

**RESPONSE TO PROPOSED CHANGES TO GAMING MACHINES (MISCELLANEOUS)  
AMENDMENT BILL 2008**

SUBMITTED BY: CLUBS SA  
DATE: 31 OCTOBER, 2008  
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**Introduction & background**

In response to the 2004 Amendments Inquiry, the South Australian Government agreed to:

- Accelerate the reduction in the number of gaming machine entitlements through the removal of the fixed price;
- Strengthen compliance and enforcement, and
- Strengthen the social effects test.

Clubs SA welcomes the opportunity to provide comment in response to the State Government's Draft Amendments to the Gaming Machines Act 1992. In so doing, it will formally respond to the following items as outlined in the Consultation Paper:

Item 2      Accelerating Gaming Machine Entitlements Reduction  
Item 3      Strengthening the Social Effect Test for New Venues  
Item 7      Strengthening the Compliance & Enforcement Provisions  
Item 9      Social Effect Certificate

**Item 2 – Accelerating Gaming Machine Entitlement Reduction**

Clause 22(3) of the draft Bill removes the fixed price of \$50K. New regulations to implement an approved trade system with a variable price have not yet been drafted. It is proposed, however, that:

- Buyers would indicate how many entitlements they wish to buy and the maximum price they are willing to pay;
- Sellers indicate how many entitlements they wish to sell and the minimum sale price they are willing to receive.



### Comment

When discussing the process for removal of GMEs from Hotels and Clubs, it should always be remembered that the vast majority (88%) of gaming machine entitlements (GMEs) in South Australia are housed in Hotels – not Clubs. As commercially based entities, Hotels are often owned by large, commercial companies (eg: supermarkets) that are extremely well resourced and have much greater buying power in the market place generally. In contrast, Clubs are not for profit entities that return net surpluses to their communities to provide improved benefits and much needed facilities for members and residents in locales across South Australia. Clubs also provide valuable funding and housing for the encouragement of sports and community activities that could not be otherwise funded by Government.

Given the gross imbalance of gaming operations between Clubs and Hotels, it is highly likely that any GMEs put up for sale from the Club industry in the next trading round would be purchased by Hotels. The impact of this trading system would therefore effectively deliver even more concentrated ownership of GMEs to Hotels at the expense of the not for profit Club industry. This would seriously affect ongoing cashflow in Clubs and have profound, negative social affect across our communities resulting from loss of facilities and amenities.

The proposed trading model offers no long-term income protection for the Club industry and will more likely serve to weaken it as a whole as a result of losing GMEs (*refer Attachment 1 from the Office of Liquor & Gambling Commissioner Annual Report 2006-07*). According to the Commissioner's Annual Report 2006-07, in the period 2003-2007, Clubs lost 16% of their gaming venues compared to only 2.6% for Hotels. The proposed trading model will put even greater pressure on smaller, volunteer based clubs to sell GMEs to the Hotel industry. Hoteliers can more easily afford to convert these newly acquired GMEs to the latest technological games and house them in top performing venues, thereby generating increased NGR for the Hotel industry only. Patrons follow games they enjoy most and this trend will undoubtedly continue.

With regard to problem gambling, the OLGC Commissioner clearly stated in the 2006-07 Annual Report that:

*The growth in NGR has increased every year since gaming commenced in 1994. With the exception of 1996-7, the average NGR per machine per day has also increased on an annual basis from \$98 for the 1994-5 FY to \$172 for the 2006-7 FY. These figures continue to increase despite the significant number of harm minimisation and responsible gambling measures introduced in recent year (refer Attachment 2 from the Office of Liquor & Gambling Commissioner Annual Report 2006-07).*

These comments were made following the various trading rounds to **reduce** the number of gaming machines to their current level. In referring to these statistics, it is clear that reducing the number of gaming machines does not reduce the level of NGR; in fact, it has had the opposite effect. The instances of problem gamblers included in these statistics is not known; however, it is logical to assume that the vast majority of a small minority (ie: problem gamblers) would be patrons at Hotels – given that 88% of gaming machines in South Australia operate in Hotel venues.

It is also worth noting that, since 2003, gaming tax receipts collected by the State Government have increased by 28% to the end of the 2006-7 FY. As noted above, it has been proven that a reduction in gaming machines has not decreased the amount of NGR.

It is important to note too that, in recognising its social and operational responsibilities, the Club industry has worked hard to reduce incidents of problem gambling through its harm minimisation program known as Club Safe. The success of this program has been acknowledged and encouraged by the Authority. Because Clubs provide a more community-based environment for members and patrons, it is more likely that incidents of problem gambling would be more apparent to gaming staff here whose job it is to know their members and patrons and form a closer working relationship with them.

Problem gambling is not an asset to any Club and this practice is not encouraged or condoned across the Club industry.

In the interests of social justice and better parity across the gaming industry, greater protection must be provided within the trade system for preservation of the not for profit Club industry. On the basis of the current trading system, there would need to be 3,128 GMEs sold from Hotels alone in order to reach the desired target of 782; past experience would suggest that this is a totally unrealistic expectation.

It is clear that any trading round as it is currently structured will result in a continuing loss of GMEs from the Club industry which it can ill afford. The reality is that any GMEs lost from the Club industry to Hotels merely serve to top up the number of GMEs in the Hotel sector. With direct access to greater commercial resources and clout, Hotels have everything to gain in this process, and stand to only further increase their stranglehold on the electronic gaming industry. Clubs are therefore distinctly disadvantaged in this current arrangement. On behalf of the South Australian Club industry, we now emphatically call for greater social justice and parity in the trading system to help redress this imbalance.

### **Recommendation**

In response to the proposed trading model, we now request that Clubs be quarantined from any future trading rounds in order to preserve this revenue stream that is the lifeblood of the Club industry, thereby enabling it to deliver a myriad of social and economic benefits.

In addition, we propose that any GMEs put up for future trade by Clubs be first offered to other Clubs for purchase at a price nominated by the Authority. This would create a fairer playing field for trade of GMEs within the Club industry to ensure that Clubs are not expected to compete against the might of a Woolworths or any other powerful commercial entity. Since its inception, Club One has successfully provided enough incentive to a significant number of Clubs to acquire under-utilised GMEs for the benefit of both parties and the Club industry generally.

In the first trading round, a total of 81 GMEs were lost from the Club industry to Hotels. Since then, an additional 138 have been acquired by Club One to ensure that the long term benefit is not lost to the Club industry and wider community. In the event, however, that the above recommendations are not accepted, and in order to successfully reach the full

quota of 3,000 removals, we finally suggest that the remaining 782 GMEs be systematically removed from the Hotel industry which currently holds more than *seven times* the total amount of GMEs in Clubs. For the Government to effectively reduce the number of GMEs in this State, the obvious target should be that sector where most machines are housed and which can better afford to absorb such a reduction. A loss of 782 GMEs from the Hotel industry would represent less than 7% of its current total holdings. By contrast, this amount would represent in excess of 50% of total Club holdings – which is clearly an untenable option.

**Item 3 - Strengthening the Social Effect Test for New Venues including reference to 10A – Principles, codes of practice, etc.**

It is proposed that the IGA be given new powers to prescribe an inquiry process that must precede an application for a social effect certificate. This will be an obligation that must be met by applicants for a Social Effect Certificate.

**Comment**

In relation to the above Inquiry process, it is recommended that all associated general principles be discussed and negotiated with industry in order that be better informed as to the intent of such a process. Further, it is requested that there be more detailed direction in the legislation as to the specific issues that the Commissioner would have to take into account when exercising his/her judgement.

In this instance, we also make reference to the case of the Morphett Vale site at Hackham involving a transfer of liquor license and application for a new gaming license. In response to the need to develop a comprehensive argument to satisfy the social effect requirements, in excess of \$100K has already been spent to provide detailed data and statistical analysis. This has been an extraordinarily complicated, protracted process that has taken over two years to date and is still not resolved. We respectfully suggest that the information and data developed in this case be referred to as a model for any future inquiries deemed necessary by the Authority.

**Item 7 - Strengthening the Compliance & Enforcement Provisions**

It is proposed to amend the Act to strengthen compliance and enforcement through the establishment of a mechanism for civil penalties and provision of additional powers to authorised officers. At this stage, however, new regulations setting out such civil penalties have not been drafted.

**Comment**

In the absence of approved and published civil penalties, it is difficult to comment as to the likely impact this initiative might have on the Club industry. In any case, introduction of civil penalties will not reduce the degree of subjectivity involved in determining whether the Commissioner takes disciplinary action against Clubs or not for any breaches incurred.

The draft amendments do not appear to take account of actions that might also be taken should a license be transferred (ie: within the hotel industry). For example, if a licensee has transgressed and been issued with civil penalties before said license is transferred, is it expected that the new licensee be responsible to pay the penalty? It is therefore recommended that the Act be worded to ensure that responsibility for payment of civil penalties incurred is non-transferable with licenses.

In the case of Clubs, licenses are not transferable; they remain constant with the Club entity. Without further clarification as to the administration of civil penalties as described above, this action could be seen to be discriminatory against Club licensees. By way of example, it could be argued that commercial corporations/operations (ie: hotels) might seek to transfer their licenses to a different entity in order to avoid payment of any civil penalties that might have been previously incurred.

The cost of administering these amendments to the Act will be significant, and it remains unclear as to whether these measures will have a positive impact in reducing instances of problem gambling.

#### **Item 9 - Social Effect Certificate**

It is proposed to amend the Act to bring forward the assessment of the social effect of a proposed gaming venue so that it can occur before costs associated with development and liquor licensing approval applications have been incurred. Further, the proposed amendment will allow:

- Applicants to better manage the cost and regulatory risk associated with making an application for a gaming machine license; and
- Community respondents to address the issue of the social effect of a proposed gaming machine venue at the beginning of the approval process.

#### **Comment**

One of the major objectives of this amendment is to provide better management of the application process and minimise costs. In the absence of more specific criteria in relation to the Inquiry process, it could likely result in being more expensive for applicants, should they be required to provide extensive documentation and statistics in support of each application.

We also respectfully query how the Authority might give directions to the Commissioner in the exercise of his/her subjective judgement in relation to these applications.

It is also unclear as to whether such an Inquiry process will apply to venues seeking to increase their existing number of gaming machines.

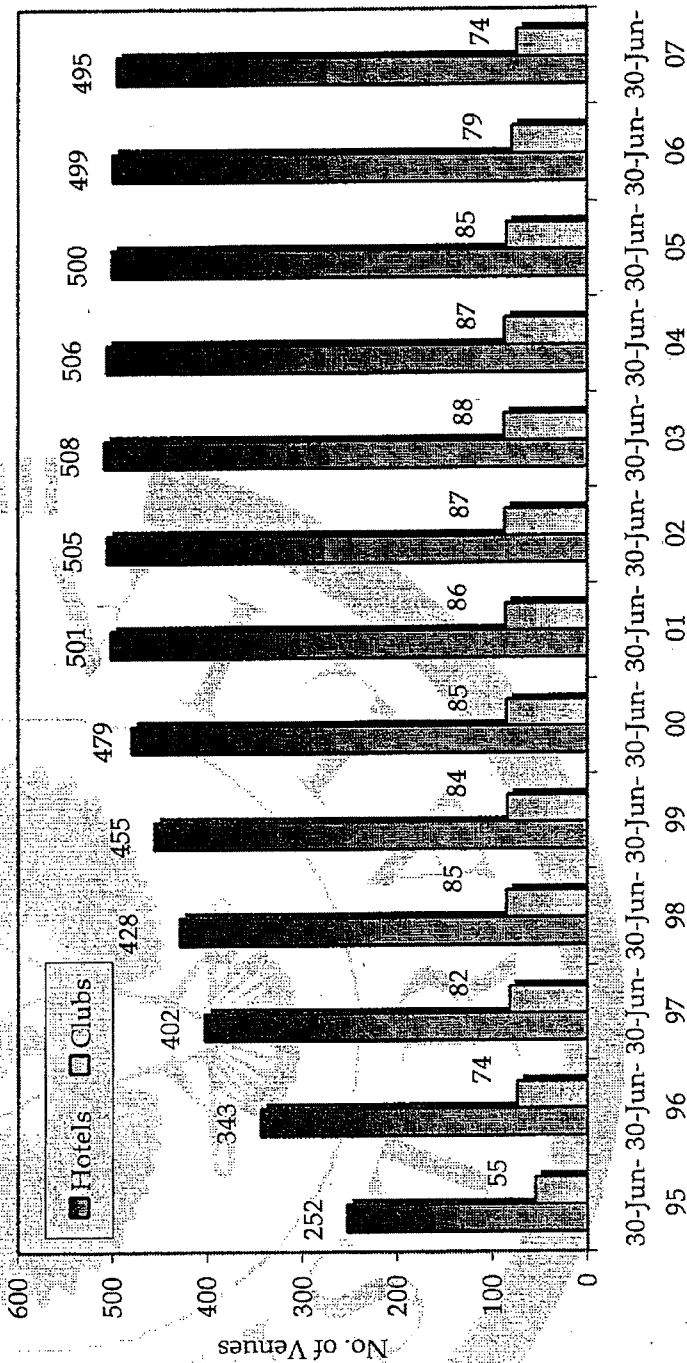
As noted under the proposed insertion of *Clause 10a – Codes of Practice, etc.*, the Authority may, by notice in the Gazette, prescribe the following:

- An inquiry process that must precede an application for a social effect certificate;  
and
- Principles for assessing the social effect of the grant of a gaming machine license.

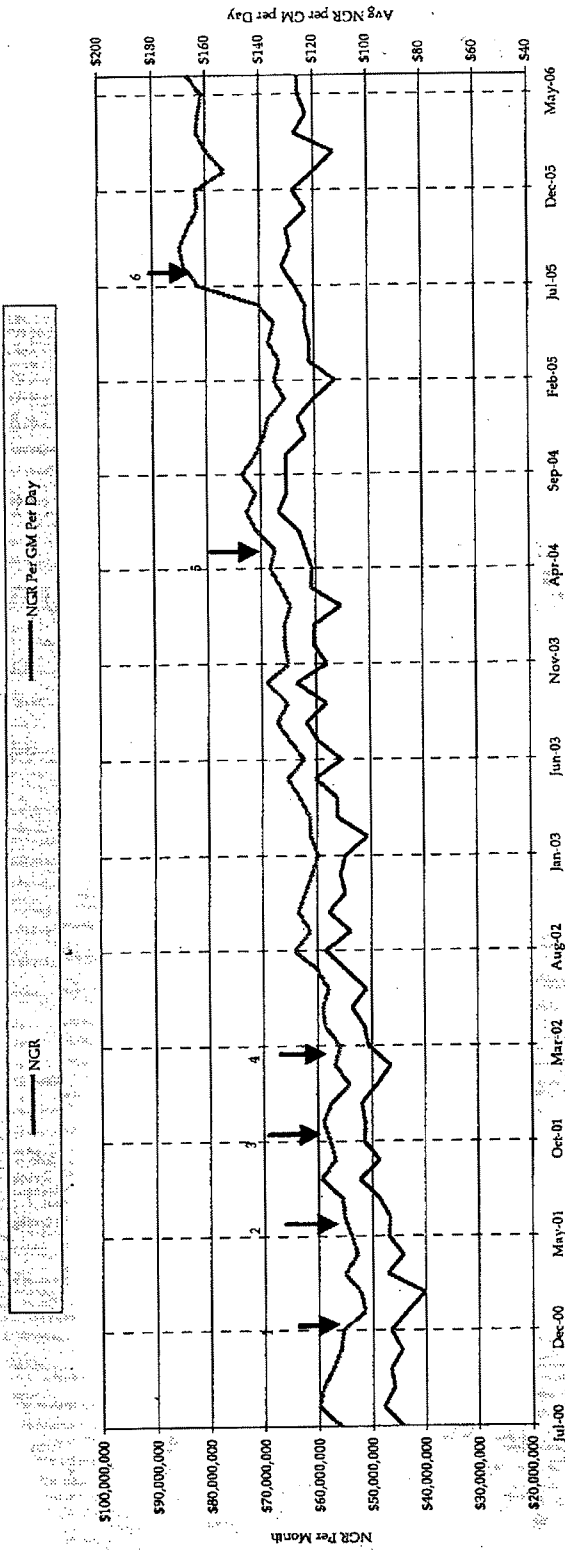
It is requested that the legislation provide greater detail and guidance as to the nature and intent of any inquiry that the Authority may require of an applicant in relation to granting of Social Effect Certificates in order that the legislation be more easily understood and interpreted. We also request that the principles involved in these amendments be discussed and negotiated with industry so that it is better informed as to the detail required in the process and that mutual agreement can be reached as to the practical implementation of such principles in venues.

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Chart 4 Growth in gaming venues



ATTACHMENT 2





## **Amendments to Section 15A – Gaming venues not to be located under same roof as shops or within shopping complexes**

### **Background**

This section was introduced as a result of concern about gaming machine licenses being granted to venues in large shopping centres (ie: Rundle Mall and major suburban retail malls). The definition of what constitutes a shopping complex is very broad and the section has prevented the grant of licenses in shopping centres

However, certain sections of 15A have prevented the establishment of gaming venues in locations which should not give rise to the concerns expressed at the time the measure was introduced in 1997.

In particular, a number of sites having potential for the location of a gaming venue were previously small shopping centres and which now for a variety of reasons – mostly the establishment of larger shopping complexes in the area – are caught by Section 15(A) notwithstanding that the location is no longer a shopping complex.

Club One has examined a number of such locations with a view to setting up venues and is not able to proceed because of the application of Section 15A.

Club One believes that provisions in the Act such as the requirement to satisfy the social effect on the local community provide more than adequate scrutiny of a license application for the establishment of a gaming venue at what is no longer a shopping complex.

It should be noted that the only business remaining on at least one of the sites in question is a retail bottle shop. The amendment should make provision for any existing or proposed liquor licenses, forming either part of the gaming venue or as a separate entity on the site.

### **Proposal**

That the legislation be amended to provide for consideration of a gaming licence application in circumstances where a shopping complex which was sited on the subject land has ceased, or is to cease to exist as a shopping complex.