

**2016**

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

**GAMING MACHINE (BALLOTS) AMENDMENT REGULATION 2016 (No 1)  
SUBORDINATE LAW SL2016-11**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
Mick Gentleman MLA  
Minister for Racing and Gaming**

## OVERVIEW

The *Gaming Machine Act 2004* (the Act) and the associated *Gaming Machine Regulation 2004* (the Regulation) regulate the management, administration and conduct of persons involved in and participating with gaming machines in the Territory. For the purposes of the Act, the *Gambling and Racing Control Act 1999* (the Control Act) provides the overarching legislative framework for gambling in the Territory.

The Control Act established the ACT Gambling and Racing Commission (the Commission) and the Commission has responsibility for administration of gaming laws and control, supervision and regulation of all gambling in the Territory.

Subsection 178(1) of the Act provides that the Executive may make regulations for the Act. The Act provides that the majority of the voting members of a club who vote in a ballot under a regulation voted for:

- a. paragraph 16(h)(iv) – having gaming machines;
- b. subparagraph 34(f)(ii)(C) – relocating to new premises;
- c. subparagraph 37F(2)(b)(i) – surrendering the authorisation certificate or an authorisation; and
- d. subsection 38(c) – in-principle approval to having gaming machines at the address.

The Act also mentions ballots in paragraph 17(3)(b) and paragraph 36(5)(b).

The Gaming Machine (Ballots) Amendment Regulation 2016 (No 1) (the Amendment Regulation) provides an amendment to the Regulation to allow licensees, that are required to conduct ballots for the purposes of the Act, the choice on how ballots may be conducted. The current requirements under the Regulation only allow ballots to be conducted by mail and by the Secretary of the Club.

The Amendment Regulation provides increased flexibility and is consistent with the ACT Government's commitment to reducing unnecessary red tape. The Amendment Regulation implements the Government response to recommendation 44 of the recent Public Accounts Committee (PAC) *Report 18 – Inquiry into elements impacting on the future of the ACT Clubs sector*.

## HUMAN RIGHTS IMPLICATIONS

There are no human rights implications.

## CLAUSE NOTES

### **Clause 1 Name of regulation**

This is a formal requirement and identifies the regulation as the *Gaming Machine (Ballots) Amendment Regulation 2016 (No 1)*.

### **Clause 2 Commencement**

The regulation commences on 16 May 2016.

### **Clause 3 Legislation amended**

Clause 3 provides that the regulation amends the *Gaming Machine Regulation 2004*.

### **Clause 4 Section 13, new definitions**

Clause 4 provides the new definitions to support ballots being conducted electronically and by a person other than a Club Secretary.

The definition of *conducted electronically* has been inserted to make it clear that this part of a ballot process only refers to the process for casting a vote and counting votes using an electronic process. This definition does not include those processes where voting documents although sent to voting members electronically, for example by email, are returned by mail and counted manually.

An *independent ballot service provider* has been included to permit persons or organisations other than the Club Secretary to conduct the ballot on the club's behalf. However, to be able to undertake the function of conducting a ballot the person or organisation must be involved in undertaking ballot processes as part of their business (for either clubs or other organisations) and must be independent of the club for which the ballot is to be conducted.

The definition of *person conducting a ballot* makes it clear that under the Regulation either the Club Secretary or a person appointed by the Secretary may conduct the ballot on behalf of the club.

The definition of what constitutes a *voting document* has been inserted to make it clear that the voting document may not necessarily be in paper format. A voting document may be: a document that can record a member's vote such as a piece of paper; or when conducted electronically may only consist of a link and password to a computer program where a vote can be lodged, with no printed document. This will enable clubs to utilise technology that is currently on the market to enable voting to be conducted. However, electronic voting requirements make it clear that any such process must be secure and provide for restricted access. This definition should also be read in conjunction with the requirements under new section 21 that a member must not be able to vote more than once.

### **Clause 5 New section 14(2)**

Clause 5 of the Amendment Regulation has been inserted to remove all doubt that a club may conduct a ballot electronically.

## **Clause 6      Sections 17 and 18**

New clause 17 of the Amendment Regulation provides updated requirements for informing the Commission in writing about a ballot and the processes to be used. It is the Club Secretary's responsibility to provide the following information to the Commission under subsection 17(1):

- (a) that the club is holding a ballot; and
- (b) the reason for holding the ballot; and
- (c) how the ballot will be conducted (examples include, but are not limited to: whether the ballot will be conducted electronically or by mail);
- (d) if the ballot will be conducted electronically – details of the electronic ballot (examples include, but are not limited to: information relating to the electronic process to be used, including how votes will be counted and how a person will be prevented from voting more than once);
- (e) if the ballot will be conducted by an independent ballot service provider -
  - (i) the name of the provider; and
  - (ii) that the ballot will be conducted by the provider; and
- (f) the voting close date for the ballot.

New subsection 17(2) of the Regulation retains the current requirements for information proposed to be published under the restructured subsection 18(1) and the documents required under the revised subsection 20(1).

Subsection 17(3) reinserts the existing requirements for an 'appropriate time' within which information must be provided to the Commission.

New subsection 18(1) provides mechanisms to reduce the administrative red tape and financial cost for licensees. This section removes the requirement that public notices must be published on an ACT Government website or in a daily newspaper circulating in the ACT. As clubs have their own websites and email accounts for members the additional costs to industry was inappropriate. The requirement that clubs must also display information in relation to a ballot at each club to which the ballot relates has been maintained.

To provide additional clarity so that the information displayed for a ballot does not become excessive, a definition of what constitutes information about a ballot for the purposes of subsection 18(1) has been inserted. The required information is confined to:

- (a) A description of the question to be decided by the ballot. This does not require the same detailed information required to be provided to voting members under paragraph 20(1)(c).
- (b) The date the ballot is to close.
- (c) Where further information about the ballot may be obtained. This requirement would be satisfied if a link to the club's website or advice that more information could be obtained from the club's front desk was displayed.

A club may, if it so desires, place additional information on the website or at the club premises. However, this would be the licensee's choice and is not mandated under the Regulation.

#### **Clause 7        Sections 20 to 22A**

Clause 7 provides for the newly reframed ballot requirements in sections 20 to 22A. New subsection 20(1) contains the existing requirements for documents to be provided to club members, with a number of modifications to reduce administrative red tape requirements. New paragraph 20(1)(a) requires that a voting document must be given to the voting member and this requirement should be read in conjunction with the definition of what constitutes a voting document at section 13 of the Regulation.

If the ballot is not to be conducted electronically new paragraph 20(1)(b) requires that either an addressed reply paid envelope be given or the address to which the voting document is to be returned be provided. The new definition of what constitutes a ballot that is conducted electronically at section 13 of the Regulation must be considered to ascertain whether this paragraph applies.

New paragraph 20(1)(b) of the Regulation removes the requirement that the club member must be given a reply paid envelope as this would limit the ability to transmit ballot documents to a club member electronically, for example by email.

New paragraph 20(1)(c) combines the previous requirements for information to be provided, existing paragraph 20(1)(c) to paragraph 20(1)(e) of the Regulation, into one notice. Subsection 20(2) retains the existing requirement that information in the notice may include a recommendation that members vote in a particular way on the question to be decided by the ballot.

New subsection 20(3) has been inserted to make it clear that documents required under subsection 20(1) may, where appropriate, be sent electronically. This means that a ballot may have documents despatched for example by email, however, voting may not be conducted electronically. For example the actual vote may require the voting member to return a paper vote to the person conducting the ballot. The actual casting of a vote could not be done by email by attaching a document to a return email as the member's vote would be identifiable.

New section 21 retains the existing requirement (subsection 21(b) of the Regulation) that a person conducting a ballot must ensure that a voting member has not voted more than once. However, the requirement that the secretary must ensure that a voting paper has been filled in by a voting member under subsection 21(a) has not been retained. This requirement is not enforceable by any person conducting a ballot unless the voter is present when a vote is cast and this is not how voting occurs for club ballots.

The existing requirements for counting votes for ballots are retained under section 22. New subsection 22(1) incorporates the policy concept that a person other than the Club Secretary may conduct a ballot, for example an organisation engaged to conduct the

ballot. Whoever conducts the ballot is responsible for working out the result of the ballot however, the provision should also be read in conjunction with the new section 22C of the Regulation.

New subsection 22(2) provides when a vote must not be counted and removes the requirement that a vote must not be counted if it has been made by someone other than a voting member, previous paragraph 22(2)(c). This provision has been removed as there would be no knowledge of the transgression unless the voter is present with the person conducting the ballot when the vote is cast and as noted above this is not how ballots for clubs are conducted.

New subsection 22(3) provides if the ballot is conducted by an independent ballot service provider then the results must be provided to the Club Secretary within 7 days from the close of the ballot, or if an earlier time is agreed, then that time. This provision should also be read in conjunction with the requirements to provide the Club Secretary with documents under new section 23 of the Regulation.

New subparagraph 22(4)(a)(i), previously paragraph 22(1)(a), retains the requirement that the results of a ballot must be displayed in each club to which the ballot relates. New subparagraph 22(4)(a)(ii) aligns with the move towards electronic processes and provides that the results of a ballot must also be displayed on the club's website. New paragraph 22(4)(b) retains the existing requirement under paragraph 22(1)(b) to provide the Commission with written notice of the result of the ballot.

Existing section 22A of the Regulation has been amended to provide that if the Club Secretary decides that another person may exercise a function under section 21 and 22 (checking and counting votes) for the club, then the Secretary must advise the Commission in writing that the person will be exercising those functions. The previous requirement that the appointment of a person other than the Club Secretary was to be decided by the Commission has not been retained. New subsection 22A(3) has been inserted to make it clear that the Secretary retains ultimate responsibility to ensure that if an alternative person exercises the functions under section 21 and 22 it must be conducted in accordance with the Regulation.

#### **Clause 8      New section 22C**

Clause 8 inserts new section 22C in the Regulation to remove all doubt that even when an independent ballot service provider is conducting a ballot, the Club Secretary retains responsibility to ensure that the ballot is conducted in accordance with Part 4 of the Regulation. If the Secretary is not satisfied that the ballot is conducted in accordance with Part 4 the Secretary must advise the Commission, and the Commission may direct that the ballot be conducted in accordance with the Regulation. The Commission may only direct that the ballot be conducted in accordance with the Regulation if the Commission is satisfied that the Regulation is not being adhered to.

It is appropriate that as the independent regulator, established by and granted powers by the ACT Legislative Assembly and bound by statutory limits, including the provisions of the Control Act, that the Commission exercise the power to direct compliance with Part 4 of the Regulation. In addition, the power to direct granted to the Commission is not unfettered and is constrained to those circumstances where the Commission is satisfied that Part 4 of the Regulation has not been complied with, and it is bound within those limits to direct only that the ballot is correctly conducted in accordance with the Regulation.

#### **Clause 9      Section 23**

Clause 9 reinserts the requirements that the Club Secretary must retain completed ballot documents. However, these requirements have been redrafted to minimise the number of ballot documents must be retained. It is not all documents required under subsection 20(1) of the Regulation that must be retained.

New subsection 23(2) provides that documents must be retained for at least 12 months after the day that the Secretary advises the Commission of the ballot result. If a ballot was not conducted electronically (noting the new definition of conducted electronically at section 13) the document that must be kept is the voting document completed by members and returned to the person conducting the ballot – the actual voting slip. This is regardless of whether the votes were counted in the ballot, for example it may be an informal vote. A list stating the name of each voting member who was given a voting document is also to be retained, note new paragraph 23(2)(a) and paragraph 23(2)(c) to the Regulation.

If a ballot was conducted electronically, voting in the ballot is conducted and the votes are counted using an electronic process, information must be retained about how the result of the ballot was worked out. For example, a computer generated report indicating the number of votes for and against the ballot question. The information must also include a list stating the name of each voting member who was given a voting document is to be retained, note new paragraph 23(2)(b) and paragraph 23(2)(c) to the Regulation. The *Electronic Transactions Act 2001* provides that a document may be retained in an electronic form to meet this requirement.

New subsection 23(3) inserts the requirement that if the ballot is conducted by an independent ballot service provider, the documents required to be kept by the Club Secretary under new subsection 23(2) must be provided to the Secretary within 7 days from the voting close date of the ballot or if an earlier time has been agreed, that agreed date.

#### **Clause 10      Dictionary, new definitions**

Clause 10 inserts into the dictionary the new definitions for *conducted electronically*, *independent ballot service provider*, *person conducting a ballot* and *voting document* as provided under clause 4 (section 13).