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

TENTH ASSEMBLY

GAMING MACHINE (COMPULSORY SURRENDER) AMENDMENT BILL 2024

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

**Presented by
Shane Rattenbury MLA
Minister for Gaming
March 2024**

GAMING MACHINE (COMPULSORY SURRENDER) AMENDMENT BILL 2024

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*.

OVERVIEW OF THE BILL

In the *Parliamentary and Governing Agreement for the 10th Legislative Assembly*, the ACT Government committed to target a reduction in the number of electronic gaming machine authorisations in the ACT to 3,500 by 1 July 2025.

At 8 November 2023, the cap on the number of authorisations for gaming machines in the ACT was 3,790.

The ACT Government is targeting a reduction in authorisations to 3,500 through two stages:

1. By establishing a non-statutory voluntary surrender scheme which provides a financial incentive for licensees which take up the option to voluntarily surrender gaming machine authorisations within a designated time period.
2. By creating a legislative framework which places a statutory obligation on licensees to compulsorily surrender authorisations once the voluntary surrender scheme ends, in order for the ACT to reach the target of 3 500 authorisations by 1 July 2025.

The purpose of this Bill is to amend the *Gaming Machine Act 2004* to establish the legislative framework for the compulsory surrender of gaming machine authorisations following the end of the voluntary surrender program.

CONSULTATION ON THE PROPOSED APPROACH

The Justice and Community Safety Directorate (JACS) consulted with government agencies on the Bill, including the Chief Minister, Treasury and Economic Development Directorate (specifically Access Canberra and the ACT Gambling and Racing Commission). JACS worked closely with the ACT Parliamentary Counsel's Office on the formulation and development of the proposed amendments for inclusion in this Bill.

JACS also consulted the Human Rights Scrutiny team on any potential human rights impacts arising from the legislation. The Criminal Law team was consulted on the offence provisions within the Bill.

CLIMATE IMPACT

This Bill does not have a climate impact.

CONSISTENCY WITH HUMAN RIGHTS

This Bill does not engage any human rights.

GAMING MACHINE (COMPULSORY SURRENDER) AMENDMENT BILL 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Gaming Machine (Compulsory Surrender) Amendment Bill 2024**. 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

Clause 1 Name of Act

This clause provides the name of the Act is the *Gaming Machine (Compulsory Surrender) Amendment Act 2024*.

Clause 2 Commencement

This clause provides that the Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause sets out that the Act amends the *Gaming Machine Act 2004*.

Clause 4 Part 2A, heading

This clause substitutes the heading for the current part 2A with a new heading for part 2A, Reducing cap on authorisations to 3 500 or fewer—compulsory surrenders.

Clause 5 Division 2A.1

This clause omits Division 2A.1 from the legislation.

Division 2A.1 of the Act includes definitions for the compulsory surrendered scheme under the Pathway to 4,000 authorisations which are no longer relevant.

Clause 6 Section 10B(5), definition of voluntary surrender period

This clause omits the ‘census day’ from the definition of ‘voluntary surrender period’ and replaces it with 23 August 2018.

This amendment is to provide clarity that the definition of ‘voluntary surrender period’ means the period beginning on 23 August 2018 and ending on 31 January 2019, as part of the previous Pathway to 4,000 scheme.

The term ‘census day’ has been omitted from section 10B(5) as it will be defined in section 10I.

Clause 7 Division 2A.5

This clause replaces the current expiry provisions in Division 2A.5, as they are no longer required within the legislation, with Division 2A.3 - Compulsory surrenders, to provide for the legislative framework for the compulsory surrender scheme.

Division 2A.3 Compulsory surrenders

Section 10I – Definitions – div 2A.3

This section inserts the following definitions for terms used in Division 2A.3.

The term **assessment** of surrender obligations is defined to mean an assessment made under the new section 10J (assessment of surrender obligations).

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

The Control Act is a reference to the *Gaming and Racing Control Act 1999*. Section 50 of the Control Act includes a formula for calculating the cap on the number of authorisations for electronic gaming for all authorised premises in the ACT.

The term **census day** means the day determined by the Minister. This determination is a notifiable instrument.

The term **licensee** does not include a licensee that held fewer than 20 authorisations for gaming machines on the census day.

This definition has been included to ensure that licensees with fewer than 20 authorisations do not have a surrender obligation under Part 2A of the Bill.

The term **surrender obligation**, of a licensee, means the total number of authorisations for gaming machines to be surrendered by the licensee in relation to all authorised premises assessed under section 10J.

Section 10J – Assessment of surrender obligations

This section establishes the legislative framework for the Minister to assess the surrender obligation of each licensee (s 10J(1)). The assessment must be made by the Minister by 1 June 2025 (s 10J(6)).

This section provides that the assessment of licensees' surrender obligation, which will be in the form of a notifiable instrument under the Act, must not exceed 20% of the authorisations held by the licensee in relation to the authorised premises on the census day (s 10J(2)). This is to ensure that there is a limit on the percentage of authorisations which club(s) are required to surrender under the legislation.

In making an assessment of the surrender obligation, the Minister must, as far as practicable, do the following:

- ensure that the cap on authorisations in the ACT will reach the target of 3,500 authorisations by 1 July 2025 (10J(3)(a)).
- assess the surrender obligation of a licensee in proportion to the number of authorisations held by the licensee under the authorisation certificate(s) for the authorised premises on the census day (new section 10J(3)(b)).
- reduce the licensee's surrender obligation by:
 - the number of authorisations that were surrendered by the licensee in relation to the authorised premises under section 37F of the Act from the census day until 1 May 2025;

- the number of authorisations forfeited by the acquiring licensee under section 127F (4) during the period beginning on the census day and ending on the day before the assessment, if the licensee is a disposing licensee. A disposing licensee is defined in s 127F; it is the licensee providing the authorisation to the acquiring licensee. Under section 127F one authorisation must be surrendered to the Territory for every four authorisations acquired through trade.
- apply any guidelines made under 10L.

This section provides that the surrender obligation must be rounded to the nearest whole number. The Minister must start with the most authorisations for authorised premises and working down to the fewest authorisations for authorised premises, adjust the surrender obligations of the licensees to add additional surrenders of authorisations for authorised premises that are necessary to ensure the cap on authorisations reaches the target of 3 500 authorisations.

Section 10K – Assessment not to exceed target of 3,500 authorisations

This section provides that the assessment must not be made by the Minister if, at the beginning of the day when the assessment is to be made, the cap on authorisations in the ACT is 3,500 or fewer.

This is to ensure that licensees are not obliged to surrender authorisations if the target of 3,500 authorisations in the ACT has already been met.

If also provides that the Minister must amend the assessment if, without the amendment, the cap on authorisations in the ACT will be fewer than 3,500.

The Minister must revoke the assessment if, at any time before 1 July 2025, the cap on authorisations in the ACT reaches 3,500 or the Minister believes the cap on authorisations in the ACT is likely to reach 3,500 or fewer before 1 July 2025.

Section 10L – Guidelines for assessment etc

This section provides that the Minister may make guidelines for the assessment of surrender obligations under section 10J.

This guideline is a disallowable instrument.

Section 10M – Licensee must give notice of gaming machines to be surrendered

This section provides that the licensee must give the ACT Gambling and Racing Commission (the commission) a written statement about the authorisations to be surrendered by the licensee in order to meet the licensee's surrender obligation (10M(1)).

It requires the statement to be given to the commission before 17 June 2025 and to include the following information: the authorised premises the authorisation is associated with, the authorisation number, and the serial number of any gaming machine associated with the authorisation (s 10M(2)).

If the licensee does not provide a statement to the commission by 17 June 2025, or if the licensee provides a statement where the number of authorisations is less than the licensee is required to surrender, the commission must give the licensee a written notice stating the following:

- a) not later than 3 days after the licensee receives the notice, the licensee must give the commission the statement (or revised statement with the correct number of authorisations); and
- b) failure to comply with the notice may be a ground for disciplinary action under section 57 (10M(3)-(4)).

Under this provision, if the licensee does not provide the statement or revised statement by the day required in the notice, the Commission may determine the authorisations that are to be surrendered by the licensee to meet the licensee's surrender obligation; and if the commission determines the authorisations to be surrendered, must notify the licensee before 1 July 2025 (10M(5)).

Section 10N – Surrender of authorisations for gaming machines

This section provides the surrender date for the compulsory surrender scheme.

Under this provision, the authorisations identified through section 10M to meet a licensee's surrender obligation are to be surrendered on 30 June 2025 (10N(1)).

It provides that, if a licensee has a gaming machine associated with an authorisation surrendered under this section, the licensee must take meter readings from the machine and render the machine inoperable (s 10N(2)).

On 2 July 2025, the commission must amend the authorisation certificate for each authorised premises to reduce the maximum number of authorisations a licensee may have by:

- a) the number surrendered for the premises on 1 July 2025; and
- b) the number surrendered for the premises under section 37F, during the period beginning on 1 April 2025 and ending on 30 June 2025.

If a licensee surrenders an authorisation under this section, the commission must give the licensee a storage permit for an interim purpose to store one or more gaming machine to be disposed of or destroyed (s10N(4)).

A storage permit for an interim purpose is issued for up to 3 months and may be extended.

If a licensee surrenders an authorisation under this section, section 37F of the Act (regarding the surrender of authorisations) does not apply (s 10N(5)).

Section 10O – Extension of term for storage permit for interim purpose

This section provides that a licensee who holds a storage permit for an interim purpose given under section 10N (4) may apply to the commission to extend the term of the permit (s 10O(1)). The permit remains in force until the application has been decided (s 10O(2)).

The commission must either extend the term of the storage permit for up to 3 months or refuse to extend the term of the permit (s 10O(3)).

This section provides that the commission must refuse to extend the term of the storage permit if the term of the permit has previously been extended under this section. If the commission refuses to extend the term of the storage permit, the commission must tell the licensee, in writing, the reasons for the decision (ss 10O(4)-(5)).

This section also provides that a decision to refuse to extend the term of a storage permit for a licensee under this section is a reviewable decision. The licensee is an entity for the purpose of the reviewable decision notices under section 173A.

Section 10P – Offence – failure to dispose of gaming machines where authorisation surrendered under s 10N

This section provides that a person commits an offence if an authorisation held by the person is surrendered under section 10N, and the commission gives the person a storage permit for a gaming machine associated with the authorisation, and the person fails to dispose of the gaming machine mentioned in the permit in the way the commission directs or within the period stated in the permit.

The maximum penalty for failure to dispose of gaming machines under this provision is 50 penalty units.

Section 10Q – Application to transfers of authorisation certificates under s 37E

This section relates to the transfer of authorisation certificates between licensees under s 37E of the Act. Section 37E of the Act provides that, if an outgoing licensee transfers an authorisation certificate to another licensee (the incoming licensee), the incoming licensee must tell the commission about the transfer. Section 37E also outlines the information which the outgoing licensee must provide to the commission.

Section 10Q provides that if authorisation certificates are transferred between licensees under section 37E during the period beginning on the census day and ending on 1 July 2025, the surrender obligation for the incoming licensee for the

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

The terms incoming licensee and outgoing licensee are defined in section 37E (1).

Section 10R – Certain actions prohibited etc

This section provides that a licensee must not transfer or acquire an authorisation certificate under section 37E during the period beginning on 2 May 2025 and ending on 2 July 2025.

Trading of authorisations and gaming machines under division 6A.6 is suspended from 2 May 2025 until 2 July 2025.

Section 10S – Disposal of gaming machines to be surrendered – notifiable action for s 113A

This section provides that the surrender of an authorisation for a gaming machine under this division is a reason for disposing of the gaming machine for section 113A (1).

Division 2A.4 Expiry – Pt 2A

Section 10T - Expiry – Pt 2A

This section provides that this part (other than section 10G and division 2A.3) expires on 1 April 2028. This is to retain the current expiry provisions in Division 2A.5 of the Act.

This section provides that section 10G expires on 1 April 2024. This is to retain the current expiry provisions in Division 2A.5 of the Act.

Division 2A.3 expires on 31 December 2025. This division expires on 31 December 2025 as the reduction in the number of electronic gaming machine authorisations in the ACT to 3,500 by 1 July 2025 will be complete.

Clause 8 Dictionary, new definitions of *assessment* and *cap on authorisations*

This clause inserts a definition for assessment and cap on authorisations into the Dictionary.

Clause 9 Dictionary, definition of *census day*

This clause substitutes the definition of census day with the following definition: for part 2A (Reducing cap on authorisations in ACT to 3 500 or fewer—compulsory surrenders)—see section 10I.

Clause 10 Dictionary definitions of *compulsory surrender day* and *first compulsory surrender day*

This clause omits the definitions of compulsory surrender day and first compulsory surrender day as they will no longer be referred to in the legislation.

Clause 11 Dictionary, new definition of *licensee*

This clause inserts a new definition of licensee as the following: for part 2A (Reducing cap on authorisations to 3 500 or fewer—compulsory surrenders)—see section 10I.

Clause 12 Dictionary, definition of *second compulsory surrender day*

This clause omits the definition of second compulsory surrender day as it will no longer be referred to in the legislation.

Clause 13 Dictionary, new definition of *surrender obligation*

This clause inserts the definition of surrender obligation into the dictionary as follows: for part 2A (Reducing cap on authorisations to 3 500 or fewer—compulsory surrenders)—see section 10L.

Clause 14 Dictionary, definitions of *surrendered authorisation*, *voluntary surrender agreement*, *voluntary surrender day* and *voluntary surrender notice*

This clause omits the definitions of surrendered authorisation, voluntary surrender agreement, voluntary surrender day and voluntary surrender notice as they will no longer be referred to in the legislation.