

**2012**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**GAMING MACHINE AMENDMENT BILL 2011**

**GOVERNMENT AMENDMENTS**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by  
Joy Burch MLA**

**Minister for Gaming and Racing**



## Overview

This supplementary explanatory statement explains Government amendments to the *Gaming Machine Amendment Bill 2011* ('the Bill') that was introduced in the ACT Legislative Assembly in November 2011. It complements the explanatory statement previously tabled with the Bill.

These amendments address issues raised in the Report of the Standing Committee on Public Accounts' Inquiry into the *Gaming Machine Amendment Bill 2011*, and other issues raised during further consultation since the Bill's introduction. The intent and effect of the Bill will remain the same; that is, to improve the regulation of electronic gaming machines (EGMs) in the Territory. This will continue to entail the reduction of the maximum number of gaming machines allowed in the ACT over time to 4000 through a sinking cap, while also making provision for the increased geographic mobility of machines to facilitate their optimal location.

The amendments provide that the Bill will now commence on 1 January 2013, with the exception of the ATM withdrawal limit. It is now proposed that the latter will commence on a day to be fixed by the Minister, to allow potential alignment with new parallel regulation currently being considered by the Commonwealth.

The amendments will:

- provide greater flexibility to multi-venue club groups in relocating machines between venues by establishing a mechanism to allow the relocation of a small number of machines. Specifically, club groups will be potentially able to relocate up to a maximum of 10 machines or 10% of the existing number of machines at the receiving club, whichever is the lesser, without necessarily being required to undertake a detailed social impact assessment to be assessed by the Gambling and Racing Commission ('the Commission'), unless the Commission is concerned about possible social impacts. Provision is also made to allow the Commission to require a 'social impact statement' – an abridged form of social impact assessment – where small-scale relocations are proposed if it believes that a full social impact assessment would not be necessary;
- allow new clubs and independent clubs (that is, clubs currently with only one venue) to access a 'pool' of up to 150 machines to assist them establish new venues where the Government releases land suitable for new club sites;
- allow clubs to potentially obtain in-principle regulatory approval for EGMs ahead of the future Government release of sites suitable for new club venues;
- provide that the \$250 per day per card Automatic Teller Machine (ATM) withdrawal limit would commence at a time to be determined by the Minister (with, as noted above, a view to allowing harmonisation with similar regulation currently being considered by the Commonwealth);
- provide that the \$250 per day per card ATM withdrawal limit would not apply to ATMs at the Canberra Race Club temporarily brought in for race days, or entities operating a small number of gaming machines (that is, 10 or fewer machines), or entities only operating 'Class B' machines;
- provide that once the long-term target of 4000 gaming machines in the ACT is reached, a per capita-based cap system will be introduced, with the details of this system to be determined by a review; and,

- allow gaming machine licensees, for a window of three years following the commencement of the Bill, to store up to 10 percent of their machines, for periods of up to 12 months, without having to provide a reason to the Gambling and Racing Commission.

The following table provides a representation of how the proposed sinking cap and 'pool' would work given a set of hypothetical events.

For simplicity, it is assumed for the purpose of this table that at the time of the Bill's commencement there will be 5000 machines allocated to clubs in the Territory and 50 unallocated machines within an overall cap of 5050.

The 50 unallocated machines will be used to constitute the initial basis of the proposed pool of up to 150 machines available for allocation to independent clubs.

<b>Event</b>	<b>Machines Withdrawn</b>	<b>Machines Allocated</b>	<b>Cap Running Total</b>	<b>To/From Pool</b>	<b>Pool Running Total</b>
Commencement of the Bill		5000	5050		50
Club surrenders 100 machines		4900	5050	100 machines to the pool	150
Club surrenders 100 machines	100	4800	4950		150
Commission allocates 30 machines to an independent club		4830	4950	30 machines from the pool	120
Club surrenders 200 machines	170	4630	4780	30 machines to the pool	150
Club surrenders 80 machines	80	4550	4700		150
The Commission allocates 50 machines to an independent club		4600	4700	50 machines from the pool	100
Club surrenders 70 machines	20	4530	4680	50 machines to the pool	150

Such processes will continue until the sinking cap reaches 4000, at which point the Minister will conduct a review to establish a framework to introduce a per-capita based cap system.

## **Outline of Amendments**

### **Amendment 1            Clause 2, Page 2, line 4**

All amendments are scheduled to commence on 1 January 2013, except for those related to the ATM withdrawal limit, which would potentially commence on a day to be fixed by the Minister.

The amendment also provides that the ATM withdrawal limit will automatically commence within 12 months after notification, should the Minister not fix a commencement day within those 12 months. This is a departure from the standard 6-month automatic commencement established under s 79 of the *Legislation Act*. A 12-month commencement period is necessary as it is intended to allow for the potential alignment of the ACT's withdrawal limit with possible forthcoming Commonwealth regulation.

### **Amendment 2            Clause 4, Page 3, line 2**

This amendment is consequential to the intended operation of the sinking cap and the preclusion of existing licensees increasing their number of machines by obtaining unallocated machines.

### **Amendment 3            Proposed new clause 4A, Page 3, line 4**

Consequential to the proposed operation of the sinking cap and pool, this amendment provides that only a club that does not currently hold a gaming machine licence, or an entity that is not a club, may apply for a gaming machine licence.

The section's heading is also amended to clarify that the section relates to eligibility to apply for an initial licence.

### **Amendment 4            Proposed new clause 4B, Page 3, line 4**

This amendment modifies the heading of Section 11 so that it more accurately reflects the provisions of the section, in setting out the requirements for an initial licence application. This distinguishes it from section 10A which relates to eligibility.

### **Amendment 5            Proposed new clause 4C, Page 3, line 4**

This amendment is a minor technical amendment to ensure that the cross reference within section 12(2)(d) accurately reflects the title of s 35 as amended by the Bill.

**Amendment 6**                      **Clause 6, Page 3, line 16**

This amendment corrects an earlier drafting error in section 17(1). This section is intended to apply to the initial application for a licence (an ‘initial licence application’), not an application for an ‘initial licence’ (as there is no such licence under the Act).

**Amendment 7**                      **Proposed new clauses 6A to 6D, Page 3, line 18**

This amendment makes provision for situations where an applicant may have been otherwise granted a license but there are no machines available in the pool. The clauses replace existing arrangements which can no longer exist under the proposed sinking cap.

**Amendment 8**                      **Clause 7, Page 3, line 19**

This amendment updates Section 18 to outline how social impact assessments will relate to in-principle approvals.

**Amendment 9**                      **Proposed new clause 7A, Page 3, line 24**

This amendment updates Section 19 to accommodate in-principle approvals in relation to the publication of social impact assessments.

**Amendment 10**                      **Proposed new clause 7B, Page 3, line 24**

This amendment makes provision for in-principle approvals in regards to public consultation requirements undertaken for social impact assessments.

**Amendment 11**                      **Proposed new clause 7C, Page 3, line 24**

This amendment makes provision for in-principle approvals in regards to grounds for the disqualification of individuals as eligible persons.

**Amendment 12**                      **Clause 8, Proposed new section 22(e), Page 4, line 15**

**Amendment 13**                      **Clause 8, Proposed new section 22(2), Page 5, line 13**

These amendments establish mechanisms for multi-venue club groups to relocate machines between venues. They provide for two types of machine relocation amendments – ‘small-scale machine relocation amendments’ and ‘large-scale machine relocation amendments’.

A small-scale relocation amendment will be the relevant mechanism for proposals to move no more than 10 machines or 10% of the existing number of machines at the receiving venue (whichever is the smaller number, rounded down to the nearest whole machine). Large scale machine relocation amendments will relate to proposals concerning larger numbers of machines.

**Amendment 14**                      **Clause 8, Proposed new section 23(1) (g) (ii) (B), Page 6, line 6**

This amendment improves upon the original drafting of the Bill, by using language more consistent with that used elsewhere in the Act.

**Amendment 15**                      **Clause 8, Proposed new section 23 (1)(ga), Page 6, line 11**

This amendment sets out the information an applicant must supply when applying for a small-scale machine relocation amendment. Specifically, a licensee would need to initially provide the Commission with information on the number of machines to be relocated and a plan of the licensed premises showing where the gaming machines are to be relocated.

However, as provided for within Amendment 20, if the Commission has concerns about possible social impacts arising from the proposal, it may also require the applicant to undertake a social impact assessment or a social impact statement.

**Amendment 16**                      **Clause 8, Proposed new section 23(h), Page 6, line 12**

This amendment follows from Amendments 12 and 13 above, and clarifies that the existing regulatory requirements will continue in regards to applications for large-scale machine relocation amendments.

**Amendment 17**                      **Clause 8, Proposed new section 23(2)(a) and (b), Page 7, line 22**

This amendment revises the language in section 23(2)(a) and (b) from ‘particular’ to ‘stated’ information or documents to reflect current best drafting practice.

**Amendment 18**                      **Clause 8, Proposed new section 26(2A) and (2B), Page 9, line 11**

The existing s26 in the Bill redrafted the provisions in the current Act relating to the temporary storage of gaming machines, to make clear that temporary storage must be undertaken for ‘a good reason’. If satisfied that the storage is for ‘a good reason’, the Commission may approve storage of any number of machines under the licence and for any stated period of time (for example, a large number of machines may need to be stored for a number of months during renovations).

This amendment provides licensees with more flexibility by allowing for the temporary storage of a small number of machines without the licensee having to provide a reason to the Commission. Not

more than 10% of the machines may be stored, for not longer than 12 months. After storing machines as a result of such an amendment, a licensee must wait 12 months to apply again for this type of licence amendment.

This provision will expire after three years.

**Amendment 19**                      **Clause 8, Proposed new section 26A (2) (a), Page 9, line 20**

This amendment rectifies an omission in the original drafting of the Bill.

**Amendment 20**                      **Clause 8, Proposed new section 26AB, Page 10, line 18**

This amendment relates to Amendments 12, 13, and 15 above and outlines the matters the Commission must take into account when making decisions on whether to approve small-scale machine relocation amendment applications.

It provides that the Commission must consider if the proposed size and layout of the receiving premises are suitable.

The amendment also provides that the Commission may require the applicant to undertake a social impact assessment if it has concerns about the social impacts related to the proposed amendment.

Alternatively, the amendment allows the Commission to require a social impact statement to be provided instead, which is an abridged form of a social impact assessment.

**Amendment 21**                      **Clause 8, Proposed new section 26B heading, Page 10, line 19**

**Amendment 22**                      **Clause 8, Proposed new section 26B(1), Page 10, line 21**

These amendments are consequential on Amendments 12 and 13 above and provide that the heading of the section and the social impact and needs assessments conducted by the Commission set out in proposed new s26B relate to large-scale machine relocation amendments, not small-scale relocation amendments.

**Amendment 23**                      **Clause 11, Page 14, line 18**

The Bill's Clause 11 was a consequential amendment that removed the term 'or has a certificate of suitability' from s 32(1)(c) of the Act as a result of changes to the gaming machine cap introduced by the Bill. However, that consequential amendment is not required in the context of 'the pool' introduced by these Government amendments, so the clause is opposed.



**Amendment 24**      **Proposed new clause 11A, Page 14, line 21**

This amendment corrects incorrect terminology.

**Amendment 25**      **Clause 12, Proposed new section 34A, Page 15, line 3**

This amendment indicates the Assembly's intention to reduce to 4000 the maximum number of machines while allowing for a pool of up to 150 available gaming machines for allocation in certain circumstances.

The amendment also provides that once the maximum number of gaming machines in the ACT reaches 4000, a per capita-based cap system will be introduced following a review to determine such a system's details (as provided for in proposed s36, see Amendments 29 and 30).

**Amendment 26**      **Clause 12, Proposed new section 35(1), definition of *number cancelled*, Page 15, line 15;**

**Amendment 27**      **Clause 12, Proposed new section 35(1), definition of *number surrendered*, Page 15, line 17**

**Amendment 28**      **Clause 12, Proposed new section 35(1A), definition of *starting number*, Page 15, line 20**

These amendments address the proposed change to the date of the commencement of the Bill and revise the years used in the definitions of *number cancelled*, *number surrendered* and *starting number*.

**Amendment 29**      **Clause 22, Proposed new section 35, Page 15, line 20**

This amendment provides for the establishment of a pool of up to 150 gaming machines available for allocation in certain circumstances. It ensures that the calculation of the maximum number of gaming machines allowed on all licensed premises in the ACT takes into account the need to ensure that up to 150 machines will be available in the pool.

When a machine is surrendered or cancelled, the maximum number of gaming machines allowed in the Territory will only be reduced if the pool would otherwise contain more than 150 machines.

**Amendment 30**      **Clause 12, Proposed new section 36(ab), Page 17, line 20**

This amendment provides that the review of the maximum number of gaming machines to be allowed on all licensed premises in the ACT, to be conducted once the cap of 4000 machines is reached, is to recommend a per capita-based cap system.

**Amendment 31**                      **Clause 12, Proposed new section 36(b), Page 17, line 21**

This amendment follows on from Amendment 30 and requires the review recommending a per capita-based cap system report to the Assembly within six months after the date the review commences.

**Amendment 32**                      **Clause 12, Proposed new section 36A, Page 17, line 22**

This amendment defines the pool of gaming machines in terms of machines available for reservation under in-principle approvals or authorisation under a license, and provides for how the number of machines in the pool is to be calculated in the context of the number of machines allocated and the maximum number of machines allowed on all licensed premises in the Territory.

**Amendment 33**                      **Proposed new clause 12A, Page 17, line 22**

This amendment introduces a new Part 2A – In-principle approvals for licences, venue relocation amendments and new venue amendments.

In-principle approvals are intended to assist clubs to make appropriate financial arrangements where they wish to open new venues and to complement the Government’s land release program.

*Section 38A*

This section explains the object of Part 2A as establishing a process for in-principle approvals for a licence, venue relocation amendment, or new venue amendment where an entity does not yet have an interest in a site or premises, plans have not yet been prepared, and the members of a club have not yet voted in a ballot.

*Section 38B*

This section provides definitions of approval-holder and in-principle approval.

*Section 38C*

This section defines an in-principle approval, if later converted to a licence, as authorising the approval-holder to, depending on the nature of the approval; acquire, dispose, install and operate gaming machines; to relocate to a new venue if a venue relocation amendment is obtained; or to decrease the number of machines under an existing licence and move them where a new venue amendment is obtained.

### *Section 38D*

This section sets out details of the circumstances where in-principle approvals can be made.

It provides that an entity may apply for an in-principle approval where they do not yet have a licence or, if they are a club, only currently hold 1 license (i.e. they are currently not a club group). In principle approvals can also be made where an existing licensee wishes to move an existing club venue to a new site (a venue relocation amendment), or otherwise wishes to set up a new venue through transferring machines (a new venue amendment).

In principle approvals are intended to facilitate the establishment of clubs in new urban areas and to complement Government land release. Applications can accordingly only be made in relation to 'suitable land' which is currently unleased land to be released by the Government and will have an appropriate lease purpose clause.

### *Section 38E*

This section sets out the information that must be contained in an application for in-principle approval for a licence, venue relocation amendment or new venue amendment. This information includes, for example: details of influential persons; a social impact assessment; operating rules and control procedures; and information on a club's constitution and membership. It provides exceptions to the existing requirements in relation to the provision of a scale plan of the premises and proposed gaming area, and of the results of a membership ballot (where the applicant is a club), in recognition that in-principle approvals relate to the development of new sites. These matters will be dealt with when an in-principle approval is 'converted' into a licence, venue relocation amendment, or new venue amendment (see *Section 38T, Section 38U, Section 38V, Section 38W, and Section 38X*).

### *Section 38F*

This section provides that the Commission must issue an in-principle approval where satisfied that a licence would be issued and there are enough reservable machines in the pool. Where there are insufficient reservable machines, the Commission may issue an approval for a smaller number of machines. The intent is that the maximum number of machines applied for in relation to any one site is reserved from the pool, and whoever is successful in obtaining the site will be able to convert their in-principle approval to a licence for the gaming machines.

### *Section 38G*

This section provides that the Commission must issue a certificate of suitability if an applicant for an in-principle approval would have otherwise been issued an approval but there are no reservable machines available.

### *Section 38H*

This section provides that the Commission must issue an in-principle approval for a venue relocation amendment if satisfied that the requirements for a new venue amendment have been met, with the exception of needing to provide details of the outcome of a ballot and details of the proposed premises.

### *Section 38I*

This section provides that the Commission must issue an in-principle approval for a new venue amendment if satisfied that the requirements for a new venue amendment have been met, with the exception of needing to provide details of the outcome of a ballot and details of the proposed premises and gaming area.

### *Section 38J*

This section provides details about the form of an in-principle approval, including that it must be in writing and state details including information about the site and the number and class of gaming machines approved in-principle.

### *Section 38K*

This section establishes that an in-principle approval is granted on condition that an approval-holder takes steps towards acquiring an interest in the relevant land or premises, and that other conditions may be imposed by regulation or by the Commission.

### *Section 38L*

This section provides that an in-principle approval is valid for a period of three years (unless extended in accordance with s 38P).

### *Section 38M and Section 38N*

Section 38M sets out the process for an approval-holder to seek an amendment to their in-principle approval, including to increase or decrease the number of machines, or to seek the removal or amendment of a condition. Section 38N prescribes how the Commission should determine such amendment applications.

### *Section 38O and Section 38P*

These sections set out the process for an approval-holder to transfer their in-principle approval to someone else, and that this transfer must be granted where the Commission is satisfied that the new approval-holder would meet the requirements for the issue of a licence (except in relation to the results of a club ballot and the possible size and layout for proposed premises or gaming areas).

### *Section 38Q and Section 38R*

These sections set out the process for an approval-holder to seek to extend the term of an in-principle approval, and that the Commission may grant an extension for up to 12 months where it is satisfied that it is required for a good reason.

### *Section 38S*

This section provides that an in-principle approval may be surrendered by written notice to the Commission.

### *Section 38T, Section 38U, Section 38V, Section 38W, and Section 38X*

These sections set out the process for an approval-holder to apply to have their in-principle approval converted to a licence, venue relocation amendment, or new venue amendment.

It provides that the approval-holder must have acquired an interest in the land or premises, and also that the requirements relating to the provision of plans and details of the results of a club ballot waived earlier must now be met, in addition to the existing requirements applicable to a licence, venue relocations amendment or new venue amendment. The sections provide that the Commission must convert an in-principle approval to a licence, venue relocation amendment or new venue amendment where satisfied that these requirements have been met.

The sections provide that a licence, venue relocation amendment or new venue amendment is to be issued on the same terms and subject to the same conditions, as the in-principle approval.

Finally, Section 38X provides for the expiration of other in-principle approvals relating to a given block of land or premises once an in-principle approval for the land or premises is converted as per the above (that is, after the successful applicant has acquired the land or premises and met the other relevant regulatory requirements).

### **Amendment 34                      Proposed new clause 12B, Page 17, line 22**

This amendment adds a note to s51(2)(c) to provide an example of 'written approval' to clarify that a licensee does not contravene the condition requiring use of gaming machines where a temporary storage amendment has been granted by the Commission.

**Amendment 35**            **Proposed new clause 12C, Page 17, line 22**

**Amendment 36**            **Proposed new clause 12D, Page 17, line 22**

These amendments provide that the existing provisions in Part 4 for disciplinary action against licensees apply also to the holder of an in-principle approval (an ‘approval-holder’).

This disciplinary action can apply, for example, where required information is not given to the Commission or false or misleading information is given, the Act is contravened, the licensee or influential person is no longer an eligible person, a club is being wound up or ceases to operate/be an eligible club, premises are not being used in accordance with an on licence, or a reprimand or financial penalty has not been complied with.

**Amendment 37**            **Proposed new clause 12E, Page 17, line 22**

This amendment protects approval holders from facing disciplinary action for failing to hold a liquor license, as some entities (such as newly establishing organisations) may not secure a liquor license ahead of acquiring a site.

**Amendment 38**            **Clause 14, Proposed new section 153A (1A), Page 18, line 11**

This amendment provides three exemptions to the \$250 per card per day ATM withdrawal limit. Exemptions will be available to ATMs temporarily located at the Canberra Racing Club on race days, to entities operating a small number of gaming machines (that is, 10 or fewer machines), and to licensees operating only ‘Class B’ machines.

**Amendment 39**            **Clause 15, Schedule 1, proposed new item 3, Page 19, line 3**

This amendment updates the schedule that outlines decisions made under the Act that are reviewable to reflect the introduction of the new provisions regarding small scale machine relocation amendments.

**Amendment 40**            **Proposed new clause 15A, Page 20, line 1**

This amendment updates the schedule that outlines decisions made under the Act that are reviewable to reflect the introduction of in-principle approvals.

**Amendment 41            Clause 16, Page 20, line 1**

The Bill previously proposed the deleted the concept of ‘certificates of suitability’. However, with the introduction of the pool, the concept of a certificate of suitability will remain in relation to initial licence applications, and so the definition will need to be retained (that is, the clause in the Bill proposing its deletion will need to be opposed).

**Amendments 42 - 47**

These amendments update the dictionary to reflect the amendments above and include cross references.

**Amendments 48 - 49**

These amendments update the headings in section 6 of the *Gaming Machine Regulation 2004* (the Regulation) to reflect changes introduced by these amendments.

**Amendment 50            Clause 20, Proposed new paragraph (6)(1)(ba), Page 21, line 7**

This amendment clarifies that the document requirements set out in the Regulation for license amendment applications apply only to large-scale machine relocation amendments, not small-scale relocation amendments.

**Amendment 51            Proposed new clause 20A, Page 21, line 8**

Section 6 of the Regulation sets out requirements for documents to be provided to the Commission when applying for a licence, a licence amendment or a transfer. The documents to be provided include audited financial statements, details of any contractual arrangement for the premises (e.g. a lease) and details of expected revenue and expenditure for the next three financial years if the application is successful.

This amendment is consequential to the introduction of in-principle approvals and indicates that these requirements must be met when making an application for the amendment or transfer of an in-principle approval.

Further, a note is added to clarify that these requirements must also be met when applying for an in-principle approval by virtue of meeting the requirements of s11(2) or s23(2) of the Act.

**Amendment 52**            **Proposed new clause 23A, Page 21, line 23**

This amendment is consequential to the introduction of in-principle approvals and adds a new note to Section 7 of the Regulation to indicate that the formula for calculating the number of club members also applies in relation to the process for converting an in-principle approval to a licence or a new venue amendment.

**Amendment 53**            **Proposed new clause 23B, Page 21, line 23**

This amendment corrects incorrect terminology.

**Amendment 54**            **Clause 24, Proposed new definition of *relevant premises*, paragraph (b), Page 22, line 7**

This amendment updates the definition of *relevant premises* in the Regulation to reflect the introduction of the distinction between large- and small-scale machine relocation amendments.

**Amendment 55**            **Clause 24, Proposed new definition of *relevant premises*, new paragraph (d), Page 22, line 10**

This amendment updates the definition of *relevant premises* in the Regulation to reflect the introduction of in-principle approvals and amendments of in-principle approvals.

**Amendment 56**            **Proposed new clauses 24A and 24B, Page 22, line 10**

**Amendment 57**            **Proposed new clause 24C, Page 22, line 10**

**Amendment 58**            **Proposed new clause 25A, Page 22, line 19**

These clauses update terminology to reflect the introduction of in-principle approvals and amendments of in-principle approvals.

**Amendment 59**            **Proposed new clause 25B, Page 22, line 19**

As provided for in Amendment 20, the Commission may require a social impact statement to be undertaken where a licensee seeks a small scale relocation amendment. Social impact statements are intended to be an abridged form of a social impact assessment which may be required where the Commission is concerned a proposal may entail some risk, but not so much as to necessitate a full social impact assessment.



This amendment sets out the requirements for social impact statements, the matters to be addressed by social impact statements, and the information to be given in social impact statements.

**Amendment 60**            **Clause 26, Proposed new section 14 note, new dot points, Page 23, line 5**

This amendment updates the cross-references to the Act in which a ballot of club members is required to be undertaken so as to include the new requirements for in-principle approvals.

**Amendment 61**            **Clause 27, Proposed new note 3, new dot points, Page 23, line 7**

**Amendment 62**            **Clause 20, Proposed new note 3, first dot point, Page 23, line 8**

These amendments ensure that the additional dictionary cross-references in note 3 reflect the introduction of in-principle approvals and a distinction between large- and small-scale machine relocation amendments.

**Amendment 63**            **Proposed new clause 28, Page 23, line 10**

**Amendment 64**            **Proposed new clause 29, Page 23, line 10**

The amendments update the dictionary definitions within the Regulation for 'gaming machine proposal' and 'local community' to take into account the new concept of social impact statements.