

LEGISLATIVE COUNCIL

GAMBLING REGULATION AMENDMENT (LICENSING) BILL 2009

(Amendments and New Clauses to be moved by Mr MADDEN)

1. Clause 1, line 3, omit "Bill" and insert "Act".
2. Clause 1, page 2, after line 13 insert—
 - "() to make further provision in relation to the placement of automatic teller machines in approved venues; and
 - () to make provision in relation to gaming machine pre-commitment mechanisms; and".
3. Clause 1, page 2, line 14, omit "(d)" and insert "(f)".
4. Clause 1, page 2, after line 15 insert—
 - "() The purpose of this Act is also to amend the **Casino Control Act 1991** to make further provision in relation to the placement of automatic teller machines in a casino."
5. Clause 2, line 17, omit "Division 1 of Part 4" and insert "sections 63 and 64".
6. Clause 2, line 18, omit "and sections 76 and 77" and insert "sections 76 and 77 and Division 5 of Part 4".
7. Clause 2, line 21, omit "subsection (3), Division 1 of Part 4" and insert "this section, sections 63 and 64".
8. Clause 2, line 24, omit "a provision referred to in subsection (2)" and insert "section 63(1) or 64, or a provision in Division 2 of Part 4 or section 76 or 77".
9. Clause 2, after line 26 insert—
 - "() If section 63(2), (3), (4) or (5) does not come into operation before 1 July 2012, it comes into operation on that day.
 - () Subject to subsection (6), Division 5 of Part 4 comes into operation on a day to be proclaimed.
 - () If Division 5 of Part 4 does not come into operation before 1 July 2012, it comes into operation on that day."
10. Clause 4, line 5, before "In" insert "(1)".

11. Clause 4, after line 6 insert—
- ' "**authorising officer**, of a club that is—
- (a) a company, means the company's secretary;
- (b) a co-operative (within the meaning of the **Co-operatives Act 1996**), means the secretary of the co-operative;
- (c) an incorporated association (within the meaning of the **Associations Incorporation Act 1981**), means the public officer or secretary of the association;
- club gaming machine entitlement** means a gaming machine entitlement that is subject to a venue condition that authorises the conduct of gaming in an approved venue in respect of which a club licence or racing club licence is in force;
- constituting document**, of a club that is—
- (a) a company, means the constitution of the company;
- (b) a co-operative (within the meaning of the **Co-operatives Act 1996**), means the rules of the co-operative;
- (c) an incorporated association (within the meaning of the **Associations Incorporation Act 1981**), means the rules of the association;
- hotel gaming machine entitlement** means a gaming machine entitlement that is subject to a venue condition that authorises the conduct of gaming in an approved venue in respect of which a pub licence is in force;
- pre-commitment mechanism** means a prescribed mechanism or system that allows a person to set a time limit or net loss limit before that person plays a gaming machine;".'
12. Clause 4, line 7, omit "'gaming' and insert "gaming".
13. Clause 4, after line 18 insert—
- "() In section 1.3(1) of the Principal Act, for the definition of **venue operator's licence substitute**—
- "venue operator's licence** means a club venue operator's licence or a hotel venue operator's licence issued under Division 2 of Part 4 of Chapter 3;".
14. Clause 5, page 6, lines 6 to 8, omit all words and expressions on these lines and insert—
- "() In section 3.1.2 of the Principal Act, the definition of **State limit** is **repealed.**".
15. Clause 9, lines 14 to 22, omit all words and expressions on these lines and insert—
- "Section 3.2.3(1)(b), (c) and (e) of the Principal Act is **repealed.**".

16. Clause 10, lines 12 to 17, omit all words and expressions on these lines.
17. Clause 10, page 13, lines 14 to 16, omit "all directions under section 3.2.3 that relate to hotel gaming machine entitlements must be applied" and insert "a notice published under section 3.4A.5(3) must be applied and the matters set out in section 3.4A.5(5) and (6) must be taken into account."
18. Clause 11, after line 25 insert—
 - "(ab) while holding gaming machine entitlements, conduct gaming on approved gaming machines in an approved venue operated by the licensee; and"
19. Clause 11, line 26, omit "(ab)" and insert "(ac)".
20. Clause 11, page 14, line 1, omit "(ac)" and insert "(ad)".
21. Clause 11, page 14, line 19, omit 'games.'" and insert "games."
22. Clause 11, page 14, after line 19 insert—
 - '(3) A venue operator's licence only authorises the licensee to conduct gaming on 105 approved gaming machines in every approved venue operated by the licensee.'".
23. Clause 15, lines 24 to 26, omit all words and expressions on these lines and insert—
 - () For section 3.4.8(1) of the Principal Act **substitute**—
 - "(1) Only a person who is not a natural person may apply to the Commission for a club venue operator's licence or a hotel venue operator's licence.
 - (1A) An application for a club venue operator's licence may only be made by a club—
 - (a) that is established for a community purpose; and
 - (b) the constituting document of which contains provisions prohibiting—
 - (i) the distribution of any annual profit or surplus to its members; and
 - (ii) the distribution of any surplus to its members on winding up.'".
 - () After section 3.4.8(2) of the Principal Act **insert**—
 - "(2A) In addition to the requirements of subsection (2), an application for a club venue operator's licence must also be accompanied by a copy of the club liquor licence, or the racing club licence, for the club and the following information—
 - (a) a copy of the constituting document of the club that is certified as true and correct by the authorising officer of the club with

the provisions referred to in subsection (1A)(b) clearly marked;
and

(b) a statement of community purpose which sets out the purposes for which the club is established (if these purposes are not set out in the constituting document of the club); and

(c) any further information that the Commission requires to be satisfied that the applicant is a club established for a community purpose.".'.

24. Clause 16, line 29, before "**venue**" insert "**hotel**".
25. Clause 16, line 32, before "venue" insert "hotel".
26. Clause 16, page 18, line 1, before "venue" insert "hotel".
27. Clause 16, page 18, line 4, before "venue" insert "hotel".
28. Clause 16, page 18, line 9, before "venue" insert "hotel".
29. Clause 17, after line 14 insert—

'() After section 3.4.11(1)(b) of the Principal Act **insert**—
"(ba) in the case of an application for a club venue operator's licence, the applicant is a club; and".'.
30. Clause 18, after line 20 insert—

'() After section 3.4.12(2)(a) of the Principal Act **insert**—
"(ab) whether the licence is a club venue operator's licence or a hotel venue operator's licence; and".'.
31. Clause 18, page 19, after line 5 insert—

'() After section 3.4.13(2)(b) of the Principal Act **insert**—
"(ba) details as to whether the venue operator is the holder of a club venue operator's licence or a hotel venue operator's licence;".'.
32. Clause 23, page 31, line 5, omit "10" and insert "15".
33. Clause 25, page 60, line 22, omit "managed or".
34. Clause 25, page 62, line 22, omit "The" and insert "Subject to this section, the".
35. Clause 25, page 62, after line 27 insert—

"() The Minister—
(a) must not create more gaming machine entitlements than the Minister has specified in a notice under subsection (3); and
(b) must not allocate a club gaming machine entitlement to a venue operator who does not hold a club venue operator's licence.

() The Minister, by notice published in the Government Gazette, must specify the maximum number of gaming machine entitlements the Minister will create under subsection (1)."

36. Clause 25, page 62, line 28, omit "this section" and insert "subsections (5) to (8)".

37. Clause 25, page 63, after line 8 insert—

"() The imposition of geographic area conditions under subsection (4)(a) must result in at least 20% of all gaming machine entitlements created authorising the conduct of gaming in a region or municipal district outside the Melbourne Statistical Division.

() The imposition of venue conditions under subsection (4)(b) must not result in—

(a) more than 50% of gaming machine entitlements created authorising the conduct of gaming in an approved venue in respect of which a pub licence is in force; and

(b) more than 50% of gaming machine entitlements created authorising the conduct of gaming in an approved venue in respect of which a club licence or racing club licence is in force.

Note

In addition to specifying, under subsection (3), the maximum number of gaming machine entitlements the Minister will create, the Minister may direct the Commission as to the maximum permissible number of gaming machines available for gaming in the State and the Commission is bound by such a direction: see section 3.2.3(1)(a) and (5)."

38. Clause 25, page 63, line 9, omit "A" and insert "In addition, a".

39. Clause 25, page 63, line 13, omit "A" and insert "In addition, a".

40. Clause 25, page 63, line 29, after "entitlements" insert "including any eligibility criteria".

41. Clause 25, page 63, line 33, omit "(5)(a)" and insert "(9)(a)".

42. Clause 25, page 64, line 4, omit "(5)(a)" and insert "(9)(a)".

43. Clause 25, page 64, line 20, omit "3.4A.5(5)(e)" and insert "3.4A.5(9)(e)".

44. Clause 25, page 69, line 1, omit "subsection (3)" and insert "this section".

45. Clause 25, page 69, after line 5 insert—

"() The effect of a decision of the Commission to amend a geographic area condition must not be inconsistent with the effect of section 3.4A.5(5).

() The effect of a decision of the Commission to amend a venue condition must not be inconsistent with the effect of section 3.4A.5(6)."

46. Clause 25, page 69, line 6, omit "A" and insert "In addition, a".

47. Clause 25, page 79, lines 25 to 31, omit all words and expressions on these lines.
48. Clause 25, page 80, line 1, omit "3.4A.32" and insert "3.4A.31".
49. Clause 25, page 80, line 8, omit "3.4A.33" and insert "3.4A.32".
50. Clause 25, page 80, line 24, omit "3.4A.34" and insert "3.4A.33".
51. Clause 54, page 118, line 5, omit "4.2.8(3)" and insert "4.2.9(3)".
52. Clause 54, page 118, line 10, omit "4.2.8(3)" and insert "4.2.9(3)".
53. Clause 54, page 118, line 15, omit "4.2.8(3)" and insert "4.2.9(3)".
54. Clause 54, page 118, line 29, omit "4.2.8(3)" and insert "4.2.9(3)".
55. Clause 57, page 126, line 20, omit "4.3A.34I or 4.3A.34J" and insert "4.3A.34I, 4.3A.34J or 4.3A.34K".
56. Heading to clause 63, line 4, omit all words and expressions on this line and insert—
"New gaming machine advertising prohibitions and responsible gambling sign requirements".
57. Clause 63, line 5, before "After" insert "(1)".
58. Clause 63, page 143, after line 21 insert—
 '() In section 1.3(1) of the Principal Act, after the definition of *Responsible Gambling Code of Conduct*, insert—
"responsible gambling sign means a sign (whether consisting of words, symbols, pictures or any other thing) that—
 (a) can reasonably be taken to be intended to foster responsible gambling in order to minimise the harm caused by problem gambling; and
 (b) is prescribed;"
- () After section 3.5.34AA(6)(b) and 3.5.34AB(4)(b) of the Principal Act **insert—**
 "(ba) a responsible gambling sign; or".
- () After section 3.5.35 of the Principal Act **insert—**
"3.5.35A Responsible gambling signs
 (1) A venue operator must display, or cause to be displayed, outside every entrance to a gaming machine area of an approved venue a responsible gambling sign.
 Penalty: 60 penalty units.
 (2) This section does not apply to a venue operator who is a casino operator."

- () In Part 3 of Schedule 1 to the Principal Act, after item 3.25 **insert**—
- "3.25A Responsible gambling signs including—
- (a) the information that must be included in a responsible gambling sign;
 - (b) the size of a responsible gambling sign;
 - (c) the placement of a responsible gambling sign outside an entrance to a gaming machine area of an approved venue;
 - (d) the manner in which a responsible gambling sign must be displayed.".'.

59. Clause 75, after line 19 insert—

"22.1A Existing venue operator's licences to be club venue operator's licences or hotel venue operator's licences

On the commencement of section 16 of the **Gambling Regulation Amendment (Licensing) Act 2009**—

- (a) a venue operator that holds a club liquor licence or a racing club licence is deemed to be the holder of a club venue operator's licence; and
- (b) a venue operator that holds a pub liquor licence is deemed to be the holder of a hotel venue operator's licence.

22.1B Minister's power to make directions relating to gaming machine numbers to continue until specified date

Section 3.2.3, as in force immediately before the commencement of section 9 of the **Gambling Regulation Amendment (Licensing) Act 2009**, continues to have effect until 15 August 2012 as if section 9 had not come into operation.

22.1C Current Ministerial directions relating to gaming machine numbers

- (1) This clause applies to a direction of the Minister—
 - (a) made under section 3.2.3 that contains a matter or thing provided for under section 3.2.3(1)(b), (c) or (e); and
 - (b) that is in force immediately before the commencement of section 9 of the **Gambling Regulation Amendment (Licensing) Act 2009**.
- (2) The direction continues to have effect until 15 August 2012 despite the commencement of section 9 of the of the **Gambling Regulation Amendment (Licensing) Act 2009** and may be amended or revoked accordingly.".

60. Clause 76, line 16, omit "3.5.34AA(7)" and insert "3.5.34AA(8)".

61. Division heading preceding clause 78, omit "5" and insert "7".

62. Clause 79, line 3, omit "1 January 2011" and insert "1 July 2013".

NEW CLAUSES

63. Insert the following New Clauses and Division headings to follow clause 77—

'Division 5—Placement of automatic teller machines

AA New Subdivision heading inserted

Before section 3.5.29 of the Principal Act **insert—**

"Subdivision 1—General measures".

BB New Subdivision inserted into Division 3 of Part 5 of Chapter 3

After section 3.5.33A of the Principal Act **insert—**

"Subdivision 2—Automatic teller machine measures

3.5.33B Definitions

In this Subdivision—

approval means an approval granted under section 3.5.33F;

approved venue, where that venue is not on a racecourse, includes—

- (a) the exterior walls of the venue; and
- (b) any land that is owned or leased (under a retail lease or otherwise) by the venue operator on which the venue is located; and
- (c) any car park owned or occupied by the venue operator and used primarily by patrons of the venue;

default conditions means the conditions specified under section 3.5.33H;

Ministerial direction means a direction of the Minister under section 3.5.33G.

3.5.33C Automatic teller machines prohibited in approved venues not on racecourses

- (1) A venue operator must not provide, or allow another person to provide on the venue operator's behalf, an automatic teller machine in an approved venue that is not on a racecourse unless the venue operator holds an approval that authorises the provision of that machine.

Penalty: 60 penalty units.

- (2) This section does not apply to a venue operator who is a casino operator.

3.5.33D Limiting placement of automatic teller machines on racecourses

- (1) In relation to a gaming machine area in an approved venue that is on a racecourse, a venue operator must not provide, or allow another

person to provide on the venue operator's behalf, an automatic teller machine—

- (a) in the gaming machine area; or
- (b) in an area that is less than 50 metres walking distance away from an entrance to the gaming machine area.

Penalty: 60 penalty units.

- (2) Section 43 of the **Interpretation of Legislation Act 1984** does not apply to the measurement of any distance for the purposes of subsection (1).

3.5.33E Application for approval

- (1) A venue operator may apply to the Commission for an approval to provide, or for another person to provide on its behalf, an automatic teller machine in an approved venue.
- (2) An application for an approval must—
 - (a) be in a form approved by the Commission; and
 - (b) contain or be accompanied by any additional information the Commission requires; and
 - (c) be accompanied by the prescribed fee (if any).

3.5.33F Approvals

- (1) Subject to this section, on receipt of an application under section 3.5.33E, the Commission may grant or refuse to grant an approval.
- (2) The Commission must not grant an approval unless—
 - (a) the approved venue in which the venue operator proposes to place or allow to be placed an automatic teller machine is or will be situated outside the Melbourne Statistical Division; and
 - (b) the Commission is satisfied that the community in which the approved venue is or will be situated would, if the approval is not granted—
 - (i) have no reasonable alternative access to cash facilities; and
 - (ii) suffer hardship.
- (3) For the purpose of being satisfied under subsection (2)(b), the Commission—
 - (a) must apply any criteria specified in a Ministerial direction; and
 - (b) must take into account any other matters specified in a Ministerial direction; and
 - (c) may take into account any other matter it considers relevant.
- (4) The Commission must—

- (a) notify, in writing, the venue operator of its decision under this section; and
 - (b) publish notice of the granting of an approval in the Government Gazette under this section.
- (5) An approval comes into effect on the day notice of its granting is published in the Government Gazette or on a later date specified in the notice.
- (6) An approval remains in force until revoked by the Commission under this Subdivision.

3.5.33G Ministerial directions as to approvals

- (1) The Minister may give a written direction to the Commission in relation to—
- (a) criteria the Commission must apply for the purpose of section 3.5.33F(2)(b);
 - (b) any other matters that the Commission must take into account for the purpose of section 3.5.33F(2)(b).
- (2) The Commission, as soon as possible after receiving a direction under this section, must publish the direction in the Government Gazette.

3.5.33H Conditions of approvals

- (1) Every approval is subject to the following conditions (*default conditions*)—
- (a) it is a condition of the approval that the automatic teller machine to which the approval applies has a withdrawal limit of not more than \$200 for every transaction;
 - (b) it is a condition of the approval that the automatic teller machine to which the approval applies does not allow cash advances from credit accounts;
 - (c) it is a condition of the approval that the automatic teller machine to which the approval applies is not located within the gaming machine area of the approved venue;
 - (d) a condition that is prescribed.
- (2) The Commission may grant an approval subject to any further conditions the Commission considers fit.
- (3) The further conditions that the Commission may impose on an approval under subsection (2) may relate to, but are not restricted to, the following—
- (a) specifying the location of or providing further restrictions on the location of automatic teller machines at the approved venue;

- (b) specifying the times when automatic teller machines may or must be available for use at the approved venue;
 - (c) the number of automatic teller machines that may be installed and used at the approved venue;
 - (d) any further withdrawal limits to apply to automatic teller machines at the approved venue.
- (4) However, a condition imposed by the Commission under subsection (2) must not be inconsistent with any default condition.

3.5.33I Amendment of conditions of approvals—Applications by venue operators

- (1) A venue operator who holds an approval may apply to the Commission for an amendment to, or a revocation or a substitution of, a condition of the approval.
- (2) An application under subsection (1) cannot be made in respect of a default condition.
- (3) Sections 3.5.33E to 3.5.33H apply to an application under subsection (1)—
 - (a) as if a reference to an application for an approval were an application under subsection (1); and
 - (b) as if a reference to a decision granting or refusing to grant an approval were a reference to a decision amending, or revoking or substituting, or a refusal to amend, or revoke or substitute, a condition of an approval (as the case may be); and
 - (c) with any other modifications that are necessary.

3.5.33J Review of approvals

- (1) The Commission must review an approval and the conditions that apply to that approval—
 - (a) not less than once every 5 years after that approval has taken effect; and
 - (b) within 90 days after the Commission becomes aware that there has been a change in access to banking services in the community in which the approved venue to which the approval relates is situated.
- (2) The Commission must notify, in writing, the venue operator who is the holder of the approval of the Commission's review.
- (3) A venue operator may make a written submission in relation to a review within 28 days after being notified of the review.
- (4) The Commission must consider any submission it receives under subsection (3) in conducting a review.
- (5) Following a review, the Commission may decide that—

- (a) the approval be revoked; or
 - (b) the approval not be revoked; or
 - (c) that a condition of the approval be amended, revoked or substituted.
- (6) The Commission must—
- (a) give the venue operator written notice of its decision under this section; and
 - (b) if the decision is that the approval is revoked or a condition of the approval is amended, revoked or substituted, publish a notice to that effect in the Government Gazette.
- (7) If the Commission decides to revoke an approval or amend, revoke or substitute a condition of the approval, that revocation, amendment or substitution (as the case may be) takes effect 90 days after the Commission notifies the venue operator who is the holder of the approval of its decision under subsection (6)(a).

3.5.33K Amendment of conditions of approvals—By the Commission

The Commission may, on its initiative, amend revoke or substitute a condition of the approval only after a review of the approval under section 3.5.33J.

3.5.33L Functions and powers under this Subdivision may be performed or exercised by a single Commissioner

A function of the Commission under this Subdivision may be performed by any Commissioner.

3.5.33M Appeal

- (1) If a decision to refuse to grant an approval under this Subdivision, or a decision to amend, or revoke or substitute a condition of an approval under this Subdivision, is made by a single commissioner, the venue operator may appeal against the decision to the Commission within 28 days of notification of the decision.
- (2) An appeal must—
 - (a) be in writing; and
 - (b) specify the grounds on which it is made.
- (3) After consideration of an appeal, the Commission may—
 - (a) confirm the decision; or
 - (b) in the case of a decision to refuse to grant an approval—grant the approval, subject to conditions;
 - (c) in the case of a decision to decision to amend, or revoke or substitute a condition of an approval—make a decision not to amend, revoke or substitute the condition.

- (4) The decision of the Commission on an appeal—
 - (a) must be notified in writing to the applicant;
 - (b) may include the reasons for the decision.
- (5) The Commission as constituted for the purposes of the appeal must not include the commissioner who made the decision appealed against."

CC Repeal of certain automatic teller machine measures

Section 3.5.32A of the Principal Act is **repealed**.

DD Casino Control Act 1991—automatic teller machine measures

For section 81AAA of the **Casino Control Act 1991 substitute—**

"81AAA Limiting placement of automatic teller machines

- (1) In relation to a casino, a casino operator must not provide, or allow another person to provide on the casino operator's behalf, an automatic teller machine—
 - (a) in the casino; or
 - (b) in an area that is less than 50 metres walking distance away from an entrance to the casino.

Penalty: 60 penalty units.

- (2) Section 43 of the **Interpretation of Legislation Act 1984** does not apply to the measurement of any distance for the purposes of subsection (1)."

Division 6—Pre-commitment mechanism requirements

EE New sections 3.4.31A and 3.4.31B inserted

After section 3.4.31 of the Principal Act **insert—**

"3.4.31A Pre-commitment mechanisms required for prescribed gaming machines—1 December 2010 to 30 November 2015

On and after 1 December 2010 and until 30 November 2015, a gaming operator or a venue operator must not allow a game to be played on a prescribed gaming machine that does not have a pre-commitment mechanism that applies to that machine.

Penalty: 120 penalty units.

3.4.31B Pre-commitment mechanisms required for gaming machines— from 1 December 2015

On and after 1 December 2015, a venue operator must not allow a game to be played on a gaming machine that does not have a pre-commitment mechanism that applies to that machine.

Penalty: 120 penalty units."

FF New subject matter for regulations inserted

After clause 3.26 of Part 3 of Schedule 1 to the Principal Act **insert**—

"3.26A In relation to pre-commitment mechanisms—

- (a) the method by which a time limit or net loss limit is set;
- (b) if a person has previously set a time limit or net loss limit, the period of time during which a new time limit or new net loss limit set by a person will not be effective;
- (c) if a person has previously set a time limit or net loss limit, the responsible gambling information that may be provided to the person, electronically or otherwise, before or during the playing of a gaming machine;
- (d) the method by which a person who has set a time limit or net loss limit may access an historical record of his or her spending on the playing of a gaming machine;
- (e) options that a person may choose to apply to his or her playing of a gaming machine if a time limit or net loss limit set by the person has been exceeded;
- (f) the period of time during which a person may not play a gaming machine if a time limit or net loss limit set by the person has been exceeded;
- (g) the kinds of networks and connections that may constitute a pre-commitment mechanism that is a system;
- (h) persons who may install and maintain pre-commitment mechanisms.".'.

AMENDMENT OF LONG TITLE

64. Long title, after "2003" insert ", the **Casino Control Act 1991**".