

**2022**

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

**GAMING MACHINE (CLUB REFUGE) AMENDMENT BILL 2022**

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

**Presented by  
Shane Rattenbury MLA  
Minister for Gaming**

## **GAMING MACHINE (CLUB REFUGE) AMENDMENT BILL 2022**

The Bill is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the *Gaming Machine (Club Refuge) Amendment Bill 2022* as presented to the Legislative Assembly. It has been prepared 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.

### **OVERVIEW OF THE BILL**

The purpose of the *Gaming Machine (Club Refuge) Amendment Bill 2022* is to create the legislative framework to support clubs to become heat and smoke refuges for local communities.

The Bill amends the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004* in the Minister for Gaming's portfolio.

### **CONSULTATION ON THE PROPOSED APPROACH**

A number of ACT Government Directorates and independent agencies were consulted on the amendments in the Bill.

The Heat and Smoke Refuge Working Group, a sub-group of the Community Clubs Ministerial Advisory Council, was also consulted on the draft Bill.

The proposed amendments reflect comments and feedback received from the stakeholders consulted.

### **SUMMARY OF AMENDMENTS**

#### ***Gaming Machine Act 2004***

The Bill amends the *Gaming Machine Act 2004* to insert a new section 166B into the Act to provide that the Minister may declare a club to be used as a refuge in relation to an emergency or other hazard if the Minister considers it necessary and desirable to do so. A hazard may include a smoke or extreme heat event.

The impact of heat stress has been identified as a current and ongoing issue for Australians:

- in *Protecting human health and safety during severe and extreme heat events: A national framework* (Commonwealth Government, November 2011) noted that "heatwaves kill more Australians than any other natural disasters;" and

- in an article published by the Australian National University (25 February 2021) it was noted that “one of the most confronting impacts of climate change is the risk of more deaths from hot weather. Heat stress can exacerbate existing health conditions including diabetes, kidney disease and heart disease. Older people are particularly vulnerable.”

In the ACT the bushfire smoke of 2019-20 was both severe and long lasting. For many people it was impossible to keep smoke out of their homes. The University of Canberra Living Well in the ACT Region 2020 survey found that 67% of survey respondents had a lot of smoke in their homes, and 36% also experience a lot of smoke in the workplace. Including appropriate clubs as a place of respite for community members may reduce health risks if a similar event was to occur.

This research indicates the importance of providing a safe space for vulnerable members of the community to attend during extreme heat or smoke events, to reduce to risk of heat and smoke related illness.

ACT clubs are well-placed to provide a space for refuge for the community during extreme weather events as many club venues are able to provide access to Heating Ventilation and Air Cooling (HVAC) systems and/or air conditioning during heat and smoke events that people might not ordinarily have in their homes. Additionally, clubs generally have long operating hours which supports their ability to provide a space for community members to attend for respite during an emergency or other hazard.

The Bill provides that the Minister may declare a club to be a refuge. New section 166B provides the legislative basis for clubs to be used as refuges during an emergency or a hazard for the period that a club refuge declaration is in place. The Bill also provides that the Minister must take into account any advice of the emergency services commissioner in making the club refuge declaration. The requirement to take into account the advice of the emergency services commissioner is to ensure that the declaration is consistent with the *ACT Emergencies (Emergency Plan) 2014 (No 1)*, which is prepared and monitored by the emergency services commissioner pursuant to section 147 of the *Emergencies Act 2004*.

The Bill also amends the sign-in and temporary membership requirements by inserting a new section 54A (1A) into the Act. Section 54A (1A) allows people (local guests, noting there is not a membership requirement for interstate guests) to enter the Club without obtaining a membership while a club refuge declaration is in force for the club. The purpose of this amendment is to enable people to access the venue as a refuge during the emergency or hazard when a club refuge declaration is in force, without requiring them to have a membership or to be signed into the club to access the venue during that period.

Part 12 of the *Gaming Machine Act 2004* (the Act) provides for community contributions. A licensee that is a club is required to make community purpose contributions of at least eight per cent of the net gaming machine revenue that the club receives in a reporting year. Community purpose contributions include contributions made by a licensee that is a club to a stated recipient for a community purpose.

Community purpose is defined in section 166 of the Act to mean assisting the community or part of the community in one or more of the ways listed in the Act, such as supporting a charitable cause. The Bill amends the definition of community purpose in section 166 (1) of the Act to provide that community purpose includes the provision of a club venue as a refuge while a club refuge declaration is in force. Under section 165 of the Act, the *community* includes people living in the ACT or surrounding region.

The amendment to section 166 (1) of the Act is intended to support the amendments made to the *Gaming Machine Regulation 2004* which allow clubs to claim certain expenses associated with the use of the club as a refuge while a club refuge declaration is in force, as community purpose contributions under the Act.

### ***Gaming Machine Regulation 2004***

The Bill amends the *Gaming Machine Regulation 2004* to enable clubs to claim as community purpose contributions, the expenses associated with:

- a) the provision of free non-alcoholic drinks to the club's members or patrons only while a club refuge declaration is in place, and
- b) the cost of forgone membership fees, as a result of the club providing the venue as a club refuge, only while a club refuge declaration is in place.

The provision of free, non-alcoholic drinks to people attending the club refuge a safety measure to ensure that people are hydrated during an extreme weather event such as a heatwave and encourage the consumption of non-alcoholic beverages. It is intended to support the operation of the venue as a refuge to provide respite for vulnerable members of the ACT community during an emergency or other hazard.

### **CONSISTENCY WITH HUMAN RIGHTS**

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

## **Rights engaged and supported**

The amendments to Gaming Machine Act and Gaming Machine Regulation promote the right to life in section 9 of the *Human Rights Act 2004* (HRA). Section 9 of the HRA provides that everyone has the right to life. In particular, no-one may be arbitrarily deprived of life. In some circumstances the right to life may give rise to a positive obligation on government to protect those within its jurisdiction from identifiable risks to life, particularly vulnerable cohorts. Where a government is aware of a real and immediate risk to life, it must take reasonable action to protect individuals. This can include an obligation to take reasonable measures and have legal and administrative frameworks in place to provide protection to the community in life-threatening situations, such as in industrial or environmental disasters.

The amendments to the Gaming Machine Act and Gaming Machine Regulation support the right to life by seeking to enhance the availability of basic needs, such as shelter and water in a potentially life threatening emergency. It does this by enabling the Minister to declare clubs to be refuges during an emergency. The amendments allow clubs to be accessible by the ACT community during an emergency (by waiving the membership requirement), and support clubs to provide free non-alcoholic beverages to those using the club while it is a refuge.

The Bill does not limit any rights.

Gaming Machine (Club Refuge) Amendment Bill 2022

*Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Gaming Machine (Club Refuge) Amendment Bill 2022**. In my opinion, having regard to the Bill and 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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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### Part 1 Preliminary

#### Clause 1 Name of Act

This clause provides that the name of the Act is the *Gaming Machine (Club Refuge) Amendment Act 2022*.

#### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on a day fixed by the Minister by written notice.

#### Clause 3 Legislation amended

This clause identifies the legislation that will be amended is the:

- *Gaming Machine Act 2004*; and
- *Gaming Machine Regulation 2004*.

### Part 2 Gaming Machine Act 2004

#### Clause 4 Conditions about guests and temporary membership

##### **New Section 54A (1A)**

This clause provides that the requirement for local guests to be a club member or signed in by a member to enter the club, does not apply while a club refuge declaration is in force. This is to allow the public, not just club members or guests, to access the venue while the club is operating as a refuge.

#### Clause 5 Meaning of community purpose etc—pt 12

##### **Section 166 (1), definition of community purpose, new paragraph (ca)**

Under section 166 of the Act, a community purpose contribution includes a contribution made by a licensee for a community purpose. The community purposes are defined in section 166 (1) and include measures such as supporting a charitable cause.

This clause amends the definition of community purpose to include that providing relief or assistance to the community by allowing access to a club for refuge while a club refuge declaration is in force is also a community purpose under the Act.

This clause is intended to create the legislative framework to allow clubs to claim certain expenses relating to the venue's operation as a club refuge as community purpose contributions under the Act.

## **Clause 6      New section 166B**

This clause inserts a new section into the Act to define the term ‘club refuge declaration’. The new section 166B provides the legislative basis for clubs to become refuges during an emergency or a hazard.

Specifically, the clause provides that the Minister may declare a club to be a refuge in relation to an emergency or a hazard if the Minister considers it necessary or desirable to do so. This declaration by the Minister is referred to as a ‘club refuge declaration’ in the new section 166B (1).

The clause provides that the Minister must take into account any advice of the emergency services commissioner when making the declaration. The requirement to take into account the advice of the emergency services commissioner is to ensure that the declaration is consistent with the *ACT Emergencies (Emergency Plan) 2014 (No 1)*, which is prepared and monitored by the emergency services commissioner pursuant to section 147 of the *Emergencies Act 2004*.

The clause also provides that the club refuge declaration is a disallowable instrument, has effect for the period stated in the declaration and may be subject to any conditions declared by the Minister.

## **Clause 7      Dictionary, new definition of *club refuge declaration***

This clause inserts the new definition of ‘club refuge declaration’ into the Act and provides that ‘club refuge declaration’ is defined at section 166B (1) of the Act.

## **Part 3      Gaming Machine Regulation 2004**

### **Clause 8      New section 66A**

This clause inserts a new section 66A into the Gaming Machine Regulation to allow club licensees to claim the following contributions as community purpose contributions if their venue is activated as a club refuge for the period that a club refuge declaration is in force:

- a) the cost of providing free non-alcoholic drinks to those attending the club venue; and
- b) the cost of foregone membership fees for allowing non-members to access the club venue.

The provision of free, non-alcoholic drinks to people attending the club refuge a safety measure to ensure that people are hydrated during an extreme weather event such as a heatwave. It is intended to support the operation of the venue as a refuge to provide respite for vulnerable members of the ACT community during an emergency or other hazard.



**Clause 9 Club's business activities – Act, s 166 (2) (c)**

**New section 67 (3)**

Sub-section 67 (1) (f) of the Gaming Machine Regulation provides that money spent providing free or subsidised meals, snacks, other food or non-alcoholic drinks to the club's members or patrons is a business activity by the licensee and therefore is not a community purpose contribution.

This clause inserts a new section 67 (3) into the Gaming Machine Regulation to provide that subsection 67 (1) (f) does not apply for a club used as a refuge while a club refuge declaration is in force. This clause supports the operation of section 66A in the Regulation to allow clubs to claim the cost of providing non-alcoholic drinks as community purpose contributions for the period that a club refuge declaration is in force.

**Clause 10 Dictionary, note 3**

This clause inserts the new definition of 'club refuge declaration' into the Regulation and provides that 'club refuge declaration' is defined at section 166B (1) of the Act.