



Independent Gambling Authority

**Inquiry into an allegation of
betting with a child**

Report for publication

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1. In this matter the Authority is concerned with the subject matter of a complaint made by FA to the effect that the SA TAB Pty Ltd (“SA TAB”), the holder of the major betting operations licence, had through its agencies accepted bets from his son AA who was, at the time, said to have been a minor.
2. By section 43(a) of the *Authorised Betting Operations Act 2000* (under which the major betting operations licence is granted), it is a condition of the licence held by SA TAB to conduct its business that it will not accept or offer to accept a bet from a child. Section 67(1)(a) of that Act makes it a statutory default for the purpose of Part 6 of the Act if a licensee contravenes or fails to comply with a condition of the licence. If there were a statutory default disciplinary action could be taken against a licensee.
3. In order to establish the factual basis for determining whether a statutory default had occurred, the Authority determined to hold an inquiry, under powers made available to the Authority by sections 13 to 15 of the *Independent Gambling Authority Act 1995*. A notice (the “inquiry notice”), setting out the terms of reference for the Inquiry, was given to SA TAB on 20 December 2002. The inquiry notice, omitting formalities stated:

Recitals

- A. Section 13(1)(a) of the *Independent Gambling Authority Act 1995* provides for the Independent Gambling Authority (“Authority”) to hold an inquiry whenever it considers it necessary or desirable to do so for the purpose of carrying out its functions.
- B. The functions of the Authority include determining, for the purposes of Part 6 of the *Authorised Betting Operations Act 2000* (“Betting Operations Act”), whether a statutory default has occurred.
- C. SA TAB is the holder of the major betting operations licence granted under Part 2 of the Betting Operations Act and is, for the purposes of Part 6 of the Betting Operations Act, a licensee.
- D. The Authority has information suggesting that on one or more occasions SA TAB has accepted a bet from a child. SA TAB has been supplied with a report from the Liquor and Gambling Commissioner and transcripts of interviews comprising that information.
- E. Section 43 of the Betting Operations Act makes it a condition of the major betting operations licence that the licensee must not accept or offer to accept a bet from a child and section 67(1)(a) of the Act makes it a statutory default for the purposes of Part 6 if the licensee contravenes or fails to comply with a condition of the licence.

Terms of reference

1. General scope

The inquiry must identify whether there has been a statutory default in the form of a breach or contravention of the licence condition imposed by section 43(a) of the Betting Operations Act Act by reason of SA TAB accepting a bet from *AA* between 24 May 2002 and 26 May 2002.

2. Specific issues

The following matters will require particular examination:

- (a) whether *AA* was aged under 18 between 24 May 2002 and 26 May 2002;
- (b) if yes to paragraph (a), whether one or more transactions took place between SA TAB or SA TAB and its agents on the one part and *AA* on the other at the places, on or about the times and for the amounts detailed in Schedule 1;
- (c) in respect of any transaction having been found to take place for the purposes of paragraph (b), whether the transaction gave rise to the acceptance of a bet from *AA*.

Schedule 1

	<i>Place</i>	<i>Date</i>	<i>Time</i>	<i>Bet amount</i>
1.	<i>Hotel Y</i> agency	24 May 2002	5.30 pm	\$500
2.	<i>Agency 1</i> agency	25 May 2002	11.15 am	\$1 000
3.	<i>Hotel Y</i> agency	25 May 2002	6.00 pm	\$1 000
4.	<i>Hotel Z</i> agency	25 May 2002	7.00 pm	\$1 000
5.	<i>Agency 2</i> agency	25 May 2002	7.00 pm	\$1 000
6.	<i>Agency 2</i> agency	25 May 2002	7.00 pm	\$1 000
7.	<i>Agency 1</i> agency	25 May 2002	7.20 pm	\$1 000
8.	<i>Agency 1</i> agency	25 May 2002	7.20 pm	\$1 000
9.	<i>Agency 1</i> agency	25 May 2002	7.20 pm	\$1 000
10.	<i>Agency 1</i> agency	25 May 2002	7.20 pm	\$1 000
11.	<i>Agency 1</i> agency	25 May 2002	7.20 pm	\$1 000
12.	<i>Agency 1</i> agency	25 May 2002	7.20 pm	\$900
13.	<i>Hotel Y</i> agency	26 May 2002	12.30 pm	\$2 000
14.	<i>Hotel Y</i> agency	26 May 2002	12.30 pm	\$2 000
15.	<i>Hotel Y</i> agency	26 May 2002	12.30 pm	\$2 000
16.	<i>Hotel Y</i> agency	26 May 2002	12.30 pm	\$2 000
17.	<i>Hotel Y</i> agency	26 May 2002	12.30 pm	\$2 000

Notes

1. Times are quoted on an "on or about" basis and relate to the statements made by *AA*

when interviewed. There are differences between these times and the times of bets derived from inspection of SA TAB records.

2. Different bets shown as being accepted at the same time are listed in the order in which, from inspection of SA TAB records, they were apparently made.
3. Bet No. 9 relates to a bet cancelled after being accepted (but before the event to which it related commenced).

The terms of reference have not been amended or altered in any way.

4. In the first instance *FA* complained to the Office of the Liquor and Gambling Commissioner. He did so on 31 May 2002. Officers investigated, though without the assistance of a legal officer, so we were told by the officers themselves. In his report dated 31 August 2002, the Commissioner said that the matter was “inconclusive” because of “conflicting evidence between the parties” and that as a consequence he would not investigate further but would recommend that a condition be placed on SA TAB’s licence requiring video surveillance of all terminals. The Commissioner seems to have made this recommendation to the Authority but with his advice that if a condition were to be so placed SA TAB be given an opportunity to make “representations on my recommendation”.
5. It is not clear from his report what statutory or other basis underpinned the investigation; nor is it clear what basis there was for a report to the Authority or for the recommendation. Certainly on the basis of the evidence gathered and the report itself, it would not be possible to implement the Commissioner’s recommendation.
6. Compliance with licence conditions is a matter of fundamental importance to the Authority. Under the Regulatory Charter the Authority is required to ensure that compliance is secured but the Authority is to achieve that objective in the first instance through the Office of the Commissioner. This means that many complaints and grievances in the first instance go to the Office of the Commissioner; only if the Commissioner perceives a problem do they find their way to the Authority. The Authority receives monthly reports from the Commissioner but these do not always contain references to matters which would need to be examined by the Authority.
7. In summary, the complaint before the Commissioner alleged that staff at a number of SA TAB agencies had received bets from AA on Friday 24 May 2002, Saturday 25

May 2002 and Sunday 26 May 2002 while he was a minor. The Commissioner's investigators conducted interviews involving the following people:

<i>CC</i>	employee of <i>Hotel Z</i> ;
<i>DD</i>	commissioned agent— <i>Agency 1 TAB agency</i> ;
<i>MA</i>	mother of <i>AA</i> , present during and participated in interviews conducted on 5 June and 8 August 2002;
<i>FA</i>	father of <i>AA</i> , present during and participated in interviews conducted on 5 June and 8 August 2002;
<i>AA</i>	interviewed on 5 June and 8 August 2002, with solicitor <i>GG</i> present (on 5 June 2002 only) and both parents also present (both occasions);
<i>EE</i>	employee of <i>Hotel Y</i> ;
<i>GG</i>	solicitor retained by family of <i>AA</i> , present during and participated in interview conducted on 5 June 2002;
<i>HH</i>	commissioned agent— <i>Agency 2 TAB agency</i> ;
<i>JJ</i>	employee of <i>Hotel Y</i> (manager);
<i>LL</i>	employee of <i>Hotel Y</i> ;
<i>NN</i>	employee of <i>Hotel Y</i> .

They also attempted to have staff who took the bets give identification evidence as to who it was that placed the bets. This was done by presenting the counter staff with a series of photographs. The problems with this approach are apparent. First, the exercise was not undertaken until some two weeks after the events which are the subject of the complaint. Secondly, the method adopted did not ensure that there were photographs of *AA* both at the time of the alleged events and at the time of the identification exercise. There was some suggestion from the investigators that his appearance had changed. There was also the difficulty that the manner in which the questions were asked was not neutral. Perhaps the most serious problem with the identification process was that those who were asked to make the identifications would have been conscious that if they did identify *AA* as the person who placed the

bets they might be implicated themselves in a breach of the licence condition and that this might in turn affect their employment. In some cases, managers were present when employees were interviewed.

8. It is well established that once an identification exercise has been tried, there will be a reluctance on the part of Courts to receive evidence of a second attempt with the same witnesses; see *Alexander v The Queen* (1981) 145 CLR 395. Having considered the matter the Authority decided not to seek to have a second attempt made and did not receive the evidence of the exercise undertaken by the investigators as evidence of the truth or accuracy of what might have been said by the witnesses about the photographs they were shown.
9. The records of interviews conducted by the Commissioner's investigators formed part of the material before the Commissioner as did the SA TAB records showing certain bets placed at *Hotel Y* and *Hotel Z* and the *Agency 1* and *Agency 2* TAB agencies. The recorded bets were as follows:

<i>Place</i>	<i>Date</i>	<i>Time</i>	<i>Bet amount</i>
1. <i>Hotel Y</i> agency	24 May 2002	15:54'24"	\$500
2. <i>Agency 1</i> agency	25 May 2002	11:13'31"	\$1 000
3. <i>Hotel Y</i> agency	25 May 2002	16:50'55"	\$1 000
4. <i>Hotel Z</i> agency	25 May 2002	16:58'42"	\$1 000
5. <i>Agency 2</i> agency	25 May 2002	17:03'03"	\$1 000
6. <i>Agency 2</i> agency	25 May 2002	17:03'08"	\$1 000
7. <i>Agency 1</i> agency	25 May 2002	17:21'15"	\$1 000
8. <i>Agency 1</i> agency	25 May 2002	17:21'20"	\$1 000
9. <i>Agency 1</i> agency	25 May 2002	17:23'06"	\$1 000
10. <i>Agency 1</i> agency	25 May 2002	17:23'12"	\$1 000
11. <i>Agency 1</i> agency	25 May 2002	17:23'17"	\$1 000
12. <i>Agency 1</i> agency	25 May 2002	17:24'38"	\$900
13. <i>Hotel Y</i> agency	26 May 2002	13:22'19"	\$2 000
14. <i>Hotel Y</i> agency	26 May 2002	13:22'24"	\$2 000
15. <i>Hotel Y</i> agency	26 May 2002	13:22'31"	\$2 000
16. <i>Hotel Y</i> agency	26 May 2002	13:26'00"	\$2 000
17. <i>Hotel Y</i> agency	26 May 2002	13:26'04"	\$2 000

10. We determined to receive those records of interview, though not the evidence of the identification exercises, other than as evidence that those exercises had taken place.
11. The records of interview and other evidence disclose the following uncontroversial matters:
 - (1) AA was born on 23 April 1985. He has an older brother and sister. His parents are MA and FA. The family lived together at *[address omitted]* at the time of the alleged events.
 - (2) At the time of the alleged events, i.e. 24, 25 and 26 May 2002, AA was a minor and SA TAB was not permitted to offer or receive bets from him.
 - (3) AA's parents both gamble; FA said he was a professional gambler.
 - (4) There are SA TAB betting facilities at *Hotel Y, Hotel Z, Agency 1* and *Agency 2*.
12. The Commissioner was unable, so he said, to reach any conclusion as to the matter and it was then referred to the Authority. The Authority was provided with the Commissioner's report, the transcripts of the interviews and certain other documents.
13. The key purpose of the questions in the inquiry notice, so far as the Authority is concerned, is to have it determined whether there has been a breach of the licence condition reflected in section 43(a) of the Authorised Betting Operations Act. The Authority could only so conclude if the Authority is satisfied that AA placed the bets and was at the time a minor and that the bets were received. In our preliminary decision of 25 February 2004 we determined that the offence is one of absolute liability and so no question arises as to the intention of SA TAB or the reasonableness of its conduct. The evidence that AA placed the bets came directly from AA himself. It

was said to be corroborated by some of the surrounding circumstances including evidence of his mother and father.

14. It was in order to properly look into this matter that the Authority determined to hold an inquiry under section 13 of the Independent Gambling Authority Act and, as part of that inquiry, to receive evidence at a closed hearing conducted over two days, 19 and 20 May 2004. SA TAB was represented at the hearing because the question of its liability was in issue. The family of *AA* (ie, *AA*, *FA* and *MA*) was advised that its members would be allowed to have legal representation because of a provision in section 15 of the Independent Gambling Authority Act which permits legal representation for people “appearing before the Authority.” The family declined this opportunity.
15. Counsel assisting the Inquiry was responsible to bring evidence before the Inquiry on the question whether a breach had occurred. The process is not one of prosecution under the Act; rather, when proceeding under section 13 of the Act the Authority is inquiring into the matter. The onus of proof is therefore not to be viewed in the way it would in a criminal or civil court; rather, the Authority assisted by Counsel directed itself to determining whether it could be appropriately satisfied that a breach occurred. The Authority as an inquirer is able to question witnesses and call for evidence to be adduced if it so requires.
16. On the central question the only direct evidence to the effect that *AA* placed the bets was that of *AA* himself. He told us on oath that he placed the bets totalling \$20 000 which he said he took from his father’s safe at home without permission. He said that after losing \$10 000 of this money on the Saturday he panicked and took the remaining \$10 000 to chase his losses on more speculative bets.
17. The evidence given by *AA* as to his actually having placed the bets himself was not directly corroborated by any witness. The evidence of circumstances which tended to support his version of events was as follows:
 - (1) *AA*’s father said that he had \$20 000 in his safe and that it was not there on the Sunday when he returned from a trip to Melbourne. *MA* however, was not entirely sure about the money. She said ‘To tell you the truth, I didn’t know that the money was there. I thought that my husband might have taken it with

him' (to Melbourne where he said he had attended a gambling tournament from which he returned to Adelaide on Sunday). *FA*'s evidence about the money was difficult to credit. He said it was to be used for a trip to Italy for *AA* however he agreed in his evidence that the trip was not to be taken for many months and yet although he had a bank account he did not intend to deposit the money. Rather it was to remain in the so called safe in his other son's bedroom which also contained a gun and perhaps some jewellery and passports. The safe, which was able to be opened with a single key, was apparently bolted to the floor. *FA* was evasive about how much money he needed as his 'float' for his gambling activities.

- (2) *AA*'s mother said *AA* confessed to her that he had taken the money and 'gambled it'. She did not however say that she questioned him about how he had gambled it or whether any other person or persons were involved in the placing of the bets.
- (3) The SA TAB records disclose that a significant number of \$1 000 and \$2 000 bets were placed near *AA*'s home on that weekend and that a total of some \$20 000 and more could be identified.
- (4) Two of the staff at the hotels and TAB agencies had some recollection of a 'young' man placing bets of a sizeable amount over that weekend although none of those witnesses before us were able to say with any confidence that they could identify the person concerned or describe the person in detail. None of them claimed to have known, or known of, *AA* prior to the events of 24, 25, and 26 May 2002.

18. All of this evidence relies upon the veracity and accuracy of the witnesses; the family of *AA* (ie, *FA*, *MA* and *AA*) and the TAB staff. There is a great deal of evidence which tells against the credit and reliability of recollection of *AA* and family, and in particular *AA*. That evidence is as follows.

19. *AA* claimed that he had been betting for some years and that he had at one stage had some thousands of dollars in cash with him while he was at school. This was discovered by his teacher and he said he was called on to explain it. He acknowledged to the Authority in his evidence that he lied to a teacher about the reason that he had a

substantial sum of money in his pocket at school, and that he lied to the counsellor and to his mother about the money at the time.

20. AA also acknowledged that he had on occasion lied to counter staff at the hotels and TAB agencies about his age and that he produced a false ID taken from his brother to prove his age. AA acknowledged that he had access to his brother's wallet from time to time and that he knew his brother kept ID in his wallet. He said he knew that he was not permitted to place bets because of his age. Apparently some time before these events AA had been paid out on a ticket in error when he placed a bet.
21. AA also admitted that some time earlier he and a friend of his had stolen a DVD from a store and been caught. He said the matter had gone to Court but that no conviction had been recorded although it would appear the facts had been admitted. Although he admitted this to us in the hearing he was evasive. When first asked whether he had been in trouble with the police he said flatly 'no'. When asked whether he had ever been questioned by the police about any matter he said he had and that it related to 'theft' of the DVD. Generally speaking AA did not give the impression of being a witness of truthfulness intent on helping the Inquiry; rather he seemed keen to speak cogently about the proposition that he had placed the bets in question. He was certainly aware that his father had in mind seeking the recovery of the money and that his parents seemed to think our findings would be important in that regard.
22. AA claimed that he had taken the money from the family safe without permission and lied to his mother about his activities on the weekend of 24 May 2002. He also said that when the money was first discovered to be missing he lied to his parents about whether he knew anything about it. He also acknowledged that he had lied to the school counsellor *BB* about what had happened to his father's money and that during the week after he had taken the money he was 'living the lie'. He also went on to tell us that after these events he did not gamble because he didn't have any money to gamble with; yet looking at the contents of his bank account at that time this was plainly untrue.

23. AA's account of his activities over the weekend was itself conflicted and inconsistent with other evidence of the circumstances.

- (1) He said he placed a bet of \$500 of his own money, at the *Hotel Y* at around 5.30 pm on the Friday night 24 May. He agreed that it could not have been earlier than that, because he had left school and played pool for a while before doing so. The TAB records showed a bet of \$500 placed at around 4.00 pm on that day. He also said that on that afternoon he was with other school friends at least one of whom gambled regularly; this boy was said to be one *PP*. The Authority attempted to contact *PP* but he did not respond to calls and did not attend at the hearing.
- (2) AA said he went to play tennis on Saturday 25 May but that the game was cancelled due to rain at about 11.00 am and that he went home early. He said he placed a bet at the *Agency 1* TAB at around noon but that the earliest it could have been would have been about 11.40am. Records from the Bureau of Meteorology do not record any rain in the area for that day. The TAB records disclose a bet comparable to that which he said he had placed but at 11.13 am at the *Agency 1* TAB.
- (3) He said that he took \$10 000 out of the family safe at about 6.00 pm on Saturday. He said he knew there was \$20 000 in the safe but was unable to explain in any convincing way how he knew there was that precise amount in the safe; he did not count it. He said that he then placed a bet at the *Hotel Y* but, on another occasion, he said this was 'anywhere between quarter to 6 and 5.30'. It appears that in July 2002 he was unable to describe the person at *Hotel Y* who took the bets but was able to do so in the hearing before us. He then travelled to the *Hotel Z* to place a bet at some time after 6 o'clock but before 7 o'clock. Later in his evidence he put this at 6.45 pm. He then went to the *Agency 2* TAB to place two bets at around 6.50 (although at first he said this was 6.30). He said he placed \$3 000 in bets at *Agency 2* but the TAB records disclose only two \$1 000 bets and those at a much earlier time. He later altered his evidence on this point. He then placed bets at *Agency 1* TAB some time just before 7.00 pm, though his evidence varied on this. The TAB records only disclose comparable bets at around 5.20 pm. Under cross

examination he agreed that the bets could not have been placed before the times he had asserted. The TAB records show bets in comparable amounts placed on Saturday 25 May at the following places and times:

Hotel Y 16:50;

Hotel Z 16:58;

Agency 2 TAB 17:03;

Agency 1 TAB 17:21.

There is a serious doubt on the evidence as to whether it would have been possible to travel between *Hotel Z* and *Agency 2* in less than 10 minutes. AA's account of how he parked the car, counted the money, filled in the tickets and placed the bets made his version of events even more difficult in terms of the time. There is also the difficulty that his account given to us in the hearing appears to be at odds with the account he gave to the Commissioner's investigator Mr Moon. In evidence he said that his friend *PP* had lost \$2 000 at the *Agency 1* that morning and that he believed *PP* had 'taken' the money from *PP*'s own parents. From about 7.00 pm he said he watched the football game at *PP*'s home. Later that night at between 10 and 11 o'clock he said he took another \$10 000 from the family safe. He said he burnt the tickets he received from the outlets though he was unable to say precisely why he did this.

- (4) The TAB records were proved through Mr Houston a senior executive officer of SA TAB whose affidavit explained in careful detail the manner in which records are kept and that all possible bets conformable with the account given by AA were included in the lists and referred to. He also confirmed that the times recorded in the records were the times at which the bets were received at the agency. Mr Houston's evidence was given in a forthright and helpful manner.
- (5) AA's account of the time of his father's return on Sunday differed significantly from that of both his mother and father. He said his father returned home in the afternoon on Sunday or around lunchtime. His father said it was late morning though his father's account was less than certain. He then said that he

went down to the *Hotel Y* at around 1 o'clock with five tickets of \$2 000 bets filled out. He did not claim that he was asked for proof of age and said that the only comment that was made was to the effect that it was a big bet. He then said that his father got home and immediately went to the safe for a reason that none of the AA and family was able to explain and that his father came out of the room demanding to know where the money had gone. On the evidence of AA and family there then ensued some days of torrid arguments and accusations and some very serious violence with FA smashing furniture and abusing AA and his mother and perhaps the others. It was said that this culminated in AA confessing to his mother and his mother telling his father and then some very serious abuse from his father. FA agreed that he hit his son and that he probably 'physically and mentally abused' his wife prior to AA's confession. In evidence he said that after the confession he 'probably belted the shit out of him, abused the shit out of him and then asked him, "what the fuck have you done with the money?"'. The accounts of all of this given by the family differed in material respects.

- (6) AA also claimed that he had \$5 000 in an account in March 2002 but that by May he had lost it. The Bank records showed a balance of \$4 309 in Commonwealth Bank Account No. *[number omitted]* as at 24 May 2002. The other account, with Bank SA—No. *[number omitted]*, held some \$15 at that date. He gave no explanation as to why he did not use his own money to place the bets or to repay the money to his father.
- (7) Neither of his parents suggested that as a result of the events there was any change in the plans for him to travel to Italy nor did they say that they had required him to repay the money or any part of it.

24. There are also powerful reasons which might be said to prompt AA to give an untruthful account of the events:

- (1) If he had taken the money or part of it and arranged for a friend to place the bets for him he would have a very powerful incentive to assert that he placed those bets himself in order to be able to contend that the bets were received by

the TAB in breach of its licence conditions and that the money should be repaid to his family.

(2) Compounding the incentive, referred to in (1) above, was what he claimed to be his fear of his father. Both he and his mother said his father had been incensed when he learned of the disappearance of the money and then that *AA* had taken it. They said his father beat him severely. *FA* admitted he had done so because *AA* had deserved it. *FA* also admitted that he beat his wife from time to time.

(3) Further if *AA* had arranged for a friend to place the bets and that person was not a minor, *AA* might be taken not to wish to implicate that person in the arrangement.

25. *AA* said he spent time with *PP*, a friend of his, on the Saturday evening and that *PP* was aware of what *AA* had done. *AA* did not ask *PP* to come to the Authority to give an account. He thought *PP* may have been nineteen years of age. Mrs Kitto, a Legal Officer employed by the Authority, provided a statement to the Inquiry setting out the several attempts she made to have *PP* attend at the Inquiry, but although she spoke to him on one occasion he did not return any of her calls or respond to her requests. She said as follows:

1. I was given a mobile telephone number for *PP* by *MA* on 2 June 2004. The number I was given was *[number omitted]*. *MA* did not give me any other contact details for *PP*.
2. I telephoned mobile phone number *[number omitted]* at 4.10 pm on 2 June 2004. A male answered the telephone. I identified myself and asked if I was speaking to *PP*. The male replied yes.
3. I told *PP* that I worked for the Independent Gambling Authority and that *MA* had given me *PP*'s phone number. I stated to *PP* that I understood that *PP* was a friend of *AA*.
4. At that point, *PP* interrupted me and asked if I could call him back as *PP* was in the middle of having a meal at the pub. I asked *PP* when it would be convenient for me to call him. *PP* replied "in 15 minutes time".
5. I telephoned *PP* again on the mobile telephone number shown above at 4.36 pm on 2 June 2004. The call was diverted to a Telstra message that informed me that the mobile phone was off or not in a mobile area.

6. I telephoned *PP* again on the mobile telephone number shown above at 4.48 pm on 2 June 2004. The call was again diverted to a Telstra message that informed me that the mobile phone was off or not in a mobile area.

7. On 8 June 2004, approximately 2.30 pm, I sent an sms message to *PP*'s mobile telephone number (*[number omitted]*).

8. The text of the message read

Need to speak to you re underage betting inquiry. Please contact Jo Kitto on 8226 7233.

9. I did not receive a response to that sms message.

10. On 9 June 2004, approximately 11.20 am, I sent an sms message to *PP*'s mobile telephone number (*[number omitted]*).

11. The text of the message read

Need to speak to you re underage betting inquiry ASAP. Please contact Jo Kitto on 8226 7233.

12. I did not receive a response to that sms message.

13. On 10 June 2004, at approximately 9.35 am, I sent an sms message to *PP*'s mobile telephone number (*[number omitted]*).

14. The text of the message read

If you don't contact me to discuss underage betting inquiry you may be summonsed to appear. Jo Kitto 8226 7233.

15. I did not receive a response to that sms message.

16. On 15 June 2004, at approximately 12.01 pm, I sent an sms message to *PP*'s mobile telephone number (*[number omitted]*).

17. The text of the message read

Betting inquiry about TAB - only want info from you. Pls call Jo Kitto 8226 7233

18. I have not received a response to that sms message.

26. The staff of the TAB who were called did not say that they recalled receiving bets from *AA* or a person answering the description of *AA*. None of them had positively identified *AA* to the Commissioner's investigators. The evidence was as follows:

(1) *NN* worked at the *Hotel Y* on Friday 24 May 2002, but could not remember the events of that day. *NN* did not know of *AA* and said that when the Commissioner's investigators had shown *NN* some photographs *NN* did not

recognise any of the people depicted in them. *NN* could not positively identify *AA*. *NN* said there were no surveillance cameras at the hotel at that time.

- (2) *EE* worked at the *Hotel Y* on Saturday 25 May 2002. *EE* told us that some customers would bet in \$500 and \$1 000 amounts from time to time. *EE* had never heard of *AA* and would not now be able to identify the person who placed bets on that Saturday if a photograph were produced or if *EE* saw him now. *EE* remembered a large bet being placed on that day and recalls asking for identification.
- (3) *JJ* was the manager at the *Hotel Y* on that weekend. *JJ* said that he recalled a person placing large multiple bets at the hotel that weekend but did not know who he was. *JJ*'s identification (such as it was) of *AA* to the Commissioner's investigators was compromised by that fact that *AA* had attended at the hotel with his father when *FA* complained. In any event, *JJ* was unable to positively identify *AA*. *JJ*'s evidence was somewhat confused and when being asked about his hotel's policy on identifying under-aged gamblers *JJ* was decidedly obtuse. This contrasted with the attitude of the TAB agency staff.
- (4) *HH* worked at *Agency 2* on the night of Saturday 25 May and said the person who placed the large bets on that occasion was a young male person perhaps nineteen or twenty years of age but that it was definitely not the person in the photograph which *HH* said was shown to *HH* by the Commissioner's investigators. *HH* also said that it was not unusual for customers to place \$1 000 bets
- (5) *DD* worked at the *Agency 1* TAB on Saturday night and said *DD* recalled a person bringing in three \$1 000 tickets to place bets at around 5.30 pm but that *DD* did not know the person and would not now remember anything of the customers of that night. *DD* said the investigators showed *DD* a photograph but that *DD* told them it was not any one of *DD*'s customers of that night.

LL, who did not appear at the hearing to give evidence, had stated in writing that *LL* worked at the *Hotel Y* on Sunday 26 May but could not describe the person who placed bets of the kind the subject of the Inquiry.

The evidence of these witnesses did not give rise to any basis for concluding that it was AA who placed the bets over that weekend.

27. On the evidence available to the Inquiry, notwithstanding the evidence of AA and family that AA took the money and placed the bets as he claimed, it is open to conclude that he arranged for a friend to place the bets; each and all of them. On AA's account PP was older and gambled regularly; PP was nearby at the times in question. Then there were the other people with whom AA was playing pool on Friday afternoon and those with whom he said he played tennis on Saturday. Some of them, who were older, were said to gamble regularly. It is also possible that his brother may have placed the bets. Less likely but still possible is that his father placed some of the bets. In these circumstances it is necessary to consider the degree to which the Authority in this Inquiry must be satisfied that a breach has occurred for there to be a basis for taking action against the Licensee. In our earlier decision we concluded that the delict created by section 43 and the terms of the licence were such as to give rise to absolute liability. This means that upon proof of the fact of offering a bet to or receiving a bet from a minor liability will result. That liability exposes the Licensee to any one or more of a number of penalties which will necessarily have an adverse effect upon its business and financial affairs. As such the Licensee should be entitled to the protection of a high standard of proof of the kind associated with civil proceedings for penalty of a serious nature; see *Briginshaw v Briginshaw* (1938) 60 CLR 336.
28. The Authority cannot be satisfied to the requisite degree that a relevant breach has occurred and this is principally because the only direct evidence to the effect that AA placed the bets was evidence given by AA himself and he not only had significant reasons for giving false evidence on the question but the evidence he gave was conflicted and inconsistent in important respects with other evidence. Moreover he had shown himself prepared to deceive and mislead on a number of other occasions including in his dealings with people in authority and with his parents. Also knowing as he did that he was not allowed to place bets he nevertheless claimed to have done so regardless of the requirements of the law.

29. The Authority therefore reports to Parliament that it is not satisfied that any relevant breach has been committed by the Licensee and that there is no basis for proceeding to consider penalty or any other action.
30. There is however one further matter about which the Authority is concerned to comment. The evidence as to the training given to the hotel and SA TAB staff directed to ensuring that bets are not offered to or received from minors and the practice adopted at some of these agencies in relation to that matter was not convincing. It is absurd to think that staff in their thirties or older would be able to discern readily whether a customer is sixteen, seventeen, eighteen, or nineteen years of age in each and every case and in some cases other ages as well. The *Hotel Y* Manager, *JJ*, was obtuse in evidence about this matter; whether this was deliberate, whether it became convenient for him in the course of evidence, or whether *JJ* had simply failed ever to think critically about the question, this is most unsatisfactory. Hotels with these facilities have important duties to the community in this matter and it is to be hoped that the Commissioner's inspectors and staff can impress upon owners and managers their role in relation to it. By contrast Mr Houston clearly understood the nature of the problem and assured the Authority that SA TAB under its new owners was taking the matter very seriously. It is to be noted that the current owners of SA TAB had only recently taken over at the time of these events. The reality is that staff should really be required to seek identification from any younger person who seeks to place a bet even if they think he or she is well into their twenties because it is so often very difficult to tell. Such an approach may seem cumbersome but in this important matter it is likely to eliminate error.
31. The Authority will not proceed to consider any question concerning SA TAB's licence but will correspond with the Licensee asking it to look carefully at the processes in place to prevent bets being accepted from under age persons.
32. To answer the specific issues questions set out in clause 2 of the inquiry notice:
 - (a) whether AA was aged under 18 between 24 May 2002 and 26 May 2002—
Yes;
 - (b) if yes to paragraph (a), whether one or more transactions took place between SA TAB or SA TAB and its agents on the one part and AA on the other at the

places, on or about the times and for the amounts detailed in Schedule 1 to the inquiry notice—Unable to be satisfied to the requisite degree;

- (c) in respect of any transaction having been found to take place for the purposes of paragraph (b), whether the transaction gave rise to the acceptance of a bet from AA—Not necessary to answer.

33. This report is made to the Minister for Gambling for the purpose of satisfying 13(2) of the Independent Gambling Authority Act. Section 13(3) of the Independent Gambling Authority Act then requires the Minister to cause the report to be laid before each House of the Parliament within 6 sitting days, unless the Authority recommends that the report should remain confidential. The Authority does recommend that the report remain confidential. The basis for the recommendation is that the Authority, in the report, has been required to reflect adversely on the conduct of certain identified individuals. The Authority is of the view that the benefit in publishing a full account of the matters dealt with in this report is outweighed by the potential damage or prejudice to those individuals by publication of those adverse reflections. If the Minister wishes it, the Authority will provide a version of this report which substitutes anonymous identifiers for the names of individuals.

for the Authority

Stephen Howells
Presiding Member
16 March 2005



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