National Gambling Reform (Related Matters) Bill (No. 1) 2012

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Law and Bills Digest Section

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National Gambling Reform (Related Matters) Bill (No. 1) 2012

Date introduced: 1 November 2012
House: House of Representatives
Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: Sections 1–2 on Royal Assent; Sections 3–7 on the latest of the following days: the same time as the National Gambling Reform Act 2012 commences; the day that section 2 of the National Gambling Reform (Related Matters) Act (No. 2) 2012 commences; or on Royal Assent.¹

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 purpose of the National Gambling Reform (Related Matters) Bill (No. 1) 2012 (the Bill) is to impose a supervisory levy in relation to gaming machines.

Background

This Bill is part of a suite of legislation directed towards reducing the harm caused by gaming machines to problem gamblers and to the families and communities of problem gamblers. The other relevant Bills are:

• National Gambling Reform Bill 2012 (the Principal Bill)² and
• National Gambling Reform (Related Matters) Bill (No. 2) 2012.³

The Principal Bill establishes a Regulator to monitor compliance, undertake investigations, collect levies and charge fees. This Bill creates a levy to recover the cost of the Regulator’s activities.

¹ However, sections 3–7 of the Bill do not commence if the National Gambling Reform Act 2012 and the National Gambling Reform (Related Matters) Act (No. 2) 2012 do not commence.
² The relevant Bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4793%22
³ The relevant 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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Basis of policy commitment

Information about the rationale for the suite of Bills is contained in the Bills Digest for the Principal Bill.4

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 suite of Bills. The Committee made no comment on this Bill.5

Joint Select Committee on Gambling Reform

The Joint Select Committee on Gambling Reform (Committee on Gambling Reform) initiated an inquiry into the suite of Bills on 1 November 2012.6 The Committee held public hearings on 13 November 2012 and published its report on 23 November 2012.7

The Committee on Gambling Reform noted that:

... the method of calculating the supervisory levy will be determined by regulations and the government has undertaken to consult with industry to inform the development of the regulations that will determine the levy. Additionally, the government has indicated that the supervisory levy will only be used to cover the costs of administering the legislation. The committee emphasises that the levy will be determined in consultation with industry and until the regulations are made, the levy is not payable.8

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8. Ibid., p. 32.

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Senate 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.\(^9\)

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.

Position of major interest groups

Of considerable concern to Clubs Australia is that the Government has not prepared a Cost Recovery Impact Statement for the legislation concerning the supervisory levy.

The Commonwealth has stated its intention to recover costs for monitoring, investigation and enforcement. It is unclear whether costs will be differentiated between those of the Commonwealth Regulator and any state or territory regulator that acts under delegation, and how the issue of duplication of duties will affect the calculation of costs.\(^10\)

That being the case, Clubs Australia is of the view that the ‘supervisory levy should be explicitly capped’.\(^11\)

According to the Australian Hotels Association the supervisory levy is a tax. It considers that ‘basic detail regarding the rate of the tax, the commencement date and whether there will be a cap on the tax needs to be revealed before voting on the legislation’.\(^12\)

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11. Ibid.

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Financial implications

According to the Explanatory Memorandum:

The Commonwealth is likely to begin incurring regulatory costs in relation to these Bills from 2012-13. However, the regulatory role is likely to increase towards 2016. There will also be a start-up cost for the Regulator. The combination of an industry fee for service and a supervisory levy will be used to recover the costs of the Regulator.\textsuperscript{13}

The levy is established by the provisions in the Principal Bill and this Bill. However, full details of the levy will be prescribed in yet to be released regulations, so the amount it will raise cannot be known.

Nature of the levy

Under the Principal Bill an amount of supervisory levy is payable for a gaming machine for a ‘levy period’ by a person (the \textit{licensee}) who holds, during the levy period, an approval or licence under a law of a state or territory to operate the gaming machine.\textsuperscript{14} The ‘levy period’ is a period of three months beginning on 1 January, 1 April, 1 July or 1 October of a year.\textsuperscript{15}

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.\textsuperscript{16} 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.\textsuperscript{17}

Main issues and key provisions

According to the Minister for Families, Housing, Community Services and Indigenous Affairs, ‘the formal imposition of the levy in this Bill arises from section 55 of the Constitution\textsuperscript{18}, which requires that laws imposing taxation deal only with the imposition of taxation.\textsuperscript{19}
Clause 5 of the Bill imposes the supervisory levy in accordance with clause 83 of the National Gambling Reform Bill 2012, as set out above.

Clause 6 of the Bill provides that the amount of the supervisory levy for a gaming machine is calculated according to regulations. The note to clause 6 provides that the regulations may prescribe different methods in relation to different classes of persons.