



Clubs Australia

Parliamentary Joint Select Committee on Gambling Reform

Inquiry into the National Gambling Reform Bill

Clubs Australia Submission

9 November 2012

Clubs Australia has long been on the public record as supporting the introduction of voluntary pre-commitment technology into every gaming venue across Australia. Clubs Australia also supports the trial of mandatory pre-commitment currently being negotiated in the Australian Capital Territory. However, Clubs Australia is concerned that the Government's bill is poorly drafted, heavy-handed and prescriptive, giving the industry and state and territory governments virtually no flexibility in implementing changes. We also note that given all state and territory governments support voluntary pre-commitment, there is no need for federal legislation in this area.

Clubs Australia is particularly disappointed that the Australian Greens sat on the draft bill for 10 months, leaving the industry in limbo, unsure of what legislative amendments would be made, if any, and unable to plan for the future. Despite these delays, the bill has not sought to adjust deadlines for implementation. Finally, while many of the details surrounding the design and functional specifications of voluntary pre-commitment have been left for regulations, the timelines are mandated in legislation, disconnected from being informed by technical considerations.

Recommendations

Clubs Australia recommends:

1. the Government undertakes a full regulatory impact statement, including the supervisory levy, and releases it prior to taking legislative action. Clubs Australia also calls for the release of the cost benefit analysis undertaken by Access Economics;
2. the supervisory levy should be explicitly capped;
3. there be explicit recognition in the legislation that venues with pre-existing voluntary pre-commitment will have their systems recognised as compliant by the Regulator, to avoid penalising those venues that have already undertaken capital expenditure to implement reforms ahead of government action, and which have existing contractual obligations with their pre-commitment provider;
4. there is an amendment to the method of calculating which venues would qualify for extended deadlines based on average revenue per machine, in order to protect vulnerable venues that face significant implementation costs relative to their revenue;
5. the timelines for compliance by gaming venues should be prescribed by regulation, to allow the Minister sufficient flexibility to respond to the findings of the Productivity Commission review in 2014;
6. there is an extension to the deadline for imposing a \$250 daily withdrawal limits on ATMs in gaming venues, to reflect realistic implementation times estimated by the ATM Industry Reference Group to perform changes on the 5,000 ATMs affected;
7. there is the inclusion of a provision to give either the responsible Minister or the Regulator the power to make exemptions or modifications of obligations for individual venues based on extenuating or unforeseen circumstances.

The legislative process

Established legislative processes have not been followed with respect to the introduction of the bill. The Government has failed to undertake transparent and meaningful consultation with affected parties to understand the technological challenges of the proposed solution, has failed to consider adequately more cost effective alternatives, and has failed to make a detailed cost benefit analysis of the proposed solution.

The Australian Government has established a clear principle that should regulatory action be necessary, a range of feasible policy options should be identified and their benefits and costs, including compliance costs, be assessed within an appropriate framework. As a general principle, the level of analytical detail should be commensurate with the impact of proposed regulatory measures. Only the option that generates the best community benefit should be adopted.¹

The Office of Best Practice Regulation noted the Government failed to prepare a regulatory impact statement at the time it originally sought to introduce its gambling reform legislation in February 2012. In the subsequent 9 months, a regulatory impact statement has still not been prepared.

In 2011, the Government employed Access Economics to undertake a cost benefit analysis of mandatory pre-commitment. Although this bill has altered the parameters examined by Access Economics, the analysis would still be a useful guide to understand what level of financial commitment will be required of the industry. Clubs Australia has repeatedly called on the Government to release the analysis, without success. This request is now repeated.

Clubs Australia also notes that consultation through the COAG process with state and territory governments was not undertaken prior to the legislation being introduced into Parliament.² Much of the detail about the design features and functional specifications of the Government's pre-commitment model will be left to regulation. Regulations should not proceed without full consultation with industry and state and territory governments.

The Government has not prepared a Cost Recovery Impact Statement for the legislation concerning the supervisory levy. The Commonwealth has stated its intention to recover costs for monitoring, investigation and enforcement. It is unclear whether costs will be differentiated between those of the Commonwealth Regulator and any state or territory regulator that acts under delegation, and how the issue of duplication of duties will affect the calculation of costs. Clubs Australia calls for an explicit cap to be placed on the supervisory levy for venues.

Recommendation

Clubs Australia recommends the Government undertakes a full regulatory impact statement, including the supervisory levy and releases it prior to taking legislative action. Clubs Australia also calls for the release of the cost benefit analysis undertaken by Access Economics. Additionally, the supervisory levy should be explicitly capped.

¹ <http://www.finance.gov.au/obpr/docs/handbook.pdf>

² See media release, "NSW disappointed in Federal Pokies Bill" from Minister George Souris, dated 2 November.

Voluntary Pre-Commitment

Clubs Australia supports the introduction of voluntary pre-commitment into every gaming venue across Australia. In our comprehensive policy approach to reducing harm caused by problem gambling, *Part of the Solution*, Clubs Australia stated:

Governments should work with industry to introduce voluntary pre-commitment in a cost effective manner that provides venues with the flexibility to choose the technological solution that best suits their needs.

All state and territory governments have already committed to the introduction of voluntary pre-commitment on poker machines.³ As the principal regulators of poker machines, state and territory governments are more than capable of managing the implementation of voluntary pre-commitment, making the Federal Government's bill superfluous and an unnecessary incursion on states' rights.

There is significant disparity among the states and territories with regard to resources and timeframes needed to implement pre-commitment, a fact acknowledged by the Productivity Commission:

[In] New South Wales, ACT and South Australia, and casinos in several jurisdictions [state linked pre-commitment] would require investments in new central monitoring systems and in some cases, software and hardware upgrades for gaming machines... This suggests that the transition to a full [state linked] pre-commitment system may take more time in some jurisdictions than others (or would impose a differential cost).(p.10.38)

Clubs Australia is concerned that the Government's bill, as drafted, is heavy-handed and highly prescriptive, giving the industry and state and territory governments virtually no flexibility in implementing voluntary pre-commitment. The bill also seeks to impose uniform timelines and conditions on all states and territories that will result in extensive compliance burdens for some jurisdictions, while leaving others less affected.

One example of the differences faced among jurisdictions can be found in the lock out provisions of the Government's bill. Section 32 of the bill requires that the pre-commitment system must "lock-out" a registered user from playing a machine once they reach their pre-commitment limit. Clubs Australia understands that in NSW, this requirement presents a particular problem as at the point the pre-commitment system "locks-up" the gaming machine generates a generic error alert through to the central monitoring system, which is sent back to the regulator. The regulator would have no way of distinguishing this event from a genuine error (such as machine tampering) and would be inundated with error messages.

In addition, a gaming machine typically sounds a very loud alarm when it is "locked-up", which is designed to attract the venue staff of the error, or potential tampering with the machine. This would be an extremely embarrassing event for a registered user of the pre-commitment system, as everyone in the venue would be aware they had exceeded their pre-commitment limit. It is likely that this aspect alone would constitute a significant deterrent to using the voluntary pre-commitment system, or further stigmatise help seeking behaviours.

³ Council of Australian Governments Select Council on Gambling Reform, Communiqué 27 May 2011.

Finally, many clubs have taken the step of implementing voluntary pre-commitment systems in advance of government regulation. These clubs have made significant investments in systems to benefit their patrons and in most cases are legally contracted to use this technology for a period of time, in some cases up to 5 years or more. Clubs Australia believes it would be patently unfair to penalise those clubs by requiring them to replace their systems with a new version of voluntary pre-commitment.

Recommendation

Clubs Australia recommends that there be explicit recognition in the legislation that venues with pre-existing voluntary pre-commitment will have their systems recognised as compliant by the Regulator, to avoid penalising those venues that have already undertaken capital expenditure to implement reforms ahead of government action, and which have existing contractual obligations with their pre-commitment provider.

Timelines

Clubs Australia believes that the Government's proposed three year implementation timeframe for venues with more than 20 poker machines fails to provide sufficient time for clubs to absorb the compliance costs and is likely to result in widespread non-compliance across the industry. Clubs Australia believes that feasible implementation timeframes must accommodate those states and territories that face the most burdensome compliance requirements. The Productivity Commission recommended that venues be given a minimum of six years to amortise the capital investment associated with implementing state linked pre-commitment.⁴

In addition, the current method for determining which venues would qualify for extended deadlines fails to account for a venue's financial capacity to comply. In 2011, Clubs Australia commissioned KPMG to undertake a national census of the clubs industry which found that 51 per cent of clubs in Australia are in financial distress. Failure to account for the financial capacity of clubs to comply with provisions of the legislation could have a detrimental impact on a large number of clubs, club employees and the communities they serve. Many clubs, particularly in rural and regional areas, with 21 to 60 poker machines, face the same compliance deadlines as the city casinos; however, their average annual revenue per machine is normally less than \$20,000, compared with revenue of more than \$100,000 per machine in casinos. As drafted, the bill clearly leaves rural and regional clubs at a disadvantage. Had a regulatory impact statement been undertaken, this would have informed legislators of the appropriate timelines for implementation.

Therefore, Clubs Australia believes a more equitable methodology of staggering the implementation timeframes should take into account a venue's average revenue per machine. As such, an expansion to the definition of small venues is sought to include both those venues that have a small number of gaming machines and also those venues that earn comparatively smaller revenues per gaming machine, in order to protect those clubs at risk of financial distress.

⁴ <http://www.pc.gov.au/projects/inquiry/gambling-2009/report> Recommendation 10.6.

Clubs Australia proposes the following expansion to the definition of a small gaming machine premises under section 9 of the bill:

Premises are ***small gaming machine premises*** if either:

- (a) no more than 20 gaming machines are made available for use on the premises; or
- (b) the average net revenue earned from each gaming machine made available for use on the premises is less than \$40,000 per annum.

With the following two sub-categories to apply under sections 13(2) and 13(3) respectively:

- (a) Premises with either:
 - a. 11 to 20 gaming machines; or
 - b. an average net revenue per gaming machine of less than \$40,000 per annum
- (b) Premises with either:
 - a. 10 or less gaming machines; or
 - b. an average net revenue per gaming machine of less than \$20,000 per annum.

Additionally, Clubs Australia notes that the Government has sought, in section 194, a Productivity Commission review of the progress of implementing the bill's obligations by September 2014. Given that the Productivity Commission may find that venues have been unable to comply with the prescriptive nature of the pre-commitment system outlined in the bill, Clubs Australia believes that the responsible Minister should have the power to extend the timelines for implementation. As such, Clubs Australia believes the deadlines for venues should be contained in regulation, rather than being prescribed in the legislation itself.

Recommendation

Clubs Australia recommends that there is an amendment to the method of calculating which venues would qualify for extended deadlines based on average revenue per machine, in order to protect vulnerable venues that face significant implementation costs relative to their revenue. Additionally, the timelines for compliance by gaming venues should be prescribed by regulation, to allow the Minister sufficient flexibility to respond to the findings of the Productivity Commission review in 2014.

ATMs

Clubs Australia remains opposed to the Federal Government mandating restrictions on people's ability to access their own money through ATM withdrawal limits. There is no evidence to show that withdrawal limits will have any effect on the prevalence of problem gambling, while imposing significant inconvenience to other patrons and club staff. It will have revenue implications for clubs in food and beverage and other non-gaming services. Yet the Productivity Commission found that causality between access to ATMs and problem gambling was 'hard to demonstrate conclusively' (p13.11).

As we have pointed out in earlier submissions, problem gamblers who are concerned about their gambling behaviour can already lower their daily withdrawal limits by contacting their bank or financial institution directly. This allows problem gamblers to make rational decisions about their future spending ability, without restricting recreational and non-gamblers from accessing their own money from ATMs in licensed venues.

Should the government continue to pursue the \$250 daily withdrawal limit for gaming ATMs, Clubs Australia calls for an extension of the deadline for implementation reflecting the estimation by the ATM Industry Reference Group that it will take at least 12 months to implement changes to the more than 5,000 ATMs that currently operate in pubs and clubs around Australia.

Recommendation

Clubs Australia recommends that there is an extension to the deadline for imposing a \$250 daily withdrawal limits on ATMs in gaming venues, to reflect realistic implementation times estimated by the ATM Industry Reference Group to perform changes on the 5,000 ATMs affected.

General exemption power

Clubs Australia argues that the legislation should have provision to allow the responsible Minister, or alternatively the Regulator, to have specific powers to exempt or modify the obligations for individual venues based on extenuating circumstances. Events such as the Queensland floods in 2011 devastated many clubs and crippled their medium term financial capability. In such situations, it should not be unreasonable for individual venues to seek the approval of the Minister or the Regulator to have their deadlines for implementation of their obligations extended. These modifications should also include the temporary suspension of the restrictions on ATM withdrawal limits if banking facilities in the local area have been affected by natural disaster or other unforeseen events.

Recommendation

Clubs Australia recommends that there is the inclusion of a provision to give either the responsible Minister or the Regulator the power to make exemptions or modifications of obligations for individual venues based on extenuating or unforeseen circumstances.