

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SELECT COMMITTEE ON GAMBLING

**INTERIM REPORT
ON
A POKER MACHINE CAP**

June 1998

RESOLUTION OF APPOINTMENT

On 20 May 1998 the Assembly resolved that a Select Committee on Gambling be appointed to inquire into and report by the first sitting day of 1999 on the social and economic impacts of gambling in the ACT, with particular reference to poker machines.

The Assembly further resolved that the Government place a cap on the number of poker machines in the ACT, the level of the cap to be recommended to the Assembly after consultation with interested parties.

COMMITTEE MEMBERSHIP

Mr Trevor Kaine MLA (Chairman)
Ms Kerrie Tucker MLA (Deputy Chair)
Mr Dave Rugendyke MLA
Mr Bill Wood MLA

Secretary
Bill, Symington

1. BACKGROUND

1.1 The committee is proceeding with its broader inquiry and, in that connection, has sought community input through media advertisement and contact with various community and interested organisations.

1.2. However, the committee has been conscious of the need to address the immediate issue of a cap on the number of poker machines in the ACT as a matter of urgency and, to that end, contacted all parties with a commercial interest in the outcome.

1.3. The committee acknowledges the cooperation of the Licensed Clubs Association of the ACT (LCA) which represented its member clubs in discussion with the committee and which provided a submission. Some 17 licensed clubs which are not members of the LCA were also invited to advise the committee on any factors relative to poker machine numbers which should be taken into account.

1.4. Including the LCA, five submissions were received from interested parties. These are listed in attachment 1.

1.5. The committee further acknowledges the cooperation of the Australian Hotels Association, ACT Branch (AHA) which represented the interests of its members in discussion with the committee.

2. LEGAL OPINION

2.1. The committee was briefed by the Commissioner for ACT Revenue (the Commissioner) and staff on the administration of the Gaming Machine Act 1987 and, through the Commissioner, received a legal opinion from the ACT Government Solicitor on specific questions put by the committee in respect to the gaming legislation. That opinion has been crucial to the committee in developing its recommendation. The relevant aspects of the legal opinion are:

- (1) the Commissioner does not have discretion under the Act to refuse an application for a (poker machine) license where the application is from an eligible club, the application complies with the requirements of the Act, the club premises are suitable. and

- (2) in the absence of legislative amendment the Gaming Machine Act 1987 would not enable the Government to give effect to the Assembly's resolution to cap the number of poker machines in the ACT

3 . NUMBERS OF POKER MACHINES

3.1. As at 28 May 1998 there were some 4520 poker machines in licensed clubs, hotels and taverns. Of this number six hotels/taverns had 10 (draw poker) machines and one had six machines. It should be noted that under current legislation hotels/taverns may have up to 13 machine, the three extra being class A machines which are no longer manufactured.

3.2. As at 19 May 1998 there were 492 applications for machines under consideration by the Commissioner and in the period after 20 May 805 additional applications were received.

3.3. Of the applications in hand the committee was advised by the Commissioner that 271 had been approved in principle. The Commissioner advised that a further 325 applications met the criteria set down in the Act and were likely to be approved. Of the remainder some 700 were classified as either speculative or questionable, suggesting that approval may not be given. The committee notes that of the applications in hand, 20 are from hotels/taverns.

3.4. The committee concludes that some 700 applications already received are unlikely to satisfy the criteria for additional licenses.

3.5. The AHA advised that if hotels/taverns were permitted to do so they would seek to expand their allocations of machines to 350.

4. THE CAP - FEASIBILITY

4.1. The committee has considered five elements in relation to a cap, viz:

- i) the desirable maximum number of machines
- ii) the discretion to be exercised by the Gaming Commissioner
- iii) start date for a cap
- iv) end date for the cap
- v) legislation

Number of machines

4.2. From the figures given the committee recommends a cap of 5200 machines for existing and operational clubs. However, the committee is aware that this number would make no provision for new clubs where there is demonstrated evidence of investment towards advanced planning or building and which would prima facie, have established a basis for applying for licenses under existing eligibility criteria.

4.3. The committee is aware of a number of such new community based clubs which could be adversely affected by setting an absolute cap at the level indicated. Accordingly, to accommodate the situation of these clubs, the committee has developed criteria under which the Commissioner may approve additional licenses.

Criteria for exercise of Commissioner's discretion

4.4. The committee is aware that a number of club groups operate under the same body corporate and it is concerned to ensure that these, mainly large, clubs should not be able to access additional machines by setting up new associated clubs.

4.5. The committee considers that any licenses granted to clubs over and above the proposed 5200 should be reserved for those new community based clubs able to satisfy the specific criteria set out in the Act and administered by the Commissioner.

4.6. The effect of this is that, in summary, existing operational clubs will not be able to exceed a total number of 5200 machines, but additional licenses may be issued to new community based clubs which meet the criteria.

Start date for the cap

4.7. It is important that speculative applications be minimised and to avoid this and ensure fairness to all interested parties, the committee will recommend that the cap be applied from Tuesday 24 June 1998 for all existing and operational clubs.

End date for the cap

4.8. The committee will report on the substance of its broader inquiry by February 1999 and, noting that consideration of its findings and possible legislative change could take some additional time, the committee will recommend that the cap remain in place for 12 months.

Legislation

4.9. As indicated above the Gaming Machine Act 1987 does not allow for a cap to be set on the number of machines or the exercise of discretion by the Commissioner in respect of an eligible club which satisfies the statutory criteria. Legislative amendment is required, therefore, to impose such a cap. A bill to achieve this is attached to this report (attachment 2).

5. HOTELS AND TAVERNS

5.1. The committee is aware that the proposed cap makes no provision for machines in hotels and taverns. The committee is tasked with ascertaining the economic and social impact on the community of gambling, and it is considered unlikely that the Government would be inclined to change the law in relation to the licensing of machines other than in licensed clubs until after the committee reports.

5.2. The committee notes, however, that should the Government consider any change necessary in the interim, amendment of the overall cap would be necessary.

5.3. In this regard the committee notes that the AHA estimate of the total allocation of licenses for this purpose would be of the order of 350. As indicated above, there are currently some 66 machines in hotels and taverns.

6. RECOMMENDATION

6.1. The committee recommends that the Assembly support the attached amendment to the gaming Machine Act 1987 to provide for:

- (i) the imposition of a cap on the number of poker machines available to existing and operational clubs as at 24 June 1998, the cap to be 5200 machines;**
- (ii) the Commissioner to approve additional licenses for new clubs; and**
- (iii) the cap continue for 12 months from 24 June 1998.**



Trevor Kaine MLA
Chair

ATTACHMENT 1

Submissions received

1. Pete's Bar and Tavern
2. Woden Valley Club
3. The Coolabah Club Ltd
4. Licensed Clubs Assn of the ACT
5. Belwest Juniors Ltd

(ATTACHMENT 2)

DRAFT

(Prepared by Parliamentary Counsel's Office)

Gaming Machine (Amendment) Bill (No. 2) 1998

A BILL

FOR

An Act to amend the *Gaming Machine Act 1987* and
for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. Short title

This Act may be cited as the *Gaming Machine (Amendment) Act (No. 2) 1998*.

2. Commencement

This Act commences on the day on which it is notified in the *Gazette*.

3. Principal Act

In this Act, "Principal Act" means the *Gaming Machine Act 1987*

4. Insertion

After section 23 of the Principal Act the following Division is Inserted:

“ Division 2A-Restrictions on gaming machines

"23A. Application

This Division has effect notwithstanding any other provision of this Part.

“23B. Restriction on gaming machines

“(1) This section applies to-

- (a) an application for the grant of a licence; or
- (b) a request to vary a licence for the purpose of increasing the number of licensed gaming machines;

made by a club on or before 24 June 1999 but which had not been determined by the Commissioner before that date

(2) The commissioner shall not-

- (a) grant the application for a licence; or
- (b) vary the licence;

to which this section applies, if-

- (c) to grant the application for the specified number of gaming machines; or
- (d) to increase the number of licensed gaming machine., by the number specified the request.,

the number of gaming machines on licensed premises would exceed 5.200.

"(3) For the purposes of subsection (2), in determining the number and type of gaming machines to be specified in a licence to which this section applies, the Commissioner, in addition to the matters about which he or she is to be satisfied or to which he or she is to have regard under this Part, shall also have regard to-

- (a) in the case of a request by a club to vary a licence- the ratio of the number and types of gaming machines in existing clubs;
- (b) the likely effect on the community of granting or varying a licence to specify a number of gaining machines less than the number sought by the applicant;
- (c) the, extent to which the, club is likely to contribute to, support and be beneficial to the community; and
- (d) such other matters as are relevant

"23C. Circumstances in which restriction does not apply

Section 23B does not apply to a club that, on 24 June 1999, does not hold a licence in relation to premises if, having regard to the following criteria, the Commissioner is satisfied that the number of 'licensed gaming machines referred to in section 23B should be exceeded-

- (a) the Commissioner is satisfied that the club has, before that date, made a significant investment in its facilities and has demonstrated a commitment to providing services to the community;
- (b) the importance of the club to the community and the extent to which the club is likely to contribute to, support and be beneficial to the community;
- (c) the corporate, and financial relationships with an existing club;
- (c) the extent to which the financial viability of the club would be affected if the licence were not granted,
- (c) such other matters as are relevant."

5. Cessation of effect of amendments

Division 2A of Part IV of the *Principal Act as* amended by this Act ceases to have effect at the expiration of 12 months after the date of commencement of this Act, and shall be taken to have been repealed at that expiration.

NOTE

Principal Act

¹ Reprinted as at 31 January 1995. See also Acts Nos. 19 and 39, 1995; Nos. 13, 49, 96 and 103, 1997

