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On 29 November 2012, the Federal Government was successful in passing through both houses of Parliament legislation aimed at regulating the operation and use of gaming machines and addressing associated issues of problem gambling. The Acts became law on 12 December 2012.

The haste with which the legislation passed through Parliament is in contrast to the protracted development of these reforms, yet reflects a number of material policy and political motivations for the Government. We track the development of the legislation and consider some of its broader implications.

The Exposure Drafts

In our article “Gaming Machines and Pre-Commitment – Possible Australian Federal Legislation”,¹ we described the background to the release of the Exposure Drafts and outlined some of the proposed key changes, as well as the policy background. The changes included:

- from the beginning of 2013, gaming machines were to be equipped with pre-commitment capability to result in all gaming machine premises being part of state-linked pre-commitment systems by 31 December 2016 (with a staggered approach being in place in respect of smaller venues);
- by 31 December 2016, all gaming machines were to have dynamic warnings in place;
- by 1 February 2013, certain measures were to be put in place concerning the operation of ATMs at gaming venues, in particular a requirement to limit the amount that can be withdrawn from an ATM located at a gaming premises within 24 hours; and
- the introduction of two levies relating to the operation of gaming machines, namely a gaming machine regulation levy and supervisory levy, largely for the purpose of financing the new regulator.

The Bills

The Bills were formally introduced into Parliament on 1 November 2012. In broad terms, some of the more substantial differences between the Exposure Drafts and the Bills were:

- the commencement of the requirement for gaming machines to be equipped with pre-commitment capability to be delayed to the end of 2013;
- a shift to a ‘double voluntary’ pre-commitment system, whereby a person can elect to both register for pre-commitment and set a loss limit. Under the Exposure Drafts, any person who elected to register for a State or Territory pre-commitment system was required to set a loss limit;
• the commencement of the requirement that ATMs located in gaming venues have a $250 daily withdrawal limit to be delayed to 1 May 2013;

• some additional exceptions from civil penalty provisions for persons who make a non-compliant gaming machine available for use and additional exceptions from the liability to pay the gaming machine regulation levy;

• further detail regarding a mandatory pre-commitment trial, including provisions which contemplate the Productivity Commission’s review of a mandatory trial, as well as its assessment of the trial’s progress.

Inquiry into the Bills
Following their introduction into Parliament, the Bills were referred to the JSCOGR to conduct an inquiry within a very tight time-frame. The JSCOGR sought submissions from interested parties by 9 November 2012 (within 9 days of the referral) and a public inquiry was conducted on 13 November 2012.

Various stakeholders were critical of a number of aspects of the Bills, including:

• The Utility of the Double-Voluntary Pre-Commitment Regime: Some stakeholders were critical of the “double voluntary” approach to pre-commitment, noting that a registered player who reaches a limit is able to opt out of registered play and continue to gamble without any of their play being tracked.3

• The Technical Challenges Faced by Manufacturers: The deadlines imposed on manufacturers and importers for ensuring that gaming machines have pre-commitment capabilities (end of 2013) are considered by gaming machine manufacturers to be simply too onerous having regard to the significant technical modifications that are required to machines, software, etc.4

• ATM Withdrawal Limits: Many parties were highly critical of these measures, either objecting to them outright or alternatively suggesting that the withdrawal limit proposed (namely, $250) was too low. Some of the points raised were that:
  - There is no supportive evidence that such limits would have any effect on the prevalence of problem gambling.
  - Withdrawal limits could restrict substantially a club’s ability to derive revenues from the provision of its food, beverage, and other non-gaming services.
  - The limits can be easily circumvented (i.e. a player need only access a nearby ATM or use multiple credit cards).
  - The exception in respect of casinos may cause gamblers to migrate away from clubs to casinos and thereby place competitive pressures on clubs.

• Federal Interference in a ‘State/Territory Issue’: It was contended that existing regulation of poker machines at State and Territory level,5 together with the commitments of the various State and Territory governments to the introduction of voluntary pre-commitment, renders the Bills unnecessary and a potential usurpation of the States’/Territories’ powers.6 It was suggested that, before any measures come into operation, State and Territory governments be further consulted in order to avoid regulatory duplication and ensure that existing problem gambling measures are not impacted adversely.

• Privacy Protection: Several organisations expressed concern regarding the accessibility of the personal information of problem gamblers utilising the pre-commitment scheme, and believed the Bill could be strengthened by introducing measures that protect those individual’s privacy. It was suggested that formulating regulations that work in conjunction with the new amendments to the Privacy Act 1988 (Cth) could help to meet this objective.7

The Acts
Following the review and parliamentary debate, the Government made a number of amendments to the Bills, principally on the basis that the timings proposed for the implementation of some of the key measures of the legislation were too short. Consequently, the Acts now:

• extend the deadline for gaming machines to be equipped with pre-commitment capabilities to 31 December 2014.

• extend the deadline for venues with 21 or more gaming machines to have compliant machines (including dynamic warnings) to 31 December 2018;

• in the case of smaller venues (between 11 and 20 gaming machines), extend the deadline for the premises to have compliant machines (including dynamic warnings) to 31 December 2022;

• delay the commencement of the requirement for $250 daily ATM withdrawal limits to 1 February 2014; and

• cap the supervisory levy at $10 million a year (indexed).

Some Unresolved Matters
There remains a great deal of uncertainty for those stakeholders affected by the new laws. The Government has yet to finalise the accompanying Regulations, which are expected to prescribe in further detail how some of the major reforms are to be implemented. In particular, there are a number of key matters which are to be covered by the Regulations, such as the meaning of “pre-commitment capability” and the identification of exempt premises in respect of ATM withdrawal limits. Moreover, certain aspects of the reforms (i.e. the establishment of pre-commitment systems) will need to be developed and
incorporated by each State and Territory independently. This procedure has yet to take place.

Gaming machine manufacturers are in a particularly vulnerable position, faced with the earliest deadlines for compliance and some of the most extensive changes to their business operations. In its 22 November 2012 letter to the Government, Gaming Technologies Association stressed that manufacturers would not be in a position to meet the requirements of the Bills in the timeframe initially proposed and called on the Government to scrap the deadlines altogether. Although the Government extended the deadline by 12 months, it will be interesting to see whether the 31 December 2014 deadline can be met by manufacturers. It may also result in a number of them redirecting more of their operations offshore.

A further issue which remains the subject of much speculation is the mandatory pre-commitment trial to be conducted in the ACT. The latest indications from ClubsACT have been that it would resist the commencement of any such trial prior to the next Federal election (now announced to take place on 14 September 2013), although we anticipate that the Federal Government will require the trial to commence before then.  

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1 Addisons Gambling Law & Regulation - April 2012
2 The Joint Select Committee on Gambling Reform, a committee of the Federal Parliament formed to review issues relating to gambling reform. For further detail, see our article entitled “Gaming Machines and Pre-Commitment – Possible Australian Federal Legislation” in our Gambling Law & Regulation – April 2012 newsletter.
3 Independent Gaming Authority of South Australia’s Submissions.
4 Gaming Technologies Association Ltd’s Submissions.
5 For instance, in the Northern Territory, machine numbers for clubs are capped at 45, hotels are capped at 10, note acceptors are not permitted and the maximum bet amount is $5. Similarly, in Western Australia, EGMs are only permitted to be played in Crown Perth, the sole licensed casino.
6 Council of Australian Governments Select Council on Gambling Reform, Communique 27 May 2011; also cited by Clubs Australia’s Submission, p4.
7 For example, the Office of the Australian Information Commissioner (OAIC) supported the proposition that the terms regarding the use of biometric information in the Bill be consistent with those in the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, now law.
8 On 21 February 2013, a meeting of ACT clubs decided not to proceed with the trial until after the federal election.