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

**GAMING MACHINE AMENDMENT REGULATION 2014 (No 1)**

**SL2014-22**

**EXPLANATORY STATEMENT**

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## **GAMING MACHINE AMENDMENT REGULATION 2014 (No 1)**

### **OVERVIEW**

The *Gaming Machine Amendment Regulation 2014 (No 1)* (the Regulation) makes amendments to the *Gaming Machine Regulation 2004*. The majority of these amendments are required following a decision of the ACT Gambling and Racing Commission (the Commission) to approve the use of 'Ticket-In' as a form of 'cashless gaming' technology associated with electronic gaming machines.

The amendments provide a revised basis for the approval and operation of a range of different types of cashless gaming, of which Ticket-In is one, without the need for further legislative amendment for each type of system.

The Bill repeals Parts 6 and 7 of the *Gaming Machine Regulation 2004* and replaces them with one new part entitled 'Cashless Gaming Systems'. The purpose of this revised part is to set the minimum requirements for operating a cashless gaming system. In broad terms, the common elements for all types of cashless gaming systems are outlined in this new part of the Regulation. Each specific type of cashless gaming system has individual operational requirements specified in a Notifiable Instrument that are consistent with the broad requirements outlined in the Regulations.

The Commission is also taking the opportunity to make a number of small non-related technical amendments to ensure the Regulation is consistent with other ACT gaming laws and current government practices, and to reduce red tape where appropriate. These amendments include:

- clarifying the requirements for providing a written estimate of the expected revenue and expenditure for in-principle approvals for new venues;
- removing unnecessary information requirements in licence schedules;
- reducing record keeping requirements for ballot documents; and
- increasing the prescribed limits for reporting contractual arrangements or consultancies entered into during a year and reporting remuneration given to a person in club annual reports.

### **STRICT LIABILITY OFFENCES**

This Bill contains a number of strict liability offences:

- Regulation 28 – Operating an unapproved cashless gaming system;
- Regulation 30 – Failure to comply with a cashless gaming system operational requirement;
- Regulation 31 – Giving a cashless gaming card to a child or allowing a child to use a cashless gaming system.
- Regulation 35 – Allowing a player account card, that was not issued by the licensee, to be used in their cashless gaming system; and
- Regulation 36 – Allowing a cashless gaming card (other than a player account card) that was not issued by the licensee at their premises to be used in their cashless gaming system.

These strict liability offences attract a penalty of up to 10 penalty units.

These offences, incorporating strict liability elements, have been carefully considered during the Regulation's development. A strict liability offence means that there are no fault elements for any of the physical elements of the offence, and that conduct alone is sufficient to make the defendant culpable. A strict liability offence has a defence of mistake of fact in addition to the other defences in part 2.3 of the Criminal Code and any other defence included in the Act.

Strict liability offences arise in a regulatory context where, for reasons such as consumer protection and public safety, the public interest requires the sanction of criminal penalties to ensure that regulatory schemes are properly observed. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental or fault element can justifiably be excluded. For example, in Regulation 31 the offence of giving a cashless gaming card to a child or allowing a child to use a cashless gaming system is one of strict liability, as a defendant can reasonably be expected to be aware of this regulation, and it is in the public interest that criminal sanctions apply.

The offences in the Regulation that are strict liability meet the criteria set out in the ACT Government Directorate of Justice and Community Safety's Guide for Framing Offences (April 2010). In each instance the licensee knows, or ought to know, their legal obligations and the offences are part of a Regulation that sets up a regime of regulatory offences.

This rationale is relevant to the gambling industry where failure by a gaming machine licensee to adequately fulfil their legal obligations justify strict liability provisions. Such failure can negatively affect the Government's harm minimisation strategies and, as a consequence, potentially affect gaming machine players and those who experience difficulties with gambling.

The Regulation recasts a number of offences from the current regulations under Regulation 30 '*Failure to comply with a cashless gaming system operational requirement*'. The original intent of the offences remains, however the Regulation increases the penalty units for these offences from 5 to 10 penalty units to reflect the seriousness of these offences and to align the offence provisions with the maximum penalty for an offence under the Regulation. Due to the continual evolution of cashless gaming technology and its capabilities, the operational requirements of a cashless gaming system are now set for each type of system under a Notifiable Instrument. This ensures that the appropriate consumer protection, administrative and technical measures are in place for each specific type of the technology that is permitted to operate in the ACT.

The Regulation also introduces three strict liability offences in relation to operating an unapproved cashless gaming system (Regulation 28), allowing a player account card that was not issued by the licensee to be used in their cashless gaming system (Regulation 35) and allowing a cashless gaming card (other than a player account card) that was not issued by the licensee at their premises to be used in their cashless gaming system (Regulation 36). These strict liability offences attract a penalty of up to 10 penalty units. As outlined above, due to their professional involvement, the licensee of the gaming machine facility can be expected to know the requirements of the legislation and as such a strict liability provision is appropriate.

## **CLAUSE NOTES**

### **Clause 1      Name of Regulation**

This clause is a formal provision setting out the name of the regulation as the *Gaming Machine Amendment Regulation 2014 (No 1)*.

### **Clause 2      Commencement**

This clause provides for the commencement of the Regulations. The Regulations will commence on the day after its notification day.

### **Clause 3      Legislation Amended**

This clause provides that the legislation to be amended is the *Gaming Machine Regulation 2004*.

### **Clause 4      Section 6(2)**

This clause clarifies that where an application has been submitted for in-principle approval for a new venue under section 38D of the *Gaming Machine Act 2004*, the written estimate of the expected revenue and expenditure must be provided for the first three years of gaming operations at the proposed venue. Currently the applicant is required to provide an estimate for the “next 3 financial years” which commences on approval of an application. This amendment ensures that the financial information includes estimates of gaming machine revenue in circumstances such as where the approval is not acted upon for a number of years or where gaming machines are not operating as soon as the venue opens.

Where an application under section 6 of the Regulations is approved part way through a financial year, the written estimate of the expected revenue and expenditure must be provided for the rest of that financial year and the next two full financial years.

### **Clause 5      Section 6(3)**

This clause omits the definition of ‘next three financial years’ as this reference has been removed from section 6(2).

### **Clause 6      Section 8(f) and example and note**

This clause omits the requirement under section 8(f) to include any condition or restriction on a gaming machine’s operation in the licence schedule, as the nature and volume of this information is impractical to include in the licence schedule. Conditions or restrictions on operations are included in gaming machine approvals issued by the Commission as Notifiable Instruments under section 69 of the *Gaming Machine Act 2004*.

### **Clause 7      Section 12A, definition of *gaming machine proposal***

This clause amends the definition of ‘*gaming machine proposal*’ under section 12A to replace the incorrect reference ‘see section 12B(2)’ with ‘see section 12B(a)’.

## **Clause 8      Section 23(1)**

This clause amends section 23(1) to provide that ballot documents must be kept for 12 months after the day notice of the result of the ballot is given to the Commission. The current requirement that ballot documents must be kept for seven years is unnecessary and imposes an excessive burden on clubs, with 12 months an appropriate period of time for any disputes arising from the ballot to be investigated and finalised.

## **Clause 9      Parts 6 and 7**

This clause repeals the current requirements for gaming machine tickets and player cards and introduces updated requirements relating to all forms of cashless gaming.

Regulation 27 inserts eight new definitions for the purposes of this part of the Regulation.

**'cashless gaming card'** means a device issued by a licensee that—

- a) is used with a licensee's gaming machine instead of, or as well as, money; and
- b) records, or enables recording of, gaming credits available to a player of the licensee's gaming machine.

Examples are provided of cashless gaming cards such as: magnetic swipe card, gaming machine ticket, plastic token, smartcard, ticket-in or ticket-out, or radio-frequency identification (RFID) tag.

A *'cashless gaming card'* is used to facilitate all types of cashless gaming including Ticket-In Ticket-Out, player account and non-account based cashless gaming and is the device through which the funds a player holds are accessed for gaming machine play or redeemed for cash.

**'cashless gaming system'** means peripheral equipment connected to a gaming machine that provides for—

- a) the recording of gaming credits held by a player with the licensee of a gaming machine for use with the machine; and
- b) the transfer of gaming credits held by a player to and from a gaming machine through the use of a cashless gaming card.

Examples are provided of cashless gaming systems such as: ticket-in ticket-out system, a system that provides for gaming using a player account or a system that provides for non-account cashless gaming.

As peripheral equipment, these systems will be assessed for approval under the *Gaming Machine Act 2004*, section 69.

A *'cashless gaming system'* usually forms one component of a licensee's gaming machine management system. A licensee must have a management system that monitors settings and machine play in order to operate cashless gaming at their premises.

**‘expired gaming credits’** means gaming credits that have expired under section 34(2).

**‘gaming credits’** means the funds available through a cashless gaming card for gaming machine play or redemption.

**‘player account card’**, in relation to an individual’s player account, is a cashless gaming card that allows the individual to use the gaming credits in their account. It must be issued by the licensee for use with a gaming machine on the licensee’s licensed premises, subject to sections 36 and 37.

**‘redeems’** — a licensee redeems gaming credits on a cashless gaming card if the licensee gives the holder an equivalent amount of money in exchange for the credits.

**‘player account’** means an account held by an individual with a licensee that allows the individual to hold gaming credits with the licensee for use with a gaming machine on the licensee’s licensed premises. This account allows the individual to hold credits with the licensee for a period of time, to add funds to the account and redeem credits for money from the account.

**‘ticket-in ticket-out system’** means an electronic system or device designed to be used for, or adapted to enable, the transfer of credits to or from a gaming machine using a ticket or similar thing. This is usually in the form of tickets or vouchers that represent an amount of currency and can be redeemed for cash or inserted into another gaming machine for continued play.

Regulation 28 provides an offence where a licensee operates a cashless gaming system on their premises and the system is not approved by the Commission under section 69 of the *Gaming Machine Act 2004*. The offence is one of strict liability and attracts a penalty of up to 10 penalty units. This allows the Commission to determine whether the system is appropriate for use in the ACT, based on the results of a technical evaluation and any available research on the consumer protection and harm minimisation implications of the system.

Regulation 29 provides that the Commission may approve requirements in relation to the operation (including the restriction of the operation) of a cashless gaming system. These operational requirements are to be specified in a Notifiable Instrument and may comprise requirements including, but not limited to:

- security systems and information the security system hold and collect;
- activity relating to gaming machines connected to the system;
- activity relating to people using the system;
- harm minimisation and other protection measures for players using the system;
- how gaming machine tax relating to gaming machines connected to the system is calculated;
- how the licensee keeps and deals with funds relating to gaming credits held on behalf of players;
- technical or operational requirements for the system;
- recording the redemption and crediting of gaming credits; and

- the maximum amount of gaming credits a gaming machine may accept through the use of a cashless gaming card.

Due to the wide range of systems available (or potentially available in the future) and their differing functionality, the Commission will set specific rather than broad requirements for each type of cashless gaming system in a Notifiable Instrument. This provision ensures that the appropriate consumer protection, administrative and technical measures are in place for the technology to operate in the ACT while providing some flexibility to address particular issues with individual systems.

Regulation 30 provides an offence where a licensee operates a cashless gaming system and fails to comply with a requirement approved under Regulation 29. This provision ensures that the cashless gaming system operates in the approved manner consistent with the consumer protection, administrative and technical requirements set under Regulation 29. The offence is one of strict liability and attracts a penalty of up to 10 penalty units.

Regulation 31 provides an offence where a licensee allows a child to use a cashless gaming system they operate or where a licensee gives a cashless gaming card to a child. The offence is one of strict liability and attracts a penalty of up to 10 penalty units. This ensures that licensees and their employees take seriously their responsibilities to prevent a child from using a cashless gaming system. It should be noted that the *Gaming Machine Act 2004* also contains an offence provision with a maximum penalty of 50 penalty units where a licensee allows a child to play a gaming machine.

Regulation 32 provides that a licensee's control procedures must require the licensee to keep a record of:

- cashless gaming cards issued;
- cashless gaming system transactions and the information contained in each transaction;
- the value of unredeemed and expired gaming credits held by the licensee; and
- information identifying each player the licensee holds gaming credits for.

Examples of cashless gaming system transactions include credits added to, debited from or redeemed from a cashless gaming card.

A licensee must prepare a written report of these records on a monthly basis. This must be completed within one week of the end of the month and the report must be kept for at least two years. The licensee must give a copy of the records and report to the Commission if asked.

The control procedures must also state how often the licensee will distribute expired gaming credits to patrons to ensure that they have appropriate policies in place to regularly undertake this task.

The recording and holding of such information is important for the Commission to ensure that a transparent auditable record of activity is kept for potential tax verification purposes, monitoring

compliance with redemption and expiry provisions, and for gaming machine activity statistical purposes.

This provision ensures gaming machine licensees operate gaming machines and peripheral equipment in accordance with their control procedures and that procedures are in place for recording key information. Control procedures are an important method of ensuring that gaming machine licensees and their employees undertake their gaming operations adequately and that their activities are completed in a systematic and consistent manner.

Regulation 33 requires the licensee to redeem any credits held by a person excluded from gambling under schedule 1, division 1.2.3 of the *Gambling and Racing Control (Code of Practice) Regulation 2002*. Where an excluded person has unredeemed gaming credits on a cashless gaming card, the licensee must take reasonable steps within 14 days to redeem the credits and forward the funds to the person. This may be done by methods including posting the person a cheque, transferring money to the person via electronic funds transfer or giving the person cash at a pre-arranged place outside the licensed premises.

This provision provides clarity on the process that must be followed regarding unredeemed gaming credits of excluded people and provides examples to emphasise that the licensee must offer an excluded person an alternative method to obtain their funds other than through re-entry to the premises. It is considered reasonable for a person not to forfeit any outstanding funds where they are excluded from gambling as this may be a disincentive for a person to enter into a voluntary self-exclusion arrangement.

Regulation 34 provides that where there are gaming credits on a player's cashless gaming card for one year after the day the player last used the card, the gaming credits expire and may no longer be redeemed. The licensee must then distribute these funds to patrons of the licensee's licensed premises in a manner approved by the Commission in writing. Licensees will be required to make these requirements clear to patrons before they utilise any cashless gaming system.

The purpose of this provision is to manage the build up of unclaimed player credits or dormant accounts which are typically of a small size. It returns the funds through an approval method to patrons in general.

Licensees must write to the Commission to seek approval of their proposed disbursement method prior to distributing the funds. This must occur within one year after the day the credits expire. A licensee may apply more than once per year, but not less.

This method of returning unclaimed funds to patrons is consistent with the current requirement where licensees seek approval for the method of distributing undisbursed link jackpot funds under the *Gaming Machine Act 2004* and any illegitimate winnings obtained by excluded or underage patrons under the *Gambling and Racing Control (Code of Practice) Regulation 2002*. These provisions will ensure that the Regulation provides an appropriate manner for any long-term



outstanding unredeemed gaming machine credits to be distributed and ensures consistency between the ACT gaming laws.

Regulation 35 requires a licensee to give the Commission a written report within one month of the end of the financial year detailing the value of expired credits (if any) the licensee held in each month of that year, and the amount of funds (if any) the licensee distributed to patrons in each month of that year. This ensures that the Commission can monitor the amount of expired credits held by licensees and ensure that they are distributed to patrons in a timely fashion.

Regulation 36 provides an offence where a licensee allows a player account card that was not issued by the licensee at their premises or at another premises operated by the licensee, to be used in a cashless gaming system on their premises. For example, a licensee that is part of a club group under the same corporate ownership may allow a player account card to be used at any licensed premises within the club group, but would commit an offence where a player account card of a different corporation was used at their premises. Only player account cards may be used in multiple premises subject to satisfying all relevant provisions of this Regulation. Licensees that operate single premises may only allow player account cards issued by them to be used in that premises.

Regulation 37 provides an offence where a licensee allows a cashless gaming card (other than a player account card) that was not issued by the licensee at their premises to be used in their cashless gaming system on their premises. This means that these cashless gaming cards may only be used in the premises in which they were issued. For example, Ticket-In Ticket-Out tickets may only operate within single premises and a ticket printed at one venue must not be accepted at another venue. The only exception to this provision is for certain player account cards as outlined above in Regulation 35.

Regulations 36 and 37 ensure that the appropriate monitoring, administrative, technical and taxation requirements are in place for the technology to operate effectively in the ACT. These are strict liability offences and attract a penalty of up to 10 penalty units.

#### **Clause 10      Section 73**

This clause amends section 73 to increase the prescribed threshold for reporting a contractual arrangement or consultancy from \$49,999 to \$99,999. Clubs are required as a condition of their licence to include this information in their annual report. The requirement provides transparency to club members in relation to a club's key financial decisions and assists in avoiding conflicted or improper financial dealings within club management. It also allows members to decide whether contractual arrangements are in the best interests of the club.

It is considered appropriate to increase the prescribed amount given it has not been adjusted since its introduction in 2004. Increasing the threshold will reduce the time and effort taken by clubs compiling their annual reports which is in line with red tape reduction commitments made by the Government.

**Clause 11      Section 74**

This clause amends section 74 to increase the prescribed threshold for reporting remuneration given to a person in the annual report of clubs from \$100,000 to \$150,000. This requirement provides transparency to club members in relation to a club's key financial decisions and whether a remuneration package is reasonable in the circumstances.

As discussed above, it is considered appropriate to increase the prescribed amount given it has not been adjusted since its introduction in 2004. Increasing the threshold will reduce the time and effort spent by clubs compiling their annual reports which is in line with red tape reduction commitments made by the Government.

**Clause 12      Dictionary, new definitions**

This clause inserts a new reference to the definitions of 'cashless gaming card' and 'cashless gaming system' in the dictionary.

**Clause 13      Dictionary, definition of gaming credits**

This clause substitutes the reference to the definition of 'gaming credits' in the dictionary.

**Clause 14      Dictionary, definitions of gaming machine ticket and player account**

This clause omits redundant references to the definitions of 'gaming machine ticket' and 'player account', as these terms are not required in the dictionary.

**Clause 15      Dictionary, new definition of player account card**

This clause inserts a new reference to the definition of 'player account card' in the dictionary.

**Clause 16      Dictionary, definition of player card**

This clause omits a redundant reference to the definition of 'player card', as this term is no longer included in the Regulations.

**Clause 17      Dictionary, definition of redeems**

This clause substitutes the reference to the definition of 'redeems' in the dictionary.