

Regulatory Impact Statement

GAMING LEGISLATION AMENDMENT REGULATION 2015 (No 1)

Subordinate Law No SL2015-27

**Prepared in accordance with the
Legislation Act 2001, section 34**

**Circulated by authority of
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Overview

This regulatory impact statement relates to the *Gaming Legislation Amendment Regulation 2015 (No 1)* (the proposed law).

The changes made by the proposed law to the *Gambling and Racing Control (Code of Practice) Regulation 2002* (the Code Regulation) and the *Gaming Machine Regulation 2004* (the Regulation) are a continuation of the wider Gaming Machine Reform Package (the Package) announced by the government on 2 October 2014.

Problem

The *Gaming Machine Act 2004* (the Act) regulates the licensing of gaming machine operators and premises, and the administration and operation of all gaming machines in the Territory. For the purposes of the Act, the *Gambling and Racing Control Act 1999* (the Control Act) provides the overarching legislative framework for gambling in the Territory.

On 4 June 2015 the Assembly passed the *Gaming Machine (Reform) Amendment Act 2015* (the Amendment Act) giving effect to significant elements of the Package. This includes a phased reduction in the overall number of electronic gaming machines in the ACT; and establishment of a trading scheme for gaming machine authorisations.

To ensure ongoing compatibility with the new legislation, amendments are required to the subordinate laws, the Code Regulation and the Regulation.

Information required by section 35 of the *Legislation Act 2001*

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the *Legislation Act 2001*. In particular this regulatory impact statement meets the content requirements set out in section 35 of the *Legislation Act 2001*.

(a) The authorising law

The Amendment Act is the authorising law for most provisions introduced through the proposed law, as follows:

- a) section 12(2)(a), (b), (c), Meaning of social impact assessment;
- b) section 16(i), Class C licence application—contents;
- c) section 22(2)(e), Authorisation certificate for class C gaming machines—contents of application;
- d) section 23(5)(c), Authorisation certificate for class C gaming machines—decision on application;
- e) section 27(2) Authorisation certificate for class C gaming machines—form;
- f) section 28(2)(h), Licence and authorisation certificate for class B gaming machines—restricted application;

- g) section 37(5)(a), Authorisation certificate amendment decision—
increase maximum amendment;
- h) section 38H(3)(b), In-principle authorisation certificate—application to
transfer;
- i) section 127S(1)(b)(x), Permit – form;
- j) section 173D(2)(c) and section 173D(5), Notifiable actions; and
- k) section 310(2), Transitional regulations.

Additionally subsection 18(1) of the Control Act is the authorising law for prescribing the new provision in the Code Regulation about the times when licensees must not operate gaming machines.

(b) Policy objectives of the proposed law

The proposed law seeks to ensure that the subordinate laws (the Regulation and Code Regulation):

- a) reflect the legislative changes introduced through the Amendment Act, particularly as they relate to the new licensing and authorisation framework needed to establish a trading scheme for gaming machine authorisations; and
- b) continue to articulate gaming machine licensing, control and operation requirements.

The proposed law also provides provisions to facilitate a smooth transition to the new requirements of the Amendment Act, and responds to industry feedback about the Amendment Act's introduction.

(c) Achieving the policy objectives

The proposed law achieves the policy objectives by:

- a) amending existing provisions to reflect the amended licensing and authorisation framework;
- b) relocating an existing provision from the Regulation to the Code Regulation to include guidelines about the times when licensees must not operate gaming machines;
- c) removing requirements for Social Impact Statements and updating related references for Social Impact Assessments to reflect policy changes under the Amendment Act;
- d) updating cross-references to amended sections of the Act for:
 - o ballots;
 - o linked-jackpots; and
 - o other dictionary definitions; and
- e) inserting detailed operational arrangements for:
 - o permits; and
 - o notifiable actions.

As provided under section 310 of the Amendment Act, the proposed law includes transitional arrangements; these include:

- a) preserving an existing in-principle approval. The provisions ensure an existing licensee's in-principle approval for a new venue amendment is taken to be an equivalent right for an in-principle authorisation certificate issued under section 38D of the Amendment Act; and
- b) preserving existing temporary storage arrangements by requiring the Commission to issue a general purpose storage permit for the remaining period up to a maximum of 12 months.

(d) Consistency of the proposed law with the authorising law

Relevant sections of the authorising law are identified at part (a) on page 2 of this Regulatory Impact Statement. The proposed law is consistent with the authorising law; it ensures that the policy objectives of the authorising law can be met, allowing a smooth transition from the old to the new law.

(e) The proposed law is not inconsistent with the policy objectives of another Territory law

The proposed law is not inconsistent with the policy objectives of any other Territory law.

(f) Reasonable alternatives to the proposed law

Amendments to the Regulation and Code Regulation through the proposed law are necessary to support the effective operation of the Act by aligning the Regulation's operational and technical matters with changes introduced by the Amendment Act.

There are no reasonable alternatives to amending the Regulation and Code Regulation to reflect changes introduced by the Amendment Act. Not amending the Regulation and Code Regulation could result in confusion for industry and the community as the Regulation would refer to provisions that no longer exist; additionally, the Commission's objectives under section 7 of the Control Act would be hampered and effective regulation would be compromised.

As such, there are no reasonable alternatives to the proposed law in achieving the identified policy objectives.

(g) Brief assessment of benefits and costs of the proposed law

The proposed law has minimal, if any, further costs or benefits beyond those introduced by the Amendment Act.

Nonetheless, minor impacts are associated with select provisions in the proposed law; these relate to:

- a) subsection 6(2), rationalising documentation requirements that must accompany an application or notification to the Gambling and Racing Commission (the Commission). Rationalisation of administrative requirements helps reduce the regulatory impost on industry while still retaining the necessary documentation needed to support the Commission's decision making; and
- b) subsection 70B(1). Notice of certain action must be given to the Commission a prescribed number of days before the licensee undertakes the action. This subsection temporarily increases the notification time period for selected actions, from 10 to 20 business days. This provision responds to an anticipated initial increase in the number of notifiable actions industry will submit to the Commission following commencement of the Amendment Act. However, to minimise the potential impost on industry from increased notification timeframes, these provisions expire 3 months after the date of commencement.

(h) Brief assessment of the consistency of the proposed law with Scrutiny of Bill Committee principles

The Standing Committee on Justice and Community Safety's (Legislative Scrutiny Role) Terms of Reference require the Committee to consider whether (among other things) a regulation:

- a) is in accord with the general objects of the Act under which it is made;
- b) unduly trespasses on rights previously established by law;
- c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
- d) contains matters which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

An analysis of the proposed law against each of these items follows. In addition, an Explanatory Statement for the proposed law has been prepared for tabling, with the proposed law, in the Legislative Assembly.

(a) Accordance with the general objects of the Act under which it is made

The general objects of the Act are to:

- a) monitor, regulate and control the numbers of gaming machines in the ACT;
- b) administer and enforce the gaming machine industry;
- c) minimise criminal and unethical behaviour in the gaming industry by the licensing of persons and entities involved in the gaming machine industry;
- d) maximise consumer protection – for example the approval and monitoring of gaming machines and peripheral equipment;

- e) provide for harm minimisation strategies for problem gamblers – for example social impact assessments and location of gaming machines; and
- f) collect taxes, fees and charges imposed under the Act.

The Regulation supports the Act and provides for detailed matters relevant to: licensing; social impact assessments; club administration and monitoring systems; and technical arrangements and peripheral equipment for gaming machines. These matters are included in the Regulation due to the nature of the industry and the possible need for a timely legislative response if circumstances warrant such action.

The objects of the Amendment Act are to implement a new licensing and authorisation framework for gaming machines and to introduce a gaming machine trading scheme in the ACT. The Amendment Regulation provides consequential amendments to support the changes introduced by the Amendment Act. The Amendment Regulation accords with the Act, as amended by the Amendment Act, and is within the object and scope of the Act.

(b) Rights previously established by law

There is one aspect in which the proposed law may be considered to trespass on previously established rights.

The Act as amended includes a number of notifiable actions at Schedule 2. These actions require a licensee to notify the commission about the action, but do not otherwise require approval. Notice of the action must be given to the Commission a prescribed number of days before the licensee undertakes the action, being 10 business days unless otherwise prescribed.

Clause 27 of the Amendment Regulation provides for new Part 9B of the Regulation which establishes that during the first three months, the prescribed number of days for certain notifiable actions is 20 business days. This means that a licensee must provide a longer notice period before the action can occur or before it takes effect. As discussed on page 5 of this Regulatory Impact Statement, this provision responds to an anticipated (based on industry feedback) initial increase in the number of notifiable actions industry will submit to the Commission following commencement of the Amendment Act. However, to minimise the potential impost on industry from increasing the Commission's allowable notification timeframes, these provisions expire within 3 months from the date of commencement.

Clause 27 of the Amendment Regulation is within the legislative power granted by the Assembly by the Amendment Act; paragraph 173D(5)(b) of the Amendment Act provides a regulation making power to prescribe a different number of days.

If the changes introduced in clause 27 are considered a trespass on existing rights, the question then is whether it does so unduly.

The amendments are considered reasonable and proportionate given that prior to the Amendment Act commencing a licensee was required to apply to the Commission for approval for most matters under the Act. The Amendment Act introduces the notification process thereby streamlining the administrative burden applied to industry. For the first time the amendments will apply statutory certainty to the industry with the operational effect being that the Commission will be required to action notifiable actions within a set period of time. Further, as the Amendment Act has not commenced, and therefore the 10 business day time limit has not been applied, licensees will not be unduly affected by the extension to 20 business days within the first three months of the Amendment Act commencing.

(c) Non-reviewable decisions

The Amendment Regulation does not create any non-reviewable decisions. The decision making powers are established under the Act, with reviewable decisions set out in Schedule 1 (as amended by the Amendment Act).

New section 309A under the Amendment Regulation retains the right of a person to apply to convert an existing in-principle approval. This provision ensures that the existing rights and obligations conferred by the in-principle approval are not lost. The processes, rights and decision making requirements for the conversion are established by section 38M and section 38N of the Amendment Act and not the Regulation.

(d) Matters properly dealt with in an Act of the Legislative Assembly

The Act and Amendment Act, as outlined above, expressly allow the Executive to make regulations for the matters addressed in the Amendment Regulation. This means the proposed law is within an express power granted by the Legislative Assembly.

The Assembly has had the opportunity to consider provisions substantially similar to the majority of the provisions of the Amendment Regulation on a number of occasions through the introduction of the Regulation in 2004 and various amendments since.