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9 November 2012

Ms Lyn Beverley
Committee Secretary
Joint Select Committee on Gambling Reform
Post Office Box 6100
Parliament House
CANBERRA 2600

Dear Ms Beverley

Inquiry into the National Gambling Reform Bill 2012

Thank you for your invitation (2 November 2012) to make a submission to this inquiry.

Table of comments

I attach a table of detailed comments on the National Gambling Reform Bill 2012.

Precommitment

The Authority has previously submitted to the Joint Select Committee that the appropriate model for precommitment is one where all gaming machine players' activity is tracked and in which those players have the option to set multiple limits on the amount they spend.

This has become generally known as the mandatory precommitment option, although the limit setting aspect of it is voluntary. A more apt designation might be *complete precommitment*.

This model is supported by the Authority because it is the only model which allows for true denial of service to players who reach their limits.

It is disappointing that the Federal Government proposes to proceed with a model which allows players who reach a limit (which they have set) to continue to play.

Regulatory approach

The Authority is concerned that the proposed regulatory regime—

- has defects which will encourage avoidance; and
- has weak enforcement and compliance measures which will make non-compliance unnecessarily difficult to detect and address.

The Authority describes these issues in the attached table.

The Authority was not consulted by the Australian Government on the regulatory regime. The Authority is not aware of any other regulatory body which was consulted.

If, as a result of consultation, the regulatory regime more closely resembled a State or Territory regulatory regime, those issues would have been identified and avoided.

The implementation choices for both the reforms and the regulatory regime mean that concurrent administration by State and Territory regulators might be impractical. This is the case, despite the inclusion of aspirational statements and provisions for delegation in the package of documents.

The Authority proposes a solution in the attached table.

Basis on which the submission is made

The Independent Gambling Authority, while it is an agency of the State of South Australia, is required to perform its functions independently of Ministerial direction.

- Its functions relate to the management and regulation of commercial gambling activities to ensure integrity of the gambling product, responsibility in gambling and the minimisation of gambling-related harm.
- The tools with which it performs those functions include the exercise of delegated legislative powers and the exercise of statutory discretions.
- It has no responsibility for, or specific expertise in respect of, the South Australian economy or the revenues of the State.

The views expressed are those of the Authority. They are not the views of the Government of South Australia.

Timeframe for this inquiry and further engagement

The Authority has responded to the invitation for submissions within the requested 7 day timeframe. This turnaround brings with it the risk that some issues will have been missed, some will have been misunderstood and some will have been poorly expressed. Please seek clarification on any matters which the Committee regards as anomalous or incomplete.

Please let me know if the Committee wishes to hear from the Authority at a hearing.

Yours sincerely

[signed]

Robert Chappell
Director
Encl:

INDEPENDENT GAMBLING AUTHORITY

Comments on the National Gambling Reform Bill 2012

Bill as introduced in the House of Representatives on 1 November 2012

Item No.	*Issue description*	*Observation or comment*
1.	Precommitment systems—future capacity for complete precommitment	It is noted that, although player registration would not presently be required to operate gaming machines, the machines must have the technical capability to allow play only by registered players.
2.	Precommitment systems—identification requirements—no biometrics	It is understood that present Federal Government policy is that biometrics cannot be used to identify players. The prohibition in proposed subsection 23(2) should be made subject to reversal by the regulations (which are disallowable by a vote of either house). The Authority has recently learned that thumbprint identification has been adopted for service providers and staff in overseas casinos because of its very great convenience. It may be that, in a relatively short time, the balance of policy views will favour this form of convenience (especially if registration is mandated).
3.	Precommitment systems—no present requirement for registration	The proposed system is "double voluntary"—players are neither required to set a limit nor required to register. While the commitment to voluntary precommitment is understood to be part of the Federal Government's policy, this particular implementation has the undesirable consequence that a registered player who reaches a limit is then able to opt out of registered play and continue to gamble without any of his or her play being tracked. Of course, incidences of untracked play cannot be reported on transaction statements. This is a serious weakness of the "double voluntary" approach in the Bill. A better implementation of voluntary precommitment would be to capture all players in the system but not to enforce limits by "denial of service". If that were done, those at risk would still gain the benefit of their play being tracked and of it being disclosed to them in transaction statements.

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4.	Precommitment systems—only one limit period available	A precommitment system compliant with the proposed Act would only allow one precommitment limit to be set. However, most of the discussion about precommitment over the past decade has pointed to the need for a cascading set of limits, for instance— (*a*) a daily (24 hour) spend limit—eg, $150/day; (*b*) a weekly spend limit which is less than 7 times the daily limit—eg, $500/week. The nature of gaming machine play and, in particular, the propensity for some players to play as soon as they have money, or to play routinely on a small number of occasions in a week, supports cascading limits. This is because a realistic recreational limit for once-a-week play produces an unrealistic limit if multiplied by 7. Although setting a spend limit for one week might address this in part, it then allows individual daily play of unrealistic proportions.
5.	Pre-commitment systems—notice period to change limit	The proposed Act requires that "loosening" changes (proposed subsection 27(2)) only take effect at the end of a limit period. This provides unreliable protection for problem gamblers because, depending on where the limit period sits in relation to a session of play it may provide little or no break in play. That is, while a loosening decision made 2 hours into a daily limit period would give 22 hours of protection, a loosening decision made 23 hours into a daily limit period would take effect immediately. This is a design flaw in the mandatory minimum specification precommitment system. There should be a minimum notice period for "loosening" decisions of at least the limit period. (Presumably the technology could allow a "loosening" decision to be implemented mid-limit period.) While this is not problematic while the precommitment system is double voluntary, it would become a problem if, for instance, a jurisdiction† made it a requirement to be registered in order to play.

† In these comments, **"jurisdiction"** is used to refer to States and Territories with laws under which gaming machines are licensed. So, **"jurisdiction mandated"** means mandated under a gaming law of a State or Territory, **"jurisdictional inspector"** means an inspector (however described) appointed under a gaming law of a State or Territory, etc etc.

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6.	Pre-commitment systems—effect of $0 limit	Subsection 26(4) explains that the setting of a limit of $0 would operate as a form of self-exclusion (called "barring" in South Australia). In 2009, the Authority reported to the South Australian Government on barring arrangements[‡]. The report noted that the effectiveness of self-exclusion as a harm minimisation measure was impaired by a weak compliance environment. In the proposed "double voluntary" precommitment scheme, the fixing of a $0 limit provides no support for self-exclusion because a barred person breaching an order would not identify him or herself by attempting to play as a registered player. If it were mandatory to play as a registered player (with or without automated denial of service), subsection 26(4) would provide an effective compliance framework for exclusion, thereby significantly improving its utility.
7.	Precommitment systems—transaction statements—periodicity	The proposal that transaction statements be provided upon request provides a weak harm minimisation measure because those most in need of a transaction statement will not request it. In South Australia, transaction statements are required to be provided to all wagering account holders at fixed periods dependent on the level of activity—each month for high intensity account holders, quarterly for medium intensity account holders and annually for everyone else. *[As part of a codes of practice review, the Authority is presently consulting with gambling providers as to how these levels should be defined.]* The implementation of this "push" model, in September 2010, resulted in fewer than a dozen queries to the Authority.
8.	Precommitment systems—transaction statements—contents	The choice of information items to be mandated for transaction statements is curious—dollar value activity in both the current period (by default, 24 hours) and the past year. In South Australia, wagering account holders are required to be provided with activity statements that provide for the whole of the activity in the statement period. By analogy, for gaming machine activity the statement would list the amounts gambled, won and (net) lost by venue by day for the statement period.
9.	Precommitment systems—no national database	The prohibition in proposed section 36 should be reversible by regulations (which are disallowable by a vote of either house).

‡ *Inquiry into barring arrangements—Report*, delivered 22 September 2009; laid before the Parliament 27 October 2009. Downloadable from http://www.iga.sa.gov.au/pdf/iga/Report_BarringInquiry.pdf.

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10.	ATM withdrawal limits—indexation	The underlying policy of indexing the maximum daily withdrawal by card is self evidently valuable. However, the implementation method disregards the way in which ATMs actually dispense money. (That is, in multiples of $10, $20 or $50, depending on how the machines are loaded.) A more practical implementation would be to allow the regulator to fix a limit from time to time (by appropriately published notice) which is no greater than the present inflation adjusted value of $250.
11.	ATM withdrawal limits—definition of "premises"	The application of ATM withdrawal limits to machines "on gaming machine premises" is a flawed regulatory measure because the proposed definition of "premises" is not suitable for this purpose. One interpretation, in the South Australian context, is that the gaming machine premises are confined to the area within which gaming machines may be placed. There are no such ATMs in South Australia because they are already required to be placed outside the gaming area. Among the possible solutions are— (*a*) define gaming machine premises for the purposes of Chapter 2 Part 4 as the associated liquor licensed premises under each jurisdiction's regulatory regime; (*b*) use a definition of ATM similar to that in clause 11(1) of the Gaming Machines Responsible Gambling Code of Practice—which identifies an ATM by reference to it being in or near premises and by reference to whether the gambling provider could reasonably be expected to exercise control over it. Please note that this defect is not solved by the anti-avoidance provisions in proposed section 41.
12.	Dynamic warning messages—coverage	It is assumed that the dynamic warnings messages requirements will apply both to registered and non-registered play.
13.	Dynamic warning messages—to be specified in regulations	It is understood that there is still significant development work required to implement dynamic messaging and that this makes it impractical to specify requirements in principal legislation.
14.	Approvals for precommitment systems—process	The approval process appears conventional.
15.	Approvals for precommitment systems—term of approval	Section 52 requires the Regulator to approve a precommitment system for 10 years. This could lead to significant legacy issues, especially if a decision is made to make registration mandatory. It is not clear why such a long period of approval is required.

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16.	Approvals for precommitment systems—revocations	It is not clear how the grounds for revocation of an approval set out in proposed paragraphs 54(1)(*a*) and (*b*) would arise, given that— (*a*) the initial approval process should acquit a system's conformity with the requirements of Part and the objects of the Act; and (*b*) system variations must be specifically approved. A good regulatory model is based on certainty, both for the regulator and the regulated entities. The intent of the proposed paragraphs might be that licensed providers of precommitment schemes—despite holding 10 year approvals—must be prepared to modify their systems to conform with changes legislated or regulated at any time and to do so at their own cost and without compensation. If that is so, it should be stated in clear terms.
17.	Licences for precommitment system providers	It is not clear why the licensing regime for precommitment system providers could not have been set out in principal legislation.
18.	Appointment of authorised persons—employees of jurisdictions	It is assumed that a jurisdictional inspector would only be appointed as an authorised person if there were in place a delegation conferring the Regulator's functions upon the inspector's employer, and one of the functions so delegated was the appointment of authorised persons. That being the case, the appointment process appears unwieldy— (*a*) formal compliance with proposed subsection 112(2) could require existing employment processes to be repeated purely for the sake of form; (*b*) an inspector could be required to carry two separate forms of identification; (*c*) it appears that appointment as an authorised person could survive termination of appointment as an inspector. Another approach would be to make provision for those employed under the control of jurisdictional delegates to exercise all the functions and powers of authorised persons when carrying appropriately issued jurisdictional identification.

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19.	Inspection powers—extent	The inspectorial powers of authorised persons are inadequate— (*a*) they provide less authority than that afforded to a private citizen (who is not required to announce his or her appearance on premises and who is not subject to "withdrawal of consent"); (*b*) they allow for licensees to restrict access to "member only" parts of premises. The policy underlying jurisdictional inspection regimes is that licensees can have no secrets from their regulators and that authorised persons will have unrestricted access at all times, without warrant, to all parts of premises. This policy is consistent with the concept of a gaming licence to be a bundle of valuable privileges under which a dangerous product is allowed to be sold. The authorised persons functions and powers should be fixed by reference to jurisdictional inspectors' powers as a minimum benchmark.
20.	Inspection powers—complexity of arrangements	The way in which enforcement and compliance powers have been structured, including the warrant provisions, raises concerns. They include the prospect that enforcement actions will be hampered by technical objections—such as that evidence gathering did not comply with highly prescriptive requirements or that authorised persons acted under the wrong powers. (This could extend to authorised persons needing to prove they were not confused as to the powers under which they were acting.) The community does not benefit from the running of such arguments and regulatory schemes should be designed to prevent them being raised. This complexity could be avoided, in the case of compliance activity undertaken by jurisdictional delegates of the Regulator, by simply adopting the existing jurisdictional powers of inspection, etc.
21.	Scope of research	The proposed research mandate set out in proposed paragraph 196(1)(*a*) might be seen as narrower than the research priority areas given to Gambling Research Australia over the past 10 years.

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22.	Delegation—identity of delegate	As presently framed, proposed paragraph 200(1)(*b*)(ii) would not allow an appropriate delegation to be conveyed to jurisdictions' incorporated regulatory bodies (such as, but not limited to, the Authority). It is incompatible with the governance of those bodies and the concurrent administration of Federal and jurisdictional law for an employee of such a body to be the delegate when the jurisdiction's regulatory functions are vested in the incorporated body. If proposed paragraph 200(1)(*b*)(ii) is reworded to allow an incorporated body to hold a delegation, the delegation would need to be sub-delegable. In any event, if effective concurrent administration is to occur, consideration should be given to allowing limited sub-delegation. To be consistent with current, accepted delegation practice, some delegated functions might need to be exercisable by an employee less senior than SES equivalent.
23.	Concurrent administration—problematic	The highly prescriptive nature of the proposed reforms and of the associated administrative arrangements (query the need for this approach) makes the prospect of concurrent administration likely— (*a*) the inspectorial and administrative arrangements proposed for the Regulator are inferior to those available to jurisdictional regulators; (*b*) there is significant scope for incompatibility between the reform proposals and the approaches jurisdictions might take—a more advanced jurisdictional precommitment scheme might fatally conflict with Chapter 2 Part 2 on something like the notice period for changes to limits. One way of avoiding the incompatibility would be to retain Chapter 2 as a default provision but to allow, by proclamation, certain jurisdictional requirements to take the place of some or all of that chapter. Of course, this would require jurisdictions to enact laws which the Federal Government was satisfied imposed responsible gambling obligations which were appropriate both having regard to the objects of the proposed Act and generally. The resulting obligations would be jurisdiction specific and enforced under jurisdiction law, thus avoiding the administrative issues identified above.