

GAMING MACHINES (MISCELLANEOUS) AMENDMENT BILL 2008

SUBMISSIONS BY ARISTOCRAT LEISURE LIMITED

Preliminary

1. In these submissions:
 - 1.1 "the Act" means the *Gaming Machines Act 1992 (SA)* as presently in force;
 - 1.2 "the Authority" means the Independent Gambling Authority;
 - 1.3 "the Bill" means the Gaming Machines (Miscellaneous) Amendment Bill 2008;
 - 1.4 "the Consultation Paper" means the consultation paper issued by the Government of South Australia contemporaneously with the Bill;
 - 1.5 "the Game Approval Guidelines" means those guidelines issued by the Authority for the purposes of section 40(2) of the Act and as presently in force.

Section 31 of the Bill – proposed amendment of section 40 of the Act

2. It is noted that the Consultation Paper does not explain the reasons for the proposed amendments to section 40 of the Act.
3. It is Aristocrat's view that there are fundamental difficulties with the existing regulatory framework for approving games.
4. Firstly, the relevant provisions of the Act are based on a fundamental misconception. The misconception is that there is a connection between the characteristics of gaming machine games and problem gambling, rather than between a player's behaviour and problem gambling. Even if there is a connection between game characteristics and problem gambling, the nature and extent of the connection is elusive and inherently difficult to establish.
5. Secondly, the Commissioner is required to consider whether approval of a game "*is likely to lead to an exacerbation of problem gambling.*" There is no definition under the Act of "*problem gambling.*"
6. Thus, the Commissioner is faced with significant practical difficulties when applying the Act.
7. The Commissioner's task has not been assisted by the content of the Game Approval Guidelines. It is Aristocrat's view that in formulating Game Approval Guidelines, the Authority has exceeded its powers. It has not proceeded on the basis of any reliable or reasonable evidence. The Authority has also worded the Game Approval Guidelines in such a manner that they fetter the Commissioner's discretion to approve games.
8. With these observations, it is Aristocrat's view that the proposed amendment to section 40 of the Act would entrench the fundamental misconception under which the Act operates. Instead of the Commissioner being required to have regard to the Game Approval Guidelines, he or she would be required to apply the principles prescribed by the Authority for assessing whether a game is likely to lead to an exacerbation of problem gambling.
9. It is Aristocrat's view that this amendment would be undesirable because it would not address the existing difficulties with the regulatory framework. Further, it would entrench and compound the present difficulties in circumstances where there is no reliable evidence of any connection between gaming machine characteristics and problem gambling.

10. Aristocrat submits that a better approach would be for the Act to require gaming machines to incorporate ameliorative measures that directly target problem gamblers.

Section 10 of the Bill – proposed new sections 10A and 10B

11. Given the submissions in paragraphs 2 to 9 (above), Aristocrat considers that the proposed new section 10A(1)(c) is also undesirable.
12. However, if the Parliament does see fit to replace the Game Approval Guidelines with “principles”, it is Aristocrat’s view that principles should only be prescribed if the Authority is satisfied that there is a reasonable evidentiary foundation for them and that any proposed principles are consistent with the object in section 11(2a) of the *Independent Gambling Authority 1995* (SA).
13. As observed above, Aristocrat considers that there is no reliable or reasonable evidentiary foundation for the existing Game Approval Guidelines. Although that is highly unsatisfactory, it remains open to the Commissioner to approve a game notwithstanding the Game Approval Guidelines. This is because the Commissioner is only required to “have regard” to them in exercising his otherwise unqualified discretion to approve a game.
14. The effect of the proposed amendment to section 40, which would require a decision to be in accordance with the relevant principles, would be to elevate the importance of the principles to a level that exceeds that of the Game Approval Guidelines. They would be the key determining factor on any application for approval of a game.
15. In these circumstances, the need for a reasonable evidentiary foundation for the principles is all the more important.
16. If Parliament proceeds with the proposed amendment to section 40, then Aristocrat suggests that subsection 10A(2) read as follows (with subsequent subsections renumbered):
- “The Authority must not prescribe a principle under subsection (1)(c) unless there is a reasonable evidentiary foundation for the principle.”*
17. Aristocrat also suggests that the proposed subsection 10A(4) be drafted to provide that representative bodies are given notice of the evidence on which the Authority proposes to rely and the reasons for any proposed principles. Aristocrat suggests the following wording for subsection 10A(4):
- “Before the Authority publishes a notice in the Gazette under this section, the Authority must –*
- (a) give notice in writing of the proposed notice to bodies that are representative of each class of licence;*
 - (b) in that notice state the reasons for the proposed notice and the evidence that the Authority proposes to rely on having regard to the objects in subsection 11(2a)(b) of the Independent Gambling Authority Act 1995;*
 - (c) consider any representations made by the body about the proposed notice within 28 days after the notice is given or such longer period allowed in the notice.”*

Section 12 of the Bill – amendment of section 14

18. Aristocrat has no objection to this proposed amendment. However, it takes the view that if a gaming machine dealer (such as Aristocrat) will be able to supply the market directly, there should be a consequential amendment to the Act that would allow a dealer to also hold a gaming machine service licence. A dealer is presently prohibited from holding such a licence pursuant to section 22 of the Act.
19. The ability to hold a dealer's licence and a service licence would bring South Australia into conformity with the practice in other States and would provide greater competition and better service quality in this market segment.

Section 30 of the Bill – proposed new section 39

20. The Bill would repeal section 39 of the Act and substitute a new section that deals with a different subject altogether. The proposed new section 39 would provide for the Commissioner to approve the form of contracts between licensees.
21. Aristocrat has no in principle objection to the proposed new section 39, provided that the Commissioner's new function would not extend to approving matters that would normally be the subject of negotiation between contracting parties. In particular, the Commissioner should not approve the terms of supply such as price and volume.
22. Further, the Commissioner should be required to maintain the confidentiality of information about the terms of contracts.
23. Aristocrat does, however, object to the specific provisions in the proposed subsection 39(2)(b), which would require the Commissioner to refuse to approve the form of a contract that provides for payment by reference to the proceeds of profits of the business of a licensee. The Consultation Paper does not explain why such a provision is desirable, nor does it give any reason why payment of this kind would be objectionable.
24. It is Aristocrat's view that such a provision would unduly intrude into matters that are properly the subject of negotiation between contracting parties. The industry is already the subject of detailed regulation. There would remain sufficient scope for the Commissioner to refuse to approve a form of contract if he or she formed the view that it would in some way jeopardise the proper conduct of gaming operations, under the proposed subsection 39(2) (a) or (d).

Section 35 of the Bill – proposed amendment of section 44A

25. For similar reasons, Aristocrat objects to the proposed new subsection 44A(4)(c).
26. Again, Aristocrat notes that the Consultation Paper does not explain why such a provision is desirable or why an agreement or arrangement such as would be proscribed would be objectionable.
27. There would remain sufficient scope, under the existing subsection 44A(4)(c)(v) of the Act, for the Commissioner to treat persons as being "associated" if he or she forms the opinion that their relationship or connection would prejudice the proper operation of the Act.

Section 47 of the Bill – proposed new section 76A

28. The Regulations to the Act already permit the Minister to grant exemptions from the Act. The Minister has already by notice granted exemptions for certain purposes, including to credit providers. Thus, the proposed new section 76A alters the manner in which exemptions for certain purposes can be permitted.

29. Aristocrat notes that the Bill does not propose a definition of "credit provider" and it is not clear whether a person who holds a dealer's licence can also be a credit provider.
30. Aristocrat submits that, subject to compliance with other relevant provisions of the Act, a dealer ought to be permitted to finance the supply of its gaming products and that this should be made clear.
31. Aristocrat also submits that, in the circumstances contemplated by the proposed subsection 76A(4), a credit provider that wishes to sell a gaming machine should only be permitted to sell the machine (and any game, artwork or software) to the original manufacturer. A provision of this kind is essential, in Aristocrat's view, to protect a manufacturer's intellectual property rights.

Other

32. Aristocrat also submits that the regulatory framework would be improved if the Act were to provide that all suppliers of equipment and technological solutions and products, such as loyalty schemes, are required to be licensed.