



# Legislative Assembly

## Gaming Machines Further Amendment Bill Hansard

### Extract

13/11/2002

#### Second Reading

**Mr FACE** (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development) [10.05 p.m.]: I move:

That this bill be now read a second time.

The Gaming Machines Act was introduced by this Government late last year and commenced on 2 April this year. The new arrangements, which are aimed at limiting the growth of poker machines in New South Wales while still allowing open competition between gaming venues, are by necessity quite complex. However, the new system is now fully operational, and I am pleased to say that it is working extremely well. Since the commencement of the legislation, the Department of Gaming and Racing has established new systems and procedures to cope with the complexity of the new arrangements. Hotels and registered clubs have now been issued with certificates advising them of their current poker machine entitlements, as well as the number of approved amusement devices [AADs] they may be authorised to keep. The certificate also includes other details, such as, the number of hardship gaming machines that have been granted and the "SIA threshold". An example of the "SIA threshold" is the maximum number of gaming machines that may be authorised to be installed without the need to undergo a social impact assessment.

Various applications are now being lodged under the new scheme, and those applications are being processed and approved. However, the implementation of the new arrangements has identified certain technical difficulties with the way the legislation is currently drafted. In addition, clubs and hotels have been providing feedback on the way the legislation is affecting them, and this has led to some policy changes being proposed. I thank the industry for its co-operation in this regard. Its co-operation falls into line with my personal policy within the ministry and that of the department in monitoring procedures and any changes that are made.

During the implementation stage it has become apparent that, once again, there are some cowboys in the industry who, if given an inch, will take a mile. That is a symptom of a complex industry, but the cowboys are a minority group. As I have indicated on many occasions before, every time these cowboys find even the smallest loophole in the legislation I will act swiftly to make sure that it is plugged. Apart from those issues, the bill is primarily of a housekeeping nature to tidy up some of the loose ends of the legislation. If those in the industry are concerned about this bill, I assure them that this is primarily a housekeeping bill.

I now turn briefly to some of the key features of the bill. The bill will require "large-scale clubs" to forfeit entitlements when transferring between premises within one kilometre of each other. One of the key elements of the new gaming machine legislation was to require clubs with more than 450 poker machines to shed some of those machines and forfeit one-in-three of the poker machine entitlements they divested. One very large club has attempted to circumvent this forfeiture requirement by amalgamating with another small club close by and seeking to transfer the surplus requirements to the smaller club without forfeiture. This is because as the legislation presently stands clubs are not required to forfeit entitlements if they are transferring between two premises that lie within one kilometre of each other. To prevent large-scale clubs from using this exemption to avoid forfeiting entitlements, the amendment will provide that any transfer of entitlements between the premises of a large-scale club will require the forfeiture of one entitlement for every three transferred regardless of the distance between the premises.

The bill will also amend the Act to restrict the number of approved amusement devices that may be authorised to be installed in a hotel or club. These machines, commonly known as "cardies" or "draw poker machines", have been declining in numbers since the commencement of the legislation—from 2,510 on 2 April 2002 to about 620 at present. It is important to clarify the legislation to ensure that those that have been divested so far are not able to be replaced. That was always the intention of the Government.

The bill introduces a new definition of "SIA threshold". As I mentioned before, this term relates to the maximum number of gaming machines that may be authorised to be installed without the need to undergo a social impact assessment. The bill provides for the SIA threshold to be decreased when entitlements are transferred from a venue in a shopping centre. The Government is committed to controlling the availability of poker machines in large shopping centres. The few hotels that are already in shopping centres are permitted to retain those poker machines that they have, but once they sell any poker machine entitlements, the bill will ensure that the venues will not be permitted to buy any more to replace those that have been divested.

The bill also provides for a continuation of the previous arrangement that allowed persons with a declared financial interest in a hotel to share in the profits from the operation of gaming machines. The Liquor Act previously provided that a hotel licensee was not to share profits from gaming machines with another person, unless that

person had declared an interest in the hotel by means of an affidavit, or other than in connection with linked gaming systems or the operation of the TAB's investment licence. The Registered Clubs Act, on the other hand, provided a blanket prohibition on a club sharing the profits from its gaming machines with other parties, other than in connection with linked gaming systems. The reason for previously allowing hotels, but not clubs, to share gaming machine profits with financially interested parties is that hotels are private, for-profit ventures, whereas clubs have been, will continue to be and must be non-profit organisations.

The version of the provisions relating to profit sharing that was carried forward to the Gaming Machines Act—section 73—was the registered clubs version, and not the version applying to hotels at that time. However, this has the unintended consequence of prohibiting a hotel licensee from returning any share in the profits from gaming machines to the person who owns the hotel, even in the case where the licensee may simply be a paid employee who has been appointed by the owner to manage the business on the owner's behalf. This result was clearly not intended. The bill will cure that problem by amending the Act to permit the sharing of hotel gaming machine profits by declared financially interested persons. The amendment is to be applied retrospectively from the date when the original provision allowing profit sharing by hoteliers was inadvertently removed. This will validate the many hotel leases that have continued to operate since that time under a profit-sharing arrangement.

The bill will extend the capacity for poker machine entitlements to be transferred between premises of registered clubs without forfeiture. At the moment, clubs can transfer poker machine entitlements between their premises without forfeiture, provided those premises are not more than one kilometre apart. The one-kilometre restriction is inappropriate in non-metropolitan areas, where distances between two premises of the one club can be significantly greater. The amendment will increase the distance threshold to 50 kilometres for non-metropolitan clubs. As I said when the original bill was introduced, we would need to address instances as we went along. It has never been my intention, or the Government's, to make it more difficult for registered clubs to amalgamate in country and regional areas. This amendment will ensure that clubs experiencing trading difficulties or those that want to merge for appropriate reasons will be able to do so.

The bill will also amend the Act to permit hotels and clubs to transfer all of their poker machine entitlements without forfeiture to temporary premises. Once again, that is another anomaly that has been identified. The Liquor Act and the Registered Clubs Act include provisions to allow temporary premises to be approved for hotels and clubs for a limited period. Approval to move to temporary premises is usually sought by hotels, in particular, following a disaster such as a fire or flood, or during a period of extensive refurbishment. This issue has been kicking around since 1989, when the devastating effects of the Newcastle earthquake created difficulties beyond their control for hotels and licensed premises.

The Gaming Machines Act does not make any provision for temporary premises. If a hotel or registered club receives approval to move to temporary premises, any application to transfer poker machine entitlements would be subject to the standard forfeiture arrangements. The bill amends the legislation to allow hotels and clubs that move to temporary premises to transfer their full entitlements to the temporary premises, and then transfer them back again to the permanent premises. The bill also clarifies that the same social impact assessment requirements will apply to temporary premises, as currently apply to a permanent removal. For example, a class 1 SIA will be required if the move is to premises within one kilometre of the original premises, and a class 2 SIA will be required if the move is to premises that are more than one kilometre and it is intended to transfer four or more gaming machines.

The bill will also clarify the arrangements when a club or hotel licence is surrendered or cancelled, or where the club or hotel moves to other premises. One important feature of the bill is to make it clear that the Liquor Administration Board is to have regard to the need for gambling harm minimisation and other related matters when exercising its functions to approve technical standards and declare devices to be approved gaming machines. I understand that one gaming machine manufacturer has challenged the board's right to consider whether a new feature on a gaming machine might exacerbate problem gambling before approving it. The bill will amend the legislation to make it absolutely clear that the board is to take harm minimisation and other matters into account when exercising relevant functions.

The bill will also amend the Act to provide that the board is not required to allocate a poker machine entitlement to a hotel or club unless the board is satisfied that the particular venue was in a position to keep the poker machine at the time the venue was authorised to install it. During the process of determining the number of poker machine entitlements that should be allocated to each club and hotel, it became obvious that, once again, some members of the industry had overstepped the mark by misrepresenting their circumstances when originally applying to the board to install poker machines. In some cases, the board had approved the authorisation of machines without being advised that the premises concerned were in no position to operate gaming machines at that time.

For example, in some cases the premises had been demolished, the address was simply a hole in the ground, or the licence owner had no legal right to operate at the nominated address. Although the machines were authorised to be installed, clearly they could not be installed and they could not be operated in such circumstances. The bill will amend the Act to provide that the board is not required to allocate poker machine entitlements unless it is satisfied that the hotel or club was in a position to keep poker machines at the time authorisation was granted, or would have been in a position to keep poker machines by the date nominated. I will not go into detail about the other miscellaneous amendments included in the bill, other than to note that they are important to the effective operation of the Act. I commend the bill to the House.