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 8* published on 8 August 2017 in relation to the Gaming Machine (Cash Facilities) Amendment Bill2017 (the Bill).

I thank the Committee for its comments. I note that the Committee’s report draws the Assembly’s attention to the analysis of the human rights implications of the Bill and the justification for the strict liability offences in the Bill, as set out in the Explanatory Statement.

In relation to the Committee’s comments suggesting that the Bill may inappropriately delegate legislative powers, I provide the following response.

As I indicated in introducing the Bill, progressing the EFTPOS cash withdrawal restrictions through the *Gaming Machine Regulation 2004* (the Regulation) rather than the *Gaming Machine Act 2004* (the Act) was a considered and deliberate decision.

Recent public discourse and an investigation by the ACT Gambling and Racing Commission have indicated that there are issues with access to cash in clubs using EFTPOS facilities. The Government will be monitoring the effects of the new measures and will respond quickly if there is evidence that EFTPOS facilities remain an issue in limiting cash withdrawals.

As noted by Pearce and Argument, the delegation of legislative power is ‘generally considered to be to both legitimate and desirable’ where ‘the amendment of primary legislation is ill-suited to situations requiring flexibility and responsiveness, where the environment in which the legislation operates is uncertain and rapidly changing’.[[1]](#footnote-1)

The regulation-making power in the Bill has been broadly constructed to include cash facilities beyond just EFTPOS facilities. As noted by the Committee, any regulation cannot be inconsistent with the principal Act.

In addition to ATMs and EFTPOS facilities, the definition of ‘cash facility’ in the Act incorporates ‘any other facility for gaining access to cash or credit’. It is therefore appropriate that the regulation‑making power includes the power to make regulations for all types of cash facilities, rather than it being limited to a single type of cash facility (EFTPOS). Including all cash facilities within the regulation-making power provides the Government with the ability to respond to technological advances in equipment or emerging forms of access to money such as the rise in cryptocurrencies.

I also note that the offences have been drafted in compliance with section 178(3) of the Act which provides for a maximum of 10 penalty units. The offences are in line with others in the Regulation, also being strict liability offences with a maximum penalty of 10 penalty units (for example, section 28 of the Regulation – Operating an unapproved cashless gaming system).

The offences also comply with the *Guide for Framing Offences* and the Committee’s *Subordinate Legislation – Technical and Stylistic Standards – Tips/Traps* document, in that the offences do not involve imprisonment and are set well below the maximum 30 and 60 penalty units respectively set out in those documents.

I note that the option remains open to a future Assembly to disallow a regulation made under the new regulation-making power, should that Assembly consider it has been inappropriately exercised, and that such regulation would also be subject to Scrutiny review.

In this instance, however, I consider that making amendments to the Gaming Machine Regulation through the power conferred by the amendments in the Bill is the right way to implement further controls on access to cash in clubs. Noting the Committee’s comments that the justification for the offences is not included in the Explanatory Statement for the Bill, during debate I intend to table a Revised Explanatory Statement including such justification.

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

Yours sincerely

Gordon Ramsay MLA

Attorney-General

1. Pearce, D and Argument, S (2012) *Delegated Legislation in Australia*, 4th edn, LexisNexis Butterworths, Chatswood, page 6. [↑](#footnote-ref-1)