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Mr Hamish Hansford
Secretary
Joint Select Committee on Gambling Reform
PO Box 6100
Parliament House
Canberra ACT 2600

By email: gamblingreform@aph.gov.au

Dear Mr Hansford

Re: Inquiry into Gambling Reform – Submission on the Pre-Commitment Scheme

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide some comments on this important, national gambling reform. The NWRN is an incorporated network of 14 community legal centres throughout Australia which specialise in social security law and how it is administered by Centrelink. Based on the experience of the clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, and advocates for reforms to law, policy and administrative practice.

NWRN members provide advice, assistance and representation to thousands of clients across Australia each year. Our clients are people living on low incomes some of whom are totally reliant on income support. A significant number of our current and past clients have severe gambling addictions or gambling problems.

The attached submission is based on our casework and experience with clients. The NWRN supports a mandatory pre-commitment scheme. We recognise the potential danger and counter-productive nature of policies which either seek to control people's behaviour or their money such as compulsory income management for certain groups of people receiving Social Security payments. However, the NWRN believes that the proposed pre-commitment scheme allows people to consider and control their own spending on gambling. In light of the family distress, and individual loss and destruction, caused by people gambling away their whole incomes, for example, we believe the proposed scheme is an important step forward.

While the nature of the technology to be used is uncertain, in the event that data is collected about individual gamblers which government authorities can gain access

to, we draw to your attention some issues about Centrelink income assessment rules which may arise for people in receipt of Social Security payments.

The troubling policy implications arising from particular State Governments relying on gambling revenue combined with gambling venues actively enticing people on low incomes to gamble are well known. In certain circumstances, Centrelink then catches these people in a net designed for high rolling criminals and punishes the person with gambling problems further.

Yours sincerely

Maree O'Halloran
President
National Welfare Rights Network

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National Welfare Rights Network

Submission to the Joint Select Committee on Gambling Reform

1. About the National Welfare Rights Network

The National Welfare Rights Network (NWRN) is an incorporated national peak body representing Welfare Rights Centres throughout Australia. NWRN members are specialists in Social Security law and policy and its administration by Centrelink and provide direct advice, assistance and representation to clients on a daily basis facing Social Security and Centrelink related problems. The NWRN draws on this daily casework experience to analyse systemic problems and trends, legislation and service delivery issues and raises these with Centrelink, relevant Government Departments and Ministers in order to achieve reform and a better system for all. Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, advocates for reforms to law, policy and administrative practice and participates in campaigns consistent with its aim to reduce poverty, hardship and inequality in Australia and to build a fair, inclusive and sustainable Australia underpinned by a comprehensive, rights based Social Security safety net for all.

The NWRN advocates that the Social Security system in Australia should be characterised by an uncompromising recognition of the following rights:

- the right of all people in need to an adequate level of income support which is protected by law;
- the right of people to be treated with respect and dignity by Centrelink and those administering the Social Security system;
- the right to accessible information about Social Security rights and entitlements, obligations and responsibilities;
- the right to receive prompt and appropriate service and Social Security payments without delay;
- the right to a free, independent, informal, efficient and fair appeal system;

- right to an independent complaints system;
- the right to independent advice and representation; and
- the right to natural justice and procedural fairness.

2. Summary of the extent of the gambling problem in Australia

The social cost of problem gambling has been a key concern for welfare and community organisations for some time. While it has long been recognised that many Australians enjoy the occasional “flutter”, for a small, but significant number of people, involvement with poker machines is destructive and harmful. The additional costs associated with the deterioration of an individual’s health, relationships, ability to work and family structure are significant. Problem gambling also disproportionately affects people who are already financially vulnerable.

The social cost of problem gambling is estimated to be at least \$4.7 billion a year, with 600,000 Australians playing the poker machines at least weekly. The Productivity Commission estimates that there are between 80,000 and 160,000 problem gamblers. In addition there are between 230,000 and 350,000 people at moderate risk.

Poker machines are the most common form of gambling, accounting for over 62 per cent of all gambling activity. There are about 200,000 gaming machines in Australia, and are located in most states and territories.

3. NWRN support for pre-commitment scheme

The recent Productivity Commission report into gambling in Australia released in June 2010 supported introducing pre-commitment technology for poker machines by 2014. The Federal Government has agreed to introduce the scheme from 2012 as part of its

agreement with Independent Member of Parliament, Andrew Wilkie, following the 2010 federal election. The full scheme would be operative by 2014.

The NWRN specifically supports:

- the Productivity Commission recommendations for pre-commitment arrangements;
- the Productivity Commission recommendations on dynamic warning and cost of play displays on poker machines; and,
- a \$250 daily withdrawal limit for ATMS in venues with poker machines.

Pre-commitment obviously requires some form of technology to identify the player and their chosen limits and time period. The difficulty in commenting on the notion of a pre-commitment scheme in detail is that the technology to build a system is not yet readily available. The technology could take a number of forms but most of the trials in Australia have used a swipe card. It has been suggested in the Australian context the pre-commitment technology would be based on a USB key with a player ID on it that prevents the person from playing a poker machine without first inserting it. The USB key would have a pre-determined limit on it to prevent the player spending more than they have agreed to. It has been suggested that the USB key would be activated when it scans a finger print. This would be to stop problem gamblers from accessing another person's USB key.

The NWRN is not concerned about the specific type of technology chosen for implementation. The NWRN is, however, concerned about the potential for Centrelink to have access to data in the event that it is collected and stored, and the use to which Centrelink may put the data.

The Government's commitment to "strong privacy arrangements for the data that is collected"¹ is noted and welcomed by the NWRN. It is, however, our experience that Centrelink has extremely wide powers in regard to the access of information pursuant to s192 of the *Social Security (Administrative) Act 1999* (see copy at the

¹ The Hon. Jenny Macklin, Address to the 20th Annual Conference of the national association for Gambling Studies, 1 December 2010 at www.jenny.macklin.fahcsia.gov.au

end of this submission) Please see section 5.2 of this submission for more information about our concerns in this area and our recommendations.

4. Welfare conditionality

NWRN wishes to make it clear to the Committee that our in principle support for a pre-commitment scheme as one mechanism to reduce excessive gambling is not about support for the paternalistic, “conditional welfare” policy approach adopted by successive governments. In past submissions Welfare Rights has labelled this policy approach as ‘the close supervision of the poor’.² In fact, one of the advantages we see to the proposed pre-commitment scheme is that it would apply to all classes and groups of people indiscriminately.

The NWRN warns of the danger that there is the potential for a future Government to seek to usurp the pre-commitment USB-based technology to stop particular groups of people, such as those receiving income support payments or Family Tax Benefits, from some forms of gambling.

If this notion seems an unlikely development, NWRN draws to the attention of the Committee the 2009 Department of Human Services discussion paper *Better Dealings with Government: Innovation in Payments and Information Services*. The discussion paper refers to a recent development in the Australian context regarding policies designated as ‘conditional welfare. It identifies as an ‘ongoing challenge’ ensuring that ‘payments are used for the intended purpose’.

This discussion paper describes a ‘changed social welfare policy landscape which seeks to better align payments with policy goals’.³ The Government held consultations with industry and sought submissions on the introduction of an electronic barcode compliance system and seeks industry views about the development of the technology upon which a system could be based.

² National Welfare Rights Network, Submission to Department of Human Services Discussion Paper *Better Dealings with Government: Innovation in Payments and Information Services*, 2009.

³ Department of Human Services Discussion Paper, *Better Dealings with Government: Innovation in Payments and Information Services*, p. 6, 2009.

5. NWRN casework and problem gambling

It is clear from the Terms of Reference to this Inquiry that the need for solutions to problem gambling in our society has been accepted and that the Inquiry is primarily about best practice implementation of a full pre-commitment scheme. As mentioned earlier, the casework experience of our members clearly supports that fact that problem gamblers need help and assistance both at an individual and a societal level.

5.1 Problem gambling, lump sum workers compensation payments, Social Security preclusion periods

The NWRN draws the Committee's attention to some research undertaken in 2002 about lump sum payments in the context of Social Security legislation. While the data in the research is not current, its findings are still highly relevant as we believe that it is one of the few studies which examines the relationship between lump sum workers compensation payments, Social Security preclusion periods and gambling. The study was conceived following an increase in the number of clients being assisted by the NWRN because they had gambled away their lump sum compensation payments. Due to the operation of Social Security legislation, the recipient of a compensation payment is subject to a Social Security compensation preclusion period. Thus, people can have entirely expended their compensation monies yet not be able to receive Social Security. Too often this results in destitution for individuals and their families.

This examination of the relationship between gambling, Social Security and the receipt of lump sum compensation payments has identified inadequacies in the compensation system and in Social Security law and policy.

Compensation and social security

The compensation provisions of the *Social Security Act 1991* have been designed to prevent injured workers receiving workers compensation payments, and receiving income support from the Commonwealth for the same injury or illness that caused

their loss of income. The rationale is to avoid “double dipping”. This means that all compensation containing a component for economic loss will affect a person’s Social Security entitlement, even where the economic loss component is not quantified.

Workers compensation will affect Social Security payments differently depending on whether it is paid as periodic compensation or as a lump sum.

There has been an incremental extension of the compensation provisions since their introduction in 1983. Changes to the rules, have in most cases, been less advantageous to people receiving Social Security payments. These changes can be characterised as:

- the extension of compensation provisions to nearly all payment types. When the compensation provisions were introduced they applied solely to Sickness Benefit;
- changes to how the Social Security payment of a person’s partner is affected by a person receiving compensation income;
- changes to how compensation income is assessed;
- changes to the formula used to determine the length of a compensation preclusion period; and,
- changes to the discretions that apply to compensation recipients appealing to have their compensation preclusion period waived.

Once a person receives a lump sum compensation payment, the underlying assumption of the Social Security and compensation systems is that the person will be able to manage the money until the compensation preclusion period has ended. The background of the person, and their experiences during the battle for compensation are not taken into account. In the eyes of the law the injured worker has been compensated financially for the loss of physical capacity and the loss of earning potential. Yet the journey from worker to compensated person is not a simple one, emotionally or financially. Many injured workers experience a great deal of difficulty because they have needed to rely on credit or savings to supplement their Social Security payment or periodic compensation income. At the same time

they had to come to terms with the anger and grief that arises from the severe injuries that lead to lump sum compensation payments.

There is a discretionary power in the *Social Security Act 1991* for the Secretary to disregard, in “special circumstances” the whole, or part of, a compensation payment that results in a Social Security compensation preclusion period or compensation charge. Where this discretion is used, a person can receive Social Security payments where they would otherwise be subject to a Social Security preclusion period.

“Special circumstances” is not limited to, but can include, consideration of a person’s health; emotional state; decision making capacity; straitened financial circumstances; addictions, including problem gambling; incorrect or insufficient legal advice; Centrelink maladministration; unjust operation of the legislation; and changed circumstances since the receipt of the compensation.

Difficulty of waiving compensation preclusion periods due to problem gambling

Research on problem gamblers suggests that people who recognise their gambling problem often go to a great deal of effort to hide their behaviour from other people, even in circumstances where the disclosure of information could assist them. Alternatively, an individual with an addiction may not recognise that they have a problem and as a result they would not inform people of the reasons they are in trouble.

Financial hardship on its own is not enough to waive a compensation preclusion period and when gambling is involved it can be extremely difficult to determine where the compensation money was spent. As mentioned earlier, a person may have difficulty admitting that the reason they have no money is because of their gambling problem. Gambling may be a “special circumstance”, but it has to be revealed for it to be considered. As a result, a person may simply appear at Centrelink or at a Tribunal presenting that they have financial problems, but this will not be considered enough a sufficient reason for the exercise of discretion.

The discretionary nature of “special circumstances” is applied on a case-by-case basis. A variety of evidence is required to make a decision and includes personal evidence from questioning, third party documentary evidence, professional reports from gambling counsellors/psychiatrists/psychologists and bank statements showing a pattern of withdrawals.

The existence of the “special circumstances” discretion for those people who have expended their compensation payments before the end of the Social Security preclusion period is an important element of the Social Security safety net in Australia. However, this discretion has a number of problems, namely:

- it is discretionary, and very often is not exercised by Centrelink staff because of moral assessments about “appropriate behaviour”; and
- the discretion is only available after a person has hit “rock bottom”.

Face-to-face contact between Centrelink and an injured worker who has received a compensation payment, usually only occurs after the compensation money is spent. The injured worker usually has no money or very little money left and has been informed at a Centrelink Customer Service Centre, that they are not entitled to receive Social Security payment.

NWRN members across Australia are contacted by many people seeking assistance in removing compensation preclusion periods where gambling losses have accounted for very significant portions of their expenditure on lump sum compensation payments. To support the addiction, credit and debt becomes an option, sending the individual, and often their family, into a cycle of debt and often a desperate desire to recoup gambling losses (“chasing losses”).

A snapshot of Social Security recipients with gambling problems

Statistical information about the characteristics of Social Security recipients and compensation recipients who have gambling related problems is extremely limited. The 2002 study that we refer had only a small sample size; however, to our knowledge no such study regarding the relationship between gambling, Social Security and compensation payments has previously been undertaken. For the

purposes of this research, a questionnaire was developed to further examine the relationship between gambling, Social Security and compensation payments. There were 90 respondents to the questionnaire.

While the sample was small and administered through gambling advice and support agencies, the results are very illuminating, and support the need for a comprehensive response to the issues facing people with problem gambling.

a) Social Security payment received: 36% received Newstart Allowance or Youth Allowance; 29% received Disability Support Pension; 12% received Age Pension, and 11% received Parenting Payment (single).

b) Medical/health conditions: Clients were diagnosed with a range of medical conditions. The most reported conditions were 11.7% suffered from severe depression; 9% suffered from mental illness; 9% had suicidal thoughts; 7.2 % suffered severe anxiety, and 7.2% suffered psychiatric disability.

c) Preferred form of gambling: 61% only gambled on the poker machines; 94% gambled on the poker machines as well as another form of gambling, and 1 person gambled on the horses only.

d) Preferred gambling venue: 23% only gambled at the club; 14% only gambled at the pub; 58% gambled at the club and at other gambling venues; and 41% gambled at the pub and at other gambling venues.

e) Amount of money spent in a fortnight on gambling: The amounts spent on gambling per fortnight ranged from \$50 to \$1,800; 11% spent approximately \$400 per fortnight on gambling; and 35% of clients would not disclose the amount spent on gambling.

f) Frequency of gambling: 34.2% of people reported that they gambled several times a week; 17.1% stated they gambled weekly; 10.8% gambled daily; and 45.9% of clients reported they gambled on the day they received their Social Security payment

The high percentage of people who report gambling on the same day as receiving Social Security payments is significant given the large number of requests for

emergency payments and hardship payments made by Social Security recipients to Centrelink.

It is notable that 49.5% of clients reported gambling to overcome loneliness. The very high response rate to the question about loneliness is a clear indication that gambling was a strategy to deal with loneliness and isolation. This widespread sense of isolation raises a number of significant policy issues about appropriate ways of engaging people in society. It is not surprising that many of the participants indicated that their preferred form of gambling was poker machines and that their preferred venue for gambling was hotels and clubs, particularly as clubs cultivate a friendly and social atmosphere to encourage individuals to attend, which may lead to increased gambling.

Alternatives to lump sum payments to reduce gambling risks

One of the core problems for many people with gambling problems is the large amount of cash that is paid to them at the time of settlement. People do not necessarily understand how to preserve this money and use it to support them for many years. In some ways these large amounts of cash are equivalent to superannuation payments. Yet when a person becomes eligible for superannuation payments, there are very sophisticated investment options, supported by the taxation and Social Security systems that encourage the long term use of the capital to create income and protect against poverty.

A possible alternative to the payment of large lump sums to vulnerable individuals is the use of structured settlements on a voluntary basis. A structured settlement is an attempt to provide more sophisticated financial solutions for receiving large sums of money. Structured settlements are well established in Canada and are becoming popular in the United Kingdom and United States of America.

A structured settlement still requires the injured worker to claim workers compensation. An agreement must be reached about whether or not the employer is liable for the injury and a determination made as to the amount of damages to be paid. Where structured settlements differ is that rather than having the full lump

sum compensation amount paid directly to the injured worker, the money is paid to a life insurance company, which then provides an annuity to the injured person.

In cases where the injured worker requires ongoing medical, rehabilitation and other services, beyond the date of settlement, this could be an appropriate means of meeting these ongoing needs. One option could be that ongoing costs would also be part of the structured settlement and could include; alterations to the home and workplace, domestic or handyman help in the home, providing specific medical equipment or appliances and modifications to the injured worker's personal transport.

The exploration of alternative means of providing compensation payments through structured settlements and changes to the interrelationship with the income test could play an important role in easing the transition from worker to disabled and compensated individual. However, these measures must be voluntary and any move to this end should first require a thorough examination of the impact of the receipt of lump sum compensation payments versus payment through structured settlements and the impact of these on a person's entitlement to Social Security, as well as any taxation implications.

Recommendation: While measures being examined by the current Inquiry are positive, further research and policy and law reform is necessary to address the relationship between gambling, Social Security and the receipt of lump sum compensation payments.

5.2 "Casino" cases

Members of the NWRN have had a number of cases where people receiving income support such as the Age Pension or the Disability Support Pension have had large debts raised against them by Centrelink on the basis that their alleged gambling "turnover" at a casino, can by the process of applying a forensic accounting formula, be said to amount to evidence of income for the purpose of assessing income under Social Security Law (Sect. 8 – Income, *Social Security Act 1991*). The Administrative Appeals Tribunal will bring down its decision about one

of these cases soon and whether Centrelink can use such process to determine income.

The issue we raise with the Inquiry is the need to be aware that Centrelink has extremely wide information and evidence-gathering powers under s192 of the *Social Security (Administration) Act 1999*. The relevant section of the Act appears at the end of this submission. In the “casino” cases, Centrelink has had access to information provided to Austrac pursuant to the *Anti-Money Laundering and Counter-Terrorism Finance Act*, as well as to “loyalty” swipe card information.

The clients NWRN members have assisted in these cases are not “high rollers” and many funded their debts through credit cards, personal loans or compensation payments. It is our view that gambling “turnover” could be evidence that prompts a further investigation of a person’s income and assets but should not be used as evidence itself of income.

However, the point for the Inquiry is to be aware that privacy protocols alone will not make any data that might be collected or stored via pre-commitment scheme technology safe from Centrelink scrutiny. What is critically important is that the Centrelink assessment rules for ordinary income should not be arbitrary and should be clearly known and spelt out to all recipients of Centrelink payments. To date we have received conflicting interpretations from Centrelink following the emergence of the casino cases.

Recommendation: That Centrelink not be allowed to access any data which may be stored on pre-commitment technology. Of course, we recognise and endorse the provision of data as appropriate to Austrac but request that Austrac not be allowed to pass data to Centrelink.

In the alternative, Centrelink be required to provide clear information to all recipients of Centrelink payments as to how gambling turnover will be treated in the assessment of ordinary income under the *Social Security Act 1991*.

Attachment 1

SOCIAL SECURITY (ADMINISTRATION) ACT 1999 - SECT 192

General power to obtain information

The Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to the Department if the Secretary considers that the information or document may be relevant to one or more of the following:

(a) the question whether a person who has made a claim for a social security payment is or was qualified for the payment;

(b) the question whether a social security payment is payable to a person who is receiving the payment;

(c) the question whether a social security payment was payable to a person who has received the payment;

(d) the rate of social security payment that is or was applicable to a person;

(daa) the operation of Division 3A of Part 3;

(da) the question whether a person who has made a claim under the Social Security (Fares Allowance) Rules 1998 was eligible for fares allowance;

(db) the operation of Part 3B;

(e) the administration of an agreement between Australia and a foreign country on social security matters;

(f) the question whether a person who has been granted a concession card is or was qualified for the card;

(g) the question whether a person who has applied for financial supplement is eligible for the supplement;

(h) the question whether a person who has obtained a financial supplement is or was eligible for the supplement;

(i) the determination of the maximum amount of financial supplement that a person is eligible for;

(j) the question whether an assurance of support given under Chapter 2C of the 1991 Act should be accepted or rejected.

