



New South Wales

Gaming Machines Amendment (Temporary Freeze) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Gaming Machines Act 2001* as follows:

- (a) to impose a temporary freeze on the maximum number of gaming machines that may be kept in a hotel or on the premises of a registered club by preventing the approval of social impact assessments that would result in an increase in the SIA threshold for the hotel or club premises,
- (b) to impose a temporary freeze in relation to the keeping of multi-terminal gaming machines on club premises by preventing the granting of applications to keep additional multi-terminal gaming machines in certain circumstances,
- (c) to provide that, in the case of a hotel that is subject to lease, the Liquor Administration Board may approve the transfer of a poker machine entitlement allocated in respect of the hotel licence only if it is satisfied that the transfer of the entitlement is, unless it was purchased by a person other than the lessor, supported by the lessor who has a beneficial interest in the business of the hotel.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Gaming Machines Act 2001* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Temporary freeze on maximum number of gaming machines

Under Division 1 of Part 4 of the *Gaming Machines Act 2001*, a social impact assessment is required to be provided to the Board if a hotel or registered club is seeking to increase the maximum number of gaming machines that may be authorised to be kept in the hotel or on the club's premises (this number is referred to as the venue's **SIA threshold**). The Board's approval of the social impact assessment is required before the SIA threshold is increased.

Schedule 1 [5] provides that the Board cannot, during the period starting on the commencement of the proposed Act and ending on a date appointed by proclamation (**the period of the freeze**), approve a social impact assessment if it would result in an increase in the SIA threshold for the venue concerned. **Schedule 1 [9]** provides that the proposed provision extends to any social impact assessment provided to the Board since 7 December 2007 that would, if approved, result in an increase in the SIA threshold for the venue. If any such social impact assessment has already been approved, the approval has no effect and the SIA threshold is taken not to have been increased.

Temporary freeze in relation to multi-terminal gaming machines

At present the Board may authorise registered clubs to keep multi-terminal gaming machines (which is a machine designed to be played by more than one player at the same time and is equipped with more than one player terminal). **Schedule 1 [8]** provides that the Board cannot, during the period of the freeze, approve an application for an additional multi-terminal gaming machine if more than 15% of the gaming machines authorised to be kept on the club's premises are terminals forming part of multi-terminal gaming machines (or if granting the application would result in such terminals comprising more than 15% of the gaming machines authorised to be kept on the premises). **Schedule 1 [9]** provides that the proposed provision extends to any pending application to keep a multi-terminal gaming machine made since 7 December 2007. If any such application has already been approved, the authorisation has no effect if the application could not have been granted had the

proposed provision been in force when the application was granted. **Schedule 1 [6] and [7]** are consequential amendments.

Transfer of hotel poker machine entitlements

Section 19 of the *Gaming Machines Act 2001* provides for the transfer of hotel and club poker machine entitlements. Such a transfer has effect only if it is approved by the Board. In the case of a hotel, an application for the Board's approval to transfer a poker machine entitlement must demonstrate that the proposed transfer is supported by each person who, in the opinion of the Board, has a financial interest in the hotel licence. Section 19 currently provides that a person is taken to have a financial interest if the person is entitled to receive any income derived from the business carried on under the authority of the licence or any other financial benefit or financial advantage from the carrying on of the business.

Schedule 1 [1] provides that a person is also taken to have a financial interest in the hotel licence if, in the case where the hotel is subject to a lease, the person is the lessor and has a beneficial interest in the business of the hotel (including the goodwill of the business at the end of the lease). However, **Schedule 1 [4]** provides that the support of such a lessor is not required in relation to the transfer of a poker machine entitlement that was purchased by a person other than the lessor.

Section 19 (6) of the Act also currently provides that a person is not to be considered as having a financial interest in a hotel licence by reason only of the person being the owner of the hotel. **Schedule 1 [3]** makes it clear that the owner of the hotel in this context refers to the owner of the building comprising the hotel (rather than the owner of the hotel business). **Schedule 1 [2]** is consequential on the amendment made by Schedule 1 [1].

Schedule 1 [9] provides that the amendments to section 19 extend to pending applications for the Board's approval to transfer hotel poker machine entitlements. If such an application has been approved since 7 December 2007, the transfer has no effect if the approval could not have been given had the amendments to section 19 been in force.

First print



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New South Wales

Gaming Machines Amendment (Temporary Freeze) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Gaming Machines Act 2001* to impose a temporary freeze on the maximum number of gaming machines that may be kept in a hotel or club and to make further provision in relation to the transfer of hotel poker machine entitlements; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Gaming Machines Amendment (Temporary Freeze) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Gaming Machines Act 2001 No 127	7
The <i>Gaming Machines Act 2001</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 19 Transfer of poker machine entitlements	3
	Omit section 19 (5). Insert instead:	4
	(5) For the purposes of subsection (3) (c), a person is taken to have a financial interest in a licence if:	5
	(a) the person is entitled to receive any income derived from the business carried on under the authority of the licence or any other financial benefit or financial advantage from the carrying on of the business (whether the entitlement arises at law or in equity or otherwise), or	6
	(b) in the case where the hotel to which the licence relates is subject to a lease—the person is the lessor and has a beneficial interest in the business of the hotel (including the goodwill of the business at the end of the lease).	7
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[2]	Section 19 (6)	16
	Omit “However”. Insert instead “Subject to subsection (5) (b)”.	17
[3]	Section 19 (6)	18
	Insert “building comprising the” after “owner of the”.	19
[4]	Section 19 (7)	20
	Insert after section 19 (6):	21
	(7) Subsection (5) (b) does not, in the case where the hotel to which the licence relates is subject to a lease, apply in relation to the transfer of a poker machine entitlement that was purchased by a person other than the lessor or a person acting on behalf of the lessor.	22
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[5]	Section 37B	27
	Insert after section 37A:	28
	37B Temporary freeze in relation to SIA thresholds	29
	(1) During the period of the freeze, a social impact assessment that relates to the keeping of approved gaming machines in a hotel or on the premises of a registered club cannot be approved if the approval would result in an increase in the SIA threshold for the hotel or the premises of the club.	30
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(2)	In this section, <i>period of the freeze</i> means the period:	1
(a)	starting on the commencement of this section, and	2
(b)	ending on the date appointed by proclamation.	3
[6]	Section 61 Clubs may keep multi-terminal gaming machines	4
	Insert “and section 61A” after “this section” in section 61 (1).	5
[7]	Section 61 (2)	6
	Insert “, subject to section 61A,” after “may”.	7
[8]	Section 61A	8
	Insert after section 61:	9
61A	Temporary freeze on number of multi-terminal gaming machines in clubs	10 11
(1)	During the period of the freeze, an application for authorisation to keep a multi-terminal gaming machine on the premises of a registered club cannot be granted if:	12 13 14
(a)	more than 15% of the approved gaming machines authorised to be kept on the premises are terminals forming part of multi-terminal gaming machines, or	15 16 17
(b)	the authorisation would result in such terminals comprising more than 15% of the approved gaming machines authorised to be kept on the premises.	18 19 20
(2)	Subsection (1) applies only if the application relates to an increase in the number of multi-terminal gaming machines authorised to be kept on the premises concerned immediately before 7 December 2007.	21 22 23 24
(3)	In this section, <i>period of the freeze</i> means the period:	25
(a)	starting on the commencement of this section, and	26
(b)	ending on the date appointed by proclamation.	27

[9] Schedule 1 Savings, transitional and other provisions	1
Insert as Part 10:	2
Part 10 Provisions consequent on enactment of Gaming Machines Amendment (Temporary Freeze) Act 2008	3 4 5
37 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Gaming Machines Amendment (Temporary Freeze) Act 2008</i> .	8 9
38 Transfer of certain hotel poker machine entitlements	10
(1) The amendments made to section 19 by the amending Act extend to any application for approval to transfer a hotel poker machine entitlement that was made between 7 December 2007 and the commencement of the amending Act.	11 12 13 14
(2) If such an application was approved before the commencement of the amending Act, the transfer of the hotel poker machine entitlement to which the application for approval relates has no effect if the approval could not have been given in accordance with section 19 had the amendments made to that section by the amending Act been in force when the approval was given.	15 16 17 18 19 20
(3) In this clause, <i>hotel poker machine entitlement</i> means a poker machine entitlement allocated in respect of a hotelier's licence.	21 22
39 Approval of certain SIAs	23
(1) Section 37B (as inserted by the amending Act) extends to any social impact assessment that was provided in accordance with Division 1 of Part 4 of this Act between 7 December 2007 and the commencement of the amending Act.	24 25 26 27
(2) If such a social impact assessment was approved before the commencement of the amending Act, the approval has no effect (and accordingly the SIA threshold for the hotel or premises concerned is taken not to have been increased) if the approval could not have been given had section 37B been in force when the approval was given.	28 29 30 31 32 33
(3) For the avoidance of doubt, section 37B does not apply in relation to any social impact assessment that was provided in accordance with Division 1 of Part 4 of this Act before 7 December 2007.	34 35 36

40	Multi-terminal gaming machines in clubs	1
(1)	Section 61A (as inserted by the amending Act) extends to any application for authorisation to keep a multi-terminal gaming machine that was made between 7 December 2007 and the commencement of the amending Act.	2 3 4 5
(2)	If such an application was granted before the commencement of the amending Act, the authorisation to which the application relates has no effect if the application could not have been granted had section 61A been in force when the application was granted.	6 7 8 9 10
41	Period of the freeze	11
	The date appointed for the end of the period of the freeze for the purposes of section 37B or 61A may be altered by a further proclamation or proclamations published before the date so appointed.	12 13 14 15
42	Crown not liable for any compensation	16
(1)	Damages or compensation are not payable by or on behalf of the Crown:	17 18
(a)	because of the enactment of the amending Act or the operation of the amendments made by the amending Act (including the provisions of this Part), or	19 20 21
(b)	for the consequences of that enactment or operation.	22
(2)	In subclause (1), <i>the Crown</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and includes any employee or agent of the Crown.	23 24 25