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Committee Secretary  
Joint Select Committee on Gambling Reform  
Parliament House  
Canberra ACT 2600

Dear Secretary

## **INQUIRY INTO PRE-COMMITMENTS SCHEME**

Thank you for the opportunity to make a submission to this inquiry. I recently wrote about these matters in an article published in the *Sydney Morning Herald* on 1 February 2011.

The Constitution does not give the Federal Parliament power over gambling. However, as the legal advice provided to the Federal Government makes clear, the Commonwealth nonetheless does have extensive powers to regulate the area. In particular, if the Commonwealth is willing to levy a new tax, the Federal Parliament's power over taxation in section 51(ii) of the Constitution could enable a universal regime to be applied to the industry.

If the tax power is not applied, and traditionally it has not been used in this context, the primary avenue for legislation would be for the Parliament to pass a law under its corporations power in s 51(xx) (likely in combination with a list of other powers, including that over interstate trade and commerce in section 51(i)). In light of the width attributed to the corporations power by the High Court in the *WorkChoices case*, the power could be used to impose conditions on how trading corporations operate, sell or manufacture pokie machines.

Whatever source of legislative power is invoked by the Commonwealth, section 109 of the Constitution makes it clear that, in the event of a conflict between a Federal and a State law, the Federal law prevails.

The Commonwealth has significant, untapped power in this area, but this is not so extensive as to cover every hotel and club with a pokie machine (unless the taxation power is applied). In particular, federal legislative authority could fall short for most venues not operating as a

corporation or across a State border. This may entice some clubs and hotels operating intra-State to eliminate their corporate status in order to escape the reach of federal regulation.

This suggests a regime of incomplete federal regulation and the possibility of delay and disputation in the High Court. This might only be avoided by securing State co-operation.

Yours sincerely

George Williams