



Gaming Machines Amendment (Centralised Monitoring System) Bill 2015 (Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday 18 November 2015 (Proof).

Second Reading

Mr SCOT MacDONALD (Parliamentary Secretary) [4.42 p.m.], on behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Gaming Machine Amendment (Centralised Monitoring System) Bill 2015.

The Centralised Monitoring System [CMS] is the computer system that undertakes monitoring of all gaming machines in New South Wales. A key function of the CMS is the calculation and invoicing for gaming machine taxes in addition to monitoring gaming machine and system integrity. All gaming machines must be connected to the CMS before they can be operational in New South Wales venues. The current CMS licence expires on 30 November 2016 and the State has commenced a process under the Governance Framework for Major Transactions to select the next licensee. The process has a number of components—commercial, legal and regulatory.

The current CMS was originally conceived in the late 1990s and commenced operation in 2001. The current legislative framework reflects the environment at that time. This bill implements a number of reforms to the licensing framework for the Centralised Monitoring System designed to introduce a modern regulatory framework that encourages innovation while also introducing important controls to reflect that the CMS operator is undertaking an important regulatory function. The bill also provides a level of commercial and regulatory certainty to CMS tenderers and ensures the transaction can be completed as designed.

Before I discuss some of the detail in the bill I should point out what this bill does not do. Importantly, the bill does not change the Government's harm minimisation gambling policy position, nor does it increase gaming machine numbers. These amendments also do not change the current licensing arrangements applying to the state-wide linked jackpot systems operating in clubs and hotels. The state-wide jackpot licences expire in late 2017 and 2019 and will be dealt with separately to the current CMS licence tendering process.

I will now turn to the detail in the bill. The bill amends section 136 of the Act to provide that the Minister may grant a licence for a new CMS, which may be granted with a future commencement date and for a term specified in the licence, on an exclusive basis. The current CMS licence exclusivity provisions fall away on the expiry of the current licence on 30 November 2016. Without a level of certainty in legislation the value to Government may be significantly diminished and provides significant regulatory risk to tenderers.

The bill introduces more rigorous suitability and integrity requirements for the operator and also allows the Minister to review the ongoing suitability of the operator during the term of the licence. This ongoing power reflects the important regulatory functions that the licensee undertakes for the Government as well as the long-term nature of the licence. In determining whether an applicant is "fit and proper" to be granted and hold a CMS Licence the Minister must have regard to a number of criteria such as the applicant's character honesty and integrity, the proposed ownership and governance structures, and whether the applicant has appropriate commercial and technical experience. The Minister is not limited to the matters that may be considered in determining whether a person is suitable to be concerned in or associated with the management and operation of the CMS.

These new provisions are consistent with the arrangements for public lotteries and casino regulation in New South Wales as well as gaming machine regulation in other states.

Section 134 of the bill will remove the requirement for the Independent Pricing and Regulatory Tribunal [IPART] to be consulted during the process to determine the monthly fee that may be charged for each machine connected to the CMS. The bill still requires that the Minister consult with the Treasurer before a fee can be determined. The inclusion of IPART in the fee-setting mechanism for the original licence was introduced as a consequence of the unique nature of that licence which was granted as part of the privatisation of the New South Wales TAB in 1997.

Unlike the initial licence grant, which was without tender and in an environment where the true costs of

a widespread monitoring system were not well understood, the new CMS licence fee will be determined as part of a competitive tender process. The removal of IPART from the Act and setting the fee at the commencement of the licence, provides certainty of cash flows to the new licensee, which is a key element of any commercial transaction. By providing this certainty to tenderers and allowing tenderers to price the licence accurately the potential for Government to receive an upfront fee paid to the State upon the grant of the licence is increased.

Despite the removal of IPART from the price setting mechanism, until the expiry of the current licence on 30 November 2016 the current IPART determined fee will continue to apply. Following this, the monthly monitoring fee will continue at the current level, but will be indexed at the consumer price index not the fixed 3 per cent indexation that has been in place since the last determination in 2004. Additionally, by paying an upfront licence fee the licensee is incentivised to achieve a return on investment, and the risk of a successful licensee underperforming or not developing the CMS to the appropriate standards is significantly reduced. As a functioning CMS is such an integral part of the industry's operation any premature departure by the next licensee, particularly if it was at short notice, could significantly disrupt gaming venues, both large and small. Government's gaming taxes could also be adversely affected if gaming turnover in venues was to fall away for a period.

The bill introduces two new categories of services for the CMS: mandatory and approved services. These services are separate to the key monitoring and integrity functions performed by the CMS. The framework for these services encourages innovation by the licensee, benefiting venues by allowing for new services to be offered during the term of the licence. These services are in addition to the services currently offered, such as gaming machine performance statements, which will continue to be provided to venues free of charge.

An example of approved services could be a suite of advanced reporting that provides more granular reporting of the performance of gaming machines in the venue. The approved services framework recognises that the State of New South Wales has provided an environment that encourages innovation and allows for smaller third party manufacturers to thrive. It is not the intention of the Government to reduce competition in the marketplace. Accordingly, the approved services framework allows for consultation to occur with a wide range of stakeholders before a decision is made to approve or refuse an application. This consultation framework recognises that the CMS is a monopoly licence, and that utilising the CMS infrastructure to offer services in a competitive market should not have a detrimental effect on existing businesses.

The mandatory services framework allows the Government through the Minister for Racing to require enhancements to be made to the CMS. As an example, the CMS could be enhanced through the provision of a venue-based voluntary pre-commitment system to be offered to venues.

Section 136E of the bill provides a framework that ensures, where there are sufficient grounds, that information submitted by the licensee in connection with the CMS licence may be subject to a claim of confidentiality by the licensee. These confidentiality provisions capture any information that is provided in connection with an application for a CMS licence, any activities authorised under that licence, information supporting the provision of a mandatory service or an application to provide an approved service.

This framework provides that the information can only be claimed as confidential if it is considered that releasing the information could adversely impact on the competitive position of the licensee, or would result in the licensee breaching the confidentiality owed to another person. The bill allows the responsible Minister to determine whether there are sufficient grounds for the information to be considered confidential and, if not, that the information may be disclosed.

The bill also permits regulations to be made that would allow the information to be disclosed to a prescribed body or persons. These provisions ensure a balanced approach to the process of determining whether information is confidential and provides the licensee certainty that information provided in support of an application, will be considered confidential where appropriate. It should be made clear that where information is subject to a claim of confidentiality, this claim will not preclude this information from being used to determine an application.

Section 139 of the bill makes it clear that all information collected by the CMS remains the property of the crown. However, the bill also provides a non-exclusive licence to the licensee to use the CMS data for the purposes of operating the CMS and offering any approved or mandatory services throughout the term of the licence. These amendments clarify and add strength to the existing provisions on data ownership which were overly complex. The bill also introduces penalties of up to \$11,000 should the CMS licensee use any CMS information in a manner that is not approved.

The bill inserts a number of additional powers into Section 172 of the Act to provide strengthened enforcement powers. Section 172 (1) of the bill provides that the Minister may impose a maximum daily penalty for continuing licence breaches, which will be levied for each day the licensee contravenes any of the disciplinary measures contained within the Act, regulations or licence conditions. The penalty will be prescribed by regulation prior to the commencement of the bill.

Expanded provisions also enable the Minister to issue a letter of reprimand without needing to first

issue a "show cause" notice and enable a rectification order to be issued concurrently with taking disciplinary action. Further, for egregious and ongoing matters, where the integrity or public interest is materially affected, the Minister may suspend or cancel the CMS licence. Where a CMS licence is cancelled under these provisions the Minister will be able to appoint a temporary licensee to continue the operations of the CMS for a period of 12 months, which can be extended for an additional 24 months if required.

The current provisions in the Act do not provide for transition at the end of the current licence. A significant risk in the process is the transition from the current CMS to a new and modernised system. Schedule 1 of the bill provides for transitional licensing arrangements to ensure appropriate management of transitional risks before the new CMS commences operation. The incumbent licensee, Maxgaming, will continue to operate its system during the transition period under a transition licence, to ensure gaming machine tax calculations, reporting on integrity events, and online gaming machine authorisations continue while a new CMS system is tested and rolled out to approximately 2,700 venues across the State.

The transition licence will be on the same terms as the current licence and enable the staged roll-out of the new CMS. Savings provisions will also ensure the current CMS licensing arrangements remain unchanged for the term of that exclusive licence. In summary, this bill represents a sensible and modernised regulatory approach to the licensing arrangements applying to the CMS and provides an opportunity to deliver benefits to both industry and Government, including harm minimisation benefits.