

## **National Gambling Reforms (Administration of ATM measure) Directions 2014 [F2014L00107]**

*Portfolio: Social Services*

*Authorising legislation: National Gambling Reform Act 2012*

*Last day to disallow: 13 May 2014 (Senate)*

### **Purpose**

2.83 This instrument is made under the *National Gambling and Reform Act 2012* (the Act) 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.

2.84 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'.<sup>1</sup>

2.85 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.

### **Background**

2.86 The committee reported on the instrument in its *Third Report of the 44th Parliament*.

### **Committee view on compatibility**

#### ***Right to health and an adequate standard of living***

##### *Uncertainty around the purpose and impact of the measure*

2.87 The committee sought further information from the Minister for Social Services 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

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1 Explanatory statement, p. 1.

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- 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.

### Minister's response

As you may be aware, as a result of recent amendments to the Act to repeal the ATM measure (among other matters), the Direction no longer has any application. The repeal took effect on 31 March 2014, the date of Royal Assent, and I refer you to Schedule 1 of the *Social Services and Other Legislation Amendment Act 2014*. However, I understand a response to the matters raised is still warranted for the period in which the Direction operated. In light of these developments, a response by 24 April, rather than 14 March (as originally requested), has been agreed.

I understand from the Committee's *Third Report of the 44th Parliament* (the Report) that its key concern with the Direction relates to its understanding of this instrument's purpose. The Committee characterised this purpose as being to 'delay implementation of the enforcement provisions with respect to the ATM measure under the Act'. As the ATM measure promoted human rights, the Committee requested further information on:

- how the Direction relates to amendments in the Social Services and Other Legislation Amendment Bill 2013 (Bill), which was then before Parliament; and
- what impact the 'cooperative engagement' approach implemented by the Direction will have on human rights.

The Government's response is set out below.

#### Repeal of the ATM measure

As you may be aware, the Bill for the repeal of the ATM measure (and other matters) was introduced in November 2013 prior to the commencement of the ATM measure from 1 February 2014. I understand the timing of the proposed repeal may have provided the basis for confusion among some regulated entities and members of the public regarding the status of the ATM measure, and therefore the purpose of the Direction. In particular, some understood this purpose as related to, or aligned with, the proposed repeal of the ATM measure, and as intended to apply while considered by Parliament.

The purpose of the Direction was not to further or support the objectives of the proposed repeal of the ATM measure or delay implementation of enforcement provisions with respect to the ATM measure under the Act. The Direction was made in accordance with the powers under the Act to establish an approach to regulation that aimed to achieve compliance, with an emphasis on cooperation with and educating regulated entities. I note that the Regulation and Ordinances Committee scrutinised the

Direction on 5 March 2014, with regard to matters including the consistency of the instrument with its enabling legislation, without issue.

The purpose of the Direction and the regulatory approach it provided was consistent with the objectives of the Act, being (as the Committee notes), to address the harms caused by gaming machines to individuals, their families and communities. As explored further below, given the confusion over the application of the measure, the Direction's priority for education and cooperative engagement was considered appropriate, as a regulatory approach. As a practical matter, I understand the Direction also proved useful in confirming compliance was required of regulated entities.

Impact of 'cooperative engagement' approach implemented by the Direction on human rights

The educative approach to compliance provided for in the Direction, primarily in terms of the regulatory priorities specified (section 5), and the procedures for responding to non-compliance (section 8), did not prevent the Regulator from taking punitive action to enforce compliance. Rather, it emphasised the use of non-punitive strategies to facilitate compliance as an initial response. It recognised that in particular regulatory contexts (such as in the gambling context), taking premature action to penalise regulated entities for non-compliance can be counterproductive.

In the context of the former Regulator's enabling legislation, the educative approach to compliance was consistent with the obligations and the broad discretion conferred on the Regulator to promote, monitor and enforce compliance. Further, a cooperative enforcement posture is recognised as one of the most effective and sustainable ways of administering regulatory schemes. Applied appropriately, these types of regulatory approaches are well accepted as consistent with contemporary best practice.

For further information, I refer you to the Australian National Audit Office's 2007 *Better Practice Guide to 'Administering Regulation'* which, consistent with the educative approach, advocates for a graduated and escalating approach to compliance. In addition, I refer you to the recommendations of the Productivity Commission's report on *'Regulator Engagement with Small Business'* in September 2013 which demonstrates the value of engaging cooperatively with regulated entities. You may wish to note that this approach is particularly relevant for engaging small businesses which comprise a major proportion of all gaming venues subject to the previous Act.

In conclusion, as an instrument that facilitated the implementation of the ATM measure, it follows that the Direction was an instrument that supported human rights. It ensured that best practice was adopted in line with the objectives of the Government's broader deregulation agenda.<sup>2</sup>

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2 See Appendix 2, Letter from The Hon Kevin Andrews, Minister for Social Services, to Senator Dean Smith, 6 May 2014, pp 1-3.

**Committee response**

**2.88** The committee thanks the Minister for Social Services for his response and has concluded its examination of this instrument.