

[Act 2001 No 127]



New South Wales

Gaming Machines Bill 2001

Explanatory note

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

Overview of Bill

This Bill consolidates the provisions relating to gaming machines (ie poker machines and approved amusement devices) that are currently contained in the *Liquor Act 1982* and the *Registered Clubs Act 1976*.

The Bill also gives effect to a number of new measures designed to limit the number of gaming machines in hotels and registered clubs and to promote the primary object of gambling harm minimisation as referred to in clause 3 of the Bill. The key reforms introduced by the Bill are as follows:

- (a) to impose an overall State cap on the number of gaming machines in hotels and clubs, with the limit set at 104,000 gaming machines (25,980 for hotels and 78,020 for clubs),
- (b) to maintain the existing limit of 30 gaming machines per hotel, but to impose for the first time a limit of 450 gaming machines per venue in the case of registered clubs,

* Amended in committee—see table at end of volume.

- (c) to require, in the case of clubs that currently have venues with more than 450 gaming machines, those venues to relinquish, over a 5-year period, 10% of their machines or such number as would bring the number of gaming machines at the venue to within the 450 machine limit,
- (d) to introduce a scheme under which poker machine entitlements (as allocated by the Liquor Administration Board) may be traded by hoteliers and clubs so long as for every 2 entitlements that are sold, one is forfeited to the Board,
- (e) to provide for the keeping of additional gaming machines (referred to as “hardship gaming machines”) on the grounds of financial hardship or in accordance with transitional arrangements arising out of the existing freeze on gaming machine numbers in hotels and clubs,
- (f) to require a social impact assessment to be provided by a hotelier or club, and to be approved by the Board, before additional gaming machines may be kept in the hotel or club or before any gaming machine may be kept in a new hotel or new club,
- (g) to require hoteliers and clubs to switch off their gaming machines for certain periods of the day,
- (h) to implement a number of other new harm minimisation measures (that will also apply in most cases to the casino) such as prohibiting all gaming machine advertising and signage, restricting prizes and schemes that promote or market gaming machine activities (eg player reward schemes), and requiring formal arrangements to be entered into in order to provide problem gambling counselling services for patrons in hotels, clubs and the casino,
- (i) to control and restrict club amalgamations (eg a limit of 4 amalgamations per club is set and clubs will only be allowed to amalgamate with other clubs that are in the same area),
- (j) to prohibit clubs, and club secretaries and managers, from holding hotelier’s licences or acquiring financial interests in hotels,
- (k) to provide that the Crown is not liable for any damages or compensation because of the enactment or operation of the proposed Act.

Outline of provisions

Part 1 Preliminary

Part 1 (**clauses 1–9**) contains provisions dealing with the name of the proposed Act, its commencement, the primary object of gambling harm minimisation, definitions for the purposes of the proposed Act, and other general matters relating to the operation of the proposed Act. A primary purpose test in respect of hotels is specified for the purposes of the proposed Act (namely, that the primary purpose of the business conducted in the hotel is the sale of liquor by retail and that the keeping or operation of gaming machines is not to detract from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for gambling).

Part 2 Limitations on gaming machine numbers

Part 2 (**clauses 10–13**) sets the cap on gaming machine numbers (ie 104,000 is set as the overall State cap, with a maximum of 30 gaming machines per hotel and 450 gaming machines per club venue) and requires the number of gaming machines in those club venues that currently have more than 450 gaming machines to be reduced over a 5-year period in accordance with the regulations.

Part 3 Poker machine entitlements and hardship gaming machines

Division 1 (**clause 14**) contains general provisions relating to the operation of Part 3. The allocation of poker machine entitlements and the approval of hardship gaming machines will be subject to the overall State cap.

Division 2 (**clauses 15–25**) provides for the allocation of poker machine entitlements by the Board in accordance with the arrangements approved by the Director-General of the Department of Gaming and Racing. Poker machine entitlements will initially be allocated for the frozen number (being the number determined by the Board) of poker machines in a hotel or club. Certain restrictions are placed on the allocation of poker machine entitlements (eg they are not to be allocated in respect of hardship gaming machines until 3 years after the commencement of the proposed Act). Poker machine entitlements are transferrable, but only in accordance with certain requirements. The forfeiture of one entitlement

for every 2 transferred to another hotel or club venue is required and also when a hotelier's licence is removed to other premises more than 1 kilometre from the previous premises.

Division 3 (**clauses 26–31**) provides for the approval by the Board of the keeping of hardship gaming machines by hoteliers and clubs in certain circumstances. The approval to keep a hardship gaming machine must be forfeited if the hotelier or club concerned is to be allowed to transfer poker machine entitlements.

Part 4 Gambling harm minimisation measures

Division 1 (**clauses 32–37**) provides that when a hotelier or club applies for additional gaming machines or applies to keep gaming machines in a new hotel or new club, a social impact assessment must be provided to the Board in connection with the application. The assessment must be approved by the Board before the application may be granted. The assessment will have to satisfy the requirements specified under the regulations.

Division 2 (**clauses 38–42**) imposes requirements on hoteliers and clubs to shutdown their gaming machines for certain periods. Until 1 May 2003, an interim 3-hour shutdown period (6 am to 9 am) is imposed. After that date, a general 6-hour shutdown period will apply (4 am to 10 am) unless the hotelier or club has the Board's approval to reduce the shutdown period on weekends and public holidays to the period between 6 am and 9 am on those days. In the case of hotels and club that are "early openers", different times can be approved by the Board so long as the length of the relevant shutdown period is not reduced.

Division 3 (**clauses 43–49**) contains a number of additional gambling harm minimisation measures. In particular, a prohibition on all gaming machine advertising and signage is introduced for hotels and clubs (eg signs that draw attention to the availability of gaming machines in hotels and clubs and signs that use terms or expressions frequently associated with gambling). Promotional prizes that are offered by hoteliers and clubs will also be regulated. Hoteliers and clubs will be required to arrange for problem gambling counselling services to be made available for patrons and will also be required to establish and conduct patron self-exclusion schemes.

Division 4 (**clauses 50–55**) contains provisions relating specifically to the operation of gaming machines by persons under the age of 18 years. If a minor operates a gaming machine in a hotel or club (which is an offence on the part of the minor), the hotelier, or the club and the club secretary, also commit an offence. Minors are also not permitted in gaming machine areas of clubs.

Part 5 Administrative controls in relation to gaming machines

Division 1 (**clauses 56–61**) requires the authorisation of the Board in order to keep or dispose of approved gaming machines. The authorisation to keep gaming machines in a hotel is subject to the hotel primary purpose test, and gaming machines cannot be authorised to be kept in retail-shopping centres.

Division 2 (**clauses 62–66**) provides for the declaration by the Board of gaming machines as approved gaming machines.

Division 3 (**clause 67**) enables certain administrative functions of the Board in relation to approved gaming machines to be exercised by other persons.

Part 6 Miscellaneous offences

Part 6 (**clauses 68–81**) contains offences in relation to the keeping and operation of gaming machines as well as in relation to other gaming machine-related matters. In particular, hoteliers will (as they are at present under the *Liquor Act 1982*) be required to keep their gaming machines in gaming rooms if they have more than 10 machines.

Part 7 Gaming-related licences

Division 1 (**clauses 82 and 83**) contains definitions for the purposes of Part 7 and specifies the different types of gaming-related licences under the proposed Act and the authority conferred by those licences. The provisions of Part 7 depart from the existing provisions of the *Liquor Act 1982* and the *Registered Clubs Act 1976* only to the extent that the gaming-related licence scheme will no longer make a distinction between poker machines and approved amusement devices.

Division 2 (**clauses 84–87**) requires a gaming-related licence to be held in order to do certain things such as manufacture or sell gaming machines. The offences under Division 2 are substantially the same as the existing offences under the *Liquor Act 1982* and the *Registered Clubs Act 1976*.

Division 3 (**clauses 88–113**) sets out the details of the gaming-related licensing scheme. These provisions include the requirement for a periodic licence fee.

Division 4 (**clauses 114–116**) prohibits key officials and former key officials (ie specified public servants and members of the Police Service) from holding a gaming-related licence or being employed by the holder of such a licence, or from having a financial interest in the business of the holder of a gaming-related licence.

Division 5 (**clauses 117–126**) contains a number of other miscellaneous provisions relating to gaming-related licences.

Part 8 Complaints and disciplinary action

Part 8 (**clauses 127–131**) deals with complaints to the Licensing Court against hoteliers, registered clubs, gaming-related licensees and close associates of hoteliers and licensees. The grounds on which a complaint may be made include the contravention by a hotelier or club of any provision of the proposed Act. The disciplinary powers of the Court in relation to a complaint include the imposition of a pecuniary penalty and the cancellation of the hotelier's or club's authorisation to keep gaming machines.

Part 9 Authorised CMS

Part 9 (**clauses 132–140**) contains provisions relating to the operation of an authorised centralised monitoring system for gaming machines in hotels and clubs. TAB is to have an exclusive licence to operate an authorised CMS for a 15-year period. Hoteliers and clubs must ensure that their gaming machines are connected to the authorised CMS, and a monitoring fee is payable to the CMS licensee.

Part 10 Linked gaming systems

Division 1 (**clauses 141 and 142**) contains definitions and other preliminary provisions for the purposes of Part 10 which deals with inter-hotel or inter-club linked gaming systems (ie linked gaming systems operating in a hotel or club but that include specially approved gaming machines that are kept and operated in other venues).

Division 2 (**clauses 143–147**) deals with the licensing of inter-hotel linked gaming systems. TAB is to have an exclusive licence to operate a linked inter-hotel gaming system for a 15-year period.

Division 3 (**clauses 148–152**) deals with the licensing of inter-club linked gaming systems. TAB is to have an exclusive licence to operate a linked inter-club gaming system for a 15-year period.

Division 4 (**clauses 153–158**) contains general provisions in relation to links licences, including certain offences such as unlawfully interfering with an authorised linked gaming system.

Part 11 Investment licences

Part 11 (**clauses 159–165**) deals with the granting of an investment licence which authorises the sale or supply of gaming machines to hotels and to share in the profits from the operation of those gaming machines. Special provision is made for the granting of an investment licence to TAB for an exclusive period up to 30 June 2013.

Part 12 General provisions relating to CMS, links and investment licences

Part 12 (**clauses 166–177**) deals with applications for a CMS licence, links licence or investment licence, the fees for CMS and links licences, the taking of disciplinary action against licensees by the Minister, the giving of directions by the Minister in relation to the operation of a CMS or linked gaming system or in relation to any activity carried on under an investment licence, and with other general matters in relation to the licences granted under Parts 9, 10 and 11 of the proposed Act. The granting of an exclusive licence to TAB under those Parts, and any conduct authorised or required under the exclusive licence, is expressly exempted from the operation of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

Part 13 Investigation and enforcement powers

Part 13 (**clauses 178–186**) contains powers of entry, inspection and seizure in relation to gaming machines and certain premises, and empowers special inspectors to require hoteliers and clubs to do certain things in relation to gaming machines.

Part 14 Legal proceedings and related matters

Division 1 (**clauses 187–190**) provides for appeals in relation to certain matters.

Division 2 (**clauses 191–203**) contains machinery provisions in relation to proceedings under the proposed Act before the Licensing Court and deals with other general procedural matters such as the issuing of penalty notices.

Part 15 Miscellaneous provisions

Part 15 (clauses 204–216) provides that the Crown will not be liable for any damages or compensation because of the enactment or operation of the proposed Act, prohibits the disclosure of confidential information, provides for the protection of certain persons from personal liability, enables functions under the proposed Act to be delegated, provides a general regulation-making power, requires the proposed Act to be reviewed after 5 years and contains other provisions of a machinery nature. In exercising certain functions under the proposed Act, the Board will be subject to Ministerial directions and guidelines. Provision is also made to prevent environmental planning instruments, and consent authorities when granting development consents under the *Environmental Planning and Assessment Act 1979*, from restricting the installation, keeping or operation of gaming machines in hotels and clubs.

Schedules

Schedule 1 contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 contains amendments to the *Liquor Act 1982* that are consequential on the enactment of the proposed Act.

Schedule 3 contains amendments to the *Registered Clubs Act 1976* that are primarily consequential on the enactment of the proposed Act. Also included in the amendments are new requirements and controls in relation to club amalgamations, provisions dealing with disclosure of information by clubs in their annual reports to members and the prohibition on clubs and club secretaries holding hotelier's licences or acquiring financial interests in hotels.

Schedule 4 contains amendments to the *Casino Control Act 1992* in relation to such matters as the prohibition of gaming machine advertising, the provision of problem gambling counselling services and the regulation of promotional prizes and reward schemes.

Schedule 5 contains amendments to other Acts that are consequential on the enactment of the proposed Act.