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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL GAMBLING REFORM BILL 2012

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 1) 2012

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 2) 2012

EXPLANATORY MEMORANDUM

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

NATIONAL GAMBLING REFORM BILL 2012

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 1) 2012

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 2) 2012

OUTLINE

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 deliver on the Government's commitments to reduce the harm caused by gaming machines to problem gamblers and to the families and communities of problem gamblers, as announced on 21 January 2012.

The object of the National Gambling Reform Bill 2012 is to reduce the harm caused by gaming machines to problem gamblers, and those at risk of experiencing that harm and to the families and communities of problem gamblers, and those at risk of experiencing that harm.

The Bills require that:

- new machines manufactured or imported from end of 2013 be capable of supporting precommitment;
- all gaming machines are part of a state-wide precommitment system, and display electronic warnings, by 2016, with longer implementation timelines for small venues; and
- a \$250 a day ATM withdrawal limit for gaming venues (other than casinos).

The Bills establish the requirements for precommitment systems in order for gaming machines to be compliant. The Bills also include provisions for the ATM withdrawal limits in gaming venues (excluding casinos) and for dynamic warnings requirements.

The Bills provide for the monitoring and investigation of compliance with the new requirements. The Regulator performs this function and these Bills also set out enforcement measures, including civil penalty orders, infringement notices, injunctions, enforceable undertakings and compliance notices.

The Bills provide that the Regulator may charge fees for services, and also establish two levies to support this package of measures. The supervisory levy will be determined by regulations. The purpose of the supervisory levy is to recover the costs to the Commonwealth of administering these Bills. The Government will be consulting industry on the development of the regulations.

The gaming machine regulation levy is payable only in certain instances (where a person is not a constitutional corporation) where the person has made available a gaming machine which is not compliant with the reforms.

The Bills provide for the Commonwealth to delegate the regulatory function to the States and Territories with approval of the relevant State or Territory Minister, and this remains the Government's preferred approach. The Bills also make clear that the requirements in Commonwealth legislation are the minimum requirements only, and do not interfere with stricter requirements in State or Territory legislation. The Government's intention is for these Bills to be capable of operating concurrently with a law of a State or Territory.

Finally, these Bills provide for the Productivity Commission to undertake two independent inquiries. One in relation to any trial of mandatory precommitment systems, and a second inquiry into the progress that is being made by gaming machine premises towards complying with the precommitment system and dynamic warning requirements and ATM withdrawal limits and the progress being made by manufacturers and importers in meeting the manufacturing and importing requirements. The Bills also establish an Australian Gambling Research Centre within the Australian Institute of Family Studies.

FINANCIAL IMPACT STATEMENT

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.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.

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NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 1) 2012

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 2) 2012

NOTES ON CLAUSES

Background

These Bills implement a package of harm minimisation measures in relation to gambling on gaming machines. These Bills are the first ever national legislation for gaming machines.

The measures are precommitment systems, dynamic warnings requirements, and limitations on withdrawals from automatic teller machines located in gaming premises (excluding casinos). The Bills also ensure that new gaming machines that are manufactured or imported are capable of providing for precommitment.

The Bills establish a Regulator, a penalty regime, a monitoring and enforcement regime and arrangements to support the privacy of gaming machine users.

The Bills also establish an Australian Gambling Research Centre, and establish requirements for two further Productivity Commission inquiries into gambling issues.

These changes to gaming venues are part of a substantial national gambling reform package announced by the Prime Minister on 21 January 2012.

The remaining measures announced on 21 January 2012 including the proposed trial of mandatory precommitment in the Australian Capital Territory, and the additional financial counsellors are non-legislative.

These reforms are based on the recommendations of the 2010 Productivity Commission inquiry into gambling in Australia. The Productivity Commission undertook an extensive independent inquiry into gambling in Australia over 18 months.

The Productivity Commission found that precommitment is a strong, practical and ultimately cost-effective tool for harm minimisation in relation to gambling. The Productivity Commission further recommended dynamic warnings on gaming machines and a \$250 daily withdrawal limit from gaming venues (excluding casinos). The Productivity Commission also recommended that an independent gambling research centre be established.

NATIONAL GAMBLING REFORM BILL 2012

Chapter 1 – Preliminary

Part 1 – Preliminary

Clause 1 – Short title

Clause 1 sets out how the new Act is to be cited, that is, as the *National Gambling Reform Act 2012*.

Clause 2 – Commencement

Clause 2 provides that the new Act will commence on Royal Assent. Part 2 of this Chapter provides for the application of the new Act setting out when the provisions contained in the Act will come into operation.

Clause 3 – Guide to this Act

Clause 3 provides a guide to the new Act.

Clause 4 – Object of this Act

Subclause 4(1) outlines that the object of the new Act is to reduce the harm caused by gaming machines to problem gamblers and those at risk of experiencing harm and to the families and communities of problem gamblers, and those at risk of experiencing harm.

Subclause 4(2) explains that the object of the new Act is to be achieved by:

- requiring precommitment systems that, if a person chooses to register, they can take greater control, by budgeting the amount of money they are prepared to lose in a State or Territory;
- the use of electronic warnings during play;
- the placing of limitations on the amount of money that can be withdrawn from automatic teller machines located in gaming premises (excluding casinos);
- protecting the privacy of users of gaming machines; and
- ensuring that new gaming machines that are manufactured or imported are capable of providing for precommitment.

Clause 5 – Definitions

Clause 5 defines certain terms that are used in this Bill. In this explanatory memorandum, certain defined terms will be addressed in the context in which they appear.

Clause 6 – Meaning of *gaming machine*

Subclause 6(1) provides a definition of ***gaming machine***. A gaming machine is a 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; and
- it may be operated wholly or partly by inserting a token, coin or banknote, electronically transferring credits or tokens, or using credits or tokens in the device; and
- because of making a bet on the device, winnings or other rewards may become payable.

The definition of gaming machine is intended to include devices currently known as poker machines, electronic gaming machines and slot machines. This Bill is not intended to cover things such as lotteries, Keno and skill testers.

Subclause 6(2) confirms that the definition of ***gaming machine*** includes part of a gaming machine, gaming equipment and any device 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; and
- designed so that, because of making a bet on the device, winnings or other rewards may become payable; and
- prescribed by regulations made under these Bills

Gaming equipment is any system, device, equipment, software or hardware that is used for or in connection with a gaming machine (**subclause 6(3)**). This definition is intended to include:

- linked jackpot equipment;
- an electronic monitoring system;
- a security device that is used, or capable of being used, for or in connection with a gaming machine;
- kiosks;

- card readers/bolt-on devices;
- a centralised credit system; and
- any other subsidiary equipment.

Subclause 6(4) provides that regulations made under clause 201 may prescribe a thing that is taken not to be a gaming machine for the purposes of this Act. This is to ensure that something that is developed in the future that is captured by the definition, but is not intended to fall within the purview of this Act, is not required to comply with the Act. For examples refer to subclause 6(1).

Clause 7 – References to premises

Subclause 7(1) provides that a reference to premises on which one or more gaming machines are made available for use is a reference to the premises to which an approval or licence under a State or Territory law that regulates gambling applies or is taken to apply.

Subclause 7(2) provides that the definition of premises set out in subclause 7(1) above does not apply in relation to the parts of this Act that relate to ATM withdrawal limits.

Clause 8 – Persons who engage in conduct alone or together with others

Clause 8 provides that a reference to a person who engages in conduct is a reference to the person who engages in conduct, whether alone or together with any other person or persons. The term **engages in conduct** is to be read broadly. All references to the term engages in conduct is to be read as including the situation where that person acts alone or in conjunction with another person.

Clause 9 – Meaning of *small gaming machine premises*

Subclause 9(1) provides that premises are ***small gaming machine premises*** if no more than 20 gaming machines are made available for use on the premises.

The definition of ‘small gaming machine premises’ is included as the precommitment and dynamic warning provisions of this legislation will commence at different times for different venues depending on how many gaming machines the venue makes available for use.

A note following subclause 9(2) directs the attention of the reader to clause 14 in relation to when Parts 2 and 3 of Chapter 2 begin to apply.

Clause 10 – Act binds the Crown

Subclause 10(1) provides that the new Act binds the Crown in each of its capacities.

The new Act does not make the Crown liable to be prosecuted for an offence, or subject to civil proceedings for a civil penalty order or given an infringement notice (**subclause 10(2)**).

Clause 11 – Concurrent operation with State and Territory laws

Subclause 11(1) provides that the new Act is not intended to exclude or limit the operation of a law of a State or Territory capable of operating concurrently with this Act.

In particular, the new Act is intended to set minimum requirements in relation to precommitment systems for gaming machines, warnings provided by gaming machines, and automatic teller machines that are on gaming machine premises other than casinos (**subclause 11(2)**). This is not intended to limit the ability of a State or Territory to impose stricter requirements in relation to gaming machines and automatic teller machines.

Subclause 11(3) confirms that, in addition, the new Act is not intended to affect the number or distribution of gaming machines in a State or Territory.

A note clarifies that the numbers and distribution of gaming machines in a State or Territory are regulated by the laws of the State or Territory.

Clause 12– Constitutional limitations

A power conferred by the new Act must not be exercised in such a way as to discriminate between States or parts of States within the meaning of subparagraph 51(ii) of the Constitution (paragraph 12(1)(a) or give preference to one State or any part of a State (**paragraph 12(1)(b)**), and must not be exercised in such a way that the exercise would infringe section 92 of the Constitution (**subclause 12(2)**).

A note confirms that section 92 of the Constitution requires trade among the States to be absolutely free.

Part 2 – Application of this Act

Clause 13 – Application of precommitment system and dynamic warning requirements

Clause 13 provides for the application (timing) of the precommitment system and dynamic warning requirements in Parts 2 and 3 of Chapter 2. Different application provisions apply, depending upon the number of gaming machines that are made available for use on gaming machine premises.

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Subclause 13(1) provides that the precommitment and dynamic warning provisions of the legislation will, apply on and after 31 December 2016, in gaming machine premises other than small gaming machine premises.

Small gaming machine premises is defined in clause 5 by reference to clause 9 which is outlined above.

The remaining subclauses deal with premises which are small gaming machine premises.

Subclause 13(2) provides that the precommitment and dynamic warning provisions of the legislation will apply on and after 31 December 2020 in relation to any gaming machine that is made available for use on small gaming machine premises if there are more than 10 gaming machines but no more than 20 gaming machines made available for use on those premises.

Subclause 13(3) provides that, if there are no more than 10 gaming machines that are made available for use on small gaming machine premises, then the precommitment system and dynamic warning requirements apply in relation to any gaming machine that is first made available for use on the premises at any time after 31 December 2020.

However, if the business replaces any of its machines with a newly manufactured or imported machine (from 31 December 2013) without changing the total number of machines offered for use at the premises, such that one or more of the machines is offered for use on or after 31 December 2020, then the precommitment system and dynamic warning requirements will apply in respect of such machines. Example 3 below illustrates how this provision works.

These provisions deliver on the Government's commitment that very small venues will be able to introduce these changes in line with their usual replacement cycle.

Subclause 13(4) deals with premises that gain or lose machines, such that the total number of machines available for use at the premises changes. It provides that, if at any time, subclause 13(2) or (3) applies to a particular gaming machine, but at a later time, the other subclause would apply, then subclause 13(2) applies to the gaming machine.

The example at the end of subclause 13(4) explains for the reader that, if a gaming machine premises has 11 gaming machines, and two machines are removed from the premises (for any reason), leaving the gaming machine premises with nine machines, the gaming machine premises will continue to be treated as if it had more than 10 gaming machines, for the purposes of the start of the precommitment and dynamic warning provisions of this legislation.

However, **subclause 13(5)** provides that subclause 13(4) does not prevent subclause (1) from applying in relation to a gaming machine if the premises on which the gaming machine is made available for use cease to be small gaming machine premises.

Example 1: Venue A has 25 gaming machines available for use on 31 December 2016. The precommitment system and dynamic warning requirements apply to the premises from 31 December 2016.

Example 2: Venue B has 15 gaming machines available for use on 31 December 2016. The precommitment system and dynamic warning requirements do not apply to Venue B at that date.

However, Venue B acquires six further gaming machines on or after 31 December 2016, bringing the total number of machines to 21. Venue B must then comply with the precommitment system and dynamic warning requirements from the time that their total number of machines exceeds 20. The precommitment system and dynamic warning requirements will continue to apply to Venue B even if the number of gaming machines made available at the premises later reduces to 20.

Example 3: Venue C has 10 gaming machines available for use on 31 December 2016.

Venue C replaces two machines with machines that are manufactured or imported from 31 December 2013. These machines must be precommitment capable because of the operation of Chapter 5 of the Bill. For these two machines only Venue C will be required to comply with the precommitment system and dynamic warning requirements from 31 December 2020.

From 31 December 2020, Venue C will need to comply with precommitment and dynamic warning requirements as they are replaced.

Clause 14 – Application of automatic teller machine requirements

Clause 14 provides that Part 4 of Chapter 2 (ATM withdrawal limit) and related parts of the new Act apply on and after 1 May 2013 in relation to any automatic teller machine that is on any gaming machine premises.

A note draws to the attention of the reader that Part 4 of Chapter 2 does not apply in relation to casinos, by reference to subclause 39(3).

Clause 15 – Application of manufacturing and importing requirements

Clause 15 provides that Chapter 5 (requirements for manufacturing and importing gaming machines), and any other related provision of the new Act, applies in relation to any gaming machine that is manufactured on or after 31 December 2013 and any gaming machine that is imported on or after 31 December 2013.

Clause 16 – Application of supervisory levy

Clause 16 sets out when the supervisory levy will apply to gaming machines. The supervisory levy and the *National Gambling Reform (Related Matters) (No 1) Act 2012* will apply the day after this Act receives Royal Assent.

The note at the end of clause 16 confirms for the reader that the supervisory levy is worked out in accordance with the method that will be prescribed in regulations made under the *National Gambling Reform (Related Matters) (No. 1) Act 2012*. An amount of supervisory levy is not payable until regulations are made under this section prescribing a method for working out the amount.

Clause 17 – Application of gaming machine regulation levy

Clause 17 sets out the application of Part 3 of Chapter 6 (gaming machine regulation levy), and related provisions of the new Act, and the new *National Gambling Reform (Related Matters) Act (No. 2) 2012*.

Subclause 17(2) provides that the gaming machine regulation levy provisions apply on and after 1 January 2017 in relation to any gaming machine that is made available for use, other than a gaming machine that is made available for use on small gaming machine premises. The gaming machine regulation levy is payable in relation to profits of gaming machines in certain instances where the person making the gaming machine available is not, or is not sufficiently connected to, a constitutional corporation.

Small gaming machine premises is defined in clause 5 by reference to clause 9.

Subclause 17(3) deals with premises with 11 to 20 gaming machines. It provides that the gaming machine regulation levy provisions apply on and after 1 January 2021 in relation to any gaming machine that is made available for use on such small gaming machine premises or for any gaming machine that was manufactured or imported on or after 31 December 2013.

Subclause 17(4) deals with premises with no more than 10 gaming machines. It provides that the gaming machine regulation levy provisions apply on and after 1 January 2021 in relation to any gaming machine that is made available for use on such gaming machine premises that was not made available for use at those premises prior to that date or for any gaming machine that was manufactured or imported on or after 31 December 2013.

Subclause 17(5) applies to any small gaming machine premises (that is, premises with no more than 20 machines) that gain or lose machines. It provides that, if the gaming machine regulation levy provision, subclause 17(4), applies in respect of a particular machine, then the gaming machine regulation levy provisions continue to apply to that machine despite the number of machines available for use at the premises falling below 11 at any later time.

Subclause 17(6) provides that subclause 17(5) does not prevent subclause 17(2) from applying in relation to a gaming machine that is made available for use on gaming machine premises if the premises cease to be small gaming machine premises. This means that, if a venue increases the number of its machines and is no longer considered a small gaming machine premises, the gaming machine regulation levy provisions apply in respect of all machines premises from that date.

Clause 18 – Performance of functions etc. after commencement

Clause 18 clarifies that certain functions, powers and actions can be exercised or undertaken after the Act commences and before the relevant provisions start to apply as a result of the application provisions in this Part. This is because certain actions will need to be taken before the provisions of the Act start to apply to ensure that the Act is fully effective when these provisions start to apply.

In particular this provision ensures that the following can be undertaken before the provisions of the Act starts to apply:

- (a) an application can be made under the Act;
- (b) a function or duty can be performed under the Act; or
- (c) a power can be exercised under the Act.

A non-exhaustive list of examples is provided at the end of the clause regarding the types of things that may occur after the Act commences but before the application of the various Parts as a result of the provisions in this Part.

The examples in the clause include:

- the making of regulations regarding exemptions from the ATM withdrawal limit provision, licencing people or organisations to provide precommitment systems and the manufacture and importation of gaming machines;
- the making and determining of applications for exemption from the ATM withdrawal limit requirements or for approval of precommitment systems; and

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- appointing authorised persons to assist the Regulator to undertake their functions and powers.

Other examples of the sorts of things that can be done after commencement but before the start of the provisions includes the making of regulations setting out the testing procedure for precommitment systems and the licensing of persons to undertake the testing of precommitment systems.

Chapter 2 – National gambling reforms

Summary

Chapter 2 explains the concept of a precommitment system and how the requirements in this Bill combine to establish a State or Territory-wide precommitment system. This Chapter also includes provisions in relation to new dynamic warning and automatic teller machine withdrawal limit requirements.

Background

This Chapter provides for three national gambling reform measures.

The 2010 Productivity Commission Inquiry Report into Gambling found that precommitment is a strong, practical and ultimately cost-effective tool for harm minimisation in relation to gambling. Under Part 2, gaming machines must have a precommitment system that complies with the requirements of Part 2. A precommitment system allows a user of a gaming machine to set a limit (called a loss limit) for a State or Territory on the amount that he or she is prepared to lose during a period (called a limit period) using gaming machines that are located in that State or Territory.

A person may choose whether to register for a State or Territory precommitment system. At the time the person chooses to register with a precommitment system for the State or Territory, the person must indicate whether he or she wishes to set a loss limit for the State or Territory. If a person elects to set a loss limit and uses a gaming machine as a registered user, then once the person's net losses during a limit period reach that loss limit, the person is prevented from using gaming machines located in the State or Territory as a registered user for the rest of the person's limit period.

Under Part 3, a gaming machine must provide certain warnings relating to a specific person's use of gaming machines, or the potential for harm from, and the cost of, using gaming machines generally. Research has shown that warning messages can be an effective way to change people's gambling behaviour, and that users of gaming machines have a higher recall of dynamic than static warnings.

Under Part 4, automatic teller machines that are on gaming machine premises (excluding casinos), clause 5 and clause 7 must not allow a person to withdraw more than the cash limit (which is \$250, as increased by indexation). The Productivity Commission recommended, based on the limited evidence available, that a daily limit of \$250 on withdrawals from automatic teller machines (excluding casinos) could help address gambling harms without overly affecting non-problem gamblers and other patrons. They also suggested that the daily withdrawal limit should be adjusted periodically to account for inflation. Casinos are excluded due to the nature of their diversified business environment and, in particular, their role in international tourism, including as a tourist gambling destination.

Exemptions from the operation of all or specified provisions of this Chapter are provided for under Part 5.

Part 1 – Guide to this Chapter

Clause 19 – Guide to this Chapter

Clause 19 sets out a brief Guide to this Chapter. The Guide explains that while all gaming machines are required to have complying precommitment systems, users may choose to register and use the precommitment system and set a limit.

Part 2 – Precommitment system

Division 1 – Registration through precommitment system for user who chooses to register

Clause 20 – When a gaming machine is not compliant

Clause 20 sets out when a gaming machine is ***not compliant***. A gaming machine will be not compliant if there is no precommitment system for the gaming machine, or the precommitment system does not comply with the requirements of this Part, or the precommitment system for the machine is not an approved precommitment system.

Note 1 at the end of the clause signposts for the reader that approvals of precommitment systems are dealt with under Division 2 of Part 5.

Note 2 signposts for the reader that a civil penalty provision applies where gaming machines are not compliant, as set out in Part 2 of Chapter 3.

Clause 21 – Precommitment system to provide for registration and cancellation

Clause 21 provides that a precommitment system for a State or Territory must allow a person to choose to register with the system in that State or Territory and must also allow the user to cancel their registration.

The precommitment system must also prevent a person from re-registering within that State or Territory within a particular time frame as set out in the regulations (made under clause 201) if they have previously cancelled their registration. A person must not be charged a fee for registering, or cancelling their registration, for the precommitment system.

A person who chooses to register with the precommitment system will have one registration that applies to them across the particular State or Territory. It is the intention that, if there is more than one precommitment system within a State or Territory those systems will link up and communicate to achieve this.

These provisions mean that it does not matter which gaming machine premises the person first chooses to register at, their registration and loss limit will apply at all gaming machine premises within the particular State or Territory.

Clause 22 – Registration process for user who chooses to register

Subclause 22(1) provides that a precommitment system must require a user who chooses to register to indicate whether they choose to set a loss limit, or not, for the State or Territory. If the person chooses to set a loss limit, the precommitment system must allow a person to do so.

The first note at the end of subclause 22(1) refers the reader to section 25, and confirms that a person may choose to set a loss limit of \$0. If a person sets a loss limit of \$0, then they are effectively excluding themselves from using gaming machines as a registered user.

The second note following subclause 22(1) directs the attention of the reader to additional rules in relation to registration in subclauses 28(2) to (4).

It is during the registration process that the user is required to consider the level of the loss limit and the duration of the limit period applying to their loss limit. This is a key harm minimisation component of the arrangements.

The precommitment system does not determine loss limits or limit periods for people who choose to register, but is a tool by which users can budget and set limits of their choice in the interests of consumer sovereignty and then have a mechanism that assists them to remain within that limit.

Subclause 22(2) provides that the precommitment system must also provide the person who chooses to register with a *limit period*. That is the length of time for which a registered user's loss limit applies.

The note at the end of subclause 22(2) points out that the limit period must comply with clause 25. At a minimum, the limit period of a State or Territory must be 24 hours. This is the default limit period however the precommitment system may allow the user to set the length of the limit period or specify a period greater than 24 hours.

Subclause 22(3) provides that, if a person chooses to set a loss limit, the precommitment system must inform a registered user about how the loss limit and limit period work, including when their limit period starts.

Subclause 22(4) provides that, if a person does not choose to set a loss limit the precommitment system must confirm that the person has chosen not to set a limit and that they can change their mind and set a loss limit at any time. This capability allows users to track their play and receive transaction statements even if they do not choose to set a limit. This is an additional harm minimisation option available to players.

Subclause 22(5) provides that the regulations (made under clauses 33 and 201) may prescribe requirements regarding the form, frequency, content and position of information that must be provided to a registered player in relation to their loss limit and limit period.

Clause 23 – Identification requirements during registration for user who chooses to register

Clause 23 sets out the identification requirements for a person who chooses to register through the precommitment system.

The precommitment system may use a photograph or signature to identify a person who is registering with the system. The precommitment system cannot use biometric processes to identify a person. Similarly, a precommitment system for a State or Territory must not use biometric processes to identify whether the person is registered for the State or Territory (**subclause 28(3)**). An example of a biometric process is an iris scan or fingerprinting.

The regulations (made under clause 201) may prescribe the method (other than biometric processes) for identifying a person who chooses to register through the precommitment system and can prohibit the use of certain methods of identification. A precommitment system must comply with any regulations made under this provision.

Clause 24 – Exclusion from system – setting a loss limit of \$0

Subclause 24(1) provides that, through the setting of a loss limit of \$0 for the State or Territory, the user may in effect exclude themselves from using gaming machines as a registered user.

The note at the end of subclause 24(1) confirms that, if a person sets a loss limit of \$0, this prevents the person from playing a gaming machine while a registered user.

This is intended to be an additional harm minimisation tool to complement existing arrangements currently operating in States and Territories which enable people to self-exclude from gaming venues.

Subclause 24(2) provides that the regulations (made under clause 201) may prescribe conditions for precommitment systems in relation to people who exclude themselves from the system.

Clause 25 – Requirements for limit periods for user who chooses to register

Clause 25 establishes the basic requirements for limit periods and confirms that a precommitment system must ensure that a registered user's limit period complies with the conditions set out in this clause.

If a precommitment system does not allow a person to nominate the length of his or her limit period, the limit period must be 24 hours (that is, this is a minimum). Precommitment systems may allow the user to set the length of the limit period. Where this is allowed, the user may set a limit, although it must still be at least 24 hours.

Limit periods may start at a time nominated by the person or at a time set by the precommitment system for the State or Territory with which the person is registering. For example a registered user may choose to start their limit period at 10pm every Monday, or a State may set a nominal time of 6am every day. The precommitment system may allow the person to change the time at which a later limit period starts. Subsequent limit periods (other than their first limit period or later limit period) whose start time has been changed must start immediately after the end of the previous limit period.

Clause 26 – Changing, revoking and setting loss limits and limit periods after initial registration

Clause 26 establishes that when a user chooses to take control of their playing decisions through registering with a precommitment system, setting loss limits and setting limit periods within a State or Territory, precommitment systems must have the functionality to give effect to the user's pre-set limits and help them monitor their play.

Subclause 26(1) provides that a precommitment system must allow a person who chooses to register to change their loss limit, if they have chosen to set one, and to set a loss limit if they had not chosen to do so at the time they registered. In addition, where a precommitment system allows a user to nominate the length of the limit period, the system must also allow the user to change the length of the limit period.

The first note at the end of subclause 26(1) confirms for the reader that, if a person revokes their decision to set a loss limit for a State or Territory, it means that they do not have a loss limit for that State or Territory.

The second note at the end of subclause 26(1) refers the reader to clause 27 that sets out when changes to a registered user's loss limits take effect.

Subclause 26(2) provides that, when a person revokes their loss limit, the precommitment system must inform the registered user of the matters set out in paragraphs 22(4)(a) and (b) in the same way as when the person registered for the system.

Subclause 26(3) provides that, when a person chooses to set a loss limit for a State or Territory the precommitment system must inform them of the matters set out in paragraphs 22(3)(a) to (c).

Clause 27 – When changes to loss limits or limit periods may take effect

Clause 27 sets out when changes to a person's loss limit or limit period will take effect.

Subclause 27(2) provides that, if a person wants to revoke their decision to set a loss limit, increase their loss limit, or decrease their limit period the precommitment system must ensure that the change does not take effect until the end of the current limit period.

Subclause 27(3) provides that, if a person wants to set a loss limit, decrease their loss limit, or increase their limit period, the precommitment system must enable the change to take effect as soon as practicable. It is intended that the precommitment system provide for these changes to take place immediately.

Subclause 27(4) confirms that a change set out in subclause 27(3) can take effect before the end of the limit period (subject to the requirement that a limit period be at least 24 hours).

Division 2 – Precommitment system requirements if a person chooses to use a gaming machine as a registered user

Clause 28 – Registration of registered user to comply with requirements

Subclause 28(1) provides that a precommitment system for a gaming machine located in a State or Territory must prevent a person registered for the State or Territory from using the gaming machine as a registered user if that person's registration does not comply with this clause.

The note at the end of subclause 28(1) confirms that a person is not required to register for the precommitment system.

Subclause 28(2) provides that the precommitment system must be an approved system for a person to be an appropriately registered user. The note at the end of subclause 28(2) refers the reader to Division 2 of Part 5 of in relation to approvals of systems by the Regulator.

Subclauses 28(3) and (4) respectively provide that a person must not be registered more than once within a particular State or Territory and that a person's registration through the precommitment system must comply with the matters set out in clauses 22 to 25 above.

Clause 29 – Identification of registered user

Clause 29 provides that the precommitment system must prevent a person who has chosen to be a registered user from using a gaming machine as a registered user unless they have identified themselves to the precommitment system. The regulations (made under clause 201) may prescribe or prohibit a manner of identifying a person as registered for a State or Territory.

A precommitment system cannot use biometric processes to identify a person as registered.

The regulations may set out other ways (other than biometric processes) in which a person can identify themselves for the purposes of the precommitment system. The regulations may also specify that particular methods of identification cannot be used to identify a person. If regulations have been made regarding these matters a precommitment system must comply with the regulations.

Clause 30 –Monitoring and transmitting expenditure and winnings for registered user

Clause 30 requires that the expenditure and winnings of a registered user are recorded and transmitted to the precommitment system to allow users to obtain an accurate record of their playing history and ensures that the loss limit is upheld. The clause provides that, if a person uses, as a registered user, a gaming machine, the precommitment system for the gaming machine must monitor each amount of money or credit that the person spends, and each amount of money or credit that the person wins during a session, and transmit the totals of this information at the end of a registered user's session of play in accordance with the regulations (made under clause 201).

For the purposes of this provision a person spends money or credit when they press a button or touch the screen to indicate their confirmation (that is, commit to game play by confirming their bet).

Clause 31 – Precommitment information for registered user

Clause 31 sets out that a precommitment system for a machine must provide a person using the gaming machine as a registered user with a range of information about their loss limit, limit period and play.

Subclause 31(2) sets out the information that must be provided to a person who chooses to play as a registered user before play commences, where that person has set a loss limit, as follows:

- (a) the loss limit;
- (b) the limit period;

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- (c) the amount that is remaining of the loss limit for the current limit period; and
- (d) any other information that is required by regulations (made under clause 201) to be given.

Subclause 31(3) provides that in addition to the information set out in subclause 31(2) above the precommitment system can also allow for the following information to be provided:

- (a) the length of time since the person last set or changed their loss limit; and
- (b) if the system allows the person to nominate a limit period – the length of time since the person last nominated or changed their limit period.

Subclause 31(4) sets out the information that must be provided to a person who chooses to play as a registered user before play commences, where that person has not set a loss limit, as follows:

- (a) the length of time since the person last decided not have a loss limit for the State or Territory; and
- (b) any other information that is required by regulations (made under clause 201) to be given.

The note at the end of subclause 31(4) refers the reader to clause 5 regarding when a person decides not to have a loss limit.

Subclause 31(5) provides that, if a registered user uses a gaming machine for a specified period of time (as prescribed by the regulations) the precommitment system must inform the person of their net losses for the current limit period. Further, if a person has chosen to set a loss limit, the amount remaining of the person's loss limit for the current limit period and any other information as prescribed in the regulations.

Subclause 31(6) provides that the Regulations can prescribe further matters in relation to the information that is to be provided to a person who has chosen to use a gaming machine as a registered user. These other matters can include, but are not limited to, the form, frequency, content and position of the information to be provided.

Clause 32– No use of gaming machine by registered user after loss limit reached

Subclause 32(1) provides that, if a person uses a gaming machine in a State or Territory as a registered user, the precommitment system must prevent the person from continuing to use the gaming machine (as a registered user), if the person has reached their loss limit (if they have chosen to set a loss limit).

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The note at the end of subclause 32(1) confirms for the reader that a person can recommence play as a registered user in a State or Territory when their current limit period in that State or Territory has ended.

Subclause 32(2) provides that the precommitment system in a State or Territory must prevent the person from using a gaming machine in that State or Territory as a registered user if, after a bet is made, the person's net losses during the limit period equal or exceed the person's loss limit (if they have chosen to set a loss limit) for that State or Territory.

Subclause 32(3) provides that a person's loss limit will be *reached* if a person uses a gaming machine in a State or Territory as a registered user and after the bet is made their net losses are equal to or exceed their loss limit for that State or Territory.

Subclause 32(4) provides that if a person has set a loss limit of \$0 for that State or Territory, the precommitment system must not allow the person to use a gaming machine in that State or Territory as a registered user. That is, if a person has set a loss limit of \$0 that person is not permitted to use a gaming machine as a registered user at all. A decision by a person to set a loss limit of \$0 means that that person has elected to preclude themselves from using a gaming machine as a registered user and is not able to place a bet on a gaming machine as a registered user.

Clause 33 – Capability requirement for precommitment systems

Subclause 33(1) provides that a precommitment system in a State or Territory must be capable of preventing a person from using a gaming machine if the person is not a registered player for that State or Territory.

Subclause 33(2) confirms that although a precommitment system for a State or Territory must be able to prevent a person who is not a registered user from using a gaming machine it is not actually required to prevent a person who is not registered from using a gaming machine. A precommitment system in a State or Territory will not be required to prevent a person who is not registered from using a gaming machine unless amendments are made to this Act requiring all users of gaming machines to be registered.

The Act does not currently require people to register for the precommitment system and accordingly precommitment systems do not need to prevent people who choose not to register from using a gaming machine. In the event that this Act is later amended to require people to register with the precommitment system subclause 33(1) will ensure that the precommitment systems already in place will ensure that people who have not registered will not be able to use gaming machines.

Division 3 – Other requirements for precommitment systems.

Clause 34 – Transaction statement for registered user

Clause 34 provides that a precommitment system must provide a transaction statement for a registered user on request. The transaction statement must be a written statement including the following information, in respect of the State or Territory:

- (a) the person's loss limit, if any;
- (b) the length of time since the person last set or changed their loss limit, or decided not to have a loss limit;
- (c) the amount of money or credit that the person has spent and won from gaming machines during the current limit period and the last 12 months (or for the entire period the person has been a registered user where the person has been registered less than 12 months); and
- (d) the number of times during the previous 12 months that the person was prevented from using, or continuing to use, a gaming machine as a registered user.

A transaction statement can be provided to a person in an electronic format, if they elect to receive it that way, as a result of the operation of the *Electronic Transactions Act 1997*.

It is intended that, for the purposes of this clause, the word **amount** also includes a nil amount. The regulations (made under clause 201) can prescribe other matters that are to be included in a transaction statement. There is to be no fee charged to a registered user for the provision of a transaction statement.

A registered user can access as many transaction statements as they choose in any given period. Each transaction statement will provide them with information in relation to their use of a gaming machine during the previous 12 months.

Clause 35 – Additional requirements for precommitment systems in regulations

Clause 35 provides that the regulations may prescribe additional requirements for precommitment systems, and that this power is not limited by any other clause in this Part.

A note inserted at the end of clause 35 provides that the regulations may not prescribe requirements that are inconsistent with the scheme that is established by this Part.

Clause 36 – No national database of protected information from precommitment systems

Clause 36 provides that a national database of protected information from precommitment systems must not be established.

Part 3 – Dynamic warnings

Clause 37 – When a gaming machine is not compliant

Clause 37 provides that a gaming machine is not compliant if the machine does not provide a warning in accordance with clause 38.

Clause 38 – Dynamic warnings

Clause 38 provides that gaming machines must provide dynamic warnings in accordance with this clause.

The warnings must relate to the use by a specific person of a gaming machine or gaming machines, or the potential for harm from, and the cost of, using gaming machines generally.

Regulations (made under clause 201) may prescribe requirements for warnings including in relation to the form, frequency, content and position of the warnings and in relation to warnings more generally under clause 38.

The note at the end of clause 38 confirms that the regulations cannot prescribe requirements that are inconsistent with this part of the legislation.

Part 4 – ATM withdrawal limit for gaming machine premises (other than casinos)

Clause 39 – ATM withdrawal limit for gaming machine premises (other than casinos)

Clause 39 provides that an automatic teller machine on gaming machine premises must not allow a person to withdraw more than \$250 cash in total using a single card in a period of 24 hours from that or any other automatic teller machine that is located on those premises. This clause does not apply to automatic teller machines that are located in premises that are licensed or approved as a casino and other exempt premises.

Note 1 at the end of subclause 39(1) refers the reader to penalties that can be imposed where automatic teller machines do not comply with this provision.

Note 2 at the end of subclause 39(1) confirms for the reader that this provision is not intended to override a State or Territory law that is more restrictive than this provision (such as not allowing automatic teller machines on gaming machine premises).

Clause 40 – Indexation

Clause 40 provides that the limit on the amount of cash that may be withdrawn under these provisions may be increased through the operation of regulations (made under clause 201). These regulations may prescribe a method of working out an increase in the amount of cash that can be withdrawn by reference to the movement of a specified index.

Clause 41 – Anti-avoidance – determination of gaming machine premises

Clause 41 provides that the Regulator can determine that a place is a 'gaming machine premises' if it would be concluded that a person has provided an automatic teller machine at the place for the sole or dominant purpose of avoiding the withdrawal limit provisions set out in Part 3 of Chapter 3 or Part 4 of this Chapter.

In determining that a person has provided an automatic teller machine in a gaming machine premises the Regulator can determine that a particular location is a gaming machine premises.

A note alerts the reader to the fact a decision to make such a determination is reviewable under clauses 198 and 199.

A determination by the Regulator under subclause 41(1) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. Subclause 41(3) is inserted to assist readers and is merely declaratory of the law.

Part 5 – Provisions related to national gambling reform

Division 1 – Exemptions from ATM withdrawal limits

Clause 42 – Exemptions from ATM withdrawal limit – regulations

Clause 42 provides that the regulations (made under clause 201) may prescribe premises which are exempt from the operation of the automatic teller machine withdrawal limits specified earlier in this Chapter. The regulations may also specify conditions that must be complied with to enable a gaming machine premises to benefit from a determination under this provision. The note at the end of subclause 42(1) refers the reader to clause 46 for the effect of an exemption on State or Territory law.

Clause 43 – Exemptions from ATM withdrawal limit – application to Regulator

Clause 43 provides that a person who occupies gaming machine premises may make an application to the Regulator for the premises to be exempt from the automatic teller machine withdrawal limits.

This provision sets out how an occupier of a gaming machine premises can apply for an exemption and the basis on which the Regulator can grant the exemption. It is intended that the Regulator would grant an exemption where the imposition of a limit would cause unreasonable inconvenience to the members of the local community in which the gaming premises is located.

In order to ensure members of those communities continue to have reasonable access to cash withdrawal facilities that enable them to conduct everyday transactions, there may be cases where an automatic teller machine in gaming machine premises needs to be exempt from daily withdrawal limits.

For example in rural or regional settings,, gaming machine venues may house the only available automatic teller machine for those communities or in an urban setting the automatic teller machine may be situated where it can most appropriately be accessed by relevant members of the community.

Such an exemption must be granted in writing, and a condition of the exemption may be varied or revoked, also in writing.

An exemption granted by the Regulator under this provision is not a legislative instrument. **Subclause 43(6)** is added to assist the reader and is merely declaratory of the law as the determination of the Regulator under subclause 43(3) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Clause 44 – Process for deciding exemptions

Clause 44 sets out the matters to which the Regulator must have regard when deciding whether to grant an exemption under clause 43. The Regulator must consider:

- (a) the object of this new Act;
- (b) any other facilities available to the community to access cash; and
- (c) any other matter that the Regulator considers appropriate.

In considering an application for an exemption, the Regulator may also consult with other groups as considered appropriate. These other groups may include the following:

- (a) State government;
- (b) local government;
- (c) community groups;
- (d) individuals within the community; and
- (e) any other person or body.

Clause 45 – Effect of exemptions on State or Territory law

Clause 45 provides that an exemption granted under the new Act is not intended to exclude or limit the operation of a State or Territory law that is capable of operating at the same time in relation to the gaming machine premises.

Division 2 – Approvals and licences for precommitment systems

Subdivision A – Approving precommitment systems

Clause 46 – Applications for approvals

Clause 46 provides that a licensed provider of precommitment systems (***the applicant***) may apply to the Regulator for approval of a precommitment system for a State or Territory, or variation to the approved terms and conditions for the precommitment system for a State or Territory.

Clause 47 – Form of applications

Clause 47 provides that an application under this subdivision must be in the approved form, and be accompanied by any other documents and fee prescribed in the regulations.

For an application to approve a precommitment system, the application must also include any terms and conditions on which the precommitment system would be provided to gaming machine premises. For example, terms and conditions may relate to costs and equitable service within a State or Territory, and the continuous availability and quality of the precommitment system made available. This is intended to ensure that precommitment systems are offered on reasonable terms and terms that are fundamentally consistent across Australia.

For an application to approve a variation to the approved terms and conditions the application must be accompanied by the proposed variation to those terms and conditions.

If a precommitment system provider does not make a precommitment system available on the terms and conditions approved by the Regulator (for example where the precommitment system is not continuously available or of poor quality):

- their approval to provide precommitment systems can be revoked by the Regulator under **clause 54** below, and
- they can be subject to a civil penalty, if the licensed precommitment system provider is a constitutional corporation (**clause 55**).

Clause 48 – Requiring further information

Clause 48 provides that the Regulator may, by notice given to the applicant, require the provision of any further information or documentation that the Regulator feels is required to enable the Regulator to make a decision on whether to grant approval to the applicant.

The Regulator is not required to make a decision in relation to the application until such time as the further requested information is provided by the applicant.

Clause 49 – Amendment and withdrawal of application

Clause 49 provides that an applicant may amend or withdraw their application for approval of a precommitment system at any time before the Regulator makes a decision. Withdrawal of the application does not prevent the applicant from submitting a new application at a later date. No fee can be charged to an applicant for amending their application. If an applicant withdraws their application for approval any application fee paid by the applicant is to be refunded to them.

Clause 50 – Testing precommitment systems

Clause 50 provides that the Regulator may require that a proposed precommitment system be tested in accordance with the regulations (made under clause 201) for determining whether the proposed system meets the requirements for a compliant precommitment system.

The regulations may provide for a licensing scheme for persons to test the precommitment system in accordance with the procedure set out in the regulations.

Clause 51 – Approving precommitment systems and variations to approved terms and conditions

Clause 51 sets out the circumstances in which the Regulator may give approval for a precommitment system.

Subclause 51(1) provides that the Regulator may approve, in writing, a precommitment system if the Regulator is satisfied that the system complies with the requirements of the new Act, that the applicant has paid the fee prescribed in the regulations and that the terms and conditions on which the precommitment system will be provided to people are reasonable, taking into account the matters prescribed in the regulations.

The note at the end of subclause 51(1) refers the reader to the review provisions in clause 198 and 199 available in the event that the Regulator refuses to approve a precommitment system.

Subclause 51(2) provides that the Regulator can refuse an application for approval of a precommitment system if the Regulator is satisfied that, although the system complies with the requirements in Part 2 of Chapter 2 of the new Act, there are features of the system that are incompatible with the objects of the new Act.

Subclause 51(3) provides that, if the Regulator approves a precommitment system for a State or Territory under subclause 51(1) the terms and conditions that accompanied the application for approval are taken to have been approved.

The note at the end of subclause 51(3) refers the reader to the civil penalty provisions in clause 55 that apply to a person who provides a precommitment system on terms and conditions that are different to the terms and conditions that were approved by the Regulator.

Subclause 51(4) provides that the Regulator may approve, in writing, a variation to existing terms and conditions for a particular precommitment system if the Regulator is satisfied that the new terms and conditions on which the precommitment system will be provided are reasonable, taking into account the matters prescribed in the regulations.

The note at the end of subclause 51(4) refers the reader to the review provisions in clauses 198 and 199 in the event that the Regulator refuses to approve a variation to the terms and conditions.

Clause 52 – Notification of approvals

Clause 52 sets out that the Regulator must give a copy of the approval to the applicant as soon as practicable after the approval is granted. The copy of the approval must state the terms and conditions that were approved for the precommitment system.

If the Regulator approves a variation to the terms and conditions for a precommitment system, the Regulator must amend the approval for the precommitment system accordingly.

The Regulator's approval is valid for ten years, unless it is revoked earlier. A copy of an approval for a precommitment system, or a variation of that approval, must be published in a manner deemed appropriate by the Regulator.

Clause 53 – Changes to precommitment requirements

Clause 53 confirms that, if there is a change to the requirements for a precommitment system after an approval has been granted, the changes apply to the precommitment system that has already been approved.

Clause 54 – Revocation of approvals

Clause 54 provides that the Regulator may revoke the approval of a precommitment system for a particular State or Territory if the Regulator is satisfied:

- (a) that the precommitment system does not comply with the requirements in Part 2 of Chapter 2; or
- (b) that, although the system complies with the requirements in Part 2 of Chapter 2 of the new Act, there are features of the system that are incompatible with the objects of the Act; or
- (c) the precommitment system is being provided subject to terms and conditions other than those that have been approved by the Regulator.

The Regulator must publish a notice revoking the approval of the precommitment system, and can publish the notice in any manner deemed appropriate.

The note at the end of subclause 54(1) refers the reader to the review mechanisms in clauses 198 and 199.

Clause 55 – Civil penalty for failing to provide precommitment system in accordance with approved terms and conditions

Clause 55 provides that a licensed provider of a precommitment system, that is a constitutional corporation, must not provide a precommitment system subject to terms and conditions other than the terms and conditions that have been approved by the Regulator. The maximum penalty that applies for breach of this provision is 200 penalty units.

Subdivision B – Licences for providing etc. precommitment systems

Clause 56 – Regulations may provide in relation to licensing persons who provide etc. precommitment systems

Clause 56 sets out that the regulations (made under clause 201) may provide for a licensing scheme for persons to provide precommitment systems for gaming machines.

The regulations can also set out a scheme for licensing persons who may operate, repair, maintain or install precommitment systems for gaming machines.

Chapter 3 – Civil penalty provisions for non-compliance with national gambling reforms

Summary

This Chapter contains civil penalty provisions in relation to gaming machines and automatic teller machines that do not comply with the requirements set out in Chapter 2.

Background

Under Part 2 of this Chapter, a person may contravene a civil penalty provision if the person makes a non-compliant gaming machine available for use and the gaming machine is made available for use by a constitutional corporation or owned, or on premises occupied by, a constitutional corporation. Part 2 also provides for circumstances under which there are exceptions.

Under Part 3 of this Chapter, a person may contravene a civil penalty provision for occupying gaming machine premises (other than casinos) on which there is a non-compliant automatic teller machine or for providing a non-compliant automatic teller machine on gaming machine premises (other than casinos).

Part 1 – Guide to this Chapter

Clause 57 – Guide to this Chapter

This clause sets out a brief guide to this Chapter.

Part 2 – Gaming machines that do not comply with precommitment systems and dynamic warning requirements

Clause 58 – Making non-compliant gaming machine available for use

Subclause 58(1) provides that a person contravenes a civil penalty provision, if the person makes a non-compliant gaming machine available for use, and at that time:

- the person is a constitutional corporation; or
- the gaming machine is owned by a constitutional corporation and an agent of the constitutional corporation makes the machine available for use; or
- the gaming machine is owned by a constitutional corporation and is made available for use in the constitutional corporations business or activities; or

- the gaming machine is located on premises occupied by a constitutional corporation and is made available for use in the constitutional corporation's business or activities.

The penalty that applies for breach of this provision is 10 penalty units for each day that the gaming machine is made available for use. A penalty unit is currently \$110. The note at the end of subclause 58(1) confirms for the reader that in accordance with clause 8 a person can make a gaming machine available for use alone or together with others.

Subclause 58(2) provides that subclause 58(1) will not apply if a person makes a gaming machine available for use in Australia, or a gaming machine is capable of being made available for use in Australia, but there is not an approved precommitment system that could operate in relation to that gaming machine and is available to be purchased.

Subclause 58(3) provides that subclause 58(2) will apply whether or not the gaming machine is one to which subclause 58(1) applies and regardless of who makes the gaming machine available for use.

Subclause 58(4) makes clear that for the purposes of paragraph 2(b) an approved precommitment system for a State or Territory could operate in relation to a gaming machine even if the precommitment system is temporarily unavailable as a result of an operational or technical issue.

Subclause 58(5) makes clear that subclause 1 does not apply if the precommitment system fails to comply or the gaming machine fails to comply and the person does not know and could not reasonably be expected to know that the precommitment system or the gaming machine does not comply with the requirements.

Subclause 58(6) makes clear that subclause 1 does not apply if the person can prove that the failure is as a result of an operational or technical issue, the failure is not the fault of any 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.

Subclause 58(7) provides that a person who wishes to rely on subclause (2), (4) or (5) in proceedings for a civil penalty order bears an evidential burden in relation to that matter. That is, the defendant is required to prove, on the balance of probabilities, that there was not an approved precommitment system available for use in the location where the gaming machine was or that the person held an honest and reasonable belief that the precommitment system or gaming machine was compliant with the legislation. This is appropriate as these matters are peculiarly within the defendant's knowledge and not available to the prosecution.

The reversal of the onus of proof in these circumstances is considered to be consistent with Part 4.3.2 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Part 3 – Automatic teller machines that do not comply with withdrawal limits

Division 1 – Constitutional provisions

Clause 59 – Application of this Part

Clause 59 provides that this Part applies to any automatic teller machine that dispenses currency.

Clause 60 – Additional operation of this Part

Subclause 60(1) provides that this Part also applies to the extent provided for in this clause.

Subclause 60(2) provides that this Part has effect as if references to a person who provides an automatic teller machine were confined to:

- (a) a bank other than a State bank; or
- (b) any other institution that is engaged in banking.

The provision of an automatic teller machine must be in the course of banking, which has the meaning as set out in section 51(xiii) of the Constitution.

Subclause 60(3) provides that this Part has the effect it would have if a reference to a person who occupies premises or who supplies an automatic teller machine were limited to a reference to a constitutional corporation.

Clause 61 – Part not to apply to State banking

Clause 61 confirms that this Part does not apply to State banking where that banking does not extend beyond the limits of the State involved.

Division 2 – Civil penalty provisions

Clause 62 – Occupying premises containing non-compliant automatic teller machine

Clause 62 provides that a person will contravene this clause if the person occupies gaming machine premises (other than casinos) and they allow another person to provide an automatic teller machine that allows people to withdraw more cash than is permitted by the withdrawal limits.

The penalty for contravening this provision is five penalty units for each day that the automatic teller machine is available for use on the gaming machine premises (other than casinos). A penalty unit is currently \$110.

Chapter 3 – Civil penalty provisions for non-compliance with national gambling reform

Note 1 at the end of the clause refers the reader to the exceptions in clause 65.

Note 2 at the end of the clause confirms for the reader that this provision applies whether the occupier of the premises shares the premises with others or not.

Clause 63 – Providing non-compliant automatic teller machine

Clause 63 provides that a person contravenes this clause if they provide an automatic teller machine on gaming machine premises (other than casinos) and the automatic teller machine allows a person to withdraw more than the withdrawal limit.

The penalty for contravening this provision is 10 penalty units for each day that the automatic teller machine is available for use on the gaming machine premises. A penalty unit is currently \$110.

Note 1 at the end of the clause refers the reader to the exceptions in clause 65.

Note 2 at the end of the clause confirms for the reader that this provision applies whether the supplier of the automatic teller machine does so with others or not.

Clause 64 – Civil penalty provision contravened without a person withdrawing more than cash limit

Clause 64 is an avoidance of doubt provision, and confirms for the reader that a person can contravene clause 62 and clause 63 even if nobody withdraws more than the withdrawal limit from the automatic teller machine in question.

Clause 65 – Exception for premises covered by exemption and casinos

Subclause 65(1) provides that clauses 62 and 63 do not apply to a person where there is an existing exemption under clause 41 or 43 above regarding the automatic teller machine and any conditions imposed under those clauses are being complied with.

Subclause 65(2) provides that clauses 62 and 63 do not apply to premises licensed or approved as a casino in the State or Territory where the premises are located.

Subclause 65(3) provides that the burden of proof in relation to the matters set out in subclauses 65(1) and (2) lies with the defendant. This burden is in relation to the defences provided for in those subclauses in relation to contravention of earlier provisions. That is, the defendant is required to prove, on the balance of probabilities, that they meet the exceptions set out in subclauses 65(1) and (2), which is information that would be within the particular knowledge of the defendant.

The reversal of the onus of proof in these circumstances is considered to be consistent with Part 4.3.2 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Chapter 4 – Privacy

Summary

Part 2 of this Chapter creates offences to protect information that has been obtained under the new Act, including information obtained from **precommitment systems**, from unauthorised disclosure or use.

Staff and former staff of the Regulator, any person who obtains information from a precommitment system, and certain others, may commit an offence for disclosing or using the information if the disclosure or use is not authorised.

Disclosing and using information is authorised in a number of situations, including for the purposes of the new Act or law enforcement, or with consent.

Background

A key object of the Act is to ensure that the privacy of users of gaming machines is protected.

Information about registered users obtained through the precommitment system (defined as **protected information**) will be confidential and therefore, protected against unauthorised disclosure and use. Chapter 4 protects registered user information by restricting what can be done with such information and providing offences for unauthorised disclosure or use of protected information. These rules need to be read in conjunction with additional rules on personal information contained in the *Privacy Act 1988*.

The definition of protected information for the purposes of the privacy provisions in this Bill operates in a similar manner to those definitions in the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Social Security (Administration) Act 1999*. It relates to information about a person obtained in the course of performing functions and duties under the new Act, and information contained in the precommitment systems. The definition includes all information obtained and is in effect ‘all encompassing’, beyond the definition of personal information in the *Privacy Act 1988*. The adoption of a broad definition will afford this information a consistent level of protection with that provided under the family assistance law and the social security law. The provisions contained in this Chapter are generally no more onerous on organisations than the National Privacy Principles contained in the *Privacy Act 1988*.

There are however some purposes for which protected information can be disclosed or used.

Part 1 – Guide to this Chapter

Clause 66 – Guide to this Chapter

This clause sets out a brief guide to this Chapter.

Part 2 – Privacy

Division 1 – Offences for unauthorised disclosure or use of protected information

Clause 67 – Offences for unauthorised disclosure or use of protected information

Subclause 67(1) provides for an offence where an ***entrusted person*** discloses or uses ***protected information*** in a manner that is not authorised under the new Act. The term entrusted person is defined in **subclause 67(4)** below and the term protected information is defined in **subclause 67(5)** below.

It is a criminal offence for an entrusted person who obtains protected information in the course of their functions, duties or powers as an entrusted person to disclose or use protected information in a manner that is not provided for under the new Act. The penalty for using or disclosing protected information without authority is 120 penalty units, two years' imprisonment, or both. A penalty unit is currently \$110.

Subclause 67(2) provides for an offence where a person discloses or uses information obtained from the ***precommitment system*** in a manner that is not authorised under the new Act. The term precommitment system is defined in clause 5 in Chapter 1 of this Bill.

It is a criminal offence for a person who obtains information from the precommitment system to disclose or use protected information in a manner that is not provided for under the new Act. The penalty for using or disclosing protected information without authority is 120 penalty units, two years' imprisonment, or both.

Subclause 67(3) provides for an offence where a person who has obtained protected information as a result of an authorised disclosure subsequently discloses or uses that protected information in a manner that is not authorised under the new Act.

It is a criminal offence for a person who obtains information by way of authorised disclosure to further disclose or use that protected information in a manner that is not provided for under the new Act. The penalty for using or disclosing protected information without authority is 120 penalty units, two years' imprisonment, or both.

Subclause 67(4) defines the term entrusted person. A person will be an entrusted person if they are, or were:

- (a) the Regulator, as defined in clause 104;
- (b) an authorised person, as defined in clause 113;
- (c) a person assisting, as defined in clause 121;
- (d) an officer or employee made available to the Regulator under clause 108;
- (e) a consultant engaged under clause 109; or
- (f) a person delegated with functions, duties or powers by the Regulator under clause 200.

This clause ensures that all people who are likely to obtain protected information in the course of performing their functions, powers or duties under the new Act cannot use or disclose that information unless that use or disclosure is otherwise authorised.

Subclause 67(5) defines protected information. Information is protected information if it is about a person other than the person who obtains the information and is obtained:

- (a) by a person in the course of performing their functions powers or duties under the new Act;
- (b) from the precommitment system; or
- (c) from an authorised disclosure of information that obtained under paragraphs (a) and (b) above.

Subclause 67(6) defines the term ***authorised disclosure or use*** to mean a disclosure or use that is authorised under a provision contained in Division 1 within Part 2 of Chapter 4 of the Bill. A disclosure of information is an ***authorised disclosure*** if the disclosure is authorised under this Division. There are a number of authorised disclosures set out in Division 2 of this Part below.

The note at the end of subclause 67(6) signposts for the reader that, if a disclosure or use is an authorised disclosure or use as defined in this subclause, that disclosure or use will be considered to be ***authorised by law*** for the purposes of the *Privacy Act 1988*.

Subclause 67(7) provides for a definition of ***authorised disclosure information*** for the purposes of this Division. Information will be authorised disclosure information if it is protected information and has been obtained by the person pursuant to an authorised disclosure or use as defined in subclause 67(6) above.

Division 2 – Authorised disclosure or use by Regulator, other entrusted persons and others

Subdivision A – Authorised disclosure or use by Regulator, other entrusted persons and others

Clause 68 – Authorised disclosure or use – official duties

Subclause 68(1) provides that an entrusted person (as defined in subclause 67(4) above) may use or disclose protected information, provided that the use or disclosure is for the purposes of the new Act and the person still falls within the definition of entrusted person. It is intended that, if a person is no longer an entrusted person, as defined, they are not permitted to use or disclose protected information in any way.

Subclause 68(2) provides that any person who obtains protected information from the precommitment system can only use or disclose that information for the purposes of the new Act.

Subclause 68(3) provides that any person who obtains protected information by way of an authorised disclosure is only permitted to use or disclose that information for the purpose of the new Act.

Clause 69 – Who may disclose or use information in accordance with sections 70 to 73

Subclause 69(1) provides that:

- (a) the Regulator or a person authorised under a delegation;
- (b) a person who obtains information from the precommitment system;
and
- (c) a person who obtains authorised disclosure information;

can rely on the authorised disclosure provisions in clause 70 to clause 73 below to disclose protected information. A person listed above can also use protected information in accordance with clause 71.

However, an ***entrusted person*** (other than the Regulator or his delegate) is prevented from disclosing authorised disclosure information or information obtained from the precommitment system using the authorisation provisions in clause 70 to clause 73. An entrusted person or an authorised person can only use or disclose protected information in the course of their duties, functions or powers.

Clause 70 – Authorised disclosure – law enforcement

Clause 70 authorises disclosure of protected information for the purposes of law enforcement.

Paragraph 70(1)(a) provides that a person referred to in subclause 69(1) can disclose protected information where they reasonably believe that the disclosure is necessary for the enforcement of the criminal law, the civil law or for the protection of the public revenue.

Paragraph 70(1)(b) provides that a disclosure under paragraph 70(1)(a) is only permitted where the information is disclosed to a Commonwealth, State or Territory Department, agency or authority, the Australian Federal Police or the police of a State or Territory.

Paragraph 70(1)(c) provides that disclosure to an organisation set out in paragraph 70(1)(b) is only authorised where that organisation is responsible for enforcement of the law.

Subclause 70(2) provides that the Regulator can set out written conditions that must be adhered to in relation to protected information that is disclosed under this subclause 70(1). This allows the Regulator to impose conditions on the use and disclosure of information disclosed under subclause 70(1) above. These conditions can be issued on a case-by-case basis, depending on the protected information being disclosed and the law to be enforced.

Subclause 70(3) provides for a criminal offence where the Regulator has imposed conditions under subclause 70(2) above and a person engages in conduct that breaches the condition imposed by the Regulator. The penalty for breaching a condition imposed by the Regulator in relation to the protection information is 120 penalty units, two years' imprisonment, or both. A penalty unit is currently \$110.

Subclause 70(4) provides that an instrument made under subclause 70(2) above is not a legislative instrument. This provision is inserted to assist readers and is merely declaratory of the law. The determination of the Regulator under subclause 70(2) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Clause 71 – Authorised disclosure – consent

Clause 71 provides that a person set out in subclause 69(1), can use or disclose protected information where the person to whom the information relates consents to that use or disclosure.

Clause 72 – Authorised disclosure – threat to life or health

Clause 72 permits disclosure by a person set out in subclause 69(1) of protected information to prevent, or lessen, a threat to the life or health of a person. This is very similar to the terms of Information Privacy Principle 11(1)(c) in section 14 of the *Privacy Act 1988* and to provisions contained in public interest disclosure guidelines in the social security law and family assistance law.

Clause 73 – Authorised disclosure – publicly available information

Clause 73 permits disclosure by a person set out in subclause 69(1) of protected information where that information has already been lawfully made publicly available.

Subdivision B – Authorised disclosure by Regulator

Clause 74 – Authorised disclosure – Minister

Clause 74 permits the Regulator to disclose protected information to the Minister.

It is intended that this provision would be used to disclose protected information where that protected information is necessary to brief a Minister:

- (a) to enable the Minister to consider complaints or issues by, or on behalf of a person, and respond to that person accordingly;
- (b) for a meeting or forum that the Minister is to attend;
- (c) in relation to issues raised, or proposed to be raised by or on behalf of a person;
- (d) so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement; or
- (e) about an anomalous or unusual operation of the new Act.

Clause 75 – Authorised disclosure – Commonwealth, State and Territory agencies

Subclause 75(1) provides that the Regulator can disclose de-identified protected information to a Department of the Commonwealth, or a State or Territory to enable that Department to perform its functions or exercise its powers.

Subclause 75(2) provides that the Regulator can set out written conditions that must be adhered to in relation to protected information that is disclosed under subclause 75(1). This allows the Regulator to impose conditions on the use and disclosure of information disclosed under subclause 75(1). Those conditions can be issued on a case-by-case basis, depending on the protected information being disclosed and the Department that the information is being disclosed to.

Subclause 75(3) provides for a criminal offence where the Regulator has imposed conditions under subclause 75(2) above and a person engages in conduct that breaches the condition imposed by the Regulator. The penalty for breaching a condition imposed by the Regulator in relation to the protection information is 120 penalty units, two years' imprisonment, or both.

Subclause 75(4) provides that an instrument made under subclause 75(2) above is not a legislative instrument. This provision is inserted to assist readers and is merely declaratory of the law. The determination of the Regulator under subclause 75(2) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Clause 76 – Authorised disclosure – research

Clause 76 provides that the Regulator may disclose protected information where it has been de-identified and is disclosed to a person or body who conducts research into gambling for the purposes of the new Act.

Clause 77 – Authorised disclosure – summaries and statistics

Clause 77 provides that the Regulator may disclose summaries and statistics based on protected information where those summaries and statistics are not likely to enable the identification of a person.

Chapter 5 – Requirements for manufacturing and importing gaming machines

Summary

This Chapter provides for civil penalties for manufacturing or importing gaming machines that are not capable of providing for precommitment.

Background

The provisions in this Chapter of the Bill will ensure that all new gaming machines manufactured in Australia or imported to Australia from 31 December 2013 are precommitment-capable.

While the requirements for precommitment systems are not due to commence until 31 December 2016, this provision will ensure that new machines to hit the market from the end of 2013 are precommitment-capable. This will help minimise the impact of introducing precommitment, as there will be ongoing machine replacement between 31 December 2013 and 31 December 2016 (31 December 2020 for small gaming machine premises).

Part 1 – Guide to this Chapter

Clause 78 – Guide to this Chapter

This clause sets out a brief guide to this Chapter.

Part 2 – Requirements for manufacturing and importing gaming machines

Clause 79 – Manufacturing gaming machines

Clause 79 provides that a person will contravene this clause if the person is a constitutional corporation, the person manufactures a gaming machine in Australia, and the gaming machine does not comply with any one or more requirements prescribed by the regulations (made under clause 201) in relation to the capability of the gaming machine to provide for precommitment.

The penalty for contravening this clause is 10 penalty units. A penalty unit is currently \$110.

The note at the end of the clause refers the reader to clause 8, confirming that a person can contravene this clause if they manufacture a non-compliant machine alone or together with another person.

Clause 80 – Importing gaming machines

Clause 80 provides that a person will contravene this clause if a person imports a gaming machine that does not comply with the requirements set out in the regulations (made under clause 201) and, therefore, does not meet precommitment requirements.

The penalty for contravening this clause is 10 penalty units.

The note at the end of the clause refers the reader to clause 8, confirming that a person can contravene this clause if they import a non-compliant machine alone or together with another person.

Chapter 6 – Liability for, and collection and recovery of, supervisory and gaming machine regulation levies

Summary

The Chapter provides for levies to support this Bill. The first of these levies is the supervisory levy and the second is the gaming machine regulation levy.

This Chapter outlines the supervisory levy, which applies to all gaming machine premises in relation to covering the cost of the Commonwealth's regulatory function, and the gaming machine regulation levy (the regulation levy) which applies, in certain circumstances, to gaming machine premises which are not constitutional corporations to encourage compliance with the Act. Gaming machine premises that are owned or operated by or on behalf of a constitutional corporation will not be subject to the regulation levy, nor will any premises that are complying with the precommitment system and dynamic warning requirements set out in this Bill. Government agencies, bodies or organisations will not be subject to the supervisory or regulation levies as a result of that agency or body levying a tax or charge calculated by reference to gaming machine revenue.

Background

The purpose of the supervisory levy is to meet the regulatory costs established by the Bill, such as the monitoring, investigation and enforcement functions that are not covered by fee-for-service arrangements. This levy applies to all persons who make gaming machines available for use. The Regulator may also charge fees for services provided in the performance of his or her functions in accordance with the Commonwealth's cost recovery guidelines.

The *National Gambling Reform (Related Matters) Act (No. 1) 2012* provides that the method for working out the amount of supervisory levy payable will be determined by regulations made under that Act. It is important that the views of the industry are taken on board in relation to the levy and the Government will be consulting with industry to inform the development of the regulations that will determine the levy.

The purpose of the gaming machine regulation levy is to encourage compliance with requirements relating to precommitment systems and dynamic warning requirements by persons who are not constitutional corporations. The gaming machine regulation levy is determined by reference to the amount of gaming machine revenue. The levy is not payable if a gaming machine complies with the precommitment system and dynamic warning requirements or if the gaming machine is made available by a person who is, or is sufficiently connected, to a constitutional corporation.

The *National Gambling Reform (Related Matters) Act (No. 1) 2012* will establish the supervisory levy and the *National Gambling Reform (Related Matters) Act (No. 2) 2012* will establish gaming machine regulation levy.

Part 1 – Guide to this Chapter

Clause 81 – Guide to this Chapter

This clause sets out a brief guide to this Chapter.

Part 2 – Liability for supervisory levy

Clause 82 – Purpose of supervisory levy

Clause 82 provides that the purpose of the supervisory levy is to cover the cost to the Commonwealth in relation to the administration of this Act and the two related matters Acts.

Clause 83 – Liability for supervisory levy

Clause 83 provides that a supervisory levy is payable in relation to a **levy period** for a gaming machine that is made available for use at any time during the levy period.

Levy period for the purposes of the supervisory levy is defined in clause 5 of the Bill and means a three-month period commencing on 1 January, 1 April, 1 July and 1 October of a year.

The amount of the supervisory levy is determined in accordance with Clause 7 of the National Gambling Reform (Related Matters) Bill (No. 1) 2012.

Although the supervisory levy provisions apply after this Act receives the Royal Assent, note 1 at the end of clause 83 confirms for the reader that the supervisory levy will not be payable until regulations have been made under section 6 of the *National Gambling Reform (Related Measures) Act (No 1) 2012*. These regulations will prescribe the method for calculating the supervisory levy. Accordingly, until the regulations are made no supervisory levy can be calculated nor become payable.

Note 2 at the end of clause 83 refers the reader to Part 4 of this Chapter for information on the collection and recovery of the supervisory levy.

Note 3 at the end of clause 83 refers the reader to clause 8, confirming that a person is liable for the levy if they make a gaming machine available for use, whether or not they make a gaming machine available alone or together with another person.

Clause 84 – Who is liable to pay the supervisory levy

Clause 84 provides that the supervisory levy is payable under clause 83 by the person who holds a State or Territory licence to operate the gaming machine during the levy period. If there is no licensee in relation to a gaming machine during the levy period, the person who makes the gaming machine available is liable to pay the levy. If more than one person holds a licence to operate the gaming machine during the levy period, all such persons are jointly liable to pay the levy.

The note at the end of subclause 84(3) refers the reader to clause 94 for rights of contribution when two or more persons are jointly liable for the levy.

An agency of the Commonwealth, a State or a Territory or a body established for a public purpose under a law of the Commonwealth, a State or a Territory is not liable for the supervisory levy as set out in subclause 84(4).

Part 3 – Liability for gaming machine regulation levy

Clause 85 – Liability for gaming machine regulation levy

Clause 85 provides that the gaming machine regulation levy will be payable in relation to a **levy period** if a person makes a gaming machine available for use at any time during the levy period. However, the levy will not be payable if during the levy period:

- (a) the gaming machine was owned, operated, or made available for use by, or on behalf of, a constitutional corporation or made available for use on premises owned or controlled by a constitutional corporation (**subclause 85(2)**); or
- (b) the gaming machine and the precommitment system that operates in relation to the gaming machine comply with the provisions of this legislation (**subclause 85(3)**); or
- (c) a person makes a gaming machine available for use in Australia, or a gaming machine is capable of being made available for use in Australia, but there is not an approved precommitment system that could operate in relation to that gaming machine and is available to be purchased (**subclause 85(4)**); or
- (d) despite the gaming machine and/or the precommitment system not complying with the provisions of this legislation the person making the gaming machine available for use did not know, or could not have reasonably known, that they did not comply (**subclause 85(7)**); or

(e) the gaming machine was found to be non-compliant as a result of an operational or technical failure by the precommitment system provider, such a failure is outside the control of the gaming machine operator (**subclause 85(8)**) and remedying the failure is not within the control of any person who makes the gaming machine available for use.

Subclause 85(5) provides that subclause 85(4) applies irrespective of who makes, or who would make, a gaming machine available for use.

Subclause 85(6) provides that an approved precommitment system for a State or Territory is available to operate in relation to a particular gaming machine even if the system is temporarily unavailable as a result of an operational or technical issue. The example at the end of subclause 85(6) states that an example of an operational or technical issue is a power outage.

Levy period for the purposes of the gaming machine regulation levy is defined in clause 5 of the Bill and means a calendar month.

The amount of the gaming machine regulation levy is determined in accordance with clause 9 of the National Gambling Reform (Related Matters) (No.2) Bill 2012.

Clause 86 – Who is liable to pay the gaming machine regulation levy

Clause 86 provides that the gaming machine regulation levy is payable under clause 85 by any person who is entitled to any of the gaming machine revenue for the levy period. For the purposes of this clause, some outgoings in relation to the machine must be disregarded. If more than one person is entitled to any of the profits of the gaming machine during the levy period, all such persons are jointly liable to pay the levy. A person is required to pay the levy even if their entitlement to the revenue is not for their own use or benefit.

A note included after subclause 86(3) directs the reader to clause 95 in relation to the right of contribution if persons are jointly liable.

Clause 5 contains a definition of ***gaming machine revenue***. Gaming machine revenue means the total amount of bets made in the levy period in relation to a machine, less outgoings. Outgoings are defined in clause 5 and are the amounts provided as winnings during the levy period (other than jackpot winnings paid from a fund to which amounts of money or credit are paid from the machine and other machines) and amounts of money or credit paid into a fund used to pay jackpots arising under linked jackpot arrangements. Monies which are inserted into a machine, but which are taken out of the machine without having been bet, are not included in the amount of bets made or in the amount of winnings provided.

An agency of the Commonwealth, a State or a Territory or a body established for a public purpose under a law of the Commonwealth, a State or a Territory is not liable for the supervisory levy as set out in subclause 84(4) or the gaming regulation levy as set out in subclause 86(5) to ensure that there can be no suggestion that such an agency or body is liable for the levy because the agency or body levies a tax or charge which is calculated with reference to the gaming machine revenue.

Part 4 – Collection and recovery of supervisory and gaming machine regulation levies

Division 1 – Assessment of levies

Clause 87 – Regulator may make assessment of levies

Clause 87 provides that the Regulator has the power to make an assessment to calculate the amount of a levy for a levy period, or make a new assessment if one has already been made.

While it is the transactions on the machine and the actions of the operator that give rise to the liability to pay the levies (and an assessment is not necessary to trigger the liability) it may be convenient in certain circumstances for the administration of the levies for the Regulator to have the power to make assessments and other persons to have the power to request one.

The note at the end of clause 87 refers the reader to clauses 198 and 199 regarding review of a decision to make an assessment.

Clause 88 – Request for assessment

Subclauses 88(1) and 88(2) provide that a person may request the Regulator to make an assessment of the levy for a levy period and that such a request for assessment must be in the approved form.

Subclause 88(3) provides that the Regulator must make an assessment if the request is made within four years of the end of the levy period or such periods as the Regulator allows.

Clause 89 – Levy liabilities do not depend on assessment

Clause 89 provides that the underlying liability to pay the levy is not dependent upon the making of an assessment and is not affected by the making of an assessment.

The note at the end of the clause refers the reader to clause 93 and confirms that a notice of assessment can be used as evidence of the liability.

Clause 90 – Regulator must give notice of the assessment

Clause 90 provides that the Regulator must give a person notice of an assessment as soon as is practicable after making the assessment. However, a failure to give the notice does not affect the validity of the assessment.

Clause 91 – Amendment of assessment

Clause 91 confirms that the Regulator may amend an assessment at any time. The note at the end of the clause refers the reader to clause 198 and clause 199 in relation to review of decisions.

Clause 92 – Later assessment prevails in case of inconsistency

Clause 92 provides that, should there be inconsistency between assessments, the later assessment will prevail.

Clause 93 – Production of assessment is conclusive evidence

Clause 93 provides that a notice of assessment is taken to be conclusive evidence of the matters contained in the assessment. However, if a review of the assessment is being undertaken under clause 198 or clause 199, the notice of assessment is not to be taken as conclusive of the amounts and particulars contained in that document.

Division 2 – Collection of levies

Clause 94 – Right of contribution if persons are jointly liable

Clause 94 provides that, if two or more persons are jointly liable to pay a levy, each is liable for the whole amount. If one person has paid an amount of the liability, they may recover some or all of the amount from another of the liable persons through a relevant court (defined in clause 5).

Clause 95 – Returns

Clause 95 establishes that persons who are liable to pay a levy (either the supervisory levy or the gaming machine regulation levy) must lodge a return with the Regulator for each levy period before the end of 21 days. A person who would be required to pay a levy if the gaming machine revenue for a particular period except the gaming machine revenue was nil or negative is also required to lodge a return for the relevant period.

The time for lodging a return in the case of the supervisory levy is before the end of the 21 days after the end of the quarter, and, in the case of the gaming machine regulation levy, before the end of 21 days after the end of the calendar month. The return must be an approved form and contain the information required by the form. Failing to lodge a return may be an offence, and the note at the end of subclause 95(1) refers the reader to clause 101 regarding the possible offence.

When no regulations have been made in relation to the supervisory levy,, no return is required.

Clause 96 – When levy due for payment

Clause 96 provides that the levy must be paid 21 days after the levy period. That is, in the case of the supervisory levy, by the end of the 21 days after the end of the quarter, and, in the case of the gaming machine regulation levy, by the end of the 21 days after the end of the calendar month.

Clause 97 – Late payment penalty

Clause 97 provides that a late payment penalty applies to any amounts of levy payable that are unpaid at the start of a month following the day on which the levy was due for payment. The levy applies to the amount of levy outstanding at the start of the month, and applies to each month or part of a month for which an amount of levy is outstanding. The rate of the penalty for each month or part of a month is 20 per cent divided by 12. A late payment penalty for a month is to be paid by the end of that month. However, the Regulator may specify in writing that the late payment penalty is payable at a later date.

Clause 98 – Payment of levy and late payment penalty

Clause 98 sets out that the levy and any late payment penalties are to be paid to the Regulator on behalf of the Commonwealth.

Clause 99 – Recovery of levy and late payment penalty

Clause 99 provides that the levies and late payment penalties (when due and payable) may be recovered as debts due to the Commonwealth. The Regulator may take court action to recover these debts on behalf of the Commonwealth.

Clause 100 – Refunds of overpayments of levy

Clause 100 confirms that, if there is an overpayment of a levy or late payment penalty, the Regulator may credit the overpayment against another liability of the person under the new Act. If the overpayment is not so credited, it must be refunded to the person who paid the levy.

Division 3 – Miscellaneous

Clause 101 – Offence for failure to lodge a return

Clause 101 provides that it is an offence for a person who is required to lodge a return in relation to a levy to fail to lodge the return as required. This is a strict liability offence.

Strict liability is considered appropriate in this circumstance because the purpose of requiring the person to lodge a return in the timeframe stipulated in the Bill is to ensure proper accounting for levies that may be imposed and the timely payment of any such levies to the Government. These conditions will ensure that the integrity of this regime is maintained and that the revenue is protected. The offence is punishable by a maximum penalty of 50 penalty units.

Subclause 101(2) provides that an offence is not committed if the person has a reasonable excuse. The person has an evidential burden of showing that there is a reasonable excuse. This approach has been taken because the particular circumstances that will need to be relied on to establish the existence of a reasonable excuse will be peculiar to the knowledge of the defendant.

The burden of showing that the person has a reasonable excuse rests with that person.

A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers cautions against defences of 'reasonable excuse', this approach has been taken to 'soften' the impact of the strict liability offence as there may be legitimate reasons why a person was unable to lodge their return, such as sickness, power outage or technical failure.

Clause 102 – Regulations may provide in relation to assessment, collection and recovery

Clause 102 provides for regulations (made under clause 201) in relation to the assessment, collection and recovery of the supervisory levy and the gaming machine regulation levy.

Chapter 7 – Monitoring and investigation

Summary

This Chapter provides for the monitoring and investigation of compliance with the new Act. The Regulator monitors and investigates compliance, and appoints authorised persons, who also exercise the monitoring and investigation powers in this Chapter. Rules relevant to both monitoring and investigation are also included in this Chapter.

The Regulator can delegate his or her functions, powers and duties (and portions of duties) in accordance with clause 200 in Chapter 9 of this Bill.

Background

The Regulator

The Regulator has responsibility for a range of functions, including administration of the new Act, monitoring, investigation and enforcement. The Regulator is required to cooperate with the States and Territories and other relevant persons in administering the new Act.

The Regulator may make arrangements with Commonwealth, State or Territory agencies and engage consultants to assist in performing their functions.

The Minister may give directions to the Regulator, and the Regulator must prepare an annual report and give it to the Minister after the end of each financial year.

The powers and functions granted to the Regulator in this Bill are similar to and consistent with the powers and functions granted to Regulators in other Commonwealth regulatory schemes, in particular the *Fuel Quality Standards Act 2000* and the *Renewable Energy (Electricity) Act 2000*.

Authorised persons

The Regulator may appoint authorised persons, such as government officers, to assist in exercising the monitoring and investigation powers. All authorised persons, including the Regulator, must carry an identity card at all times when exercising their powers.

Inspecting public areas of gaming machine premises

Authorised persons may enter a public area of gaming machine premises when the premises are open to the public and exercise inspection powers, including making observations and collecting information in relation to regulated devices.

Monitoring

Authorised persons may enter premises by consent or under a warrant to determine whether a provision of the new Act has been, or is being, complied with. Other monitoring powers include searching premises, observing activity, inspecting documents, operating electronic equipment and accessing data. An authorised person may be assisted by other persons, for example technicians, if that assistance is necessary and reasonable.

Investigation

If an authorised person has reasonable grounds for suspecting that there may be evidential material on any premises, they may enter the premises and exercise the investigation powers. These powers include searching the premises with the occupier's consent or under an investigation warrant. An authorised person may also seize certain items in accordance with this Chapter.

Other provisions

Authorised persons must comply with a number of obligations when entering premises. Authorised persons may also ask questions, seek production of documents and open gaming machines.

Part 1 – Guide to this Chapter

Clause 103 – Guide to this Chapter

Clause 103 provides a guide to Chapter 7 of the Bill.

Part 2 – Regulator

Clause 104 – The Regulator

Clause 104 provides that the Regulator is the Secretary of the Department of the Minister who has portfolio responsibility for the new Act.

Clause 105 – Functions of the Regulator

Clause 105 explains that the Regulator has responsibility for a range of functions, including administration of the new Act, monitoring and enforcement of compliance under the new Act, and the monitoring and evaluating the operation of the new Act. The Regulator is required to cooperate with the States and Territories and other relevant persons in administering the new Act.

Clause 106 – Powers of the Regulator

Clause 106 provides that the Regulator has a range of powers to do all things necessary or convenient to be done in connection with their functions.

Clause 107 – Regulator may charge for services

The Regulator may, by legislative instrument, specify fees for services provided in the performance of their functions (**subclause 107(1)**). Sections 17 to 19 of the *Legislative Instruments Act 2003* deal with rule-maker consultation, including the circumstances in which consultation may be unnecessary or inappropriate. The *Legislative Instruments Act 2003* does not make consultation mandatory. However, all Commonwealth agencies are encouraged to undertake appropriate consultation before making a legislative instrument, particularly if the proposed instrument is likely to affect business or restrict competition.

Subclause 107(2) provides that a fee specified for services by the Regulator must not amount to taxation.

To the extent that the Regulator recovers the costs to the Commonwealth of administering this Act and the two related Acts through fees for services, the amount of those costs to be covered by the supervisory levy will be reduced.

Clause 108 – Arrangements with other agencies

Clause 108 provides that the Regulator may make arrangements with Commonwealth, State or Territory agencies in relation to officers of such agencies being made available to assist the Regulator in performing their functions or duties, or exercising their powers.

Clause 109 – Consultants

Clause 109 provides that the Regulator may engage consultants to assist in performing the Regulator's functions.

Clause 110 – Minister may give directions to the Regulator

The Minister may give directions to the Regulator in relation to the performance of their functions and exercise of their powers by legislative instrument (**subclause 110(1)**). Sections 17 to 19 of the *Legislative Instruments Act 2003* deal with rule-maker consultation, including the circumstances in which consultation may be unnecessary or inappropriate. The *Legislative Instruments Act 2003* does not make consultation mandatory. However, all Commonwealth agencies are encouraged to undertake appropriate consultation before making a legislative instrument, particularly if the proposed instrument is likely to affect business or restrict competition.

Despite the instrument making power set out above, the Minister must not give a direction in relation to a particular case (**subclause 110(2)**).

Subclause 110(3) requires the Regulator to comply with a direction given under this clause.

Clause 111 – Annual report

Subclause 111(1) provides that the Regulator must prepare an annual report and give it to the Minister.

The annual report must be prepared and given to the Minister as soon as practicable after the end of each financial year (**subclause 111(2)**).

Subclause 111(3) provides that the annual report must be included in the Department's annual report.

Subclause 111(4) provides for a non-exhaustive list of the information and matters that must be included in the annual report as follows:

- (a) details of any convictions for offences against this legislation and the penalty imposed on the person; and
- (b) details of any civil penalty orders that were made against a person and the penalty the person was required to pay; and
- (c) details of any enforcement action that was taken in accordance with this legislation; and
- (d) any other matter that is prescribed by regulation.

Part 3 – Authorised persons

Clause 112 – Appointment of authorised persons

Subclause 112(1) provides that the Regulator may appoint an APS employee or an employee of a State or Territory agency for the purposes of the new Act.

The Regulator must not appoint a person under subclause 112(1) unless satisfied of certain matters (**subclauses 112(2) and (3)**).

Subclause 112(4) provides that an authorised person holds office for the period specified in the relevant instrument of appointment (but not exceeding four years).

An authorised person must comply with any directions of the Regulator (**subclause 112(5)**). **Subclause 112(6)** is inserted to assist readers and is merely declaratory of the law. Any direction of the Regulator under subclause 112(5) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Clause 113 – The Regulator is an authorised person

Clause 113 provides that the Regulator is an authorised person.

Clause 114 – Identity cards

The Regulator must issue an identity card to an authorised person (**subclause 114(1)**). The Minister must issue an identity card to the Regulator (**subclause 114(2)**).

Subclause 114(3) provides that an identity card must be in a form prescribed by regulation and contain a recent photograph of the authorised person.

An authorised person must carry their identity card at all times when exercising their powers (**subclause 114(4)**).

Clause 115 – Offence for not returning identity card

A person commits an offence if they cease to be an authorised person and does not return the identity card issued to them within 14 days (**subclause 115(1)**). This is an offence of strict liability (**subclause 115(2)**).

Strict liability is considered appropriate in this circumstance because the purpose of requiring the person to return their identity card in the timeframe stipulated in the Bill is to reduce the risk of misuse of identity cards. This condition will ensure that the integrity of the system is maintained. The return of the identity card is a purely administrative task.

The maximum penalty for breach of this provision is 1 penalty unit. Currently a penalty unit is \$110.

Subclause 115(1) does not apply if the identity card was lost or destroyed (**subclause 115(3)**). The note at the end of subclause 115(3) confirms that the burden of proving the defence in the subclause lies with the person seeking to rely on the offence. That is, the defendant is required to prove, on the balance of probabilities, that they lost their card, or that the card was stolen, which is information that would be within the particular knowledge of the defendant.

The reversal of the onus of proof in these circumstances is considered to be consistent with Part 4.3.2 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Part 4 – Inspecting public areas of gaming machine premises

Clause 116 – Inspection powers in public areas of gaming machine premises

Subclause 116(1) enables an authorised person to enter a public area of gaming machine premises when the premises are open to the public and exercise certain inspection powers. These inspection powers include observing the operation of regulated devices, collecting certain information or documents in relation to regulated devices and discussing regulated devices with any person. The term ***regulated device*** is defined in **subclause 116(6)**.

The powers provided under subclause 116(1) may only be exercised for certain purposes specified in **subclause 116(2)**.

Subclause 116(3) confirms that, to avoid doubt, if a person is required to be a member, or otherwise register, to access an area of gaming machine premises, that area is not a public area of those premises.

Subclause 116(4) provides that subclause 116(1) does not affect any right of the occupier of the premises to refuse to allow an authorised person to enter, or remain on, the premises.

Subclause 116(5) provides that subclause 116(1) also does not limit certain powers of an authorised person or any other power of a person to enter a public area of gaming machine premises.

Subclause 116(6) defines ***regulated device*** as:

- (a) a gaming machine; or
- (b) a precommitment system; or
- (c) an automatic teller machine.

Part 5 – Monitoring

Division 1 – Monitoring powers

Clause 117– Authorised person may enter premises by consent or under a warrant

Subclause 117(1) provides that an authorised person may enter any premises and exercise the monitoring powers for either or both of the following purposes:

- determining whether a provision of the new Act has been, or is being, complied with;

- determining whether information given in compliance or purported compliance with a provision of the new Act is correct.

Subclause 117(2) provides that an authorised person is not authorised to enter the premises unless the occupier consents and the authorised person has shown their identity card, or unless entry is made under a monitoring warrant.

Clause 118 – Monitoring powers of authorised persons

Clause 118 sets out the monitoring powers that an authorised person may exercise in relation to premises under clause 117. These powers include searching premises, observing activity on premises and inspecting documents.

Clause 119 – Operating electronic equipment

Subclause 119(1) provides that monitoring powers also include the power to operate electronic equipment on the premises and use a storage device that is on the premises and can be used with the equipment or is associated with it.

Subclause 119(2) provides that, if information is found in the exercise of the power under subclause 119(1) that is relevant to determining compliance under the new Act or confirming whether certain information is correct, the monitoring powers include further powers set out in **subclause 119(3)**. These further powers include operating electronic equipment to put relevant data in documentary form and remove the documents so produced from the premises.

An authorised person may only operate electronic equipment under this clause if they believe on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment (**subclause 119(4)**).

Clause 120 – Accessing data held on certain premises – notification to occupier

If an exercise of power under subclause 119(1) involves operating electronic equipment on premises to access data held on other premises and it is practicable to notify the occupier of the premises on which the data is held that the data has been accessed, the authorised person must do so as soon as practicable and include other specified information if relevant (**subclause 120(1)**).

Subclause 120(2) requires that a notification under subclause 120(1) must include sufficient information to allow the occupier of the premises on which the data is held to contact the authorised person.

Clauses 119 and 120 relate to the exercise of monitoring powers and therefore do not require reasonable suspicion that the data that may be accessed constitutes evidential material (as required in section 3L of the *Crimes Act 1914*).

Clause 121 – Expert assistance to operate electronic equipment

This clause applies to premises to which a monitoring warrant relates (**subclause 121(1)**).

Subclause 121(2) provides that an authorised person may secure any electronic equipment that is on the premises if the authorised person believes certain matters based on reasonable grounds. In this case, the equipment may be secured by any means.

The authorised person must give notice to the occupier of the premises (or another person who apparently represents the occupier) of their intention to secure the equipment and the fact that the equipment may be secured for up to 24 hours (**subclause 121(3)**). The equipment may be secured until the earlier of either the 24-hour period ending or the equipment being operated by an expert (**subclause 121(4)**).

In certain circumstances and after giving notice to the occupier, the authorised person may apply to an issuing officer for an extension of the 24-hour period (**subclauses 121(5)-(6)**). Provisions relating to the issue of monitoring warrants apply to the issue of an extension and the 24-hour period may be extended more than once (**subclauses 121(7)-(8)**).

Clause 122 – Securing evidence of the contravention of a related provision

This clause applies if an authorised person enters premises under a monitoring warrant for either or both of the following purposes:

- determining whether a provision of the new Act has been, or is being, complied with;
- determining whether information given in compliance or purported compliance with a provision of the new Act is correct (**subclause 122(1)**).

Subclause 122(2) provides that the monitoring powers include the power to secure a thing for a period not exceeding 24 hours in certain circumstances in relation to possible contravention of a related provision.

In certain circumstances and after giving notice to the occupier, the authorised person may apply to an issuing officer for an extension of the 24-hour period (**subclauses 122(3)-(4)**). Provisions relating to the issue of monitoring warrants apply to the issue of an extension and the 24-hour period may be extended more than once (**subclauses 122(5)-(6)**).

Division 2 – Persons assisting authorised persons

Clause 123 – Persons assisting authorised persons

Subclause 123(1) provides that an authorised person may be assisted by other persons in exercising power or performing certain functions or duties, if that assistance is necessary and reasonable.

Subclause 123(2) set outs the powers, functions and duties of a person assisting the authorised person. A power exercised or a function or duty performed by a person assisting the authorised person is taken to have occurred as if exercised or performed by the authorised person (**subclauses 123(3) and (4)**).

Subclause 123(5) is inserted to assist readers and is merely declaratory of the law. Any direction given in writing by a person assisting the authorised person under paragraph 123(2)(c) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Division 3 – Monitoring warrants

Clause 124 – Monitoring warrants

An authorised person may apply to an issuing officer for a warrant under this clause in relation to premises (**subclause 124(1)**).

Subclause 124(2) provides that the issuing officer may issue the warrant if they are satisfied, by information on oath or affirmation, that it is reasonably necessary to access the premises for specified purposes. However, the issuing officer must not issue the warrant unless the authorised person or some other person has given them such further information required concerning the grounds on which the issue of the warrant is being sought (**subclause 124(3)**).

Subclause 124(4) sets out the required content of a warrant issued in accordance with this clause.

The warrant provisions in this Chapter are consistent with provisions in other regulatory regimes, such as those contained in the *Financial Transactions Reports Act 1988*, *Fuel Quality Standards Act 2000* and *Renewable Energy (Electricity) Act 2000* amongst others. The duration of a monitoring warrant for up to 6 months is required in order to permit monitoring of premises over a sustained period of time to determine whether a provision of the Bill has been, or is being, complied with. In these circumstances, clause 124 is considered to be consistent with Part 8.7 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Part 6 – Investigation

Division 1 – Investigation powers

Clause 125 – Authorised person may enter premises by consent or under a warrant

If an authorised person has reasonable grounds for suspecting that there may be evidential material on any premises, they may enter the premises and exercise the investigation powers set out in clauses 126, 127 and 130 (**subclause 125(1)**).

However, **subclause 126(2)** provides that an authorised person is not authorised to enter the premises unless the occupier of the premises has consented and the authorised person has shown their identity card if required, or unless the entry is made under an investigation warrant.

Clause 126 – Investigation powers of authorised persons

Clause 126 sets out the investigation powers that an authorised person may exercise in relation to premises under clause 126. These powers include searching the premises with the occupier's consent or under an investigation warrant. If entry is permitted under investigation warrant, the authorised person also has seizure powers in relation to evidential material and the power to inspect, examine and conduct tests on material and equipment on the premises.

Clause 127 – Operating electronic equipment

Subclause 127(1) confirms that the investigation powers include the power to operate electronic equipment to access data not held on the premises and use a storage device that is on the premises and can be used with the equipment or is associated with it in certain circumstances.

Subclause 127(2) confirms that the investigation powers also include specified powers in relation to evidential material found in the exercise of the power under subclause 127(1).

Operation of electronic equipment under subclause 127(1) or (2) may only occur if the authorised person believes on reasonable grounds that the operation of the equipment can be carried out without damage (**subclause 127(3)**).

An authorised person may only seize equipment or a storage device under paragraph 127(2)(a) in certain limited circumstances (**subclause 127(4)**).

Clause 128 – Accessing data held on certain premises – notification to occupier

If an exercise of power under subclause 127(1) involves operating electronic equipment on premises to access data held on other premises and it is practicable to notify the occupier of the premises on which the data is held that the data has been accessed, the authorised person must do so as soon as practicable and include other specified information if relevant (**subclause 128(1)**).

Subclause 128(2) requires that a notification under subclause 128(1) must include sufficient information to allow the occupier of the premises on which the data is held to contact the authorised person.

Clauses 127 and 128 relate to the exercise of investigation powers and therefore do not require reasonable suspicion that the data that may be accessed constitutes evidential material (as required in section 3L of the *Crimes Act 1914*).

Clause 129 – Expert assistance to operate electronic equipment

This clause applies to if an authorised person enters premises under an investigation warrant to search for evidential material (**subclause 129(1)**).

Subclause 129(2) provides that an authorised person may secure any electronic equipment that is on the premises if the authorised person believes certain matters based on reasonable grounds. In this case, the equipment may be secured by any means.

The authorised person must give notice to the occupier of the premises (or another person who apparently represents the occupier) of their intention to secure the equipment and the fact that the equipment may be secured for up to 24 hours (**subclause 129(3)**). The equipment may be secured until the earlier of either the 24-hour period ending or the equipment being operated by an expert (**subclause 129(4)**).

In certain circumstances and after giving notice to the occupier, the authorised person may apply to an issuing officer for an extension of the 24-hour period (**subclauses 129(5) and (6)**). Provisions relating to the issue of investigation warrants apply to the issue of an extension and the 24-hour period may be extended more than once (**subclauses 129(7)-(8)**).

Clause 130 – Seizing evidence of contraventions of related provisions

This clause applies if an authorised person enters premises under an investigation warrant to search for evidential material (**subclause 130(1)**).

Subclause 130(2) provides that the investigation powers include seizing a thing that is not evidential material of the kind specified in the warrant in certain limited circumstances.

Division 2 – Persons assisting authorised persons

Clause 131 – Persons assisting authorised persons

Subclause 131(1) provides that an authorised person may be assisted by other persons in exercising power or performing certain functions or duties, if that assistance is necessary and reasonable.

Subclause 131(2) set outs the powers, functions and duties of a person assisting the authorised person. A power exercised or a function or duty performed by a person assisting the authorised person is taken to have occurred as if exercised or performed by the authorised person (**subclauses 131(3) and (4)**).

Subclause 131(5) is inserted to assist readers and is merely declaratory of the law. Any direction given by a person assisting the authorised person under paragraph 131(2)(c) in writing is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Division 3 – General provisions relating to seizure

Clause 132 – Copies of seized things to be provided

This clause applies if an investigation warrant is being executed in relation to premises and an authorised person seizes certain specified items from the premises under this Part of the Bill (**subclause 132(1)**).

Subclause 132(2) provides that the occupier of the premises may request the authorised person to give them a copy of the thing or the information. The authorised person must comply with such a request as soon as practicable after the seizure (**subclause 132(3)**). However, the authorised person is not required to comply with the request if possession of the item by the occupier could constitute an offence against a law of the Commonwealth (**subclause 132(4)**).

Clause 133 – Receipts for seized things

Subclause 133(1) requires that the authorised person must provide a receipt for a thing that is seized under this Part of the Bill. One receipt may cover two or more things seized (**subclause 133(2)**).

Clause 134 – Return of seized things

Subclause 134(1) provides that the Regulator must take reasonable steps to return a thing seized when the earliest of the following happens:

- the reason for the seizure no longer exists;
- it is decided that the thing is not to be used in evidence; or
- the period of 60 days after the seizure ends.

Subclause 134(1) is subject to any contrary order of a court and does not apply if the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership (**subclause 134(2)**).

Subclause 134(3) provides circumstances in which the Regulator is not required to take reasonable steps to return a thing because the period of 60 days after the seizure ends.

Subclause 134(4) confirms that a thing required to be returned under this clause must be returned to the person from whom it was seized (or the owner if that person is not entitled to possess it).

Clause 135 – Issuing officer may permit a seized thing to be retained

The Regulator may apply to an issuing officer for an order permitting the retention of a thing seized for a further period in certain specified circumstances (**subclause 135(1)**).

Subclause 135(2) provides that, before making an application, the Regulator must take reasonable steps to discover who has an interest in the retention of the thing and (if it is practicable to do so) notify each person who has an interest of the proposed application.

The issuing officer may order that the thing may continue to be retained for a period specified in the order if they are satisfied that it is necessary for the thing to continue to be retained for certain specified reasons (**subclause 135(3)**). The period specified in the order must not exceed three years (**subclause 135(4)**).

Clause 136 – Disposal of seized things

Subclause 136(1) enables the Regulator to dispose of a thing seized if they have taken reasonable steps to return the thing to a person and either they have been unable to locate the person or the person has refused to take possession of the thing. The Regulator may dispose of the thing in such manner as they think appropriate (**subclause 136(2)**).

Clause 137 – Compensation for acquisition of property

Subclause 137(1) provides that, if the operation of clause 136 would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation.

In these circumstances, where the Commonwealth and the person do not agree on the amount of compensation, the person may institute proceedings for the recovery of such reasonable amount of compensation as the relevant court determines (**subclause 137(2)**).

Subclause 137(3) provides that *acquisition of property* and *just terms* have the same meaning as in paragraph 51(xxxi) of the Constitution.

Division 4 – Investigation warrants

Clause 138 – Investigation warrants

An authorised person may apply to an issuing officer for a warrant under this clause in relation to premises (**subclause 138(1)**).

Subclause 138(2) provides that the issuing officer may issue the warrant if they are satisfied, by information 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. However, the issuing officer must not issue the warrant unless the authorised person or some other person has given them such further information required concerning the grounds on which the issue of the warrant is being sought (**subclause 138(3)**).

Subclause 138(4) sets out the required content of a warrant issued in accordance with this clause.

The warrant provisions in this Chapter are consistent with provisions in other regulatory regimes, such as those contained in the *Financial Transactions Reports Act 1988*, *Fuel Quality Standards Act 2000* and *Renewable Energy (Electricity) Act 2000* amongst others. In these circumstances clause 138 is considered to be consistent with Part 8.3 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Clause 139 – Investigation warrants by telephone, fax etc.

An authorised person may apply to an issuing officer by electronic means for a warrant under clause 138 in an urgent case or if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant (**subclause 139(1)**). In these circumstances, the issuing officer may require communication by voice to the extent that it is practicable in the circumstances (**subclause 139(2)**).

Subclause 139(3) provides that, before applying for the warrant, the authorised person must prepare information of the kind mentioned in subclause 136(2). If necessary, the authorised person may apply for the warrant before the information is sworn or affirmed.

The issuing officer may complete and sign the same warrant that would have been issued under clause 138 if satisfied that there are reasonable grounds for doing so (**subclause 139(4)**). After completing and signing the warrant, the issuing officer must inform the authorised person by electronic means of the terms of the warrant and the day and time when the warrant was signed (**subclause 139(5)**). The authorised person must then undertake certain actions specified in **subclause 139(6)** including sending certain information to the issuing officer within a set timeframe (**subclause 139(7)**). The issuing officer must attach this information to the signed warrant (**subclause 139(8)**).

Clause 140 – Authority of warrant

Subclause 140(1) confirms that a form of warrant completed under subclause 139(6) is authority for the same powers as authorised by the warrant signed by the issuing officer under subclause 139(4).

Subclause 140(2) provides certain circumstances in which a court is to assume (unless the contrary intention is proved) that an exercise of power was not authorised by a warrant under clause 139.

Clause 141 – Offence relating to warrants by telephone, fax etc.

Clause 141 provides five offences to prohibit certain actions of an authorised person in relation to an investigation warrants by electronic means. Each of these offences is punishable by a penalty of imprisonment for two years.

Clause 142 – Completing execution of investigation warrant after temporary cessation

This clause applies if an authorised person, and all persons assisting, who are executing an investigation warrant temporarily cease its execution and leave the premises (**subclause 142(1)**). If this occurs, the execution of the warrant may be completed in certain specified circumstances (**subclauses 142(2-3) and 142(5)**).

Subclause 142(4) provides that, before making the application, the authorised person, or person assisting, must give notice to the occupier of the premises of their intention to apply for an extension (if it is practicable to do so).

Clause 143 – Completing execution of an investigation warrant stopped by court order

Clause 143 provides that an authorised person may complete the execution of an investigation warrant that has been stopped by an order of a court if the order is later revoked or reversed and the warrant is still in force when the order is revoked or reversed.

Part 7 – General provisions relating to monitoring and investigation

Division 1 – Obligations of authorised persons in entering premises

Clause 144 – Consent

Before obtaining consent from an occupier to enter premises for the purposes of paragraphs 117(2)(a) or 125(2)(a), an authorised person must inform them that they may refuse consent (**subclause 144(1)**). A consent has no effect unless voluntary (**subclause 144(2)**).

Subclause 144(3) provides that consent may be expressed to be limited to entry during a particular period. Consent that is not limited has effect until withdrawn (**subclause 144(4)**).

If an authorised person entered premises because of the consent of the occupier of the premises, they must leave the premises if the consent ceases to have effect (**subclause 144(5)**).

Clause 145 – Announcement before entry under warrant

Subclause 145(1) requires an authorised person to announce they are authorised to enter the premises, show their identity card to the occupier and give any person at the premises an opportunity to allow entry before entering premises under a monitoring warrant or an investigation warrant.

An authorised person is not required to comply with subclause 145(1) if they believe, on reasonable grounds, that immediate entry to the premises is required to ensure the safety of a person or to ensure that the effective execution of the warrant is not frustrated (**subclause 145(2)**). In these circumstances, if the occupier of the premises is present, the authorised person must show his or her identity card to them as soon as practicable after entering the premises (**subclause 145(3)**).

Clause 146 – Authorised person to be in possession of warrant

An authorised person executing a monitoring warrant must be in possession of the warrant issued, or a copy of the warrant as so issued (**subclause 146(1)**).

An authorised person executing an investigation warrant must be in possession of the warrant issued, or a copy of the warrant as so issued, or the form of warrant completed under subclause 139(6), or a copy of the form as so completed (**subclause 146(2)**).

Clause 147 – Details of warrant etc. to be given to occupier

Subclause 147(1) provides that an authorised person must comply with subclause 147(2) if a monitoring warrant or an investigation warrant is being executed and the occupier of the premises is present. **Subclause 147(2)** sets out certain actions the authorised person executing the warrant must undertake as soon as practicable.

Division 2 – Other powers of authorised persons

Subdivision A – Asking questions and seeking production of documents

Clause 148 – Authorised person may ask questions and seek production of documents

Clause 148 applies if an authorised person enters premises for the purposes of determining whether (**subclause 148(1)**):

- a provision of the new Act has been, or is being, complied with; or
- information given in compliance or purported compliance with a provision of the new Act is correct; or
- an authorised person enters premises to search for evidential material.

If the entry is authorised because the occupier consented, the authorised person may ask the occupier to answer any questions, and produce any documents, relating to certain matters set out in **subclause 148(2)**.

Similarly, if the entry is authorised by a monitoring warrant or an investigation warrant, the authorised person may ask the occupier to answer any questions, and produce any documents, relating to certain matters set out in **subclause 148(3)**.

Subclause 148(4) provides that a person commits an offence if they are subject to a requirement under subclause 148(3) and they fail to comply with the requirement. This offence is punishable by a penalty of 30 penalty units.

Subdivision B – Opening gaming machines

Clause 149 – Authorised person may open gaming machines

Clause 149 applies if an authorised person enters premises and exercises a monitoring powers or investigation powers (**subclause 149(1)**).

Subclause 149(2) provides that, in the course of exercising monitoring powers or investigation powers, an authorised person may perform certain actions in relation to a gaming machine including opening the gaming machine and testing components inside the gaming machine. However, an authorised person may only open a gaming machine or component if they have appropriate training and believe on reasonable grounds that this can be carried out without damage to the machine or component (**subclause 149(3)**). Similar requirements apply to another person requested to remove, alter or break a mark or seal under paragraph 149(2)(d) (**subclause 149(4)**).

Subclause 149(5) confirms that, to avoid doubt, damage to the machine or component does not include damage to a mark or seal.

The powers in subclause 149(2) do not limit the monitoring powers or investigation powers (**subclause 149(6)**).

Clause 150 – Authorised person to notify about broken seals and reseal gaming machines

Clause 150 applies if an authorised person has, under clause 149, removed, altered or broken (or requested the removal, alteration or breaking of) a mark or seal in relation to a gaming machine (**subclause 150(1)**).

Subclause 150(2) requires the authorised person to notify the occupier and the body responsible for regulating gaming machines in the relevant State or Territory as soon as practicable and reseal the gaming machine.

The regulations (made under clause 201) may provide certain procedures, prohibit certain actions and provide offences in relation to removing, altering, breaking seals and resealing on gaming machines (**subclause 150(3)**). Clause 201 provides for limits on the penalties that can be imposed by the regulations.

Clause 151 – Relationship with State or Territory laws

This Subdivision has effect despite any law of a State or Territory to the contrary (**subclause 151(1)**). A person does not commit an offence, and is not liable for any penalty, under an enactment of a State or Territory, as a result of actions conducted in accordance with clauses 149 or 150.

Division 3 – Occupier’s rights and responsibilities on entry

Clause 152 – Occupier entitled to observe execution of warrant

Subclause 152(1) provides that the occupier of premises (or another person who apparently represents the occupier) is entitled to observe the execution of a monitoring warrant or an investigation warrant in relation to the premises if they are present at that time. This clause also does not prevent the execution of the warrant in two or more areas of the premises at the same time (**subclause 152(3)**).

The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution (**subclause 152(2)**).

Clause 153 – Occupier to provide authorised person with facilities and assistance

Subclause 153(1) provides that the occupier of premises (or another person who apparently represents the occupier) to which a monitoring warrant or an investigation warrant relate must provide all reasonable facilities and assistance to an authorised person and any person assisting the authorised person for the effective execution of their powers.

Subclause 153(2) provides an offence if the person is subject to subclause 130(1) and they fail to comply. The penalty for contravention of this subclause is 30 penalty units.

Division 4 – Miscellaneous

Clause 154 – Powers of issuing officers

A power conferred on an issuing officer by Part 5, 6 or 7 of Chapter 7 is conferred in a personal capacity and not as a court or member of a court (**subclause 154(1)**). The issuing officer need not accept the power conferred (**subclause 154(2)**).

Subclause 154(3) provides that an issuing officer exercising a power mentioned in subclause 154(1) has the same protection and immunity as if they were exercising the power as the court of which they are a member or as a member of the court of which the issuing officer is a member.

Clause 155 – Compensation for damage to electronic equipment

This clause applies if the following occurs as a result of electronic equipment being operated as mentioned in Parts 5 or 6:

- damage is caused to the equipment; or
- the data recorded on the equipment is damaged; or

- programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted;

and the damage or corruption occurs because insufficient care was exercised in selecting the person who was to operate the equipment or insufficient care was exercised by the person operating the equipment (**subclause 155(1)**).

Subclause 155(2) provides that the Commonwealth must pay an agreed amount of reasonable compensation to the owner of the equipment, or the user of the data or programs. However, if the Commonwealth and the owner or user fail to agree, certain proceedings may be instituted in a relevant court (**subclause 155(3)**).

In determining the amount of compensation payable, regard is to be had to whether certain parties provided any appropriate warning or guidance on the operation of the equipment (**subclause 155(4)**).

Clause 156 – Compensation for damage to gaming machine

This clause applies if the following occurs as a result of a gaming machine, or a component of the gaming machine, being opened as mentioned in clause 149:

- damage is caused to the machine or component; and
- the damage is caused because insufficient care was exercised by an authorised person in selecting the person who was to open the machine or component or insufficient care was exercised by an authorised person opening the machine or component (**subclause 156(1)**).

Subclause 156(2) provides that the Commonwealth must pay an agreed amount of reasonable compensation to the owner of the gaming machine. However, if the Commonwealth and the owner fail to agree, certain proceedings may be instituted in a relevant court (**subclause 156(3)**).

In determining the amount of compensation payable, regard is to be had to whether certain parties provided any appropriate warning or guidance on the opening of the gaming machine or component (**subclause 156(4)**).

Part 8 – Requiring persons to give information, produce documents and keep records

Clause 157 – Power to require persons to give information, produce documents or answer questions

Subclause 157(1) provides that the Regulator may give a written notice to a person under subclause 157(2) if they have reason to believe that the person has information or a document that is relevant to the administration or enforcement of the new Act.

The Regulator may require the person to:

- give information to a specified authorised person; or
- produce documents to a specified authorised person; or
- appear before a specified authorised person to answer questions (**subclause 157(2)**).

Subclause 157(3) requires the notice to contain certain information depending on what the Regulator requires of the person under subclause 157(2).

An authorised person may require answers provided under paragraph 157(2)(c) to be verified by, or given on, oath or affirmation and either orally or in writing (**subclause 157(4)**). An authorised person to whom information or answers are verified or given may administer the oath or affirmation (**subclause 157(5)**).

Subclause 157(6) provides that a person commits an offence if they are given a notice under this clause and fail to comply. The penalty for contravention of this subclause is six months' imprisonment or 30 penalty units, or both.

This clause does not abrogate the common law privilege against self-incrimination.

Clause 158 – Translation of documents

If a person is required by the new Act to produce a document and the document is not written in English, an authorised person may request the person to make available a certified English translation within 28 days (**subclause 158(1)**).

Subclause 158(2) provides that a person commits an offence if they refuse or fail to comply with subclause 158(1). The penalty for contravention is four penalty units. This offence is one of strict liability (**subclause 158(3)**).

Strict liability is appropriate in this case as compliance by a person is not an onerous or difficult obligation and is an action in the control of the person.

Including a provable fault element would probably undermine the integrity of the provision, as it would be difficult to prove fault in most instances. Alternatively, the fault element would need to be drafted to include all states of mind that could lead to non-compliance, effectively making the offence strict liability.

Subclause 158(4) provides a definition of **certified** in relation to a translation of a document.

Clause 159 – Record keeping requirements

Subclause 159(1) provides that the regulations (made under clause 201) may prescribe requirements in relation to keeping and retaining records of specified information that is relevant to the new Act. Such requirements may be imposed on any or all of the persons specified in **subclause 159(2)**.

Subclause 159(3) provides that a person commits an offence if they are subject to a requirement under regulations made under this clause and the person engages in conduct that contravenes the requirement. The penalty for contravention is four penalty units. This offence is one of strict liability (**subclause 159(4)**).

Strict liability is appropriate as compliance by a person is not an onerous or difficult obligation and is an action in the control of the person, and not subject to reliance on actions of third parties. The purpose of clause 159 is to ensure people keep records of their compliance with the new Act.

Including a provable fault element would probably undermine the integrity of the provision, as it would be difficult to prove fault in most instances. Alternatively, the fault element would need to be drafted to include all states of mind that could lead to non-compliance, effectively making the offence strict liability.

The imposition of strict liability in these circumstances is considered to be consistent with Part 4.3.2 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Chapter 8 – Enforcement

Summary

Chapter 8 provides for a range of actions to be taken to enforce the harm minimisation measures in this Bill, including civil penalty orders, infringement notices, injunctions, enforceable undertakings and compliance notices, with the possibility of publication by the Regulator of details of enforcement action taken under this Chapter.

Background

Civil penalty orders may be sought from a court in relation to contraventions of civil penalty provisions.

A person can be given an infringement notice in relation to a contravention of an offence of strict liability.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

An injunction may be sought to restrain a person from contravening a provision, or to compel compliance with a provision.

An authorised person may accept from a person an undertaking relating to compliance with a provision. The undertaking may be enforced by a court order.

A person may be given a compliance notice if an authorised person reasonably believes that the person has contravened a provision. The notice may require the person to take specified action to remedy the contravention. A failure to comply with a notice may be subject to a civil penalty.

The penalties provided for within this Bill are maximum penalties. Accordingly, the penalty that might apply in relation to any particular offence can be adjusted according to the gravity of the contravention, or where there have been multiple, or repeat, contraventions of the provisions.

The regulator may publicise details of certain enforcement action taken under Chapter 8.

Part 1 – Guide to this Chapter

Clause 160 – Guide to this Chapter

Clause 160 provides a guide to Chapter 8 of the Bill.

Part 2 – Civil penalty provisions

Division 1 – Obtaining a civil penalty order

Clause 161 – Civil penalty orders

Subclause 161(1) provides that the Regulator may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty. ***Civil penalty provision*** is defined in clause 5 to mean a provision of the new Act either that sets out at its foot a pecuniary penalty, or penalties, indicated by the words ‘civil penalty’, or that is stipulated by another provision of the new Act to be a civil penalty provision. Additionally, the provision must be either a subsection, or a section that is not divided into subsections, or a subregulation, or a regulation that is not divided into subregulations.

A note alerts the reader that the Regulator cannot apply for an order in certain cases where an undertaking or compliance notice has been given (see subclauses 187(6) and 189(5)).

Subclause 161(2) requires that the Regulator make the application to the court within four years of the alleged contravention.

If the relevant court is satisfied that the person has contravened the civil penalty provision, **subclause 161(3)** provides that the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Subclause 161(4) provides that an order under subclause (3) is a ***civil penalty order***.

The amount of the pecuniary penalty is limited by **subclause 161(5)**. If the person is a body corporate, the limit is five times the pecuniary penalty specified for the civil penalty provision. Otherwise, the limit is the pecuniary penalty specified for the civil penalty provision.

Subclause 161(6) provides that, in determining the pecuniary penalty, the court may take into account all relevant matters, including:

- the nature and extent of the contravention;
- the nature and extent of any loss or damage suffered because of the contravention;
- the circumstances in which the contravention took place; and
- whether the person has previously been found by a court to have engaged in any similar conduct.

Clause 162 – Civil enforcement of penalty

Clause 162 provides for the enforcement of penalty. A pecuniary penalty is a debt payable to the Commonwealth. The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

Clause 163 – Conduct contravening more than one civil penalty provision

Clause 163 deals with the situation where conduct contravenes more than one civil penalty provision. If conduct constitutes a contravention of two or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

Clause 164 – Multiple contraventions

Clause 164 provides for multiple contraventions of a civil penalty provision. **Subclause 164(1)** provides that a relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character. **Subclause 164(2)** makes it clear that the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

Clause 165 – Proceedings may be heard together

Clause 165 provides that a relevant court may direct that two or more proceedings for civil penalty orders are to be heard together.

Clause 166 – Civil evidence and procedure rules for civil penalty orders

Clause 166 provides that a relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

Clause 167 – Contravening a civil penalty provision is not an offence

Clause 167 makes it clear that a contravention of a civil penalty provision is not an offence.

Division 2 – Civil proceedings and other enforcement action

Clause 168 – Civil proceedings after other enforcement action

Clause 168 provides that a relevant court may not make a civil penalty order against a person for a contravention of a civil penalty provision (the ***gambling contravention***) if the person has;

- (a) been convicted of a criminal offence (under a law of the Commonwealth, a State or a Territory); or
- (b) been found by a court to have contravened a civil penalty provision under the law of a State or Territory

that is constituted by conduct that is the same, or substantially the same, as the conduct that is constituting the gambling contravention.

Clause 169 – Other enforcement action during civil proceedings

Clause 169 provides that proceedings (the ***gambling proceedings***) for a civil penalty order against a person for a contravention (the ***gambling contravention***) of a civil penalty provision are stayed if:

- either;
 - criminal proceedings are commenced or have already been commenced against the person for an offence (under a law of the Commonwealth, a State or a Territory); or
 - civil proceedings are commenced or have already been commenced against the person for an offence under a law of a State or a Territory; and
- the offence, or civil penalty provision referred to above, is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the gambling contravention.

Subclause 169(2) provides that the gambling proceedings may be resumed if the person is not convicted of the offence or a court does not find the person breached a civil penalty provision referred to in paragraph 169(1)(a). Otherwise, the gambling proceedings are dismissed.

Clause 170 –Other enforcement action after civil proceedings

Clause 170 provides that criminal proceedings (under a law of the Commonwealth, a State or a Territory), or civil penalty proceedings (of a State or Territory) may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision, regardless of whether a civil penalty order under this Bill has been made against the person in relation to the contravention. It is intended that this provision will apply only to the extent that the law of the Commonwealth or the relevant State or Territory (as applicable) would otherwise allow for a civil penalty to be imposed on a person who has previously been convicted of a criminal offence for conduct that is the same, or substantially the same, as the conduct giving rise to the civil offence.

Clause 171 – Evidence given in civil proceedings not admissible in criminal proceedings

Clause 171 provides that evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings (under a law of the Commonwealth,) against the individual if:

- the individual previously gave the evidence or produced the documents in proceedings under this Act for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
- the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Subclause 171(2) provides that subclause (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

Clause 171 is an evidential rule that applies only to Commonwealth criminal proceedings. It is not intended that this rule will displace the rules of evidence as they apply to proceedings brought in a State or Territory. State or Territory proceedings will be bound by the rules of evidence relating to the State or Territory in which the proceedings are undertaken.

Division 3 – Miscellaneous

Clause 172 – Ancillary contravention of civil penalty provisions

Clause 172 provides that a person must not:

- attempt to contravene a civil penalty provision; or
- aid, abet, counsel or procure a contravention of a civil penalty provision; or

- induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
- be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
- conspire with others to effect a contravention of a civil penalty provision.

A note alerts the reader to the fact that clause 174 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to this subclause. Accordingly, a person's state of mind does need to be proven for a contravention of these provisions.

Subclause 172(2) provides that a person who contravenes subclause (1) in relation to a civil penalty provision is taken to have contravened the provision.

Clause 173 – Mistake of fact

Clause 173 provides that a person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if, at or before the time of the conduct constituting the contravention, the person considered whether or not facts existed, and was under a mistaken but reasonable belief about those facts, and, had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

Subclause 173(2) provides that for the purposes of subclause (1), a person may be regarded as having considered whether or not facts existed if:

- the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
- the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Subclause 173(3) provides that a person who wishes to rely on subclause (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter. That is, the defendant is required to prove, on the balance of probabilities, that they held an honest and reasonable belief in relation to the mistaken facts relied upon. This is appropriate as mistake of fact is a matter which is peculiarly within the defendant's knowledge and not available to the prosecution.

The reversal of the onus of proof in these circumstances is considered to be consistent with Part 4.3.2 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Clause 174 – State of mind

Clause 174 provides that, in proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subclause 172(1)), it is not necessary to prove:

- the person's intention; or
- the person's knowledge; or
- the person's recklessness; or
- the person's negligence; or
- any other state of mind of the person.

Subclause 174(2) provides that subclause (1) does not affect the operation of clause 173 (which is about mistake of fact).

Clause 175 – Civil penalty provisions contravened by employees, agents or officers

Clause 175 provides that, if an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

Part 3 – Infringement notices

Clause 176 – When an infringement notice may be given

Subclause 176(1) provides that, if the Regulator has reasonable grounds to believe that a person has contravened a civil penalty provision in Chapter 3 or 5 of the new Act, the Regulator may give an infringement notice to the person for the alleged contravention.

Subclause 176(2) provides that the infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

Subclause 176(3) provides that a single infringement notice must relate only to a single contravention of a single provision.

Clause 177 – Matters to be included in an infringement notice

Clause 177 provides that an infringement notice must:

- be identified by a unique number;
- state the day on which it is given;

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- state the name of the person to whom the notice is given;
- give brief details of the alleged contravention, including the provision that was allegedly contravened, the maximum penalty that a court could impose for the contravention, and the time (if known) and day of, and the place of, the alleged contravention;
- state the amount that is payable under the notice;
- give an explanation of how payment of the amount is to be made; and
- state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) neither criminal proceedings, nor proceedings for a civil penalty order, will be brought in relation to the alleged contravention;
- state that payment of the amount is not an admission of guilt or liability;
- state that the person may apply to the Regulator to have the period in which to pay the amount extended;
- state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court, or proceedings for a civil penalty order may be brought, in relation to the alleged contravention;
- set out how the notice can be withdrawn;
- state that, if the notice is withdrawn, the person may be prosecuted in a court, or proceedings for a civil penalty order may be brought, in relation to the alleged contravention; and
- state that the person may make written representations to the Regulator seeking the withdrawal of the notice.

Subclause 177(2) provides that the amount that is payable under the notice is to be different for alleged contraventions of different parts of the new Act. For an alleged contravention by a person of a provision in Part 2 of Chapter 3 (gaming machines that do not comply with precommitment and dynamic warning requirements) or of clause 63 (providing a non-compliant automatic teller machine), or of clause 79 or 80 (manufacturing and importing gaming machines), 10 penalty units apply to a body corporate, and two penalty units apply otherwise. A penalty unit is currently \$110.

For an alleged contravention by a person of clause 62 (occupying premises containing a non-compliant automatic teller machine), five penalty units apply to a body corporate, and one penalty unit applies otherwise.

Clause 178 – Extension of time to pay amount

Clause 178 provides that a person to whom an infringement notice has been given may apply to the Regulator for an extension of the period of time to pay the amount set out in the infringement notice before civil penalty proceedings are commenced.

Subclause 178(2) provides that, if the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.

Subclause 178(3) provides that, if the Regulator extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in clause 177 is taken to be a reference to that period so extended.

Subclause 178(4) deals with the situation in which the Regulator does not extend the period, providing that reference to the period in clause 177 becomes the later of the last day of the period or the day that is seven days after the person is given notice of the Regulator's decision not to extend.

For clarity, **subclause 178(5)** provides that the Regulator may extend the period more than once under subclause (2).

Clause 179 – Withdrawal of an infringement notice

Clause 179 allows a person to whom an infringement notice has been given to make written representations to the Regulator seeking the withdrawal of the notice.

Subclause 179(2) provides that the Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

Subclause 179(3) guides the Regulator when deciding whether or not to withdraw an infringement notice. The Regulator must take into account any written representations seeking the withdrawal that were given by the person to the Regulator. The Regulator may also take into account:

- whether a court has previously imposed a penalty on the person for a contravention of an offence or civil penalty provision in the new Act;
- the circumstances of the alleged contravention;
- whether the person has paid an amount stated in an earlier infringement notice, for contravention of a civil penalty provision that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the offence in the relevant infringement notice;

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- any other matter the Regulator considers relevant.

Subclause 179(4) provides that notice of the withdrawal must be given to the person. The withdrawal notice must state:

- the person's name and address;
- the day the infringement notice was given;
- the identifying number of the infringement notice;
- that the infringement notice is withdrawn; and
- that the person may be prosecuted in a court, or proceedings for a civil penalty order may be brought, in relation to the alleged contravention.

Subclause 179(5) provides that, if the Regulator withdraws the infringement notice and the person has already paid the amount stated in the notice, the Commonwealth must refund to the person an amount equal to the amount paid.

Clause 180 – Effect of payment of amount

Subclause 180(1) provides that, if the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in clause 177, then:

- any liability of the person for the alleged contravention is discharged;
- neither criminal proceedings, nor proceedings for a civil penalty order, may be brought in relation to the alleged contravention;
- the person is not regarded as having admitted guilt or liability for the alleged contravention; and
- the person is not regarded as having been convicted of the alleged offence.

Subclause 180(2) provides that subclause (1) does not apply if a notice has been withdrawn.

Clause 181 – Effect of this Part

Clause 181 provides that this Part does not:

- require an infringement notice to be given to a person for an alleged contravention of a civil penalty provision;

- affect the liability of a person for an alleged contravention of a civil penalty provision if the person does not comply with an infringement notice given to the person for the contravention, or an infringement notice is not given to the person for the contravention, or an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a civil penalty provision offence.

Part 4 – Injunctions

Clause 182 – Grant of injunctions

Clause 182 provides for restraining and performance injunctions.

Subclause 182(1) provides that, if a person has engaged, is engaging or is proposing to engage, in conduct in contravention of any provision of the new Act, a relevant court may, on application by an authorised person, grant an injunction restraining the person from engaging in the conduct. Additionally, if, in the court's opinion, it is desirable to do so, the court may require the person to do a thing.

An authorised person is defined in clause 5 as a person appointed under clause 112 and the Regulator in his or her capacity as an authorised person under clause 113.

A relevant court is defined in clause 5 as 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 the new Act.

Subclause 182(2) provides that, if a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing, and the refusal or failure was, is or would be a contravention of a provision of the new Act, a court may, on application by an authorised person, grant an injunction requiring the person to do that thing.

Clause 183 – Interim injunctions

Clause 183 allows for the granting of interim injunctions before deciding an application for an injunction under clause 182. The interim injunction may restrain a person from engaging in conduct, or require a person to do a thing.

However, **subclause 183(2)** restricts a court from requiring an applicant for an injunction under clause 182 to give an undertaking as to damages as a condition of granting an interim injunction.

Clause 184 – Discharging or varying injunctions

Clause 184 provides that a relevant court may discharge or vary an injunction granted by that court under this Part.

Clause 185 – Certain limits on granting injunctions not to apply

Clause 185 guides the grant of restraining and performance injunctions by a court.

Subclause 185(1) provides that the power of a relevant court under this Part to grant an injunction restraining a person from engaging in conduct may be exercised:

- whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind;
- whether or not the person has previously engaged in conduct of that kind; and
- whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Subclause 185(2) provides that the power of a relevant court under this Part to grant an injunction requiring a person to do a thing may be exercised:

- whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing;
- whether or not the person has previously refused or failed to do that thing; and
- whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that thing.

Clause 186 – Other powers of a relevant court unaffected

Clause 186 confirms that the powers conferred on a relevant court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by the new Act or otherwise.

Part 5 – Enforceable undertakings

Clause 187 – Acceptance of undertakings

Clause 187 provides that the Regulator may accept any of the following undertakings:

- a written undertaking given by a person that the person will, in order to comply with a provision of the new Act, take specified action;

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- a written undertaking given by a person that the person will, in order to comply with a provision of the new Act, refrain from taking specified action;
- a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a provision of the new Act, or is unlikely to contravene such a provision, in the future.

Subclause 187(2) provides that the undertaking must be expressed to be an undertaking under this clause.

Subclause 187(3) provides that the person may, with the written consent of the Regulator, withdraw or vary the undertaking. They may do so at any time.

Subclause 187(4) provides that the Regulator's written consent is not a legislative instrument. This provision is inserted to assist readers and is merely declaratory of the law. The Regulator's written consent is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Subclause 187(5) provides that the Regulator may, by written notice given to the person, cancel the undertaking.

Subclauses 187(6) and (7) deal with the relationship between undertakings and the civil penalty provisions.

Subclause 187(6) provides that the Regulator must not apply for a civil penalty order in relation to a contravention of a civil penalty provision by a person if an undertaking given by the person under this clause in relation to the contravention has not been withdrawn or cancelled.

Subclause 187(7) similarly provides that the Regulator must not accept an undertaking in relation to a contravention if the person has been given a notice in relation to the contravention under clause 189.

Clause 188 – Enforcement of undertakings

Clause 188 provides that, if a person has given an undertaking under clause 187, the undertaking has not been withdrawn or cancelled, and the Regulator considers that the person has breached the undertaking, the Regulator may apply to a relevant court for an order under subclause (2).

Subclause 188(2) provides for a relevant court's powers if the court is satisfied that the person has breached the undertaking. If so, the court may make any or all of the following orders:

- an order directing the person to comply with the undertaking;

- an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- any other order that the court considers appropriate.

Part 6 – Compliance notices

Clause 189 – Compliance notices

Clause 189 empowers an authorised person to give a notice, known as a compliance notice, to a person in particular circumstances. An authorised person is defined in clause 5 as a person appointed under clause 112 and the Regulator in his or her capacity as an authorised person under clause 113.

Subclause 189(1) provides that this clause applies if an authorised person reasonably believes that a person has contravened any provision of the new Act.

Subclause 189(2) empowers an authorised person to, except as provided by subclause (4), give the person a notice requiring the person to do the following within such reasonable time as is specified in the notice. The person may be required to take specified action to remedy the direct effects of the contravention referred to in subclause (1), and/or to produce reasonable evidence of the person's compliance with the notice.

Subclause 189(3) provides that the notice must also:

- set out the name of the person to whom the notice is given;
- set out the name of the authorised person who gave the notice;
- set out brief details of the contravention;
- explain that a failure to comply with the notice may contravene a civil penalty provision;
- explain that the person may apply to a relevant court for a review of the notice on either or both of the grounds that the person has not committed a contravention set out in the notice or that the notice does not comply with subclause (2) or this subclause; and
- set out any other matters prescribed by the regulations (made under clause 201).

Subclause 189(4) provides that an authorised person must not give a person a notice in relation to a contravention if the person has given an undertaking under clause 187 in relation to the contravention, the undertaking has been accepted by the Regulator and the undertaking has not been withdrawn or cancelled.

Subclause 189(5) provides that the Regulator must not apply for a civil penalty order in relation to a contravention of a civil penalty provision by a person if an authorised person has given the person a notice in relation to the contravention and either the notice has not been withdrawn, and the person has complied with the notice, or the person has made an application under clause 190 in relation to the notice that has not been completely dealt with.

Subclause 189(6) provides that a person who complies with a notice in relation to a contravention of a civil penalty provision is not taken to have admitted to contravening the provision or to have been found to have contravened the provision.

Subclause 189(7) requires that a person must not fail to comply with a notice given under this clause. This is a civil penalty provision, subject to a penalty of 30 penalty units.

However, **subclause 189(8)** provides that the penalty in subclause 189(7) does not apply if the person has a reasonable excuse. Although *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* cautions against defences of 'reasonable excuse' this approach has been taken because the particular circumstances that will need to be relied on to establish the existence of a reasonable excuse will be peculiar to the knowledge of the defendant.

Subclause 189(9) provides that a person who wishes to rely on subclause (8) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subclause. This means that the person has to prove, on the balance of probabilities, that the facts upon which they rely are true. This approach has been taken because the particular circumstances that will need to be relied on to establish the defence will be peculiar to the knowledge of the defendant

Clause 190 – Review of compliance notices

Clause 190 provides for review by a court of the giving of a compliance notice.

Subclause 190(1) provides that a person who has been given a notice under clause 189 may apply to a relevant court for a review of the notice on grounds that either the person has not committed a contravention set out in the notice and/or that the notice does not comply with subclause 189(2) or (3).

Subclause 190(2) provides that, at any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.

Subclause 190(3) then provides that the court may confirm, cancel or vary the notice after reviewing it.

Part 7 – Miscellaneous

Clause 191 – Regulator may publicise certain offences and contraventions

Clause 191 empowers the Regulator to publicise, in any way he or she thinks appropriate, any or all of:

- an offence against the new Act of which a person has been convicted, and the person's name;
- a contravention of a civil penalty provision in relation to which a civil penalty order has been made against a person, and the person's name;
- the acceptance of an undertaking given under clause 187 by a person, the terms of the undertaking, and the person's name;
- a breach of an undertaking given under clause 187 in relation to which an order has been made against a person under subclause 188(2), the terms of the order and the person's name;
- the granting or varying of an injunction under Part 4 restraining a person from engaging in conduct, or requiring a person to do an act or thing, the nature of the conduct, act or thing, and the person's name.

A note alerts the reader to the fact that this subclause constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

Subclause 191(2) clarifies that this clause does not limit the power of the Regulator or anyone else to publicise a matter or a person's name, prevent anyone else from publicising a matter or a person's name; or affect any obligation (however imposed) on anyone to publicise a matter or a person's name.

Chapter 9 – Research, reviews and other provisions

Summary

Chapter 9 contains provisions for two separate inquiries by the Productivity Commission in relation to any trial of mandatory precommitment systems (including the conditions the Commonwealth places on itself in agreeing to any trial of mandatory precommitment) and an assessment of the progress gaming machine premises are making towards complying with the measures contained in this Bill. This Chapter also establishes a new Australian Gambling Research Centre within the Australian Institute of Family Studies and an Expert Advisory Group on Gambling to support it.

This Chapter also provides for the Regulator to delegate all or any powers or functions under the Bill. If the delegation is made to an employee or body of a State or Territory the delegation can only be made with the approval of the relevant Minister of the State or Territory.

It is the Government's preference that the Regulator's functions and powers be delegated to a relevant employee or body in each of the States or Territories.

This Chapter also sets out the review and appeal rights that are available from decisions made by the Regulator, or his or her delegate.

Part 1 – Guide to this Chapter

Clause 192 – Guide to this Chapter

Clause 192 provides a guide to Chapter 9 of the Bill.

Part 2 – Research, reviews and other provisions

Division 1 – Research and reviews

Clause 193 – Productivity Commission review of results of trial if trial conducted

Subclause 193(1) provides that this clause applies if the Commonwealth agrees that a trial is to be conducted in relation to the requirements of Part 2 of Chapter 2 (precommitment systems) and the trial requires that all persons who use a gaming machine that is covered by the trial be registered, otherwise known as mandatory 'full' precommitment.

Subclause 193(2) sets out that features that must be included in the trial before the Commonwealth can agree to the trial occurring. These features confirm that the trial will be robust and independent.

Subclause 193(3) provides that, if a trial is undertaken, once it has been completed, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1988*, refer the results of the trial as evaluated by the independent body, to the Productivity Commission for inquiry.

The note at the end of subclause 193(3) refers the reader to clause 195 for the requirements in relation to the referral and reports on the inquiry.

Subclause 193(4) provides that, as part of the inquiry the Productivity Commission must consider whether requiring people to register with the precommitment system to be able to use a gaming machine provides sufficient advantages to individuals and communities over a precommitment system that allows people to choose whether they want to register to justify implementing that system in all States and Territories.

Clause 194 – Productivity Commission review of assessment of progress

Clause 194 provides that the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1988*, refer to the Productivity Commission for inquiry an assessment of the progress gaming machine premises are making towards complying with Parts 2 and 3 of Chapter 2 (precommitment systems and dynamic warning systems), ATM withdrawal limits, Part 2 of Chapter 5 (requirements for manufacturing and importing gaming machines) and any other matters that the Minister who administers the Act considers relevant.

The referral of as set out in subclause 194(1) must occur no later than 30 September 2014.

Clause 195 – Requirements for referrals to Productivity Commission and reports

Subclause 195(1) provides that in referring the matters set out in subclause 193 or 194 to the Productivity Commission for inquiry, the Productivity Minister must, under paragraph 11(1)(b) of the *Productivity Commission Act 1988*, specify six months as the period within which the Productivity Commission must submit its report on the inquiry and, under paragraph 11(1)(d) of that Act, require the Commission to make recommendations to the Commonwealth Government

Subclause 195(2) provides that, as soon as practicable after receiving a report, the Minister who administers the new Act must cause a statement to be prepared that sets out the Commonwealth Government's response to each recommendation. That Minister must also cause copies of the statement to a report to be tabled in each house of the Parliament within three months after receiving the report (**subclause 195(3)**).

For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1988*, the matters referred to in clauses 193 and 194 are taken to be matters relating to industry, industry development and productivity (**subclause 195(4)**) and this clause does not limit the Productivity Minister's powers under that paragraph (**subclause 195(5)**).

Clause 196 – Research into gambling

Subclause 196(1) gives additional functions to the Director of the Australian Institute of Family Studies that establish the Australian Gambling Research Centre. The new functions of the Director are to undertake or commission research into, or producing data and statistics about gambling issues and to increase the capability of researchers to undertake these activities.

The Australian Institute of Family Studies is established by Part XIVA of the *Family Law Act 1975* (the Family Law Act). The Director of the Australian Institute of Family Studies has the same meaning as section 114A of the Family Law Act.

Subclause 196(2) confirms for the reader that the new functions of the Director of the Australian Institute of Family Studies form part of the Administration of the new Act. This clause has been added to ensure that it is clear that although the role of Director of the Australian Institute of Family Studies is established under the Family Law Act, when the Director is undertaking the functions set out in subclause 196(1) those actions are part of the new Acts administration and not part of the administration of the Family Law Act.

Subclause 196(3) provides that when the Director and the Australian Institute of Family Studies are undertaking the functions set out in subclause 196(1) above they are to be known as the Australian Gambling Research Centre.

Subclause 196(4) provides that, for the purposes of section 114LD of the Family Law Act, the functions referred to in subclause 196(1) are to be considered functions of the Director under Part XIVA of the Family Law Act. This provision ensures that the Director can delegate the new functions in the same way as existing functions can be delegated.

Clause 197 – Expert Advisory Group on Gambling

Subclause 197(1) establishes the Expert Advisory Group on Gambling to support the Australian Gambling Research Centre.

Subclause 197(2) provides for the functions of the Expert Advisory Group on Gambling that is established by subclause 197(1). The functions of the Expert Advisory Group on Gambling are to provide advice to the Director of the Australian Gambling Research Centre (as set out in subclause 196(3) above) in relation to:

- (a) strategic directions and research plans and programs for undertaking or commissioning research into, or producing data and statistics about, gambling; and
- (b) strategies for increasing the capability and capacity of researchers to conduct research into, or produce data and statistics about, gambling.

The note at the end of subclause 197(2) refers the reader to subclause 196(3) for information regarding the Australian Gambling Research Centre.

Subclause 197(3) sets out how many members of the Expert Advisory Group on Gambling there will be. The Expert Advisory Group on Gambling will be comprised of the Director of the Australian Gambling Research Centre and between 7 and 11 other members.

Subclauses 197(4) to 197(6) set out how the members of the Expert Advisory Group on Gambling, other than the Director of the Australian Gambling Research Centre, will be appointed.

The Director of the Australian Gambling Research Centre will be able to appoint, in writing, members to the Expert Advisory Group on Gambling if the Director is satisfied that the person to be appointed has relevant expertise. The Director can also revoke a person's appointment at any time.

Subclause 197(7) provides that the Director of the Australian Gambling Research Centre can determine, in writing, the terms and conditions of appointment to the Expert Advisory Group on Gambling. The determination of the terms and conditions of appointment is not a legislative instrument as it is covered by item 9 of Schedule 1 to the Legislative Instruments Regulations 2004. That item provides that instruments of appointment are not legislative instruments.

Subclause 197(8) confirms for the reader that an appointment to the Expert Advisory Group on Gambling is not a public office within the meaning of the *Remuneration Tribunal Act 1973*. Accordingly, the provisions of that Act do not apply to the people appointed to the Expert Advisory Group on Gambling.

Subclause 197(9) provides that the Director of the Australian Gambling Research Centre can give the Expert Advisory Group on Gambling written directions about how the Group is to carry out its functions and the procedures that are to be followed at meetings.

Subclause 197(10) confirms for the reader that directions given to the Expert Advisory Group on Gambling under subclause 197(9) are not a legislative instrument. This is merely declaratory of the law, as the directions do not meet the definition of legislative instrument in section 5 of the *Legislative Instruments Act 2003*.

Division 2 – Other provisions

Clause 198 – Internal review of reviewable decisions

Subclause 198(1) provides that, as soon as practicable after a person makes a reviewable decision, the Regulator must cause a notice in writing to be given to the person whose interest are affected by the decision containing certain specified information. A failure to comply with subclause 198(1) in relation to a decision does not affect the validity of the decision (**subclause 198(2)**).

A person whose interests are affected by a reviewable decision may apply in writing to the Regulator for a review of the decision (**subclause 198(3)**). An application for review must be made within 30 days after the day on which the decision first came to the notice of the applicant (or any other period the Regulator allows) (**subclause 198(4)**).

Subclause 198(5) requires the Regulator to review the decision on receiving the application. The Regulator may make a decision affirming, varying or revoking the reviewable decision and make any other decision that the Regulator thinks appropriate (if revoking the decision) (**subclause 198(6)**).

Clause 199 – AAT review of decisions

If the Regulator makes a decision under subclause 198(6) or makes a reviewable decision personally, the Regulator must cause a notice in writing to be given to the person whose interests are affected by the decision containing certain specified information including a statement to the effect that application may be made to the Administrative Appeals Tribunal for review (**subclause 199(1)**). A failure to comply with subclause 199(1) in relation to a decision does not affect the validity of the decision (**subclause 199(2)**).

Subclause 199(3) provides that application may be made to the Administrative Appeals Tribunal for a review of decisions made under subclause 198(6) or reviewable decisions made by the Regulator personally.

In clause 199, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975* (**subclause 199(4)**).

Clause 200 – Delegation

Subclause 200(1) provides for the Regulator to delegate all or any powers or functions under the Bill (other than under clause 113 (Regulator is an authorised person)) to certain specified persons, that is an SES employee or acting SES employee in the Department. Powers or functions can also be delegated to a person occupying or acting in a position that is equivalent to or higher than an SES employee (in the public service of a State or Territory) or a body established for a public purpose by or under a law of a State or Territory.

Subclause 200(2) requires a delegate to comply with any directions of the Regulator in exercising powers or functions delegated under subclause 200(1).

The Regulator may not delegate a power or function to a person referred to in paragraph 200(1)(b) (certain persons occupying or acting in positions in certain State or Territory positions) without the written agreement of the relevant Minister of the State or Territory concerned (**subclause 200(3)**). This means that any delegation to a State or Territory regulator must be agreed by the relevant Minister of a State or Territory.

Clause 201 – Regulations

Subclause 201(1) provides that the Governor-General may make regulations on various matters relating to the new Act.

Without limiting subclause 201(1), the regulations may include offences and civil penalty provisions, and prescribe penalties for contraventions of such provision that do not exceed specified penalty unit limits (**subclause 201(2)**).

It is necessary for offence content to be delegated to regulations due to the changing nature of the subject matter and technology governed by the gambling reform measures in this Bill. It is also 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.

Any offence content proposed for inclusion in regulations made under this clause would be considered by the Federal Executive Council and are subject to disallowance by Parliament. This provides an additional layer of scrutiny and accountability. In these circumstances clause 201 is considered to be consistent with Part 2.3.4 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

National Gambling Reform Bill 2012
Chapter 9 – Research, reviews and other provisions

The *Legislative Instruments Act 2003* applies to regulations made under clause 201. Sections 17 to 19 of the *Legislative Instruments Act 2003* deal with rule-maker consultation, including the circumstances in which consultation may be unnecessary or inappropriate. The *Legislative Instruments Act 2003* does not make consultation mandatory. However, all Commonwealth agencies are encouraged to undertake appropriate consultation before making a legislative instrument, particularly if the proposed instrument is likely to affect business or restrict competition.

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 1) 2012

Summary

This Bill is part of the legislative package providing for national gambling reform. The purpose of the levy established by this Bill is to meet the costs of the Commonwealth in relation to the administration of the Bills.

Part 1 – Preliminary

Clause 1 – Short Title

Clause 1 sets out the short title of the new Act. The short title will be the *National Gambling Reform (Related Matters) Act (No. 1) 2012*.

Clause 2 – Commencement

Clause 2 sets out the commencement provisions for this Bill. Clause 1 and clause 2 will commence on the day the new Act receives Royal Assent. Clauses 3 to 7 will commence at the later of:

- (a) when the new *National Gambling Reform Act 2012* commences; or
- (b) the time at which section 2 of the *National Gambling Reform (Related Matters) Act (No. 2) 2012* commences; or
- (c) the start of the day the new Act receives Royal Assent.

However, clauses 3 to 7 will not commence unless the new *National Gambling Reform Act 2012* and section 2 of the *National Gambling Reform (Related Matters) Act (No. 2) 2012* commence.

Clause 3 – Act binds the Crown

Clause 3 provides that the new Act binds the Crown in each of its capacities.

Clause 4 – Expressions from *National Gambling Reform Act 2012*

Clause 4 provides that any expression used in this Bill has the same meaning as provided for in the new *National Gambling Reform Act 2012*.

Clause 5 – Imposition of supervisory levy

Clause 5 imposes the supervisory levy in accordance with section 83 of the new *National Gambling Reform Act 2012*.

Clause 6 – Amount of supervisory levy

Clause 6 provides that the method for calculating the amount of the supervisory levy for a levy period is as prescribed by the regulations.

The note at the end of clause 6 indicates that the regulations may prescribe different methods in relation to different classes of persons.

Clause 7 – Regulations

Clause 7 provides that the Governor-General may make regulations in relation to the matters in the new Act.

The *Legislative Instruments Act 2003* applies to regulations made under clause 10. Sections 17 to 19 of the *Legislative Instruments Act 2003* deal with rule-maker consultation, including the circumstances in which consultation may be unnecessary or inappropriate. The *Legislative Instruments Act 2003* does not make consultation mandatory. However, all Commonwealth agencies are encouraged to undertake appropriate consultation before making a legislative instrument, particularly if the proposed instrument is likely to affect business or restrict competition.

The Government will consult with industry prior to making these regulations.

NATIONAL GAMBLING REFORM (RELATED MATTERS) BILL (No. 2) 2012

Summary

This Bill is part of the legislative package providing for national gambling reform. The purpose of the levy imposed by this Bill is to discourage the provision, by un-incorporated entities, of gaming machines that do not comply with the precommitment systems and dynamic warning requirements as provided for in the National Gambling Reform Bill 2012.

Part 1 – Preliminary

Clause 1 – Short Title

Clause 1 sets out the short title of the new Act. The short title will be the *National Gambling Reform (Related Matters) Act (No. 2) 2012*.

Clause 2 – Commencement

Clause 2 sets out the commencement provisions for this Bill. Clause 1 and clause 2 will commence on the day the new Act receives Royal Assent. Clauses 3 to 7 will commence at the later of:

- (a) when the new *National Gambling Reform Act 2012* commences; or
- (b) the time at which section 2 of the *National Gambling Reform (Related Matters) Act (No. 1) 2012* commences; or
- (c) the start of the day the new Act receives Royal Assent.

However, clauses 3 to 7 will not commence unless the new *National Gambling Reform Act 2012* and section 2 of the *National Gambling Reform (Related Matters) Act (No. 1) 2012* commences.

Clause 3 – Act binds the Crown

Clause 3 provides that the new Act binds the Crown in each of its capacities.

Clause 4 – Expressions from *National Gambling Reform Act 2012*

Clause 4 provides that any expression used in this Bill has the same meaning as provided for in the new *National Gambling Reform Act 2012*.

Clause 5 – Imposition of gaming machine regulation levy

Clause 5 provides that the new Act will impose the gaming machine regulation levy set out in section 85 of the *National Gambling Reform Act 2012*.

Clause 6 – Amount of gaming machine regulation levy

Clause 6 sets out how the amount of the levy is determined. The rate of the levy is 10 per cent. The amount of the levy for each gaming machine is determined by, first, multiplying the rate of the levy by the gaming machine revenue from the machine for the levy period. Allowable reductions for the gaming machine for the levy period are then subtracted from this figure. The allowable reductions will be determined in accordance with the regulations (made under clause 7). In the event that gaming machine revenue from a levy period are less than zero, no levy is payable for that period.

Clause 7 – Regulations

Clause 7 provides that the Governor-General may make regulations in relation to the matters in the new Act.

The *Legislative Instruments Act 2003* applies to regulations made under clause 7. Sections 17 to 19 of the *Legislative Instruments Act 2003* deal with rule-maker consultation, including the circumstances in which consultation may be unnecessary or inappropriate. The *Legislative Instruments Act 2003* does not make consultation mandatory. However, all Commonwealth agencies are encouraged to undertake appropriate consultation before making a legislative instrument, particularly if the proposed instrument is likely to affect business or restrict competition.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Gambling Reform Bill 2012

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

National Gambling Reform (Related Matters) Bill (No. 2) 2012

These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bills

The purpose of these Bills is to reduce the risks and harm associated with problem gambling for people who gamble, their families, and the community.

This is to be achieved by allowing users of gaming machines to limit that harm by:

- providing for precommitment for gaming machines by:
 - allowing users of gaming machines to set limits for a State or Territory on the amount that they are prepared to lose during a period using gaming machines that are located in that State or Territory;
 - preventing a user from continuing to use, as a register user, gaming machines, once their loss limit has been reached; and
 - allowing users to retain control over whether to impose limits on the amount that they are prepared to lose during a period using gaming machines that are located in a State or Territory;
- ensuring that warnings are provided electronically on the potential for harm from, and the cost of, using gaming machines;
- limiting the ability of users of gaming machines to access cash from automatic teller machines on premises containing gaming machines;
- ensuring the privacy of users of gaming machines is protected; and
- ensuring that new gaming machines that are manufactured or imported are capable of providing for precommitment.

Human rights implications

These Bills engage the following human rights:

Right to Privacy and Reputation

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary or unlawful interference with a person's privacy and reputation.

These Bills involve the collection, storage, security, use and disclosure of personal information.

Statement of Compatibility with Human Rights

The collection and use of personal information is necessary to achieve the objectives of these Bills, which includes allowing players to set limits on the amount they are prepared to lose within a given timeframe. If the information was not collected the system would not be able to identify players to enable them to restrict their own losses.

These Bills also protect personal information by restricting what can be done with collected information and providing offences for unauthorised disclosure or use of protected information.

Presumption of Innocence

Article 14 of the ICCPR protects the right to be presumed innocent until proven guilty when charged with a criminal offence. The presumption of innocence is a fundamental principle of common law and imposes a burden on the prosecution of proving the charge. Accordingly, where the evidential burden is placed on a defendant the law may be considered to be inconsistent with human rights.

These Bills provide for a number of civil penalty and criminal offences. In a number of the provisions the evidential burden is reversed. The reversal of onus shifts the burden of proof to the respondent requiring the respondent to show that there is a reasonable likelihood that the matters on which they rely are true. Under international human rights law, a reverse onus provision does not necessarily violate the presumption of innocence, provided that the law is not unreasonable in the circumstances. Reverse onus provisions may be justified where the particular offence makes it very difficult for the prosecution to prove each element, or it is easier for the respondent to prove a fact than for the prosecution to disprove it.

All of the provisions in these Bills with a reverse burden of proof are civil penalty provisions. None of the criminal offence provisions in these Bills involves a reversal of the evidential burden. Each of the provisions that require a respondent to bear the evidential burden involves the respondent seeking to rely on a defence, the material facts of which are peculiarly within the knowledge of the respondent. In each case it is clearly more practical for the respondent to prove the facts relied upon than for the prosecution to disprove those facts.

Conclusion

These Bills are compatible with human rights because to the limited extent that it may impact on human rights, those impacts are reasonable, necessary and proportionate.

**Minister for Families, Community Services and Indigenous Affairs,
Minister for Disability Reform, the Hon Jenny Macklin MP**