

2020

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

GAMING MACHINE AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Gordon Ramsay MLA
Attorney-General**

GAMING MACHINE AMENDMENT BILL 2020

The bill has not been determined to be a significant bill.

This explanatory statement relates to the *Gaming Machine Amendment Bill 2020* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the 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.

BACKGROUND

The *Gaming Machine Act 2004* (the Gaming Machine Act) regulates the licensing of gaming machine operators, venues and all 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 the administration of gaming laws and the control, supervision and regulation of gaming in the Territory.

Through section 48 of the Control Act, the *Taxation Administration Act 1999* (other than part 9) applies, with modifications, to gaming laws, including the Gaming Machine Act. The Gaming Machine Act establishes that gaming machine tax (GMT) is payable on gross revenue in relation to the operation of gaming machines (gross gaming machine revenue, GGMR).

Through amendments introduced by the *Gaming Machine Amendment Act 2017*, the Gaming Machine Act establishes a gaming machine tax rebate (GMT rebate) for licensees that are small or medium clubs and small or medium club groups of 50% of the licensee's GMT liability. The rebate commenced from 1 July 2017.

As part of the changes in the *Gaming Machine Amendment Act 2017*, section 179A of the Gaming Machine Act required the Minister to:

- review the operation of section 162A (Gaming machine tax rebate—financial year):
- present a report of the review to the Legislative Assembly before 30 November 2019.

Amendments to the *Gaming Machine Act 2004* in 2017 introduced the GMT rebate and required the Attorney-General to review the operation of the GMT rebate after two years and report its findings to the Legislative Assembly.

The intention of the GMT rebate was to allow smaller local community clubs to retain more of their gaming revenue to reinvest in their organisation and to diversify their income streams away from gaming.

In April 2018, the Government appointed Mr Neville Stevens AO to undertake the *Club Industry Diversification Support Analysis* (the Analysis) to help achieve the Government's commitment to reduce the number of gaming machine authorisations in the Territory and support clubs to transition away from a dependence on income from gaming machines. Among the findings and recommendations of the Analysis, released in June 2018, Mr Stevens recommended the Government introduce a phased approach to calculating the GMT rebate, which would reduce the rebate received by clubs by 50 cents in every dollar of GGMR over \$4 million.

The Government agreed in principle, and amended the definitions of 'small or medium club' and 'small or medium club group' to provide that clubs or club groups with GGMR of not more than \$4 million for the financial year or whose GGMR in 2017-18 was not more than \$4 million, would be eligible for the GMT rebate.

On 28 November 2019, the Government presented the *Gaming Machine Tax Rebate Statutory Review - Report* (the Review Report) in the Legislative Assembly.

The Review Report included a commitment to retain the 50 per cent gaming machine tax rebate for small and medium clubs and club groups and to introduce legislation, which, in line with the recommendations of the Analysis:

- removes the current provision where any club/club group eligible for the rebate in 2017-18 remains eligible for the rebate in perpetuity; and
- provides for the phased reduction of the amount of gaming machine tax rebate received by clubs at a rate of \$0.50 for every \$1 earned over \$4 million Gross Gaming Machine Revenue (GGMR) per annum; and

The Review Report also committed to a further review of the operation of the rebate, with the report of the review to be tabled in the Legislative Assembly by 30 November 2022.

The Gaming Machine Amendment Bill 2020 (the Bill) gives effect to the Government commitments in the Review Report and makes other changes to assist clubs in their compliance with the community contributions scheme.

The amendments that deal with the phased reduction of the GMT rebate will ensure that clubs with GGMR slightly exceeding \$4 million will not lose the entire rebate as soon as this amount is exceeded, but the benefit which flows from the GMT rebate will progressively diminish with each dollar of GGMR the club earns in excess of the \$4 million threshold. This will allow those clubs to retain more of their gaming

revenue to reinvest in their organisation and to diversify their income streams away from gaming.

The Bill includes a further redefinition of ***small or medium clubs*** and ***small or medium club groups*** in order to avoid any unintended consequences for clubs or groups of losing their small or medium status due to exceeding the threshold by a small amount, whilst ensuring that clubs that continue to grow their gaming businesses are no longer eligible for the rebate.

The Government committed in the *Parliamentary Agreement for the 9th Legislative Assembly* to review the community contribution scheme for gaming machine licensees to maximise the direct community benefit. As part of a review to support reforms to the scheme in line with this commitment, 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, *ACT Clubs' Community Contributions*. As outlined in the Government's response to that report, relevant issues raised were considered in the review.

The review led to the development of a number of reforms to improve the effectiveness of the scheme and enhance its community benefit. These reforms were implemented through amendments to the Gaming Machine Act and the *Gaming Machine Regulation 2004* (the Gaming Machine Regulation) by the Amendment Act of 2018 and the *Gaming Legislation Amendment Act 2019* (the Amendment Act of 2019). These included increasing the contribution rate for clubs, increased transparency through revised reporting arrangements, and restrictions on what can be claimed as a community contribution under the scheme.

The Bill includes amendments to assist clubs to meet their regulatory obligations and reflect their current business practices. These include revised community purpose contribution reporting requirements that better align with the licensing and authorisation framework, reflecting the fact that the scheme does not require contributions to be made to a venue's local area, but rather to the broader community in the ACT and the surrounding region (and the broader Australian community in the event of a natural disaster). Transitional provisions will assist clubs to adapt to new requirements of the scheme.

OVERVIEW OF THE BILL

The Bill makes the following amendments to the Gaming Machine Act and the Gaming Machine Regulation:

- a) redefines a small or medium club and a small or medium club group as one with GGMR of not more than \$4 000 000 for the financial year or one that receives a reduced GMT rebate through the phased reduction;
- b) introduces a phased reduction of the GMT rebate by 50 cents in every dollar of GGMR over \$4 million for the financial year;
- c) requires a further review of the operation of the rebate in three years' time, and the report of the review to be tabled in the Legislative Assembly by 30 November 2022;
- d) removes the requirement for club licensees with more than one venue to report on the community purpose contributions for each venue separately and allow licensees with more than one venue to make community purpose contributions on a group basis;
- e) introduces a transitional provision reducing the minimum monetary contribution for clubs that are not small or medium clubs or part of a small or medium club group from 6% to 5% for reporting years ending after 30 June 2019 and before 1 July 2021; and
- f) introduces a transitional provision reducing community contributions shortfall tax from 150% to 100% for reporting years ending after 30 June 2019 and before 1 July 2021.

CONSULTATION ON THE PROPOSED APPROACH

The recommendations of the Analysis Report were informed by consultation with clubs, club industry peak bodies, Government directorates and trade unions representing club workers. Recommendation one of the Analysis Report was made in response to concerns raised by the club industry that if a club's GGMR were to exceed the threshold by even the smallest amount, the GMT rebate would have to be repaid in its entirety.

Following the introduction of the community contribution scheme reforms by the Amendment Acts of 2018 and 2019, further consultation with clubs, club industry peak bodies and Government directorates has occurred. The proposed amendments and transitional provisions respond to stakeholder feedback in relation to the operation of the community contributions scheme and its impact on club businesses.

CONSISTENCY WITH HUMAN RIGHTS

During the Bill's development, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004*. The Bill does not engage any human rights set out in the *Human Rights Act 2004*. The provisions of the Bill apply only to

gaming machine licensees that are clubs, which are corporations or incorporated associations and are not natural persons.

Gaming Machine Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Gaming Machine Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Gaming Machine Amendment Act 2020* (the Amendment Act).

Clause 2 Commencement

This clause provides that the provisions of the Amendment Act concerning the gaming machine tax rebate will commence on 1 July 2020. All other provisions will commence on the day after the Act's notification day.

Clause 3 Legislation amended

This clause lists the legislation amended by this Bill. This Bill will amend the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*.

Clause 4 Annual report of clubs, Section 54 (1)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 5 Section 54 (1) (a) (i)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 6 Section 54 (1) (d) (i)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 7 Computer cabinet access register, Section 71 (2)

This clause is a technical amendment that corrects an erroneous reference to an undefined term, reflecting changes made to the language of the Gaming Machine Act by the *Gaming Machine (Reform) Amendment Act 2015* (the Amendment Act of 2015).

Clause 8 Definitions—pt 11, Section 157A, definitions of *small or medium club* and *small or medium club group*

This clause amends the definitions of a *small or medium club* and a *small or medium club group* for Part 11 (Finance) of the Gaming Machine Act.

The current definition states that a licensee, or all the licensees within a club group, is a small or medium club or club group if the gross revenue in relation to the operation of gaming machines under all authorisation certificates held by the licensee(s) is

(a) not more than \$4 million for the financial year, or

(b) was not more than \$4 million in the financial year beginning on 1 July 2017.

Part (b) of these definitions now provides if a club or club group's GGMR for the financial year exceeds \$4 million, that club or group will be classified as small or medium if it receives a reduced GMT rebate through the application of new section 162A (2A). The intent of the amended part (b) of the definitions is to ensure that there are no unintended consequences for licensees exceeding the \$4 million threshold by an amount small enough to attract a reduced level of rebate. Small or medium status is linked to a number of other benefits, the unexpected loss of which could impact the business and cashflow of the effected licensee. These benefits include, but are not limited to, a reduced monetary contribution requirement under the community contributions scheme, priority applicant status for the Diversification and Sustainability Support Fund and the ability to elect to pay GMT and other statutory payments on a quarterly (rather than monthly) basis.

Furthermore, the amended provision operates to ensure that licensees that increase their gaming machine revenue and have GGMR for a financial year substantially exceeding the threshold will not remain eligible for the GMT rebate in perpetuity.

Clause 9 Audit of financial statements etc, Section 158 (1) (a) and (b)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 10 Payment of gaming machine tax or payment to diversification and sustainability support fund—quarterly election, Section 161A (1)

This clause is a minor amendment that removes an erroneous reference to section 162 of the Gaming Machine Act (which concerns gaming machine tax returns).

Clause 11 New section 161A (4)

This clause is a minor amendment that provides a signpost definition for the term **required amount** in relation to contributions a licensee must make to the Diversification and Sustainability Support Fund.

Clause 12 Gaming machine tax rebate—financial year, New section 162A (2A)

New section 162A (2A) introduces a phased reduction of the GMT rebate. A licensee is entitled to a GMT rebate for the financial year if the licensee is a small or medium club, or is part of a small or medium club group, for the year. The amount of the GMT rebate for a licensee is 50 percent of the licensee's GMT liability for the financial year. The new section provides that if a licensee's GGMR exceeds a threshold of \$4 000 000 for the financial year, the amount of the GMT rebate for the licensee will be reduced by \$0.50 for each dollar that the licensee's GGMR exceeds that threshold.

For example, a club's GGMR for the 2020-2021 financial year is \$4,350,000. The amount of gaming machine tax paid on the initial \$4,000,000 of GGMR was \$718,250. The rebate to be received on this amount would be \$359,125. However, as the club's GGMR has exceeded \$4 million by \$350,000, the amount by which the rebate is reduced is \$175,000. Therefore, the amount of rebate the club is entitled to for the 2020-2021 financial year is \$184,125 (being \$359,125 - \$175,000).

An example is provided in the Bill illustrating how the amount of GMT rebate that a licensee is entitled to is reduced where the licensee's GGMR exceeds the threshold.

The new section is intended to gradually reduce the amount of GMT rebate that a licensee is entitled to receive as their GGMR increases, and to eventually remove the licensee's entitlement to the rebate entirely. In conjunction with clause 4 of the Bill, such licensees would no longer be classified as being small or medium.

Clause 13 Gaming machine tax rebate—part financial year, New section 162B (3A)

New section 162B (3A) concerns the application of the phased reduction of the GMT rebate to a licensee that was part of a club group (other than a small or medium club group) for part of a financial year only. In this scenario, a licensee may be entitled to a GMT rebate for the part of the financial year that the licensee was not part of a club group, where their GGMR does not exceed a threshold of \$4 000 000 adjusted on a pro-rata basis. For example, if the licensee was not part of a club group for six months in the financial year, the threshold is adjusted to \$2 000 000. The licensee would then be entitled to a GMT rebate of 50% of their GMT liability on GGMR up to \$2 000 000.

New section 162B (3A) provides that where the licensee's GGMR for the part of the financial year exceeds the adjusted threshold, the amount of the GMT rebate for the licensee will be reduced by \$0.50 for each dollar by which the adjusted threshold is exceeded. As per the above new section 162A (2A), the intent is to gradually reduce the amount of GMT rebate that a licensee is entitled to receive as their GGMR increases, and to eventually remove the licensee's entitlement to the rebate entirely where their GGMR substantially exceeds the adjusted threshold. In conjunction with clause 4 of the Bill, such licensees would not be classified as being small or medium.

Clause 14 Required payment to gambling harm prevention and mitigation fund, Section 163A (1)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). The additional words are intended to provide clarity that the operation of the section has not changed. The payment to the gambling harm prevention and mitigation fund required under section 163A is not a community contribution and must continue to be made in relation to the GGMR of each authorised premises rather than the GGMR of the licensee. See notes on Clause 18 (section 167) for further explanation.

Clause 15 Payment from gambling harm prevention and mitigation fund—minimum community contributions, Section 163D (1) (a)

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 16 Meaning of *community purpose* etc—pt 12, Section 166 (1), definition of *community purpose contribution*, paragraph (a) (ii)

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 17 Section 166 (1), definition of *community purpose contribution*, paragraph (a) (iii)

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 18 Section 167

This clause amends the provisions concerning minimum community contributions that licensees that are clubs are required to make, in order to facilitate licensees with more than one authorised premises (i.e. venue) making community contributions on a licensee basis, rather than for each authorised premises.

Currently, where a licensee operates multiple authorised premises, each authorised premises is individually required to make community purpose contributions of a minimum of 8% of the venue's NGMR. Any 'common expenditure' by a licensee on behalf of multiple venues must be apportioned between those venues in proportion to the number of gaming machines operated at each venue.

The amended provisions will allow a licensee to make a minimum community purpose contribution of 8% of the licensee's total NGMR, i.e. on behalf of all their venues.

The intent of these amendments is to reduce any regulatory burden associated with community purpose contributions reporting for clubs, whilst also better aligning reporting requirements with changes made to the gaming machine licensing framework by the Amendment Act of 2015, which allowed a single licensee can operate multiple venues and their resourcing can be shared across the group.

The revised wording of section 167 further clarifies that the community contributions to the Chief Minister's Charitable Fund and the gambling harm prevention and mitigation fund must continue to be made in relation to the GGMR of each of the licensee's venues, rather than in relation to the GGMR of the licensee.

Section 167 (3) provides that licensees, other than those that are small or medium clubs or part of a small or medium club group, must make a minimum monetary community purpose contribution. As part of the total contribution of 8% of the licensee's NGMR required under section 167 (2) (c), at least 6% of the licensee's NGMR (i.e. for all their venues for a reporting year) must be a contribution of money.

Section 167 (8) includes a new transitional provision providing that licensees are permitted to make a minimum monetary community purpose contribution of only 5% of their NGMR as money for their reporting years ending after 30 June 2019 and before 1 July 2021.

The reform will apply retrospectively to reporting years ending after 30 June 2019 but before 1 July 2021, to ensure clubs are supported throughout the entire transition period.

**Clause 19 Payment of community contributions for a tax period,
Section 169 (1)**

This clause is a consequential amendment, reflecting the revised structure of section 167.

**Clause 20 Community purpose contributions—reporting by clubs,
Section 172 (1) (a)**

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 21 Section 172 (1) (b)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 22 Section 172 (1) (d)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 23 Section 172 (2)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 24 Section 172 (3)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

**Clause 25 Community contributions—commission must publish summary,
Section 172A (1) (a)**

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 26 Section 172A (1) (b) (ii)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises) and also corrects a previous erroneous omission of the words “for the reporting year”. See notes on Clause 18 (section 167) for further explanation.

**Clause 27 Community contribution shortfall tax,
New section 172B (4A) and (4B)**

This clause introduces a transitional provision, reducing the community contribution shortfall tax rate for licensees that are clubs for a reporting year from 150% to 100%. Community contribution shortfall tax liability falls on licensees that fall short of the minimum community contributions required under section 167 for a reporting year. Prior to the Amendment Act of 2018, the tax rate was 100% of a licensee's shortfall. For example, if a licensee fell short of the required community purpose contribution of 8% of their NGMR and contributed only 5% of their NGMR, the licensee would have incurred a tax liability of 3% of their NGMR.

The Amendment Act of 2018 increased the tax rate to 150% of a licensee's shortfall. As such, in the example above, the licensee would incur an increased tax liability of 4.5% of their NGMR.

The transitional provision reduces the community contribution shortfall tax rate to the previous level of 100% for reporting years ending after 30 June 2019 and before 1 July 2021.

Clause 28 Section 172B (5), definition of *community contribution shortfall*

This clause forms part of the amendments that clarify reporting requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 29 Section 179A

Section 179A currently provides that the Minister must, before 30 November 2019, review the operation of the GMT rebate and present a report of the review to the Legislative Assembly. This review was completed and tabled in the Legislative Assembly on 28 November 2019.

This clause amends section 179A to provide that a further review of the GMT rebate must occur before 30 November 2022 and a report of the review must be tabled in the Legislative Assembly.

Clause 30 Community contributions—clubs with reporting year beginning before and ending after 1 July 2019, Section 314 (4)

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 31 New section 314 (4A)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

**Clause 32 Club’s business activities—Act, s 166 (2) (c)
Section 67 (1)**

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 33 Section 67 (1) (a) and (b)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 34 Sections 68 (1) and 69 (1)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 35 Division 9.4 heading

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 36 Section 69B heading

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 37 Section 69C

This clause forms part of the amendments that clarify reporting requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 38 Division 9.5 heading

This clause is a consequential amendment, reflecting the revised structure of section 167.

Clause 39 Club operating multiple authorised premises, Section 69D

This clause repeals section 69D of the Gaming Machine Regulation, which concerned the allocation of common expenditure on community purpose contributions. As the amendments to the Gaming Machine Act in the Bill allow licensees that are clubs with more than one authorised premises (i.e. venue) to make and report on community purpose contributions on behalf of all of their venues, allocation of common expenditure between venues is no longer necessary. See notes on Clause 18 (section 167) for further explanation.

Clause 40 Women’s sports, Section 69E (2)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 41 Sections 69F (2) and 69G (2)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 42 Charging fees for activities or events, Section 69I (1) (a)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 43 Working out value of in-kind community purpose contributions, Section 69K (1)

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 44 Other statements to be included in annual report of clubs— Act, s 54 (1) (f), Section 74A

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.

Clause 45 Further amendments, mentions of *club*

This clause forms part of the amendments that clarify community contribution requirements for licensees that are clubs with more than one venue (authorised premises). See notes on Clause 18 (section 167) for further explanation.