

Coalition members' dissenting report

1.1 The Coalition members of the committee believe the amount of time set aside for what should have been a thorough inquiry into this legislation was disgraceful. Serious issues have been raised with the committee including a lack of consultation and clarity regarding the legislation. State governments and regulators have raised issues in submissions¹ and requested further consultation through COAG.² Industry has raised issues around the timelines for implementation and cost.³ The concerns of the governments and organisations which the Labor government would leave to implement this legislation appear to have been ignored.

1.2 This inquiry has been a rush job from start to finish. One week for submissions and one hearing is not adequate for this legislation and the number of serious issues raised with the committee. A thorough inquiry is warranted. The experience that committee members have gained since this committee was established, and which could have been applied to the issues, has been wasted through lack of engagement with all the stakeholders.

1.3 While the Coalition supports voluntary pre-commitment as a tool for those who have gambling problems it does not agree with the how the Labor government wants to achieve this. Coalition members of this Committee therefore believe this legislation should not be supported in its current form.

1.4 Coalition committee members will outline below the concerns raised with the committee which we believe have been glossed over in the committee majority report. Although ultimately not supporting this legislation, coalition committee members will make some recommendations in an attempt to improve the bill so that it takes into consideration the key issues raised with the committee.

1.5 The evidence presented to the Committee on the negative impact of this proposed legislation on hospitality employment and the very real risk there will be widespread non-compliance was clear. There was no rebuttal to the concerns raised by industry that the forced expenditure to achieve compliance would result in job losses, marginal clubs being further disadvantaged, and many venues being non-compliant through no fault of their own, rather as a consequence of state and territory based regulators not approving new and/or altered games within the timeframes specified by the legislation.

1 Department of Racing, Gaming and Liquor, WA, *Submission 5*; Independent Gambling Authority, *Submission 10*; Northern Territory Government, *Submission 12*; Government of South Australia, *Submission 20*.

2 Mr George Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, 'NSW Disappointed in Federal Pokies Bill', *Media Release*, 2 November 2012.

3 Clubs Australia, *Submission 7*; Gaming Technologies Association, *Submission 9*; Australian Hotels Association, *Submission 14*.

This legislation is not needed

1.6 Coalition committee members believe that ultimately, gaming is a state issue and the Commonwealth should not continue to erode the powers and responsibilities of the states. Professor of Constitutional Law, Dr Anne Twomey was also of this view:

As a matter of principle, however, I am of the view that gambling is fundamentally a State matter that should be dealt with by State laws. While I am personally supportive of measures to limit the pernicious effects of gambling on poker machines (or indeed, to get rid of them altogether), it would be more consistent with the federal system and with the principle of subsidiarity for such laws to be applied at the State level.⁴

1.7 The evidence shows a clear lack of consultation with the states⁵ even though they will be left to implement the system. The states and territories, via COAG support voluntary pre-commitment technology so there is no need to add yet another layer of bureaucracy to this process which does not take into consideration the differences between jurisdictions.⁶

1.8 Agreement by the states and territories for the Commonwealth to legislate on a national basis should be a necessary precursor for legislation of this type.

Uniform timelines will create unequal compliance burdens

1.9 This bill imposes uniform timelines and conditions on all states and territories which will result in extensive compliance burdens and costs for some jurisdictions due to the lack of central monitoring systems.⁷ The Productivity Commission (PC) acknowledged the disparities between states and territories regarding their ability to implement pre-commitment.⁸

1.10 These technical differences were also pointed out by the Gaming Technologies Association (GTA):

Further, each State and Territory has its own existing technical requirements which must be augmented by clearly defined pre-commitment functional and technical requirements before redevelopment can begin.⁹

4 Dr Anne Twomey, *Submission 1*, p. 1.

5 Department of Racing, Gaming and Liquor, WA, *Submission 5*; Mr George Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, 'NSW Disappointed in Federal Pokies Bill', *Media Release*, 2 November 2012; Northern Territory Government, *Submission 12*; Government of South Australia, *Submission 20*.

6 Clubs Australia, *Submission 7*, p. 2.

7 Clubs Australia, *Submission 7*, p. 2.

8 Productivity Commission, *Gambling*, Overview, Commonwealth of Australia, Canberra, 20120, p. 28.

9 Gaming Technologies Association, *Submission 9*, p. 1.

1.11 Coalition committee members suggest that these differences between states and territories, which will affect the implementation timeline and costs for some jurisdictions, be taken into consideration with the timelines being moved from the legislation to regulations to allow greater flexibility and more time to achieve compliance.

Recommendation 1

1.12 Coalition committee members recommend that the different technical situations in jurisdictions, which will directly affect timelines and costs for implementation, be taken into consideration by moving the timelines from the legislation to the regulations to allow greater flexibility and more time.

Technical challenges

1.13 Technical challenges are not limited to the state/territory system as confirmed by the Gaming Technologies Association whose members supply gaming machines. As the association has repeatedly told the committee, before redevelopment of machine software can begin, functionality must be clearly defined so technical requirements can be developed. The GTA reported that to date work has not commenced on the functional design. Technical differences in each state and territory further complicate the process. The GTA stressed to the committee that the implementation timelines in the bill 'cannot be met'.¹⁰ This is the organisation that represents the suppliers of new gaming machines in Australia and they have made this point repeatedly to the government and the committee but they have been ignored. This advice around the complexity and cost for industry was reinforced by Aristocrat, which has almost 60 years experience in the industry. Aristocrat supported the information provided by GTA and added:

Currently there are approximately 400 Aristocrat titles installed in the Australian gaming environment. Upgrading these to ensure compliance with any new regulatory requirement would involve a huge investment and redirection of resources towards the development of the necessary mathematics models, artwork and feature sets. Aristocrat believes the implementation timeframes being discussed by the Committee are wholly unrealistic.

Each new Aristocrat game has to be modified to meet 11 different protocols across the country, a problem that cannot be overlooked. Manufacturers will need time to gain recommendations from independent licensed testing laboratories and approval from gaming regulators for compliant solutions, estimated at two months per game, per jurisdiction. Therefore the proposed voluntary state wide precommitment system is highly complex.¹¹

1.14 Aristocrat concluded:

...the issues that stand out for Aristocrat relate to the significant technological and regulatory hurdles that will need to be overcome in order

10 Gaming Technologies Association, *Submission 9*, p. 1, 5.

11 Aristocrat, *Submission 15*, pp 4–5.

to provide what is outlined in the legislation within the timeframes specified.¹²

1.15 Coalition committee members are astonished that the Department of Families, Housing, Community Services and Indigenous Affairs appears to be accepting the advice from one organisation, the Toneguzzo Group, over the consistent advice provided by the gaming machine manufacturing industry.¹³ Coalition committee members also note that the copy of the Toneguzzo Group report available under FOI on the FaHCSIA website has blacked out all useful information regarding implementation, costs and timeframes.

Existing pre-commitment systems

1.16 The status of existing pre-commitment systems is not clarified in the bill. Many venues have already made significant investments in pre-commitment systems and in most cases have entered contractual relationships to provide pre-commitment to patrons. As pointed out by Clubs Australia it would be unfair to penalise venues which have already installed pre-commitment systems and require them to replace their systems with a new version.¹⁴

1.17 Coalition committee members suggest that the legislation specify that existing pre-commitment systems that meet the minimum requirements should be recognised as compliant as quickly as possible to provide regulatory certainty.

Recommendation 2

1.18 Coalition committee members recommend that existing pre-commitment systems that meet the minimum requirements specified in the legislation should be recognised as compliant as quickly as possible in order to provide regulatory certainty for venues.

Timelines

1.19 Coalition committee members note that although the introduction of the legislation had been delayed by 10 months, only the timeline for the ATM limit changes has been extended. Specifically Clubs Australia has pointed out that the three year implementation timeframe for venues with more than 20 poker machines does not provide sufficient time for clubs to absorb the compliance costs and may result in widespread non-compliance. It noted that the Productivity Commission recommended that venues be given a minimum of six years to amortise the capital investment.¹⁵

12 Aristocrat, *Submission 15*, p. 5.

13 FaHCSIA, Answers to questions taken on notice 13 November 2-12, No 21, received 16 November 2012. See also Ms Liza Carroll, *Proof Committee Hansard*, 13 November 2012, p. 65.

14 Clubs Australia, *Submission 7*, p. 5.

15 Clubs Australia, *Submission 7*, p. 5.

1.20 The Australian Hotels Association stated its preference that venues be able to make the change to voluntary pre-commitment through the natural replacement of machines.¹⁶

1.21 The need for venues to have more time to comply was supported by the manufacturing industry. Aristocrat stated:

We strongly believe a long term, phased implementation timeframe is a necessity for venues, especially smaller venues, who will need sufficient time to absorb the costs associated with overhauling their entire machine and game fleet. Importantly, a phased approach would also allow policy makers to respond to the evidence base that emerges from trials.¹⁷

1.22 GTA also highlighted this issue to the committee:

The Bill should instead specify that the development of revised functionality must be completed by consultation with relevant stakeholders; and that its subsequent implementation should then commence according to venues' machine replacement programs.¹⁸

Financial capacity to comply

1.23 Clubs Australia pointed out that a 2011 KPMG survey found that 51 per cent were in financial distress. The legislation does not take into consideration the financial capacity of clubs to comply. Clubs Australia noted that many clubs in regional and rural areas will face the same timelines as city casinos despite the average annual revenue per machine being significantly less. It suggests that the venue's average revenue per machine should be taken into account and recommends an expansion to the definition of small venue to include those that have smaller revenues per gaming machine.¹⁹

1.24 While the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) raised issues with the suggestion made by Clubs Australia regarding expanding the definition of small venues,²⁰ Coalition committee members believe it should not be dismissed out of hand but should be the subject of consultation to see whether some aspects can be accommodated.

Need for greater flexibility

1.25 Given the difficulties that some venues may face to implement pre-commitment by the timeframe required in the legislation, Clubs Australia has suggested that the Minister should have the power to extend the timelines if required.

16 Australian Hotels Association, *Submission 14*, p. [5].

17 Aristocrat, *Submission 15*, p. 5.

18 Gaming Technologies Association, *Submission 9*, p. 5.

19 Clubs Australia, *Submission 7*, p. 5.

20 Ms Liza Carroll, *Proof Committee Hansard*, 13 November 2012, p. 70.

To achieve this it suggests the deadlines for venues should be contained in the regulations rather than the legislation.²¹

Recommendation 3

1.26 Coalition committee members recommend that further consultation with industry take place to ensure the timelines proposed in the bill can take further consideration the ability of smaller venues, those in regional and rural areas and those in financial distress to comply with the requirements. This should include the suggestions put forward by industry and the placement of deadlines in regulations.

Need for a general exemption power

1.27 Clubs Australia suggested that there is a need for a provision to allow the Minister or Regulator to have powers to exempt or modify the obligations for individual venues in extenuating circumstances such as floods. This would allow the minister/regulator to extend deadlines for implementation. These provisions should also include the temporary suspension of the ATM withdrawal limit if banking facilities in a local area have been affected.²²

1.28 Coalition committee members support this suggestion for a general exemption power.

ATM withdrawal limits

1.29 Another example of the lack of consultation and evidence is around the \$250 per day ATM withdrawal limit. The Productivity Commission found that the causality between access to ATMs and problem gambling was 'hard to prove'.²³

1.30 The ATM Industry Reference Group outlined why a 12-month lead in time is required:

Unlike Victoria where a limit of \$400 per card applied across any 24-hour period, the current proposed change would apply across multiple states and territories, which are all subject to different legislative and regulatory models;

The geographical locations of ATMs in gaming venues across Australia are spread far and wide;

It will take many months for each ATM company to put in place the necessary technological arrangements to differentiate between ATMs in their networks that the limit would apply to (licensed premises with electronic gaming machines – EGMs) and those that it wouldn't (service stations, convenience stores, licensed premises without EGMs, other locations, etc). As part of this process, ATM companies will have to

21 Clubs Australia, *Submission 7*, p. 6.

22 Clubs Australia, *Submission 7*, p. 7.

23 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 20120, p. 13.11. See also ATM Industry Reference Group, *Submission 16*, p. 2.

identify and work on ATMs at each individual site (there are currently more than 5000 of ATMs located on licensed premises in Australia);

On the basis that these bills were to pass Parliament before the end of 2012, the development process for the implementation of this limit would not be able to commence until mid-January 2013, due to industry change moratoriums in place across the peak processing period within the ATM deployers. These moratoriums are self imposed and have been put in place for the protection of the payment system across peak periods such as Christmas and holiday periods. These moratoriums are critical to ensure integrity to the payments system and so that there is no interruption to consumers during this peak period for access to cash;

In many instances, the introduction of the limit will mean that fresh contractual agreements between the ATM companies and merchants (hotels, clubs) will need to be agreed upon and struck;

ATMs that are captured by the limit will need to be programmed to ensure that once the limit is reached, further withdrawals are rejected;

ATM and network technology will require updating to ensure the limit applies across multiple terminals and multiple transactions, and overall impact to locations where more than one service provider is present;

The AIRG notes that there is no ability for venues to maintain compliance with the proposed legislation where multiple devices by multiple service providers are in place, resulting in removal of one of the service providers' device and requiring a logistical effort to be undertaken, as well as the technical effort, not to mention negotiations regarding contractual breach relating to early contract termination remedies with one of the providers;

ATM companies will need to ensure that information displayed on ATM screens is updated; and

ATM companies will need to update reporting processes in order to ensure that this major policy change can be adequately monitored.²⁴

1.31 Coalition committee members believe that given the implementation issues outlined by the ATM Industry Reference Group, in order to ensure successful implementation, there should be a lead time of not less than 12 months from the date of the legislation passing parliament for the daily withdrawal limit to apply.

Recommendation 4

1.32 Coalition committee members recommend that there should be a lead time of not less than 12 months from the date of the bills passing parliament for the proposed daily withdrawal limit to apply.

Limit too low

1.33 The committee heard evidence that the proposed \$250 daily ATM withdrawal limit is too low and should be higher. The ATM Industry Reference Group submitted that the PC report was completed in 2010 and allowing for CPI of three per cent per

24 ATM Industry Reference Group, *Submission 16*, pp 4–5.

annum the limit would be around \$280 which could be rounded to \$300. The timeframe from the publication of the PC report to implementation in May 2013 also does not take into account the higher cost of living in this timeframe. It therefore advocated for a limit of \$400 as this limit was introduced in Victoria in 2012 and had a significant impact on the number of transactions in gaming venues (a decline of 5 per cent).²⁵

1.34 Concerns about the limit were also raised by venues. The Australian Hotels Association stated that the proposed limit will affect food and beverage sales. It noted that the ABS confirmed that 70 per cent of hotel income is generated from food and beverage sales.²⁶ Clubs Australia also highlighted the weak evidence for this measure which will cause inconvenience for patrons and staff.²⁷

1.35 More targeted measures which would not affect other patrons were suggested to the committee. Clubs Australia pointed out that problem gamblers can already lower their daily withdrawal limits by contacting their bank or financial institution directly.²⁸ The Australian Hotels Association told the committee about self-exclusion ATMs which would also target problem gamblers without causing inconvenience to recreational and non-gamblers.²⁹

Recommendation 5

1.36 Coalition committee members recommend that measures around ATM use targeted specifically to help problem gamblers, such as lowering their daily withdrawal limits and/or the use of self-exclusion ATMs, should be pursued in preference to causing inconvenience to all patrons. However, if implemented, the proposed daily limit should be increased to at least \$400 to take account of the issues raised by industry.

Conclusion

1.37 Coalition committee members do not support this bill. It is unnecessary, heavy handed and overly prescriptive. It places impractical and impossible timelines on jurisdictions and industry to implement the best systems for voluntary pre-commitment and their valid concerns appear to have been ignored in the rush to push through this legislation.

1.38 The delay with the introduction of this legislation has not been taken into account for manufacturers, venues or for implementation of the \$250 ATM daily withdrawal limits. Although the industry can prepare for various scenarios and the committee heard it has been doing its best, the significant movements in gambling policy over the past two years has meant that industry could not start significant

25 ATM Industry Reference Group, *Submission 16*, p. 5.

26 Australian Hotels Association, *Submission 14*, p. [4].

27 Clubs Australia, *Submission 7*, p. 6.

28 Clubs Australia, *Submission 7*, p. 7.

29 Australian Hotels Association, *Submission 14*, p. [5].

preparations with any degree of certainty. There were and are no guarantees that what was proposed in the draft legislation and what is proposed in these bills will become law until the bills pass both houses of parliament. At the very least the timeframes should take account of the 10 month delay since the draft legislation was released in February 2012.

1.39 Given the numerous issues raised in submissions it is clear that consultation has been inadequate and that further work with jurisdictions and industry is required in order to develop the best voluntary pre-commitment system that targets and assists problem gamblers which is achieved in a realistic timeframe that takes account of the technical, implementation and cost issues raised by industry.

Recommendation 6

1.40 Coalition committee members recommend that the bills not be passed in their current form.

Mr Steven Ciobo MP

Mr Josh Frydenberg MP

