

HATZIS CUSACK LAWYERS

Liquor & Gaming Specialists

Our Ref: TH:MS:02964
Your Ref:

16 June 2017

The Coordinating Officer
Local Impact Assessment Review
Liquor & Gaming NSW

By email: LIA.review@justice.nsw.gov.au

Dear Sir/Madam,

**RE: SUBMISSION INTO REVIEW OF THE LOCAL IMPACT ASSESSMENT
SCHEME UNDER THE GAMING MACHINES ACT 2001**

We are instructed to make this submission on behalf of a client hotel group, which prefers to remain unnamed.

Purpose of Submission

Our client proposes changes to the existing LIA system in order to cut red tape, promote certainty to industry participants and reduce cost.

The proposed modifications are in the public interest as they will facilitate the ongoing reduction in gaming machine numbers through the GME Forfeiture Scheme.

Relevant Background Facts

The Gaming Machines Act 2001 introduced a “cap and trade” system to regulate the conduct of gaming machines in NSW.

An essential component of the “cap and trade” scheme was the forfeiture requirement set out in sec. 20 of the Act. Gaming machine entitlements must be bought and sold in blocks of two or three with one entitlement forfeited to the Crown.

The forfeiture provision has succeeded in reducing the numbers of GMEs over time.

Whereas there were 104,000 such entitlements in 2001¹, the overall numbers have reduced to 95,071 as at March 2017². When the reducing numbers of gaming machines is juxtaposed against population growth, there has been a significant reduction in poker machine densities over time. That significant reduction can be seen in the following table:

¹ Number of entitlements under the “Overall State Cap” as enacted in 2001.

² Source: Local Impact Assessment Review discussion paper page 12.

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	2001	2011	2016	2017
NSW Population ³	6,311,168	6,917,658	7,757,800 ⁴	7,757,800 ⁵
Machine numbers	104,000 ⁶	99,676	97,643	95,071
Density (machines per 100,000 of population)	1,647.9	1,440.9	1,258.6	1,225.5

Over the 15 years since the introduction of the scheme, the density of gaming machines in NSW has decreased by more than 25%.

Measured against the legislative object of reducing the overall number of gaming machines in NSW, the forfeiture scheme has clearly been a spectacular success.

The period since the introduction of the scheme has been marked by 15 years of unbroken economic growth across Australia, with New South Wales in the last few years having recorded the highest rates of GDP growth, highest rates of retail trade, dwelling starts and business investment.

Indexes measuring the well-being of the Australian population, and the New South Wales population, show a marked improvement in recent times. Generally speaking, the population is considerably better educated and more affluent than in 2001. In particular, low unemployment rates, higher levels of education and higher income are metrics associated with lower levels of problem gambling.⁷

The very substantial reductions achieved in the density of poker machines, coupled with the beneficial changes to the socio-demographic make-up of the population, allows policymakers some room to make the LIA system more streamlined, and less complex, cumbersome and costly for industry participants.

The LIA Scheme and Hotels

The LIA Scheme is concerned with increases to the gaming machine thresholds of individual clubs and hotels.

Increasing the gaming machine threshold of an individual hotel is in the wider public interest, insofar as that results in the forfeiture of gaming machine entitlements on transfer.

³ ABS Census figure

⁴ Estimated resident population according to ABS preliminary census figures

⁵ Estimated resident population according to ABS preliminary census figures

⁶ Overall State cap figure taken from 2001 Act

⁷ Tanya Davidson and Bryan Rodgers *Profiling Problem Gambling Symptoms in the Australian Capital Territory: Socioeconomic and Demographic Characteristics and Gambling Participation* Final Report 31 October 2011, a joint project of ACT Gambling and Racing Commission, Australian National University and ACT Government.

The Existing System is Unnecessarily Restrictive for Less Vulnerable Communities

Measured against the objects of cutting red tape, creating certainty and reducing cost, the LIA system has failed.

This is most starkly evident in cases where a Class 2 LIA is required.

In the case of Band 3 areas, a Class 2 LIA is required for even the smallest scale increase in gaming machine numbers. A hotel with a gaming machine threshold of 28 is required to undergo the full-scale Class 2 LIA process, even though the hotel seeks an increase of only two machines.

The Class 2 LIA process has proven to be so lengthy, complex, uncertain and expensive that few applicants have dared to lodge an application. In the case of the Fairfield Hotel (which sought an increase of 7 machines) the LIA lodged was some 138 pages. We understand that hundreds more pages of reports and submissions were elicited as part of the LIA process.

ILGA's decision alone is 48 pages long.

It appears from that decision that an adequate LIA2 application would require evidence from a social planner, a full-scale literature review in relation to problem gambling, evidence from an economist (to show to what extent additional revenue will be generated from the local community rather than be drawn from other venues already within the local community), an expert on harm minimisation procedures (to assess the adequacy of the venue's harm minimisation procedures to cope with problem gambling in the local community), a survey firm (to undertake professionally qualified patron profile) as well as the skills of an expert lawyer to be able to draw the evidence together in a cogent and focused submission addressing the statutory criteria.

When our firm has been approached by industry participants who are considering a Class 2 LIA we have advised them to budget for at least \$60,000 - \$80,000 in costs to undertake that process.

Further, the way in which the "overall social and economic impact" test has been applied by ILGA imposes prohibitive costs on applicants seeking a threshold increase (even a very small-scale increase).

The Authority has developed a formula to quantify community detriments.

Put simply that formula was as follows:

- Expected gross profit per machine per annum (based on last two years figures for the Hotel) x number of additional machines x 5 years x 41%.

In the case of the Fairfield Hotel, that equation came to:

- \$198,723 p.a. x 7 machines x 5 years x 41%
 = \$1,391,062 x 5 years x 41%
 = \$6,955,310 x 41%
 = \$2,782,124.

ILGA required a payout of \$2,782,124 under this formula before it would even consider granting the LIA2 application. These are prohibitive costs.

A similar analysis has been undertaken by the Authority to refuse threshold increases for other venues in Band 3 areas (see application by Mounties for threshold increase of 60 machines and by South Wagga Wagga Sports and Bowling Club).

The Class 2 LIA system, and the way it has been applied by the Authority, has effectively deterred applications being made for more machines in Band 3 LGAs.

In the case of Class 1 LIAs, (which are supposed to be simple, low-cost and certain) our experience is that the LIA exercise has been growing in cost and complexity.

The original legislative intention in replacing the former SIA system with LIAs was that industry participants in Band 2 areas could proceed with “certainty” and put forward their own “positive contribution” to the local community. Our experience has been that ILGA officers negotiate with applicants to provide ever higher positive contributions. It is entirely unclear what basis is put forward for those negotiations and what will occur if an applicant refuses to provide an increased contribution. Applicants are afraid to not offer increased contributions on pain of losing their threshold increases. This has resulted in considerable *uncertainty* and inconsistency in the quantum of positive contributions put forward by successful Class 1 LIA applicants.

Another aspect creating uncertainty is that, more recently, ILGA has been endeavouring to impose conditions on applicants requiring that they acquire GMEs from other Band 2 or Band 3 areas (and not Band 1) in order to fill the statutory quota. In our experience, this action is skewing the market for GMEs, such that vendors in Band 2 and Band 3 areas can ask higher prices for GMEs being sold by them. This also retards the free flow of GMEs and the consequent reduction in overall numbers within the forfeiture scheme. Moreover, it is again unclear what statutory basis authorises ILGA to impose such conditions.

In our experience, applicants for Class 1 LIAs sometimes meet with submissions from councils or local community groups objecting to the Class 1 LIA on general “social impact” grounds. This requires an applicant to provide submissions addressing general “social impact” issues. That is contrary to the clear statutory intention, which was that Class 1 LIAs should be much more certain and much less discretionary in nature.

The Right Policy Setting – A Suggested Solution

Our client recognises that the goals of industry certainty, reducing red tape, reducing cost, developing the gaming industry and facilitating the ongoing reduction in the number of GMEs need to be balanced with a need to prevent an over-concentration of gaming machines in sensitive areas.

The LIA system and LGA banding are supposed to restrict and limit the placement of gaming machines in sensitive areas. While the requirement for a Class 2 LIA is highly effective in restricting the entry of additional machines into Band 3 areas, the selection of those Band 3 areas is very badly flawed.

Recently, ILGA published on its website the model applied by that Authority in determining LGA bandings.

It appears that the model applied by ILGA considers the socio-demographic makeup of particular communities but, in addition, takes into account (and gives equal weighting to) other gaming industry-specific factors, such as gaming machine spend per head of population in each LGA and gaming machine densities in each LGA.

That model has produced anomalous consequences. The highly-advantaged residential community of Sydney LGA (SEIFA 1020) is characterised as a “Band 3” LGA. Very well-heeled areas such as Waverley (1080), Randwick (1043) and Inner West (1037) are all characterised as “Band 2”.

On the other hand, some of the most disadvantaged communities in the State are characterised as “Band 1”, where up to 20 additional machines can be acquired by a venue in any one year without any form of LIA. These communities include the following LGAs: Kyogle (907), Tenterfield (915), Inverell (921) and Bourke (933).

Some even more acutely disadvantaged communities than these are characterised as “Band 2”, ranking them as equivalent to Waverley, Randwick and Inner West. These include Brewarrina (SEIFA 788 – the most disadvantaged in the State), Gilgandra (911) and Warrumbungle (911).

In our client’s submission, these glaring anomalies should be removed by basing the LGA banding system on SEIFA scores alone. This measure would be most effective in identifying those areas where populations are vulnerable to increases in gaming machine numbers. In those LGA bands, a system of assessment similar to the current Class 2 LIA (with some improvements) could apply.

In all other LGAs, a system analogous to the current Class 1 LIA system could apply, with some simplification and certainty as to what “positive contribution” is required in return for a threshold increase. Any positive contribution which is payable for a threshold increase might be made payable to the Responsible Gambling Fund, so that the amounts raised can be expended in furthering the object of gambling harm minimisation.

Our client’s proposal is, in essence, a simple proposal. The most sensitive LGA communities across NSW would be identified (using the purest metric available) and those communities would be “ring fenced”. Special, and restrictive, rules would apply to increasing thresholds for venues in those sensitive local communities, similar to the current LIA 2 system.

For all other LGA communities, a uniform system, similar to the current Class 1 LIA system, would apply, with certainty as to what “positive contribution” is required. A ‘carve-out’ from the LIA system might apply to small-scale threshold increases in the most advantaged communities, as presently occurs in Band 1 LGAs.

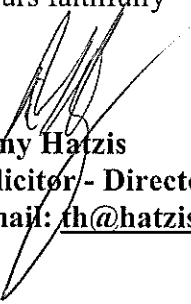
In determining bandings, it is also essential that up-to-date data be used. At present, there is too great a lag time in capturing demographic changes within, and across, LGAs. Given the rapid population growth that has occurred, and is continuing across Australia and NSW, it is imperative that the most recent SEIFA and population data be used in determining bandings. At present, ILGA relies on census figures which can be up to 5 years old. Updated projections are available from a range of sources and a model could be developed to continually update census figures, perhaps on an annual basis. This would ensure that the LIA system remains up to date and that decisions are made having regard to the most current statistics.

Conclusion

Our client's proposal would more effectively identify those most vulnerable to adverse gaming-related impacts, using real-time metrics. For all other local communities, this proposal would cut red tape, promote industry certainty, reduce cost and complexity and facilitate the overall reduction of machines through the GME Forfeiture Scheme.

Our client's proposal would also divert funds into the Responsible Gambling Fund to better meet the harm minimisation objectives of the legislation.

Yours faithfully



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