

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Gaming and Racing)

Gaming Machine (Club Governance) Amendment Bill 2011

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Gaming Machine (Club Governance) Amendment Bill 2011

A Bill for

An Act to amend the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004* in relation to the governance of clubs in the ACT

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Gaming Machine (Club Governance) Amendment Act 2011*.

2 Commencement

- (1) This Act (other than sections 9, 10, 11, 21, 26 and 28) commences on 1 July 2011.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Sections 9, 10, 11, 21, 26 and 28 commence on 1 July 2012.

3 Legislation amended

This Act amends the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*.

Part 2 Gaming Machine Act 2004

4 Grounds for refusing initial licence application by club Section 14 (1) (a)

substitute

- (a) payments for goods and services supplied to a club, including the rental or lease payments for the club's premises, are related to the level of gaming machine performance; or

Examples—goods and services

- food and beverages
- cleaning services
- gaming machines

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

5 Eligibility of clubs and other corporations New section 21 (1) (f) and (g)

insert

- (f) the corporation is not the subject of an auditor's opinion that it is not able to pay all of its debts as and when they become due and payable; and
- (g) the corporation is not the subject of an auditor's adverse opinion or disclaimer of opinion, within the meaning of Auditing Standard ASA 705.

6 New section 21 (4)

insert

(4) In this section:

AUASB means the Auditing and Assurance Standards Board established under the *Australian Securities and Investments Commission Act 2001* (Cwlth), section 227AA (1).

Auditing Standard ASA 705 means Auditing Standard ASA 705 *Modifications to the Opinion in the Independent Auditor's Report* made by the AUASB on 27 October 2009 under the Corporations Act, section 336 (1) (Auditing standards).

Note A copy of the standard is accessible at www.comlaw.gov.au.

7 Conditions about inequitable benefits
Section 53 (4) (a)

substitute

(a) the person is offered the benefit (whether or not under the rules of the club) in the course of acting on behalf of the club while performing the person's normal duties as an employee or director of the club; and

8 New section 53 (4) (b) (iii)

insert

(iii) an expense relating to the person's duties paid by someone else and authorised by a resolution of the club's management committee or board.

Example—expense paid by someone else
conference fees

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

9 New sections 53A and 53B*insert***53A Condition about club's constitution—consistency with gaming laws**

It is a condition of a licence for a club that the club's constitution is consistent with the gaming laws.

53B Condition about club's constitution—amendment if inconsistent with gaming laws

(1) It is a condition of a licence for a club that the club's constitution provides for the constitution to be amended in accordance with a direction by the commission under section 148B (Club constitution—consistency with gaming laws) without an election of the voting members of the club.

(2) This section is declared to be a corporations legislation displacement provision for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws).

Note Subsection (2) ensures that any provision of the Corporations Act or the *Australian Securities and Investment Commission Act 2001* (Cwlth) with which this section would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**10 Annual report of clubs
Section 54 (a)***substitute*

(a) any contractual arrangement or consultancy entered into with an influential person during the year, including—

(i) the position the influential person occupies in the club;
and

- 1 (ii) the purpose of the arrangement or consultancy; and
2 (iii) the total amount of the arrangement or consultancy for
3 the year;
4 (aa) any contractual arrangement or consultancy entered into during
5 the year for more than the amount prescribed by regulation,
6 including—
7 (i) the purpose of the arrangement or consultancy; and
8 (ii) the total amount of the arrangement or consultancy for
9 the year;

10 **11 New section 54 (c)**

11 *insert*

- 12 (c) if any benefits have been taken by a person during the financial
13 year—
14 (i) the person's position in the club; and
15 (ii) a description of the benefit taken by the person; and
16 (iii) the purpose for which the benefit was taken; and
17 (iv) the monetary value of the benefit; and
18 (v) the name of the person who offered the benefit.

19 **12 Other conditions of club licences**
20 **Section 55 (d)**

21 *omit*

1 **13 New section 144A**

2 *in part 9, insert*

3 **144A Definitions—pt 9**

4 In this part:

5 *associated organisation declaration* means a declaration under
6 section 147 (Associated organisations—declaration) that an entity is
7 an associated organisation for a club.

8 *warning notice*, for an associated organisation—see
9 section 147B (1).

10 **14 Section 147 heading**

11 *substitute*

12 **147 Associated organisations—declaration**

13 **15 Section 147 (2)**

14 *after*

15 declaration

16 *insert*

17 (an *associated organisation declaration*)

18 **16 New section 147 (2) (ba)**

19 *insert*

20 (ba) it does not have the power to remove a director from the club's
21 board; and

1 **17 Section 147 (2) (f)**

2 *omit*

3 approval

4 *substitute*

5 declaration

6 **18 New section 147A to 147D**

7 *insert*

8 **147A Associated organisation declaration—condition**

9 It is a condition of an associated organisation declaration that the
10 entity declared to be an associated organisation for a club—

11 (a) continually meets each requirement for the declaration; and

12 *Note* For the requirements for the declaration of an entity as an
13 associated organisation for a club—see s 147 (2).

14 (b) continues not to do anything that would, if the commission
15 were considering whether to declare the entity as an associated
16 organisation for a club, cause the commission to refuse to
17 make the declaration; and

18 (c) does not attempt to remove a director (including do anything a
19 purpose of which is to remove a director) from the club's
20 board.

21 *Note 1* The Control Act, s 22 provides that the commission may, for a purpose
22 related to the administration or enforcement of a gaming law, require a
23 person to give or produce to the commission the things mentioned in
24 that section.

25 *Note 2* The Control Act, s 23 provides that an authorised officer may enter and
26 inspect the premises of an associated organisation at any reasonable
27 time to do the things mentioned in that section.

1 **147B Associated organisation—warning notice**

- 2 (1) If the commission is satisfied that an entity declared to be an
3 associated organisation for a club has stopped meeting a
4 requirement for the associated organisation declaration, the
5 commission may give the entity a notice (a *warning notice*).
- 6 (2) A warning notice given to the entity must—
- 7 (a) state that the commission is not satisfied that the entity is
8 meeting a requirement for the associated organisation
9 declaration; and
- 10 (b) tell the entity that the entity may, within 3 weeks after the day
11 the entity is given the notice (or a longer period stated in the
12 notice), give a written response to the commission about the
13 notice.

14 **147C Associated organisation declaration—suspension or**
15 **repeal**

- 16 (1) This section applies if—
- 17 (a) an associated organisation has been given a warning notice;
18 and
- 19 (b) after considering any responses given within the period stated
20 in the warning notice, the commission is satisfied that the
21 associated organisation has stopped meeting a requirement for
22 the associated organisation declaration applying to the
23 organisation.
- 24 (2) The commission may—
- 25 (a) suspend the declaration; or
- 26 (b) repeal the declaration.

- 1 (3) If the commission suspends or repeals the declaration, the
2 suspension or repeal takes effect—
- 3 (a) when the entity receives written notice of the suspension or
4 repeal; or
- 5 (b) on a later stated date.
- 6 (4) If the commission suspends the declaration, the suspension ends—
- 7 (a) on a date stated in the written notice of the suspension; or
- 8 (b) when an event stated in the written notice happens.

9 **147D Club elections—election of board directors**

- 10 (1) This section applies if a club holds an election of directors to the
11 club's board.
- 12 (2) The club must ensure that at least 25% of the directors are elected
13 by the voting members of the club.

14 **19 Section 148 heading**

15 *substitute*

16 **148 Club elections—record-keeping**

17 **20 New section 148A**

18 *insert*

19 **148A Club directors—acting in good faith**

20 A director of a club must exercise the director's powers and
21 discharge the director's duties—

- 22 (a) in good faith in the best interests of the club; and
- 23 (b) for a proper purpose.

21 New section 148B*insert***148B Club constitution—consistency with gaming laws**

(1) This section applies if the commission believes on reasonable grounds that—

(a) a provision of a club's constitution is inconsistent with a gaming law; or

(b) a function under a provision of a club's constitution would, if exercised, be inconsistent with a provision of a gaming law.

(2) The commission must, in writing, direct the club to amend the constitution to remove the inconsistency.

(3) A club must comply with a direction under subsection (2) within the reasonable time stated in the direction.

(4) In this section:

club means a club in relation to whose premises a licence is in force.

**22 Approval of community contributions
Section 164 (3), definition of *contribution*,
new paragraph (b) (xvi)***insert*

(xvi) the payment of a tax, fee or levy, other than a payment required under section 163A (1) (Required payment to problem gambling assistance fund).

Section 23

23 Required community contributions
Section 169 (2) (a) and (3) (b)*omit*

7%

substitute

8%

24 Problem gambling community contributions
New section 171A (1A)*insert*

(1A) This section does not apply to a payment required under section 163A (1) (Required payment to problem gambling assistance fund).

25 Reviewable decisions
Schedule 1, new items 34A and 34B*insert*

34A	147C (2) (a)	suspend declaration of associated organisation	entity given warning notice
34B	147C (2) (b)	repeal declaration of associated organisation	entity given warning notice

26 Schedule 1, new item 34C*insert*

34C	148B (2)	give direction to amend club's constitution	club given direction
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27 Dictionary, new definitions

insert

associated organisation declaration, for part 9 (Club administration)—see section 144A.

gaming law—see the Control Act, dictionary.

warning notice, for an associated organisation, for part 9 (Club administration)—see section 144A.

1 **Part 3 Gaming Machine Regulation 2004**

2 **28 Section 73 heading**

3 *substitute*

4 **73 Contractual arrangements and consultancies in annual**
5 **report of clubs—Act, s 54 (aa)**

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

2 **Notification**

Notified under the Legislation Act on 2011.

3 **Republications of amended laws**

For the latest republication of amended laws, see www.legislation.act.gov.au.
