
National Gambling Reforms (Administration of ATM measure) Directions 2014

FRLI: F2014L00107

Portfolio: Social Services

Tabled: House of Representatives and Senate, 11 February 2014

Summary of committee concerns

2.8 The committee seeks further information on how this instrument relates to proposed amendments to the *National Gambling Reform Act 2012* (the Act) currently before the Parliament and what impacts the instrument will have on the right to health and the right to an adequate standard of living.

Overview

2.9 This instrument is made under the Act¹ for the purposes of providing regulatory guidance and general requirements in relation to the approach to be taken by the National Gambling Regulator in the first six months of administering the ATM measure under the Act.

2.10 According to the explanatory statement, '[t]he ATM measure is the first that applies under the Act from 1 February 2014, and requires ATM providers and venues to introduce a \$250 limit to cash withdrawals from ATMs at gaming venues, in any 24 hour period'.²

- 2.11 The instrument implements an educative and cooperative approach by:
- specifying priorities based on the Regulator's functions with respect to the ATM measure relevant to an educative approach;
 - prescribing procedural requirements to ensure genuine applications for exemption are settled before responding to potential non-compliance; and
 - establishing a mandatory process for 'cooperative engagement' which must be followed before responding to any potential non-compliance.

1 *National Gambling Reform Act 2012*, section 110.

2 Explanatory statement, p 1.

Compatibility with human rights

Statement of compatibility

2.12 The statement of compatibility accompanying the instrument states that the instrument engages the right to privacy (in that the Act involves the collection, storage, security, use and disclosure of personal information) and the right to be presumed innocent (in that the Act provides for a number of civil penalty and criminal offences, which, in a number of cases, include reverse burdens of proof). The statement of compatibility concludes that the instrument 'is compatible with human rights because to the limited extent it may impact on human rights, those impacts are reasonable, necessary and proportionate'.³

Committee view on compatibility

2.13 According to the explanatory statement, the purpose of the Act is 'to provide measures to reduce the harm caused by gaming machines to problem gamblers, and their families and communities'.⁴

2.14 The committee notes that relevant to this instrument are proposed amendments to the Act currently before the Parliament. The Social Services and Other Legislation Amendment Bill 2013 proposes to amend the Act to repeal the powers and functions of the National Gambling Regulator and a number of other measures under the Act, including the ATM withdrawal limit measure.⁵

2.15 The committee has previously commented on the amendments proposed by this bill.⁶ The committee noted that the risks and harms which result from problem gambling which the Act was intended to address 'relate directly to the promotion of human rights, including in particular the right to an adequate standard of living, and the right to health'.⁷ The committee sought further information as to whether the effect of the measures is to remove measures that promote human rights and whether they would be replaced with measures which address the problems targeted by the Act.

2.16 The Minister's response stated that the measures in the bill constitute the first step of a new and different policy approach to problem gambling, through

3 Statement of compatibility, p 3.

4 Explanatory statement, p 1.

5 See Schedule 1 to the Social Services and Other Legislation Amendment Bill 2013.

6 See Parliamentary Joint Committee on Human Rights (PJCHR), *First Report of the 44th Parliament*, 10 December 2013, p 51 and *Second Report of the 44th Parliament*, 11 February 2014, p 159.

7 See PJCHR, *First Report of the 44th Parliament*, 10 December 2013, p 53.

expressing the Government's commitment to developing and implementing appropriate measures in the near future. The committee recommended that the government's actions be accompanied by appropriate mechanisms to monitor the effectiveness of the replacement measures in promoting human rights, in particular the rights to health and to an adequate standard of living.

2.17 It appears to the committee that the purpose of this instrument is to delay implementation of the enforcement provisions with respect to the ATM measure under the Act. It prioritises an approach of 'cooperative engagement' over compliance activities. As the committee as previously noted, the purpose of the measures in the Act, including the ATM measure and its associated enforcement provisions, is to address the harms caused by gaming machines to individuals, their families, and communities.

2.18 The committee intends to write to the Minister for Social Services to seek further information as to:

- **how this instrument relates to the amendments to the Act currently before the Parliament in the Social Services and Other Legislation Amendment Bill 2013; and**
- **what impact the 'cooperative engagement' approach implemented by this instrument will have on the right to health and the right to an adequate standard of living.**

