



NSW Legislative Council Hansard (Proof)

Gaming Machines Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 11 October 2005 (Proof).

Second reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.29 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

The bill before the House contains a range of miscellaneous amendments to the Gaming Machines Act and the Casino Control Act. These amendments have been identified as necessary to the proper functioning of the Act, as experience is gained in the administrative and operational side of administering the legislation. While many of the amendments are minor, they are worthwhile and achieve a greater clarity for the operation of the Act as a whole.

This bill seeks to validate decisions made by the Liquor Administration Board with respect to the initial allocation of poker machine entitlements. When the Gaming Machines Act commenced in 2002, and as a result of the cap on the number of gaming machines in NSW, the Board undertook the task of allocating a poker machine entitlement for each gaming machine authorised to be kept in venues across the State.

In doing this, the Board made certain assumptions, based on Crown law advice, as to how to administer this task. Under these assumptions, venues that were not trading at the respective gaming machines freeze date—for example venues with seasonal patronage such as those located at the snowfields—but had authorisations to operate gaming machines, were issued with entitlements for each authorisation.

Subsequent litigation determined that some assumptions made by the Board did not fully reflect the legislation as written. This would mean that over 250 poker machine entitlements in more than 48 venues would need to be withdrawn. Some of those entitlements have been on-sold to other venues.

It is the view of the Government that the position taken by the Board was a more practical one in the circumstances. As a result, it is necessary to validate decisions made by the Board to provide certainty to a number of venues across the State as to the correct number of entitlements held.

Further, the bill seeks to provide guidance to the Board to resolve a small number of outstanding allocation issues that have arisen over time. A scheme will be introduced to allow the Board to grant a special allocation of entitlements for the small number of venues that have not, for a number of reasons, been allocated entitlements under section 15 of the Act. A regulation making power has been inserted into the Act to provide the framework for the allocation scheme. A consultation draft regulation, including this framework, has been prepared and is available to assist Honourable Members in understanding the proposal.

The framework for the special allocation process allows only certain venues to apply for a special allocation. That is, only those venues that were in dispute with the Board as to the Board's assessment of the venue's initial allocation entitlement will be permitted to apply for a special allocation.

Further, in circumstances where the venue was disadvantaged by the timing of the relevant gaming machine freeze (either because they were closed for renovations or in the process of moving premises), the venue must satisfy the Board that there has been continuity of business and any excessive delay in reopening the premises for business is justified in the circumstances.

Finally, for venues that were not closed for renovations or in the process of moving premises, the Board must apply the same rules to determine the allocation as were applied to all other venues in the State prior to the litigation mentioned earlier.

A number of amendments relate to the Government-commissioned review of gambling in NSW, conducted by the Independent Pricing and Regulatory Tribunal [IPART]. The IPART report identified the need to establish a strong evidence base from which to inform responsible gambling policy decisions. To this end, the bill seeks to allow for variations to specific provisions of the Act for research or trial purposes.

Naturally, it is expected that consultation would occur with necessary venues, industry and community sectors ahead of any such trial.

IPART raised concerns with regard to the Board being involved in policy decisions with respect to technical standards of gaming machines. The Government has considered these concerns, and this bill proposes that these functions be undertaken by the Department as a more appropriate body to make policy decisions.

The report also considered that the Casino Community Levy should be used for purposes related to responsible gambling, and as such, the bill renames the Casino Community Benefit Fund as the "Responsible Gambling Fund".

The IPART report also highlighted the need to be transparent in regard to the regulation of gaming.

Thus it is also proposed to amend the Act to provide an additional power to set aside current secrecy provisions if it is in the public interest to do so. This provision is in addition to other mechanisms that permit the disclosure of gaming machine information, such as a Freedom of Information application. The bill seeks to improve communication with the public about gaming related matters, and ensures that more information is publicly available.

Other jurisdictions publish greater information for their community than NSW. It is important that we too provide more information to the public in recognition of the community's view on gambling related matters.

This is done in a number of ways in other states and territories. One such jurisdiction is the ACT—at anytime residents can look up online and see information about gambling.

The bill also inserts an offence for a venue if they fail to enter into arrangements with a problem gambling counselling service or a self-exclusion program for the benefit of patrons. Venues have been required to have an arrangement for a self-exclusion scheme since April 2000, and they have been required to enter into arrangements for counselling services since October 2002. Venues have been given ample time to arrange to have these services in place, and it is now appropriate to penalise those venues who have failed to make appropriate arrangements.

The bill also seeks to increase the efficiency of the Department's compliance program by introducing a power to allow remote inspections. This will allow a special inspector to request documents by way of a notice through the post. This will provide efficiencies to the Department, in particular for inspections of non-metropolitan venues.

The bill also seeks to introduce several offence provisions aimed at ensuring the integrity of gaming in this State. It will now be an offence for licensed dealers, sellers, advisers and technicians to supply or fit unapproved software components into gaming machines. This amendment seeks to ensure that any modification to a gaming machine is approved by the Board, and that the gaming machine operates in accordance with that approval.

Further, if the Board has issued a notice to update gaming machine software, it will be an offence for dealers, sellers and advisers to release software that has not been updated in line with the Board's direction.

Offences have been included for a hotelier or the secretary of a registered club who fail to ensure that a security seal has been attached to a gaming machine. Further amendments seek to ensure that all gaming machines are connected to the Centralised Monitoring System. These offence provisions seek to ensure the integrity of the gaming industry.

Since the introduction of centralised monitoring of gaming machines, the vast majority of clubs and hotels have taken steps to ensure that all gaming machines report to the CMS. However, there is a small number that refuse to provide assistance to the CMS Licensee to ensure their gaming machines remain connected.

The provisions of the bill will require hotels or clubs to respond to reasonable requests of the CMS Licensee within a two working day period. Responding to such requests may include alerting the CMS licensee that the fault is not attributable to any action on the part of the club.

Should they not do so, the CMS Licensee would then escalate the matter to the Department for compliance action in accordance with agreed procedures. The Minister for Gaming and Racing has asked the Department to consult with the major industry associations about those procedures and to ensure that all involved understand their responsibilities.

The bill introduces similar responsibilities for licensed technicians that undertake work on gaming machines. Licensed technicians must ensure that following work on a gaming machine, that it remains connected to the CMS. A defence is provided in circumstances where it is not practical for the gaming machine to continue to be

connected to the CMS provided the relevant hotel or club is advised.

Again the Department has been asked to consult with all relevant stakeholders.

It is proposed to amend the Act to make it clear that the Board may suspend or cancel a hotel or club's authorisation to keep gaming machines if the hotel or club fails to pay its monitoring fee or gaming machines tax. This is a power that the Board previously exercised, with some effect, when the gaming machine provisions were in the Liquor Act and the Registered Clubs Act, when the Board was responsible for revenue collection. This amendment seeks to clarify that the Board retains this power under the Gaming Machines Act.

The bill also clarifies that the Board may include in its costs of investigation and approval of gaming machines any fee associated with the testing or evaluation of the machine's compatibility and compliance with the centralised monitoring system. While the testing and evaluation arrangements are yet to be fully determined, the ability of the Board to charge fees in this regard should not be seen as the establishment of a new profit centre, but rather the recompense of costs associated with any development or maintenance of any test tool utilised and the processing of relevant applications.

Finally, a number of minor miscellaneous amendments are proposed in the bill which deal with drafting errors, minor wording changes or similar clarification. I will not go into the detail of all of these amendments other than to note that they are important to the effective operation of the Act.

I note that the Opposition proposed an amendment to the bill in the other place. The amendment sought to ensure that only matters of a regulatory, statistical or industry wide nature are published. The Government accepted this amendment in the other place. The Minister in the other place made it clear that the amendment would not impact on the Department's current avenues for providing information on gaming related matters.

I note that it is the practice that all bills will be scrutinised by the Legislation Review Committee. The Committee's obligations are set out in the Legislation Review Act 1987 and I believe that this bill does not contain any provisions that fall within the areas of interest to the committee.

The bill does not contain any provisions that trespass on personal rights or liberties. It does include some provisions that may be seen to increase the compliance burden placed on venues. However, it is considered that those provisions seek to protect the integrity of the gaming industry.

There is only one regulation making power in the bill. It is narrow and specific, and as such it is not considered that it would inappropriately delegate legislative powers or insufficiently subject the exercise of legislative power to Parliamentary scrutiny. It is noted that a copy of the proposed Regulation has been made available for consideration in connection with this bill.

The bill does not contain any provisions that make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers or upon non-reviewable decisions.

I commend the bill to the House.