

2018

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

GAMING LEGISLATION AMENDMENT BILL 2018

EXPLANATORY STATEMENT

**Presented by
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GAMING LEGISLATION AMENDMENT BILL 2018

INTRODUCTION

This explanatory statement relates to the Gaming Legislation Amendment Bill 2018 (the Amendment Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Amendment Bill and to help inform debate on it. It does not form part of the Amendment Bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the Amendment Bill. It is not, and is not meant to be, a comprehensive description of the Amendment Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The *Gaming Machine Act 2004* (the Gaming Machine Act) and the *Gaming Machine Regulation 2004* (the Gaming Machine Regulation) regulate the licensing of gaming machine operators, venues and gaming machines. For the purposes of the Gaming Machine Act, the *Gambling and Racing Control Act 1999* (the Control Act) provides the overarching legislative framework for gambling in the Territory.

The Control Act establishes the ACT Gambling and Racing Commission (the Commission) with a governing board. The Commission has responsibility for administration of gaming laws and control, supervision and regulation of gaming in the Territory.

Through amendments introduced by the *Casino (Electronic Gaming) Act 2017*, the Control Act establishes the maximum number of authorisations for electronic gaming (including gaming machines) in the ACT.

BACKGROUND

In 2015, the *Gaming Machine (Reform) Amendment Act 2015* (the Reform Act) introduced the trading scheme for gaming machine authorisations. This included the introduction of a two phased reduction of gaming machine authorisations across the Territory.

Phase 1 was due to operate for a maximum of three years and commenced on 31 August 2015. This phase provided for a reduction in the number of gaming machine authorisations in the ACT through forfeiture requirements, the introduction of provisions to quarantine and store gaming machines, and the trading scheme to allow clubs, hotels and taverns to divest themselves of gaming machines.

Phase 2, which was due to commence no later than 31 August 2018 under the Reform Act as originally passed, provided for the maximum number of gaming machine authorisations to be limited to 15 authorisations per 1,000 adults in the Territory. To achieve this ratio, licensees with 20 or more authorisations would be required to surrender their authorisations on a pro-rata basis to meet the ratio. The Phase 2 provisions are contained in the uncommenced Schedule 1 of the Gaming Machine (Reform) Amendment Act.

The Government has since committed in the *Parliamentary Agreement for the 9th Legislative Assembly* to reduce the number of gaming machine ‘licences’ (‘authorisations’ in the Gaming Machine Act) to 4,000 by 1 July 2020, as part of a range of measures intended to reduce gambling harm.

Following an initial round of consultation seeking industry input in late June/early July 2017, the community and industry were invited to provide feedback on options for achieving the commitment by commenting on the *Options Paper - Implementing the Government Commitment to Reduce Gaming Machine Authorisations* during August/September 2017.

On 3 April 2018, the Attorney-General announced the appointment of Mr Neville Stevens AO to undertake the Club Industry Diversification Support Analysis to inform Government decision-making. The *Club Industry Diversification Support Analysis: Findings and Recommendations* and the *Government’s Pathway to 4,000 Gaming Machine Authorisations by 2020* were tabled in the Legislative Assembly on 23 August 2018.

The Pathway to 4,000 provides for incentives for the voluntary surrender of gaming machine authorisations in advance of the compulsory surrender of authorisations in April 2019 and April 2020, and for a range of club industry diversification support measures to assist the industry in diversifying income streams away from gaming machine revenue.

Amendments in the *Casino and Other Gaming Legislation Amendment Act 2018* postponed the default commencement of schedule 1 of the Reform Act (which included the Phase 2 gaming machine trading scheme provisions) until 31 August 2019. However, as outlined in the Explanatory Statement for the Casino and Other Gaming Legislation Amendment Act, the intent of that delay was to allow time for a revised approach that aligns with current Government policy to be finalised and considered by the Legislative Assembly – that revised approach is set out in this Amendment Bill.

The Parliamentary Agreement also commits to:

- review the current community contribution scheme to maximise the direct community benefit; and
- establish an independent charitable fund to distribute funds to charitable and community causes.

As part of the review to support policy reforms to the scheme in line with these commitments, the Justice and Community Safety Directorate (JACS) circulated an *Options Paper: Maximising the Benefit of the Community Contributions Scheme* to facilitate discussion. The review also considered relevant research and reports, as well as models of similar schemes operating in other jurisdictions. These reports included the ACT Auditor-General Report No. 5 of 2018 on *ACT Clubs' Community Contributions*. As outlined in the Government Response to that report, relevant issues raised were considered in the review and in the development of the Amendment Bill.

OVERVIEW OF THE AMENDMENT BILL

The Amendment Bill amends the Gaming Machine Act and Regulation to provide the legislative framework for the *Pathway to 4,000 Gaming Machine Authorisations*, including the voluntary and compulsory surrender of gaming machine authorisations.

The Amendment Bill provides for improved enforcement and transparency measures, including a higher maximum financial penalty for disciplinary action and the ability to enter into enforceable undertakings under the Gaming Machine Act, as well as amendments to the Control Act requiring the Commission to keep a public register of disciplinary action and enforceable undertakings. The ability to set higher maximum penalties for offences under the Gaming Machine Regulation and the *Gambling and Racing Control (Code of Practice) Regulation 2002* is also provided for.

The Amendment Bill revises the name of the Problem Gambling Assistance Fund to the Gambling Harm Prevention and Mitigation Fund and amends other references to 'problem gambling' in the Gaming Machine Act and the Control Act, in line with the Government's adoption of a public health approach to gambling harm reduction.

The Amendment Bill also provides for reforms to the community contributions scheme to increase the contribution rate for club licensees, provide for a mandatory contribution from hotel licensees and implement reforms to improve the effectiveness of the current scheme and enhance its community benefit. Reforms include increased transparency about contributions made and for revised reporting arrangements, and a range of exclusions from the scheme. The amendments in the Amendment Bill will be supplemented by changes to the Gaming Machine Regulation that are being developed separately to provide an opportunity for industry and community feedback.

In addition, the Amendment Bill includes a number of minor and technical amendments to the Gaming Machine Act and Regulation that reduce red tape and improve the operation of certain provisions – including in relation to linked-jackpot arrangements, warning notices on gaming machines, community contributions shortfall tax and cashless gaming.

The Amendment Bill repeals the ratio of 15 gaming machine authorisations per 1,000 adults and associated 'Phase 2' trading scheme provisions under the Reform Act.

Uncommenced amendments to schedule 1 of the Reform Act that were included in the *Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016* will now no longer commence and will have no legal effect. Certain elements of both sets of uncommenced provisions, including in relation to the repeal of quarantine permits and the renaming of permits to 'storage permits' as a result, are included in the Amendment Bill, since these amendments are to be retained.

The Amendment Bill also amends the Control Act in relation to provisions that are inserted into that Act by the *Casino (Electronic Gaming) Act 2017*, establishing the maximum number of authorisations for electronic gaming in the ACT.

The Amendment Bill amends the following legislation:

- *Casino (Electronic Gaming) Act 2017*
- *Gambling and Racing Control Act 1999*
- *Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016*
- *Gaming Machine Act 2004*
- *Gaming Machine Regulation 2004*
- *Gaming Machine (Reform) Amendment Act 2015*.

HUMAN RIGHTS IMPLICATIONS

During the Amendment Bill's development due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004*. The measures introduced in the Amendment Bill support the Government's commitment to reduce the number of gaming machines in the Territory, which is intended to reduce gambling harm. In addition, reforms to the community contributions scheme will improve the direct benefit of the scheme to the community. These measures may be seen as positively engaging the protection of the family and children (section 11).

Provisions in clause 12 of the Amendment Bill that allow for an increased disclosure of information within the ACT Government under the Control Act engage the right to privacy and reputation (section 12 HRA).

An assessment of the Bill against section 28 of the HRA is provided below.

A Compatibility Statement under the HRA has been issued for the Bill by the Attorney-General.

Section 28 Human Rights Act Assessment

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Right to privacy and reputation, section 12

The nature of the right affected

Section 12 (Privacy and reputation) of the HRA provides that everyone has the right not to have his or her privacy, family, or home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked.

Clause 12 of the Amendment Bill provides for an increased range of disclosure of confidential documents or confidential information acquired under a gaming law or as a result of exercising functions under or in relation to a gaming law.

The importance of the purpose of the limitation

The intent of division 4.4 of the Gaming Machine Act is to ensure the secrecy of confidential documents and confidential information obtained acquired under a gaming law or as a result of exercising functions under or in relation to a gaming law.

It is necessary, however, to expand the permitted disclosures within the ACT Government to remove doubt about the permitted disclosures within the ACT Government, and the flow of information between the Minister, the responsible administrative unit (currently the Justice and Community Safety Directorate) and the Commission. In addition, new part 2A of the Gaming Machine Act, which relates to the voluntary and compulsory surrender of authorisations is being administered by the Justice and Community Safety Directorate, which will also require information sharing to and from tax officers under the *Taxation Administration Act 1999* to permit the administration of the offset amounts under a voluntary surrender agreement.

The provisions in the Bill are considered necessary and reasonable to fulfil the objectives, noting the existing protections on the confidentiality and disclosure of information obtained.

The nature and extent of the limitation

Clause 12 of the Amendment Bill inserts new section 37(d)(ia) to provide that information may be disclosed to the administrative unit responsible for the Control Act, the Commission and the Minister for the purposes of advising the Minister about policy matters or the operation of a gaming law.

This clause also inserts new section 37(d)(ib) to provide that information may be disclosed to the responsible administrative unit, the Commission, the Minister (currently the Attorney-General) or a tax officer under the *Taxation Administration Act 1999* for the purposes of administering part 2A of the Gaming Machine Act, which relates to reducing the cap on the number of gaming machine authorisations in the ACT to 4,000 or fewer (including the voluntary and compulsory surrender of authorisations).

This provision ensures that the Commission is able to disclose information received under a gaming law to the Minister (currently the Attorney-General), to the relevant administrative unit (currently the Justice and Community Safety Directorate), or to a tax officer and avoids any doubt that the Commission is able to do so. Similarly, it provides that information may be shared with the Commission by the Minister, relevant administrative unit, or a tax officer.

The amendment broadens within the ACT Government the potential recipients of information, and potentially limits the right to privacy and reputation, noting that the provisions in division 4.4 of the Control Act apply to all gaming and racing legislation.

However, the definition of a gaming officer in section 34; the requirement to respect confidentiality in section 35; the restrictions on disclosure in division 4.4 and the prohibition on secondary disclosures in section 38 operate to prevent the disclosure of information except as provided for under the Control Act. Offence provisions apply for a person making a record of confidential information other than in accordance with their duties and unauthorised disclosure. The maximum penalty that can be applied is 50 penalty units, imprisonment for 6 months or both.

In addition, where confidential documents or information is used by or disclosed to the Commission or other Government staff, they are bound by the requirements under the *Information Privacy Act 2014*.

The relationship between the limitation and its purpose

The permitted disclosure within the ACT Government of information or documents acquired in connection with a gaming law is rationally connected to the purpose of administering the suite of gambling and racing legislation, and providing policy advice to the Minister.

Due consideration was given about whether the amendments in clause 12 were required, however, it is considered that it is necessary to ensure that information can be shared with relevant officers within the ACT Government to provide policy advice to the Minister, to enable the administration of legislative provisions and to reduce gambling harm,. Without this information sharing, it will not be possible for the Justice and Community Safety Directorate to administer part 2A of the Gaming Machine Act introduced by the Amendment Bill.

Less restrictive means reasonably available to achieve the purpose

In developing the legislation an assessment was made as to whether any less restrictive means were available to achieve the purpose of the Bill. There is no less restrictive means reasonably available as amending the permitted disclosures is an important part of delivering the Amendment Bill's intent and to ensure ongoing information sharing within Government that supports policy development and administration of the gaming and racing suite of legislation.

As outlined above, to the extent that clause 12 engages a person's right to privacy and reputation, it is considered reasonable and demonstrably justified in a free and democratic society. Amending the permitted disclosure provisions under section 37 of the Control Act is proportionate and necessary to ensure the administration of new part 2A of the Gaming Machine Act and to support ongoing policy development and administration. Division 4.4 of the Gaming Machine Act includes existing provisions that mitigate the human rights impacts.

Clause 13 – Register of Disciplinary Action and Enforceable Undertakings

Clause 13 provides for a register of disciplinary action and enforceable undertakings given under the Gaming Machine Act. At present, all gaming machine licensees in the Territory operate within a corporate or incorporated association structure. Previously, a small number of individual licensees operated gaming machines within the context of operating a hotel or tavern business as a sole trader, and the Gaming Machine Act retains the capacity for an individual to become a class B (hotel/tavern) licensee only in the limited circumstances where they purchase a business with existing class B gaming machines as a going concern. In order to address potential impact on the individual's right to privacy and reputation, the Amendment Bill provides that an individual's name cannot be included on the register, rather a registered business name or trading name must be displayed. As a result, it is considered that clause 13 does not engage the right to privacy and reputation.

Offences

The Amendment Bill includes the following new or amended offences in the Gaming Machine Act:

- New section 10F – operating gaming machine where authorisation surrendered – 100 penalty units
- New section 100 – failure to dispose of gaming machines where authorisation surrendered under s 10M – 50 penalty units
- New section 55E – compliance with GM undertaking – 100 penalty units
- New section 171 – community purpose contributions—record keeping by clubs – 20 penalty units, strict liability offence
- Amend existing section 104(2) – insert word ‘storage’ before ‘permit’ – 100 penalty units
- Amend existing section 151(2) –warning notices – remove requirement for display on individual gaming machines – 5 penalty units, strict liability offence

New section 10F

New section 10F of the Gaming Machine Act provides that a person commits an offence if the person fails to take all reasonable steps to stop a gaming machine being used on the premises where the person owns, occupies or manages authorised premises and an authorisation or authorisation certificate associated with the premises is surrendered under section 10D (Surrender of authorisations and authorisation certificates on voluntary surrender day).

This new offence mirrors the existing offence provision in section 105 of the Gaming Machine Act and is necessary to ensure that gaming machines are not used where not authorised.

This amendment supports the voluntary surrender provisions in division 2A.2. All gaming machine licensees may choose to voluntarily surrender authorisations under this division. At present, all gaming machine licensees in the Territory operate within a corporate or incorporated association structure. Previously, a small number of individual licensees operated gaming machines within the context of operating a hotel or tavern business as a sole trader, and the Gaming Machine Act retains the capacity for an individual to become a class B (hotel/tavern) licensee only in the limited circumstances where they purchase a business with existing class B gaming machines as a going concern. Although possible, it is unlikely that an individual would become a gaming machine licensee before the voluntary surrender period closes on 31 January 2019 (see new section 10B), and therefore become subject to the offence should they choose to voluntarily surrender authorisations.

This new offence carries a maximum penalty of 100 penalty units to align with the offence in existing section 105. A maximum penalty of 100 penalty units is considered appropriate for the use of an unauthorised gaming machine, in the context of industry integrity, gambling harm reduction and consumer protection considerations.

New section 100

New section 100 of the Gaming Machine Act provides that a person commits an offence if the person fails to dispose of a gaming machine held under a storage permit in the way the Commission directs or within the period stated in the storage permit.

This new offence mirrors existing section 37G of the Gaming Machine Act. The purpose of this provision is to prevent a person from owning or possessing an unauthorised gaming machine where they have failed to comply with disposal requirements following the compulsory surrender of authorisations under section 10M.

This amendment supports the compulsory surrender provisions in division 2A.3 and therefore applies only to club licensees with 20 or more authorisations (these licensees are all bodies corporate).

The maximum penalty for this offence is 50 penalty units. The maximum penalty for the offence in new section 100 is lower than the maximum penalty for the offence in new section 10F, reflecting that the use of an unauthorised gaming machine is more serious than owning or possessing (but not using) an unauthorised gaming machine.

New section 55E

Under new section 55E of the Gaming Machine Act, it is an offence for a person that has given a GM undertaking, and it is in effect, to contravene the undertaking.

The maximum penalty for this offence is 100 penalty units. This maximum penalty reflects that the person who has given the undertaking has breached the undertaking that they entered into. It is clear that the person would be aware of the conduct required to comply with the undertaking, where they have given the undertaking. As the giving of GM undertaking may allow a licensee to avoid disciplinary action for a contravention of the Gaming Machine Act or the Control Act, it is appropriate that a higher penalty is applied where the undertaking is contravened. A maximum penalty of 100 penalty units is in line with other provisions in the Gaming Machine Act relating to more serious conduct such as operating an unauthorised gaming machine.

New section 171

Existing section 165 of the Gaming Machine Act provides for records of community contributions made by a licensee, with this being a strict liability offence provision with a maximum penalty of 20 penalty units.

New section 171 of the Gaming Machine Act provides for record keeping by clubs in relation to community purpose contributions. New record keeping requirements expand on the information required to be kept under existing section 165 and are intended to improve transparency about the recipients of contributions and the purposes for which they are made, the way in which they are used and the nature of the benefit received.

Under new section 171(1)(b) it is a strict liability offence with a maximum penalty of 20 penalty units if a club licensee makes a community purpose contribution and does not keep a written record of the 'contribution information' for the contribution. Note that all club licensees are either an incorporated association or a corporation, so this strict liability offence does not apply to any individual and therefore this offence does not engage the presumption of innocence until proven guilty (rights in criminal proceedings) under section 22(1) of the Human Rights Act).

While the inclusion of strict liability limits the range of defences that may be available, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the Criminal Code provides a specific defence to strict liability offences of mistake of fact. Subsection 23 (3) of the Criminal Code provides that other defences may also apply to strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

Amendment of existing section 104(2)

Existing section 104 of the Gaming Machine Act prohibits the operation of unauthorised, stored or quarantined gaming machines and provides for a maximum penalty of 100 penalty units.

Clause 35 of the Amendment Bill includes a minor amendment to the existing offence provision to insert the word 'storage' before permit. This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) of the Gaming Machine Act under clause 44 below, which provides for the repeal of quarantine permits. With the repeal of quarantine permits, the term 'permit' no longer needs to be defined to refer to both storage and quarantine permits (see existing definition in section 127M of the Gaming Machine Act), so the term is being amended to 'storage permits'.

In all other respects the offence provision is unchanged.

Amendment of existing section 151(2)

Existing section 151 of the Gaming Machine Act provides that it is an offence if the licensee does not display a warning notice complying with the Commission's determination under section 151(1). A warning notice that complies with the determination must be displayed in a prominent position on each gaming machine installed on the authorised premises and at or near each entrance to each gaming area within the authorised premises.

As outlined below in the clause notes, there is duplication between statements approved by the Minister under section 126 of the Gaming Machine Act and the Commission's determination, resulting in licensees having to display multiple harm minimisation messages on each gaming machine.

As a red tape reduction measure, clause 60 amends section 151(2) to remove the requirement that a warning notice must be displayed on each gaming machine. Section 151(2) retains the requirement for the display of signage (when determined by the Commission) in a prominent position at or near each entrance to each gaming area within the authorised premises.

While section 151 is a strict liability offence provision, clause 60 of the Amendment Bill removes a requirement of the provision. The existing maximum penalty remains and the offence continues to be a strict liability offence. As a result, it is considered that this amendment does not engage the presumption of innocence until proven guilty (rights in criminal proceedings) under section 22(1) of the Human Rights Act.

Revenue/Cost Implications

The reduction in gaming machine authorisations through the Amendment Bill is expected to result in a revenue reduction for the Territory over time.

Administration fees will not apply to Commission activities associated with the voluntary and compulsory surrender of authorisations.

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Gaming Legislation Amendment Act 2018* (the Amendment Act).

Clause 2 Commencement

Clause 2 provides commencement dates for the Amendment Act.

Part 1 and schedule 1, part 1.3 are taken to have commenced on the day the *Gaming Machine (Reform) Amendment Act 2015* (the Reform Act) was notified – which is 15 June 2015. This retrospective commencement of part 1 and schedule 1, part 1.3 is non-prejudicial and is necessary since the uncommenced schedule 1 (Other amendments – compulsory surrender) of the Reform Act is to be repealed in its entirety and replaced with provisions in this Amendment Bill.

Schedule 1, part 1.2 is taken to have commenced on the day the *Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016* was notified – which is 19 August 2016. This retrospective commencement is non-prejudicial and is necessary since the uncommenced schedule 1 (Other amendments – compulsory surrender) of the Reform Act is to be repealed in its entirety. Relevant provisions of the Red Tape Reduction Act have been incorporated into this Amendment Bill.

Schedule 1, part 1.1 is taken to have commenced on the day the *Casino (Electronic Gaming) Act 2017* was notified – which is 13 November 2017. This retrospective commencement is non-prejudicial and is necessary since the uncommenced schedule 1 (Other amendments – compulsory surrender) of the Reform Act is to be repealed in its entirety. The maximum number of gaming machine authorisations in the ACT following the voluntary and compulsory surrender process will be determined in accordance with provisions in this Amendment Bill.

Section 23, sections 26 and 27, sections 65 to 71, section 78, section 80, sections 82 to 85, sections 87 and 88, section 91, section 95, section 97, section 99, section 100 and section 102 commence on 1 July 2019, the date that the revised community contributions scheme commences.

Schedule 2 of the Amendment Bill commences on 1 May 2020. This schedule amends section 50 of the Control Act, which provides for the maximum number of authorisations for gaming machines in the ACT, and reflects that the compulsory surrender process will be

complete on 1 May 2020. The schedule also provides for a review of the cap on the number of gaming machine authorisations by 1 May 2025.

The remaining provisions of the Amendment Bill will commence on the seventh day after the Amendment Act is notified on the Legislation Register. This will enable the Parliamentary Counsel's Office to have up-to-date republications of the affected legislation ready for the Legislation Register on the day the amendments commence.

Clause 3 Legislation amended

This clause identifies that the following legislation will be amended by the Amendment Act:

- *Casino (Electronic Gaming) Act 2017*
- *Gambling and Racing Control Act 1999*
- *Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016*
- *Gaming Machine Act 2004*
- *Gaming Machine Regulation 2004*
- *Gaming Machine (Reform) Amendment Act 2015.*

PART 2 GAMBLING AND RACING CONTROL ACT 1999

Clause 4 Functions of commission Section 6 (2) (c)

Clause 4 omits the reference to 'problem gambling' in section 6(2)(c) of the Control Act and replaces it with the term 'gambling harm'.

This amendment is part of amendments that reflect the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

Clause 5 How commission must exercise its functions Section 7 (c)

Clause 5 omits the reference to 'problem gambling' in section 7(c) of the Control Act and replaces it with the term 'gambling harm'.

This amendment is part of amendments that reflect the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and

is often considered to be limited to circumstances where there is a significant impact of gambling).

**Clause 6 Governing board members
 Section 12 (1)**

Clause 6 omits the reference to ‘problem gamblers’ in section 12(1) of the Control Act and replaces it with the term ‘people experiencing gambling harm’.

This amendment is part of amendments that reflect the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

**Clause 7 Monitoring and research
 Section 17 (1)**

Clause 7 omits the reference to ‘problem gambling’ in section 17(1) of the Control Act and replaces it with the term ‘gambling harm’.

This amendment is part of amendments that reflect the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

**Clause 8 Code of Practice
 Section 18 (2) (d)**

Clause 8 omits the reference to ‘problem gamblers’ in section 18(2)(d) of the Control Act and replaces it with the term ‘people experiencing gambling harm’.

This amendment is part of amendments that reflect the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

Clause 9 Section 18 (2) (e) and (f)

Clause 9 omits the reference to ‘problem gamblers’ in section 18(2)(e) and (f) of the Control Act and replaces it with the term ‘experiencing gambling harm’.

This amendment is part of amendments that reflect the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

Clause 10 Education and counselling
Section 19 (1) (a)

Clause 10 omits the reference to ‘with gambling problems’ in section 19(1)(a) of the Control Act and replaces it with the term ‘who are experiencing gambling harm’.

This amendment is part of amendments that reflect the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

Clause 11 Section 19 (1) (b) (iii)

Clause 11 substitutes the reference to ‘about dealing with gambling problems’ in section 19(1)(b)(iii) of the Control Act with the term ‘for people who are experiencing gambling harm’.

This amendment is part of amendments that reflect the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling, which relates to an individual gambler and is often considered to be limited to circumstances where there is a significant impact of gambling).

Clause 12 Permitted disclosures to particular people
New section 37 (d) (ia) and (ib)

Division 4.4 of the Control Act establishes secrecy provisions in relation to confidential documents or confidential information acquired under a gaming law or as a result of exercising functions under or in relation to a gaming law.

Section 37 of the Control Act provides for permitted disclosures of information obtained under or in relation to the administration of a gaming law.

Clause 12 of the Amendment Bill inserts new section 37(d)(ia) to provide that information may be disclosed to the administrative unit responsible for the Control Act, the Commission

and the Minister for the purposes of advising the Minister about policy matters or the operation of a gaming law.

This clause also inserts new section 37(d)(ib) to provide that information may be disclosed to the responsible administrative unit, the Commission, the Minister (currently the Attorney-General) or a tax officer under the *Taxation Administration Act 1999* for the purposes of administering part 2A of the Gaming Machine Act, which relates to reducing the cap on the number of gaming machine authorisations in the ACT to 4,000 or fewer (including the voluntary and compulsory surrender of authorisations).

This provision ensures that the Commission is able to disclose information received under a gaming law to the Minister (currently the Attorney-General), to the relevant administrative unit (currently the Justice and Community Safety Directorate), or to a tax officer and avoids any doubt that the Commission is able to do so. Similarly, it provides that information may be shared with the Commission by the Minister, relevant administrative unit, or a tax officer.

While the amendment broadens within the ACT Government the potential recipients of information, the definition of a gaming officer in section 34; the requirement to respect confidentiality in section 35; the restrictions on disclosure in division 4.4 and the prohibition on secondary disclosures in section 38 operate to prevent the disclosure of information except as provided for under the Control Act.

These measures support the right to privacy and reputation where the confidential document or information obtained relates to individuals. (See *Human Rights Implications* above.)

Clause 13 New sections 37A and 37B

As noted above, division 4.4 of the Control Act relates to secrecy of information acquired under a gaming law or as a result of exercising functions under or in relation to a gaming law. Section 37 of the Control Act relates to permitted disclosures of information obtained under or in relation to the administration of a gaming law.

Clause 13 inserts new sections 37A and 37B in the Control Act, as part of amendments which introduce enforceable undertakings as a new regulatory tool to improve enforcement of the Gaming Machine Act (clause 27, which inserts new part 3A - Enforceable undertakings in the Gaming Machine Act is related to this clause).

New section 37A provides that the Commission may disclose information as agreed with the person in an enforceable undertaking under part 3A of the Gaming Machine Act. This

section, therefore, provides for disclosure of information with the consent of the person that has given the enforceable undertaking.

New section 37B provides that the Commission must keep a public register of disciplinary action taken against licensees under part 4 of the Gaming Machine Act.

New section 37B(1) provides that the register will list the business or trading names of licensees that have had disciplinary action taken against them; a description of the disciplinary action taken; and the disciplinary ground for which the action was taken.

Under new section 37B(2) the Commission may enter details agreed with a licensee where the licensee has entered into an enforceable undertaking under part 3A of the Gaming Machine Act.

New section 37B(3)(a) provides that the Commission must not enter details about disciplinary action on the register if the details contain any references to the names of individuals. In conjunction with the requirement in section 37B(1) that requires the register to list business or trading names, this provision has been developed with regard to the right to privacy and reputation under the Human Rights Act (noting, however, that there are currently no individuals who are gaming machine licensees).

New section 37B(3)(b) provides that the Commission must not enter details about disciplinary action on the register unless the time for any appeal or review of the disciplinary action has ended and any appeal or review of the disciplinary action has been decided or withdrawn.

Although no individuals are currently gaming machine licensees, as outlined above, there is the possibility that an individual could become a class B licensee in future if they acquired an existing hotel. In order to not engage the individual's right to privacy and reputation, the Amendment Bill provides that an individual's name cannot be included on the register, rather a business name or trading name must be displayed.

Clause 14 Section 50 heading

Clause 14 replaces the existing heading of section 50, which is 'Maximum number of authorisations for electronic gaming allowed in ACT', with the heading 'Cap on number of authorisations for electronic gaming in ACT'.

The Gaming Machine Act uses the defined term 'maximum number' of authorisations to mean the maximum number of authorisations for gaming machines that a licensee may have under an authorisation certification (see the Dictionary, Gaming Machine Act).

Similarly, as part of amendments made by the Casino (Electronic Gaming) Act, the Control Act defines ‘maximum number’ for casino gaming machines or casino Fully Automated Table Game (FATG) terminals as meaning the maximum number of authorisations for casino gaming machines/FATG terminals that a licensee is allowed under an authorisation certificate. In these contexts, maximum number means the limit on the number of authorisations that can be held (and therefore the number of gaming machines/casino gaming machines/casino FATG terminals that can be operated) at each venue.

The use of ‘maximum number’ in section 50 of the Control Act to refer to the maximum number of authorisations for electronic gaming in the ACT has resulted in some confusion. In the context of section 50, the term maximum number means the total number of authorisations actually held by all licensees in the ACT as listed under their authorisation schedules, not the number the licensee can hold at each venue. It is the maximum number worked out in accordance with section 50 that is being reduced to 4,000 by 2020. As a result, the terminology is being refined to instead refer to a ‘cap’ on the number of authorisations.

This amendment is related to the amendment in clause 15.

Clause 15 Section 50 (1), (2) and (3)

Clause 15 omits the reference to ‘maximum’ number of authorisations in section 50(1), section 50(2) and section 50(3) and replaces it with the term ‘cap on the’ number of authorisations.

The Gaming Machine Act uses the defined term ‘maximum number’ of authorisations to mean the maximum number of authorisations for gaming machines that a licensee may have under an authorisation certification (see the Dictionary, Gaming Machine Act). Similarly, as part of amendments made by the Casino (Electronic Gaming) Act, the Control Act defines ‘maximum number’ for casino gaming machines or casino Fully Automated Table Game (FATG) terminals as meaning the maximum number of authorisations for casino gaming machines/FATG terminals that a licensee is allowed under an authorisation certificate. In these contexts, maximum number means the limit on the number of authorisations that can be held (and therefore the number of gaming machines/casino gaming machines/casino FATG terminals that can be operated) at each venue.

The use of ‘maximum number’ in section 50 of the Control Act to refer to the maximum number of authorisations for electronic gaming in the ACT has resulted in some confusion. In the context of section 50, the term maximum number means the total number of authorisations actually held by all licensees in the ACT as listed under their authorisation schedules, not the number the licensee can hold at each venue. It is the maximum number

worked out in accordance with section 50 that is being reduced to 4,000 by 2020. As a result, the terminology is being refined to instead refer to a ‘cap’ on the number of authorisations.

This amendment is related to the amendment in clause 14.

Clause 16 Section 50 (5), definition of *surrendered*, paragraph (a)

Clause 16 repeals and replaces the existing definition of ‘surrendered’ in section 50(5) of the Control Act to include authorisations that are surrendered under the following new sections of the Gaming Machine Act:

- section 10D (Surrenders on voluntary surrender day), which is part of the new voluntary surrender provisions, and
- section 10M (Surrenders of authorisations for gaming machines), which is part of the new compulsory surrender provisions.

As is currently the case, the definition of surrendered also includes authorisations surrendered under section 37F(1)(c) (Surrender of licences, authorisation certificates and authorisations) of the Gaming Machine Act if the surrender takes effect under section 173E (Notifiable actions – date of effect).

**Clause 17 Licences and authorisation certificates—register
Section 52 (2) (d)**

Section 52 of the Control Act requires the Commission to keep a register of licences, authorisation certificates and authorisations. Section 52(2) sets out the details the Commission is required to include on the register.

Clause 17 repeals and replaces paragraph (d) of section 52(2) to clarify the types of information required to be recorded in the register in relation to storage permits, and reflects that quarantine permits will no longer exist in line with the amendment in clause 44 below.

**Clause 18 Regulation-making power
Section 54 (2)**

Section 54(2) currently provides that a regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units.

Under clause 18, the maximum penalties that may be prescribed in a regulation made under the Control Act will be increased from not more than 10 penalty units to not more than 30 penalty units. This limit is in line with the maximum established in the *Guide for Framing*

Offences and well below the guidance that offences in subordinate legislation must not exceed 60 penalty units in the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)'s document *Subordinate Legislation— Technical and Stylistic Standards – Tips/Traps*.

Gambling is necessarily highly regulated for reasons of integrity, harm reduction and consumer protection. This amendment will allow maximum penalties under the *Gambling and Racing Control (Code of Practice) Regulation 2002* to be increased to 30 penalty units where appropriate, to ensure that penalties for offences under the regulation better align with the significant penalties available under the existing legislative framework for gambling and racing activities. For example, the Gaming Machine Act includes numerous offences with a maximum penalty of 100 penalty units.

The regulation-making power in section 54 is not constrained to particular matters, reflecting the wide scope of the gaming laws to which the Control Act relates. However, any regulations made under the power conferred by the section cannot be inconsistent with the principal Act.

In many cases, offences under the regulation will apply to licensees that are either an incorporated association or a corporation. In the context of the activities governed by the Control Act, and the revenues earned through gaming and racing activities, a potential maximum penalty of 30 penalty units (equating to \$24,300 or \$4,800 under the *Crimes Legislation Amendment Act 2018* that is currently awaiting notification) is not considered excessive.

Clause 19 Dictionary, note 2

Note 2 of the Dictionary lists terms defined in the Dictionary of the Legislation Act that are relevant to the Control Act. Clause 19 inserts the following terms to the list: 'administrative unit' and 'Minister'.

PART 3 GAMING MACHINE ACT 2004

Clause 20 New part 2A

Clause 20 inserts new part 2A in the Gaming Machine Act. This new part provides for the reduction in the number of authorisations in the ACT to 4,000 or fewer by 2020, as set out in the *Pathway to 4,000 Gaming Machine Authorisations by 2020* document tabled by the Attorney-General in the Legislative Assembly on 23 August 2018.

New Part 2A Reducing cap on authorisations in ACT to 4 000 or fewer

New Division 2A.1 Preliminary

New Section 10 Definitions—pt 2A

New division 2A.1 includes new section 10 (Definitions—pt 2A), which establishes definitions of terms that are used in new part 2A of the Gaming Machine Act, being the terms ‘census day’, ‘compulsory surrender day’, ‘first compulsory surrender day’ and ‘second compulsory surrender day’.

Census day means 23 August 2018, which is the day that the Pathway to 4,000 was tabled in the Legislative Assembly.

Compulsory surrender day means each of the first compulsory surrender day and the second compulsory surrender day.

The *first compulsory surrender day* is 1 April 2019 and the *second compulsory surrender day* is 30 April 2020, as set out in the Pathway to 4,000.

New Division 2A.2 Voluntary surrenders

New division 2A.2 includes new sections 10A to 10H. These new sections provide for the voluntary surrender of gaming machine authorisations prior to the compulsory surrender of authorisations in 2019 and 2020.

New Section 10A Definitions—div 2A.2

New section 10A establishes definitions for new division 2A.2 (Voluntary surrenders). The terms defined are ‘surrendered authorisation’, ‘voluntary surrender agreement’, ‘voluntary surrender day’ and ‘voluntary surrender notice’.

Surrendered authorisation means an authorisation surrendered under new section 10D and includes an authorisation under an authorisation certificate surrendered under that section.

A *voluntary surrender agreement* is defined in new section 10C (see below).

Voluntary surrender day means 14 February 2019 or an earlier day agreed between the licensee and the Commission.

A *voluntary surrender notice* is defined in new section 10B (see below).

New Section 10B Notifying authorisations for surrender during voluntary surrender period

New section 10B provides that a licensee may give written notice of the number of authorisations and authorisation certificates to be surrendered under 10D. The section provides the details that must be set out in the notice.

Voluntary surrender period means the period beginning on the census day and ending on 31 January 2019.

New Section 10C Voluntary surrender agreement

New section 10C provides that the Territory may enter into an agreement with a licensee in relation to a surrender under 10D under the following conditions:

- the licensee has given a voluntary surrender notice to the Minister; and
- the agreement is entered into or before 8 February 2019 or the voluntary surrender day for the licensee (whichever is earlier).

The new section provides that a voluntary surrender agreement may provide for:

- an entitlement to a deemed payment or partial payment of an offset amount for the licensee;
- the process by which the entitlement is claimed by the licensee
- any other matters agreed by the parties.

The incentives set out in the *Pathway to 4,000* document will be included in these agreements.

The new section provides that the voluntary surrender agreement must be entered into for the Territory by the Treasurer or the Minister.

Offset amount – is defined in 10H(4).

New Section 10D Surrender of authorisations and authorisation certificates on voluntary surrender day

New section 10D provides that the section applies if the licensee has entered into a voluntary surrender agreement. The new section sets out that each authorisation and authorisation certificate contained in the surrender notice is surrendered on the voluntary surrender day.

If the licensee has a gaming machine associated with a surrendered authorisation the licensee must:

- take a meter reading from the gaming machine
- render the machine inoperable

- give the commission a written statement of the meter reading and any outstanding amount payable by the licensee in relation to a surrendered authorisation certificate.

The commission must be given these things within 3 working days of the voluntary surrender day.

Existing section 103(1) provides that the Commission may authorise a person to possess or operate a gaming machine on stated conditions. For section 103(1), a licensee is authorised to possess a gaming machine associated with a surrendered authorisation for three months after the voluntary surrender day for the licensee. This authorisation means that the offence in section 103 does not apply in these circumstances. This provision will allow licensees time to adjust gaming machine holdings and reorganise gaming areas following the voluntary surrender of authorisations, including allowing for the attendance of gaming machine technicians where required.

The normal operation of section 37F (other than subsection (2)(b)) is displaced for a surrender under this section.

New Section 10E Trading of authorisation to replace surrendered authorisations

New section 10E applies if the licensee surrenders an authorisation associated with a gaming machine under section 10C on the voluntary surrender day and on that day, the licensee acquires an authorisation under the trading scheme (division 6A.6) to replace the surrendered authorisation.

Under new section 10E(2), the notifiable action in relation to the licensee's acquisition of the authorisation takes effect on the voluntary surrender day – despite section 173E which sets out the date of effect of notifiable actions.

The requirements of section 10D(3) do not apply where section 10E applies. The requirements of section 10D(3) relate to taking meter readings, rendering the gaming machine inoperable, and giving the Commission a written statement of the meter readings and confirmation that the machine is inoperable. Where a surrendered authorisation is replaced on the voluntary surrender day with an authorisation acquired under the trading scheme, it is not a requirement to make the gaming machine inoperable.

The trading of authorisations involves the forfeiture of one-in-four authorisations under section 127F and forfeited authorisations assist in reducing the cap on the number of authorisations in the ACT under section 50 of the Control Act. As a result, this clause facilitates the replacement of surrendered authorisations where a licensee is trading authorisations.

New Section 10F Offence operating surrendered gaming machines

New section 10F of the Gaming Machine Act provides that a person commits an offence if the person fails to take all reasonable steps to stop a gaming machine being used on the

premises where the person owns, occupies or manages authorised premises and an authorisation or authorisation certificate associated with the premises is surrendered under section 10D (Surrender of authorisations and authorisation certificates on voluntary surrender day).

This new offence mirrors the existing offence provision in section 105 of the Gaming Machine Act and is necessary to ensure that gaming machines are not used where not authorised.

This new offence carries a maximum penalty of 100 penalty units to align with the offence in existing section 105.

New section 10G No applications for, or transfers of, authorisation certificates etc for certain licensees

New section 10G provides that a licensee has surrendered an authorisation certificate under section 10D is not entitled to:

- apply for an authorisation certificate under section 21
- acquire an authorisation certificate from an outgoing licensee under section 37E
- apply for in-principle approval for an authorisation certificate under section 38B

New section 10H Offsets

New section 10H provides the framework a licensee claiming a land, lease and planning and development charge as set out in their voluntary surrender agreement and provided for in the *Pathway to 4,000* document. An offset amount is taken to be paid as provided for in the voluntary surrender agreement.

An *offset amount* is defined as fee, charge or other amount that is prescribed by regulation, payable under the:

- *Building Act 2004*
- *Community Title Act 2001*
- *Electricity Safety Act 1971*
- *Gas Safety Act 2000*
- *Planning and Development Act 2007*
- *Unit tiles Act 2001*
- *Water and Sewerage Act 2000*; or
- an Act prescribed by regulation.

New Division 2A.3 Compulsory surrenders

New Section 10I Definitions—div 2A.3

New section 10I establishes definitions for new division 2A.3 (Compulsory surrenders). The terms defined are ‘cap on authorisations’, ‘licensee’, and ‘surrender obligation’.

Cap on authorisations means the number of authorisations for electronic gaming for all authorised premises in the ACT, worked out under the Control Act, section 50.

Licensee does not include a licensee that held 19 or fewer authorisations for gaming machines on census day.

Surrender obligation, of a licensee means the number of authorisations for gaming machines to be surrendered by the licensee in relation to each authorised premises determined under section 10J.

New Section 10J Determination for surrenders

New section 10J provides that the Minister must determine the surrender obligation of each licensee for each compulsory surrender day. The surrender obligation must not exceed 10 per cent of the authorisations held by the licensee on the compulsory surrender day. The provision sets out a number of principles the must consider when making the determination. Any authorisations taken into account for the first compulsory surrender day must be taken into account for the second compulsory surrender day. Any voluntary surrender authorisations taken into account for the licensee’s compulsory surrender determination must, as far as practicable, be evenly distributed between the two compulsory surrender days. The Minister must round a surrender obligation to the nearest whole number and allocate surrender obligations from the licensee that holds the greatest number of authorisations to the fewest. This allows for the distribution of surrender obligations that cannot be distributed evenly amongst relevant licensees. This provision allows the target of 4,000 authorisations by the second compulsory surrender day to be met but not exceeded.

The determination must commence on or before 4 March 2019 for the first compulsory surrender day and 3 April 2020 for the second compulsory surrender day.

A determination is a notifiable instrument.

A determination must not be made if, at the beginning of the day when the determination is made, the cap on authorisations in the ACT is 4 000 or fewer. A determination that has been made can be revoked if the cap on authorisation reaches 4,000 or fewer before the surrender day.

New Section 10K Guidelines for determination

New section 10K provides that the Minister may make a guideline for the determination and this guideline is a disallowable instrument.

New Section 10L Licensee must give notice of gaming machines to be surrendered

New section 10L sets out that a licensee must give the commission a written statement about the authorisations to be surrendered by the licensee to meet the licensee's surrender obligation.

The statement must be given on or before 18 March 2019 for the first compulsory surrender day and 17 April 2020 for the second compulsory surrender day.

The statement must include the following information about each authorisation:

- the authorised premises the authorisation is associated with;
- the authorisation number;
- the serial number of any gaming machine associated with the authorisation.

If the licensee has not given the commission the statement by the day required the commission must give the licensee written notice that the licensee must give the Commission the statement no later than three days after receiving the notice, and that a failure to comply with the notice may be a ground for disciplinary action under section 57.

If a licensee has not given the commission the statement by the day required under the notice the commission may determine the authorisations that are to be surrendered by the licensee to meet the licensee's surrender obligation.

If the commission determines the authorisations to be surrendered by a licensee on a compulsory surrender day, the commission must notify the licensee before the compulsory surrender day.

New Section 10M Surrender of authorisations for gaming machines

New section 10M provides that on a compulsory surrender day, the authorisations identified under section 10L to meet a licensee's surrender obligation for the day are surrendered.

If a licensee has a gaming machine associated with an authorisation surrendered under this section, the licensee must take meter readings from the machine and render the machine inoperable.

On the day after a compulsory surrender day, the commission must amend the authorisation certificate for each authorised premises to reduce the maximum number of

authorisations a licensee may have under the authorisation certificate by the number surrendered for the premises on the compulsory surrender day under this section.

Under section 10M(3)(b), the maximum number is also reduced by the number surrendered under section 37F for the premises if the number has not previously been counted to reduce the maximum number under the authorisation certificate—during the period beginning on 1 February 2019 and ending on the day before the determination for the compulsory surrender day. This provision means that it is only where a licensee voluntarily surrenders authorisations that the maximum number on a certificate is not reduced.

If a licensee surrenders an authorisation under this section, the commission must give the licensee a storage permit for an interim purpose under section 127N (b) for the gaming machine under the authorisation.

Section 37F does not apply to a licensee for the surrender of an authorisation under this section.

New Section 10N Extension of term for storage permit for interim purposes

New section 10N sets out the conditions for the extension of an interim storage permit under 10M. A licensee who holds a storage permit for an interim purpose given under section 10M may apply to the commission to extend the term of the storage permit. The Commission must either extend the term of the storage permit for up to three months or refuse to extend the term of the storage permit.

If a licensee applies to extend the term of a storage permit, the storage permit remains in force until the application is decided.

The commission must refuse to extend the term of the storage permit if the term of the permit has previously been extended under this section.

If the commission refuses to extend the term of the storage permit, the commission must tell the applicant, in writing, the reasons for the decision.

A decision to refuse to extend the term of a storage permit for a licensee under this section is a reviewable decision.

New section 100 Offence – failure to dispose of gaming machines where authorisation surrendered under 10M

New section 100 of the Gaming Machine Act provides that a person commits an offence if the person fails to dispose of a gaming machine held under a storage permit in the way the Commission directs or within the period stated in the storage permit.

This new offence mirrors existing section 37G of the Gaming Machine Act. The purpose of this provision is to prevent a person from owning or possessing an unauthorised gaming

machine where they have failed to comply with disposal requirements following the compulsory surrender of authorisations under section 10M.

This amendment supports the compulsory surrender provisions in division 2A.3 and therefore applies only to club licensees with 20 or more authorisations (these licensees are all bodies corporate).

The maximum penalty for this offence is 50 penalty units. The maximum penalty for the offence in new section 10O is lower than the maximum penalty for the offence in new section 10F, reflecting that the use of an unauthorised gaming machine is more serious than owning or possessing (but not using) an unauthorised gaming machine.

New section 10P **Application to transfers of authorisation certificates under s 37 E**

New section 10P applies to a licensee (the incoming licensee) if an authorisation certificate is transferred to the licensee for an authorised premises by an outgoing licensee under section 37E during the transfer period.

The surrender obligation for the incoming licensee for the authorised premises is to be worked out in relation to the authorised premises as if the incoming licensee were the outgoing licensee and the outgoing licensee continued to hold an authorisation certificate for the authorised premises.

Under new subsection 10P(3), the term ‘*transfer period*’ means the period beginning on the census day and ending on the second compulsory surrender day.

New Division 2A.4 ***Miscellaneous***

New Section 10Q **Meaning of compulsory surrender period—div 2A.4**

New section 10Q establishes definitions for new division 2A.4 (Miscellaneous). The defined term is ‘compulsory surrender period’.

New Section 10R **No transfer of authorisation certificates under s 37E**

New section 10R restricts the ability to transfer authorisation certificates under 37E.

New Section 10S **Disposal of gaming machine to be surrendered—
notifiable action for s 113A**

New section 10S sets out that the surrender of an authorisation for a gaming machine under this part is a reason for disposing of the gaming machine for section 113A (1).

surrender of an authorisation includes surrender of an authorisation under an authorisation certificate surrendered under division 2A.2. This section relates to both compulsory and voluntary surrender.

New Section 10T Suspension of trading after during compulsory surrender period

New section 10T sets out that trading of authorisations and gaming machines under division 6A.6 is suspended during a compulsory surrender period.

New Division 2A.5 **Expiry—pt 2A**

New Section 10U Expiry—pt 2A

New section 10U provides for the expiry of part 2A. Under new section 10U(2), divisions 2A.3 and 2A.4 expire on 31 December 2020, after the voluntary surrender and compulsory surrender processes are complete. The remainder of part 2A expires on 1 April 2026, which reflects that the offsets available under section 10F are only available until 31 March 2026 (seven years after the first compulsory surrender date of 1 April 2019, in line with the *Pathway to 4,000 Gaming Machine Authorisations* document).

Clause 21 **Authorisation certificate amendment—application**
Section 33 (1), note 4, 1st dot point

Section 33(1) of the Gaming Machine Act sets out circumstances under which a licensee can apply for an amendment of an authorisation certificate – including a gaming area amendment, premises relocation amendment or an increase maximum amendment.

Note 4 under section 33(1) sets out additional sections of the Gaming Machine Act under which an authorisation certificate may be amended – namely section 37A (one-off increase maximum amendment), section 37B (technical amendment) and section 37C (amendment on the Commission’s own initiative).

Clause 21 omits the first dot point from note 4, which refers to section 37A. This clause is consequential to omission of section 37A from the Gaming Machine Act under clause 22 below.

Clause 22 **Authorisation certificate amendment—increase maximum**
to not more than relevant number
Section 37A

Section 37A of the Gaming Machine Act facilitated the introduction of the gaming machine authorisation trading scheme through providing a one-off exemption from the requirement to complete a social impact assessment for class C licensees seeking to increase the maximum number of authorisations the licensee may have under their authorisation certificate. Class C licensees with less than a maximum of 120 authorisations were permitted to notify the commission of an increase in the maximum number of authorisations under an authorisation certificate of no more than 12 authorisations. For licensees with a maximum

of 120 or more authorisations, the increase was limited to 10% of that number, with a ceiling of 20 authorisations.

Licensees were permitted to have only one maximum number increase to their authorisation certificate under this provision and this exemption was to be repealed on the commencement of Phase 2 of the trading scheme. Clause 22 omits section 37A from the Gaming Machine Act from the commencement of the Amendment Act, to align with the introduction of amendments to support the implementation of the Pathway to 4,000.

Clause 23 Transferring an authorisation certificate
Section 37E (2), note

Section 37E of the Gaming Machine Act provides for the transfer of an authorisation certificate between licensees. Section 37E(2)(d) provides that if an authorisation certificate is transferred, the outgoing licensee must give the Commission any outstanding amount payable by the outgoing licensee under the Gaming Machine Act.

A note under section 37E(2)(d) currently indicates that amounts are payable under provisions including sections 143, 159 and 172. Clause 23 deletes the reference to section 172 as a consequential amendment to the community contributions reforms included in this Amendment Act. Existing section 172 relates to the community contributions shortfall tax, which is now provided for under new section 172B. However, the list of sections in the note is not exhaustive and the obligation on a licensee to pay any outstanding amount remains, regardless of whether specifically referenced in the note.

Clause 23 commences on 1 July 2019 when the community contributions reforms commence.

Clause 24 Surrender of licences, authorisation certificates and
authorisations
Section 37F (2) (b)

Section 37F provides for the surrender of licences, authorisation certificates and authorisations. Section 37F(2)(b)(i) currently requires a licensee to provide the Commission with evidence that the surrender of an authorisation was supported by a majority of the voting members of the club who voted in a ballot conducted under a regulation, where a licensee is surrendering an authorisation certificate or authorisation. (Or alternatively, under section 37F(2)(b)(ii), provide evidence that such a vote would not be practical.) Part 4 of the Gaming Machine Regulation sets out ballot requirements.

Clause 24 repeals and replaces section 37F(2)(b) to remove the surrender of an authorisation from section 37F(2)(b)(i). Under the trading scheme provisions, the decision

about the number of authorisations to hold or trade is a matter for the licensee (up to the maximum number of authorisations the licensee may have under an authorisation certificate). Division 6A.6 provides that a licensee can trade authorisations with other licensees, including potentially divesting all authorisations held by the licensee, without the requirement to conduct a voting member ballot.

The requirement for evidence of the support of voting members for the surrender of an authorisation certificate is retained in section 37F(2)(b)(i). This reflects that once an authorisation certificate is surrendered, the issuing of a new authorisation certificate to recommence gaming operations at a venue is a more significant and uncertain undertaking, including the requirement to undertake a social impact assessment and subject to the Commission's consideration of a range of matters, as set out in division 2B.3.

Section 37F(2)(b)(ii) continues to provide for a licensee to be able to provide evidence to the Commission that a vote under subsection (i) would not be practical.

**Clause 25 Licence and authorisation certificate to be available on
request
Section 42 (2)**

Section 41 of the Gaming Machine Act provides that it is a condition of a licence that licensees should retain a copy of the licence and authorisation certificate (including the authorisation schedule) at the premises to which the authorisation certificate relates.

Section 42(1) currently provides that it is a condition of a licence that the licensee must allow a person to view the licence and authorisation certificate if so requested. However, under section 42(2) of the Gaming Machine Act, a licensee is permitted to restrict viewing of an authorisation schedule to authorised officers exercising a function under the Control Act.

Under section 27(1)(h), an authorisation certificate must include an authorisation schedule, therefore, the omission of section 42(2) under clause 25 means that a person, on request, must be allowed to view the full authorisation certificate including its schedule.

This amendment is part of the red tape reduction amendments for the display of information about linked-jackpot arrangements. Allowing a patron to view the authorisation schedule for an authorised premises will meet the requirements of amended sections 134(4) and 136(1) for access to information on linked-jackpot arrangements.

Clause 26 New section 54 (e) and (f)

Section 54 of the Gaming Machine Act provides that it is a condition of a club's licence that the club's annual report include information about a range of matters set out in the section.

Clause 26 adds new 54 (e) to the existing annual report matters set out in section 54, to provide that the total value of any contributions made to registered parties and associated entities must be included in a club's annual report. This requirement relocates the existing provision in section 166(2)(d) and is consequential amendment to the community contributions reforms in this Amendment Act.

Clause 26 also adds new section 54 (f) which provides for a club's annual report to include anything else prescribed by regulation. This clause relates to the amendment in clause 109, which repeals and replaces section 35 of the Gaming Machine Regulation.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 27 New section 54 (2) to (4)

As noted above, section 54 of the Gaming Machine Act provides that it is a condition of a club's licence that the club's annual report include information about a range of matters set out in the section.

In addition, under section 158 of the Gaming Machine Act, licensees are required to provide the Commission with a copy of audited financial statements or a certified income and expenditure statement as soon as practicable (but not later than six months) after the end of each financial year. Licensees with gross revenue of at least \$200,000 must provide audited financial statements and licensees with gross revenues less than \$200,000 must provide an income and expenditure statement that is certified to be true.

Under the community contributions reforms in this Amendment Act, club licensees are required to make community purpose contributions totalling 8 per cent of their net gaming machine revenue per year (see new section 167). New section 172 sets out a range of matters that must be addressed in a club's annual report about community purpose contributions.

As part of these reforms, clause 27 inserts new subsections (2) to (4) to provide that not later than ten working days after giving the Commission a copy of the financial statements or certified income and expenditure statements, the licensee must give the Commission an electronic copy of the licensee's annual report and the licensee must publish the annual report on a website of the licensee that can be accessed by the public free of charge.

The ten working day provision in this clause is intended to provide licensees a small amount of additional time (10 working days) after the completion of financial/income and expenditure statements, if required, to provide their annual report to the Commission and publish it on their website. This short period of additional time is considered appropriate in the context of licensees having up to six months after the end of the financial year to provide their financial statements or income and expenditure statements to the Commission, with that time allowing for the development of audited or certified statements and Board consideration as required.

The requirement to publish annual reports is intended to improve transparency of information about club operations and revenues to provide context for improved reporting on community contributions, as part of the community contributions reforms in this Amendment Act.

Compliance with new section 54(2)(b) will require licensees to ensure that their annual report is available to the public free of charge. Restricting access to annual reports to members only, as currently occurs in some instances, will not meet the requirements of this section.

As set out in the note under new section 54(2), under section 172 the Commission must also publish information about community contributions made by clubs.

New section 54(3) provides for a licensee to remove confidential information, or with the written approval of the Commission, other sensitive information from the annual report to be published. However, where this occurs the published annual report must set out that information was removed from the report because it was confidential or sensitive, and the nature of the information removed.

New section 54(4) provides definitions for new section 54, including the terms 'associated entity' and 'confidential information'.

The definition of *associated entity* is included in this section consequential to the relocation of existing section 166(2)(d) by clause 26 above, and mirrors the existing definition set out in section 164 of the Gaming Machine Act.

Confidential information is defined as information that is not publicly available when the annual report is published, that is about the personal or business affairs of a person other than the licensee, and where one or more of the following apply: the information was given to the licensee in confidence; publishing the information would reveal a trade secret; the

information was provided in compliance with a duty imposed under an Act other than this Act; and/or the licensee would breach a law by providing the information.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 28 New part 3A

Clause 28 inserts a new part 3A in the Gaming Machine Act to provide for enforceable undertakings as a new regulatory enforcement tool available to the Commission.

Part 3A *Enforceable undertakings*

New Section 55A Meaning of GM undertaking—pt 3A

New section 55A provides a signpost definition of ‘GM undertaking’ for new part 3A, which is defined in section 55B.

New Section 55B Commission may accept undertakings

New section 55B is the principal provision that introduces enforceable undertakings in the Gaming Machine Act.

New section 55B(1) provides that the Commission may accept a written undertaking (called a ‘GM undertaking’) given by a person relating to the person’s contravention or alleged contravention of the Gaming Machine Act or the Control Act. The Control Act is included in this section as it is overarching legislation across all gambling activities and the *Gambling and Racing Control (Code of Practice) Regulation 2002* is made under that Act. A person that has contravened or is alleged to have contravened the Control Act, including the Code of Practice, may seek to give a GM undertaking.

New Section 55C Notice of decision and reasons for decision

Under new section 55C, when a person is seeking to give a GM undertaking, the Commission must give the person written notice of the Commission’s decision to accept or reject the undertaking. The Commission must also give the person reasons for its decision.

New Section 55D When a GM undertaking is enforceable

New section 55D provides for when a GM undertaking becomes enforceable. A GM undertaking takes effect and becomes enforceable when the Commission’s decision to accept the decision is given to the person who gave the undertaking or at any later date stated by the undertaking.

New Section 55E Compliance with GM undertaking

Under new section 55E, it is an offence for a person that has given a GM undertaking, and it is in effect, to contravene the undertaking.

The maximum penalty for this offence is 100 penalty units.

New section 55E(2) provides that where the Commission has applied to the Magistrates Court for an order in relation to the contravention of a GM undertaking, the offence provision does not apply.

New Section 55F Contravention of GM undertaking

New section 55F provides an alternative to the offence provision in section 55E where a person has contravened a GM undertaking.

Under new section 55F(1), the Commission may apply to the Magistrates Court for an order if a person has contravened a GM undertaking but only if no proceedings have been taken against a person under section 55E in relation to that contravention.

New section 55F(2) provides that an order to direct the person to comply with the undertaking and/or an order discharging the undertaking may be made by the Court if it is satisfied the person who gave the GM undertaking has contravened it.

In addition to the orders in new section 55F(2), new section 55F(3) provides that the court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the Territory the costs of the proceeding and the reasonable costs of the Commission in monitoring future compliance with the GM undertaking.

New Section 55G Withdrawal or variation of GM undertaking

Under new section 55G(1), a person who has given a GM undertaking may withdraw the undertaking or vary the undertaking at any time, with the written agreement of the Commission.

However, the ability to vary the undertaking is limited by new section 55G(2), which provides that the undertaking cannot be varied to provide for a different contravention or alleged contravention of this Act or the Control Act.

New Section 55H Proceeding for contravention or alleged contravention

New section 55H(1) provides that no proceeding may be brought, or no disciplinary action may be taken, against a person for a contravention, or alleged contravention, of this Act or the Control Act if a GM undertaking is in effect in relation to that contravention.

Similarly, new section 55H(2) provides that no proceeding may be brought, or no disciplinary action taken, for a contravention or alleged contravention where a person has given a GM undertaking and the GM undertaking has been completely discharged.

New sections 55H(3) and (4) provide that a GM undertaking may be accepted by the Commission before a proceeding or disciplinary action has been finalised in relation to a contravention or alleged contravention, and where this occurs, the Commission must take all reasonable steps to have the proceeding or disciplinary action discontinued as soon as possible.

Clause 29 Definitions—pt 4
Section 56, definitions of *disciplinary action* and *ground for disciplinary action*

Section 56 of the Gaming Machine Act provides for definitions used in part 4 of the Act.

Clause 29 omits the definition of ‘disciplinary action’ from section 56 and is consequential to the amendment in clause 28 which inserts new part 3A (Enforceable undertakings).

Clause 89, which amends the Dictionary definition of ‘disciplinary action’, is related to this amendment. The definition of disciplinary action is amended to apply to the entire Gaming Machine Act, not just part 4. See also the Legislation Act 2001, section 156.

Clause 29 also omits the definition of ‘ground for disciplinary action’ from section 56 and is consequential to the amendment in clause 28 which inserts new part 3A (Enforceable undertakings).

Clause 93, which amends the Dictionary definition of ‘ground for disciplinary action’, is related to this amendment. The definition of ground for disciplinary action is amended to apply to the entire Gaming Machine Act, not just part 4. See also the Legislation Act 2001, section 156.

Clause 30 Disciplinary action
Section 58 (1) (c)

Section 58 of the Gaming Machine Act sets out various disciplinary actions that may be taken against a person where the Commission is satisfied that a ground for disciplinary action exists or where a licensee has contravened a direction in a reprimand (see section 62 of the Act).

Section 58(1)(c) currently provides that a disciplinary action available to the Commission is ordering the person to pay a financial penalty of not more than \$100,000.

Clause 30 amends section 58(1)(c) to increase the maximum financial penalty to not more than the greatest of the following amounts:

- \$1,000,000;
- three times the total value of any benefits that the Commission can determine have been obtained by one or more people and that are reasonably attributable to the ground for disciplinary action; or
- 10 per cent of the person's gross gaming machine revenue during the 12 months ending at the end of the month in which the applicable ground for disciplinary action arose or began.

Clause 32 below provides for a number of relevant matters that the Commission must consider when deciding what disciplinary action to take, and the amount of any penalty to be imposed. While the matters must be considered, they are not determinative of the penalty amount.

Clause 31 Disciplinary action
Section 58 (1) (g)

Section 58(1)(g) of the Gaming Machine Act provides that, as a disciplinary action, the Commission may order the person to forfeit 100 per cent of the gross gaming machine revenue of any excess gaming machines to the Territory, and may direct how the excess gaming machines are to be disposed of.

This provision was introduced to support the new licensing and authorisation framework and storage provisions under the Reform Act. Licensees were granted flexibility in managing the number of authorisations and gaming machines operated within the maximum number set out in the authorisation certificate, and this flexibility brings with it the responsibility to ensure that the licensee holds the required authorisations and that the maximum number allowed under the certificate is not exceeded at any time. There should be no financial advantage to a licensee of the unauthorised operation of gaming machines.

Clause 31 amends the wording of section 58(1)(g) to better reflect the intent of this provision, and to ensure it is clear that operating a gaming machine without an authorisation under an authorisation certificate may result in forfeiture of 100 per cent of the gross gaming machine revenue of any such machine. This includes where an authorisation has been voluntarily surrendered under division 2A.2 or subject to compulsory surrender under division 2A.3.

In addition to the potential disciplinary action under section 58, is also an offence to operate a gaming machine otherwise than in accordance with an authorisation certificate

(section 105) and to intentionally acquire a gaming machine where an authorisation for the gaming machine is not held (section 98(4)).

Clause 32 Section 59

Clause 32 repeals and replaces section 59, which currently provides criteria for disciplinary action. New section 59 sets out a number of matters the commission must consider when deciding what disciplinary action to take and what penalty to impose. The amendments introduced by this clause are related to the increased maximum financial penalty under clause 30.

One factor the Commission needs to consider is the person's capacity to pay (section 59(1)(f)) and another is the financial impact on club of a financial impact of a penalty (section 59(1)(g)). These considerations are not determinative and would be just two of the factors the Commission would consider when making a decision. They would not prevent the Commission taking action even if the action put a licensee under financial stress. The weight the Commission would give to each of the factors would depend on the circumstances of each case. For example, if the conduct was very serious or repeated that would be given more weight than financial considerations, even if the financial considerations were serious.

The matters in section 59(1)(a), (b) and (c) reflect existing considerations in section 59 of the Gaming Machine Act.

Section 59(1)(d) is a new provision that requires the Commission to consider the duration or repetition of the person's conduct that led to the disciplinary ground. That is, the Commission needs to consider whether there was a single instance or multiple instances of the conduct, and over what period the conduct occurred.

Section 59(1)(e) provides the Commission must consider any statement given by an individual in relation to the harmful impacts on the individual of the disciplinary ground. This new requirement will allow individuals that have experienced harmful impacts of a licensee's conduct to have a voice in the consideration of disciplinary action and the setting of any penalty by the Commission. The impact statement must relate to the disciplinary ground and cannot extend to other conduct by the licensee or other persons.

Clause 33 Acquisition of gaming machines—amendment of authorisation schedule etc
Section 100 (5)

Section 100 of the Gaming Machine Act provides for the amendment of an authorisation schedule where a licensee notifies the Commission about the proposed acquisition of a gaming machine under section 99.

Section 100(3) operates in conjunction with the forfeiture provisions of the trading scheme at section 127F (Trading authorisations—forfeiture requirement) and provides that the commission must amend the licensee’s authorisation schedule to remove one authorisation for a gaming machine for every four authorisations the licensee acquires.

Under section 100(5), section 100(3) and section 100(5) itself were due to expire on the commencement of schedule 1 (Other amendments—compulsory surrender) of the Reform Act. In line with clause 42 below, which retains the forfeiture requirement during trading, clause 33 omits section 100(5). As a result, section 100(3) is retained.

Clause 34 Section 104 heading

The heading of section 104 of the Gaming Machine Act is currently ‘Offence—operating unauthorised, stored or quarantined gaming machines’. Clause 34 amends the heading of section 104 to reflect that quarantine permits will no longer exist. The heading of section 104 is amended to ‘Offence—operating unauthorised or stored gaming machines’.

Subdivision 6A.7.3 (Quarantine permits) was to be repealed on the commencement of schedule 1 (Other amendments – compulsory surrender) of the Reform Act. Given that these uncommenced provisions in the Reform Act are being repealed, the subdivision is now being repealed under clause 44 below.

Clause 35 Section 104 (2) (b) and (c)

Clause 35 inserts the word ‘storage’ before permit. This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) of the Gaming Machine Act under clause 44 below, which provides for the repeal of quarantine permits.

With the repeal of quarantine permits, the term ‘permit’ no longer needs to be defined to refer to both storage and quarantine permits (see existing definition in section 127M of the Gaming Machine Act), so the term is being amended to ‘storage permits’.

Clause 36 Conditions on approval to repossess gaming machine
Section 109(1)

Section 109 of the Gaming Machine Act relates to the Commission’s approval of the repossession of gaming machines under section 108 of the Act. Under section 109(1)(a), an approval to repossess a gaming machine is subject to the condition that the person take all reasonable steps necessary to prevent the repossessed gaming machine being played before its disposal.

Clause 36 repeals and replaces the existing section 109(1) to remove the above condition but retain the condition in section 109(1)(b), which relates to the person repossessing the gaming machine allowing an authorised officer to exercise the Commission’s functions under section 108(3). These functions include taking meter readings, sealing the computer cabinet and rendering the gaming machine inoperable.

The insertion of a definition of ‘inoperable’ in the Dictionary of the Gaming Machine Act under clause 94, meaning ‘to switch off and to secure the gaming machine so it cannot be played’ makes existing section 109(1)(a) unnecessary, and it is therefore being repealed.

Clause 37 Approval of disposal of gaming machines
Section 113 (3)

Under section 111 of the Gaming Machine Act, the disposal of a gaming machine must be in accordance with an approval by the Commission under section 113 (except where section 113A (Disposal of gaming machines—notifiable action) applies.

Section 113(3) currently provides that the Commission must not approve the lease or hire of a gaming machine by one licensee to another.

As a consequential amendment to clause 89, which amends the Dictionary definition of ‘dispose of’ a gaming machine, clause 37 provides that the Commission must not approve a method of disposal by a licensee that involves the lease or hire of a gaming machine to any person. This amendment provides clarity that the leasing or hiring of gaming machines by a licensee is not a permitted disposal method.

Clause 38 Disposal of gaming machines—notifiable action
Section 113A (1) (b)

Section 113A(1) currently provides for the disposal of gaming machines by notifiable action where the disposal is proposed for any of the listed reasons.

Clause 38 repeals and replaces existing section 113A(1)(b) to provide that in addition to selling a gaming machine to another licensee in the ACT or a local jurisdiction, a licensee may give the gaming machine to another licensee in the ACT or a local jurisdiction. This amendment aligns with the amendment to the Dictionary definition of ‘dispose of’ in clause 89.

Clause 39 Section 113A (1) (d) and (e)

As noted above, section 113A(1) currently provides for the disposal of gaming machines by notifiable action where the disposal is proposed for any of the listed reasons.

Clause 39 is a technical amendment that simplifies and consolidates the reasons for proposed disposal of a gaming machine. Subsection 113A(1)(d) currently provides for disposal in accordance with a notifiable action where a gaming machine is to be returned to the approved supplier who sold the gaming machine, and section 113A(1)(e) where the gaming machine is to be sold to an approved supplier.

Under clause 39, sections 113A(1)(d) and (e) are repealed and replaced with a new section 113A(1)(d), which provides for disposal where the gaming machine is to be sold or returned to an approved supplier.

**Clause 40 Selling class B authorisations
Section 127C (8)**

Under section 127C(7) of the Gaming Machine Act, the selling of class B gaming machine authorisations is subject to the forfeiture requirements for trading authorisations at section 127F. A class C gaming machine licensee acquiring class B gaming machine authorisations must forfeit one gaming machine authorisation to the Territory for every four acquired, meaning that the acquiring class C licensee will only receive three gaming machine authorisations. Section 127C(8) currently provides that both subsections (7) and (8) of section 127C expire on the commencement of schedule 1 (Other amendments—compulsory surrender) of the Reform Act.

Clause 40 omits subsection (8) from existing section 127C of the Gaming Machine Act, so that the one-in-four forfeiture is retained, and applies whenever trading of authorisations occurs. This amendment is related to clause 42 below.

**Clause 41 Trading class C authorisations and gaming machines
Section 127E (5)**

Under section 127E(4) of the Gaming Machine Act, the trading of class C gaming machine authorisations is subject to the forfeiture requirements for trading authorisations at

section 127F. A class C gaming machine licensee acquiring class B or class C gaming machine authorisations must forfeit one gaming machine authorisation to the Territory for every four acquired, meaning that the acquiring class C licensee will only receive three gaming machine authorisations. Section 127E(5) currently provides that both subsections (4) and (5) of section 127E expire on the commencement of schedule 1 (Other amendments—compulsory surrender) of the Reform Act.

Clause 41 omits subsection (5) from existing section 127E of the Gaming Machine Act, so that one-in-four forfeiture is retained, and applies whenever trading of authorisations occurs. This amendment is related to clause 42 below.

Clause 42 Trading authorisations—forfeiture requirement
Section 127F (6)

Section 127F of the Gaming Machine Act establishes the one-in-four forfeiture requirement that applies when authorisations are traded between gaming machine licensees. Under section 127F(6), the forfeiture provisions were to be repealed at the commencement of schedule 1 (Other amendments—compulsory surrender) of the Reform Act, when Phase 2 of the gaming machine trading scheme commenced, however, this is no longer the case.

Clause 42 omits subsection (6) from existing section 127F of the Gaming Machine Act, so that one-in-four forfeiture is retained, and applies whenever trading of authorisations occurs.

Clause 43 Definitions—div 6A.7
Section 127M, definitions

Under clause 43 the definitions of ‘permit’, ‘quarantined authorisation’, ‘quarantined gaming machine’, ‘quarantine period’ and ‘quarantine permit’ will be omitted from the definitions at section 127M of the Dictionary, Gaming Machine Act.

These definitions are no longer required as quarantine permits will no longer exist under the amendment in clause 44 below.

Clause 44 Quarantine permits
Subdivision 6A.7.3

Subdivision 6A.7.3 in the Gaming Machine Act currently relates to quarantine permits. These permits were to be repealed once schedule 1 (Other amendments – compulsory surrender) of the Reform Act commenced, and they are now to be repealed under the Amendment Bill.

Clause 44 omits subdivision 6A.7.3 from the Gaming Machine Act, as part of amendments that repeal all references to quarantine permits from the Act.

Clause 45 Section 127S

Clause 45 provides for the repeal and replacement of section 127S of the Gaming Machine Act. Section 127S currently provides for the form of storage permits and quarantine permits. Consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above, the section has been re-drafted to remove all references to quarantine permits and to clarify the information to be included in a storage permit for a general purpose, or an interim purpose.

**Clause 46 Permit—conditions
 Section 127T (1)**

Section 127T of the Gaming Machine Act provides for conditions on storage and quarantine permits. Clause 46 amends section 127T(1) to repeal references to ‘A permit’ and replace them with the term ‘A storage permit’. This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

Clause 47 Section 127T (1)

Section 127T of the Gaming Machine Act provides for conditions on storage and quarantine permits. Clause 47 amends section 127T(1) to omit all references to ‘or quarantined’ so that the section relates only to conditions on storage permits, and is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

Clause 48 Section 127T (1) (i) and (j)

Clause 48 repeals and replaces section 127T(1)(i) of the Gaming Machine Act and omits section 127T(1)(j), which applies a permit condition in relation to quarantined authorisations. This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

**Clause 49 Permit—term
 Section 127U (2), notes 1 and 2**

Section 127U of the Gaming Machine Act provides for limitations on the term of storage permits for a general or interim purpose. Notes 1 and 2 under section 127U(2) alert the reader to provisions governing the term and extension of quarantine permits. Clause 49 omits these two notes and is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

Note 3 under section 127U(2) is retained in its current form, as it relates to the extension of a storage permit for a general purpose under section 127W.

Clause 50 Permit amendment—notification
Section 127X (1) (a)

Section 127X(1) of the Gaming Machine Act establishes the requirement for a licensee to notify the Commission about the proposed disposal of a stored or quarantined gaming machine, or to remove a stored gaming machine from storage so that it may be operated at the licensee's authorised premises.

Clause 50 amends section 127X(1)(a) to omit the reference to 'or quarantined' so that the paragraph relates only to the proposed disposal of stored gaming machines, and is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

Clause 51 Trading authorisations under permits—procedure
Section 127ZB

Section 127ZB of the Gaming Machine Act sets out the procedure for trading gaming machine authorisations that are currently under a storage or quarantine permit. Clause 51 amends section 127ZB to omit the reference to 'or quarantined' so that the section relates only to the trading of stored authorisations, and is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

Clause 52 Section 127ZB (2) (b) and (c), except notes

As noted in clause 51 above, section 127ZB of the Gaming Machine Act sets out the procedure for trading gaming machine authorisations that are currently under a storage or quarantine permit. Currently, quarantine permits are required for quarantined authorisations, with or without an associated gaming machine. However, stored authorisations that do not have an associated gaming machine do not require a storage permit (they simply remain unused on an authorisation schedule).

Consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above, clause 52 repeals and replaces section 127ZB(2)(b) and (c) to reflect the removal of references to quarantine permits and quarantined authorisations.

Clause 53 Trading authorisations under permits—issue of quarantine permit to acquiring licensee
Section 127ZD

Clause 53 omits section 127ZD of the Gaming Machine Act, which requires the Commission to issue a quarantine permit to the acquiring licensee where a quarantined authorisation is traded (with or without an associated gaming machine). This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above.

Clause 54 Section 131 heading

The heading of section 131 of the Gaming Machine Act is currently 'Rendering gaming machines inoperable on authorisation ceasing to be in force'. Clause 54 is a technical amendment to the heading of section 131 to include the word 'certificate', as the section relates to rendering gaming machines inoperable where an authorisation certificate ceases to be in force.

Clause 55 Single-user approval for linked-jackpot arrangements
Section 134 (4) (a) (ii)

Section 134 of the Gaming Machine Act establishes requirements for single-user approvals for linked-jackpot arrangements. Single-user approvals can be sought where a licensee is seeking to operate a linked-jackpot arrangement involving gaming machines operated under a single authorisation certificate.

Under section 134(4)(a), it is a condition of an approval that each linked gaming machine displays a sign stating clearly that the gaming machine is part of a linked-jackpot arrangement, and the percentage of turnover of the gaming machine set aside for the payment of linked jackpots.

The requirement to provide signage displaying the specific amount of turnover contributed to the linked-jackpot arrangement on each gaming machine imposes considerable administrative burden on licensees. In the interests of consumer protection and information however, these details must still be available to patrons.

Clause 55 amends section 134(4)(a)(ii) to provide that each gaming machine must instead display signage that it is part of a linked-jackpot arrangement, and that information about the arrangement is available, on request, from the licensee.

Section 41 of the Gaming Machine Act provides that it is a condition of a licence that licensees should retain a copy of the licence and authorisation certificate (including the authorisation schedule) at the premises to which the authorisation certificate relates.

Information on the percentage of turnover of a gaming machine that is set aside for the payment of a linked-jackpot arrangement is included in the authorisation schedule to the authorisation certificate. Clause 25 above omits section 42(2) of the Gaming Machine Act which currently provides that a licensee can restrict viewing of an authorisation schedule to authorised officers exercising a function under the Control Act.

Allowing a patron to view the authorisation schedule for an authorised premises will meet the requirements of amended section 134(4)(a)(ii).

This amendment is part of the red tape reduction amendments for the display of information about linked-jackpot arrangements.

Clause 56 New section 134 (4) (aa)

Clause 56 inserts new section 134(4)(aa) to the Gaming Machine Act to provide that it is a condition of a single-user approval that a licensee makes available, on request, information about the linked-jackpot arrangement to anyone requesting it. An example of the information to be made available is included under the new section – being the percentage of turnover of each gaming machine set aside for the payment of linked jackpots.

This amendment is part of the red tape reduction amendments for the display of information about linked-jackpot arrangements.

**Clause 57 Conditions on multi-user permits
Section 136 (1) (a) (ii)**

Section 136 of the Gaming Machine Act establishes requirements for multi-user permits for linked-jackpot arrangements. Multi-user permits can be sought where a person is seeking to operate a linked-jackpot arrangement involving gaming machines operated under two or more authorisation certificates.

As with single-user approvals under section 134, it is a condition of a multi-user permit under section 136(1)(a) that each linked gaming machine displays a sign stating clearly that the gaming machine is part of a linked-jackpot arrangement, and the percentage of turnover of the gaming machine set aside for the payment of linked jackpots.

Clause 57 mirrors the amendment made by clause 55 above, and amends section 136(1)(a)(ii) to provide that each gaming machine must instead display signage that it is part of a linked-jackpot arrangement, and that information about the arrangement is available, on request, from the licensee.

As outlined in relation to clause 55 above, allowing a patron to view the authorisation schedule for an authorised premises will meet the requirements of amended section 136(1)(a)(ii).

This amendment is part of the red tape reduction amendments for the display of information about linked-jackpot arrangements.

Clause 58 New section 136 (1) (aa)

Clause 58 mirrors the amendment made by clause 55 above, and inserts new section 136(1)(aa) to the Gaming Machine Act to provide that it is a condition of a multi-user permit that a licensee makes available, on request, information about the linked-jackpot arrangement to anyone requesting it. An example of the information to be made available is included under the new section – being the percentage of turnover of each gaming machine set aside for the payment of linked jackpots.

This amendment is part of the red tape reduction amendments for the display of information about linked-jackpot arrangements.

**Clause 59 Club directors—acting in good faith
New section 148A (c)**

Section 148A provides that a club director must exercise the director’s powers and discharge the director’s duties in good faith in the best interests of the club and for a proper purpose.

As part of measures to reduce gambling harm, clause 59 amends section 148A to add a new requirement that a club director must exercise powers and discharge duties, as far as practicable, in a way that reduces gambling harm. This amendment is intended to create a positive obligation on club directors to reduce gambling harm, as well as acting in good faith in the best interests of the club and for a proper purpose.

**Clause 60 Warning notices
Section 151 (2)**

Under section 151(1) of the Gaming Machine Act, the Commission may determine the form and minimum dimensions of a warning notice and the text of a warning notice, and there is an existing determination (DI2004-184). Section 151(2) provides that the warning notice must be displayed on each gaming machine and at or near each entrance to each gaming area within the authorised premises.

Section 126 of the Gaming Machine Act was amended by the *Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016* to remove the requirement to display return-to-player information on each gaming machine and provide for the display of harm minimisation statements that are approved by the Minister. In August 2016, the then Minister for Racing and Gaming approved statements for display under notifiable instrument NI2016-467.

As a result, there is duplication between the statements approved by the Minister and the Commission's determination, resulting in licensees having to display multiple harm minimisation messages on each gaming machine.

As a red tape reduction measure, clause 60 amends section 151(2) to remove the requirement that a warning notice must be displayed on each gaming machine. Section 151(2) retains the requirement for the display of signage (when determined by the Commission) in a prominent position at or near each entrance to each gaming area within the authorised premises.

While section 151 is a strict liability offence provision, the amendment in clause 60 removes a requirement of the provision. The existing maximum penalty remains and the offence continues to be a strict liability offence. As a result, it is considered that this amendment does not engage the presumption of innocence until proven guilty (rights in criminal proceedings) under section 22(1) of the Human Rights Act.

Clause 61 **Definitions—pt 11**
Section 157A, definitions of *small or medium club* and
small or medium club group

Section 157A of the Gaming Machine Act establishes definitions of 'small or medium club' and 'small or medium club group' for the purposes of part 11. These definitions were introduced by the *Gaming Machine Amendment Act 2017* as part of providing for the 50 per cent gaming machine tax rebate.

The Pathway to 4,000 provides that clubs' existing eligibility for the rebate will be maintained (based on 2017-18 gross gaming machine revenue) until the review of the tax rebate as required under section 179A of the Gaming Machine Act is completed. The review must be tabled in the Legislative Assembly by 30 November 2019 under existing section 179(1)(b).

Clause 61 repeals and replaces the definitions of 'small or medium club' and 'small or medium club group' for the purposes of part 11, to reflect the ongoing eligibility for the rebate where a small or medium club or club group's gross gaming machine revenue was

not more than \$4 million in the financial year beginning on 1 July 2017 (paragraph (b) of the definitions). Under paragraph (a) of the definitions a club or club group that was not eligible for the rebate in the financial year beginning on 1 July 2017, will be eligible as a small or medium club or club group if the gross gaming machine revenue of the club or group in a subsequent year is not more than \$4 million (until the review is completed).

**Clause 62 Gaming machine tax rebate—financial year
Section 162A (2)**

The Pathway to 4,000 also provides that if an eligible club's gross gaming machine revenue exceeds \$4 million, the 50 per cent gaming machine tax rebate does not apply to the club's gross gaming machine revenue amount above \$4 million.

Clause 62 omits 'gaming machine tax liability under section 159' and substitutes the term 'GMT liability' in section 162A(2) of the Gaming Machine Act as part of amendments that implement the above intent. This clause is related to clause 63 below.

GMT liability for section 162A means the licensee's gaming machine tax liability worked out under section 159 on the licensee's gross revenue that is not more than \$4 million from the operation of gaming machines under all of the licensee's authorisation certificates.

Clause 63 New section 162A (4)

Clause 63 inserts a new definition of 'GMT liability' in section 162A. When read in conjunction with existing section 162A, this clause provides that the 50 per cent gaming machine tax rebate (the GMT rebate) does not apply to gross gaming machine revenue above \$4 million where the licensee remains eligible for the GMT rebate as a result of the revised definitions of small or medium club and small or medium club group in clause 61 above.

**Clause 64 Gaming machine tax rebate—part financial year
Section 162B (3) and (4)**

Section 162B of the Gaming Machine Act applies where a club was part of a club group (other than a small or medium club group) for part of a financial year. In this case, the license is only entitled to a gaming machine tax rebate for the part of the financial year that the licensee was not part of the club group (see section 162B(2)).

Clause 64 repeals and replaces existing sections 162B (3) and (4) and adds a new subsection (5).

Under amended section 162B(3), the amount of the GMT rebate for the licensee is 50 per cent of the licensee's GMT liability for the part of the financial year ('the entitled part of the year') for which the licensee is entitled to the rebate.

Under amended section 162B(4), the GMT rebate applies to reduce the amount of the licensee's gaming machine tax liability for the entitled part of the year.

New section 162B(5) provides definitions of 'adjusted amount' and 'GMT liability' for the section.

The 'adjusted amount' of gross gaming machine revenue means \$4 million adjusted on a pro-rata basis to the part of the financial year the licensee was entitled to the GMT rebate. An example of the adjusted amount is provided.

'GMT liability' replaces the phrase 'gaming machine tax liability under section 159' in section 162B(3) of the Gaming Machine Act as part of amendments that implement the Pathway to 4,000's intent as outlined in clause 62 above. GMT liability for section 162B means the licensee's gaming machine tax liability worked out under section 159 on the licensee's gross revenue that is less than the adjusted amount from the operation of gaming machines under all of the licensee's authorisation certificates.

Clause 65 Division 11.2 heading

Division 11.2 of the Gaming Machine Act establishes the Problem Gambling Assistance Fund. In line with the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling), the name of the Fund is to be updated to be known as the 'Gambling Harm Prevention and Mitigation Fund'.

Clause 65 repeals and replaces the heading of division 11.2 to reflect the change in the Fund's name.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 66 Section 163A heading

Section 163A of the Gaming Machine Act sets out the required payment to the Problem Gambling Assistance Fund by licensees.

In line with the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling), the name of the Fund is to be updated to be known as the 'Gambling Harm Prevention and Mitigation Fund'.

Clause 66 repeals and replaces the heading of section 163A to reflect the change in the Fund's name.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 67 Section 163A (1)

Section 163A(1) of the Gaming Machine Act provides that a licensee is liable to pay the required percentage (set out in section 163A(2)) of the licensee's gross revenue for each tax period to the Problem Gambling Assistance Fund.

In line with the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling), the name of the Fund is to be updated to be known as the 'Gambling Harm Prevention and Mitigation Fund'.

Clause 67 repeals and replaces existing section 163A(1) to reflect the change in the Fund's name.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 68 Section 163AA heading

Section 163AA of the Gaming Machine Act provides an annual payment option for licensees with an average Problem Gambling Assistance Fund liability of less than \$300 per month.

In line with the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling), the name of the Fund is to be updated to be known as the 'Gambling Harm Prevention and Mitigation Fund'.

Clause 68 repeals and replaces the heading of section 163AA to reflect the change in the Fund's name.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 69 Section 163AA (3)

Section 163AA of the Gaming Machine Act provides an annual payment option for licensees with an average Problem Gambling Assistance Fund liability of less than \$300 per month.

In line with the Government's adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling), the name of the Fund is to be updated to be known as the 'Gambling Harm Prevention and Mitigation Fund'.

As a result, clause 69 amends the reference to 'Problem Gambling Assistance Fund' in section 163AA(3) to 'Gambling Harm Prevention and Mitigation Fund'.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 70 Section 163B

Clause 70 repeals and replaces existing section 163B of the Gaming Machine Act and adds new sections 163C and 163D.

Amended section 163B(1) provides that the Commission must open and maintain a banking account (the 'gambling harm prevention and mitigation fund').

Amended section 163B(2) provides the definition of 'banking account' as an account with an authorised deposit-taking institution that is, or is substantially the same as, a bank account.

New section 163C provides for payments from the Gambling Harm Prevention and Mitigation Fund for required payment funds. New section 163C(1) provides that the section applies to an amount paid into the Fund under section 163A (Required payment to gambling harm prevention and mitigation fund), or under part 12 as a community contribution. The required payment to the Fund under section 163A is currently set at 0.75 per cent of the licensee's gross gaming machine revenue. (See the Dictionary, Gaming Machine Act for the definition of gross revenue).

Under new section 163C(2), the Commission may make a payment out of the Fund only for a purpose the Commission is satisfied will assist in alleviating gambling harm; alleviating the disadvantages that arise from gambling harm; or providing or ascertaining information about gambling harm. Examples are provided below new section 163C(2).

New section 163D provides for payments from the Gambling Harm Prevention and Mitigation Fund for the required minimum community contribution funds. New section 163D(1) provides that the section applies to an amount paid into the Fund under section 167(1)(b) (Minimum community contribution—clubs) or section 168(1)(b) (Minimum community contribution—licensees other than clubs). Under new section 167 inserted by clause 71 below, the minimum community contribution for a club licensee is 0.4 per cent of the club’s net gaming machine revenue and under new section 168, the minimum community contribution for licensees other than clubs is 0.4 per cent of the licensee’s community contribution revenue (see the Dictionary, Gaming Machine Act and new section 168 inserted by clause 71 below for definitions of net revenue and community contribution revenue respectively).

Under new section 163D(2), the Commission may make a payment out of the Fund only for a purpose set out in the gambling harm prevention and mitigation guidelines, and with the written approval of the Minister.

New section 163D(3) provides that the Minister may make guidelines about gambling harm prevention and mitigation and under 163D(4), a guideline is a disallowable instrument.

The amendments in this clause are in line with the Government’s adoption of a broader public health approach to reducing gambling harm (rather than the existing narrower focus of addressing problem gambling) and are part of the community contributions reforms.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 71 Part 12

Clause 71 repeals and replaces existing part 12 of the Gaming Machine Act, which relates to community contributions. New part 12 includes new sections 164 to 172B. This clause is the principal clause for the community contributions reforms being implemented through this Amendment Bill. The clause commences on 1 July 2019.

New Section 164 Definitions—pt 12

New section 164 establishes definitions for new part 12 of the Gaming Machine Act. The defined terms are as set out below.

Chief Minister’s Charitable Fund means the Chief Minister’s Charitable Fund Ltd ACN 627 111 700.

The definition of *community* is in section 165.

The definition of *community purpose* is in section 166.

Community purpose contribution means a contribution made for a community purpose.

Contribution means any money, benefit, valuable consideration or security.

The definition of *contribution information* for a community purpose contribution is in section 170.

Minimum community contribution for a licensee for a financial year means the amount applying to the licensee under section 167 or section 168.

Recipient for a community purpose contribution means the entity to which the contribution is made; if a group within the entity receive a discrete portion of the contribution, *recipient* includes the group; and if an office or individual who is a member of the entity receives a discrete portion of the contribution, *recipient* includes the office or individual. Examples are provided for paragraphs (b) and (c) of the definition.

Reporting year for a licensee means the period for which the licensee prepares a financial statement or income and expenditure statement under section 158 of the Gaming Machine Act (Audit of financial statements etc).

The definition of *tax period* is in section 157A.

New Section 165 *Meaning of community etc—pt 12*

New section 165 establishes the definition of ‘community’ for part 12 of the Gaming Machine Act.

Under new section 165(1), *community* means the people living in the ACT or surrounding region; or if the declared area if the Minister declares an area. New section 165(2) provides that the community includes people living somewhere else in Australia who need relief or assistance because of a natural disaster, in recognition that the Australian community is supportive of each other during natural disaster events, and that the ACT community has been a recipient of such support.

New section 165(2) provides that the community is comprised of individuals and groups from diverse cultural, language and religious backgrounds; of different gender identity; of different sexual orientation; with disability; of all ages, including children and young people; in different social, economic and social circumstances.

New section 165(3) provides that a declaration (for new section 165(1)(a)(ii)) is a notifiable instrument.

Under new section 165(4), 'groups' is defined to include community groups, associations and not-for-profit organisations.

New Section 166 Meaning of community purpose etc—pt 12

New section 166(1) of the Gaming Machine Act provides that 'community purpose' means assisting the community, or part of the community, in one or more of the following ways:

- supporting a charitable cause
- providing recreation opportunities
- providing education opportunities
- improving social inclusion, equality or cultural diversity
- benefiting or increasing participation in community sport
- preventing or mitigation harm cause by drug or alcohol misuse or dependence
- benefiting or increasing participation in women's sport conducted in the ACT, or with participants mainly based in the ACT
- providing relief or assistance to people living in Australia following a natural disaster; or
- a purpose prescribed by regulation.

Under new section 166(2), a 'community purpose contribution' means a contribution made by a club licensee to a stated recipient for a community purpose; to the Gambling Harm Prevention and Mitigation Fund other than by a payment required under sections 163A(1) (Required payment to gambling harm prevention and mitigation fund) or 167(1)(b) (Minimum community contribution—clubs); or to the Commission and transferred to the Chief Minister's Charitable Fund other than by a payment required under section 167(1)(a) (Minimum community contribution—clubs).

New section 166(2)(b) provides that a community purpose contribution includes an contribution prescribed by regulation.

New section 166(3) sets out contributions that are not community purpose contributions. This section takes into account the matters excluded from the definition of a contribution under existing section 164(3) of the Gaming Machine Act and revises and adds to the exclusions. Under new section 166(3)(j) a regulation may set out any other contribution not to be a community purpose contribution.

New section 166(4) provides that a regulation may prescribe matters in relation to a community purpose or a community purpose contribution, including matters that are included or not included in a community purpose or a community purpose contribution.

New Section 167 Minimum community contribution—clubs

New section 167 of the Gaming Machine Act provides for the minimum community contribution that a licensee that is a club must make as a percentage of the club's net revenue (see the Dictionary, Gaming Machine Act for the definition of net revenue).

Under new section 167(1), a club must make a minimum community contribution of:

- 0.4 per cent of the licensee's net revenue for the tax period, paid to the Commission and transferred to the Chief Minister's Charitable Fund;
- 0.4 per cent of the licensee's net revenue for the tax period, paid to the Gambling Harm Prevention and Mitigation Fund; and
- 8 per cent of the licensee's net revenue for a reporting year for the licensee, made or paid as a community purpose contribution.

New section 167(2) provides that for a club other than a small or medium club or small or medium club group, at least 6 per cent of the community purpose contribution must be a contribution of money. New section 167(6) provides a signpost definition for small or medium club or small or medium club group, which are defined in existing section 157A of the Gaming Machine Act.

New section 167(3) is based on the existing section 169(3), and provides for the Minister to determine a lower minimum community contribution for a club if satisfied, on application by the club, that making the minimum community contribution would seriously affect the club's viability. If the Minister makes such a determination, it is a disallowable instrument under new section 167(4).

New section 167(5) provides that a regulation may prescribe matters in relation to contribution under this section, including how the value of a community purpose contribution is worked out and when a community purpose contribution is made.

New section 168 Minimum community contribution—licensees other than clubs

New section 168 of the Gaming Machine Act provides for the minimum community contribution that a licensee that is not a club must make as a percentage of the licensee's community contribution revenue (see new section 168(2) for the definition of community contribution revenue).

Under new section 168(1), a licensee that is not club must make a minimum community contribution of:

- 0.4 per cent of the licensee's community contribution revenue for the tax period, paid to the Commission and transferred to the Chief Minister's Charitable Fund;

- 0.4 per cent of the licensee’s community contribution revenue for the tax period, paid to the Gambling Harm Prevention and Mitigation Fund; and

New section 168(2) provides definitions of the terms ‘community contribution revenue’ and ‘tax period’ for the section. *Community contribution revenue* is a licensee’s gross revenue less the licensee’s gaming machine tax (see the Dictionary, Gaming Machine Act for the definitions of gross revenue and gaming machine tax). A *tax period* is defined in section 157A.

New Section 169 Payment of community contributions for a tax period

New section 169 requires that the minimum community contribution paid for a tax period under section 167(1)(a) or (b) or under section 168 must be paid on the seventh day after the end of the tax period.

New Section 170 Licensee must engage with community—clubs

New section 170 provides that a licensee that is a club must engage with the community by making the community aware that the licensee must make community purpose contributions and by considering community needs in relation to making community purpose contributions.

This new section is intended to increase the transparency of the community contributions scheme and provide the opportunity for an increased number and range of recipients to benefit from community purpose contributions.

New Section 171 Community purpose contributions—record keeping by clubs

Existing section 165 provides for records of community contributions made by a licensee, with this being a strict liability offence provision with a maximum penalty of 20 penalty units.

New section 171 provides for record keeping by clubs in relation to community purpose contributions. New record keeping requirements expand on the information required to be kept under existing section 165 and are intended to improve transparency about the recipients of contributions and the purposes for which they are made, the way in which they are used and the nature of the benefit received.

Under new section 171(1)(b) it is a strict liability offence with a maximum penalty of 20 penalty units if a club licensee makes a community purpose contribution and does not keep a written record of the ‘contribution information’ for the contribution. (Note that all club licensees are either an incorporated association or a corporation, so this strict liability offence does not apply to any individual).

New Section 172 Community purpose contributions—reporting by clubs

New section 172 sets out the matters that clubs will need to include in their annual report in relation to community purpose contributions in a reporting year, and is part of measures to improve transparency about community purpose contributions.

Under the community contributions reforms, a club will no longer need to provide the Commission with a separate report at the end of the financial year about their community contributions. Instead, a club's annual report will be required to include detail about the community purpose contributions made during the reporting year. This provision is based on a club's reporting year since not all clubs prepare their annual report on a 1 July to 30 June year.

Under section 172(1), a club's annual report must include gross gaming machine revenue; net gaming machine revenue; the total value of community purpose contributions made by the licensee during the reporting year; the percentage of a licensee's net revenue for the reporting year that was made as a community purpose contribution; the contribution information (other than an individual recipient's name) for each community purpose contribution made by the licensee during the reporting year; an account of how the licensee engaged with the community under new section 169; and an account of how the licensee monitors the way in which the community purpose contributions were used and the steps taken, if any, to reduce the likelihood of a contribution being used in a way that is not intended.

New section 172(2) provides for the annual report to include the percentage of the club's net revenue for the reporting year that was made for each of the community purposes listed in that section. Note that this list does not include the full list of community purposes set out in new section 166(1) since any payments made to the Gambling Harm Prevention and Mitigation Fund or to the Commission and transferred to the Chief Minister's Charitable Fund are captured under information to be published by the Commission under new section 172A.

New section 172(3) reflects that a licensee that is a club with gross revenue for a reporting year of less than \$200,000 is not currently required to prepare an audited annual report. Instead, these clubs must prepare a written statement setting out the information required under new section 172(1), and this statement must be annexed to the licensee's certified income and expenditure statement that is given to the Commission under section 158.

The requirements for reporting in section 172 need to be understood in conjunction with the record keeping provisions in section 171, in particular, the contribution information requirements set out in section 171(1)(b).

New Section 172A Community contributions—commission must publish summary

New section 172A provides that the Commission must publish on the Commission's website summary information about community contributions made by licensees.

Under new section 172A(1), the Commission must publish the minimum community contribution received from each licensee under section 167(1)(a) and (b) or section 168(1)(a) and (b). This information relates to minimum community contributions made by licensees (both club and non-club licensees) to the Gambling Harm Prevention and Mitigation Fund and to the Commission and transferred to the Chief Minister's Charitable Fund.

New section 172A(1)(b) requires the Commission to publish information on the amount of any community purpose contribution mentioned in section 166(2)(a)(ii) and (iii) which relate to additional community purpose contribution payments made to the Gambling Harm Prevention and Mitigation Fund and to the Commission and transferred to the Chief Minister's Charitable Fund.

Under new section 172A(1)(b)(ii), the Commission must publish a summary of the proportion of the total community purpose contributions given to each community purpose by each club (using information provided by clubs under new section 172(2)).

New section 172A(1)(b)(iii) requires the Commission to publish on its website the club's annual report received under section 54(2)(a) or, where the club is not required to prepare an annual report, a written statement annexed to the licensee's certified income and expenditure statement under new section 172(3) and given to the Commission under section 158. The requirement to publish annual reports or written statements on the Commission's website in addition to the requirement for clubs to publish this information on a publicly-accessible website is a transparency measure intended to improve the community's access to information about, and awareness of, community contributions.

New section 172A(2) provides that the Commission may ask a licensee to give the Commission, within a stated reasonable time, information about the licensee's community contributions that the Commission reasonably needs to prepare the summary.

This provision, in conjunction with the requirements inserted in section 54, will provide increased transparency about community contributions and the context of club operations and revenues in which they are made.

New Section 172B Community contribution shortfall tax

New section 172B of the Gaming Machine Act is based on the existing section 172 and imposes a community contribution shortfall tax where the community contributions of a club fall short of its minimum requirements (as set out in new section 167).

In line with community contributions reforms, new section 172B(1) provides that the shortfall tax will now be 150 per cent of amount by which a club's community contributions fall short of its minimum community contribution. New section 172B(2) provides that the license must pay the community contribution shortfall tax (where it is imposed).

Under new section 172B(3), shortfall tax is payable 30 days after the day the licensee receives an assessment under part 6 of the Control Act.

New section 172B(4) provides that if an amount of community contribution shortfall tax is paid, the Commission must transfer the amount to the Gambling Harm Prevention and Mitigation Fund or, if another fund is prescribed by regulation, that fund.

New section 172B(5) provides the definition of 'community contribution shortfall' for this section.

Clause 72 Section 174A heading

Section 174A provides that a licence or authorisation certificate is not *personal property* under section 10 of the *Personal Property Securities Act 2009* (Cwlth) (the PPS Act). As is evidenced by the existing heading of section 174A, this provision was intended to include authorisations. The amendment in clause 73 below corrects section 174A to refer to a licence, authorisation certificate or authorisation as not personal property for the PPS Act. In line with this amendment, the heading of section 174A is amended to 'Licences and authorisations etc not personal property—PPS Act'.

Clause 73 Section 174A (1)

As outlined in clause 72 above, section 174A provides that a licence or authorisation certificate is not *personal property* under section 10 of the *Personal Property Securities Act 2009* (Cwlth) (the PPS Act). As is evidenced by the existing heading of section 174A, this provision was intended to include authorisations. The amendment in clause 73 corrects section 174A to refer to a licence, authorisation certificate or authorisation as not personal property for the PPS Act.

Clause 74 Section 178 (3)

Section 178(3) of the Gaming Machine Act currently provides that a regulation may prescribe offences for contraventions of the regulations and fix maximum penalties of not more than 10 penalty units for the offences.

Under clause 74, the maximum penalties that may be prescribed in a regulation made under the Gaming Machine Act will be increased from not more than 10 penalty units to not more than 30 penalty units. This limit is in line with the maximum established in the *Guide for Framing Offences* and well below the guidance that offences in subordinate legislation must not exceed 60 penalty units in the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)'s document *Subordinate Legislation— Technical and Stylistic Standards – Tips/Traps*.

Gambling is necessarily highly regulated for reasons of integrity, harm reduction and consumer protection. This amendment will allow maximum penalties under the *Gaming Machine Regulation 2004* to be increased to 30 penalty units where appropriate, to ensure that penalties for offences under the regulation better align with the significant penalties available under the existing legislative framework for gambling and racing activities. For example, the Gaming Machine Act includes numerous offences with a maximum penalty of 100 penalty units.

The regulation-making power in section 178 is not constrained to particular matters, however, section 178(2) does provide that a regulation may make provision in relation to peripheral equipment, minimum payout for gaming machines and a cash facility at authorised premises. Any regulation made under the power conferred by the section cannot be inconsistent with the principal Act.

In many cases, offences under the regulation will apply to licensees that are either an incorporated association or a corporation. In the context of the activities governed by the Control Act, and the revenues earned through gaming and racing activities, a potential maximum penalty of 30 penalty units (equating to \$24,300 or \$4,800 under the *Crimes Legislation Amendment Act 2018* that is currently awaiting notification) is not considered excessive.

Clause 75 Section 179

Section 179 of the Gaming Machine Act provides that the Minister must review the operation of section 127F (Trading authorisations – forfeiture requirements) and subdivision 6A.7.3 (Quarantine permits) before the commencement of schedule 1 of the Reform Act (i.e. before the commencement of Phase 2 of the gaming machine trading scheme), and present a report of the review to the Assembly.

As outlined in clause 42 above, forfeiture requirements under section 127F are to be retained whenever trading occurs. Quarantine permits are being removed with the repeal of subdivision 6A.7.3 under clause 44 above. As a result, the above review provision is being repealed and replaced with a new review provision in line with the Pathway to 4,000.

Clause 75 provides that before 1 May 2025, the Minister must review the operation of division 6A.6 (Trading of authorisations and gaming machines) and present a report of the review to the Legislative Assembly.

Under clause 75(2), section 179 will expire on 1 May 2026, one year after the review report must be presented.

**Clause 76 Transitional—Gaming Machine (Reform) Amendment
Act 2015
Part 20**

Part 20 of the Gaming Machine Act currently provides transitional provisions in relation to the enactment of the Gaming Machine (Reform) Amendment Act. These transitional provisions were due to expire four years after the commencement day (i.e. four years from 31 August 2018), however, part 20 is omitted by clause 76 as the provisions are no longer required in the Gaming Machine Act.

Clause 77 New part 22

Clause 77 inserts new part 22 (Transitional – Gaming Machine Legislation Amendment Act 2018) in the Gaming Machine Act. Part 22 includes new sections 314 and 315.

New section 314 provides transitional reporting arrangements for clubs with a reporting year that begins before 1 July 2019 when the community contributions reforms commence. Under section 314(2), the licensee’s annual report or written statement under section 172 must, for each community contribution for the part of the reporting year ending immediately before 1 July 2019, set out the information required to be recorded under existing section 165 as in force immediately before that date.

For the part of the reporting year beginning on 1 July 2019, the licensee’s annual report or written statement under section 172 must comply with the requirements of section 172 for each contribution made on or after that day.

This clause is required because a number of clubs have a reporting year that is not 1 July to 30 June in each year.

New section 314(3) provides definitions of the terms ‘commencement day’ and ‘reporting year’ for this section. *Commencement day* is 1 July 2019 and *reporting year* for a licensee is defined in section 164 of the Gaming Machine Act.

New section 315 inserted by clause 77 provides for transitional regulations which may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Gaming Machine Legislation Amendment Act 2018*. A regulation may modify part 22 (including in relation to another Territory law) to make provision in relation to anything that, in the Executive’s opinion, is not, or is adequately or appropriately, dealt with in part 22 of the Act. A regulation has effect despite anything elsewhere in this Act or another territory law.

The capacity to modify an Act through subordinate legislation is referred to as a ‘Henry VIII’ clause. It is acknowledged that these clauses are generally not preferable. In developing the Amendment Bill, every attempt has been made to foresee issues arising in the transition. However, it is considered that this provision is necessary in this Bill as there is no practical alternative available to ensure that any unforeseen matters which might arise during the implementation of the Amendment Bill’s provisions can be addressed expediently. This power is limited by time and is confined to the purpose of supporting the enactment of the Amendment Bill.

Transitional provisions are kept in the Act for a limited time and as such the transitional provisions at part 22 expire on 1 July 2020, one year after the community contributions reforms commence. Transitional provisions are repealed on expiry but continue to have effect after repeal (see *Legislation Act 2001*, section 88).

Clause 78 Reviewable decisions
Schedule 1, item 52

Clause 78 omits item 52 from the table of reviewable decisions in schedule 1 of the Gaming Machine Act. This amendment is consequential to the community contribution reforms and in particular the repeal and replacement of section 164.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 79 Notifiable actions
Schedule 2, item 1

Clause 79 omits item 1 from the table of notifiable actions in schedule 2 of the Gaming Machine Act. This amendment is consequential to the omission of section 37A from the Gaming Machine Act under clause 22 above.

Clause 80 Dictionary, note 2

Note 2 of the Dictionary lists terms defined in the Dictionary of the Legislation Act that are relevant to the Gaming Machine Act. Clause 80 inserts the following terms to the list: ‘authorised deposit-taking institution’, ‘Chief Minister’, ‘entity’, ‘financial year’, ‘Legislative Assembly’, ‘Minister (see s 162)’ and ‘Treasurer’.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 81 Dictionary, new definitions

Clause 81 inserts definitions of the terms ‘cap on authorisations’ and ‘census day’ in the Dictionary of the Gaming Machine Act.

The definition of *cap on authorisations* for division 2A.3 is in section 10H.

The definition of *census day* for part 2A is in section 10.

Clause 82 Dictionary, new definitions

Clause 82 inserts definitions of the terms ‘Chief Minister’s Charitable Fund’ and ‘community’ in the Dictionary of the Gaming Machine Act.

The definition of *Chief Minister’s Charitable Fund* for part 12 is in section 164.

The definition of *community* for part 12 is in section 165.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 83 Dictionary, definition of *community contribution*

Clause 83 omits the definition of the term ‘community contribution’ from the Dictionary of the Gaming Machine Act. This amendment is part of the community contributions reforms. As part of the reforms, a number of new terms are inserted in the Dictionary, including ‘community purpose contribution’ under clause 85 and ‘minimum community contribution’ under clause 95.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 84 Dictionary, definition of *community contribution shortfall tax*

Clause 84 repeals and replaces the definition of the term ‘community contribution shortfall tax’ in the Dictionary of the Gaming Machine Act. As part of the community contributions reforms included in this Bill, clause 71 provides that the community contribution shortfall tax provision is now in new section 172B(1). As a result, the Dictionary provides that the definition of *community contribution shortfall tax* is in section 172B(1).

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 85 Dictionary, new definitions

Clause 85 inserts definitions of the terms ‘community purpose’ and ‘community purpose contribution’ in the Dictionary of the Gaming Machine Act.

The definition of *community purpose* for part 12 is in section 166.

The definition of *community purpose contribution* for part 12 is in section 166.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 86 Dictionary, new definitions

Clause 86 inserts definitions of the terms ‘compulsory surrender day’ and ‘compulsory surrender period’ in the Dictionary of the Gaming Machine Act.

The definition of *compulsory surrender day* for part 2A is in section 10.

The definition of *compulsory surrender period* for division 2A.4 is in section 10Q.

Clause 87 Dictionary, definition of contribution

Clause 87 repeals and replaces the definition of the term ‘contribution’ in the Dictionary of the Gaming Machine Act. The definition of *contribution* for part 12 is in section 164.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 88 Dictionary, new definition of contribution information

Clause 88 inserts a definition of the term ‘contribution information’ in the Dictionary of the Gaming Machine Act. The definition of *contribution information* for part 12 is in section 171.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 89 Dictionary, definitions of *disciplinary action* and *dispose of*

Clause 89 repeals and replaces the definitions of the terms ‘disciplinary action’ and ‘dispose of’ in the Dictionary of the Gaming Machine Act.

The definition of *disciplinary action* is amended to apply to the entire Gaming Machine Act, not just part 4. See also the *Legislation Act 2001*, section 156.

This clause is related to the amendment in clause 29 and is consequential to the amendment in clause 28 which inserts new part 3A (Enforceable undertakings). Clause 93, which amends the Dictionary definition of ‘ground for disciplinary action’, is related to this amendment.

The definition of *dispose of* is amended to include selling or giving the gaming machine to a person in the ACT or a local jurisdiction (note that local jurisdiction is also defined in the Dictionary of the Gaming Machine Act); selling or returning the gaming machine to an approved supplier; destroying the gaming machine; and leasing or hiring the gaming machine to a person.

Under section 113 the Commission must approve the disposal of a gaming machine, unless it is being disposed of in accordance with a notifiable action under section 113A. This definition should be read in conjunction with sections 113 and 113A of the Gaming Machine Act.

Clause 90 Dictionary, new definition of *first compulsory surrender day*

Clause 90 inserts a definition of the term ‘first compulsory surrender day’ in the Dictionary of the Gaming Machine Act. The definition of *first compulsory surrender day* for part 2A is in section 10.

Clause 91 Dictionary, new definition of *gambling harm prevention and mitigation fund*

Clause 91 inserts in the Dictionary of the Gaming Machine Act the term ‘gambling harm prevention and mitigation fund’, which is defined in section 163B. This amendment is in line with the Government’s adoption of a broader public health approach to reducing gambling harm. The name of the Problem Gambling Assistance Fund is to be updated to be known as

the ‘Gambling Harm Prevention and Mitigation Fund’. The term ‘problem gambling assistance fund’ is omitted from the Dictionary under clause 97.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 92 Dictionary, new definition of *GM undertaking*

Clause 92 inserts a definition of the term ‘GM undertaking’ in the Dictionary of the Gaming Machine Act. The definition of *GM undertaking* for part 3A is in section 55B.

Clause 93 Dictionary, definition of *ground for disciplinary action*

Clause 93 repeals and replaces the definition of ‘ground for disciplinary action’. The definition of *ground for disciplinary action* is amended to apply to the entire Gaming Machine Act, not just part 4. See also the *Legislation Act 2001*, section 156.

This clause is related to the amendment in clause 29 and is consequential to the amendment in clause 28 which inserts new part 3A (Enforceable undertakings).

Clause 89, which amends the Dictionary definition of ‘disciplinary action’, is related to this amendment.

Clause 94 Dictionary, new definitions of *inoperable* and *licensee*

Clause 94 inserts definitions of the terms ‘inoperable’ and ‘licensee’ in the Dictionary of the Gaming Machine Act.

Inoperable, in relation to a gaming machine, means to switch off and to secure the gaming machine so it cannot be played. Numerous sections of the Act refer to rendering a gaming machine inoperable and the insertion of this definition clarifies the requirement.

The definition of *licensee* for division 2A.3 is in section 10I.

Clause 95 Dictionary, new definition of *minimum community contribution*

Clause 95 inserts a definition of the term ‘minimum community contribution’ in the Dictionary of the Gaming Machine Act. The definition of minimum community contribution for part 12 is in section 164.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 96 Dictionary, definition of *permit*

Clause 96 omits the definition of ‘permit’ as this term will no longer be used in the Gaming Machine Act as a consequence of amendments included in the Amendment Bill.

Clause 97 Dictionary, definition of *problem gambling assistance fund*

Clause 97 omits the definition of ‘problem gambling assistance fund’ in line with the Government’s adoption of a broader public health approach to reducing gambling harm. The name of the Fund is to be updated to be known as the ‘Gambling Harm Prevention and Mitigation Fund’. Clause 91 provides for the new Fund name to be inserted in the Dictionary of the Gaming Machine Act.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 98 Dictionary

Clause 98 omits the definitions of several terms that will no longer be used in the Gaming Machine Act as a consequence of amendments included in the Amendment Bill. The defined terms to be omitted are: ‘quarantine period’, ‘quarantine permit’, ‘quarantined authorisation’ and ‘quarantined gaming machine’.

Clause 99 Dictionary, new definitions of *recipient* and *reporting year*

Clause 99 inserts definitions of the terms ‘recipient’ and ‘reporting year’ in the Dictionary of the Gaming Machine Act.

The definition of *recipient* for part 12 is in section 164.

The definition of *reporting year* for a licensee for part 12 is in section 164.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 100 Dictionary, definition of *required community contribution*

Clause 100 omits the definition of ‘required community contribution’ from the Dictionary. This amendment is consequential to the community contributions reforms. As part of the reforms, a number of new terms are inserted in the Dictionary of the Gaming Machine Act, including ‘community purpose contribution’ under clause 85 and ‘minimum community contribution’ under clause 95.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 101 Dictionary, new definitions

Clause 101 inserts definitions of the terms ‘second compulsory surrender day’, ‘surrendered authorisation’ and ‘surrender obligation’ in the Dictionary of the Gaming Machine Act.

The definition of *second compulsory surrender day* for part 2A is in section 10.

The definition of *surrendered authorisation* for division 2A.2 is in section 10A.

The definition of *surrender obligation* for division 2A.3 is in section 10I.

Clause 102 Dictionary, new definition of *tax period*

Clause 102 inserts a definition of the term ‘tax period’ in the Dictionary of the Gaming Machine Act. The definition of *tax period* for part 12 is in section 157A.

This clause commences on 1 July 2019 when the community contributions reforms commence.

Clause 103 Dictionary, new definitions

Clause 103 inserts definitions of the terms ‘undertaking’, ‘voluntary surrender agreement’, ‘voluntary surrender day’ and ‘voluntary surrender notice’ in the Dictionary of the Gaming Machine Act.

The definition of *undertaking* for part 3A is in section 55A.

The definition of *voluntary surrender agreement* for division 2A.2 (Voluntary surrender) is in section 10C.

The definition of *voluntary surrender day* for division 2A.2 (Voluntary surrender) is in section 10A.

The definition of *voluntary surrender notice* for division 2A.2 (Voluntary surrender) is in section 10B.

Clause 104 Further amendments, mentions of *permit*

Clause 104 omits the term ‘permit’ and replaces it with ‘storage permit’ in the following sections of the Gaming Machine Act:

- section 127X to 127ZB
- section 127ZC(3)(a) and (b)
- sections 127ZE(1) and 127ZF(1).

The term ‘permit’ currently refers to a storage permit or a quarantine permit in the listed sections. As quarantine permits will no longer exist following the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above, all references to ‘permit’ in these sections of the Gaming Machine Act will be amended to ‘storage permit’.

Clause 105 Further amendments, mentions of permits

Clause 105 omits the term ‘permits’ and replaces it with ‘storage permits’ in the following sections of the Gaming Machine Act:

- subdivision 6A.7.4 heading
- subdivision 6A.7.5 heading
- subdivision 6A.7.6 heading
- subdivision 6A.7.7 heading
- section 127ZB heading
- section 127ZC heading
- subdivision 6A.7.8 heading
- section 127ZE heading.

The term ‘permits’ currently refers to both storage permits and quarantine permits in the listed sections. As quarantine permits will no longer exist following the repeal of subdivision 6A.7.3 (Quarantine permits) under clause 44 above, all references to ‘permits’ in these sections of the Gaming Machine Act will be amended to ‘storage permits’.

PART 4 GAMING MACHINE REGULATION 2004

Clause 106 Cashless gaming systems—control procedures Section 32 (2) and examples and note

Part 6 of the Gaming Machine Regulation provides for cashless gaming systems. A cashless gaming system is peripheral equipment connected to a gaming machine that allows the playing of a gaming machine using gaming credits instead of, or as well as, money. Under section 34 of the Regulation, unredeemed gaming credits expire after one year and can no longer be redeemed. Licensees are currently required to distribute funds equivalent to the expired credits to patrons of the authorised premises in a way approved by the Commission.

Section 32(2) requires that a licensee’s control procedures state how often the licensee will distribute expired gaming credits to patrons. There are two examples under section 32(2)

and a note pointing to the requirement that a licensee must seek the Commission's approval to distribute expired gaming credits under section 34(4).

Clause 106 omits section 32(2) and its examples and note from the Gaming Machine Regulation. This amendment is consequential to the changes to the distribution methods and reporting on distribution of expired gaming credits in clauses 107 to 109 below. As a result of these amendments, it is no longer necessary for the licensee's control procedures to state how often expired gaming credits will be distributed to patrons.

Clause 107 Unredeemed gaming credits—expiry after 1 year
Section 34 (3)

Section 34(3) of the Gaming Machine Regulation establishes the requirement that licensees are required to distribute funds equivalent to the expired credits to patrons of the authorised premises in a way approved by the Commission.

Gaming credits expire throughout the year and depending on the approach to distribution adopted by the licensee, the requirement to seek written approval of a distribution method can create considerable administrative burden.

To improve the operation of this section and reduce red tape, clause 107 amends section 34(3) of the Regulation to provide that expired gaming credits must be distributed in one of the following ways:

- by adding funds to an existing linked-jackpot arrangement or to a stand-alone progressive jackpot at the premises where the gaming credits were accumulated;
- by using a lottery conducted under the *Lotteries Act 1964* at the premises where the gaming credits were accumulated; or
- in a way approved in writing by the Commission.

Clause 108 Section 34 (4) and note

Section 34(4) of the Gaming Machine Regulation currently provides that a licensee must apply to the Commission for approval of a method to distribute expired gaming credits within one year after the day the credits expire.

In line with the amendments at clause 107 above, clause 108 amends section 34(4) to provide that the licensee must apply for approval of a distribution method within 12 months after the day the gaming credits expire, only where the gaming credits are to be distributed through a method other than an existing linked-jackpot arrangement or a lottery at the premises where the gaming credits were accumulated.

To maintain a time limit on the distribution of expired gaming credits, whatever the method of distribution, clause 108 inserts section 34(5) to provide that if funds equivalent to the expired gaming credits have not been distributed before the end of the financial year following the financial year in which the credits expire, the funds are forfeited to the Gambling Harm Prevention and Mitigation Fund.

New section 34(6) provides for the definition of ‘stand-alone progressive jackpot’ for section 34.

An example is included under section 34(6) to illustrate the operation of this provision.

Clause 109 Section 35

Section 35 of the Gaming Machine Regulation provides that a licensee that is operating a cashless gaming system must provide an annual report stating the value of expired gaming credits and the amount of funds distributed (if any) for each month of the year.

Clause 109 amends section 35 to add a requirement that the annual report must also include details of the distribution of expired credits. This requirement will assist the Commission in monitoring the distribution of expired credits following the changes introduced under clauses 106 to 108 above. An example is included under section 35(b) to illustrate the operation of this amended provision.

Amended section 35 also provides that the information must be included in the licensee’s annual report under section 54 of the Gaming Machine Act, rather than a separate annual report being required.

Clause 110 Winning linked jackpots Section 46 (2) (a)

Clause 110 of the Gaming Machine Regulation provides for steps the licensee must take where a person claims to have won a linked jackpot on a linked gaming machine on authorised premises.

Under section 46(2)(a), the licensee must make the gaming machine inoperable until the licensee has worked out the matters to be worked out under paragraphs (b) and (c), which relate to working out whether the person has won a linked jackpot and the amount won.

As a consequential amendment to clause 94 which inserts the definition of ‘inoperable’ in the Dictionary of the Gaming Machine Act, section 46(2)(a) is amended to provide that the licensee must take all reasonable steps necessary to prevent the gaming machine being played until the licensee has worked out the matters to be worked out under paragraphs (b)

and (c). Switching the gaming machine off, as required under the definition of inoperable, would not allow the licensee to work out the required matters in section 46.

Clause 111 Form of permit—Act, s 127S (e)
Section 70A

Clause 111 omits the term ‘permit’ and replaces it with ‘storage permit’ in section 70A of the Gaming Machine Regulation.

The term ‘permit’ currently refers to a storage permit or a quarantine permit. As quarantine permits will no longer exist following the repeal of subdivision 6A.7.3 (Quarantine permits) of the Gaming Machine Act under clause 44 above, references to ‘permit’ in section 70A of the Regulation will be amended to ‘storage permit’.

SCHEDULE 1 REPEAL OF UNCOMMENCED AMENDMENTS

Part 1.1 Casino (Electronic Gaming) Act 2017

Item 1.1 Schedule 4

Schedule 4 of the Casino (Electronic Gaming) Act is a technical provision included in that Act to support the relocation of uncommenced provisions of the Reform Act, which provided for the maximum number of authorisations to be set at a ratio of no more than 15 authorisations for every 1,000 adults living in the ACT. This amendment was originally scheduled to commence, by default, on 31 August 2018, if not commenced earlier by notice. The default commencement date was amended by the *Casino and Other Legislation Amendment Act 2018*.

Under item 1.3, schedule 1 below, schedule 1 of the Reform Act is repealed. As a result, the uncommenced ratio provisions are repealed and will never commence. Therefore, the uncommenced provisions in schedule 4 of the Casino (Electronic Gaming) Act will also never commence and are being removed from that Act by item 1.1, schedule 1 of the Amendment Bill.

Part 1.2 Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016

Item 1.2 Schedule 1

Schedule 1 of the Gaming and Racing (Red Tape Reduction) Legislation Amendment Act included a number of amendments to schedule 1 of the Reform Act, which were to commence at the same time as schedule 1 of the Reform Act commenced.

Under item 1.3, schedule 1 below, schedule 1 of the Reform Act is repealed. As a result, the uncommenced amendments in schedule 1 of the Red Tape Reduction Act provisions will also never commence and are being removed from that Act by item 1.2, schedule 1 of the Amendment Bill.

Provisions relating to storage permits that were formerly included in schedule 1 of the Red Tape Reduction Act have been included in the Amendment Bill.

Part 1.3 Gaming Machine (Reform) Amendment Act 2015

Item 1.3 Schedule 1

Schedule 1 (Other amendments –compulsory surrender) of the Reform Act provided for Phase 2 of the gaming machine trading scheme, including the ratio of 15 gaming machine authorisations per 1,000 adults, and associated provisions, including compulsory surrender provisions to reduce the maximum number of gaming machine authorisations to achieve the ratio.

Item 1.3, schedule 1 of the Amendment Bill repeals schedule 1 (Other amendments – compulsory surrender) of the Reform Act. Provisions that were formerly included in schedule 1 have been included in the Amendment Bill, where required – including amended compulsory surrender provisions and provisions associated with the repeal of quarantine permits.

Schedule 1 of the Reform Act, which implemented Phase 2 of the gaming machine trading scheme and was originally due to commence no later than 31 August 2018 (commencement amended to 31 August 2019 by the *Casino and Other Gaming Legislation Amendment Act 2018*), is repealed and will no longer commence.

SCHEDULE 2 DELAYED AMENDMENT - GAMBLING AND RACING CONTROL ACT 1999

Item 2.1 Section 50

Item 2.1, schedule 2 of the Amendment Bill is a delayed amendment that amends the definition of ‘surrendered’ in section 50(5) of the Control Act following the reduction to 4,000 gaming machine authorisations. Specifically, the definition will be amended to remove the references to authorisations surrendered under section 10D or section 10M of the Gaming Machine Act (i.e. the voluntary or compulsory surrender of authorisations), which is being inserted under clause 16 of the Amendment Bill.

Schedule 2 commences on 1 May 2020 and on this date, the formula for working out the cap on the number of authorisations for electronic gaming will take into account the number of authorisations surrendered under section 37F(1)(c) of the Gaming Machine Act, as well as authorisations cancelled or forfeited.

Item 2.2 New section 50A

Item 2.2, schedule 2 of the Amendment Bill inserts a new section 50A to the Control Act, which provides for a review of the cap on the number of authorisations in the ACT. New section 50A provides that before 1 May 2025, the Minister must review the operation of section 50 of the Control Act. The Minister must present a report of the review to the Legislative Assembly before that date.

New section 50A will expire on 1 May 2026, which is one year after the report of the review must be presented to the Legislative Assembly.

Item 2.3 Section 101

Section 100 of the Control Act is a transitional provision that ensured the existing maximum number of authorisations was retained when the transfer of the maximum number formula from the Gaming Machine Act to the Control Act occurred. A notice under section 10(3) of the Gaming Machine Act in force immediately before the commencement of section 55 of the Casino (Electronic Gaming) Act was taken to be a notice under section 50(3) of that Act.

Under existing section 101 of the Control Act, this transitional provision expires on the commencement of schedule 4 of the Casino (Electronic Gaming) Act. Schedule 4 is a technical provision included in the Casino (Electronic Gaming) Act to support the relocation of uncommenced provisions of the Reform Act, which provided for the maximum number of authorisations to be set at a ratio of no more than 15 authorisations for every 1,000 adults living in the ACT. This amendment was originally scheduled to commence, by default, on 31 August 2018, if not commenced earlier by notice. As provided by the *Casino and Other Gaming Legislation Amendment Act 2018*, the default commencement date for the ratio and other Phase 2 trading scheme provisions was amended to 31 August 2019 to allow time for this revised approach that aligns with current Government policy to be finalised and considered by the Legislative Assembly.

Under item 1.3, schedule 1 above, schedule 1 of the Reform Act is repealed. As a result, the uncommenced ratio provisions are repealed and will never commence. Therefore, item 1.1, schedule 1 of the Amendment Bill provides that the uncommenced provisions in schedule 4 of the Casino (Electronic Gaming) Act are also repealed and will never commence.

Instead of the expiry of the transitional provision occurring with the commencement of schedule 4 of the Casino (Electronic Gaming) Act, item 2.3, schedule 2 of the Amendment Bill amends the expiry of the transitional provision in section 101 of the Control Act so that it expires one year after it commences. The transitional provision has operated to preserve any notice made under the Gaming Machine Act about the maximum number of authorisations in the ACT and is no longer required.