalty, which may well be capped, and particularly probably the amount of compensation that you would pass on to an individual would also probably be quite minimal.

MR FITZGERALD: Can I go back to a comment that you made and it arises from the Reynolds v Katoomba RSL. Are we in a state where the courts are failing to understand the way in which gamblers, problem gamblers in particular, behave? In other words, there is an assumption about problem gamblers and their ability to make choice that is not understood fully by the courts and that will further develop over time. So the current reluctance to hold venues accountable is simply a timing problem - that is, that the evolution of knowledge is not sufficient; or do you actually that there's ingrained legal principles at work that would for a very long period of time into the future preclude successful actions in this area?

MS BAILEY (PIAC): There's too many precedents now.

MS SIMPSON (PIAC): Yes, I think that the difficulty that a litigant would face now bringing action is that there is quite a strong precedent now, particularly the Reynolds case, but Foroughi as well, which sets the bar very, very high to try to

carve out that extraordinary case. In the case of Reynolds the court actually accepted that there was psychological evidence that he had an addiction to gambling; that wasn't regarded as sufficient, and so on. So we think that the precedent has been set really very high for most litigants to be prepared to take any form of litigation. The other decision such as Preston and Kakavas are very interesting because they're interlocutory decisions which seem a little bit more promising but they are interlocutory which is very different. All that was said in those cases by the court is, "This is an open question. We won't knock it out immediately." The other interesting thing is that those cases didn't go any further which suggests that perhaps other things are happening to make sure that the cases that might lead to a different precedent aren't going to actually get there.

MR FITZGERALD: Is there any sense that you have that the cases regarding alcohol, tobacco and gambling are all being treated in the same way or is there a sense that in the cases for the gambling the threshold is higher than in relation to either alcohol or tobacco usages and are they helpful in fact looking at the other two areas or not really? I suppose that's come up because of the most recent decision in relation to the incident - I think it was in Tasmania, wasn't it?

MS SIMPSON (PIAC): Yes.

MR FITZGERALD: Whether that's relevant or not, I have no idea because we haven't studied that case but there seems to be a bit of a view that we should be learning from both tobacco and alcohol cases. But there's also a bit of a view that when you get to gambling there's a greater reluctance to accept - not that the harm is caused, but that the harm is caused providers largely around this issue of free choice, the choice to gamble or not to gamble.

MS SIMPSON (PIAC): I haven't had an opportunity either to properly look at that case in Tasmania. I would actually like to before I make any comments so perhaps I can take that on notice.

MR FITZGERALD: Yes, good. We will look forward very much to the submission about this area. As we have indicated, we have a general direction and obviously over the coming days of hearings we will get substantially more commentary, particularly from the industry about that recommendation. The question for us is if we proceed to recommend that in the final report, how do you operationalise it. So whilst I think the draft set out a direction, I think we're still struggling to work out how you actually operationalise that. You said that you had comments on some of the other recommendations too.

MS BAILEY (PIAC): Yes. Going backwards again to 8.1 about complaints handling - and in a way I suppose this is the other part of protecting consumers, is where action should be able to be taken against a provider regardless of the level of

harm or whether harm is being caused or not, but that there are certain behaviours and compliance regimes that providers should comply with and if they're not, who takes that action and what should be the penalty for that.

But first of all, going back to basics, the recommendations that you had about the form that a complaints process should take, that's particularly encouraging and particularly in New South Wales where we find that it's extremely weak. PIAC has done a lot of work on the general issue about complaint processes recently because the Commonwealth government has been looking at aged care and the state government has been looking at the health complaints, the Health Complaints Commission. So we have had a bit of time to really look at the characteristics of what makes a good complaint system. In a moment I will just go through those characteristics that we have identified.

But in terms of a structural mechanism, the Health Complaints Commission and the Aged Care Complaints Commission are both independent and they could be models that could be looked at by states and also in New South Wales there's EWON, the Energy and Water Ombudsman, which is industry based. So there are other industry based complaint systems, not all of them are as effective but the one in New South Wales, EWON, is particularly so. So it would require a bit of examination as to why that is and others aren't. But it should provide the incentive, if it's industry-funded that they have a reason to resolve complaints and also to reduce the complaints if they paying because the amount that they have to pay increases for the number of complaints they have.

MS SYLVAN: Can I just ask in relation to your characteristics, have you found a difference between the industry-funded bodies that are required by levy - in other words, they're statutorily based as opposed to something like the TIO as distinct from, for instance, the Banking and Investment Services Ombudsman?

MS BAILEY (PIAC): We have a special project that looks after consumer issues in electricity and water and utilities generally and I asked them about this and the problem with comparing one with the other is that if you look at the industry based services on their own, not all of them are effective. So why EWON is and others are not, it doesn't necessarily make it successful because it's industry based so there are other things going on but as a principle if - well, it's just using logic that that would happen. In our discussions with people in our area that work on this area we started to think that possibly it has more to do with the initial legislation of what the providers can and can't do and what they can be challenged on.

There are more controls over, for example, the transfer between providers in electricity provision than there is in telecommunications so therefore if you make a complaint to the telecommunications commission about the changeover from one provider to another but it's not going to go very far whereas in the realm of electricity

which came later and learnt from those other regimes, you're more likely to get some attention and some action. So in itself being paid for by the industry is not necessarily in itself a solution.

The other question you raised was about what the penalties could be. We were looking at other industries where essentially they're very capital intensive and the regulator is not going to close them down. A broadcasting authority is not going to close down a television station. A disability funder is not going to close down a service that provides lots of nursing homes or lots of disability services. It's just not going to happen. But there are a set of financial penalties which will certainly be a deterrent. So I would say there are examples of penalties in other pieces of legislation that could be drawn upon.

MS SYLVAN: Just in relation to that, what you're basically saying is that one factors in successful complaints handling and appropriate discipline of an industry is that there is a hierarchy present and corporate capital punishment is very rarely used.

MS BAILEY (PIAC): That's right.

MS SYLVAN: So the John Braithwaite model, a whole set of hierarchy, going up the hierarchy if you were disciplining over and over and over again.

MS BAILEY (PIAC): That's right. But, of course, you need a structure that's independent that can take that action. In New South Wales we don't have that.

MR FITZGERALD: Just on that, one of the points that has been raised to us is that lack of hierarchy of penalties means that the regulators never act because the ultimate penalty is removal of a licence and that, as you said, is unlikely to occur particularly in relation to one or two incidents. But the question about just this structure, a dilemma that I have in relation to this is we don't know what the level of complaints would be. In relation to the utilities that you have described we could have anticipated and we know in practice they're very high and largely they're about billing and pricing and a number of related issues.

I suppose one of the concerns I would have is recommending the establishment of an independent body given that we have really no sense of what the level of complaint would be. So I suppose our view was that whilst we understand the weaknesses that are exhibited in some regulators, I suppose our view was that at least in the first instance it should be a function within the regulator itself. I think we understand why you might not do that in a number of cases. But really it's an unknown because there is really no effective complaint handling processes in place.

MS BAILEY (PIAC): We did turn our minds to that issue as well in terms of where would it be placed. 10 years ago the Productivity Commission made a number

of recommendations around the separation of the regulatory and policy processes and so on.

MR FITZGERALD: Yes.

MS BAILEY (PIAC): In New South Wales that definitely hasn't happened. So if that happened, even if it was as simple as to remove the complaint process to, say, Fair Trading, to somehow separate the process, to remove it from the body which is the supporter and promoter of the industry, would have to be one small step, particularly in New South Wales, that would support consumers.

MR FITZGERALD: If you could explain to me again where the concerns in the New South Wales model are. We've made some further comments in the draft report in relation to governance and, you're right, in 1999 we set out a framework for better governance. I might say many of the states seemed to have taken that on board and some haven't. But in the New South Wales context in particular, what do you see as the greatest weakness in their current governance arrangements?

MS BAILEY (PIAC): I will just go through the five points that we have developed and I don't believe that to any extent New South Wales would meet these. So the first one is that the organisation authority - affects the rights of individuals - should have clearly defined powers and be accountable. There needs to be separate reporting, public reporting of complaint processes. There is a clear separation of the role of the regulator, regulation of accreditation, standards setting matters from the role of assessment, investigation and prosecution of disciplinary performance. So again that goes back to the other point. Assessment, investigation and prosecution should be carried out by an independent body that employs dedicated officers to carry out these tasks. So not the inspectors that are used to going and looking and how many people you can fit into a club, the regular - if you look at the number of offences in New South Wales they're usually around delivery of alcohol and the number of people you can or can't fit into a venue.

There should be no potential for perception by consumers that the system is structured is so that the providers can protect themselves at the expense of protecting the public interest in individual service. Justice has to be seen to be done and again it gets back to that including everything under the one roof, that there's no perception that there's any separation. The process to determine complaints should comply with the rules of procedural fairness and be conducted in an open and transparent manner. Written reasons should be provided for all decisions or hearings. It may not be a hearing but if hearings occur, it should be open unless there is a compelling reason for them not to be and all parties, including complainants, the notifier should have a right to request a review of the decision which is conducted at arm's length from the decision-maker. So no industry should be on any decision-making panel or even to the extent of advisory panels.

So, for example, just moving on a bit, when there's a recommendation about research and advisory panel suggesting that industry should be on that panel. I would say they should be consulted but they shouldn't be part of that decision-making process. There's a clear conflict of interest. I think what Lizzie was saying before, if you want to take up that example about where the consumer is removed from that complaints process. So there's no transparent process, you have no idea what's happened to your complaint.

MS SIMPSON (PIAC): I think the difficulty sometimes that we've found with non-litigious matters is it always seems to have all the advantages of efficiency, speedier, less formal and so on but actually sometimes we find that our clients in a sense become really disenfranchised from the process because the lack of formality, the lack of procedural fairness, the lack of rules means that they can be cut out inadvertently often, I would say, rather than deliberately. But they can be inadvertently cut out quite quickly so in a sense their complaint can be accepted and often that can be it. Sometimes they may be told at the end what's happened to their complaint but sometimes they might not even ever be told what happens to the complaint. In some cases they can actually be told that it's not appropriate for them to be told what happened at the end of the complaint because the complaint is about the provider rather than about the individual.

So sometimes they are told that under statutes they don't actually have any rights to be told the outcome of the decision because it's not about them, it's much more about the provider and clients find that very difficult to understand to a certain extent because they do feel that if they bought a complaint about their situation that they should, at the very least, be told what happens. So it becomes quite often very untransparent from the client's point of view and then often they're told that they can't make submissions because again it's the regulator who is looking into the situation rather than the individual making complaints. So sometimes they do find themselves quite shut out of the process and kind of a bit bewildered at the end of it as to how their complaints became someone else's complaint.

MR FITZGERALD: I must say I share the complainants' concerns. If nobody tells you what happened to them, that is a bit problematic.

MS BAILEY (PIAC): Did you have any more questions about that?

MR FITZGERALD: No. We've only got about another five minutes so if you just want to target on any of the other recommendations that would be fine.

MS BAILEY (PIAC): Just the last one, chapter 14, the regulatory process in institutions, particularly in New South Wales I think if those fundamental structures are not in place it will be difficult to implement anything under the other

recommendations, particularly the ones that we've referred to. I mentioned before the issue about separating those with a conflict of interest with particular bodies, whether it's research or compliance issues. The other issue, and I'll just finish on this one, is about consumer representation. PIAC, as I mentioned before, we're funded to have a utilities project which doesn't deal directly with consumers but because it's such a complex issue it provides resources to employ people to get across the legislation, to be able to make submissions to be that expert consumer on committees at hearings and so on and in New South Wales there is nothing comparable to do with gambling which is an area which is still developing. It's quite complex to get ahead and to keep up to date with all of that.

PIAC ourselves were struggling to find the resources to make this submission and it was only because of a good budgetary position that we had last year that we were able to spend nearly $10,000 on employing some expert advice because we don't have experts in psychology and we had to bring that in to help us to look at the evidence in order to write that submission. In another year we might not have been able to do that and we would have had a much more limited submission. I'm not necessarily putting up PIAC's hand to be able to do this but there would be other organisations such as NCOSS which would be better placed to provide that expertise, but they need to be funded for it. So with all of the structure and the regulatory processes and so on, there needs to be some consumer representation and it needs to be paid for.

MR FITZGERALD: Do you know whether or not in New South Wales the Casino Community Benefit Fund would be available for consumer activity or it outside of its terms of reference?

MS BAILEY (PIAC): I would be speaking not as an expert in this area, but my understanding is that it's for research and treatment services.

MR FITZGERALD: Not general advocacy.

MS BAILEY (PIAC): Yes. But that's not our area of expertise so the trust deeds would probably have to be altered.

MR FITZGERALD: Thanks for that. The issue about consumer representation is an issue. I think we have some comments in the report about that but no substantive recommendations. Even in both the 1999 and this inquiry it is difficult to get the consumer's view put in a strong way, although we have had representation from consumer groups in both inquiries but we understand that. What the method by which that can be addressed is a much more tricky issue for us, so if you have any suggestions about how the consumer voice can be better heard through research or through advocacy or through direct support, we'd be interested in those. So we're conscious of it but I don't think we've got a clear way forward.

MS BAILEY (PIAC): I'm not sure where the funding would come from but I would certainly look at our model for EWCAP which is the Energy and Water Consumers Advocacy Program as being a model but I don't know how it would be funded.

MR FITZGERALD: That's in New South Wales?

MS SYLVAN: It's New South Wales.

MS BAILEY (PIAC): But the model would work nationally or in any other state.

MR FITZGERALD: Any other final comments? Louise, questions?

MS SYLVAN: No.

MR FITZGERALD: All right. Thank you very much for that and we do very much look forward to the full written submission, particularly in relation to the statutory duty of care or statutory cause of action and some of the other issues. The other one we would be keen to get is how we can strength and improve the self-exclusion regime, including in relation to the whether or not there needs to be different penalties or provisions that might make that a more effective regime across the groups.

MS BAILEY (PIAC): Thank you.

MR FITZGERALD: That concludes this morning's hearings but if anyone else would like to make a presentation, they're entitled to do so at this time. If not, we'll adjourn until next Monday where we will recommence hearings in Melbourne and then on Tuesday in Adelaide and the following week in Canberra. Thank you very much.

AT 12.02 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 7 DECEMBER 2009