



31 October 2008

Mr Kym Della-Torre  
 Gambling Policy  
 Department of Treasury and Finance  
 GPO Box 1045  
 ADELAIDE SA 5001

Dear Kym,

ABN 77 237 576 146

Telephone 08 8232 4525  
 Toll Free 1800 814 525  
 Facsimile 08 8232 4979  
 Email information@ahasa.asn.au  
 Web www.ahasa.asn.au

4th Floor, AHA (SA) House  
 60 Hindmarsh Square  
 Adelaide SA 5000

PO Box 3092  
 Rundle Mall SA 5000

**Re: Gaming Machines (Miscellaneous) Amendment Bill 2008**

The AHA|SA has considered the above Bill which reflects the changes to the Gaming Machines Act 1992 we understood would occur following the Independent Gambling Authority's Final Reports of its Review 2006 and its 2004 Amendments Inquiry.

Generally, the proposed amendments do not give rise to any significant concerns for our industry. However, there are some matters which we believe do require further clarification, and there are additional issues not raised by the Independent Gambling Authority but which are appropriate to raise in the context of the technical amendments being proposed.

**Clause 10A – Principles, codes of practice etc.**

Whilst the AHA|SA understands that this clause consolidates many of the current functions of the Independent Gambling Authority, there is some concern among our members that it may authorise the Authority to make changes to the Codes which they could not do under the present legislation. We are therefore seeking legal advice as to whether there are in fact any unintended consequences as a result of this clause.

**Clause 10B - Recognitions**

We understand that the advanced problem gambling intervention course contemplated by the provisions will require the approval of the Independent Gambling Authority which is not the case with the current Code. We believe a transitional period is required to recognise the advanced problem gambling training undertaken by persons pursuant to the previous Code.

**Clause 12 – Amendment of Section 14 – Licence classes**

Now that a gaming machine dealer's licence authorises the sale of gaming machines direct to the holder of a gaming machine licence, or a gaming machine service licence, provision should be made requiring the gaming machine dealer to issue a certificate to verify that the gaming machine which was delivered is the approved machine and the return to player is as ordered.

**Clause 14 – Insertion of sections 17A and 17B**

We agree with the provision of a proposed premises certificate. However, the requirement to obtain a social effect certificate before making application for a proposed premises certificate or a gaming machine licence will mean a substantial delay resulting from the necessity to obtain Planning Approval before the licence can be granted. In many cases the period of delay may be well in excess of 18 months, the period proposed for the currency of a social effect certificate.



We therefore suggest that this period be extended or, alternatively, there be a requirement that the certificate lapse unless otherwise extended in the Commissioner's discretion.

We note that that section 58(3) of the Liquor Licensing Act 1997 requires the licensing authority to take into account any licence to be granted under a certificate of approval. Is it intended that a similar provision pursuant to the Gaming Machines Act 1992 will be enacted, or is it proposed that this be addressed through the Independent Gambling Authority guidelines?

**Clause 22 – Amendment of section 27B – Transferability of gaming machine entitlements**

Section 27B of the current Act provides for the District Court to determine whether gaming machine entitlements may be sold where there is disagreement between the landlord and tenant as to ownership in circumstances where the lease was entered into before the commencement of that section. Section 27D has determined that where a lease entered into before the commencement of Division 3A of the Act refers to the licensee maintaining a certain number of gaming machines, the lease will be construed as requiring the licensee to maintain the number of gaming machines equivalent to the number of gaming machine entitlements assigned to the licensee on the commencement of the Division.

There are some licensees who are operating pursuant to leases affected by section 27 and who have purchased entitlements through the approved trading system. Lessees who have participated in the trading system and purchased gaming machine entitlements should be able to deal with these entitlements in subsequent trading rounds. This will be of particular significance for those licensees who have short leases or wish to reduce those entitlements back to the number they had at the commencement of section 27. Therefore, the ability to have this issue resolved in the District Court should be available to the lessee or the landlord.

**Clause 26 – Insertion of Part 3 Division 6A - Civil penalties**

The imposition of penalties and the initiation of disciplinary action is always of concern to the Association and the industry. Any move to simplify the process is supported on the basis that members are not subjected to arbitrary penalties merely because it is easy to issue contravention notices. We would point out that the vast majority of members actively attempt to comply with the significant number of regulatory conditions and we would be concerned if contravention notices were to become the norm for relatively minor infringements where a caution or undertaking would achieve the same purpose. Likewise, if the civil penalty regime is to be introduced, then all the safeguards that are currently part of that regime should also apply.

Many licensees will make a commercial decision to accept a contravention notice and pay a civil penalty rather than incur the expense of defending a prosecution or a disciplinary action. Accordingly, we would submit that the protection offered by section 15(4) of the Expiation of Offences Act should apply. We consider that the expiation of an offence should not subsequently be the subject of further proceedings. If the Commissioner elects to issue a contravention notice which is subsequently expiated, there should not be the opportunity of relying on the same facts to launch further proceedings. In our view section 15(4) is a significant safeguard against double jeopardy which should not be diminished.

The AHA|SA also expresses concern that maximum penalties can often become the normal penalty and we submit that care should be taken when drafting the regulations to ensure that appropriate penalties are applied to various offences.

**Clause 47 – Financing of licensee’s business**

We believe the introduction of section 76A has the potential to cause conflict with landlords who may claim ownership of the gaming machine entitlements. We have suggested an amendment to section 27B to give the District Court the ability to determine ownership rights in relation to entitlements purchased by lessees after the commencement of Division 3A. It is the view of the AHA|SA that section 27B needs to be constructed in such a way that the rights of landlords are not infringed.

**Clause 52 – Amendment of Schedule 1 – Gaming machine licence conditions**

We cannot see any basis for prohibiting the use of a coin dispensing machine between the hours of 2am and 8am if a licensee is permitted to operate during those times having met the requirements of the proposed conditions (nc)(i) and (ii), providing the coin dispensing machine is routinely and regularly monitored.

**Barring**

The increased emphasis on responding to patrons who exhibit gambling difficulties is supported. We therefore draw attention to the requirement of the barring provisions of section 59 being restricted to the licensee (see attached reference to the Office of the Liquor and Gambling Commissioner’s website). We submit that this is a technical issue that should be considered in this Bill, and the process should be extended to gaming machine managers, particularly those who have completed advanced gaming training courses. This would be consistent with the provisions of section 125 of the Liquor Licensing Act 1997 which provides for licensees and responsible persons to bar a person from the licensed premises. In the same way that a responsible person must supervise the licensed premises at all times, a gaming machine manager must properly supervise and manage gaming operations at all times and will therefore always be present to respond immediately to any need to issue a barring order (note that section 125 of the Liquor Licensing Act 1997 authorises a responsible person to bar a person for an indefinite period).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Horne', written in a cursive style.

**IAN HORNE**  
General Manager

## **Barring Under Section 59 of the Gaming Machines Act 1992**

### **Who can bar?**

If the licensee believes that the welfare of a person, or the welfare of a person's dependents is at risk from the excessive playing of gaming machines, the licensee can bar that person from the gaming area of the licensed premises.

A person can also initiate this barring process by approaching the licensee and requesting that the licensee bar them. See below for special requirements in relation to self-barring.

Licensees should note that only licensees have the power to bar. Approved gaming machine managers and gaming machine employees do not have the authority to bar. They may initiate the barring process but the barring order served on the person must be signed by the licensee.