

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL SELF-EXCLUSION REGISTER (COST RECOVERY LEVY) BILL 2019

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families and Social Services, Senator the Hon Anne Ruston)**

NATIONAL SELF-EXCLUSION REGISTER (COST RECOVERY LEVY) BILL 2019

OUTLINE

The purpose of this Bill is to impose a levy on persons who provide licensed interactive wagering services, and for related purposes. This Bill allows for the Australian Communications and Media Authority (ACMA), the regulatory body of the National Self-Exclusion Register (Register), to recover its Register-related costs from licensed interactive wagering service providers. This Bill supplements the Interactive Gambling Amendment (National Self-exclusion Register) Bill 2019.

Financial impact statement

This Bill has no financial impact on the Commonwealth or the interactive wagering industry at this stage. The Bill does not set out the amount of the charges.

The charges for interactive wagering service providers will be set by legislative instrument. The charges will only recover ACMA's regulatory costs associated with developing and administering the Register scheme and the costs of contracting the Register operator. It is not intended to generate additional revenue.

REGULATION IMPACT STATEMENT

A Council of Australian Governments (COAG) Decision Regulatory Impact Statement (RIS) was prepared to support the development of quality regulation for the National Consumer Protection Framework for online wagering in Australia. The Register formed a part of the COAG RIS.

The Decision RIS can be found through this link:

<https://ris.pmc.gov.au/2018/11/30/national-consumer-protection-framework-online-wagering-australia>

The OBPR ID is 20531.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

NATIONAL SELF-EXCLUSION REGISTER (COST RECOVERY LEVY) BILL 2019

Summary

This Bill provides for a cost recovery levy to be imposed upon licensed interactive wagering service providers for costs involved with accessing the Register. Cost recovery is required for ACMA to recover its costs relating to the establishment and management of the Register under the Interactive Gambling Amendment (National Self-exclusion Register) Bill 2019, including compliance. The Bill sets out the imposition of the levy, by whom levy is payable, how the amount of the levy is calculated and the limit on the total amount of levies.

The Bill also provides for the total levy amount to include ACMA's upfront costs associated with establishing the Register, prior to the system becoming operational. The establishment costs may be recovered over a number of levy periods, in order to prevent charging the interactive wagering industry excessive upfront costs.

This Bill is designed purely as a cost-recovery mechanism, and provides an appropriate legal structure for the recovery of ACMA's Register-related costs through the imposition of a cost recovery levy on the interactive wagering industry.

It is appropriate that the interactive wagering industry meet ACMA's Register-related costs, given the industry creates the need for the Register. Cost recovery arrangements will be efficient and ensure that interactive wagering service providers licensed in Australia pay their fair share of ACMA's register-related costs. This will ensure that consumers experiencing harm from online wagering have access to a national self-exclusion scheme. ACMA will undertake further consultation on cost recovery arrangements, before charging commences.

Explanation of clauses

Section 1 provides that the Bill, when enacted, may be cited as the *National Self-exclusion Register (Cost Recovery Levy) Act 2019*.

Section 2 provides that the Bill, when enacted, will commence at the same time as the *Interactive Gambling Amendment (National Self-exclusion Register) Act 2019*.

Section 3 provides that this Bill, when enacted, will bind the Crown in each state and in the Australian Capital Territory and the Northern Territory. The Bill does not bind the Crown in right of the Commonwealth as it is not intended that the Commonwealth tax itself.

Section 4 provides that this Bill, when enacted, will apply to every external Territory. This is because some licensed interactive wagering service providers may operate in external territories.

Section 5 provides that this Bill, when enacted will extend to acts, omissions, matters and things outside Australia. This is essential because some licensed interactive wagering service providers may be subsidiaries of international companies based overseas. This section ensures that all licensed interactive wagering service providers who may be operating from overseas, but also providing interactive wagering services within Australia or to Australians, will also be required to pay the levy. The *Interactive Gambling Act 2001* has extra-territorial application.

Section 6 This section defines key terms used in this Bill.

The first 'levy period' is defined as the period beginning at the start of the proclaimed start day and ending at the end of 30 June next following the proclaimed start day. This will capture the period of time in the first year that the levy is imposed which may not be a full financial year.

Section 7 describes to whom a levy is imposed upon for a levy period. This provision explains that a levy is imposed if the person was a licensed interactive wagering service provider during the whole or part of the levy period and they made at least one request to the Register operator under subsection 61NC(1) of the *Interactive Gambling Act 2001* during the levy period. A licensed interactive wagering service provider would make a request to the Register operator to inform the provider whether one or more specified individuals are registered individuals. This would inform them as to whether they are able to provide interactive wagering services to the individual or not. This levy is imposed on licensed interactive wagering service providers because they are accessing the Register and using the service.

Section 8 explains that the levy is payable by a licensed interactive wagering service provider.

Section 9 provides the mechanism for how the amount of levy will be determined.

The method of determining the amount of levy is to be determined by ACMA at a later stage, once details become clear regarding the specific costs involved in the establishment, operation and maintenance of the Register. The method of determining the amount of levy will follow the Australian Government Cost Recovery Guidelines, where cost drivers that apportion costs based on regulatory effort will be utilised. An amount will only be imposed on licensed interactive wagering services providers for the services and regulatory effort they create. This is a cost recovery levy and not general taxation.

Subsection 9(2) provides that consultation with the Minister must occur prior to the making of any determination under subsection 9(1).

Section 10 provides a limit on the total amount of levies imposed on persons for a levy period. The total amount of levies imposed on a person must not exceed the sum of the cost of items listed, which are the elements of ACMA's regulatory effort relating to the Register (establishing and managing the Register arrangement and other regulatory and administrative costs relating to the Register).

This section ensures that it is a cost recovery levy, imposed on licensed interactive wagering service providers for using the service of accessing the Register. This levy is not intended to raise general revenue.

Section 11 sets out how the designated levy periods and applicable percentages will be determined. A designated levy period is each of 2 or more consecutive levy periods as specified by ACMA. This would allow ACMA to recover its upfront costs (referred to in paragraph 10(1)(g)) over multiple levy periods. This will ensure that there are no excessive upfront costs in the first levy period on industry, particularly small to medium-sized businesses.

This section allows ACMA to make a determination to specify a designated levy period and the applicable percentage. ACMA has the discretion to impose different percentages at different designated levy periods. For example, ACMA may impose 10% in the first year, and then 15% in the second year, etc. However, the total of the applicable percentages must not exceed 100% as ACMA cannot impose more than its actual incurred costs.

ACMA must consult the Minister before making a determination under this section.

Section 12 provides that a reference to 'the ACMA's upfront costs' is a reference to the sum of the items listed, such as costs incurred by ACMA in relation to the performance of its functions, or exercise of its powers, in its preparation to establish, establishing, developing and operating the Register. ACMA may recover the costs it has incurred since 30 November 2018 up to the proclaimed start date (the 'interim period' defined in section 6).

Consistent with the Australian Government Cost Recovery Guidelines, only expenses incurred are able to be recovered.

Provisions about when the levy is due and payable and late payment penalty are in the *Interactive Gambling Amendment (National Self-Exclusion Register) Act 2019*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

National Self-exclusion Register (Cost Recovery Levy) Bill 2019

This Bill is 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 Bill

The National Self-exclusion Register (Cost Recovery Levy) Bill 2019 (Cost Recovery Levy Bill) provides for a cost recovery levy. The cost recovery levy will be levied on licensed interactive wagering service providers for costs associated with the Register. The Cost Recovery Levy Bill sets out the imposition of the levy, by whom levy is payable, the amount of the levy and the limit on the total amount of levies.

This Bill does not contain amounts of charges. The amount of the levy will be worked out in accordance with a method determined by the Australian Communications and Media Authority (ACMA) by legislative instrument. ACMA must consult with the Minister before making the legislative instrument. Setting the charges through a legislative instrument allows the Minister to consult with stakeholders on the amounts and make appropriate and timely adjustments to the charges.

The Register will be established under the accompanying Interactive Gambling Amendment (National Self-exclusion Register) Bill 2019 (Register Bill) which also includes requirements for the collection of the cost recovery levy.

Human rights implications

While the Register Bill engages a number of human rights, the Cost Recovery Levy Bill does not engage any human rights, and therefore does not limit any rights.

The Cost Recovery Levy Bill is enabling and mechanistic in nature. It does not itself impose the amount or method of charging, and will not impose any financial impacts on business. This will be set in the determination under the Cost Recovery Levy Bill.

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

**[Circulated by the authority of the Minister for Families and Social Services,
the Hon Anne Ruston]**