



## Gordon Ramsay MLA

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Member for Ginninderra

Attorney-General

Minister for Regulatory Services

Minister for the Arts and Community Events

Minister for Veterans and Seniors

Mrs Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mrs Jones

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its *Scrutiny Report 9* published on 5 September 2017 in relation to the Casino (Electronic Gaming) Bill 2017 (the Bill).

I thank the Committee for its consideration of the Bill and provide the following comments in relation to the matters on which the Committee has requested a response.

### *Pre-commitment Information - strict liability offences and available defences*

I note the Committee's comments about the offences created under clause 34 of the Bill on the use or disclosure of pre-commitment information. While the Committee is concerned that 'it may not be clear in all cases that the information in question will have been obtained through use of the pre-commitment system' I can advise that the information to be collected and stored within the system will be limited to that which is required for the effective operation of the system, in line with requirements under the Territory Privacy Principles. Given the unique nature of information to be retained within the system (including, for example, playing history for a period and the dollar/time limits set by a person), it is difficult to conceive of a circumstance where a person did 'not know' the information was obtained from the pre-commitment system.

Further, the nature of mandatory pre-commitment requires trust that players' information will be held securely. I consider that it is appropriate to apply strict liability to the disclosure or use of information as part of the integrity of the system, and it would undermine deterrence to have to prove fault. The use or disclosure of pre-commitment information should be limited to those who have a legitimate need to access it – whether that is during a police or ACT Gambling and Racing Commission investigation or if authorised by a Court or tribunal, or in other circumstances set out in the Bill. I also note that de-identified information can be used or disclosed for research purposes. This element may result in wider use or disclosure of de-identified information, however, as long as

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the person doing so is acting in connection with research purposes, that use or disclosure would not be captured under the offence.

The offences are strict liability, not absolute liability, providing for the availability of Criminal Code defences of mistake of fact or intervening conduct or event, if appropriate. Noting the Committee's request for further justification of strict liability and the operation of various defences, during debate I intend to table a Revised Explanatory Statement that will address these matters.

*Strict liability offences with maximum penalties of 100 penalty units*

The Committee has requested further explanation of certain offences in the Bill that are strict liability with a maximum penalty of 100 penalty units.

The Bill must be understood and interpreted in context. That is, the Bill regulates access to, and the operation of, electronic gaming products at the casino. These offences do not have wide application across the community, and the Bill operates in conjunction with the existing frameworks established under the *Casino Control Act 2006* and the broader gaming and racing suite of legislation, including the *Gambling and Racing Control Act 1999*.

I note that all the strict liability offences in the Bill with a maximum penalty of 100 penalty units apply only to the casino licensee. Under section 21(3) of the *Casino Control Act*, the casino licensee must be a corporation, not an individual.

The very nature of having to apply for, be granted, and retain a casino licence is a substantial undertaking. Therefore the licensee is on notice of their special relationship of responsibility to both gambling patrons and the broader community, and the licensee is well aware of their obligations to abide by the laws governing operations at the casino. The Bill provides a framework for access to new electronic gaming products at the casino and I consider that a robust regulatory framework is important in deterring conduct that has the potential to bring harm to a range of people.

The framework in the Bill has been developed to harmonise with measures provided in the *Casino Control Act*. For example, as part of the existing disciplinary framework, the casino licensee can be ordered under section 34(1)(c) of the *Casino Control Act* to pay a financial penalty to the Territory of up to \$1,000,000.

For the casino licensee, a 100 penalty unit offence represents a maximum penalty of \$75,000. Given that the licensee might obtain significant revenue from the inappropriate use of electronic gaming products, limiting the maximum penalty to 50 penalty units (\$37,500) would provide inadequate deterrence.

Under the *Gaming Machine Act 2004*, gaming machine licensees in clubs and hotels are subject to the following similar strict liability, 100 penalty unit offences associated with the maximum stake amount of gaming machines, and the selling and acquisition of gaming machine authorisations and physical gaming machines:

- section 49 – Maximum stake amount (links with offence in section 39 on failure to comply with licence conditions)
- section 127C – Selling class B authorisations
- section 127D – Selling class B gaming machines

- section 127G – Acquiring authorisations and gaming machines
- section 127H – Selling class C gaming machines
- section 127I – Selling class C authorisations

The offences in clause 33 of the Bill that apply where a gaming machine in the casino is not connected to a pre-commitment system, or where the pre-commitment system is not functioning as approved, are new offences that do not apply to existing gaming machine licensees. However, given the Government's intent that the pre-commitment system is mandatory, it is important that all gaming machines in the casino are connected to the system, and that the system is functioning properly. Otherwise, patrons might be able to circumvent their set limits, increasing the risk of gambling harm. For this reason the maximum penalties have been set in line with the offences above. These two offences are strict liability, however, as noted in the Explanatory Statement, the offences do not apply where the licensee can demonstrate it took all reasonable steps to ensure the gaming machine was connected to a pre-commitment system, and that the system was functioning as approved.

The ACT Government must also play its part in supporting anti money-laundering/counter-terrorism financing efforts through strong controls on gambling activities, with appropriate penalties for contraventions. As noted by AUSTRAC, 'money laundering is a key risk to Australia – it is the common element in almost all serious and organised crime.'<sup>1</sup> McMillen and Woolley note that:

*Historically, licensed gambling operations have been identified as a potential mechanism for money laundering to occur. In Australia, the introduction of casino regulations sought to prevent money laundering and criminal activity in the casinos...over the years Australia has established an international reputation for effective casino regulation.<sup>2</sup>*

I therefore consider it appropriate that the Bill includes a strong framework of offences for the casino licensee and that defences available are restricted to those under the *Criminal Code 2002*, including mistake of fact and intervening conduct or event, with a maximum penalty of 100 penalty units in certain cases. I note that the Explanatory Statement already provides justification for the higher penalties in the Bill, however, I will consider incorporating further explanatory material in the Revised Explanatory Statement to be tabled.

*Power to create offences by regulation, up to 30 penalty units*

In relation to the Committee's comments suggesting that the Bill may inappropriately delegate legislative powers, through the creation of offences by regulation with penalties of up to 30 penalty units, I note the following.

As I indicated in introducing the Bill, further provisions will be developed to address a number of administrative, operational and technical matters that are outside the scope of this Bill. Matters such as taxation and gaming machine approval provisions will be addressed legislatively. There are, however, a number of matters that I expect will be addressed by regulation. These include specific measures about the operation of gaming machines and fully automated table game terminals, and

<sup>1</sup> AUSTRAC, (undated), *Taskforce Eligo: Money laundering*, available at: [http://www.austrac.gov.au/sites/default/files/documents/eligo\\_ml\\_fact\\_sheet.pdf](http://www.austrac.gov.au/sites/default/files/documents/eligo_ml_fact_sheet.pdf), accessed 12 September 2017.

<sup>2</sup> McMillen, Jan and Woolley, Richard, (2000), *Money Laundering in Australian Casinos*, Australian Institute for Gambling Research – University of Western Sydney, 3<sup>rd</sup> National Gambling Regulation Conference, [http://www.aic.gov.au/media\\_library/conferences/gambling00/mcmillen.pdf](http://www.aic.gov.au/media_library/conferences/gambling00/mcmillen.pdf), accessed 12 September 2017.

regulations around the operation of both the centralised monitoring system and the pre-commitment system.

Gambling is necessarily highly-regulated for reasons of integrity, harm minimisation and consumer protection. Introducing new types of gaming products to the casino environment will necessitate controls beyond those that already exist, and it is considered inappropriate to constrain the regulation-making power to those matters that are foreseeable now. I note also that any regulations made cannot be inconsistent with the principal Act.

Any regulation made under the power will be subject to Scrutiny review and disallowance in the Assembly if it is considered that the power has been inappropriately exercised.

While a 30 penalty unit maximum is at the upper end of maximum penalties in regulations under the *Guide for Framing Offences*, I note that the Committee's own guidance document *Subordinate Legislation – Technical and Stylistic Standards – Tips/Traps* indicates a maximum of 60 penalty units, provided the offence does not involve imprisonment.

As indicated in the Explanatory Statement, the offences in the Bill generally apply to corporations, and I expect this would be the same for any offences provided by regulation. Considered in the context of the Bill as outlined above, a potential maximum penalty of 30 penalty units (\$22,500 for a corporation or \$4,500 for an individual) is not considered excessive.

In light of the Committee's comments about further explanation being required, I will address this in the Revised Explanatory Statement.

I trust that this response addresses the Committee's comments in relation to the Bill.

Yours sincerely

Gordon Ramsay MLA  
Attorney-General