National Gambling Reform Bill 2012

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National Gambling Reform Bill 2012

Date introduced: 1 November 2012

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: On the day of Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The National Gambling Reform Bill 2012 (the Bill), along with two companion Bills, the National Gambling Reform (Related Matters) Bill (No. 1) 2012¹ and the National Gambling Reform (Related Matters) Bill (No. 2) 2012², propose a package of measures to regulate electronic gaming machines (EGMs). The provisions are aimed at reducing the harms associated with gambling on these machines. Broadly, the provisions proposed in the Bills require that:

• from the end of 2013, new EGMs either manufactured in, or imported into, Australia be capable of supporting an approved precommitment system
• by 2016, EGMs be linked together as part of a state-wide or territory-wide precommitment system, and display electronic warning messages (with extended timelines for smaller venues) and
• from 1 May 2013 Automatic Teller Machines (ATMs) located in gaming venues have a $250 daily withdrawal limit.

In addition, this Bill establishes a Regulator to monitor compliance, undertake investigations, collect levies and charge fees. The companion Bills create two new levies in order to recover the cost of the Regulator’s activities. The provisions also propose the main features and methodology of a 12 month trial of mandatory precommitment (if it is agreed by the Commonwealth to proceed with a trial) and for an independent evaluation by the Productivity Commission, as well as establishing an Australian Gambling Research Centre and an Expert Advisory Group on Gambling.

¹ The National Gambling Reform (Related Matters) Bill (No. 1) 2012 bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4794%22
² The National Gambling Reform (Related Matters) Bill (No. 2) 2012 bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4795%22

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Background

Gambling is a popular activity in Australia, with around 70 per cent of adults having engaged in a gambling activity in the previous year. The most popular forms of gambling are ‘scratchies’ and lotteries, with Australians spending some $19 billion on gambling in 2008–09.4

Some forms of gambling, particularly if undertaken frequently, can adversely impact on individuals. The Productivity Commission, which recently conducted an extensive inquiry into gambling in Australia, estimates that between 80 000 and 160 000 Australian adults suffer significant problems from their gambling, while a further 230 000 to 350 000 experience moderate problems.5 As a proportion of the population, these figures may appear relatively modest, but the negative impacts of problem gambling can extend well beyond the individual problem gambler. It is estimated that the actions of each problem gambler negatively impacts on between five and ten other people. This means that up to five million Australians could be affected by problem gambling each year, including friends, family and employers of people with a gambling problem.6

The definition of problem gambling can vary among experts, but in Australia it is usually defined as:

Problem gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others or the community.7

While the most popular forms of gambling, lotteries and scratchies, are generally considered to be low risk, other types of gambling, if played frequently are higher risk. These include casino games such as roulette, or blackjack, wagering (betting on a race) and electronic gaming machines (EGMs—or pokies).8

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3. A ‘scratchie’ (also called a scratch ticket, scratch-it or scratch-and-win) is a unique form of instant lottery where the prizes are all determined at the time of printing.
5. Ibid., p. 5.1. Estimates of problem gambling are imprecise due to methodological differences in the main two screening tools applied in Australia: the Canadian Problem Gambling Index and the South Oaks Gambling Screen. As well, the stigma associated with problem gambling means that people often try to conceal their problem. Some surveys suggest a decline in prevalence of problem gambling has occurred in recent years. Ibid., p. 15.
8. PC, op. cit., p. 2.

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Traditionally, the regulation of most gambling activity, including EGMs, is the responsibility of state and territory governments.9

**Electronic Gaming Machines (EGMs)**

When EGMs, or pokies, were first introduced into Australia in the 1950s, they were colloquially known as ‘one armed bandits’. These largely mechanical gambling devices allowed a player on the insertion of a coin or token, to pull a lever which then spun a series of reels. These reels featured colourful icons, such as player card symbols (hence their popular moniker, pokies). If these icons lined up in a specific pattern the player had a win, and a jackpot or prize would be paid.

Over the decades pokies have become increasingly sophisticated both in the games they feature and the technology they use. Today, the spinning of the icons is generated by complex mathematical algorithms, and the pattern of the spinning reels is generated by computer graphics. Players can choose to play single or multiple games (or lines) and choose a number of stake options, from one cent a line up to $10. While most machines are configured to ‘pay out’ around 85 per cent of the time, in reality, the chance of a large win on a modern poker machine is remote.10 For example, when playing a game like Black Rhinos, just to have a 50 per cent chance of getting five rhinos in a row, playing one line at a time, 6.7 million button presses would be required at a cost to the player of nearly $330 000.11

Gambling on EGMs has become increasingly popular over the last few decades, although only around 30 per cent of adults report having played on them in the previous year. Nevertheless, some 600 000 Australians play the pokies at least weekly.12 The share of total gambling expenditure spent on EGMs has risen from 29 per cent in 1986–87, to 55 per cent in 2008–09. Meanwhile, spending on wagering has declined over the same period, from 36 per cent of total expenditure to just 15 per cent.13

According to national statistics collated by the Queensland government, in 2008–09 there were 198 248 EGMs operating across Australia, a slight fall on the previous year. Together these EGMs generated player losses that exceeded $10.4 billion, a slight increase on the previous year. Over the

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9. With the exception of interactive gambling and some advertising.
10. PC, op. cit., p. 11.4.
13. Ibid., p. 6.

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same period, state governments collected some $4.8 billion in revenue (mainly taxes) from EGM activity.\textsuperscript{14}

EGMs are easily accessible in all jurisdictions (except Western Australia where they are confined to the casino), as they are located in popular community venues like clubs and hotels. This accessibility, combined with design features such as game speed, frequent small wins, large jackpots, free games and attractive graphics and sounds, have contributed to their appeal among gamblers.\textsuperscript{15}

In its report, the PC found that the intensity of play, fast spin rates and high bet limits that often feature on EGMs can result in high hourly losses (up to $1200 per hour in some jurisdictions).\textsuperscript{16} Players incurring such losses may play for longer as they try to ‘chase their losses’ in an attempt to win back their money. The longer and more frequently a person plays the pokies, the more likely they are to lose contact with reality. The PC found that the extent of problems associated with EGMs was significantly greater than for all other forms of gambling.\textsuperscript{17} It also estimated that around 40 per cent of total revenue from EGMs can be attributed to losses from problem gamblers.\textsuperscript{18} Some 15 per cent of EGM players are classed as problem gamblers, with another 15 per cent at moderate risk of harm.\textsuperscript{19}

**Precommitment and EGMs**

Put simply, precommitment involves a gambler setting a loss limit before they commence playing. While gamblers may attempt to do this on their own (for example, by taking limited cash to an EGM venue), many find once they are in the venue or playing the pokies, they are unable to stick to their limit, often with adverse consequences. A technology that could assist gamblers to rein in their expenditure by helping them to stick to their limits might therefore prove to be a useful harm minimisation tool. But whether such a technology should be mandatory for all players or voluntary has become the focus of intense debate.

**Voluntary or mandatory precommitment**

The issue of whether players should be forced to set a limit before they gamble is one of the most contentious in the debate around poker machine reform. On the one hand there are those who

\begin{itemize}
  \item \textsuperscript{16} PC, op. cit., p. 11.7.
  \item \textsuperscript{17} Ibid., p. 5.27.
  \item \textsuperscript{18} Ibid., p. 47. However, this figure has been contested by Clubs Australia.
  \item \textsuperscript{19} Combined this equates to around 190 000 people with a moderate or severe gambling problem. Ibid., p. 5.1.
\end{itemize}

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argue that forcing a player to set limits is paternalistic, that individual choice would be violated if players are forced to set limits. In the view of some, personal responsibility should be paramount.\(^{20}\)

On the other hand, supporters of mandatory precommitment argue that the addictive nature of the pokies erodes a person’s ability to make a free choice about their gambling. They can no longer protect themselves from the harms of their gambling and so need the protection given by having to set a limit on their spending. Sometimes the need for such safeguards is equated with the need to have mandatory seat belts in cars.\(^{21}\)

These arguments are unlikely to ever be fully resolved, as they often reflect the different personal values and ethics of those who hold them.

**Trials of precommitment systems in Australia**

Most precommitment systems which have been trialled involve the use of a player card. These are usually in the form of a magnetic or smart card sometimes in conjunction with a PIN. These cards allow the player, if they choose, to preset spending or time limits, or see how much they have spent (player statements) and some even facilitate cashless gambling. Trials of these systems in Australia were undertaken in a few individual venues in South Australia and Queensland, and all were voluntary for players to use.\(^{22}\)

Results from these trials have produced mixed results.\(^{23}\) While the trials have shown that such systems can help some gamblers monitor and manage their expenditure, players could easily circumvent their limit by moving to another machine or swapping their card with another player’s, so the extent to which these voluntary systems reduced harms was limited. The takeup of precommitment was also fairly low, with a majority of gamblers in venues where it was offered declining to use the limit setting features (although other features including cashless gaming proved quite popular).

**International evidence**

Both Norway and Nova Scotia in Canada have moved to introduce precommitment technologies on their gaming machines (called video lottery terminals, or VLTs).

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20. Ibid., p. 3.12.
21. Ibid., p. 11.39.
22. There were six trial sites in South Australia for the J-card system, and three trial sites for the Maxetag system. Queensland had two trial sites for the Simplay card, and one site for the eBet trial.
23. For an overview of these trials refer to PC, op. cit., Appendix C, vol. 2.

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**Nova Scotia**

The Nova Scotia Gaming Corporation has developed a system called My-Play, a card-based system which allows VLT players to set spend and time limits, among other features. Trials of the My-Play system were conducted between 2004 and 2006. The trials involved requiring all players in a particular region to use the card on VLTs in that area for a set period, although it was not required that a player set limits. Assessments of the trials found that many players did opt to use the limit setting features of the card. Many subsequently played for longer, but overall the trials found there was a reduction in gambling expenditure. Generally, players expressed positive views towards the system. ²⁴

Based on the positive results from these trials, Nova Scotia has now moved towards progressively implementing the My-Play system on all VLTs. From April 2012, it is compulsory for all players to use a My-Play card in Nova Scotia (although using the limit setting features remains optional).

**Norway**

Norway removed all its VLTs in 2007, replacing them in late 2008 with modified terminals (called Multix) which all feature preset spending limits, reduced jackpots and lower bet limits. Players can opt to set additional voluntary options on top of these mandated limits. The evidence on whether the introduction of these new machines led to an overall reduction in gambling related harm has been the focus of considerable debate and was explored in a recent paper by the Parliamentary Library. ²⁵

Broadly, supporters of mandatory precommitment have pointed to the evidence from Norway in support of this approach. Those opposed to mandatory precommitment contend that the evidence from Norway supports their view that this approach will not work.

As the Parliamentary paper notes, the evidence that has been drawn upon in support of these opposing views appears at times contradictory. According to one study, the removal of VLTs from Norway in 2007 led to falls in total gambling participation, gambling frequency and gambling ²⁴

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problems—in some cases dramatically.\textsuperscript{26} As markers of problem gambling associated with VLTs, these falls were considered significant.

But data from the state regulator appears at least in part to contradict these findings. This showed that following the removal of VLTs participation in internet gambling increased as did the use of gambling helpline services from internet problem gamblers. A small increase in the proportion of problem gamblers was observed. Yet at the same time, a higher proportion of the population in Norway reported they had no gambling problems.

Interpreting this evidence, the paper observed the shift in trends was relatively small, so it was uncertain how much weight should be given to these. It was also possible that the increase in internet gambling simply reflected an ongoing trend towards gamblers favouring internet-based technologies, rather than a substitution effect. In any case, key differences between the Australian and Norwegian situations limit the conclusions that can be drawn, although some lessons can be learnt.

Evaluating the trials—PC’s conclusions

Evaluating the evidence from the various trials, the PC concluded that while partial (or voluntary) precommitment provided some benefits, such as assisting gamblers to set goals and become more aware of their gambling:

\begin{quote}
\ldots gamblers are not bound by the limits they impose on themselves in such a system. In effect, partial precommitment would give Ulysses a knife to cut his bonds when the Sirens call.\textsuperscript{27}
\end{quote}

The PC concluded that full (mandatory) precommitment, where a player would be fully bound by their limit, could overcome these shortcomings:

\begin{quote}
The Commission’s view is that precommitment is a strong, practicable and ultimately cost-effective option for harm minimisation. It overcomes some of the existing severe deficits in achieving self-control for problem gamblers and for genuine informed consent by many other consumers.

While recognising that even a full precommitment system cannot be a ‘silver bullet’ it may ultimately take pressure off other regulations aimed at harm minimisation.\textsuperscript{28}
\end{quote}

Consequently, the PC recommended that all jurisdictions move towards implementing a full precommitment system on EGMs by 2016, subject to trialling and development.\textsuperscript{29}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{27} PC, op. cit., p. 10.22
\item\textsuperscript{28} Ibid., p. 10.44.
\end{itemize}
\end{footnotesize}

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While the trials in Queensland and South Australia have concluded, the Queensland government has opted to make available to players the option of using precommitment technology.\(^{30}\)

**Wilkie agreement**

In 2010, the Independent Member for Denison, Andrew Wilkie made the introduction of mandatory precommitment technology on all EGMs a key feature of his agreement to support the minority Gillard Labor Government following the federal election. The agreement stipulated that the Government would move to:

> Implementing a best practice full precommitment scheme—that is uniform across all States and Territories and machines—consistent with recommendations and findings of the Productivity Commission. Implementation of precommitment arrangements will commence in 2012, with the full pre commitment scheme commencing in 2014, working with States and Territories to achieve this outcome. The full precommitment scheme will include the use of technology that is expected to have the best chance of reducing problem gambling.\(^{31}\)

Other measures agreed to included dynamic player warnings and a $250 daily limit on ATM withdrawals in EGM venues.

A Parliamentary Joint Select Committee on Gambling Reform (the Committee on Gambling Reform) was subsequently established to consider gambling reforms. Its first inquiry was into the design details that could inform the development of a mandatory precommitment scheme. In May 2011, the Committee on Gambling Reform tabled its report which among other things, recommended the introduction of a card based mandatory precommitment system on all high intensity poker machines by 2014 (these are the standard in Australia). As an alternative, venues would be able to operate lower intensity machines especially configured to limit hourly maximum losses to $120. A trial of mandatory precommitment was also recommended. The Committee on Gambling Reform, however, did not want the trial to delay proceeding with the implementation of mandatory precommitment.\(^{32}\)

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29. Ibid.
31. The text of the Agreement between the Prime Minister and Mr Wilkie can be viewed at: [http://parlinfo/parlInfo/download/library/jrnart/218796/upload_binary/218796.pdf;fileType=application/pdf#search=%22agreement%20betweenjulia%20gillardandrew%20wilkie%22](http://parlinfo/parlInfo/download/library/jrnart/218796/upload_binary/218796.pdf;fileType=application/pdf#search=%22agreement%20betweenjulia%20gillardandrew%20wilkie%22)

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Government’s proposed gambling reforms

In January 2012, the Prime Minister announced the gambling reforms the Government would be proceeding with. This included a raft of measures to tackle problem gambling, but did not commit to implementing mandatory precommitment. Legislation would be introduced to require that from 2013, all new EGMs are to be capable of supporting precommitment, and that all machines be part of a state-linked precommitment system by the end of 2016 (with exemptions for smaller venues). A 12 month trial of mandatory precommitment would be undertaken, with a view to determining if a mandatory system delivers stronger benefits than a voluntary one.

The statement also committed the Government to introduce electronic player warnings, a daily ATM withdrawal limit of $250 as well as a range of other harm reduction measures. In committing to a trial the Government indicated this would be ‘robust’ in order ‘to build the evidence base’ and would be independently reviewed by the Productivity Commission. If the trial results supported mandatory precommitment, it would be simply a matter of ‘flicking the switch’ to a mandatory precommitment system.

This statement represented a shift away from the mandatory precommitment regime agreed to with Mr Wilkie, as it only committed the Government to legislatively for precommitment capable machines. Only if the trial results supported mandatory precommitment might the switch to a mandatory system be made. Mr Wilkie subsequently withdrew his support for the government.

The Government’s change in approach followed an intense campaign by opponents of mandatory precommitment led by clubs, hotels and others, who argued against the proposal.

In February 2012, the Government circulated draft legislation on its proposed gambling reforms and sought public feedback on these. Mr Wilkie subsequently indicated he would support the provisions in the draft legislation if the details of the trial were specifically included in the Bill. This was agreed, however the Government indicated it would only introduce the legislation if passage

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33. J Gillard (Prime Minister), J Macklin (Minister for Families, Community Services and Indigenous Affairs), B Shorten (Minister for Financial Services and Superannuation; Minister for Employment and Workplace Relations) and S Conroy (Minister for Broadband, Communications and the Digital Economy), Tackling problem gambling in Australia, joint press release, 21 January 2012, viewed 8 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1366242%22

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through the Parliament was assured. As the Greens remained opposed, instead advocating for a $1 bet limit, the legislation stalled.

Committee consideration

Senate Scrutiny of Bills Committee

On 21 November 2012 the Senate Standing Committee for the Scrutiny of Bills published its comments on the Bill. Those comments are discussed under the ‘Key provisions’ heading of this Bills Digest.

Joint Select Committee on Gambling Reform

The Joint Select Committee on Gambling Reform initiated an inquiry into this Bill and the companion Bills on 1 November 2012. The Committee held public hearings on 13 November 2012 and published its report on 23 November 2012.

The majority of the Committee on Gambling Reform, having made a series of recommendations in relation to, amongst other things, matters that should be further considered by the Productivity Commission, recommended that the Bills be passed.

The dissenting report by the Coalition members of the Committee on Gambling Reform stated:

While the Coalition supports voluntary pre-commitment as a tool for those who have gambling problems it does not agree with the how the Labor government wants to achieve this. Coalition

42. Ibid., pp. vii–viii.

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members of this Committee therefore believe this legislation should not be supported in its current form.\(^\text{43}\)

Of particular concern to the Coalition members was their belief that ‘ultimately, gaming is a state issue and the Commonwealth should not continue to erode the powers and responsibilities of the states’.\(^\text{44}\)

Senator Xenophon also dissented, stating:

Ultimately, this issue must be about problem gamblers and those directly affected ... I am fundamentally unable to support this bill. I cannot support legislation that is so qualified and conditional, and fraught with technical difficulties. It will also not help problem gamblers in any significant way.\(^\text{45}\)

The Greens made additional comments to the report, stating:

The Australian Greens noted conflicting evidence from witnesses including the representatives of the churches and Clubs Australia regarding both the effectiveness and cost of implementing dollar bet limits on electronic gaming machines in Australia over a time period of five years or more. Greater clarity around this issue would assist the public debate when future reforms are considered, especially around the practicality of various timelines, the actual costs to industry, and the impact of previous changes to bet limits in state jurisdictions. Further evidence on the effectiveness of bet limits in limiting the harms of problem gambling is also desirable.\(^\text{46}\)

That being the case, the Greens recommended that ‘the Australian Gambling Research Centre should prioritise research into the effectiveness and cost of implementing national bet limits on poker machines in Australia’.\(^\text{47}\)

**Selection of Bills Committee**

At its meeting of 19 November 2012, the Senate Selection of Bills Committee resolved to recommend that the provisions of the National Gambling Reform Bill 2012, the National Gambling Reform (Related Matters) Bill (No. 1) 2012 and the National Gambling Reform (Related Matters) Bill (No. 2) 2012 be referred immediately to the Finance and Public Administration Legislation Committee for inquiry and report by 27 November 2012.\(^\text{48}\)

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43. Ibid., p. 45.
44. Ibid., p. 46.
45. Ibid., p. 56.
46. Ibid., p. 77.
47. Ibid.

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Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at the end of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011, the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible. At the time of writing this Bills Digest the Parliamentary Joint Committee on Human Rights had not commented on the Bill.

Policy position of non-government parties/independents

Independent Member for Denison, Andrew Wilkie has indicated support for these Bills, albeit expressing some regret that they do not go as far as his original proposal. Nevertheless, he stated that ‘watered down’ progress on gambling reform was worth supporting, particularly as it will establish a precedent for Federal government involvement:

> The Government’s package is much less than the deep reforms promised by the Prime Minister after the 2010 election. But they are better than nothing and worth supporting. Moreover they will establish the precedent of federal intervention in poker machine regulation and that alone is very important.

> For my part I only agreed to support the Government’s watered down reforms when they agreed to my demands that all poker machines must be mandatory pre-commitment capable at the flick of a switch, and that the conditions for the Canberra trial of mandatory pre-commitment must be legislated.⁴⁹

The Greens have shifted their position from opposing the Government’s draft legislation and instead calling for the adoption of $1 betting limits, to now offering their support. Explaining the Greens turnaround Senator Richard Di Natale, Greens spokesperson on gambling told the ABC’s 7.30 program:

> What we'll get with this legislation—which is a long way from where it needs to be and we'll continue to campaign for much stronger reform—we get the Commonwealth with a role at least in poker machine reform. We get limits on ATMs, we get all machines being mandatory precommitment-ready. It's a small step forward, but still a long way from where we need to be. In the end ... it was this or nothing. The Government made it very, very clear it wasn't going to consider the many compromises we put forward. And in the end we had to make a decision about whether this was better than nothing.⁵⁰


A further issue that swayed the Greens was that they won support from the Government to establish and fund a new independent gambling research institute.  

As already stated, Independent Senator Nick Xenophon, a long time campaigner for poker machine reform, does not support the legislation in its current form.

The Federal Coalition has indicated that it opposes mandatory precommitment, but would support a voluntary precommitment system. Shadow Minister responsible for Families, Housing and Human Services, Kevin Andrews, released a Discussion Paper on addressing problem gambling in November 2011. In the accompanying media release he indicated the Coalition’s opposition to a mandatory scheme, stating:

The Coalition is not persuaded mandatory pre-commitment will address problem gambling. It is also a scheme that will have significant flow-on impacts on employment and on local communities.

More recently, Opposition Leader Tony Abbott stated:

We’ve been very consistent all along on this. The best way to tackle problem gambling is through voluntary precommitment, through more counselling and through tackling online gambling.

However, the Coalition has not yet issued a formal statement about its position on these particular Bills.

Independents Rob Oakeshott and Tony Windsor have both expressed some misgivings about a full mandatory scheme. In a statement on gambling reform in January 2012, Mr Oakeshott stated:

I will weigh up legislation on its merits when the detailed legislation is released and, if good, I’ll back it, and if bad, I won’t.

He indicated he had some concerns if the scheme resulted in each jurisdiction requiring a different card and if details of the scheme were to be specified in regulations. He has not yet indicated his position on these Bills.

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51. Ibid.
52. K Andrews (Shadow Minister for Families, Housing and Human Services) and T Abbott (Leader of the Opposition), Release of Coalition policy discussion paper on gambling reform, joint media release, 2 November 2011, viewed 7 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1197762%22

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Mr Windsor has previously expressed concerns around the workability of a mandatory scheme and its likely impact on clubs in rural and regional Australia.\textsuperscript{55} However he has not yet indicated a position on these Bills.

Neither Independent Craig Thomson nor Peter Slipper has outlined their positions on the legislation or the issue of precommitment.

**Position of major interest groups**

**Industry groups**

The body representing the clubs industry, Clubs Australia, which generally supports voluntary precommitment, has expressed concerns over the Bills.\textsuperscript{56} In a press release, they describe the proposed 2016 deadline for the introduction of precommitment as ‘not fair’ because it provides insufficient time for the majority of clubs to comply. Furthermore, they argue, many clubs would be ‘forced to spend millions’ replacing machines earlier than expected. They also criticised the $250 ATM daily withdrawal limit as lacking supporting evidence.

In response, the Minister issued a statement disputing these claims.\textsuperscript{57} She points out that around 25 per cent of clubs (those with fewer than 10 machines) would not face additional costs as they are permitted under the legislation to introduce the changes only as they replace their machines. Another 26 per cent of clubs would have a lead time of eight years, during which time many would replace their machines as part of a normal cycle.

Clubs Australia has also expressed concern over the levies the Bill proposes to impose on venues to fund the reforms, particularly the lack of detail over how much this will cost clubs, stating:

> Members of Parliament are now being asked to vote on legislation to introduce voluntary precommitment without knowing if that technology comes with a new tax for every club and hotel.

\textsuperscript{55} T Windsor (Independent Federal Member for New England), *Windsor has concerns with poker machine reforms*, media release, 1 April 2011, viewed 13 November 2012,\[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F807897%22\]


\textsuperscript{57} J Macklin (Minister for Families, Community Services and Indigenous Affairs Minister for Disability Reform), *Pokies legislation gives more than half of Australia’s clubs and pubs extra time to get ready*, media release, 2 November 2012,\[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2019061%22\]

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Similarly, clubs are being asked to support legislation without knowing what the full cost of that support would be or how it could increase in the future.  

Clubs have also expressed concerns over the deadline of 1 May 2013, for the imposition of ATM withdrawal limits, arguing that at least 12 months will be needed to implement changes.

Media reports suggest that ACT clubs may hold particular concerns over the prospects for the proposed trial of mandatory precommitment in their jurisdiction. Jeff House, President of ClubsACT is reported as saying:

... he would not recommend clubs take part in a 12-month trial of mandatory precommitment technology if it spanned a federal election campaign. He said there was no guarantee the Coalition would not kill the trial if it won the election, scheduled to be held by November 30, and clubs would not be inclined to commit to a trial that might be abandoned because of a change of government.

The Australian Hotels Association (AHA), representing the hotel industry, is not supportive of the legislation and has raised a number of issues of concern in their submission to the Committee on Gambling Reform in relation to the Bills. Specific issues of concern are the absence of a cost/benefit analysis, the timetable for implementation being too short and forced replacement of machines, the ATM limit and its effect on food and beverage sales, the requirement for a state-based precommitment system and the imposition of the new levies.

The Gaming Technologies Association (GTA) representing manufacturers, ‘states categorically’ that the current deadlines in the Bill for manufacturers ‘can’t be met’, due to the complexity of the technical modifications that will need to be made. They also point to the multiple technical requirements and regulatory arrangements across jurisdictions, which they argue will delay implementation.


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Church and social services groups

Welfare and anti-gambling advocates have generally welcomed the legislation. Representing the churches, the Australian Churches Gambling Taskforce Chair Tim Costello described it as ‘a solid platform for further reform’.63 The measures in the Bill ‘will provide greater protection for people who are living with a gambling addiction and for those people who are at risk of developing a problem’, he said. Nevertheless, he said that the Taskforce will continue to advocate for further reforms, because ‘voluntary precommitment is about as safe as voluntary speed limits on the road’.64

The ACT Australian Council of Social Services has welcomed the ATM limits and is generally supportive of the principle of precommitment.65 However, the organisation has expressed disappointment the Bills do not align with the recommendations of the Productivity Commission, and has specific concerns over subclause 33(2), which it wants addressed via the inclusion of a sunset clause.66

Other opinions

Monash University academic and gambling researcher Dr Charles Livingstone has identified some pertinent aspects of the decision to establish an independent gambling research institute.67 He points out that because much gambling research in Australia has been funded by state governments, themselves reliant on gambling revenue, this raises questions over whether these research efforts have been completely free from industry influence. While conceding ‘more evidence is almost always desirable’, Livingstone has concerns that what might appear to be a reasonable call for more research may simply defer more prompt action on problem gambling. Further:

Whether the new gambling research institute can do a better job than the Productivity Commission’s two inquiries is an interesting proposition. Indeed, whether it can do better than the commission in determining the efficacy of harm-reducing measures such as precommitment and $1 maximum bets is an open question. It will depend on the questions and themes the


64. Ibid.


66. Subclause 33(2) of the Bill provides that although the precommitment system is required to have this capability, the precommitment system is not actually required to prevent a person who is not registered for the state or territory from using the gaming machine unless amendments are made to this Act requiring this.


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institute is encouraged to explore, whether it is subject to any form of constraint, and the resources available to it.  

Academic Dr Samantha Thomas also raises some pertinent issues. Firstly, links between loyalty schemes and precommitment systems are not prohibited in the legislation, raising the risk that industry may target players who opt to use precommitment. She also points to the need for effective social marketing and education programs ‘to encourage individuals to make ‘responsible’ choices about their gambling’ and ‘educating and encouraging individuals to use the new technology.  

State and territory governments

Of the jurisdictions, only the Tasmanian Government has so far publicly welcomed the Bill. Minister for Human Services Cassy O’Connor welcomed the reforms, stating:

After a bit of to-ing and fro-ing on gambling reform in recent years, it’s good to see progress on gambling reform at the national level, and even though the measures do not go far enough, I believe this is a step in the right direction.

The reforms introduced to Federal Parliament this week are a welcome step forward, especially the $1.5 million allocation secured by the Greens to go towards the National Gambling Research Foundation.

Meanwhile, the New South Wales (NSW) Government has criticised the Bill. NSW Minister for Tourism, Major Events, Hospitality and Racing, George Souris was critical of the Federal Government for not consulting with the states and territories before introducing the legislation. He stated that:

The Commonwealth’s Bill contains provisions that establish its own regulatory compliance framework in relation to gaming machines which are licenced by the State.

This was done without first consulting with NSW and is not in the spirit of the [Council of Australian Governments] COAG process. Therefore, there are unresolved issues regarding the State’s existing compliance responsibilities and the cost of the additional Commonwealth compliance regime.

68. Ibid.
70. C O’Connor (Minister for Human Services-Tasmania), Commitment to tackling problem gambling remains strong, media release, 2 November 2012, viewed 13 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2033864%22

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NSW, as a matter of principle, cannot support the Bill until those matters are properly considered at a COAG meeting where all jurisdictions can consider this national approach unilaterally imposed by the Commonwealth.

He went on to state that NSW remained ‘committed to implementing proven effective measures’ designed to reduce harm and pointed to the additional $48 million in funding NSW was making available to provide counselling and support services. He argued that the Federal Government should concentrate on regulating other forms of gambling, such as online gambling and the broadcasting of live betting odds.

The Northern Territory (NT) Government also opposes the Bills. It is concerned that the regulatory impact on the small club sector in the NT is not justified by the extent of the problem. It also regards the proposed time frame as too short, and has called for a regulatory impact statement to be undertaken and more consultation before proceeding with the reforms.\(^72\)

The views of other jurisdictions were not known at the time of writing this Bills Digest.

**Financial implications**

The Explanatory Memorandum acknowledges there will be start-up costs associated with the establishment of the proposed Regulator, but explains that these costs will be recovered through the imposition of two new levies: the Gaming Machine Regulation Levy and a Supervisory Levy.\(^73\)

These two levies will be established by the provisions in this Bill and the two companion Bills. However, full details of these levies will be prescribed in yet to be released regulations, so the amount they will raise cannot be known. It is not clear if the cost of establishing and running the proposed Australian Gambling Research Centre will be recovered from these levies.\(^74\)

Costs associated with a proposed trial of pre-commitment technology are not dealt with in this Bill or the relevant Explanatory Memorandum. However, as noted above, the cost has been factored into the 2012–13 Budget.

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74. Clause 82 of the Bill states: ‘The purpose of the supervisory levy is to cover the costs to the Commonwealth in relation to the administration of this Act’. This broad statement does not specify that the levy be used exclusively to recover only the cost associated with establishing the proposed regulator.

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Main issues

Will voluntary precommitment be sufficient to reduce harms?

Chapter 2 of the Bill sets out the design specifications of a precommitment system, which will allow for a registered user to set loss limits on their spending. However, these provisions only apply if a person chooses to become a registered user and then opts to set spending limits. In other words, while it will be mandatory for a precommitment system to be installed on most EGMs by 2016, it will be entirely voluntary for players to use. Only if a person chooses to play as a registered user, will they be bound by the limits they have set.

This arrangement the government argues ‘will give people more control when playing poker machines—helping them to set limits and keep track of their spending’. But many gambling reform advocates have long argued that a voluntary system will not be sufficient to protect players from harm. The Independent Gambling Authority from South Australia, for example, in evidence to the Committee on Gambling Reform, argued that a voluntary system ‘simply will not make any difference’, because take-up is likely to be small. However, the Responsible Gambling Advocacy Centre from Victoria conceded that evidence from the precommitment trials showed those who used precommitment ‘exercised improved control over their spending’ and concluded there are ‘clearly benefits’ with a voluntary scheme.

The debate over the extent to which a mandatory scheme delivers greater benefits than a voluntary one, is unlikely to be settled until the results of the proposed trial of mandatory precommitment are known.

Registered Users

The Bill proposes a voluntary precommitment system whereby a person, who chooses to do so, can register. The registration process must be free, will only require simple identification (such as a signature or photograph) and not permit biometric identification, and will allow the person to set

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75. Clause 22 of the Bill.
77. Parliamentary Joint Select Committee on Gambling Reform, First report: the design and implementation of a mandatory pre-commitment system for electronic gaming machines, op. cit., p. 95.
78. Ibid.
79. The provisions referred to in this section are set out in clauses 21–33. The definition of ‘registered user’ is set out in clause 5 of the Bill.
80. Subclause 21(3) of the Bill.
81. Subclause 23(1) of the Bill.
82. Subclause 23(2) of the Bill.

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loss and time limits.\textsuperscript{83} A registered user can cancel their registration at any time\textsuperscript{84}, but once cancelled they cannot re-register during a yet to be prescribed time period.\textsuperscript{85}

A registered user who sets a loss limit can set any limit, including $0—although this would effectively exclude them from play as a registered user.\textsuperscript{86} A registered user can set a time period for which a loss limit would apply, but this time period must be at least 24 hours.\textsuperscript{87} If a registered user chooses to loosen their loss limit, this will only take effect following the expiration of their time limit period\textsuperscript{88}, but if they choose to tighten their limit, this is to take effect as ‘soon as practicable’.\textsuperscript{89} Once a registered user reaches their loss limit, they are prevented from continuing play as a registered user for the balance of their time period.\textsuperscript{90}

It should be noted, that a player who is a registered user can still opt to play as a non-registered user.\textsuperscript{91} This means, in effect, that once a person has reached their limits under the precommitment system there is no provision in this Bill which will prevent the person from playing outside the precommitment system.

While the provisions specify that the precommitment system must have the capability to prevent play from someone who is not a registered user, this is not required to occur unless or until amendments are made to the Act requiring this.\textsuperscript{92}

 Compliance and constitutional corporations

The Bill prohibits a person making a non-compliant gaming machine—that is, one which does not have a precommitment system or dynamic warnings—available for use.\textsuperscript{93} Essentially, the Bill places much of the onus on the venue which operates EGMs to ensure that EGMs are compliant. However, due to constitutional limitations, explained below, penalty provisions will only apply where the non-compliant EGMs are offered for use by, on behalf of, or in connection with a constitutional corporation. (Information about the exemptions from these penalties is discussed in the ‘Key provisions’ part of this Bills Digest.)

The question that arises, then, is whether each and every venue will be, or have the required connection to, a constitutional corporation.

\textsuperscript{83}. Clauses 22 and 25 of the Bill.
\textsuperscript{84}. Subclause 21(1) of the Bill.
\textsuperscript{85}. Subclause 21(2) of the Bill.
\textsuperscript{86}. Clause 24 of the Bill.
\textsuperscript{87}. Subclause 25(2) of the Bill.
\textsuperscript{88}. Subclause 27(2) of the Bill.
\textsuperscript{89}. Subclause 27(3) of the Bill.
\textsuperscript{90}. Clause 32 of the Bill.
\textsuperscript{91}. See fn., 58.
\textsuperscript{92}. Clause 33 of the Bill.
\textsuperscript{93}. Clause 58 of the Bill.

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What is a constitutional corporation?

Section 51(xx) of the Constitution (the corporations power) grants the Parliament of the Commonwealth the power to make laws with respect to ‘foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth’ (collectively called ‘constitutional corporations’).  

‘Foreign corporations’ are those that are formed outside the limits of the Commonwealth.

In order to identify whether a corporation is a ‘trading or financial corporation’ the courts currently apply an ‘activities test’. This ‘activities test’ was approved by a majority of the High Court in Adamson’s Case and has been applied to some extent ever since.

A trading corporation is one that engages in trading activities. ‘Trade’ means the buying and selling of goods and services. Profit (or intended profit) does not appear to be an essential element.

Similarly, a financial corporation is one that engages in financial activities, that is, commercial dealings in finance (such as borrowing or lending money).

The Western Australia Court of Appeal has summarised the following principles applicable in determining whether a corporation could be classified as a ‘constitutional corporation’:

- a corporation may be a trading corporation even though trading is not its predominant activity
- the trading activity must be substantial and not peripheral
- trading has a broad meaning and includes activities for revenue, and trade in services
- the making of a profit is not essential, but usual
- the ends which the corporation seeks to serve are irrelevant to its description
- whether the trading activities of a corporation are sufficient to justify its categorisation as a constitutional corporation is a question of fact and degree

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96. Higgins v Beauchamp [1914] 3 KB 1192 at 1195 (Lush J); Commissioners of Taxation v Kirk [1900] AC 588 at 592.

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• the current activities are not the only relevant consideration—regard must also be had to the intended purpose of the corporation, although a corporation that carries on trading activities can be a trading corporation even if it was not originally established to trade and

• the commercial nature of the activity is an element to be considered.99

Uncertainty about classification of constitutional corporations

Despite the number of cases and their general reliance on the activities test, some uncertainty remains regarding the classification of constitutional corporations.

Rosemary Owens, Professor of Law, South Australia, argues that in classifying section 51(xx) corporations, courts usually adopt a quite nuanced approach which takes into account the full range of facts, and do not simply consider the activities of the relevant corporation in a vacuum.100

In different cases the balance of factors may vary. However, it would appear that clubs that are ‘incorporated and whose trading activities constitute a significant proportion of their overall activities are likely to be trading, and therefore constitutional, corporations’.101

Those entities that are not constitutional corporations, or are not captured by the other direct regulation provisions of the Bill, will be subject to the gaming machine regulation levy.

Definition of a ‘precommitment system’

The Bill requires that gaming machines have both precommitment functionality and be connected to an approved state-wide or territory-wide precommitment system. Accordingly, clause 5 of the Bill defines the term ‘precommitment system’ as having two parts. First, a precommitment system of a state or territory must allow a registered user to set a limit and be prevented from play on any machine in that state or territory once their limit is reached. Second, a precommitment system for a gaming machine requires that the precommitment system on the individual machine must be the one that is in use in the state or territory where the machine is located.

101. Australian Government Solicitor, Measures to address problem gambling—Commonwealth power to legislation, legal advice to the Department of Families, Housing, Community Services and Indigenous Affairs, 27 January 2012, viewed 14 November 2012, http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=CitationId%3A644798;rec=0;resCount=Default

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Connection to a state-wide or territory-wide system is required to ensure that a registered user who has chosen to set a loss limit, will be bound by this limit wherever in the state or territory the person plays as a registered user.\textsuperscript{102}

It is important to note here that precommitment technology can be machine based, venue based or more widely networked. Typically, a precommitment system involves the use of some kind of player card (a smart card with a chip or one with a magnetic strip) that is then swiped through a reader fitted to a machine to initiate play. The card is able to carry identification data and details of spend limits, and the machine has special software which can ‘read’ this data and respond to it appropriately. A system of precommitment which is based around an individual machine or venue will not necessarily prevent a player from moving onto another machine or venue once their limit is reached.\textsuperscript{103}

A networked precommitment system, which this Bill proposes, can address the problem of venue ‘hopping’, but requires more complexity. In addition to the reader and machine or venue specific software, some form of communication technology that allows data to be transferred from an individual machine or venue to some form of centralised system that can monitor the whole jurisdiction, may be needed. A number of jurisdictions already have in place communication systems that allow the transfer of data from machine/venue to a Centralised Monitoring System (usually for the purposes of collecting gambling taxes). However, these systems nearly all feature different communication protocols and technical requirements, which would currently make implementing a national, harmonised system difficult.

One recognised shortcoming with a state-wide or territory-wide system compared to a national one is that a player who is resident near a border area cannot be prevented from simply moving across the border and resuming play there. The risk of ‘leakage’ is likely to be greater in border areas where gambling facilities exist nearby or adjacent to each other. This means that gamblers in such areas may find it easier to circumvent the provisions of this Bill and exceed their spending limits, but this may also place them at greater risk of harms.

It should be noted that all state and territory governments have indicated they support precommitment.\textsuperscript{104}

\textsuperscript{102} As noted previously, there are no provisions that would prevent a registered user opting to play unregistered.

\textsuperscript{103} This is sometimes called ‘hopping’.

\textsuperscript{104} Council of Australian Governments Select Council on Gambling Reform, Communiqué, Canberra, 27 May 2011, viewed 19 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2048116%22

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Precommitment systems and the states and territories

It is important to understand that the penalties arising from making a non-compliant gaming machine available for use will not apply in states or territories where there is no approved precommitment system.\textsuperscript{105}

In its first report of May 2011, the Committee on Gambling Reform noted that a number of trials for voluntary precommitment systems had occurred in South Australia, Queensland and overseas.\textsuperscript{106} Importantly the Bill allows the states and territories to continue to run their own systems.\textsuperscript{107} Whilst the Committee on Gambling Reform recommended that technical standards and communications protocols be harmonised by jurisdictions\textsuperscript{108}, the Government response to that recommendation was that the draft legislation delivers minimum national standards for precommitment and that the Commonwealth would discuss any further harmonisation with states and territories through the COAG Select Council on Gambling.\textsuperscript{109}

Constitutional law expert Dr Anne Twomey, in a submission to the Committee on Gambling Reform inquiring into the Bills, has highlighted some potential issues relating to the legislation. The first relates to the question of the Commonwealth appearing to legislate in an area which has been traditionally a state matter. She goes on to express reservations that one section of the Bill:

... appears to imply that an obligation is imposed upon each State and Territory to establish a precommitment system for the State or Territory which would potentially apply to all gaming machines within the State or Territory.\textsuperscript{110}

She then asks:

... why the Commonwealth on the one hand asserts that it has power to make national laws on this subject while at the same time applying those laws in a State-based manner and impliedly requiring the States to establish the system that underpins the law.\textsuperscript{111}

\begin{itemize}
  \item \textsuperscript{105} Paragraph 58(2)(b) of the Bill.
  \item \textsuperscript{106} Parliamentary Joint Select Committee on Gambling Reform, op. cit.
  \item \textsuperscript{107} Clause 11 of the Bill provides that the Act is not intended to exclude or limit the operation of a law of a state or territory that is capable of operating concurrently with this Act.
  \item \textsuperscript{108} Joint Select Committee on Gambling Reform, op. cit., p. 227.
  \item \textsuperscript{111} Ibid.
\end{itemize}

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Constitutional underpinning of the Bill

Although there is no specific plenary power under the Constitution to make laws for gambling there are various heads of legislative power that can be drawn on. Section 51(xxxvii) of the Constitution allows the Commonwealth to make laws with respect to:

- matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.

This is known as the ‘referral’ power. There are three ways in which this power works:

- by ‘subject matter’—for example the reference of the matter of ‘air transport’ by Queensland to the Commonwealth in 1943 and 1950
- by ‘text’ so that the power that is referred is confined to the text of a Bill\textsuperscript{112} or
- by adoption—when at least one state has referred a matter to the Commonwealth (via either ‘subject matter’ or ‘text’ referral), the Commonwealth is then empowered to enact a law about that matter which will also apply in the referring state. Once that has occurred, any other state or states can adopt the new Commonwealth law by passing a state law setting out the extent of the adoption and annexing the relevant Commonwealth law.

This would be the ideal power on which to base an Act which would provide uniform laws across the States and Territories about precommitment systems for EGMs. However, despite the issue of problem gambling being on the agenda for COAG, progress towards a national system has been slow.\textsuperscript{113} All state and territory governments have indicated that they support precommitment, as well as dynamic warnings and ATM limits. Through the COAG Select Council on Gambling Reform the states and territories also agreed that all new gaming machines should feature precommitment functionality, although a date by which this should occur was not agreed. However, the states and territories have not agreed on a uniform precommitment system which would apply across Australia.\textsuperscript{114}

That being the case, prior to the introduction of this Bill, the Government commissioned legal advice from the Australian Government Solicitor as to whether the Commonwealth could draw on other

\textsuperscript{112} Since the 1980's there have been numerous referrals, both text-based and defined by a general subject-matter, which have led to the successful enactment of Commonwealth laws. For example during 2002 and 2003 all the states referred a matter, expressed as a Bill, to regulate the prosecution of terrorists. The references are fixed in time and otherwise may be terminated by proclamation by the Governor of the relevant state. This has resulted in the enactment of the federal Criminal Code Amendment (Terrorism) Act 2003.


\textsuperscript{114} Ibid.

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legislative powers under the *Constitution* to establish a legislative scheme with the following key features:

- in relation to electronic gaming machines:
  - a full pre-commitment scheme that is uniform across all States and Territories and machines
  - dynamic warnings and cost of play displays and
  - national standards.

- in relation to automatic teller machines in gaming venues:
  - a daily withdrawal limit.\(^{115}\)

The Australian Government Solicitor answered the question in the affirmative, noting that a number of heads of power, separately or in combination, could provide varying degrees of coverage. The powers identified were the corporations power (section 51(xx) of the *Constitution*), trade and commerce power (section 51(i)), telecommunications power (section 51(v)), banking power (section 51(xiii)), currency power (section 51(xii)), taxation power (section 51(ii)) and the territories power (section 122).\(^{116}\) The rationale for an overarching Commonwealth law such as this Bill is to address the flaws in existing policy and administrative arrangements across the states and territories.\(^{117}\)

The key feature of the Bill is its use of both direct regulation (for example, by way of the corporations power) and taxation based regulation, so that persons and entities that operate in the gaming industry, but who may not be captured by the powers utilised to impose direct regulation, are required to meet certain standards or conditions in order to avoid having to pay a tax.\(^{118}\)

**Proposed ACT trial of precommitment**

The provisions proposed in clause 193 of this Bill do not specifically commit the Commonwealth to running a trial. Instead, this is an option the Commonwealth may agree to pursue provided a number of pre-conditions are met. These include requirements about the design of the trial and its evaluation methodology. The provisions stipulate that any trial must run for 12 months, that all EGM users in the trial area be registered, the trial be independently designed and managed and be subject to peer review and audit, and that the results be evaluated by the Productivity Commission,

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116. Ibid., p. 2.
117. PC, op. cit., p. 3.9.
118. Ibid., p. 7. Note that the disadvantage of this form of regulation is that, apart from the tax, there is no authority to impose additional sanctions (such as civil or criminal penalties) if an entity chooses to pay the tax but not undertake the specific actions or meet requirements.

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which must consider whether a mandatory precommitment system ‘delivers sufficient advantages’ over a voluntary system.

While negotiations between the Commonwealth and ClubsACT over a trial have commenced, progress appears to have slowed since the Commonwealth made an initial offer in February 2012 of $36 million to ClubsACT for its participation.119 In September 2012, the Minister announced that a Trial Oversight Committee to oversee the trial would be appointed.120 However, recent media reports suggest ClubsACT is still considering its position.121

While funding for a trial was factored into the 2012–13 Budget, the precise cost of the trial was listed as ‘not for publication’.122 The Explanatory Memorandum does not detail the cost of running a trial either, so the financial implications of the trial remain unknown.

Australian Gambling Research Centre

The inadequacy of research funding and effort was commented upon by both the Committee on Gambling Reform and the Productivity Commission. Each called for improvements in this area. The PC called for the replacement of the current national research body, Gambling Research Australia (GRA), with a national centre that had the capacity to undertake research itself or outsource research projects, and that would be advised by an expert advisory panel.123 The Joint Select Committee called for a ‘national, accountable and fully independent research institute on gambling [to] be established’.124

While the provisions in this Bill would establish a new research body, the Australian Gambling Research Centre (AGRC), to be located in the Australian Institute of Family Studies (AIFS), questions have been raised over its capacity and role. Sophie Vasiliadis, an academic from the University of Melbourne concedes there are knowledge gaps:

> Important gaps remain in our understanding of problem gambling and our capacity to implement effective, evidence-based primary prevention, harm minimisation and treatment strategies.

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120. J Macklin (Minister for Families, Community Services and Indigenous Affairs Minister for Disability Reform), Progressing a trial of mandatory pre-commitment in the ACT, media release, 8 September 2012, viewed 7 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1906351%22
123. PC, op. cit., Recommendation 18.3.

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For example, the roles of individual and social factors that increase the risk of problem gambling remain uncertain. Understanding this can inform practitioners, family, friends, employers, health professionals and venue workers of the warning signs to look out for and how to support gamblers who are experiencing problems.  

In addition, she acknowledged that research efforts so far may have been impeded due to research being funded and directed by government agencies. Vasiliadis argues that this may have placed ‘conveniently political outcomes’ ahead of ‘methodological rigour’. But the proposed funding of $1.5 million ‘is a tiny budget for world-leading, rigorous research’, she warns. Vasiliadis also notes that the AIFS ‘has limited expertise in problem gambling research, treatment, training or policy’. 

Funding for this agency is not specified in this Bill, and it remains unclear from the Minister’s statements what the source of the funding will be. Whether the supervisory levy, which is designed to cover the costs of the administration of the Act, could also be used to cover the cost of the proposed AGRC also remains unclear. If no specific funding is allocated to the AIFS it might need to provide the resources from within its own budget.

**Imposition of levies**

Costs associated with the gambling reforms in this Bill are to be recovered via the imposition of two new levies—the supervisory levy in relation to gaming machines and the gaming machine regulation levy. Further information about the levies is provided under the ‘Key provisions’ heading of this Bills Digest, and in the Bills Digests for the companion Bills.

**Key provisions**

**Chapter 1—preliminary matters**

Chapter 1 of the Bill sets out the object of the Act, provides the key definitions of the terms which are used in the Bill and confirms that the Act is intended to operate concurrently with state and territory laws. Despite this, the provisions of section 109 of the Constitution operate so that when a law of a state is inconsistent with a law of the Commonwealth, the Commonwealth law will prevail to the extent of the inconsistency.

**Subclause 4(1)** of the Bill states that the purpose of the Act is to reduce the harms caused by gaming machines to problem gamblers, their families and communities. **Subclause 4(2)** specifies this is to be achieved through: providing a precommitment system that allows registered users to voluntarily set spending limits for certain periods; prevent users continuing to play within that jurisdiction once

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126. Ibid.
their limit is reached (although as outlined above the Bill, as drafted, does not achieve this); allow users to exert control over their limits; ensure electronic warnings on potential harms are displayed; limit cash withdrawals from ATMs; protect privacy of users; and require that all gaming machines manufactured or imported are precommitment capable.

The definition of ‘gaming machine’ in clause 6 is, on its face, exceptionally broad, capturing as it does any device (whether wholly or partly mechanically or electronically operated) that is designed so that:

- it may be used for the purposes of playing a game of chance, or a mixed game of chance and skill
- it may be operated wholly or partly by inserting a token, coin or banknote into the device, electronically transferring credits or tokens to the device or using credits or tokens in the device (whether those credits or tokens are held, stored or accredited by the device or elsewhere) and
- because of making a bet on the device, winnings or other rewards may become payable.

According to Dr Twomey the definition ‘would seem likely to cover games of chance at fair grounds, school fetes, agricultural shows and the like’. However the breadth of the definition is qualified by subclause 6(4) of the Bill, which specifies that regulations can prescribe what is taken not to be a gaming machine for the purposes of the Act. This is to address the issue of devices being developed in future which might otherwise fall under the provisions in this Bill and to protect against any unforeseen consequences of the Bill which might capture some gaming machines to which the measures are not intended to apply, such as those identified by Dr Twomey.

The Bill also defines the term ‘small gaming machine premises’ in clause 9 as being one in which no more than 20 gaming machines are made available for use.

Clauses 13–18 detail the start dates in relation to precommitment systems, dynamic warnings and ATM limits for different types of premises; and for imported and manufactured gaming machines; and the start dates for the two proposed levies. Notably, subclause 13(1) specifies that requirements for precommitment systems and dynamic warnings start from 31 December 2016 for all machines in most premises; but for ‘smaller gaming machine premises’ later start dates apply. For those with 11–20 machines, subclause 13(2) specifies a start date of 31 December 2020. For premises with 10 or less machines, subclause 13(3) specifies that precommitment and dynamic warnings are only required on new machines that are acquired as part of the natural replacement cycle and made available for use in the premises after December 2020. Machines acquired before this date, but after December 2013, will be required to have precommitment and dynamic warnings capability, which must be in use from December 2020.

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127. A Twomey, Submission to the Joint Select Committee on Gambling Reform, Inquiry into proposed gambling reform laws, op. cit.
128. Clause 9 of the Bill.

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Chapter 2—national gambling reforms

In addition to the specifications of the precommitment systems which are outlined under the heading ‘Registered users’ above, Chapter 2 of the Bill provides that gaming machines must be capable of providing a dynamic warning. The warning provides information about the use by a specific person of a gaming machine or gaming machines or more generally about the potential for harm from, and the cost of, using gaming machines. It will be for regulations to prescribe the form, frequency, content and position of the warnings. Because this Bill intends to set only the minimum standard in relation to the three gambling reforms, the states and territories may choose to adopt schemes in relation to dynamic warnings which are tailored to the needs of the gambling population in their jurisdictions.

The third reform, set out in clause 39 of the Bill, provides for an ATM on a gaming machine premises (other than casinos) to have a cash withdrawal limit of $250 for a 24 hour period. Regulations may prescribe the manner in which that amount is to be indexed annually. There is scope in clauses 42–44 for a person who occupies gaming machine premises to apply to the Regulator for the premises to be exempt from the operation of the ATM withdrawal limit. The Regulator may grant the exemption if he, or she, is satisfied that compliance will cause unreasonable inconvenience to members of the community where the premises are located.

Approvals and licences for precommitment systems

Clause 201 of this Bill provides that the Governor-General may make regulations ‘in respect of any matter under this Act’. The regulations may prescribe any matters required or permitted by the Act or that are necessary for giving effect to the Act. Consistent with that provision, clause 56 provides for regulations to be made setting out the details of a scheme to license persons who provide precommitment systems for gaming machines as well as a scheme to license persons to operate, repair, maintain or install precommitment systems for gaming machines. Those regulations may include any fees payable in relation to such a scheme.

The risk, when fees are imposed by regulation is that the fee may, in fact, become a tax. The Senate Select Committee for the Scrutiny of Bills takes the view that it is for Parliament, rather than the makers of subordinate legislation, to set a rate of tax. That being the case, there is an expectation that there will be some limits imposed on the exercise of this power. There is no such limit in the Bill and the Explanatory Memorandum is silent on the matter. This compares to the terms of subclauses 47(2) and 107(2), which specify that certain fees imposed by regulations or other

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129. Clause 38 of the Bill.
130. The casino exemption is based on a recommendation from the Productivity Commission. The PC considered that because casinos provide a broader range of services that attract a wider range of patrons, a withdrawal limit would have greater costs, so they should be exempt. PC, op. cit., p. 13.31.
131. Clause 40 of the Bill.
132. The Regulator’s decision not to grant an exemption, or to grant an exemption subject to conditions, is subject to review under clauses 198 and 199 of the Bill.

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legislative instrument for the purposes of subclauses 47(1) and 107(1) ‘must not be such as to amount to taxation’.\textsuperscript{133}

The holder of such a license is a ‘\textit{licensed provider}’ for the purposes of this Act. A ‘\textit{licensed provider}’ may apply to the Regulator (in the manner and form set out in \textit{clause 48}) for approval of a precommitment system.\textsuperscript{134}

The Bill empowers the Regulator to:

\begin{itemize}
  \item approve a precommitment system of a state or territory\textsuperscript{135}
  \item refuse to approve a precommitment system for a state or territory\textsuperscript{136}
  \item approve a variation of the approved terms and conditions of a precommitment system for a state or territory\textsuperscript{137} and
  \item revoke an approval of a precommitment system.\textsuperscript{138}
\end{itemize}

The Senate Standing Committee for the Scrutiny of Bills commented on the delegation of legislative power in \textit{paragraph 51(1)(c)} and \textit{subclause 51(4)} which relate to the Regulator’s power to approve a precommitment system for a State or Territory and to vary the approved terms and conditions for such a system. In both instances the Regulator must be, among other things, satisfied that the terms and conditions are reasonable ‘taking into account the matters prescribed by the regulations’.

As the Explanatory Memorandum does not indicate why these considerations cannot be specified in the primary legislation, the Senate Standing Committee for the Scrutiny of Bills has sought the Minister’s advice as to the rationale of the approach ‘so that it is able to form a view on its appropriateness’.\textsuperscript{139}

\textbf{Clause 55} gives rise to a civil penalty of a maximum of 200 penalty units where a licensed provider of a precommitment system that is a constitutional corporation provides a precommitment system other than on the terms and conditions which have been approved by the Regulator.\textsuperscript{140}

\begin{itemize}
  \item \textsuperscript{133} There must be a direct relationship between the payment of the fee and the service which is provided.
  \item \textsuperscript{134} \textit{Clause 46} of the Bill.
  \item \textsuperscript{135} \textit{Subclause 51(1)} of the Bill.
  \item \textsuperscript{136} \textit{Subclause 51(2)} of the Bill.
  \item \textsuperscript{137} \textit{Subclause 51(4)} of the Bill.
  \item \textsuperscript{138} \textit{Clause 54} of the Bill.
  \item \textsuperscript{139} Senate Standing Committee for the Scrutiny of Bills, op. cit., pp. 17–18.
  \item \textsuperscript{140} Under section 4AA of the \textit{Crimes Act 1914}, a penalty unit is equivalent to $110. This means that the maximum penalty would currently be equivalent to $22 000. However, the Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012, which was introduced into the House of Representatives on 10 October 2012, proposes to amend section 4AA of the \textit{Crimes Act 1914} so that a penalty unit is equivalent to $170. This would mean that the penalty under clause 55 would be equivalent to $34 000. The relevant Bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fbillhome%2Fr4907%22
\end{itemize}

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Chapter 3—civil penalty provisions

Gaming machines

Clause 58 is a civil penalty provision which arises where a ‘person’ makes a non-compliant gaming machine available for use and any of the following apply:

- the person is a constitutional corporation
- the person acts as an agent of the constitutional corporation which owns the gaming machine
- the person makes the gaming machine available for use for the purposes of, or in the course of, conducting the business or activities of the constitutional corporation which owns the gaming machine or
- the person makes the gaming machine available for the purposes of, or in the course of, conducting the business or activities of the constitutional corporation on whose premises the gaming machine is located.

The maximum amount of the civil penalty is 10 penalty units for each day that the gaming machine is made available.¹⁴²

Exceptions

Importantly the civil penalty provision will not apply where the gaming machine is made available for use in Australia (or is capable of being made available for use under a law of a state or territory) and there is no approved precommitment system for the state or territory that could operate in respect of that gaming machine and is available to be purchased.¹⁴³ Clause 11 of the Bill makes clear that the Bill is intended to operate concurrently with a law of a state or territory. That being the case, the Bill requires a precommitment system established by state or territory to be comprised of the minimum requirements outlined in the Bill and allows for such a precommitment system to contain more than those minimum requirements. What the Bill does not do is to require a state or territory to establish a precommitment system in the first instance.

Two other exceptions apply. Where the person does not know, and could not reasonably be expected to know, that the precommitment system for a gaming machine, or the gaming machine itself, does not comply with the requirements of Parts 2 and 3 of Chapter 2 of the Bill respectively

¹⁴¹ Clause 20 of the Bill provides that a gaming machine is not compliant if there is no precommitment system for the machine, the precommitment system does not comply with Part 2 of Chapter 2 of the Bill, or if the precommitment system is not an approved system. Clause 37 provides that a gaming machine is not compliant if the gaming machine does not provide electronic warnings in the terms required by clause 38 of the Bill.

¹⁴² See fn., 128. Under section 4AA of the Crimes Act 1914, a penalty unit is equivalent to $110. This means that the penalty is equivalent to $1100. The text of the Crimes Act 1914 can be viewed at: http://www.comlaw.gov.au/Details/C2012C00767/Download

¹⁴³ Subclause 58(2) of the Bill. Note that subclause 58(4) of the Bill provides that this exception does not apply where the precommitment system is temporarily unable to operate due to factors such as a power outage.
the penalty for making a non-compliant machine available for use will not apply.\textsuperscript{144} Nor will it apply where the non-compliance of the precommitment system for a gaming machine, or the gaming machine itself, is the result of an operational or technical issue which is not the fault of the person who makes the gaming machine available for use and it is not within the control of the person to remedy the failure.\textsuperscript{145}

Importantly, in each of those circumstances, if the person seeks to rely on the above-mentioned exceptions (that is, where there is no approved precommitment system for the state or territory that could operate in respect of that gaming machine and is available to be purchased; where the person did not, and could not reasonably be expected to know that the precommitment system or the machine itself does not comply with requirements; or where the noncompliance resulted from an operational or technical issue that was outside the control of the person), then he or she bears the evidential burden of establishing, on the balance of probabilities, that the relevant situation existed. According to the Explanatory Memorandum, ‘the reversal of the onus of proof is considered to be consistent with Part 4.3.2 of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers’.\textsuperscript{146}

**Automatic teller machines**

Under clause 62 a person is liable for a civil penalty if the person occupies premises which are ‘gaming machine premises’\textsuperscript{147} and allows another person to provide an ATM which would allow a person to withdraw more than the cash limit. The civil penalty is a maximum of five penalty units in relation to each day on which the ATM would allow such a withdrawal.\textsuperscript{148}

Similarly, clause 63 provides that a person is liable for a civil penalty if the person provides an ATM which would allow a person to withdraw more than the cash limit on gaming machine premises. The civil penalty is a maximum of 10 penalty units in relation to each day on which the ATM would allow such a withdrawal.\textsuperscript{149}

\textsuperscript{144} Subclause 58(5) of the Bill.
\textsuperscript{145} Subclause 58(6) of the Bill.
\textsuperscript{146} Explanatory Memorandum, p. 29. The text of the guide to framing commonwealth offences, infringement notices and enforcement powers, September 2011 edn., can be viewed at: http://www.ag.gov.au/Publications/Documents/AGuidetoFramingCthOffencesInfringementNoticesandEnforcementPowersCLLEB.pdf
\textsuperscript{147} ‘Gaming machines premises’ are defined in clause 5 of the Bill as premises on which one or more gaming machines are made available for use and, in relation to that part of the Act relating to ATM withdrawal limit, any other place determined by the Regulator to be, or be part of, gaming machine premises.
\textsuperscript{148} The penalty is equivalent to $550.
\textsuperscript{149} The penalty is equivalent to $1100.

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Exceptions

The contraventions in clauses 62 and 63 will arise whether or not a person actually withdraws more than the cash limit—that is, the mere existence of a non-compliant ATM will give rise to the contravention. However the contraventions do not apply to a casino which is licensed or approved in the state or territory where the premises are located. Nor do they apply to a person who occupies premises, or who provides an ATM on premises, if exemptions have been granted under other provisions of the Act, and any conditions of the exemption are being complied with.

Chapter 4—privacy

Chapter 4 of the Bill sets out those circumstances in which a person is authorised to disclose ‘protected information’ and creates offences for unauthorised disclosure or use of such information. Information obtained by a person is ‘authorised disclosure information’ if the information is protected information, and the information is obtained by the person by way of an authorised disclosure.

Unauthorised disclosure or use

Clause 67 gives rise to three offences for the unauthorised disclosure or use of protected information. The first of the three offences relates to ‘entrusted persons’—that is the Regulator, staff and former staff of the Regulator who have access to protected information in that capacity. An entrusted person commits an offence if the person has obtained protected information and the person discloses the information to another person, or uses the information—and the disclosure or use is not an authorised disclosure or use.

150. Clause 64 of the Bill.
151. The Productivity Commission considered that because casinos provide a broader range of services that attract a wider range of patrons, a withdrawal limit would have greater costs, so casinos should be exempt from the ATM withdrawal limit requirement. PC, op. cit., p. 13.31.
152. Subclause 65(2) of the Bill.
153. That is, clause 42, which provides for the regulations to prescribe premises that are exempt and clause 43, which allows a person who occupies gaming machine premises to apply to the Regulator for the premises to be exempt from the ATM withdrawal limit.
154. Subclause 65(1) of the Bill.
155. Subclause 67(5) of the Bill defines ‘protected information’ as information that is obtained by a person in the course of performing their duties or functions, or by way of authorised disclosure and is information that is obtained by a person from a precommitment system, or by way of authorised disclosure where the information relates to a person other than the person who obtained it.
156. Subclause 67(7) of the Bill.
157. An ‘authorised disclosure or use’ of information is one which is authorised under Division 1 of Part 2 of Chapter 4 of the Act.
158. Subclause 67(1) of the Bill.

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The second offence arises from the disclosure or use of information obtained from precommitment systems where the disclosure, or use, is not an authorised disclosure or use.\textsuperscript{159} The third offence arises where a person has obtained protected information by way of an authorised disclosure and subsequently makes a disclosure, which is not authorised, to another person.

The maximum penalty for each of the three offences is 120 penalty units or imprisonment for two years, or both.\textsuperscript{160}

\textbf{Authorised disclosure}

\textbf{Clause 69} provides for the disclosure, or use, of protected information by the Regulator (or his, or her, delegate) or by the person who obtains the information if the information is obtained from a precommitment system or is authorised disclosure information. The persons listed in clause 69 may disclose or use protected information in the following circumstances:

- subject to some conditions\textsuperscript{161}, where the person believes on reasonable grounds that the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue and the information is disclosed to a prescribed body\textsuperscript{162} whose functions include that enforcement or protection\textsuperscript{163}
- where the person to whom the information relates has consented\textsuperscript{164}
- to prevent or lessen a serious and imminent threat to the life or health of a person\textsuperscript{165} and
- where the information is already publicly available.\textsuperscript{166}

\textbf{Clauses 74–76} further authorise the Regulator to disclose protected information to the Minister, to Commonwealth, state and territory agencies and for research.

\textbf{Chapter 5—requirements for manufacturing and importing gaming machines}

\textbf{Clauses 79} and \textbf{80} give rise to civil penalties for the manufacture and importing of non-compliant gaming machines respectively. The maximum amount of the penalty is ten penalty units.\textsuperscript{167}

\textsuperscript{159} \textit{Subclause 67(2) of the Bill.}
\textsuperscript{160} The penalty is equivalent to $13 200.
\textsuperscript{161} Under \textit{subclauses 70(2) and (3)}, where the Regulator has imposed conditions to be complied with in relation to the disclosure of information and a person breaches those conditions, the person commits an offence. The maximum penalty for the offence is 120 penalty units or imprisonment for two years or both.
\textsuperscript{162} \textit{Paragraph 70(1)(b) of the Bill.}
\textsuperscript{163} \textit{Clause 70} of the Bill.
\textsuperscript{164} \textit{Clause 71} of the Bill.
\textsuperscript{165} \textit{Clause 72} of the Bill.
\textsuperscript{166} \textit{Clause 73} of the Bill.
\textsuperscript{167} The penalty is equivalent to $1100.
The Senate Standing Committee for the Scrutiny of Bills commented on the delegation of legislative power in clauses 79 and 80 in the following terms:

It is noted that the penalty limits set in clause 201 are consistent with the Guide to Framing Commonwealth Offences. Further the Explanatory Memorandum justifies the necessity for offence content to be delegated to regulations ‘due to the changing nature of the subject matter and technology governed by gambling reform measures’ in the Bill and, also, on the basis that it is possible that ‘the information that may be required to provide other offence content in relation to this subject matter will involve a level of detail and material of such a technical nature that it is not appropriate to deal with it in this Bill’. These sorts of reasons are consistent with accepted bases for providing for offences in regulations and the Committee makes no further comment.\(^\text{168}\)

### Chapter 6—liability for, and collection and recovery of, levies

#### Supervisory levy

The National Gambling Reform (Related matters) Act (No. 1) 2012 will impose a supervisory levy. An amount of supervisory levy is payable under clause 83 for a gaming machine for a ‘levy period’ by a person (the licensee) who holds, during the levy period, an approval or licence under a law of a state or territory to operate the gaming machine. The ‘levy period’ is a period of three months beginning on 1 January, 1 April, 1 July or 1 October of a year.\(^\text{169}\)

If there is no licensee in relation to a gaming machine, the supervisory levy is payable in respect of each gaming machine by the person who makes the gaming machine available for use.\(^\text{170}\) If more than one person is liable to pay an amount of supervisory levy, then all of those persons are jointly liable to pay the amount of supervisory levy.\(^\text{171}\)

#### Gaming machine regulation levy

The National Gambling Reform (Related matters) Act (No. 2) 2012 will impose a gaming machine regulation levy. The gaming machine regulation levy is payable for a gaming machine for a ‘levy period’ if a person makes the gaming machine available for use during the levy period. The ‘levy period’ is a calendar month.\(^\text{172}\)

However, the gaming machine regulation levy will not be payable for a levy period if at that time:

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\(^{168}\) Senate Standing Committee for the Scrutiny of Bills, op. cit., p. 18.  
\(^{169}\) Clause 5 of the Bill.  
\(^{170}\) Subclause 84(2) of the Bill.  
\(^{171}\) Subclause 84(3) of the Bill.  
\(^{172}\) Clause 5 of the Bill.

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• the person making the gaming machine available for use:
  – is a constitutional corporation
  – acts as an agent of the constitutional corporation which owns the gaming machine
  – does so for the purposes of, or in the course of, conducting the business or activities of the constitutional corporation which owns the gaming machine or
  – does so for the purposes of, or in the course of, conducting the business or activities of the constitutional corporation on whose premises the gaming machine is located.

• the gaming machine, and any precommitment system for the gaming machine, comply with all of the requirements in the Bill in relation to precommitment systems and dynamic warnings

• a gaming machine is made available for use in Australia (or is capable of being made available for use in Australia) in accordance with the law of the state or territory in which the gaming machine is located but there is not an approved precommitment system for a state or territory that could operate in relation to that gaming machine and that is available to be purchased

• the person who makes the gaming machine available for use does not know, and could not reasonably be expected to know, that the precommitment system or gaming machine does not comply with the requirements for a precommitment system or dynamic warnings under the Bill and

• any failure to meet the requirements of the Act in relation to the precommitment system or dynamic warnings is a result of an operational or technical issue which is not the fault of the person who makes the gaming machine available for use—and remedying the failure is not within the control of any person who makes the gaming machine available for use.

In essence then, it is only payable by those who are not captured under the other terms of the Bill.

According to clause 86 of the Bill, the gaming machine regulation levy is payable by any person who is entitled to any of the ‘gaming machine revenue’ from the gaming machine for the levy period calculated by deducting the total amount of ‘outgoings’ from the total amount of bets made in relation to the gaming machine during the levy period. It is possible for the gaming machine regulation levy to be a negative amount.

If more than one person is entitled to any of the gaming machine revenue, all such persons are jointly liable to pay the amount of gaming machine regulation levy.

173. ‘Outgoings’ are defined in clause 5 of the Bill. Essentially outgoings are amounts of money or credit provided as winnings during the levy period in relation to the use of the gaming machine and, if the gaming machine is lawfully linked to one or more other gaming machines for the purposes of contributing money or credit from the gaming machine to a prize—an amount of money or credit that is deducted from the gaming machine during the levy period in order to contribute to the prize.

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Collection of levies

The levy payable by a person is due and payable 21 days after the end of the levy period.\textsuperscript{174} A late payment penalty applies to any amount unpaid at the start of the month following the day on which the levy was due for payment. The rate of the penalty is 20 per cent divided by 12 in respect of every month or part of a month for which the levy is outstanding.\textsuperscript{175} (However, the Regulator may by written notice specify a later day as the day on which the penalty is due and payable.)

The levy and any late payment penalty are payable to the Regulator on behalf of the Commonwealth.\textsuperscript{176} These amounts are recoverable by the Regulator as a debt due to the Commonwealth.\textsuperscript{177} In the event that an amount of levy, or late payment penalty, are overpaid by a person, the Regulator may credit the amount against a liability of the person under the Bill, or in the event that it is not credited to such a liability—refund the amount to the person.\textsuperscript{178}

In addition, clause 95 imposes a requirement on a person who is liable to pay a levy in a levy period, to lodge a return with the Regulator before the end of 21 days after the end of the levy period in the approved form. A failure to lodge a return as required gives rise to an offence of strict liability, the penalty for which is 50 penalty units.\textsuperscript{179}

Clauses 87-93 provide for the assessment of levies.

Chapter 7—monitoring and investigation

Clauses 104–106 establish the Regulator as the Secretary of the Department and set out his or her functions and powers. One of those powers is to appoint one or more APS employees and/or employees of an agency of a state or territory as ‘authorised persons’\textsuperscript{180} for periods not exceeding four years.\textsuperscript{181} An authorised person has inspection, monitoring and investigation powers under the Bill. Clause 123 provides that an authorised person may be assisted by others in exercising the powers under Chapter 7.

The provisions in Chapter 7 allow for authorised persons to enter premises with the consent of the occupier, or under warrant. Clause 144 provides that the authorised person must inform the occupier that they can refuse consent. (However, it should be noted that a person cannot refuse consent if the entry is under a warrant.) Consent may be limited to a particular period. In addition,

\begin{itemize}
  \item \textsuperscript{174} Clause 96 of the Bill.
  \item \textsuperscript{175} Clause 97 of the Bill.
  \item \textsuperscript{176} Clause 98 of the Bill.
  \item \textsuperscript{177} Clause 98 of the Bill.
  \item \textsuperscript{178} Clause 100 of the Bill.
  \item \textsuperscript{179} Clause 112 of the Bill.
  \item \textsuperscript{180} The imposition of strict liability means that a fault element does not need to be satisfied, but the offence will not criminalise honest errors and a person cannot be held liable if he, or she, had an honest and reasonable belief that they were complying with relevant obligations.
  \item \textsuperscript{181} Clause 112 of the Bill.
\end{itemize}

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the authorised person must leave the premises if the consent is withdrawn or ceases to have effect—unless the entry is under a warrant.

Inspection powers

The inspection powers may be exercised only for the purpose of determining whether a provision of the Bill has been, or is being, complied with; determining whether information given in compliance with a provision of the Act is correct; or investigating a possible contravention of a related provision. The inspection powers are:

- to enter a public area of gaming machine premises when the premises are open to the public to observe the operation of, and practices relating to the operation of, 'regulated devices';
- to inspect or collect written information that is made available to the public in relation to regulated devices and
- to discuss regulated devices with any person.

Monitoring powers

An authorised person may enter any premises and exercise the monitoring powers for the purpose of determining whether a provision of the Bill has been, or is being, complied with and/or determining whether information given in compliance or purported compliance with a provision of this Bill is correct. The monitoring powers are set out in clause 118 as follows:

- to search the premises and any thing on the premises
- to examine or observe any activity conducted on the premises
- to inspect, examine, take measurements of or conduct tests on any thing on the premises
- to make any still or moving image or any recording of the premises or any thing on the premises
- to inspect any document on the premises and to take extracts from, or make copies of, such a document and
- to take onto the premises the equipment and materials which are required for the purpose of exercising powers in relation to the premises.

Two other sections contain monitoring powers. Clause 119 provides the power for an authorised person to operate electronic equipment on the premises. Clause 122 empowers an authorised person to secure a thing for a period of 24 hours if the authorised person:

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181. Subclause 112(4) of the Bill.
182. Subclause 116(2) of the Bill.
183. ‘Regulated devices’ are defined in subclause 116(6) as a gaming machine, a precommitment system or an automatic teller machine.
184. Subclause 116(1) of the Bill.
185. Under subclause 117(2) an authorised person may not enter the premises unless the occupier has consented to the entry or the entry is made under a monitoring warrant.

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• believes on reasonable grounds the thing affords evidence of a contravention of a provision of the Act and
• believes on reasonable grounds that it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize it is obtained and the circumstances necessitating securing the thing are serious and urgent.

Under subclause 122(3) of the Bill, the authorised person may apply for an extension of the 24 hour period in circumstances where the authorised person believes on reasonable grounds that the thing needs to be secured for longer than that period. The 24 hour period may, under subclause 122(6), be extended more than once.

Clause 124 allows an authorised person to apply to an ‘issuing officer’ for a monitoring warrant. The required content of the warrant is prescribed in subclause 124(4) of the Bill. The issuing officer must be satisfied that it is reasonably necessary that an authorised person or persons have access to the premises for the purpose of determining whether a provision of the Act has been or is being complied with or that information given in compliance with the Act is correct.

Investigation powers

An authorised person may enter premises and exercise investigation powers where he or she has reasonable grounds for suspecting that there may be ‘evidential material’ on the premises, and the occupier of the premises has consented to the entry or the entry is made under an investigation warrant. The investigation powers are similar to the monitoring powers, that is, there is a power to enter the premises, search it for the material specified in the warrant, and to seize evidential material. There is a power to inspect, examine, take measurements of or conduct tests on evidential material, make any still or moving image or any recording of the premises or evidential material and to take onto the premises any equipment and materials for the purpose of exercising the investigation powers.

Seizure provisions

Clauses 132–137 deal with the seizure of property so that:

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186. Clause 5 defines an ‘issuing officer’ as a magistrate, a Federal Magistrate or a Judge of the Federal Court of Australia.
187. Clause 5 defines ‘evidential material’ as any of the following: (a) a thing with respect to which an offence against, or a civil penalty provision under, this Act has been contravened or is suspected, on reasonable grounds, to have been contravened; (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence or civil penalty provision; (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence or civil penalty provision.
188. Under subclause 125(2) an authorised person may not enter the premises unless the occupier has consented to the entry or the entry is made under an investigation warrant.
189. Clause 126 of the Bill. Note that these powers are also available under a monitoring warrant in accordance with paragraphs 118(c), (d) and (g).

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• a copy of things seized or information copied under an investigation warrant must be copied and given to the occupier of the relevant premises\(^{190}\)
• receipts are to be provided by the authorised person in respect of things that have been seized\(^ {191}\)
• things that have been seized are to be returned by the Regulator—which there are specified exceptions\(^ {192}\) and
• the Regulator may apply to the issuing officer for an order permitting the retention of seized things in the event that proceedings in which the thing may provide evidence have not commenced within 60 days of the seizure or some other period specified by the issuing officer in an order.\(^ {193}\)

Where the Regulator has taken reasonable steps to return a thing that has been seized, but has not been able to locate the person, or the person has refused to take possession of it, the Regulator may dispose of the thing.\(^ {194}\) In that case, clause 137 of the Bill provides for the Commonwealth to make payment of a reasonable amount of compensation, consistent with the requirements of section 51(xxxi) of the Constitution.\(^ {195}\)

**Investigation warrants**

An authorised person may apply to an issuing officer for an investigation warrant in relation to premises. The issuing officer may issue the warrant if he or she is satisfied, based on information provided on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.\(^ {196}\) Subclause 138(4) of the Bill prescribes the information which must be contained in such a warrant.

Clauses 139–141 set out the process to be followed and the protections which are extended in circumstances where an authorised person applies to an issuing officer for an investigation warrant by telephone, fax or other electronic means.

**Other powers of authorised persons**

In addition to the inspection, monitoring and investigation powers outlined above, authorised persons are empowered to ask the occupier of premises to answer questions and produce documents in relation to whether a provision of the Bill that has been, or is being complied with, or

190. Clause 132 of the Bill.
191. Clause 133 of the Bill.
192. Clause 134 of the Bill.
193. Clause 135 of the Bill.
194. Clause 136 of the Bill.
195. Section 51(xxxi) of the Constitution provides that the Parliament has power to make laws for the peace, order, and good government of the Commonwealth with respect to the acquisition of property on just terms from any state or person for any purpose in respect of which the Parliament has power to make laws.
196. Subclauses 138(1) and (2) of the Bill.

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to determine whether information given in purported compliance with a provision of the Bill is correct.\textsuperscript{197} Where the entry has been under a warrant, a person who fails to comply with that requirement commits an offence. The maximum penalty for the offence is 30 penalty units.\textsuperscript{198}

Authorised persons who have entered premises to exercise monitoring powers or investigation powers may also open a gaming machine; inspect, examine, take measurements of or conduct a test on any component of a gaming machine; and remove, alter or break a mark or seal to open a gaming machine or a component of a gaming machine, subject to certain prerequisites.\textsuperscript{199} 

\textbf{Clause 156} of the Bill provides for the payment of compensation for damage to a gaming machine, or component of a gaming machine, which has been opened, where the damage occurs because insufficient care was exercised by the authorised person in opening the machine or the component.

\section*{Chapter 8—enforcement}

Chapter 8 contains a suite of enforcement provisions which are commonplace for a Regulator under an Act of the Commonwealth.

\textbf{Clause 161} empowers the Regulator to apply to a ‘\textit{relevant court}’\textsuperscript{200} for an order requiring a person who is alleged to have contravened a civil penalty provision, to pay the Commonwealth a pecuniary penalty.\textsuperscript{201} Where the court is satisfied that the person did contravene a civil penalty provision, the court may make a ‘\textit{civil penalty order}’ that the person pay to the Commonwealth a pecuniary penalty.\textsuperscript{202}

The maximum amount of the pecuniary penalty is:

- if the person is a body corporate—five times the pecuniary penalty specified for the civil penalty provision\textsuperscript{203} and
- otherwise—the pecuniary penalty specified for the civil penalty provision.\textsuperscript{204}

The effect of \textbf{clauses 173} and \textbf{174} is that in proceedings for civil penalty orders, it is not necessary to prove the person’s knowledge, intention, recklessness or negligence – it is enough that the event took place. However, the ‘mistake of fact defence’ is open to those who mistakenly but reasonably

\begin{itemize}
\item \textsuperscript{197} \textit{Clause 148} of the Bill.
\item \textsuperscript{198} The penalty is equivalent to $3300.
\item \textsuperscript{199} \textit{Clause 149} of the Bill.
\item \textsuperscript{200} \textit{Clause 5} of the Bill defines a ‘\textit{relevant court}’ as being the Federal Court of Australia, the Federal Magistrates Court or a court of a state or territory that has jurisdiction in relation to matters arising under this Act.
\item \textsuperscript{201} \textit{Clause 172} of the Bill provides for ancillary contravention of a civil penalty provision where a person, for example, aids or abets the contravention of a civil penalty provision, or in any way directly, or indirectly, is knowingly concerned in, or party to, a contravention of a civil penalty provision.
\item \textsuperscript{202} \textit{Subclause 161(3)} of the Bill.
\item \textsuperscript{203} \textit{Clause 175} of the Bill provides that conduct of an employee, agent or officer of a body corporate acting within the scope of his, or her, employment or authority, is also attributed to the body corporate.
\item \textsuperscript{204} \textit{Subclause 161(5)} of the Bill.
\end{itemize}

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believe certain facts to exist which, if true, would have shielded them from liability. A contravention of a civil penalty provision is proved on the ‘balance of probabilities’ and does not result in a criminal conviction.

**Infringement notices**

The Regulator may issue an infringement notice to a person where the Regulator has reasonable grounds to believe that the person has contravened a civil penalty provision. Clause 177 sets out the requirements for the matters to be included in the notice, in particular, the amount that is payable under the notice and information that if the person pays the amount specified in the notice within 28 days, proceedings for a civil penalty order will not be brought. Clause 180 confirms that the effect of paying the amount specified in an infringement notice is that any liability of the person for the alleged contravention is discharged.

Under subclause 177(2) of the Bill, the amount payable in respect of an infringement notice is:

<table>
<thead>
<tr>
<th>Contravention</th>
<th>Penalty—body corporate</th>
<th>Penalty—otherwise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaming machines that do not comply with precommitment and dynamic warning requirements (Part 2 of Chapter 3)</td>
<td>ten penalty units</td>
<td>two penalty units</td>
</tr>
<tr>
<td>Providing non-compliant automatic teller machine (section 63)</td>
<td>ten penalty units</td>
<td>two penalty units</td>
</tr>
<tr>
<td>Manufacturing non-compliant gaming machine (section 79)</td>
<td>ten penalty units</td>
<td>two penalty units</td>
</tr>
<tr>
<td>Importing gaming machine which is not capable of precommitment (section 80)</td>
<td>ten penalty units</td>
<td>two penalty units</td>
</tr>
<tr>
<td>Occupying premises containing non-compliant automatic teller machine (section 62)</td>
<td>five penalty units</td>
<td>one penalty unit</td>
</tr>
</tbody>
</table>

205. Clause 176 of the Bill.

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Additional enforcement powers

Under clause 182 the Regulator may make an application for an injunction to restrain a person from engaging in conduct or to require a person to take certain action. In addition, the Regulator may accept undertakings that a person will take action or refrain from action.\(^{206}\)

Where an authorised person reasonably believes that a person has contravened a provision of the Act, he or she may issue a compliance notice setting out the nature of the contravention and that a failure to comply with the notice could lead to a civil penalty provision.\(^{207}\)

Chapter 9—research, review and other provisions

Chapter 9 of the Bill contains provisions relating to a trial of mandatory precommitment and its key features and methodology\(^{208}\); the inquiry process to be followed by the Productivity Commission when assessing the trial\(^{209}\); a review of progress on compliance with the provisions of this Bill (to be referred by the Minister no later than September 2014)\(^{210}\); the additional functions for the Director of the Australian Institute of Family Studies in undertaking gambling research under the name of the Australian Gambling Research Centre\(^{211}\); and the establishment of an Expert Advisory Group to provide advice.\(^{212}\)

Importantly, paragraph 193(2)(f) requires the appointment of an independent auditor to ensure integrity of any financial data collected during any trial, while paragraph 193(2)(g) requires the details of the trial to be made publicly available, subject to certain conditions.

Subclause 193(3) directs the Minister who is administering the Productivity Commission Act 1998\(^{213}\) (the Productivity Minister) to refer the results of the trial to the Productivity Commission for inquiry and subclause 193(4) specifies that the Productivity Commission must consider whether the mandatory precommitment system delivers sufficient advantages over a voluntary precommitment system.

Subclause 194(1) requires the Productivity Minister to refer the progress venues are making towards implementing precommitment systems, ATM withdrawal limits and dynamic warning systems to the Productivity Commission for inquiry. Subclause 194(2) requires this referral to occur no later than 30 September 2014.

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206. Clause 187 of the Bill.
207. Clause 189 of the Bill. Subclause 187(7) of the Bill provides that the Regulator cannot accept an undertaking in relation to a contravention if the person has been given a compliance notice.
208. Subclause 193(2) of the Bill.
209. Subclauses 193 (3) and (4) of the Bill.
210. Also to be undertaken by the Productivity Commission. Clause 194 of the Bill.
211. Clause 196 of the Bill.
212. Clause 197 of the Bill.

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Clause 196 specifies the additional functions to be given to the Director of the Australian Institute of Family Studies, which will include undertaking or commissioning research into problem gambling and gambling issues and building research capacity. Subclause 196(3) specifies that when undertaking these additional functions, the name of the organisation be referred to as the Australian Gambling Research Centre.

Subclauses 197(1) and (2) establish the Expert Advisory Group on Gambling and its role in providing advice to the Director of the Australian Institute of Family Studies. Subclause 197(3) specifies the membership of the Group must be between seven and 11 members in addition to the Director, while subclauses 197(4) and (5) specify that members must be appointed by the Director provided they satisfy the Director as to their relevant expertise. Subclause 197(8) specifies that appointment to membership does not constitute the holding of a public office. Subclause 197(9) gives the Director authority to direct the group to carry out its functions.

Concluding comments

The National Gambling Reform Bill 2012, and its associated Bills, is not the first instance where the Commonwealth has sought to impose its authority over what are traditionally state responsibilities, nor is it likely to be the last. However, the legislation comes after a number of reports have called for major reforms to the regulation of electronic gaming machines in the face of evidence over the harms these can cause problem gamblers, their families and their communities.

The Bills would require that from December 2016 most venues with EGMs would have to offer machines equipped with a state-wide approved precommitment system. The system would allow a person to freely register and choose to set spending and time limits within that jurisdiction, and lock them out from further play as a registered user, once their limit was reached. A range of other reforms are also proposed, including limits on ATM withdrawals and dynamic warnings.

While not establishing a mandatory precommitment system—an approach preferred by many reform advocates—nevertheless, evidence from trials suggests that a voluntary precommitment regime will provide some benefits, including providing greater control over spending.

The proposed trial and evaluation of a mandatory system that this Bill provides for should assist in building the evidence base for a full scheme, but its future is still not assured. Some implementation issues around the voluntary scheme also remain contentious, particularly those around the proposed timeframe, the proposed levies, and regulatory issues.

A number of other issues also look likely to provoke ongoing interest and discussion. These include jurisdictional issues and constitutional powers; the proposed trial of precommitment, including its

213. The text of the Productivity Commission Act 1998 can be viewed at:

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timing and funding; border issues; internet gambling impacts; and the capacity and role of the proposed Australian Gambling Research Centre.

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