Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 1

Question:

How will registration work for people living close to state borders? They can only register once in each state but is there anything preventing people registering in each state?

Answer:

The legislation provides for a pre-commitment system that allows a person to register for a particular State or Territory.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 2

Question:

Why will a transaction statement only be provided on request? Isn't it the case that those most in need of a statement will not request it? What do you think about providing them depending on the level of activity – each month for high intensity players, quarterly for medium intensity and annually for everyone else?

Answer:

Clause 34 provides that the pre-commitment system must provide a transaction statement for a registered user on their request.

That means that the pre-commitment system must be capable of generating transaction statements.

Clause 34 requires that a statement is generated at the request of a user to ensure that statements are not generated for other purposes that might result in a misuse of an individual's personal information about their activity on a gaming machine. This feature (generating a transaction statement) is intended to assist the individual rather than be used to collate information about player activity.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 3

Question:

Could you provide an explanation of what dynamic warnings will be displayed on all gaming machines? On what research/evidence will the message content be based?

Answer:

Gaming machines will display messages that communicate the potential for harm and cost of using gaming machines to players Section 38(2) describes what the warnings must relate to.

Section 38(4) allows for regulations to be made to prescribe the form, frequency, content and position of the warnings. Message content will be informed by current research and evidence including input from academic experts.

The Government is conducting a trial of dynamic warnings is Queensland. The results of the trial will help inform which types of messages are most effective and the best approaches for delivery (frequency, duration, format and type of delivery). Message types to be tested as part of the trial have been drawn from a range of resources including previous research by academic experts, public inquiries and research undertaken by the Department.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 4

Question:

Is it intended that dynamic warning messages requirements would apply to both registered and non-registered players?

Answer:

Yes.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 5

Question:

What can you tell us about linking the registration system for voluntary pre-commitment to existing venue loyalty schemes? Has this been considered? Are there issues around linking harm minimisation schemes with industry incentive schemes?

Answer:

Linking voluntary pre-commitment and loyalty systems is neither prohibited nor required under the legislation.

Trials of voluntary pre-commitment to date and systems currently available, such as Maxgaming SIMPLAY and Worldsmart Playsmart, have been associated with loyalty marketing systems. Loyalty systems have high take up with regular players.

The Government's independent technical advice is that venue – based pre-commitment systems can be linked in to a state-wide system.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 6

Question:

What does the new legislation mean for existing pre-commitment schemes that already operate in some venues/jurisdictions? If existing systems are approved could a person require multiple devices to use the system in different venues?

Answer:

The Government's independent technical advice is that venue-based pre-commitment systems can be linked in to a state-wide system.

It is possible that players could have more than one card (for example, their loyalty cards from different venues) but they would only have one registration in the state-wide system and one limit.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 7

Question:

Under the proposed legislation, the pre-commitment system will need to be approved by the Regulator. How will this work? How much lead time will be required for regulatory approval and then notification of requirements by industry to manufacturers, including overseas manufacturers?

Answer:

The requirements for pre-commitment system capability for machines manufactured or imported from 31 December 2013 [sections 79, 80] are distinct from the approval of pre-commitment systems by the Regulator [sections 46-56].

For the approval of pre-commitment systems, providers will make an application to the Regulator which will be processed. This can happen at any time.

The requirement that new machines to hit the market from the end of 2013 must be capable of supporting pre-commitment, are not affected by the approval of pre-commitment systems.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 8

Question:

Some of the functions of the Regulator appear to be in conflict such as administration and investigation with evaluation. Wouldn't it be better to for evaluation to be undertaken independently?

Answer:

The functions of the regulator include monitoring and evaluating the operation of the National Gambling Reform Bill.

As such, the Regulator will be closely involved in the implementation of the reforms proposed in the legislation and will have an immediate and clear understanding of how the reforms are working to enable an evaluation to be undertaken of the operation of these functions. It is usual for a Regulator to undertake such an evaluation role.

In addition to the ongoing evaluation role of the regulator, the legislation currently includes a requirement for the Productivity Commission to conduct a review of progress in implementing the legislation, to start no later than September 2014.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 9

Question:

Why is the approval period for a pre-commitment system 10 years?

Answer:

A 10 year approval for pre-commitment systems provides a sufficient period of certainty for pre-commitment providers who develop products to meet the requirements.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 10

Question:

What percentage of gaming machine venues are not 'incorporated' – i.e. not covered by the corporations power which enables the Commonwealth to legislate in this area?

Answer:

It is difficult to determine precisely, however the Government's analysis suggests that a minority of venues are not incorporated.

The legislation relies on a number of constitutional powers, including the corporations *and* taxation powers. As a result, all gaming machine venues (incorporated and unincorporated) would still be required to comply with the requirements of the legislation.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 11

Question:

What is the Commonwealth's response to the concerns raised in the submission from the Western Australian Government about whether Video Lottery Terminals will be captured under the proposed legislation?

Answer:

The definition of ***gaming machine*** in clause 6 seeks to strike a balance between picking up the machines that the legislation needs to address and not collecting other types of machines, such as the ones referred to in the submission from Western Australia. Under subclause 6(4), machines that are not intended to be captured (because they are not taken to be a gaming machine for the purpose of this act) can be excluded by regulation.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 12

Question:

What is your response to the suggestion made in Clubs Australia's submission (p. 6) that the definition of small venues should include not just those that have a small number of gaming machines but would include average revenue per machine in order to qualify for extended deadlines? Why not put the deadlines for venues in regulation? (p. 6)

Answer:

The current provisions relating to small venues have used the number of EGMS as a means of determining whether more generous timeframes should apply on the basis that this method of distinguishing venues can be readily ascertained by a Regulator through the examination of a licence for that venue. This enables the requirements under the legislation to be readily applied at a point in time and provides the certainty required to make this measure enforceable.

In contrast, fluctuations in revenue would make it more difficult to ascertain compliance. To date it has been difficult for FaHCSIA to obtain detailed revenue data from each jurisdiction at the level required to adopt this methodology.

The timeframes that have been set for implementation are consistent with technical advice that compliance is workable and reasonable.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 13

Question:

Why does the bill rule out the use of biometrics and is this incompatible with clause 11 which says the Act is not intended to limit the ability of a state or territory to impose stricter requirements? Why rule out use of particular technology as systems develop?

Answer:

On 24 February 2011, the Australian Government ruled out the use of fingerprints or other biometric data in the pre-commitment system, at this point in time.

The Government is committed to ensuring the privacy of users of a pre-commitment system is upheld and it does not support systems that require invasive personal data collection such as fingerprinting.

Please see Minister Macklin's media release http://jennymacklin.fahcsia.gov.au/node/1040.

Joint Select Committee on Gambling Reforms

INQUIRY INTO NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 14

Question:

Submissions have questioned the prohibition of biometrics as in the future such technology may prove to be more convenient. The Independent Gambling Authority (p. 1) suggests that the prohibition should be subject to reversal by the regulations. What is FaHCSIA's response to this suggestion?

Answer:

On 24 February 2011, the Australian Government ruled out the use of fingerprints or other biometric data in the pre-commitment system, at this point in time.

Please see Minister Macklin's media release http://jennymacklin.fahcsia.gov.au/node/1040.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 15

Question:

Submissions have raised issues about problematic concurrent administration with the states and possible incompatibilities (see Independent Gambling Authority SA, p.7). How will these issues be dealt with?

Answer:

A number of consultations with state and territory governments were undertaken following the release of the Commonwealth Government exposure draft of the legislation. All comments from consultations and written submissions were considered and reflected in legislation, where appropriate.

The legislation makes clear the Commonwealth Parliament's intention not to displace the operation of State laws. States and territories may impose stricter laws as it relates to the harm minimisation measures.

The legislation allows the Regulator to delegate most of its functions to states and territories where there is agreement. Upon commencement, it is anticipated that the Regulator will work closely with states and territories to minimise any administrative burdens. Furthermore, the Commonwealth will consult with states and territories in drafting regulations associated with the implementation of the legislation.

The Government will work towards delegating regulatory functions to states and territories to further streamline administration with existing regimes. The Government's preference remains for states and territories to take on the regulatory functions associated with the implementation of the National Gambling Reform Bill, in light of the existing regulatory role they play. Discussions with states and territories are continuing in order for this to be achieved.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 16

Question:

In the consultation undertaken with the states and territories on the legislation, how have jurisdictions with less developed/centralised gaming machine systems been treated? For jurisdictions with fewer machines, have any concessions been made?

Answer:

As stated by the Department at the Inquiry hearing on 13 November 2012, the legislation is based around venues complying with legislation. There is no provision in the legislation requiring a jurisdiction to set up a state-wide central monitoring system, if this does not already exist. Furthermore, the legislation has been drafted to allow flexibility in the design of pre-commitment systems. The system could be a single system across a jurisdiction, or multiple systems that share data through a central system.

Despite this, a number of states with older central monitoring systems are due to upgrade their systems before the start of the pre-commitment requirements. For example, New South Wales is re-tendering its central monitoring system in 2014.

The legislation provides extended implementation timeframes for all small venues, nationwide. This is in recognition of the significant number of small pubs and clubs, many of them in regional communities and operating on a much smaller scale than larger gaming venues in metropolitan areas. Venues with between 11 and 20 gaming machines will have an extra four years, until 2020, to bring in pre-commitment technology on their gaming machines. Venues with 10 or fewer machines will be able to implement the technology as they replace their machines in their usual replacement cycle. These extensions are applicable to all small venues, regardless of the state or territory they are located in.

Table 1: Percentage of small venues in each jurisdiction

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
10 or fewer EGMs	23.9%	29.8%	67.9%	26.2%	26.8%	4.8%	1.0%	0.0%	**25.9%**
11-20 EGMs	16.4%	32.8%	9.9%	20.7%	21.3%	33.7%	6.8%	0.0%	**25.8%**
Greater than 20 EGMs	59.7%	37.4%	22.2%	53.2%	51.9%	60.8%	92.2%	100.0%	**48.3%**

More detailed figures were tabled by the Department at the 13 November 2012 hearing and are available on the Committee's website (see 'Additional Information Received' document #1)

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 17

Question:

What is the Commonwealth's response to the NSW Government's concern (raised in a 2 November 2012 media release from the Minister for Hospitality, Mr George Souris MP) which states that the reforms are 'not in the spirit of the COAG process' and that NSW cannot support the legislation until 'unresolved issues regarding the State's existing compliance responsibilities and the cost of the additional Commonwealth compliance regime' are properly considered at a COAG meeting? Will there be further consultation?

Answer:

All members (including NSW) of the Council of Australian Governments (COAG) Select Council on Gambling Reform agreed on 27 May 2011to support the infrastructure required for pre-commitment. Commonwealth – State officials worked closely to develop functionality requirements for pre-commitment which have informed the development of the Commonwealth's legislation.

The Department consulted extensively with industry and state and territory governments, including the NSW Government, following the release of the exposure draft of the legislation in February 2012. Since the exposure draft was released, amendments have been made to respond to issues raised by stakeholders and improve the workability of the legislation.

The Commonwealth will continue to work with the states and territories, to ensure an understanding of the National Gambling Reform Bill 2012, in the drafting of regulations and in determining regulatory arrangements.

The Commonwealth wrote to all COAG Ministers in December 2011 to extend the reporting date of the Select Council on Gambling Reform to allow further discussions within this forum. Responses have not been received from several jurisdictions, including the NSW Government.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 18

Question:

Has the legislation been submitted to the Office of Best Practice Regulation for a regulatory impact statement? If not, why not?

Answer:

There is no requirement for new legislation to be submitted to the Office of Best Practice Regulation.

A Post-Implementation Review will be commenced by the Department for each of the four regulatory measures it has responsibility for, within one to two years of implementation.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 19

Question:

There was no actual figure for the cost of the trial in the 2012 Budget. Has funding been set aside for the costs of the trial? Is the figure of $37 million in compensation for ACT clubs still accurate?

Answer:

Funding was allocated for the trial of mandatory pre-commitment in the Australian Capital Territory (ACT) in the 2012/13 Budget, but was not published to ensure the approach to market to deliver a pre-commitment system remains without undue influence.

There have been no changes to the Government's financial assistance package to clubs in the ACT following the offer of 22 January 2012. http://jennymacklin.fahcsia.gov.au/node/1703.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 20

Question:

Could you describe any plans for an educational/promotional campaign for both patrons and staff of venues to accompany the gambling reforms? Would such a campaign be funded by government, industry or both?

Answer:

Education within gaming venues will be an important component of initiatives to support the introduction of the gambling reforms. It is the Government's intention to implement an educational campaign, in collaboration with the Regulator, Industry and other key stakeholders.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 21

Question:
A copy of the independent technical advice given by the Toneguzzo Group

Answer:

The independent technical advice from the Toneguzzo Group was subject to an FOI request on 12 August 2011. A copy of those parts of the advice released can be obtained from: http://www.fahcsia.gov.au/disclosure-log (see FOI reference number 11/12-010 document 39).

The remaining parts of the advice were determined to be Commercial in Confidence and unable to be released.

Joint Select Committee on Gambling Reforms

INQUIRY INTO NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 22

Hansard reference: p. 67

Question:

Mr Ciobo asked the Department to provide the mechanisms or options for achieving compliance with the legislation and outline what each of the mechanisms is.

Answer:

There are a number of pre-commitment systems available and already operating in Australia that may be compliant with the legislation.

These systems have been trialled in Queensland and South Australia, and are operating within venues in a number of states.

These include, but are not limited to, the following systems:

- Maxgaming SIMPLAY
- Worldsmart Playsmart
- eBet Odyssey
- Global Gaming Industries Max-e-Tag
- Crown Play Safe

It is possible that a number of existing and new pre-commitment providers of these systems will seek to become approved providers under the legislation.

The Department has not been prescriptive about particular systems or technologies in the legislation, but instead the legislation sets out the functional requirements for a system to be approved. This approach provides maximum flexibility for industry to choose systems that suit their particular operating environment. It also allows for new systems to be developed and marketed over time, in addition to those currently available.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 23

Question:

A list consultations undertaken (organisations, dates, frequency)

Answer:

The Department has regular contact with a range of industry and community stakeholders on gambling issues.

In February and March 2012 Commonwealth Government officials conducted formal consultations on the exposure draft of the legislation (which was released on 17 February 2012). Below is a record of the meetings with stakeholders during this formal consultation period.

The exposure draft of the legislation has been available on the FaHCSIA website since 17 February 2012 and written submissions were called for and have been received.

These formal consultations followed 18 months of close engagement with industry groups, community groups and state and territory governments in the development of the Government's policy and legislation, including through an Expert Advisory Group and the COAG Select Council on Gambling Reform.

It noted is that further consultation on specific issues were undertaken outside of this formal consultation period by the Department, Minister Macklin and her office up to the point of introduction of the National Gambling Reform Bills.

ORGANISATION	DATE
ACT Government	1 February 2012
Australian Hotels Association – all associations meeting	2 February 2012
Clubs Australia NSW	8 February 2012
ACT Government	10 February 2012
ACT Government	14 February 2012
ACT Government	20 February 2012
Gaming Technologies Association	20 February 2012
Clubs Australia NSW	21 February 2012
NT Government	21 February 2012
Australian Hotels Association Vic	22 February 2012
David Curry	22 February 2012
Australian Hotels Association Vic	22 February 2012
Australasian Gaming Council	22 February 2012

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Australasian Casinos Association & Crown	22 February 2012
Victorian Government	22 February 2012
WA Government	23 February 2012
SA Government	23 February 2012
NT Government	23 February 2012
TAS Government	23 February 2012
BMM Compliance	27 February 2012
Worldsmart	28 February 2012
SA Government	28 February 2012
Australian Hotels Association SA	28 February 2012
Clubs SA	28 February 2012
Clubs Qld	29 February 2012
Maxgaming	29 February 2012
Qld Government	29 February 2012
NSW Government	1 March 2012
Regis Controls	1 March 2012
Phillip Ryan	2 March 2012
Clubs QLD	2 March 2012
Australian Hotels Association QLD	2 March 2012
QLD Government	2 March 2012
Clubs ACT	6 March 2012
Australian Hotels Association ACT	8 March 2012
Australian Hotels Association Nat (ACT)	13 March 2012
Clubs ACT	21 March 2012
Australian Churches Gambling Taskforce	22 March 2012
Australasian Gambling Regulators Conference	28, 29, 30 March (FaHCSIA did a presentation on 29 March 2012)

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 24

Question:

There is a specific ban on a national database (section 36). Presumably, given the privacy provisions in the bill, states and territories will be allowed to form their own databases.
If not, why do these provisions exist?
How are multiple state/territory databases better or worse from a privacy perspective than a single national database?
If manufacturers or venues become operators of a pre-commitment scheme, will they be allowed to keep this information? What will prevent them from using it for commercial purposes?

Answer:

The states and territories are permitted to form their own databases to manage the state-wide pre-commitment systems.

The Government supports a system that protects and upholds players' privacy and section 36 prohibits a national database of protected information from pre-commitment systems being established. A national database is not required for state-wide pre-commitment.

This provision reflects concerns from stakeholders about a national database.

Personal information collected as part of a pre-commitment system will be less than what club memberships already require and all player information will be de-identified.

Under subclause 67(2), it is a criminal offence for a person who obtains information from the pre-commitment system to disclose or use protected information in a manner that is not provided in the legislation. This details the restrictions of the use of data or protected information collected by a pre-commitment system, as well as the criminal penalty provisions for contravention.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 25

Question:

Section 72 allows for the disclosure of protected information 'where there is a threat to life or health'. Can you provide the reasons for this clause?
Does it mean that gambling activity will be monitored on the non-national database?
How will this provision come into effect in a practical sense?

Answer:

Section 72 of the National Gambling Reform Bill 2012 permits disclosure by a person set out in section 69(1) of protected information to prevent, or lessen, a threat to the life or health of a person. This provision aligns with the terms of Information Privacy Principle 11(1)(c) in section 14 of the *Privacy Act 1988*.

This provision is in line with privacy and secrecy provisions across the Commonwealth. This provision would only apply in rare circumstances where there is a serious threat to the life or health of an individual, as determined by the Regulator or a person authorised under a delegation, and would be determined based on the facts.

The provision does not imply or permit gambling activity to be monitored by any entity other than is required for pre-commitment.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 26

Question:

Can the department please indicate the specific section in the bill that requires a system to be state or territory-wide – that is, to cover and link together all machines in a state or territory so that a 'registered player' is registered for every machine in a state or territory?

Answer:

The registration requirements for a pre-commitment system is set out in section 21 of the National Gambling Reform Bill. The intent of this clause is outlined in the explanatory memorandum of the legislation, specifically:

> "A person who chooses to register with the pre-commitment system will have one registration that applies to them across the particular State or Territory. It is the intention that, if there is more than one pre-commitment system within a State or Territory those systems will link up and communicate to achieve this.
>
> These provisions mean that it does not matter which gaming machine premises the person first chooses to register at, their registration and loss limit will apply at all gaming machine premises within the particular State or Territory."

National Gambling Reform Bill 2012 – Explanatory Memorandum, p.13

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 27

Question:

In reference to this exchange:
Senator XENOPHON: So if a state or territory does not want to do it then there will be no pre-commitment scheme in place in that state or territory. It is contingent on the action of a state or territory government, is that right?

Ms Carroll: No. The legislation is based around venues complying with the legislation. The venues in most jurisdictions already work through state and territory government and through central monitoring systems and those sorts of things but there is not an expressed provision that says that the states are required to set up a kind of central monitoring system or something like that.

Senator XENOPHON: So in the absence of such a monitoring system it will be very hard to fulfil the intent of the bill, won't it?

Mr Agnew: There is a monitoring system or you could have multiple providers that share data through a central system, which is another solution.

Senator XENOPHON: So you could have a number of manufacturers or venues setting it up?

Mr Agnew: Yes. (p. 69 of Proof Committee Hansard)

Are there any specific provisions in the act to require the exchange of information through systems operated by venues or manufacturers, so that it will be a 'state/territory-wide' system, as defined in my earlier question?

Answer:

Clause 32 requires that the pre-commitment system denies play to a registered user who has reached their loss limit in the particular limit period for the relevant State or Territory. If the pre-commitment system was not linked to a central system, or networked with all other pre-commitment systems in the relevant State or Territory it could not meet this requirement. Such a pre-commitment system would not be compliant under the proposed legislation.

In addition, clause 30 of the proposed legislation provides that registered user data is to be transmitted in accordance with the Regulations. It is intended that the Regulations will require that the data be transmitted to a 'state/territory-wide' system for clarity.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 28

Question:

Ms Carroll stated: The key to moving from a voluntary system into a mandatory system is whether the machines can operate and there is a denial of play when you get to a certain point. In a voluntary system the machines operate in two modes: both when you are in the system and when you are outside the system. So, even if you have multiple providers, you are just saying that the only way the machines can be operating is within the system, so they do not operate outside of the system. (p. 69 of Proof Committee Hansard)

If there are multiple providers on a mandatory system, presumably the providers will still have to be linked so a person cannot play to different limits under different systems within the same state/territory?

What specific sections in the bill address this requirement to ensure the 'flick of a switch' to an effective mandatory system can occur, other than Section 33?

Answer:

The two key features of approved pre-commitment systems in the legislation that also deliver the requirements for mandatory pre-commitment are:

- Subsection 28(3): unique player identification, that is a player can only have one registration in a state or territory. This means that a player's limit is recognised across a state or territory and is binding across a state or territory.
- Section 32: denial of play once limits are reached. This is a key feature of mandatory system – ie. that when a player hits their limit they can no longer play. In the current legislation this only applies to 'registered players' and registration is not a requirement under a voluntary system. ;

Together, these two requirements create the capability for a mandatory system.
The key difference between the voluntary system in the legislation and a mandatory system is that a person must register to be able to use a gaming machine in a mandatory system.

Therefore, further legislative amendments would need to be made to the legislation to introduce a mandatory system and prevent a person who is not registered from using the gaming machine, but the technical functionality for a mandatory system is delivered through Subsection 28(3) and Section 32.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 29

Question:

Senator XENOPHON: Could I go to penalty exemptions. Maybe I have not understood this, but there are specific penalty exemptions for non-compliant machines where a precommitment system is not in place—clause 58(2), for example. Could you see that as almost removing any incentive for a scheme to be in place? How would you read that?
Ms Carroll: If I am thinking about the right one, the key is to put the fault at the right place. If it is through no fault of the venue—they have purchased a precommitment system from someone or perhaps they are paying a licence fee or someone to operate it for them—and the precommitment system does not operate properly, it is to say that it is not the venue's fault that that happened, and the penalty would move to the precommitment system provider rather than the venue itself. That is if the venue operator could not reasonably have known about the fact that it was not operating properly.
However, clause 58(2) states that the penalty does not apply when 'there is not an approved pre-commitment system for a state or territory'. Can the department see how this clause, not the one relating to 'no fault', could remove any incentive for a precommitment system to exist? *(p. 69 of Proof Committee Hansard)*

Also, Ms Carroll states earlier: *The legislation is based around venues complying with the legislation. (p. 69 of Proof Committee Hansard)*

- How is this exemption consistent with that statement, and therefore with the principle on which the legislation is based?

Answer:

We apologise for the confusion but it appears that Ms Carroll responded to the Senator's question by referring to the effects of subclauses 58(4), (5) and (6).

It is an offence under subclause 58(1) for a person to make a gaming machine available for use when the machine is non-compliant. This is a requirement on venues.

Subclause 58(2) provides an exemption to the offence of making a non-compliant gaming machine available for use if there is no approved pre-commitment system for the State or Territory available to be purchased. This ensures that there are no competition issues between States and Territories.

We are confident the clause will not lead to a difficulty in the delivery of approved pre-commitment systems. There are already a number of pre-commitment providers that are ready to provide pre-commitment systems nationally.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 30

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Also, Ms Carroll states earlier: *The legislation is based around venues complying with the legislation. (p. 69 of Proof Committee Hansard)*

- How is this exemption consistent with that statement, and therefore with the principle on which the legislation is based?

- Can the department answer the same question posed in s as above in relation to the levy exemption under Section 85(4)?

Answer:

Subclause 85(4)(b) provides an exception to liability for the gaming machine regulation levy if there is no approved pre-commitment system for the State or Territory available to be purchased. This ensures that there are no competition issues between States and Territories.

We are confident the clause will not lead to a difficulty in the delivery of approved pre-commitment systems. There are already a number of pre-commitment providers that are ready to provide pre-commitment systems nationally.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 31

Question:

Ms Carroll also states: Whether it is a constitutional corporation or not, if the problem is actually in the venue and they have not complied, then they would be the ones that would bear the penalty. If it is the pre-commitment system operator, they would be the ones that would bear the penalty. (p. 70 of Proof Committee Hansard)

Can the department provide the section in the bill that outlines the penalty for not providing a state or territory-wide system, and who it applies to?

Answer:

Subclause 58(1) provides that venues are held responsible if they make non-compliant gaming machines available for use. A gaming machine cannot be compliant unless it is part of a state-wide system as it would not operate to ensure denial of play when a registered user reached their loss limit for the state within the limit period as required by clause 32.

Subclauses 58(5) and (6) provide an exception to the above requirement where the gaming machine is not compliant as a result of a failure in the precommitment system that is beyond the control of the venue. That failure could be a failure of the precommitment system to meet requirements of the legislation or an operational or technical failure.

Clause 54 sets out that the Regulator can revoke a precommitment system provider's approval if they provide a system that is not compliant with the legislation.

Clause 55 sets out the penalty provision for a precommitment provider who provides a precommitment system other than on approved terms and conditions. The approved terms and conditions will include that the precommitment system is compliant with the legislation.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 32

Question:

Can the department provide information on how indexing the withdrawal amount for ATMs will work in practice? Only certain denominations are available from ATMs, so what happens if the indexation doesn't fit into these denominations – if it's $251.50, for example?

Answer:

While paragraph 40(1)(a) of the proposed legislation allows for the Regulations to specify an index for increases to the ATM withdrawal limit, paragraph 40(1)(b) provides that the Regulations can also specify the manner of working out the increase to the withdrawal limit.

The Government will consult on the development of regulations.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 33

Question:

Can the department provide reasons as to why the definition of 'gaming machine premises' needs to be further determined by regulations and does not simply involve the entire building and environs where a licence is held?

Answer:

The definition of ***gaming machine premises*** is provided for in clause 5 of the proposed legislation. There is no provision for the definition to be expanded by regulations.

Subsection 41(2) allows the Regulator to determine that a place is, or is not, part of a gaming machine premises for the purposes of the ATM withdrawal limit provisions. This subsection seeks to strike a balance between picking up the ATMs that the legislation needs to address and not collecting other types of ATMs, such as those on external walls of a shopping centre that also has a gaming venue onsite.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 34

Question:

Can the department provide real-world examples of what inspection powers authorised persons will have?

Answer:

Section 116 sets out the inspection powers available to authorised persons.

Authorised persons will be able to watch the use of gaming machines in venues (and any associated pre-commitment infrastructure such as kiosks), read and collect copies of information provided to patrons of gaming venues regarding the use of gaming machines and to talk to any person regarding gaming machines.

Joint Select Committee on Gambling Reforms

INQUIRY INTO THE NATIONAL GAMBLING REFORM BILL 2012 AND OTHER RELATED BILLS - QUESTIONS ON NOTICE

DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 35

Question:

In relation to sections 193 or 194, the Productivity Commission has 6 months to report. Is there a capacity to extend this timeframe?

Answer:

Section 195 of the National Gambling Reform Bill 2012 details the requirements for referrals to the Productivity Commission and relevant reports. In relation to sections 193 and 194 of the bill, a period of six months has been specified within which the Productivity Commission must submit its report on that inquiry to the Productivity Minister. Specifying the reporting period in the legislation aligns with paragraph 11(1) b of the Productivity Commission Act 1998. As this has been designated in legislation, it cannot be extended, except by legislative amendment.

Joint Select Committee on Gambling Reforms

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DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

Question No: 36

Question:

If the PC gets 6 months to conduct the review/report, why does the Government get unlimited time to respond and 3 months before it has to table the review/report?

Answer:

Subclause 195(2) of the bill provides that, as soon as practicable after receiving a report, the Minister who administers the new Act must cause a statement to be prepared that sets out the Commonwealth Government's response to each recommendation. That Minister must also cause copies of the statement to a report to be tabled in each house of the Parliament within three months after receiving the report (subclause 195(3)).

These provisions mean that the Minister has only 3 months to respond – not an unlimited period.