

**2019**

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

**GAMING LEGISLATION AMENDMENT BILL 2019**

**EXPLANATORY STATEMENT**

Presented by  
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## **GAMING LEGISLATION AMENDMENT BILL 2019**

### **INTRODUCTION**

This explanatory statement relates to the Gaming Legislation Amendment Bill 2019 (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. The Control Act provides for a regulation to prescribe codes of practice in relation to gaming laws.

The *Gambling and Racing Control (Code of Practice) Regulation 2002* has been made under section 18 of the Control Act.

### **BACKGROUND**

The Government committed in the *Parliamentary Agreement for the 9<sup>th</sup> 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.

In August 2018, the Attorney-General tabled the Government's *Pathway to 4,000 Gaming Machine Authorisations by 2020*. This Pathway responded to the findings and recommendations of the *Club Industry Diversification Support Analysis Report*, which was undertaken by Mr Neville Stevens AO.

Recommendation 4 of the Report was about the establishment of a Diversification Support Fund (the Fund) financed by a contribution from industry per gaming machine authorisation held. The Fund is intended to provide both an incentive not to retain unused authorisations

(through its contribution model) and to provide ongoing funding to assist clubs to improve their operations and to develop and implement diversification strategies.

The Government agreed to this recommendation and will match industry funding for the first three years of the Fund's operation (from 2019-20).

Recommendation 5 of the Report proposed that the Government mandate training for club directors within 12 months of their appointment. The training program is to cover board member responsibilities, management collaboration and finance for club board, together with training on harm minimisation and the role of boards in overseeing the provision of responsible gambling services. The report recommended that the cost of mandatory training be met from the Fund. This recommendation was also agreed by Government.

## **OVERVIEW OF THE AMENDMENT BILL**

The Amendment Bill amends the Gambling and Racing Control Act and the Gaming Machine Act to establish the Diversification and Sustainability Support Fund. The amendments provide for governance arrangements and require industry contributions to the Fund based on the number of gaming machine authorisations held. The Amendment Bill also provides the framework for mandatory training requirements for club boards, executives and staff.

The Amendment Bill also includes a small number of minor policy and technical amendments that are required to uncommenced provisions that are part of the reforms to the community contribution scheme, or to the Gaming Machine Act more generally, to ensure clarity and to improve the operation of the provisions.

The Amendment Bill amends the following legislation:

- *Gambling and Racing Control Act 1999*
- *Gaming Machine Act 2004*

## **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* (HRA).

The measures introduced in the Amendment Bill will support clubs in reducing their reliance on gaming machine revenue and diversifying their income streams, which is intended to reduce gambling harm. The measures will also support the sustainability of clubs, which is intended to ensure that services and facilities provided by clubs continue to be available. A number of provisions support the implementation of the reforms to the community contributions scheme, which will improve the direct benefit of the scheme to the

community. These measures may be seen, to some extent, as positively engaging the protection of the family and children (section 11).

The provision in clause 6 of the Amendment Bill that allows for a code of practice made under section 18(1) of the Control Act to provide for the protection of privacy may be seen as positively engaging the right to privacy and reputation (section 12 HRA).

New subdivision 11.3.3 within clause 22 of the Amendment Bill, which restrict eligibility for appointment to the advisory board of the diversification and sustainability support fund and require the disclosure of advisory board members' interests and associations, may be seen as limiting the right to privacy and reputation (section 12 HRA) and the right to peaceful assembly and freedom of association (section 15(2) HRA). In addition, it is expected that individual applicants to the fund would be required to disclose some personal and financial information in order for the advisory board to assess their applications. This requirement may arise under guidelines made under new section 163J inserted by clause 22.

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 and right to peaceful assembly and freedom of association, section 15(2) – Advisory board members' eligibility for appointment and disclosure of interests**

##### *The nature of the right affected*

Section 12 (Privacy and reputation) of the *Human Rights Act 2004* 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.

Section 15(2) of the Human Rights Act provides that everyone has the right to freedom of association.

Clause 22 of the Bill will insert new subdivision 11.3.3 in the Gaming Machine Act, which provides for an advisory board for the diversification and sustainability support fund. The advisory board's function is to advise the Minister on matters concerning the diversification and sustainability support fund, and to make recommendations about payments to be made from the fund.

New section 163N(1) inserted by clause 22 of the Amendment Bill establishes when a person is ineligible to be, or to remain, appointed to the advisory board. The Minister must not appoint a person, or must end an appointment of a person, to the advisory board if:

- the person, or the person's domestic partner, is an influential person for a club licensee (see section 8 of the Gaming Machine Act for the definition of influential person);
- the person is an employee, representative or board member of an industry association for clubs;
- the person has been convicted, or found guilty, of an offence against a gaming law;
- within the last five years the person has been convicted or found guilty of certain offences; or
- the Minister considers that the person is unlikely to be able to exercise the functions of a member of the advisory board because of the person's business association, financial association or close personal association with another person.

Clause 22, new section 163N(2) sets out circumstances in which an advisory board member's appointment may be ended. These circumstances include where the person has:

- contravened a Territory law;
- failed to take all reasonable steps where a conflict of interest may arise during the exercise of the person's functions as a member of the advisory board;
- is bankrupt or personally insolvent;
- is absent from three consecutive meetings of the board, otherwise than on approved leave;
- is affected by physical or mental incapacity that substantially affects the person's ability to exercise the functions of a member of the advisory board.

Clause 22, new section 163N(3) provides the definition of the term 'association' for the section. In this instance, an association of a person with another person does not include the person's membership of a club unless the person is involved in managing or running the club. This provision ensures that a person who holds a club membership but is not involved in club decision-making remains eligible for appointment to the advisory board.

Clause 22, new section 163P provides for the disclosure of interests by advisory board members, including in relation to financial and personal interests.

In order for a person to be an advisory board member, a person may need to disclose information about their current interests and associations, their partner's business interests and their criminal history. These requirements engage the right to privacy and reputation and the right to freedom of association.

*The importance of the purpose of the limitation*

The fund will be responsible for making recommendations to the Minister about payments from the diversification and sustainability support fund.

While an advisory board's power is restricted to making a recommendation to the Minister about fund payments, it is important that such a recommendation be as independent and impartial as possible, and that the community can be confident that it has not been improperly influenced.

Advisory board members' association and personal information, including criminal history, is considered necessary and reasonable to ensure the integrity of the fund.

*The nature and extent of the limitation*

Limitations on advisory board members' associations and the disclosure of advisory board members' interests are applied only in connection with appointment to the advisory board of the diversification and sustainability support fund. As a result, it is associations and information relevant to appointment as an advisory board member that are captured by the requirement.

The advisory board will be responsible for making recommendations about the distribution of over \$2 million in funding each year (for the first three years of the fund's operation) and it is imperative that these recommendations are, and are seen to be, fair and impartial.

The limits on advisory board members' associations are restricted to those that are relevant to their membership of the board and capacity to carry out its functions.

Strong safeguards are in place for the handling, confidentiality, and permitted disclosures of information acquired by a person under a gaming law under Division 4.4 (Secrecy) of the Gambling and Racing Control Act. Unauthorised disclosure is an offence, with a maximum penalty of 50 penalty units, imprisonment for 6 months or both. In addition, the advisory board will need to comply with the Territory Privacy Principles under the *Information Privacy Act 2014* in relation to any personal information obtained.

### *The relationship between the limitation and its purpose*

It is important to ensure that advisory board members do not have associations that would conflict with the proper exercise of their functions.

The provision of personal and financial information and the disclosure of interests is an essential part of determining whether a person is suitable for appointment to, or ongoing involvement in, the advisory board for the fund.

Due consideration was given to the appropriateness of restrictions on advisory board membership, however, in the interest of integrity, it is considered that these limitations are necessary to assist the Minister in appointing an advisory board that can provide an independent, impartial recommendation about fund payments.

### *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 provisions. There is no less restrictive means reasonably available as the provision of advisory board members' information is an important part of determining the suitability of persons for appointment to, and ongoing involvement in, the advisory board. Similarly, community and industry confidence in the advisory board's recommendations would be affected if relevant associations of board members were not considered in making an appointment.

It is important to note also that there is no compulsion on a person to seek or accept appointment to the advisory board.

To the extent that advisory board membership eligibility and information disclosure requirements engage a person's right to freedom of association and right to privacy and reputation, it is likely to be reasonable and demonstrably justified in a free and democratic society. It is important that the Minister is aware of advisory board members' interests, associations and criminal history to uphold the integrity of decisions about payments made from the diversification and sustainability support fund. Existing restrictions on the use and disclosure of information obtained under a gaming law operate to mitigate the human rights impacts.

## **Right to privacy and reputation, section 12 – Individual applications for payments from the diversification and sustainability support fund**

### *The nature of the right affected*

Section 12 (Privacy and reputation) of the *Human Rights Act 2004* 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 22 of the Amendment Bill will insert new division 11.3 in the Gaming Machine Act, which provides for the diversification and sustainability support fund.

The advisory board established under clause 22, new section 163K will make recommendations to the Minister about payments to be made from the fund.

New section 163J provides that the Minister may make guidelines for applications from entities seeking payments from the fund. The guidelines are a notifiable instrument under new section 163J(3).

The majority of applications to the fund are expected to come from club licensees, which are all bodies corporate in accordance with the definition of a club under the Gaming Machine Act.

It is possible, however, that an individual applicant may seek payments from the fund. For example, an individual staff member might seek support for retraining where a club has diversified away from gaming machine revenue. Such an application would not be precluded by the use of the term 'entities' in new section 163J, as it includes a person under the definition of this term in the *Legislation Act 2001*. The purposes of the fund in section 163F specifically include training and skills development for club workers, executives and members of club management committees and boards.

For the advisory board to be able to consider the merits of an individual application, it is anticipated that the person would need to disclose some personal and financial information relevant to their application. The guidelines to be made under new section 163J of clause 22 may set out requirements for this information.

The information required to be disclosed would be limited to that necessary to make a recommendation to the Minister about payments from the fund.

#### *The importance of the purpose of the limitation*

The provision of personal and financial information of an individual engages the right to privacy and reputation.

Without the provision of relevant personal and financial information, the advisory board would not be able to consider an individual application for payments from the fund.

While fund recipients could have been limited to bodies corporate only to avoid engaging the right to privacy and reputation of individuals, this may have unnecessarily limited the purposes to which funding can be applied.



The ability for the advisory board to receive information about individual applications is critical to the advisory board's ability to perform its function of making a recommendation to the Minister about payments from the fund.

#### *The nature and extent of the limitation*

Individuals can choose whether they wish to make an application to the diversification and sustainability support fund.

To the extent that an application includes personal and financial information about an individual, an advisory board member who acquires confidential documents or information under the Gaming Machine Act is considered to be a gaming officer for the purposes of the Control Act, division 4.4 (Secrecy). Under this division, unauthorised disclosure of confidential information is an offence, with a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

Clause 10 of the Amendment Bill expands the permitted disclosures under section 37 of the Control Act to include public servants, but only for the purpose of administering the diversification and sustainability support fund (division 11.3 of the Act). The term 'public servant' is defined in the Dictionary of the *Legislation Act 2001* and it is limited to a person employed in the ACT Public Service.

In addition, advisory board members will need to comply with the Territory Privacy Principles set out in Schedule 1 of the *Information Privacy Act 2014*.

As part of their applications to the diversification and sustainability support fund, it is anticipated that clubs may provide sensitive information about their business operations and future plans. As noted above, club licensees are all bodies corporate and therefore the provision of this information does not engage the right to privacy.

#### *The relationship between the limitation and its purpose*

Careful consideration was given to the nature and function of the advisory board and the appropriate powers for the board. A key function of the advisory board is to provide a recommendation to the Minister about payments to be made from the diversification and sustainability support fund. The provision of information to the advisory board is essential to it being able to consider applications and perform its statutory function.

#### *Less restrictive means reasonably available to achieve the purpose*

In developing the Bill an assessment was made as to whether any less restrictive means were available to achieve the purpose. There is no less restrictive means reasonably available since relevant personal and financial information about an individual is a critical element in forming a recommendation to the Minister about payments to be made from the

fund. As noted above, there is no requirement on an individual to make an application or provide any information to the advisory board except in the context of an application for funding.

It will not be possible for the advisory board to properly carry out its appointed statutory function without access to relevant information. When provided with such information, advisory board members are bound by existing restrictions on the use and disclosure of information obtained under a gaming law, including the secrecy provisions under the Control Act and the Territory Privacy Principles.

To the extent that the requirement to provide an individual's personal and financial information to the advisory board for the diversification and sustainability support fund engages a person's right to privacy and reputation, it is likely to be reasonable and demonstrably justified in a free and democratic society.

#### Revenue/Cost Implications

The diversification and sustainability support fund will be funded by industry contributions, matched by Government contributions in the first three years of the fund's operation. The formula for fund contributions is set out in clause 22 of the Amendment Bill, new section 163H.

Other than administrative costs associated with the fund, there are no other cost implications arising from this Amendment Bill. Resourcing within the Justice and Community Safety Directorate and Chief Minister, Treasury and Economic Development Directorate will support the administration of the fund. Fund monies will not be directed towards these costs.

## 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 2019* (the Amendment Act).

#### **Clause 2      Commencement**

Clause 2 provides that the Amendment Act commences immediately after the commencement of section 72 of the *Gaming Legislation Amendment Act 2018*. Section 72 is scheduled to commence on 1 July 2019.

#### **Clause 3      Legislation amended**

This clause lists the legislation amended by the Amendment Bill. The Bill will amend the:

- *Gambling and Racing Control Act 1999*
- *Gaming Machine Act 2004*.

### PART 2 - GAMBLING AND RACING CONTROL ACT 1999

#### **Clause 4      Code of practice                   Section 18 (1)**

Section 18(1) of the Control Act provides a regulation-making power for codes of practice under the Act.

As currently drafted, section 18(1) provides that a regulation may prescribe 1 or more codes of practice to apply to specified classes of people who are licensed or otherwise authorised to do things under a gaming law.

Clause 4 amends the existing power to make it clear that codes of practice made under the Control Act may apply in relation to:

- a person who is licensed or has a function under a gaming law;
- a licensee's executive or members of a licensee's board or management committee; or
- a licensee's premises or a worker at a licensee's premises.

The ACT has committed to implement the National Consumer Protection Framework for online wagering. The measures within the Framework will be implemented through a combination of Commonwealth, and State and Territory regulatory changes. As a result, clause 4 also amends section 18(1) to include new paragraph (d) to provide that a code of

practice may apply in relation to commitments made under the National Consumer Protection Framework (see clause 8 below).

**Clause 5      Section 18 (2) (e)**

Section 18(2) of the Control Act provides that a code of practice may include, but is not limited to, guidelines about the matters set out in that section.

In particular, section 18(2)(e) provides that a code of practice may include guidelines about training staff to recognise and deal appropriately with people who are experiencing gambling harm or are at risk.

Clause 5 adds executives or members of a licensee's board or management committee to this provision. Changes to the *Gambling and Racing Control (Code of Practice) Regulation 2002* are being progressed separately to provide for this training.

**Clause 6      New section 18 (2) (g) to (i)**

As outlined above, section 18(2) of the Control Act provides that a code of practice may include, but is not limited to, guidelines about the matters set out in that section.

Clause 6 inserts new section 18(2)(g) to (i) to include additional matters about which guidelines may be included in a code of practice. These items reflect changes being made to the *Gambling and Racing Control (Code of Practice) Regulation 2002* that are being progressed separately.

The proposed changes to the Code of Practice Regulation include the observation and recording of gambling harm incidents. New section 18(2)(g) makes it clear that guidelines about the protection of privacy may be included in a code of practice.

New section 18(2)(h) provides that guidelines about providing workplace rights training for workers at premises of club licensees may be included in a code of practice.

The proposed changes to the Code of Practice Regulation include new requirements for workplace rights training for club workers. Workers who are better informed about their rights as employees, and particularly their entitlements with respect to security of employment, would be better equipped and empowered to comply with their gambling harm reduction obligations under the legislative framework.

It can be a confronting, and difficult exercise for frontline club workers (who are likely to be the ones who are in the best position to observe signs of gambling harm in patrons) to engage in interventions which seek to prevent gambling harm, when those actions may also have the effect of decreasing the revenue of their employer. The provision of training to

club sector staff in workers' rights would equip clubs' workforce with the skills and confidence to undertake successful harm minimisation interventions.

New section 18(2)(i) provides that guidelines about providing training in corporate governance to a club licensee's executive or members of a club licensee's board or management committee may be included in a code of practice.

It should be noted, however, that the list of matters outlined in section 18(2) is not exclusive.

**Clause 7      New section 18 (2A)**

Clause 7 inserts new section 18(2A) to provide that a code of practice may include powers of direction for the Commission to ensure compliance with the code.

As noted above, the Control Act provides the overarching legislative framework for gambling in the ACT. Many of the individual gambling-related Acts include specific powers of direction for the Commission.

This amendment is a technical amendment to ensure that all licensees that are required to comply with a code of practice are subject to the Commission's direction where such powers of direction have been included in the code.

**Clause 8      New section 18 (4)**

Clause 8 provides the definition of the term 'National Consumer Protection Framework' for section 18 of the Control Act. This term means the National Consumer Protection Framework for Ongoing Wagering in Australia, National Policy Statement of Australian Governments, as in force from time to time.

The Framework is publicly available at <https://www.dss.gov.au/communities-and-vulnerable-people-programs-services-gambling/national-consumer-protection-framework-for-online-wagering-national-policy-statement>.

**Clause 9      Education and counselling  
Section 19 (1) (b) (iii)**

Section 19 of the Control Act provides for the Commission's education and counselling activities.

Clause 9 omits the existing reference to 'for people experiencing gambling harm' in section 19(1)(b)(iii) of the Control Act and replaces it with the term 'about gambling harm'. This better reflects the Government's public health approach to gambling harm and the intent of the provision. The intent here is to provide for publicity and education programs

about gambling harm. Existing section 19(1)(a) is about providing counselling for people who are experiencing gambling harm.

**Clause 10 Permitted disclosure to particular people**

**New section 37 (d) (iiia)**

Strong safeguards are in place for the handling, confidentiality, and permitted disclosures of information acquired by a person under a gaming law under division 4.4 (Secrecy) of the Control Act. Unauthorised disclosure is an offence, with a maximum penalty of 50 penalty units, imprisonment for 6 months or both. In addition, compliance with the Territory Privacy Principles under the *Information Privacy Act 2014* is required.

As part of their applications to the diversification and sustainability support fund, it is anticipated that clubs may provide sensitive information about their business operations and future plans. Applications to the fund from individuals may also include personal information about the applicant.

For the purposes of division 4.4, section 34 of the Control Act defines gaming officers to include any person who has acquired a confidential document or confidential information under a gaming law or as a result of exercising functions under or in relation to a gaming law. This means that material obtained by members of the advisory board for the diversification and sustainability support fund is subject to the secrecy provisions in division 4.4 and protects the information provided in applications to the fund.

The advisory board may wish to seek expert input from ACT Government agencies in relation to clubs' proposals. For example, it may be relevant to consult with the Environment, Planning and Sustainable Development Directorate about potential alternative land uses to support diversification activities.

Clause 10 expands the permitted disclosures under section 37 of the Control Act to include public servants, but only for the purpose of administering the diversification and sustainability support fund (division 11.3 of the Act). The term 'public servant' is defined in the Dictionary of the *Legislation Act 2001* and it is limited to a person employed in the ACT Public Service.

**Clause 11 Dictionary, new definition of *club licensee***

Clause 11 amends the Dictionary of the Control Act to include the definition of 'club licensee', meaning a licensee that is a club under the Gaming Machine Act. This term is introduced to the Control Act in amendments outlined in clauses above.

**Clause 12 Dictionary, new definition of *workplace rights training***

Clause 12 amends the Dictionary of the Control Act to include the definition of ‘workplace rights training’, meaning training on rights and obligations under laws in force in the ACT that apply in relation to workers at premises of club licensees.

The definition provides the following examples of rights and obligations:

- employment agreements
- minimum wages and employment conditions
- termination of employment agreements
- workplace safety.

**PART 3 - GAMING MACHINE ACT 2004**

**Clause 13 Section 10F heading**

Clause 13 is a minor amendment that changes the heading of section 10F of the Gaming Machine Act from ‘Offence—operating surrendered gaming machine’ to ‘Offence—operating gaming machine where authorisation surrendered’. The amended heading more accurately reflects section 10F, as it is authorisations not gaming machines that are surrendered under Part 2A of the Act.

**Clause 14 Transferring an authorisation certification  
Section 37E (2), note**

Clause 14 is a minor and technical amendment that corrects a cross-reference in the note under section 37E of the Gaming Machine Act. The reference in the note to the community contributions shortfall tax (under section 172B) was inadvertently omitted in amendments introduced by the *Gaming Machine Amendment Act 2018*, which are scheduled to commence on 1 July 2019.

**Clause 15 Section 127T heading**

Clause 15 is a minor amendment that aligns the heading of section 127T of the Gaming Machine Act with changes made to section 127T in the *Gaming Machine Amendment Act 2018*, which repealed references to ‘permit’ and replaced them with ‘storage permit’. This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) in that Act.

**Clause 16 Section 127U heading**

Clause 16 is a minor amendment that aligns the heading of section 127U of the Gaming Machine Act with changes made to section 127U in the *Gaming Machine Amendment Act 2018*, which repealed references to ‘permit’ and replaced them with ‘storage permit’. This amendment is consequential to the repeal of subdivision 6A.7.3 (Quarantine permits) in that Act.

**Clause 17      Section 127U (1) and (3)**

Section 127U of the Gaming Machine Act provides for the term of a storage permit. Clause 17 amends section 127U(1) and (3) 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 the *Gaming Machine Amendment Act 2018*.

**Clause 18      Audit of financial statements etc  
Section 158 (1)**

Section 158(1) of the Gaming Machine Act provides that a licensee must provide the Commission with a copy of audited financial statements or certified income and expenditure statements (depending on the level of gross revenue of the licensee) as soon as practicable (but not later than 6 months) after the end of each financial year.

Clause 18 is a minor amendment to clarify that the relevant statements must be provided to the Commission as soon as practical (but not later than 6 months) after each financial year of the licensee. This amendment is required because a number of clubs have a non-standard financial year (i.e. not 1 July to 30 June).

**Clause 19      Section 161A**

Section 161A of the Gaming Machine Act is part of provisions that enable a quarterly payment option for gaming machine tax for small or medium clubs and small or medium club groups. Clubs with gross gaming machine revenue of not more than \$4 million are eligible for the GMT rebate and therefore may elect the quarterly payment option.

Clause 19 amends section 161A(1) to provide that a licensee that is entitled to the GMT rebate under section 162 of the Gaming Machine Act may also elect to pay their contributions to the diversification and sustainability support fund on a quarterly basis. Without this amendment, small or medium clubs and small or medium club groups would be required to make contributions to the fund on a monthly basis, and it would be contrary to the reforms introduced in 2017 that eased the administrative burden on small and medium clubs by allowing tax lodgements and payments to be made quarterly rather than monthly.

The provision is otherwise the same as the existing section 161A.

**Clause 20      Section 163C heading**

The heading of section 163C of the Gaming Machine Act is currently 'Payment from gambling harm prevention and mitigation fund-required payment funds'. Clause 20 is a minor amendment that changes the heading of section 163C to 'Payment from gambling



harm prevention and mitigation fund-required payments and community purpose contributions' as this better reflects the section.

**Clause 21 Section 163D heading**

The heading of section 163D of the Gaming Machine Act is currently 'payment from gambling harm prevention and mitigation fund-community contribution funds'. Clause 21 is a minor amendment that changes the heading of section 163D to 'Payment from gambling harm prevention and mitigation fund-minimum community contributions' as this better reflects the section.

**Clause 22 New division 11.3**

Clause 22 inserts new division 11.3 (Diversification and sustainability support fund) into part 11 of the Gaming Machine Act, which relates to finance. New division 11.3 includes new sections 163E to 163R. This clause is the principal clause in this Amendment Bill implementing the Diversification and Sustainability Support Fund.

**New subdivision 11.3.1 Preliminary**

*New section 163E Definitions-div 11.3*

New section 163E provides definitions of the terms 'advisory board' and 'diversification and sustainability support fund' for division 11.3 of the Gaming Machine Act. These are signpost definitions as the terms are defined in new sections 163K and 163F respectively.

*New section 163F Diversification and sustainability support fund*

New section 163F(1) provides that the director-general must open and maintain a banking account (the diversification and sustainability support fund). Currently, the responsible director-general is the Director-General, Justice and Community Safety Directorate.

New section 163F(2) provides for the purposes of the fund. These are:

- assisting clubs to diversify their income to sources other than gaming machines;
- supporting the sustainability of clubs;
- contributing to projects that help reduce regulatory costs or improve efficiency in administration and compliance for clubs;
- training and skills development for club workers, executives and members of club management committees and boards.

New section 163F(3) provides the definition of a 'banking account' for section 163F, being an account with an authorised deposit-taking institution that is, or is substantially the same as, a bank account.

*New section 163G Reporting*

New section 163G provides that the director-general must include the following information about the operation of the diversification and sustainability support fund for each reporting year within the Directorate's annual report under the *Annual Reports (Government Agencies) Act 2004*:

- payments into, and out of, the fund during the year;
- the name of each person (other than an individual) who made a payment into the fund or who received a payment out of the fund;
- the purposes for which payments were made out of the fund.

New section 163G(2) provides the definition of the term 'reporting year' for section 163G with a signpost to the Dictionary of the *Annual Reports (Government Agencies) Act 2004*.

**New subdivision 11.3.2 Payments to and from diversification and sustainability support fund**

New subdivision 11.3.2 provides for payments into and out of the diversification and sustainability support fund, as well as providing for the making of guidelines for applications for fund payments.

*New section 163H Payments to diversification and sustainability support fund*

New section 163H provides for payments to the diversification and sustainability support fund.

New section 163H(1) provides that for each tax period, a club licensee is liable to pay the required amount to the Commission for each of the licensee's authorised premises, and under subsection (2) the Commission is required to pay the amounts received to the diversification and sustainability support fund.

In accordance with the definitions for part 11 of the Gaming Machine Act, a tax period is either a month or a quarter, depending on the licensee's eligibility to elect quarterly payments under section 161A. To simplify and reduce administrative burden associated with the collection of fund contributions, this provision is intended to align fund contributions with existing arrangements where the Commission collects monthly or quarterly gaming machine tax and other required payments from clubs.

New section 163H(3) establishes how the required monthly or quarterly contribution to the fund is worked out. A club licensee is liable to pay to the Commission \$20 per month for the first 99 gaming machine authorisations and \$30 per month for the 100th and each subsequent authorisation held at each of the licensee's authorised premises.

For example, Club ABC Pty Ltd operates two clubs. Club A holds 90 authorisations under its authorisation certificate and Club B holds 120 authorisations under its authorisation certificate. Club ABC Pty Ltd must pay the Commission a total of \$4,410 for each month, being \$1,800 ( $\$20 \times 90$ ) for Club A and \$2,610 ( $(\$20 \times 120) + (\$10 \times 21)$ ) for Club B.

Under new section 163H(4), the amount required to be paid for a tax period is payable on the 7th day after the end of the tax period (i.e. on the 7th day after the month or quarter, depending on the licensee's eligibility to make quarterly payments).

New section 163H(5) provides the definition of 'authorised premises' for section 163H, meaning an authorised premises of the licensee at the beginning of the first day of the tax period.

*New section 163I Payments out of diversification and sustainability support fund*

New section 163I provides for payments out of the diversification and sustainability support fund.

Under new section 163I(1), a payment out of the fund may only be made in accordance with section 163I.

New section 163I(2) provides that the director-general must make a payment out of the diversification and sustainability support fund if:

- an application for the payment has been made in accordance with any guidelines made under section 163J; and
- the payment is for a purpose mentioned in section 163F(2); and
- the Minister directs the director-general to make the payment after the Minister has consulted with the advisory board in relation to the payment.

*New section 163J Guidelines for applications for payments out of diversification and sustainability support fund*

New section 163J provides for guidelines for applications for payments out of the diversification and sustainability support fund.

Under new section 163J(1), the Minister may make guidelines for applications from entities seeking payments out of the fund.

New section 163J(2) provides that guidelines may include guidelines about the kinds of applications, or applicants, to be considered for payments out of the fund for a particular year or period.

Under new section 163J(3) a guideline is a notifiable instrument, which must be notified under the *Legislation Act 2001*.

**New subdivision 11.3.3      *Advisory board for diversification and sustainability support fund***

New subdivision 11.3.3 provides for an advisory board for the diversification and sustainability support fund. In accordance with new section 163I(2)(c), the Minister must consult with the advisory board before directing the director-general to make payments out of the fund.

These provisions reflect common corporate governance provisions for Territory boards and committees.

***New section 163K      Establishment of advisory board***

New section 163K provides for the establishment of the advisory board for the diversification and sustainability support fund.

***New section 163L      Functions of advisory board***

New section 163L establishes the functions of the advisory board for the diversification and sustainability support fund.

New section 163L(1) provides that the main functions of the advisory board are to:

- advise the Minister on matters concerning the diversification and sustainability support fund; and
- make recommendations about payments to be made from the fund.

Under section 163L(2), the advisory board also has any other function given to the Board under this Act.

***New section 163M      Membership of advisory board***

New section 163M provides for the membership of the advisory board for the diversification and sustainability support fund.

Under new section 163M(1), the advisory board consists of up to four members who the Minister considers have qualifications or experience in appropriate areas to assist the advisory board to exercise its functions. The members are appointed by the Minister.

The following examples of appropriate areas for qualifications or experience of advisory board members are provided under new section 163M(1):

- business strategy or financial management
- club operations
- urban design, planning or property development.

New section 163M(2) provides that the term of an appointment to the advisory board is limited to not longer than two years.

New section 163M(3) provides that the Minister must appoint a chair of the advisory board from the members appointed under subsection (1).

Under new section 163M(4), the conditions of appointment of members or the chair of the advisory board are the conditions agreed between the Minister and the member or chair, subject to any determination under the *Remuneration Tribunal Act 1995*.

#### *New section 163N Advisory board-making and ending appointments*

New section 163N provides for the making and ending of advisory board member appointments.

New section 163N(1) establishes when a person is ineligible to be, or to remain, appointed to the advisory board. The Minister must not appoint a person, or must end an appointment of a person, to the advisory board if:

- the person, or the person's domestic partner, is an influential person for a club licensee (see section 8 of the Gaming Machine Act for the definition of influential person);
- the person is an employee, representative or board member of an industry association for clubs;
- the person has been convicted, or found guilty, of an offence against a gaming law;
- within the last five years the person has been convicted or found guilty of certain offences; or
- the Minister considers that the person is unlikely to be able to exercise the functions of a member of the advisory board because of the person's business association, financial association or close personal association with another person.

New section 163N(2) sets out circumstances in which an advisory board member's appointment may be ended. These circumstances include where the person has:

- contravened a Territory law;
- failed to take all reasonable steps where a conflict of interest may arise during the exercise of the person's functions as a member of the advisory board;
- is bankrupt or personally insolvent;

- is absent from three consecutive meetings of the board, otherwise than on approved leave;
- is affected by physical or mental incapacity that substantially affects the person's ability to exercise the functions of a member of the advisory board.

New section 163N(3) provides the definition of the term 'association' for the section. In this instance, an association of a person with another person does not include the person's membership of a club unless the person is involved in managing or running the club. This provision ensures that a person who holds a club membership but is not involved in club decision-making remains eligible for appointment to the advisory board.

*New section 163O Agenda to require disclosure of interest item*

Under new section 163O(1), the agenda for each meeting of the advisory board must include an item requiring the disclosure of any material interest in an issue to be considered at the meeting.

New section 163O(2) provides the definition of the term 'material interest' for section 163O, which is defined in section 163P(4).

*New section 163P Disclosure of interests by members of advisory board*

New section 163P provides for the disclosure of interests by members of the advisory board.

Under new section 163P(1), an advisory board member must disclose the nature of any material interest in an issue being considered, or about to be considered, by the board. The disclosure must be made at board meeting as soon as practicable after the relevant facts come to the advisory board member's knowledge.

New section 163P(2) provides that the disclosure of a material interest must be recorded in the advisory board's minutes. The member must not be present when the advisory board considers the issue or take part in a board decision on the issue, unless the board otherwise decides.

Under new section 163P(3), where any other advisory board member also has a material interest in the same issue, they must not be present when the board is considering its decision under new section 163P(2).

New section 163P(4) provides definitions for the section. The defined terms are 'associate', 'indirect interest' and 'material interest'.

*New section 163Q Proceedings of advisory board*

Under new section 163Q(1), the Minister may make guidelines for the proceedings of the advisory board, including meeting and voting requirements of the board.

New section 163Q(2) provides that the advisory board may conduct its proceedings as it considers appropriate unless any guidelines made by the Minister provide otherwise.

Under new section 163Q(3), a guideline is a notifiable instrument, which must be notified under the *Legislation Act 2001*.

*New section 163R Protection of members of advisory board from liability*

New section 163R provides that members of the advisory board are not civilly liable for anything done or omitted to be honest and without recklessness in the exercise of a function under a Territory law or in the reasonable belief that the act or omission was in the exercise of a function under a Territory law.

Under new section 163R(2) any liability that would, apart from the section, attach to a member of the board attaches instead to the Territory.

**Clause 23 Definitions—pt 12**

**Section 164, definitions of *recipient*, examples**

Section 164 (uncommenced) of the Gaming Machine Act establishes the definitions for new part 12 of the Gaming Machine Act. Clause 23 is a minor amendment that deletes the examples of recipient in the definition.

**Clause 24 Meaning of community purpose etc—pt 12**

**Section 166 (2) (j)**

Section 166 (uncommenced) of the Gaming Machine Act sets out the meaning of ‘community purpose’ as part of the community contributions reforms.

Clause 24 is a minor and technical amendment to section 166(2)(j) that adds the word ‘contribution’ to the end of the provision. This amendment clarifies that a community purpose contribution does not include any other contribution prescribed by regulation not to be a community purpose contribution.

**Clause 25 Minimum community contribution—clubs**

**Section 167 (2)**

Section 167 (uncommenced) of the Gaming Machine Act sets out the minimum community contribution that a club licensee must make as a percentage of the club’s net revenue.

Clause 25 amends section 167(2) to clarify that the minimum community contribution requirement is 6% of net gaming machine revenue as a monetary contribution, not 6% of the 8% net gaming machine revenue required to be made as a community purpose contribution. This amendment ensures there is no doubt about the amount of monetary contribution required.

Clause 25 also introduces new subsection (2A) which provides that part of the amount mentioned in subsection (2) (i.e. the 6% of net gaming machine revenue of a club licensee) may be a contribution in kind rather than of money in certain circumstances. These circumstances are where the contribution:

- is made under a written arrangement or agreement that has a stated term prescribed by regulation; and
- meets any other requirements prescribed by regulation.

**Clause 26      Community purpose contributions—reporting by clubs**  
**Section 172 (1) (g) (ii)**

Section 172 (uncommenced) of the Gaming Machine Act 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.

Clause 26 is a minor and technical amendment to section 172(1)(g)(ii) to remove a double negative and clarify the provision.

**Clause 27      Community contributions-commission must publish**  
**summary**  
**Section 172A (1) (b) (i)**

Section 172A (uncommenced) of the Gaming Machine Act provides that the Commission must publish a summary on its website about various matters relating to community contributions. The Commission's summary must set out the amount of any contributions made by club licensees to the Gambling Harm Prevention and Mitigation Fund or the Chief Minister's Charitable Fund (other than as a required payment under section 163A or mandatory minimum community contributions under section 167).

Clause 27 is a minor and technical amendment that corrects an incorrect cross reference to section 166(2). The correct cross reference is section 166(1).

**Clause 28      Section 172A (2)**

Section 172A(2) (uncommenced) of the Gaming Machine Act 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.

Clause 28 makes a minor and technical amendment to this provision to reflect the community contributions reforms which now refer to 'community purpose contributions'. As a result, the provision has been simplified to refer to information that the Commission reasonably needs to prepare the summary under section 172A(1), which will be published on the Commission's website.

#### **Clause 29      Community contribution shortfall tax**

##### **Section 172B**

Section 172B (uncommenced) of the Gaming Machine Act provides for a community contribution shortfall tax for club licensees. This section is based on the existing section 172 of the Gaming Machine Act and imposes a community contribution shortfall tax where the community contributions of a club fall short of its minimum requirements (as set out in the uncommenced section 167 of the Act). Section 172B increases the tax rate from the existing 100 per cent of the shortfall to 150 per cent.

Clause 29 amends references to 'financial year' in section 172B to 'reporting year'. This amendment is required because a number of clubs have a reporting year that is not the standard financial year (1 July to 30 June).

#### **Clause 30      Section 172B (5), definition of *community contribution shortfall***

Clause 30 clarifies subsection (5) of section 172B (uncommenced) of the Gaming Machine Act to better reflect the community contributions reforms.

#### **Clause 31      Section 314**

Clause 31 substitutes and amends the existing transitional provision in part 22 of the Gaming Machine Act to clarify that a licensee is required to pay:

- 8% of their net revenue for the part of the reporting year up to 30 June 2019 as community contributions in accordance with existing part 12 of the Gaming Machine Act; and
- 8% of their net revenue for the part of the reporting year after 1 July 2019 as community purpose contributions under the new scheme.

The total community contributions requirement for the reporting year is 8% of net revenue, however, eligible purposes under the old and new community contributions schemes vary.

This provision is required because numerous clubs have a reporting year that is not the standard July-June financial year.

As with the other provisions in part 22, this transitional provision will 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 31 also inserts new section 314A in part 22 of the Gaming Machine Act, which is an additional transitional provision addressing reporting arrangements to support the community contributions reforms. This provision applies to clubs with a reporting year that begins before 1 July 2019, including those clubs whose financial year ends on 30 June 2019. This provision is required because a number of clubs have a reporting year that is not 1 July to 30 June in each year.

Under new section 314A, the existing reporting requirements are retained for reporting years beginning before 1 July 2019, including the requirement to provide a financial report to the Commission, for the Commission to report to the Minister, and for the Minister to report to the Assembly.

As with the other provisions in part 22, this transitional provision will 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 32      Dictionary, new definition of *advisory board***

Clause 32 inserts the definition of the term ‘advisory board’ to the Dictionary of the Gaming Machine Act. This is a signpost definition as the term is defined in section 163E.

**Clause 33      Dictionary, definition of *community contribution shortfall tax***

Clause 33 omits the definition of the term ‘community contribution shortfall tax’ from the Dictionary of the Gaming Machine Act. It is not necessary to include the definition of this term in the Dictionary, since the term is used only in section 172B of the Gaming Machine Act.

**Clause 34      Dictionary, new definition of *diversification and sustainability support fund***

Clause 34 inserts the definition of the term ‘diversification and sustainability support fund’ to the Dictionary of the Gaming Machine Act. This is a signpost definition as the term is defined in section 163F.