Amendments to be moved on behalf of the Government

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
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OUTLINE

These amendments are designed to address issues raised in submissions to the Joint Select Committee on Gambling Reform and the recommendations of the Joint Select Committee on Gambling Reform in its report dated 23 November 2012.

The amendments make changes to the timing of the start of the ATM withdrawal provisions, and provide further detail about the operation of the supervisory levy, including setting a cap on the total amount payable by licensees of gaming machine premises and allowing the levy to start at different times for different types of gaming machine premises.

The amendments also provide for transaction statements to be provided to registered users in an electronic format. They also address concerns that the Regulator should only make approvals of precommitment systems for a particular State or Territory where it can be satisfied that the law of that State or Territory requiring the precommitment system to be approved has also been complied with.

Amendments are also proposed addressing industry concerns that the supervisory levy payable by gaming machine premises should reflect the true cost to the Commonwealth of the administration of the new Act.

An amendment is also proposed confirming that the supervisory levy is not to be used to recover the costs of the Australian Gambling Research Centre.

In addition, amendments are proposed to require further matters to be referred to the Productivity Commission for inquiry. These amendments address recommendations made by the Joint Select Committee on Gambling Reform in its report.

Some minor editorial amendments are also proposed.

Financial impact statement

These amendments have nil or negligible financial impact.
NATIONAL GAMBLING REFORM BILL 2012

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NOTES ON AMENDMENTS

Amendment 1 makes an amendment to the application (start date) of the ATM withdrawal limit provisions of the Bill. The amendments remove the date 1 May 2013 and insert the date 1 February 2014. This amendment provides approximately one year within which to implement the ATM withdrawal limit requirements.

Amendment 2 makes an editorial change to clause 16 by inserting the number 1 at the start of the clause to make the clause into a subclause. This takes account of amendment 4 below, which inserts a new subclause 16(2).

Amendment 3 removes the words, ‘the day this Act commences’, and replaces them with the words, ‘the day or days prescribed by the regulations for the purposes of this subsection’. The effect of this amendment is to clarify that the supervisory levy cannot start to be collected until after a date, or dates, that will be set out in regulations that are to be made under section 6 of the National Gambling Reform (Related Matters) Act (No. 1) 2012.

Amendment 4 adds a new subclause 16(2). The new subclause provides that the regulations, made under the National Gambling Reform (Related Matters) Act (No. 1) 2012 may prescribe different start days for the supervisory levy for different types of gaming machine premises.

Amendment 5 inserts a new subclause 34(3A) after the existing subclause 34(3). The new subclause provides that a transaction statement required to be given by subclause 34(1) may be given to a person in an electronic format if the person who asked for the transaction statement requests for it to be provided in that way.

Amendment 6 adds a new paragraph at the end of subclause 51(1). The new paragraph adds a new matter about which the Regulator must be satisfied when approving precommitment systems for a State or Territory.

This new clause applies where:

- a law of a State or Territory requires that a precommitment system is approved under a State or Territory law; and

- a precommitment system has been approved under that law; and

- that system meets the requirements of the Commonwealth’s legislation.
In a practical sense, this is when a State government has already approved a particular precommitment provider to run a State system that is compliant with our legislation.

In these circumstances, the Commonwealth regulator can only approve the precommitment system that the state has already approved.

This ensures that the Regulator does not approve a precommitment system for a State or Territory that is not capable of operating in that State or Territory because of the application of State or Territory law.

**Amendment 7** makes an editorial change to remove the word ‘may’ from clause 54 and replaces it with the word ‘must’. This ensures that, where a precommitment system does not meet the standards required, the approval for that system is revoked. The editorial change removes any doubt around whether the provision is intended to be discretionary, and ensures that amendment 8 below operates as intended.

**Amendment 8** adds a new paragraph at the end of subclause 54(1). The new paragraph provides that the Regulator may revoke the approval of a precommitment system if a law of a State or Territory requires that a precommitment system is approved under State or Territory law and the precommitment system is not approved under the relevant State or Territory law. This ensures that the Regulator does not maintain the approval of a precommitment system for a State or Territory that is not capable of operating in that State or Territory because of the application of State or Territory law.

**Amendment 9** inserts a note at the end of clause 82. The new note confirms for the reader that the amount of supervisory levy that is payable in a calendar year cannot be more than the amount in the Minister’s determination, which in turn cannot be higher than the cap on the levy. The cap and the arrangements for Ministerial determination are set out in new clause 84A, which is inserted by amendment 12 below.

**Amendment 10** makes editorial changes to allow for the insertion of this new subclause.

**Amendment 11** adds a new subclause 83(2). This subclause allows for the regulations to provide different arrangements for classes of gaming machine premises in relation to their liability to pay the supervisory levy.

**Amendment 12** inserts new clauses 84A, 84B and 84C into the Bill.

New clause 84A sets out the arrangements for a cap on the total amount of supervisory levy that is payable to the Commonwealth in a calendar year.

New subclause 84A(1) provides that the total amount of the supervisory levy that is payable for a calendar year cannot exceed the amount that is set by Ministerial determination for that calendar year.
New subclause 84A(2) authorises the Minister to determine, through a legislative instrument, the total amount of supervisory levy that is payable in a particular calendar year (the *levy year*). The Minister will make this determination annually.

When making a determination under new subclause 84A(2), the Minister must consult with the persons liable to pay the supervisory levy under clause 84 as provided for in new subclause 84A(3). This consultation can be directly with gaming machine premises affected, or through representative bodies.

In addition, new subclause 84A(4) sets the parameters for the Minister’s annual determination. The total amount of supervisory levy in the Minister’s determination cannot be higher than the lower of:

(a) either:

   (i) $10 million (the cap); or

   (ii) if a lower amount has been prescribed in the regulations for the purposes of new clause 84B discussed below (the revised cap) – that amount;

(b) the total costs to the Commonwealth of administering the new Act in the last financial year before the levy year, as published by the Regulator (set out in new paragraph 111(4)(ca), inserted by amendment 13 below).

New subclause 84A(5) provides that the regulations may specify an index for the purposes of this section and a way of working out an increase to the amounts referred to in new paragraph 84A(4)(a). The method for working out any increase that is to apply must be by reference to the movement of that index over the year ending 31 December.

New subclause 84A(6) provides that, if there is an increase in the index referred to in subclause 84A(5) for a particular year, the amount referred to in subclause 84A(4)(a) above is increased in a way set out in the regulations.

New subclause 84A(7) provides that the regulations can describe how any amount collected that is over and above the amount determined by the Minister is to be returned to those liable to pay the levy. As the levy will be based on the actual costs to the Commonwealth in the previous financial year, excess levy could only be collected in the case of an error. This subclause allows any such amounts to be returned to industry.

New subclause 84A(8) provides that, in the unlikely event that there is a failure in the collection of the levy which leads to more than the amount determined by the Minister being collected, the regulations would not be invalid. However, any excess collected would be returned to industry.
New subclause 84B(1) provides that, within 12 months of the Act commencing, the Regulator must estimate, in writing, the total costs to the Commonwealth of administering the new Act in a full year of operation. This review of the cap after 12 months will allow for negotiations with the States and Territories about their willingness to take on regulatory functions under the new Act.

New subclause 84B(2) provides that the regulations may set out an amount less than $10 million, which will then become the maximum amount (the revised cap) of supervisory levy that is payable in a calendar year if the costs published by the Regulator are less than $10 million.

The note at the end of new subclause 84B(2) confirms that the total amount of supervisory levy that is payable in any given calendar year cannot be more than the amount set out in the regulations (the revised cap) for the purposes of subclause 84B(2).

New subclause 84B(3) confirms that the regulations for the revised cap cannot exceed the costs estimated by the Regulator as the cost to the Commonwealth in a full year of operation, as set out in new subclause 84B(1).

New clause 84C confirms that the Minister will undertake a review of the maximum amount of supervisory levy payable under paragraph 84A(4)(a) within five years of the Act commencing. As part of that review, the Minister must consult with the persons liable to pay the supervisory levy either directly or through representative bodies.

Amendment 13 inserts a new paragraph (ca) into clause 111 to provide that the Regulator must include the total cost to the Commonwealth, during the year, in relation to the administration of the Act in the Regulator’s annual report.

Amendment 14 adds a note to the end of clause 111. The new note signposts new clause 84A, and reminds the reader that the total amount of supervisory levy payable in a calendar year cannot exceed the total costs to the Commonwealth of administering the Act for the previous financial year.

Amendment 15 makes an editorial change to clause 192, which sets out the guide to the chapter. These editorial changes reflect the amendments that are made to clause 194 by amendment 17 below, which describe additional matters that must be referred to the Productivity Commission.

Amendment 16 makes an editorial change to the heading to clause 194 as a result of amendment 17 below. The new heading reflects the fact that the matters referred to the Productivity Commission are wider than an assessment of the progress of the reforms.

Amendment 17 removes paragraph 194(1)(b) and substitutes new paragraphs (b), (c), (d), (e) and (f).
These new paragraphs provide that the Productivity Minister must refer the following additional matters to the Productivity Commission for inquiry:

- whether the prohibition on the use of biometric processes in subclause 29(3) should be retained;

- the use of loyalty schemes of gaming machine premises as part of providing precommitment systems;

- whether limits should be placed on cash withdrawals at gaming machine premises from electronic funds transfer at the point of sale; and

- whether there are grounds for smaller gaming machine premises in regional and remote areas to be exempt from precommitment system and dynamic warning requirements.

New paragraph 194(1)(f) provides that any other matter that the Minister who administers the Act considers is relevant can also be referred to the Productivity Commission for inquiry.

**Amendment 18** makes an editorial change to the note at the end of clause 194 by making it Note 1. This takes account of amendment 19 below, which inserts a new Note 2.

**Amendment 19** adds a new Note 2 after the original note to clause 194. The new note is a signpost to subclause 196(3) which provides for the Australian Gambling Research Centre.

**Amendment 20** removes subclause 196(2) and substitutes a new subclause 196(2). The new subclause 196(2) provides that the supervisory levy may not be used to recover the costs associated with the Director performing the functions set out in subclause 196(1).
NOTES ON AMENDMENTS

Amendment 1 makes an editorial change to clause 6 to account for the changes proposed by amendment 2 below. Amendment 1 identifies the existing note to clause 6 as Note 1, given that a further note will be added to the end of clause 6 by amendment 2.

Amendment 2 inserts new Note 2 at the end of clause 6.

New Note 2 confirms, as set out in clause 84A of the new National Gambling Reform Act 2012, that the maximum amount of supervisory levy that is payable to the Commonwealth in any given calendar year must not be more than the amount determined by the Minister.