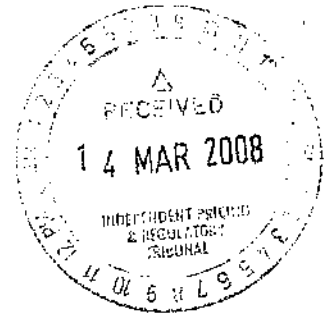


13 March 2008

The Independent Pricing and Regulatory Tribunal  
PO Box Q290  
QVB POST OFFICE NSW 1230



Dear Sir,

**RE: SUBMISSION – DRAFT REPORT  
REVIEW OF THE REGISTERED CLUBS INDUSTRY IN NSW**

The authors of the draft report dated February 2008 have positively responded to the NSW Government's Terms of Reference concerning the club industry. The authors of the report deserve credit for the comprehensive and detailed way they have examined the NSW club industry.

IPART has made a number of recommendations to government which, if implemented will unfortunately lead to further regulation of the industry.

Comment

It is somewhat ironic that IPART has been called upon to review the club industry. Perhaps the state government has at last realised that the iniquitous poker machine tax of former Treasurer Egan the granting of more poker machines to hotels, and anti-smoking legislation, have crippled some clubs and caused others to withdraw financial grants to local sporting, educational and cultural bodies.

What is the government's obsession with regulating the club industry? That industry has demonstrated that it can function quite well if left unregulated. Suggestions that more regulations be made to somehow "improve" the industry are not required. Why is the government not seeking a review of the hotel industry? Comparisons could then have been made.

Comparisons

The club industry should be compared to local councils and even the state government. True it is, that local government is a creature of statute and the state government derives its power from the Federal Constitution (residual powers), but less attention is paid by governments to those organs compared to registered clubs.

Investigations

Who investigates corrupt state governments? While there are watchdog bodies such as ICAC who can make reports from time to time on the activities of individuals, government as a whole is never investigated.

Who investigates local government? Again, the behaviour of various councillors may be investigated by ICAC. Local government per se has never been referred to IPART for an investigation.

Why is there a need for the government to refer the club industry for a review by IPART?

### Qualifications

In the IPART report on clubs, reference is made to qualifications and training of directors, managers and the general governance of clubs. Why is it so essential that the government has IPART investigate and put forward proposals as to who should run clubs? Does it do the same for people who put their names forward to be members of the state legislature? Does it do the same to people who put their names forward to be members of local councils and shires? The answer is pretty obvious. Why is the club industry being singled out for over-regulation, when in fact the industry can regulate itself quite well?

### Amalgamations

There is provision in the Constitution (Section 42) for state governments to refer all their powers to the Commonwealth, thereby amalgamating with it. Self-interest would never allow that occur.

With local government, it has been found in the past that there had been too many and embracing the economic principle of "the economies of scale", state governments have forced the amalgamation of some councils.

In some instances – particularly in allowing hotels to have more poker machines, a number of clubs have chosen to amalgamate, rather than liquidate. These amalgamations were an initiative of the club industry which sought legislative approval.

### Too much democracy

Members of state parliament are elected for four years. Members of local councils are elected for four years. Directors of some clubs are elected for one to three years. Clubs where there are annual elections are prone to instability, moreso than clubs where directors are elected for a longer period.

Clubs that have classes of membership, i.e. some with voting rights and some without, generally do not suffer from instability in the same way that clubs experience where annual elections take place.

### Voting

There is a suggestion that once a person joins a club, that person has immediate voting rights. Such a situation can lead to "stacking" where a separate body of people can join a club en masse and if allowed to vote at the next election, can take control of the club, notwithstanding the original purpose for establishing the club, as no doubt defined in its constitutions. Voting rights should not be granted to people unless they have had continuous membership for three years.

### Stability

Certain clubs seek board and management stability to ward off "palace coups" by embracing the biennial or triennial rule. In most instances, this appears to work well but can disenfranchise members who do not have membership or a particular class of membership. Whether this should be changed is really a matter for the club, its members and its constitution. Most constitutions provide clause(s) for altering constitutions and often attempts are made, unsuccessfully, to alter a constitution to bring about a change in voting rights. Invariably, those attempted changes have failed because members are quite content not to upset the status quo within a club to satisfy a group of people, who for one reason or another feel disaffected. Once again, this is not a matter

for regulation, it is a matter for members of individual clubs and for the club industry as a whole to self-regulate. Disgruntled members always have the right to surrender their membership and move on but there are people whose personal interests are somewhat paramount to their club interests. Suffice as to say that if a survey was taken of all clubs as to whether the club is satisfied with (a) their constitution, (b) classes of membership, (c) voting rights and (d) others, the overwhelming vote would be that more members are satisfied with their club's constitution than those who may be disgruntled by it.

### Conclusion

IPART has carried out its investigations of the club industry quite thoroughly. It has made recommendations to the government which may be acted upon and new regulations formulated. Perhaps in the final report it might make a further recommendation that the government of NSW allow the club industry to regulate itself without the need for further government intervention. The NSW government and NSW local government function without over-regulation, so why can't the same apply to the club industry?

Over-regulation of the club industry would be a retrograde step. Less regulation, enabling the club industry to function without too much interference by the government will be in the industry's best interests.

Yours faithfully,  
J.P. Donnellan