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

GAMING MACHINE AMENDMENT BILL 2007 (NO.2)

EXPLANATORY STATEMENT

Circulated by the authority of
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Background

The *Gaming Machine Amendment Bill 2007 (No.2)* (the Bill) amends the *Gaming Machine Act 2004* (the Act) in a number of ways. The main areas of amendment are the provisions for community contributions, gaming machine licence considerations, eligibility of individuals as well as other technical amendments.

In order to address the Government's concern regarding community contributions for the funding of problem gambling issues, this Bill proposes an incentive scheme to encourage gaming machine licensees to increase expenditure to assist with the funding of problem gambling matters. For a licensee that is a club, the required community contribution for a financial year is 7% of the club's net gaming machine revenue. The proposed scheme will provide that for every \$3.00 contributed a licensee can claim \$4.00 towards their required annual community contribution.

To be an eligible contribution for the incentive scheme the funding must:

- assist in alleviating problem gambling;
- assist in alleviating the disadvantages that arise from problem gambling; or
- inform about problem gambling.

This initiative supports a long-standing Government objective to encourage licensees to increase community contributions to problem gambling issues with as little regulatory impact as possible.

Also, the Bill proposes to amend the provisions relating to when the Gambling and Racing Commission (the Commission) may assess an application for gaming machines or additional gaming machines when the maximum number of gaming machines that can be issued under the Act has occurred. The Bill further proposes to clarify the assessment criteria that the Commission may use when determining an application for gaming machines or additional gaming machines.

The current Act permits an eligible individual to apply for a licence or an approval (namely a supplier, attendant, technician or licensee). This can occur even though the Commission may have taken action that has resulted in a licence or an approval being cancelled, or an application for a licence or an approval being refused on the grounds that the applicant provided false or misleading information.

To address this situation the Bill proposes that a person is not eligible to apply for a licence or an approval if within the last 12 months the Commission has cancelled the individual's licence or an approval, or an application has been refused on the basis that false or misleading information was provided to the Commission.

A number of other minor and technical amendments to the Act are also proposed.

Revenue/Cost Implications

The Commission will absorb any costs associated with the introduction and implementation of the proposed amendments and for providing any education programs and information sessions required for licensees.

Notes on Specific Provisions

Clause 1 Name of Act

This clause provides that the name of this Act is the *Gaming Machine Amendment Act 2007 (No.2)*.

Clause 2 Commencement

This clause provides that this Act (other than new section 152A of the principal Act) commences on the day after its notification. Section 152A has a delayed commencement of 6 months.

Section 152A of the Act relates to the prohibition on external visibility of gaming machines and peripheral equipment from licensed premises.

Clause 3 Legislation amended

This clause provides that this Act amends the *Gaming Machine Act 2004*. Consequential amendments to the *Casino Control Act 2006* and the *Gaming Machine Regulation 2004* have also been included.

Clause 4 Applications to be dealt with in order of receipt - New section 10(5), (6) and (7)

This clause inserts new section 10(5) into the Act to clarify that the Commission is not required to make a decision about the number of gaming machines to be issued in relation to applications for gaming machines or additional gaming machines if the maximum number of gaming machines allowed under section 35 of the Act has been allocated.

New section 10(6) of the Act provides that if gaming machines become available for allocation the Commission may by written notice require an applicant to provide updated information to the Commission.

New section 10(7) has been inserted to make it clear that updated information includes a required document under the Act that has been updated.

This amendment enables the Commission to consider the most recent information when deciding on the number of machines to be allocated to the applicant.

Clause 5 No available gaming machines - Section 17(2)(b)

This clause substitutes a new section 17(2)(b) into the Act and provides that a certificate of suitability is to be issued to indicate that the Commission would have issued a licence to an applicant for gaming machines if the maximum number of gaming machines allowed had not been reached. New clauses 17(2)(b)(i) and (ii) of the Act clarify that the number of gaming machines that an applicant would be otherwise entitled to will be determined when the number of gaming machines approved for all licensed premises falls below the maximum number of gaming machines allowed in the ACT or as part of a consideration for the transfer of a licence to the applicant under section 32.

This amendment will ensure that there is a clearly defined two-stage process for assessing an application if there were no gaming machines available for allocation

under the Act. The first stage provides that the Commission determines that the applicant would have been successful in being granted a licence for gaming machines. Secondly, the Commission will determine the actual number of gaming machines that the applicant will be entitled to if and when additional gaming machines become available. This process will allow the Commission to adequately assess the appropriate number of gaming machines, having regard to all the current relevant circumstances and information, at the closest possible time to allocation (ie. actual licence issue or amendment).

Clause 6 Eligibility of individuals – New section 20(3)(d)

This clause inserts a new section that makes it clear that an eligible person in relation to an application for a licence, or an application to become an approved supplier, technician or an attendant, does not include an individual that has within the last 12 months:

- had action taken by the Commission which has resulted in the cancellation of a licence or an approval; or
- an application has been refused on the basis that false or misleading information has been provided to the Commission.

The effect of this provision is that a person who has had their licence or approval cancelled or an application refused on the ground of providing false or misleading information will not be able to reapply for a period of 12 months. This provision does not include a cancellation of a licence where a technician or attendant ceases employment with a licensee. A cancellation in this instance is purely employment related and does not reflect any contravention of the Act by the technician or attendant.

This amendment prevents a person that has had their licence or approval cancelled, such as through disciplinary action by the Commission, from immediately re-applying for another licence or approval. It also applies to an applicant who provided false or misleading information such as failing to declare a criminal conviction or bankruptcy, from applying for a 12 month period.

This amendment protects the integrity of the Act's licensing and approval system.

Clause 7 Eligibility of clubs and other corporations – Section 21(2)

This clause amends a drafting anomaly in section 21(2) of the Act and inserts the words "does not" to provide that the Commission may decide that the corporation is an eligible person even though a provision of subsection 21(1) does not apply in relation to the corporation. The Explanatory Statement for the *Gaming Machine Act 2004* clearly indicates that it was the intended purpose of section 21(2) to apply when a corporation may be treated as eligible. Without the amendment section 21(2) did not achieve the result that was originally intended.

Clause 8 Substantive licence amendments – Section 24(3)(b)(iii)

This clause amends section 24(3)(b)(iii) of the Act to provide that the Commission is to be satisfied that the pattern of usage for existing gaming machines, as well as the actual number of club members, is sufficient to justify an increase in the number of gaming machines.

This amendment ensures that the Commission considers the actual usage for the existing machines as this provides a better indication of demand for existing machines and therefore justification for additional machines. The current provision relating only to absolute member numbers does not necessarily provide an indication of current machine requirements.

Clause 9 Section 24(4)

This clause provides for the redrafting of section 24(4) of the Act to ensure that the substituted section provides consistent criteria that the Commission must satisfy itself before amending a licence to allow a licensee to operate more gaming machines. Section 24(4) is now consistent with the criteria in section 24(3) in relation to what the Commission must consider before issuing additional gaming machines. The fundamental difference between sections 24(3) and 24(4) is that under section 24(4) the Commission may, if it considers appropriate after considering all the criteria, approve a lesser number of gaming machines than those requested by the licensee.

Clause 10 Transfer of Licence – Section 32(3)

This clause substitutes a new section 32(3) into the Act which provides the additional requirement that the amended licence must include a mention of the number of machines the prospective licensee is authorised to operate. This provides that the Commission may issue a lesser number of gaming machines to the prospective licensee than the number requested for transfer by an applicant.

The provisions of existing section 32(3) remain unaltered.

Clause 11 Approval of gaming machines and peripheral equipment – Section 69(3)

This clause provides for a technical amendment to section 69(3) of the Act to correct a drafting anomaly that previously only included an approval of a gaming machine as a notifiable instrument. To correctly apply the requirements of this provision any peripheral equipment is also to be approved by notifiable instrument.

Clause 12 Application and approval as a supplier – Section 72(2)(d)

This clause provides a consequential amendment to section 72(2)(d) to give effect to new section 20(3)(d)(iii). New section 72(2)(d) provides that an application under section 72(1) of the Act, to become an approved supplier, may be approved provided that the applicant has not, in the last 12 months, provided false or misleading information in the application to become an approved supplier.

Clause 13 New section 73A

This clause inserts new section 73A into the Act and enhances the existing provisions relating to the regulation of suppliers and is also required to give effect to new section 20(3)(d)(iii) and (iv). The Act does not currently provide for a supplier's approval to be cancelled or suspended, or for a supplier to be reprimanded. This new provision applies if the Commission stops being satisfied that an approved supplier meets the conditions for approval stated in section 72(2) or the supplier has contravened the Act.

The Commission may by written notice given to the approved supplier:

- cancel the approval; or
- suspend the supplier's approval; or
- reprimand the supplier.

In considering whether to take action under this section, the Commission must consider:

- whether action has been taken against the supplier under this section before;
- the seriousness of the contravention of the Act;
- the likelihood of further action needing to be taken against the supplier (such as indicated by the person's compliance history);
- the public benefit of suppliers being regulated under this Act (the importance of suppliers being properly regulated); and
- any other relevant matter.

This section allows the Commission to take action against a supplier if the person is no longer eligible to be a supplier as specified in section 72 or the supplier breaches the Act, for example by not correctly providing required documentation or by intentionally supplying machines with a higher stake amount than prescribed under the regulations.

These disciplinary provisions are identical to existing provisions that apply to attendants and technicians under the Act (see for example sections 79 and 91 of the Act). Clause 20 of this Bill provides for the Commission's decisions under these new provisions to be reviewable decisions.

Clause 14 Approval of technicians – Section 75(1)

This clause provides for a consequential amendment to section 75(1) of the Act to give effect to new section 20(3)(d)(v). New section 75(1)(b) provides that an application under section 74 of the Act, to become an approved technician, may be approved provided that the applicant has not, in the last 12 months, provided false or misleading information in an application to become an approved technician.

Clause 15 Approval of attendants – Section 86(1)

This clause provides for a consequential amendment to section 86(1) to give effect to new section 20(3)(d)(vii). New section 86(1)(b) provides that an application under section 85 of the Act, to become an approved attendant, may be approved provided that the applicant has not, in the last 12 months, provided false or misleading information in an application to become an approved attendant.

Clause 16 Section 152

This clause provides for the redrafting of section 152 of the Act to provide for a simplified subsection (1) by modifying the offence provision so that the licensee causing an external sign to be displayed is no longer an offence.

In addition, section 152(3) is amended to provide for an expanded definition of what does not constitute an "external sign". Sections (3)(b) and (c) have been inserted to

provide that a sign consisting mainly of a registered business name, as defined under the *Business Names Act 1963*, or a business logo that does not advertise gaming machines or promote a gambling activity, are not offences for the purposes of section 152(1). This means that the amendment will allow licensees to advertise their name, style, title, designation or logo under which a business is carried on, provided that there is no advertisement of gaming machines or gambling activity.

Clause 17 New section 152A

This clause inserts new section 152A into the Act which provides a prohibition on gaming machines, or any peripheral equipment for a gaming machine, being visible from outside licensed premises. This section has been inserted as part of an overall harm minimisation strategy to limit public exposure to gaming machines and gambling activity generally. It supports existing section 152 of the Act which prohibits external signage that advertises or promotes gaming machines by also prohibiting gaming machines and peripheral equipment from being visible outside the premises. This ensures that persons outside gaming venues, including those under the age of 18 years, do not see gaming activity or gaming machines in operation.

This offence provision is essentially the same as the existing offence under section 152 and is a strict liability offence. The justification for the strict liability offence that was used for existing section 152 is the same as for new section 152A. For convenience, the previous justification for the strict liability offence is reproduced here.

Strict liability offences generally arise in a regulatory context where, for reasons such as public safety or protection of the public revenue, it is necessary to ensure the integrity of the regulatory scheme. In this circumstance, the public interest in ensuring that the regulatory scheme is observed requires the sanction of a criminal penalty. In particular, a licensee is expected, due to his or her professional involvement in the industry, to know what the requirements of the law are, therefore the mental, or fault, element can justifiably be excluded.

This rationale is relevant in the gaming machine industry where there is a potential effect on the government's gambling harm minimisation strategies and, as a consequence, the potential effect, if the provision is not observed, on problem gambling by the general public, justifies the categorisation of strict liability for the offence by licensees for gaming machines, or any peripheral equipment for a gaming machine, being visible from outside licensed premises.

A delayed commencement of six months has been applied to clause 152A to provide licensees with adequate time to comply with the new requirements.

Clause 18 Approval of community contributions – Section 164(3)(b)(iv)

This clause amends section 164(3)(b)(iv) of the Act by correcting a minor drafting anomaly. The previous reference to “associated entity” has been replaced with “associated organisation”. The appropriate reference in this section is to “associated organisation” in the context that the Commission may declare a body to be an “associated organisation” for a club under section 147 of the Act. An “associated entity” is appropriately dealt with under section 164(3)(b)(xi) in the context of community contributions made by licensees and is as defined under the *Electoral Act 1992*.

Clause 19 New section 171A

This clause inserts new section 171A into the Act and provides an incentive scheme for licensees to contribute to problem gambling initiatives as part of their annual community contributions. The incentive scheme provides that for every \$3.00 of problem gambling community contributions made by a licensee, the licensee is entitled to claim \$4.00 towards their annual community contribution requirement.

New section 171A(2) provides a definition of what constitutes an eligible problem gambling community contribution as being a contribution that will:

- (a) assist in alleviating problem gambling; or
- (b) assist in alleviating the disadvantages that arise from problem gambling; or
- (c) inform about problem gambling.

This new section is part of the Government's strategy to minimise the harm that may be caused by excessive gambling.

Clause 20 Reviewable decisions – Schedule 1, new items 9A and 9B

This clause inserts new item 9A into Schedule 1 of the Act to provide that a decision to cancel or suspend a supplier's approval under section 73A is a reviewable decision.

Similarly, clause 20 also inserts new item 9B into Schedule 1 of the Act to provide that a decision to reprimand a supplier under section 73A is a reviewable decision.

SCHEDULE 1 AMENDMENTS TO THE CASINO CONTROL ACT 2006

Clause 1.1 New section 7(2)(f)

This clause inserts new section 7(2)(f) into the *Casino Control Act 2006* in order to adopt the principles of new section 20(3)(d) of the *Gaming Machine Act 2004* regarding the eligibility of individuals. New section 7(2)(f) of the *Casino Control Act 2006* has been inserted to provide that an eligible person in relation to applications for a casino employee licence does not include an individual that has within the last 12 months:

- had an application for a casino employee licence refused on the basis that false or misleading information has been provided to the Commission; or
- had action taken by the Commission which has resulted in the cancellation of an employee licence under part 4 of the *Casino Control Act 2006*.

This proposed amendment maintains consistency across ACT gaming laws in relation to the eligibility of individuals where it is appropriate to do so.

SCHEDULE 2 AMENDMENTS TO THE GAMING MACHINE REGULATION 2004

Clause 2.1 Section 64, Example 2

The clause amends Example 2 provided under section 64 of the *Gaming Machine Regulation 2004*. The revised example excludes “problem gambling support” since the guidelines that relate to community contributions for problem gambling are now covered under new section 64A of the Regulation.

Clause 2.2 New section 64A

This clause inserts new section 64A into the Regulation and provides guidelines for approving a financial contribution by a club as a problem gambling community contribution. A contribution is a problem gambling community contribution when it is applied to:

- (a) counselling or support services for problem gamblers that are not provided by the entity;
- (b) training or education programs on the recognition and avoidance of problem gambling;
- (c) public awareness campaigns for problem gambling; or
- (d) programs to research and collect data on problem gambling.

Training and education programs include the development and delivery of an education program that assists in recognising and avoiding problem gambling or may include the training of staff to effectively provide such services. An example for research programs provides for research conducted by a national research centre on the implications of problem gambling for the community.

This new section in the Regulation is a consequence of new section 171A in the Act relating to problem gambling community contributions and provides guidelines for this section pursuant to section 164(2)(a) of the Act.

