

GAMING MACHINE AMENDMENT BILL 2001

EXPLANATORY NOTES

Short Title

Gaming Machine Amendment Bill 2001

Objectives of the Legislation

The *Gaming Machine Amendment Bill 2001* gives force to the objective of the *Gaming Machine Act 1991* which aims to ensure that, on balance, the State and community as a whole benefit from machine gaming. The changes proposed in the Bill include:

- Creation of the Major Facilities Fund accounts to finance major public sporting and cultural developments of statewide significance and associated infrastructure.
- Imposition of a Major Facilities Levy on the profits of machine gaming in category 1 licensed premises.
- Removing the scope to accept applications for gaming machines in category 1 licensed premises.
- Decreasing the number of approved gaming machines at a premises where the premises has not been operating the approved number of machines for a determined period.

Reasons for the Legislation

Gaming machines were originally introduced in Queensland to assist the ailing club industry. Consequently, it is of concern that the most significant recent growth in gaming machine numbers and profit in Queensland has occurred in hotels. At the same time the community has expressed the view that there are sufficient gaming machines in the community and no further expansion is needed.

The Government responded to community concerns in December 2000 by introducing a new objective to all gaming legislation regarding the need for the community to benefit from gambling. This Bill reinforces the Government's commitment to maximising community benefit from machine gaming and to promoting responsible gambling. This is evidenced by the Bill creating an environment which caps any future growth in machine gaming in category 1 licensed premises and through the creation of a major facilities levy based on the large profits from machine gaming in category 1 licensed premises.

Estimated Cost for Government Implementation

There are no significant costs arising from the legislation, albeit some cost will be incurred in systems changes needed to implement the major facilities levy.

Assessment of Bill's Consistency with Fundamental Legislative Principles

This legislation has been prepared taking into consideration fundamental legislative principles. A deviation from these principles occurs in relation to the retrospective nature of clauses 3, 4, 6 and 8 which give effect to the announcement made on 8 May 2001 that there would be a cap on gaming machine numbers in hotels. If the Government introduced legislation to place a cap on gaming machines without retrospectivity it was probable that there would have been a large number of applications made between the introduction of the legislation and its commencement. Evidence of this can be seen in the artificially stimulated increase in applications at the time of the 1999 Gaming Review, where elements of the gaming machine industry believed that a cap would be set as a result of the Review. Notwithstanding the Government's intention to institute a cap without producing protective applications, the Bill allows a limited extension of time for certain liquor licence applicants to also apply for a gaming machine licence. In addition, all applications on hand at 8 May 2001 and those subsequently received by 5 pm on 29 June 2001 from applicants for general liquor licences will continue to be dealt with by the Queensland Gaming Commission ("the Commission") until 31 December 2001.

There is no right of appeal against the lapsing of applications not determined by the Commission by 31 December 2001. The Bill nevertheless provides that those applicants who are able to demonstrate to the Commission that there are exceptional circumstances surrounding their

application may continue to be able to have their application dealt with by the Commission. In addition, the existing right of appeal against the Commission refusing to grant a gaming machine licence within the period to 31 December 2001 remains unaffected.

Clauses 11 to 16 do not have retrospective commencement, but do contain a retrospective element because all taxes and levies are collected monthly in arrears on the tenth day of the month in which they become payable.

New section 400 under clause 17 protects the State and departmental officers from action arising from not dealing with applications which are retrospectively invalid. The section confers immunity on the State and departmental officers who have been effecting the Government's policy of capping gaming machine numbers in category 1 licensed premises.

Consultation

Government consultation has taken place, with the Departments of the Premier and Cabinet, Tourism, Racing and Fair Trading, State Development, Department of Employment and Training and the Department of Primary Industries. In addition, the Queensland Hotels Association were consulted in relation to the rates to be imposed for the major facilities levy.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short Title

Clause 1 sets out the short title of the Act.

Commencement

Clause 2 provides that the commencement of sections 3, 4, 6 and 8 are taken to have commenced at midday on 8 May 2001.

PART 2—AMENDMENT OF GAMING MACHINE ACT 1991

Clause 3 notes that Part 2 amends the *Gaming Machine Act 1991*.

Clause 4 amends section 2 to insert definitions of category 1 and category 2 licensees and a definition for “liquor licence transfer application”.

Clause 5 removes a previous reference that no longer has application.

Clause 6 amends section 56 to clarify that those entities specified in (1)(a) to (c) are the only entities eligible to make an application for a gaming machine licence. This clause also provides for some consequential amendments to subsections (2), (5) and (6). The clause gives retrospective effect to the Government’s policy of capping gaming machine numbers in category 1 licensed premises. The clause removes the ability for holders of or applicants for general liquor licences from applying for gaming machine licences. It also prevents applications from holders of on-premises and special facility premises licences and subsidiary operators (other than non-proprietary clubs). As premises relating to such applications are category 1 licensed premises it is necessary to also remove the ability for holders of such licences to apply for a gaming machine licence in order to give effect to the Government’s policy.

Clause 7 amends section 78 to use the language relating to a transfer in a consistent manner.

Clause 8 amends section 81 to retrospectively clarify that from midday on 8 May 2001, only category 2 (club licensees) may make an application to increase gaming machine numbers. This operates with clause 6 to implement the cap on gaming machine numbers in category 1 licensed premises.

Clause 9 amends section 86 to expand the circumstances in which an inspector may recommend a reduction in the approved number of gaming machines at licensed premises. Inspectors will now be able to make such recommendations where, for at least three (3) months within a six (6) month period, a licensee has not continuously operated one (1) or more of the licensee’s approved number of gaming machines, except where the machines are stored with the chief executive’s approval or are under examination by a licensed repairer. This amendment reflects the Queensland Gaming Commission’s current requirement that a licensed premises which is granted an increase to their approved number of gaming

machines must install the additional machines within six (6) months of the Commission's decision. "Entitlements" to machines at category 1 licensed premises which are reduced via this mechanism may be able to be re-allocated at a later date once the quantum of the category 1 cap has been established.

Clause 10 inserts two (2) new divisional headings.

Clause 11 inserts new divisional headings and inserts a new section 316A which sets out the purpose for which the Major Facilities Levy accounts may be used. A new section 316B is inserted which provides that category 1 licensees must pay the major facilities levy to the chief executive monthly in arrears on the day and at the percentage prescribed in the regulation. It also clarifies that the levy is additional to gaming machine tax. There will be a series of rates prescribed in the regulation increasing in quantum as licensees' monthly taxable metered win increases. The clause additionally inserts section 316C which provides for the way in which the levies are to be accounted and recorded.

Clause 12 amends section 317 so that the section deals with levies as well as taxes and penalties and ensures consistent terminology is used to describe gaming machine tax.

Clause 13 makes a minor technical amendment to section 322 to include the new levy and ensure consistent terminology regarding gaming machine tax.

Clause 14 amends section 323 to include the new levy.

Clause 15 makes a minor technical amendment to section 324 to include the new levy and recovery of amounts by the chief executive.

Clause 16 makes a minor technical amendment to section 325 to include the new levy and remove obsolete language.

Clause 17 inserts a new divisional heading and three new transitional sections. The new section 399 explains the requirements and limitations on the continued processing of applications made under section 56 or section 81 before midday on 8 May 2001 as well as applications made under the Liquor Act 1992 for a general liquor licence before midday on 8 May 2001 which had not been issued with such a liquor licence before midday on 8 May 2001 and which subsequently made an application for a gaming machine licence at or before 5 pm on 29 June 2001. The section clarifies that all three (3) types of applications will lapse on 31 December 2001 and thereby places an onus on all applicants to respond in a timely manner to all requests for further information made by the chief executive or

Commission, such as requests to provide a community impact statement in the form required by the Commission. An extension to the lapsing date may be granted if the applicant applies for a deferral of the lapsing by 30 November 2001 and the Queensland Gaming Commission is satisfied on material provided by the applicant that there are exceptional circumstances surrounding the application. The maximum period for which lapsing is able to be deferred is until 30 June 2002, after which the application will lapse if it has not been decided by the Commission. It is anticipated that failure to gain town planning approvals, or failure to be issued with a liquor licence will not generally qualify as exceptional circumstances. The Commission requires new licensees to install their approved numbers of machines within 12 months. Accordingly, extending the final lapsing date for exceptional circumstances to 30 June 2002, will ensure that the final numbers of gaming machines in category 1 premises will be established by June 2003. The new section 400 provides that any applications made after midday on 8 May 2001 that may no longer be made due to the retrospective application of clauses 6 and 8 are invalid and consequently no action can be taken against the State or departmental officers for failing to deal with such applications and any action underway must be dismissed. It also clarifies that such applications must not be dealt with. Finally, this clause inserts a new section 401 to clarify that the major facilities levy will be payable for July 2001 and each month thereafter.

PART 3—MINOR AMENDMENTS OF OTHER ACTS

Clause 18 provides for a schedule of minor amendments to the *Lotteries Act 1997* and the *Keno Act 1996*.