



Legislative Council

Gaming Machines Further Amendment Bill Hansard - Extract

21/11/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.44 a.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the speech in *Hansard*.

Leave granted.

The Gaming Machines Act that was introduced by this Government late last year commenced on 2 April of 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 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 a certificate advising them of their current poker machine entitlements, as well as the number of approved amusement devices 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' - i.e. 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.

During the implementation stage, it has also become apparent that, once again, there are some in the industry who, if given an inch will take a mile. Every time these people find even the smallest loop-hole in the legislation, the Government will act swiftly to make sure that it is plugged.

Apart from those issues, the Bill before the House is primarily of a house-keeping nature to tidy up some of the loose ends of the legislation.

I will now turn briefly to some of the key features.

The Bill will require "large-scale clubs" to forfeit entitlements when transferring between premises within 1 km 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 1 km of each other. In order to prevent large scale clubs from using this exemption as a means of avoiding 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, also 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.

The Bill introduces a new definition of SIA threshold. As 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 or SIA.

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 which 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 their 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 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 this 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 1 km apart. The 1 km 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 km for non-metropolitan clubs.

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. 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 of time. 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.

The Gaming Machines Act does not make any provision for temporary premises. The effect is that 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 – i.e. a Class 1 SIA will be required if the move is to premises within 1 km of the original premises, and a Class 2 SIA will be required if the move is to premises that are more than 1 km away and it is intended to transfer 4 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 in relation to approving technical standards and declaring devices to be approved gaming machines.

It is understood 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 a device. 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 over-stepped 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, quite 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 on 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.