

2019

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

GAMING MACHINE AMENDMENT REGULATION 2019 (NO 1)

SL2019–16

EXPLANATORY STATEMENT

**Circulated by the authority of
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OVERVIEW

The *Gaming Machine Act 2004* (the Act) and the *Gaming Machine Regulation 2004* (the Regulation) regulate gaming machine operators, venues and gaming machines.

The ACT Government has committed in the *Parliamentary Agreement for the 9th Legislative Assembly* 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.

The *Gaming Legislation Amendment Act 2018* introduced reforms to the community contributions scheme that commence on 1 July 2019. These include:

- an increase to the contribution rate for club licensees;
- a new mandatory minimum community contribution from hotel licensees;
- reforms to improve the effectiveness of the current scheme and enhance its community benefit by broadening the distribution of community contributions;
- increased transparency about contributions made and revised reporting arrangements; and
- a range of specific exclusions from the scheme.

The community purpose contributions introduced by the Amendment Act are made only by club gaming machine licensees (class C licensees under the Act). As noted above, hotels and taverns (class B licensees) will, for the first time, be required to make mandatory minimum contributions, however, this is at the fixed rate of 0.4 per cent to the Gambling Harm Prevention and Mitigation Fund and 0.4 per cent to the Chief Minister's Charitable Fund. Hotels are not required to make community purpose contributions totalling 8 per cent of net gaming machine revenue.

Part 9 of the Regulation provides details about what can be claimed by club gaming machine licensees ('clubs') as community purpose contributions under the scheme and how to work out claims.

The Gaming Machine Amendment Regulation 2019 (No 1) (the Amendment Regulation) is made under sections 166 and 167 of the Act (as amended by the Amendment Act). The provisions of the Amendment Regulation provide further detailed reforms to the community contributions scheme, including in relation to sport, in-kind contributions, facilities maintenance and specific exclusions from the scheme.

HUMAN RIGHTS IMPLICATIONS

The Amendment Regulation engages the right to equality before the law under the *Human Rights Act 2004* (HRA) with respect to the exclusion of men's professional sport from being claimed as a community purpose contribution.

The limitation on the right to equality is reasonable and demonstrably justifiable in a free and democratic society under s 28 of the HRA as it is directed at achieving a legitimate objective. The regulation is intended to rectify an ongoing inequity in the funding available to women's sport. As shown in the Community Contributions report, clubs have historically provided a low level of funding to support women's sport as a proportion of overall sports funding. The limitation is proportionate, as it does not prevent clubs from providing funding to men's sport but provides that such funding will not be claimable as a community purpose contribution under the scheme. This mechanism could be given further consideration having regard the efficacy of the scheme.

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 HRA).

The Amendment Regulation provides further detail in relation to the requirement for clubs to make community purpose contributions. In line with eligibility requirements under the Act, all club gaming machine licensees operate within a corporate or incorporated association structure.

REGULATORY IMPACT STATEMENT

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement where a subordinate law is likely to impose appreciable costs on the community, or a part of the community.

While the Amendment Act introduced reforms that change the contribution rate and framework of the scheme, the Amendment Regulation of itself does not impose any additional appreciable costs on club gaming machine licensees. The Amendment Regulation provides details about the contributions that can, and cannot, be claimed under the scheme and how claims are to be worked out.

For this reason, a Regulatory Impact Statement has not been prepared for the Amendment Regulation.

NOTES ON CLAUSES

Clause 1 – Name of regulation

Clause 1 is a formal provision setting out the name of the Amendment Regulation as the *Gaming Machine Amendment Regulation 2019 (No 1)*.

Clause 2 – Commencement

Clause 2 provides the commencement date for the Amendment Regulation, being 1 July 2019.

Clause 3 – Legislation amended

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

Clause 4 – Part 9

Clause 4 repeals and replaces existing Part 9 – Community contributions of the Regulation with new Part 9 – Community purpose contributions. Existing sections 63 to 70 of the Regulation are repealed, and replaced by new sections 63 to 69K.

Division 9.1 *Preliminary*
New section 63 *Definitions—pt 9*

New section 63 defines three terms for the part.

‘Gain’ from playing sport includes wages, income and other benefits, payments for, or the provision of, accommodation or personal transport and payments for general living costs unless the payments, wages, income or other benefits were for reasonable expenses incurred from participating in sport.

A ‘men’s professional sports team’ is one in which a majority of participants are professional sportsmen. It is intended that majority mean more than half.

A ‘professional sportsman’ is a male (of any age) who receives gain (as defined in the Regulation) from playing sport.

Division 9.2 *Community purpose contributions-*
 –Act, s 166 (1)
New section 64 *Maintenance of sports facilities*

New section 64 sets which contributions to the maintenance of a sporting facility may be counted as a community purpose contribution.

The following may be counted as a community purpose contribution:

- (a) maintenance of a sports facility that has open community access;
- (b) maintenance of a sports facility that does not have open community access but is available some of the time for the community to use for sports or sports training.

Sections 69F and 69G set out how to work out the value of these community purpose contributions. A club that provides an open community access facility may be able to claim more of the maintenance of that facility, in accordance with the working out provisions.

‘Open community access’ for a facility, means the facility can be accessed or booked by any member of the community during operating hours apart from when the facility is—

- (a) incidentally unavailable; or
- (b) being actively used by others in the community.

This definition is in line with the long-standing provision in the Act that allowed claims for capital payments and depreciation for facilities that are available to be used by the public (i.e. the general public, not only club members and guests), and recognises the broader community benefit of the maintenance of facilities where open community access is provided.

New section 65 Maintenance of recreation facilities

New section 65 sets out that the maintenance of a recreation facility that has open community access is a community purpose contribution.

Open community access for a facility is as defined in section 64 above. It means the facility can be accessed or booked by any member of the community during operating hours apart from when the facility is—

- (a) incidentally unavailable; or
- (b) being actively used by others in the community.

A recreation facility means a dedicated facility or space built or provided for a specific recreational purpose other than a sport (e.g. an art studio with a kiln) but does not include part of a club’s premises that is ordinarily used by the club or its patrons.

New section 66 Sports and recreation

New section 66 sets out what sports and recreation contributions may be counted as community purpose contributions.

The following may be counted as a community purpose contribution:

- (a) a contribution to a recipient for uniforms, equipment or training for sports teams or sportspeople in the community;
- (b) a contribution to a recipient for sports coaches, trainers, umpires or administrators;
- (c) a contribution to a recipient for sports or recreation activities or events available to the community;
- (d) a contribution to a recipient that promotes or develops sports or recreation activities available to the community;
- (e) a contribution to a recipient for award events for sports teams and sportspeople in the community;
- (f) a contribution to a recipient for the purpose of providing health services related to the recipient's participation in sport in the community. Note that under section 69H, only the out of pocket expenses for a health service can be claimed.

For this section a recipient cannot include a professional sportsman or a men's professional sports team.

Division 9.3 Contributions not included in community purpose contributions

New section 67 Club's business activities—Act, s 166 (2) (c)

New section 67 sets out what of the club's business activities cannot be counted as a community purpose contribution.

The following business activities are not community purpose contributions:

- (a) promoting the club's activities or activities associated with the operation of—
 - (i) the club; and
 - (ii) an associated organisation of the club;
- (b) training for a club's staff or executives including any training required under a gaming law;
- (c) professional entertainment or social or entertainment activities of a club, members or patrons;
- (d) providing anyone with free or subsidised alcoholic beverages either directly or indirectly (for example, as a gift, donation or prize);
- (e) providing anyone with a contribution to be used for a gambling activity;
- (f) providing free or subsidised meals, snacks, other food or non-alcoholic drinks to the club's members or patrons.

The restrictions on claiming business activities (e) and (f) above do not apply to an amount contributed to provide a prize for a raffle if—

- (a) the raffle is not conducted for the club, an associated organisation, a professional sportsman or a men's professional sports team; and

(b) the amount is otherwise contributed for a community purpose. These provisions are similar to the existing provision in the Regulation which allows clubs to contribute prizes given to support external raffles.

New section 68 Capital payments or depreciation—Act, s 166 (2) (e)

New section 68 sets out the capital payments and depreciation that cannot be counted as community purpose contributions.

The following cannot be counted as community purpose contributions:

- (a) capital payments for assets owned, controlled or being acquired by the club or an associated organisation if the assets do not have open community access;
- (b) capital payments for, or other expenditure on, assets owned, controlled or being acquired by the club, if the assets are not in the ACT;
- (c) depreciation in relation to a capital payment mentioned in paragraph (a) or (b);
- (d) depreciation in relation to a capital payment for a community purpose contribution;
- (e) a capital payment if depreciation in relation to the payment is a community purpose contribution.

‘Open community access’ is defined for this section. Open community access, for an asset, means the asset can be accessed or booked by any member of the community during operating hours apart from when the asset is—

- (a) incidentally unavailable; or
- (b) being actively used by others in the community.

New section 69 Other contributions—Act, s 166 (2) (j)

New section 69 sets out ‘other contributions’ that cannot be counted as community purpose contributions. Some of these contributions replicate exclusions in the existing community contributions framework while others are new and respond to concerns raised about the existing framework.

The following cannot be counted as community purpose contribution:

- (a) a contribution for a business association, registered party, associated entity or industrial organisation;
- (b) a contribution made from donations collected by the club or the proceeds of a fundraising activity by the club;
- (c) a contribution for remuneration, allowances or other entitlements for people employed by a club or a recipient unless otherwise allowable as a community purpose contribution;
- (d) a contribution for the following paid for, or given to, an individual:
 - (i) phones, tablets, computers and other technology;

- (ii) food and drinks;
- (iii) general living costs;
- (e) a contribution to, or for the benefit of, a professional sportsman or a men's professional sports team (unless the contribution is allowed by a determination made under section 69A);
- (f) a contribution for maintenance of a sports facility used only by professional sportsmen or men's professional sports teams (unless the contribution is allowed by a determination made under section 69A);
- (g) a contribution for a fine or penalty or a contribution made in relation to disciplinary action;
- (h) a contribution for a drug or alcohol test;
- (i) a contribution for airline lounge memberships;
- (j) notional provisions other than depreciation.

The terms 'associated entity', 'disciplinary action', 'entitlements', 'industrial organisation', and 'registered party' are defined.

New section 69A Determination—allowable community purpose contributions in relation to sports

New section 69A sets out that the Minister may determine that a contribution to or for the benefit of a men's professional sports team or a professional sportsman can be counted as a community purpose contribution.

The Minister may only make a determination under this subsection if satisfied of the following:

- (a) making the determination will support participation in community sport; and
- (b) the team or person's viability to participate in the sport would be adversely affected without the determination; and
- (c) making the determination is in the public interest.

Any such determination will be in effect for the period stated in the determination and is subject to any conditions set by the Minister.

This new section provides for the Minister to allow an exemption from the exclusion for professional men's sport, in circumstances where the Minister is satisfied that a broader community benefit from the contribution can be demonstrated.

Division 9.4 In-kind contributions—Act, s 167 (2A)

New section 69B Term of arrangement or agreement—Act, s 167 (2A) (a)

Division 9.4 sets out the requirements for a written arrangement or agreement under s 167 (2A) that sets out that a club, other than a small or medium club,

may make a contribution in-kind rather than of money in certain circumstances. Section 167 (2A) was introduced to allow larger clubs to continue or establish long-term support arrangements.

New section 69B sets out that the term for the written arrangement or agreement is three years or more.

New section 69C Requirements for in-kind contribution—Act, s 167 (2A) (b)

New section 69C sets out that the requirements for the in-kind contribution are that the in-kind contribution not exceed 2% of the club's net gaming machine revenue for the relevant reporting year.

The contribution must not be made to a recipient that is controlled by or related to the club and it must be made for the purpose of providing a defined facility space or program for the recipient.

Division 9.5 Working out value of community purpose contributions—Act, s 167 (5)

New section 69D Clubs operating multiple authorised premises

New section 69D retains the effect but simplifies the language of the existing framework for allocating common expenditure where a club operates more than one venue.

Section 69D applies to a club that operates two or more authorised premises. As noted in the Overview above, a 'club' in this context refers to a club gaming machine licensee, which is a class C licensee under the Act.

Since authorised premises is a defined term in the Act meaning a premises for which an authorisation certificate is in force, this section applies where the licensee holds two or more authorisation certificates.

In working out the community purpose contributions for each authorised premises, common expenditure on behalf of multiple authorised premises must be allocated between the premises in proportion to the number of gaming machines operated at each premises at the end of the reporting year.

New section 69E Women's sports

New section 69E applies to a community purpose contribution that benefits or increases participation in women's sport.

This section retains the '4 for 3' incentivisation for women's sport that sets out that for every 3 dollars the club contributes, the club's minimum community purpose contribution must be worked out as if the club had contributed \$4.

This provision incentivises clubs to support women's sport.

New section 69F Maintenance of sports facilities with open community access

New section 69F sets out how to work out the value of a community purpose contribution for sports facilities (mentioned in new section 64 above) with open community access.

For facilities that have open community access (i.e. any member of the community can book an oval or access an oval regardless whether they are a member of the club), all maintenance costs will be able to be claimed, less any fees or charges for use collected by the club.

New section 69G Maintenance of sports facilities available to community some of the time

New section 69G sets out how to work out the value of a community purpose contribution for sports facilities (mentioned in new section 64 above) that are available to the community some of the time.

For facilities that are available for community sport and women's sport (i.e. an enclosed oval made available for some periods during the week), maintenance costs will need to be calculated as a proportion of the amount of time the facility is used by non-professional and women's professional sport compared to its use by professional men's sport.

For example, if an oval was used during the year by junior sports teams 50 per cent of the time, and a professional men's sports team for the other 50 per cent of the time, then only half the usage and maintenance costs would be claimable. The club would also need to deduct any fees or charges that were collected by the club from the junior sports teams.

New section 69H Health services – out of pocket expenses only

New section 69H applies to a community purpose contribution mentioned in new section 66 (1) (f) above.

Under new section 69H, the value of the community purpose contribution must not include costs for health services that have, or will be, rebated or paid by another entity.

The provision of health services is supported by Commonwealth Government funding through Medicare and through private health insurance, which many sportspersons are required to maintain as a condition of their engagement with a sports club, or is otherwise supported directly through sports clubs. The intention of this provision is that any claim for health services for a sportsperson is limited to any out-of-pocket costs associated with the provision of the health service.

New section 69I Charging fees for activities or events

New section 69I applies where a community purpose contribution is used to hold an activity or an event held by a club or at a facility owned by a club and a fee or other amount is charged in relation to the activity or event, all or part of which is received by the club or an associated organisation.

If the club has a clear written record of the amount received by the club or an associated organisation, the value of the community purpose contribution must exclude the amount received.

If the club does not have a clear written record of the amount received by the club or an associated organisation, the value of the community purpose contribution is taken to be \$0.

This provision is similar to existing section 68 of the Regulation but updates the language and clarifies that where the club does not have clear written records of the amount received by the club or an associated organisation, the amount of the contribution is taken to be \$0.

New section 69J When community purpose contribution is made

Existing section 69 of the Regulation contains provisions about the timing of claiming contributions under the scheme.

New section 69J updates the language used in existing section 69 but otherwise provides the same effect that for a community contribution of money, the contribution is made when the money is given, not when the thing for which the money is given is provided or agreed to.

For example, for a club with a reporting year of July-June of each year, where a team sponsorship agreement is signed in June 2020 but the first payment is not

made until July 2020, the community purpose contribution cannot be claimed by the club until the 2020-21 reporting year.

New section 69K Working out value of in-kind community purpose contributions

New section 69K sets out how the value of an in-kind contribution should be worked out.

In working out the value of the contribution, the club must use the cost of providing the contribution or the market value of the contribution.

The club must keep records of its workings and evidence of its costs and market valuations.

This provision has the same effect as existing section 70 of the Regulation.

Clause 5 – Dictionary, note 2

Note 2 to the Dictionary of the Regulation sets out relevant terms defined in the *Legislation Act 2001*. Clause 5 adds ‘corporation’ and ‘individual’ to the existing list of definitions in note 2.

Clause 6 – Dictionary, note 3

Note 3 to the Dictionary of the Regulation sets out relevant terms defined in the *Gaming Machine Act 2004* that have the same meaning in the Regulation. Clause 6 omits the definition of ‘community contribution’ from the list of definitions in note 3. This definition is omitted because these contributions by clubs are now known as ‘community purpose contributions’.

Clause 7 – Dictionary, note 3

Note 3 to the Dictionary of the Regulation sets out relevant terms defined in the *Gaming Machine Act 2004* that have the same meaning in the Regulation. Clause 7 adds the following definitions to the existing list of definitions in note 3:

- associated organisation
- community
- community purpose
- community purpose contribution
- contribution
- minimum community contribution
- recipient
- reporting year.

Clause 8 – Dictionary, new definitions

Clause 8 adds the definition of ‘gain’, ‘men’s professional sports team’ and ‘professional sportsman’ to the Dictionary for the Regulation, with signposts to the definitions in new section 63 of the Regulation.