

2011

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

GAMING MACHINE AMENDMENT BILL 2011

EXPLANATORY STATEMENT

**Presented by
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Overview

This explanatory statement relates to the Gaming Machine Amendment Bill 2011, as introduced in the ACT Legislative Assembly.

The Gaming Machine Amendment Bill 2011 includes a number of amendments to the *Gaming Machine Act 2004* that would:

- allow multi-venue club groups to move gaming machines between their venues, subject to the current social impact and needs assessments administered by the Gambling and Racing Commission (the Commission);
- allow a club (or a multi-venue club group) to transfer gaming machines from an existing venue or venues to a new club venue;
- introduce a \$250 per day per card Automatic Teller Machine (ATM) withdrawal limit for venues;
- introduce a medium to longer term target for the number of gaming machines in the ACT of 4,000; and
- introduce a gaming machine cap that automatically reduces when machines are surrendered voluntarily or due to the cancellation of a licence.

The provisions within the Bill are scheduled to commence on 1 January 2012, with the exception of the ATM withdrawal limit, which is scheduled to commence on 1 January 2013.

Outline of Amendments

Part 1 Preliminary

Clause 1 Name of Act

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

Clause 2 Commencement

All amendments are scheduled to commence on 1 January 2012, except for those related to the ATM withdrawal limit, which would commence on 1 January 2013.

Clause 3 Legislation amended

The Bill amends the *Gaming Machine Act 2004* (the Act) and the *Gaming Machine Regulation 2004*.

Part 2 Amendments to the Gaming Machine Act 2004

Clause 4

This clause removes the section related to applications to increase the number of gaming machines; and the possibility that the Commission could not approve an increase in the number of gaming machines operated by a licensee due to the fact that the gaming machine cap had been reached and there were no unallocated machines. As the reformed gaming machine cap proposed by the Bill would remove any possibility of a licensee increasing the number of machines by obtaining unallocated machines, this situation would no longer occur and therefore is removed from the Act.

Clause 5

This amendment makes a minor technical change to the Act by removing the reference to 'kinds' of gaming machines operated by a club. Originally, this clause required club licensees to specify whether the machines to be operated were Class B (draw-poker style gaming machines) or Class C (modern gaming machines). However, all current clubs operate Class C machines. Therefore, this reference to kinds of machines is no longer required in the Act.

Clause 6

This clause removes Section 17 of the Act, which relates to the procedure required to be undertaken by the Commission in the situation where a licensee has applied for an initial licence, and would be granted a licence, however, no gaming machines are available under the cap. With the changes to the gaming machine cap and the introduction of an automatically reducing cap, there is no longer any possibility for this situation to occur and therefore this section is removed.

Clause 7

This clause updates the note related to which sections require social impact assessments to be undertaken to reflect later changes of section numbers in the Act.

Clause 8

This set of amendments reforms the process for applications to amend licences. The relevant sections of the Act have been redrafted to separately identify each of the possible licence amendment categories and to introduce two new types of licence amendment applications - the transfer of gaming machines within a multi-venue club group between existing venues (machine relocation amendment) and the transfer of gaming machines from an existing venue to a brand new club venue (new venue amendment). For existing amendment types, the requirements have not been changed, only the section of the Act redrafted to improve clarity.

Section 22

This section separately identifies all of the possible licence amendment applications that can be made by a licensee. Under the proposed changes of this Bill, an amendment application would be able to be made under the following categories:

- decreasing the number of machines;
- structurally changing part of the gaming area at a club;
- storing gaming machines temporarily;
- relocating a licence to a new venue;
- relocating gaming machines from one existing venue to another in a multi-venue club group;
- relocating gaming machines from an existing venue or venues to a new club venue; and
- technical amendments to licences (changes directly related to the technical specifications of gaming machines).

Section 23

This section outlines what applicants are required to supply the Commission as part of their application for any of the aforementioned licence amendments. This section includes the criteria for the new types of application – multi-venue club transfers of gaming machines within existing club venues and the transfer of gaming machines from an existing venue or venues to a new club venue.

For transfers to a new venue, in addition to the required documentation for an initial licence application, the applicant is also required to provide information about the proposed financial investment into the new venue and a description of the amenities and facilities that are to be provided at the proposed new club.

Sections 24 – 26C

These sections of the Bill outline the decision making criteria for the Commission to consider the different types of applications outlined in section 22. This section has been substantially redrafted from the current Act, however, with the exception of the criteria for the new types of amendment applications, the criteria have remained the same for each different category of application.

Section 24

This section directs that, should a licensee apply to decrease the number of machines operating under their licence, the Commission should amend the licence to reflect the application.

Section 25

This section outlines the criteria for the Commission to consider when making a decision relating to an application for structurally changing part of the gaming area in a licensed club. It has been redrafted from the current Act but reflects the existing criteria.

Section 26

This section outlines the criteria for the Commission to consider when making a decision related to an application for the temporary storage of gaming machines. It is redrafted from the current Act (in which it is contained in section 26) but generally reflects the existing criteria.

The redrafting of this section makes it clear that a temporary storage must be undertaken for a good reason (for example, the renovation of a gaming area, repairs and maintenance to the gaming area, relocation of the gaming machine area within the club) and that the machines must be stored at an appropriate premises for the duration of the storage.

Section 26A

This section outlines the criteria for the Commission to consider when making a decision related to an application to undertake a venue relocation amendment. This type of amendment would apply when a licensee decides to move their entire club venue to a new club site.

The Commission must amend the licence if they are satisfied that:

- the proposed size and layout of the new venue is appropriate for the operation of the number of machines allowed under the licence;
- the relocation of the venue is appropriate;

- the licensee does not owe an amount to the Territory; and
- a majority of voting members voted for the relocation of the licence.

In deciding whether the application is appropriate, the Commission must consider the application, the social impact assessment, any submissions made about the social impact assessment and the extent to which the club has contributed to and is likely to contribute to the community.

Section 26B

This section outlines the criteria required for the Commission to consider an application by a licensee to relocate machines from one existing venue within the club group to another existing venue. This amendment allows a licensee with more than one venue to apply to shift machines between their venues, subject to the current social impact and needs assessments outlined in the Act.

For such a decision, to approve an application and amend the Licence, the Commission must be satisfied that:

- the size and layout of the venue proposed to receive additional gaming machines is suitable for the operation of the increased number of machines;
- that the amendment of the licence to move the gaming machines is appropriate;
- the number of club members and the pattern of use of gaming machines is sufficient to justify the extra machines at the venue where the machines would be relocated to;
- the licensee does not owe an amount to the Territory; and
- a majority of voting members of the club voted for the relocation of the machines.

In making such a decision, the Commission must also consider the social impact assessment made about the proposed changes and the extent to which the club has and is likely to contribute, support and benefit the community.

This section also gives the Commission the ability to not approve the relocation of the requested number of machines, but instead approve a lesser number of machines to be relocated without requiring a further application by the licensee.

Section 26C

This section outlines the criteria that the Commission must consider when making a decision about a licence amendment to move machines from existing gaming machine venues to a new club venue. This amendment allows an existing licensee (whether a single venue club or a multi-venue club group) to set up a new venue by moving machines internally from their existing venue (or for a multi-venue club group, from one or more of their venues) to the new club venue. This amendment is introduced primarily to help provide the ability for new clubs to open up in new greenfield suburbs (where currently there may be limited or no clubs) in a policy setting where there is no pool of gaming machines available.

The Commission must amend the current licence(s) and issue a new licence for the new venue if it is satisfied that:

- the application satisfies the requirements for the issue of a licence outlined in section 13 of the Act;

- it is appropriate to issue the new licence;
- the licensee does not owe an amount to the Territory; and
- a majority of voting members of the club voted for the relocation of the machines.

Section 26C(6) outlines the criteria the Commission must consider in deciding whether it is appropriate to issue the new licence and amend the current licence(s). The Commission must consider the:

- size and layout of the venue and the proposed gaming area;
- number of club members and their ratio to the number of gaming machines held by the licensee;
- contribution the club has made and/or will make in the future to the community;
- social impact assessment and submissions made in relation to it;
- intended monetary investment in the new venue; and
- amenities and facilities proposed for the new venue in comparison to existing amenities and facilities in the local area of the new venue.

This section differs from the criteria to be considered by other license amendment applications by allowing the Commission to make a decision on the application by considering on balance all the criteria in section 26C(6). This will provide greater flexibility to the Commission when considering applications to open a new club site.

The Commission also has the ability for a new venue amendment to not approve the new venue with the requested number of machines, but instead approve a lesser number of machines for the venue, without requiring a further application by the licensee.

Section 26D

This section outlines the existing provisions for the Commission to make a decision regarding an application for a technical amendment to a licence. It is redrafted from the current Act (in which it was contained in section 25), but the overall criteria is unchanged.

Clauses 9 and 10

These clauses update the references contained within them to reflect the structural changes to the Act by the changes proposed by the Bill.

Clause 11

This is a consequential amendment as a result of the changes to the gaming machine cap.

Clause 12

This part of the Bill reforms the maximum number of gaming machines in the ACT (known as the gaming machine cap).

Section 34A

This section outlines a statement of intention related to the number of gaming machines in the ACT. It states that the maximum number of machines should be reduced to 4,000, with this reduction to occur over time, through natural attrition, as licensees surrender gaming machines or gaming machine licences are cancelled by the Commission.

Section 35

This section outlines the process for determining the maximum number of machines at any point in time following the commencement of the legislation. The maximum number of machines is equal to the number of machines at the end of December 31, 2011, less any machines surrendered or cancelled on or after 1 January 2012.

To provide clarification of what the exact number of gaming machines at any particular point of time is, this amendment requires the Commission to prepare a notifiable instrument that states the new maximum number of machines and the date of the change as soon as possible after any machine licences are surrendered or cancelled. A notifiable instrument is a public document that is published on the ACT Legislation Register.

This section also outlines the definitions related to when a gaming machine is surrendered and when the cancellation of a gaming machine becomes final (including an outline of the review process should a decision made by the Commission be appealed against).

Section 36

This section makes it mandatory for the Minister to review the maximum number of machines when the gaming machine cap falls to 4,000 machines. The Minister must present the report of the review to the Legislative Assembly within 6 months from the commencement of the review.

Clause 13

This amendment replaces the current heading for this section of the Act with a new heading that more accurately reflects the contents of the section.

Clause 14

This clause introduces a \$250 per day, per card withdrawal limit for Automatic Teller Machines (ATM) in gaming machine venues. It outlines that should a licensee have a non-compliant ATM, this would constitute a strict liability offence with a maximum penalty of 50 penalty units.

Strict liability offences are considered to engage the presumption of innocence because the burden of proof is shifted to the defendant. Generally, the principle is that a defendant is not obligated to offer a defence. It is for the prosecution to prove, beyond a reasonable doubt, the person is guilty. However, unlike a fault element offence, for a strict liability offence the prosecution is only required to prove that a person had committed the physical element of the offence.

Consequently, strict liability offences are usually employed where it is necessary to ensure the integrity of a regulatory scheme and where a defendant can reasonably be expected to be aware of the requirements of the law.

It is submitted that strict liability is appropriate in the human rights context for this proposal. This provision imposes a limitation that is a proportionate and reasonable means to achieve the purpose of the provision which is to ensure that the ATM withdrawal limits are implemented in venues.

This amendment is introduced as a result of the agreement made at the Council of Australian Government's Select Council on Gambling Reform in May 2011. The Council agreed to work towards the nation-wide implementation of the \$250 ATM withdrawal limit in gaming venues. In addition, such a limit was also recommended by the Productivity Commission in its 2010 Gambling report.

Clause 15

This clause updates the schedule that outlines decisions made under the Act that are reviewable to reflect the revised drafting of sections 24 to 26 of the Act and to include the new types of licence amendment decisions as reviewable decisions.

Clauses 16, 17, 18 and 19

These clauses update the dictionary in the Act, updating cross references to reflect the location of the definitions in the Act.

Part 3 Amendments to the Gaming Machine Regulation 2004

Clause 20

This updates the section of the regulation related to required documents for applications. It removes the reference to the removed amendment application to increase the number of gaming machines, inserts the new amendment categories related to venue relocation amendments and updates the section numbers related to the application categories.

Clause 21

This updates the heading to reflect the revised section numbers of the Act that this regulation applies to.

Clause 22

This updates the reference within the definition related to the calculation to work out the number of club members for an application. It replaces the reference to the removed application to increase gaming machines and replaces it with a reference to the new venue amendment application.

Clause 23

Similar to the previous clause, this clause replaces the reference to amendment applications to increase the number of gaming machines at a venue with a reference to the new venue amendment category.

Clause 24

This updates the definitions of relevant premises for this regulation related to social impact assessments to reflect the introduction of licence amendment applications related to new venue, venue relocation and machine relocation amendments.

Clause 25

This amendment amends the clause related to the Commission being required to consider population while undertaking its social impact assessment for any proposed licence amendment application. The Commission must now also consider projected population and projected growth rates of the local community. This change is designed to ensure these important factors are taken into account during the decision making process related to a new club venue within the ACT.

Clause 26

This clause updates the cross-references to the Act in which a ballot of club members is required to be undertaken so as to include the new requirements for machine relocation, venue relocation and new venue amendments.

Clause 27

This clause inserts additional dictionary cross-references into the Regulation to reflect the new types of licence amendments in the Act.