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

GAMING LEGISLATION AMENDMENT REGULATION 2015 (No 1)

Subordinate Law No SL2015-27

EXPLANATORY STATEMENT

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INTRODUCTION

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.

The Control Act established the ACT Gambling and Racing Commission (the Commission) with a governing board. The Commission has responsibility for the administration of gaming laws and the control, supervision and regulation of gaming in the Territory.

The *Gambling and Racing Control (Code of Practice) Regulation 2002* (the Code Regulation) has been made under the Control Act. The *Gaming Machine Regulation 2004* (the Regulation) has been made in accordance with subsection 178(1) of the Act.

OVERVIEW

The Gaming Legislation Amendment Regulation 2015 (No 1) (the Amendment Regulation) provides amendments to the Regulation. The amendments are consequential to the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, and support the implementation of the gaming machine trading scheme, new licensing and authorisation framework and transitional arrangements. The Amendment Regulation supports implementation of those amendments introduced by the Amendment Act; it therefore has minimal, if any, further costs or benefits beyond those introduced by the Amendment Act. These costs are detailed in the Regulatory Impact Statement to the Amendment Regulation.

HUMAN RIGHTS IMPLICATIONS

During the development of the Amendment Regulation consideration was given to the impact on human rights. Clause 7 of the Amendment Regulation requires that contractual information be supplied to the Commission for premises where gaming machine activities may occur. This requirement has been applied since the Regulation commenced in November 2004.

While the Amendment Regulation generally deals with entities and not individuals, it is possible that some contracts may relate to individuals. Therefore section 12 (Privacy and reputation) of the *Human Rights Act 2004* may be engaged as the contractual information may indicate an individual's personal information.

An assessment was made as to whether any less restrictive means were available to ascertain the contractual information relevant to the Commission meeting its enforcement obligations – see below (this contractual information may include the identity of an entity or individual, or information on commercial financial arrangements). Furthermore consideration was given to the type of contractual information that would be obtained. It was determined that where personal information was acquired it would include limited details namely, the identity of a person and their address. Other personal information, including such matters as criminal history, are not able to be sought under section 6 of the Regulation and nor would such extension be warranted.

Information on contractual arrangements assists the Commission to, among other things, identify ‘kick-backs’ and possible money laundering activities. The Commission must have the necessary tools to meet its obligations under subsection 7(b) of the *Gambling and Racing Control Act 1999*, to minimise the possibility of criminal or unethical activity. Obtaining information on contracts is a means to achieving such obligations.

Once the information is received the Commission is bound by strict requirements under the *Information and Privacy Act 2014* and *Privacy Act 1988* (Cwlth). Division 4.4 (Secrecy) of the *Gambling and Racing Control Act 1999* provides further strong safeguards for the handling, confidentiality, and permitted disclosures of information that the Commission acquires as a result of exercising its functions under or in relation to a gaming law. Offence provisions apply for a person making a record of confidential information other than in accordance with their duties and unauthorised disclosure. The maximum penalty that can be applied is 50 penalty units, imprisonment for 6 months or both.

It was ascertained that there was no other means available to obtain contractual information. Accordingly, when balancing the risks involved; the type of information likely to be disclosed; and the strict protection requirements for information once disclosed, the amendment was considered reasonable and proportionate.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 - Name of regulation

This clause is a formal requirement and identifies the regulation as the *Gaming Legislation Amendment Regulation 2015 (No 1)*.

Clause 2 - Commencement

The Amendment Regulation commences when section 4 of the *Gaming Machine (Reform) Amendment Act 2015 (Amendment Act)* commences. This will enable simultaneous commencement of the Regulation and the majority of the reforms introduced by the Amendment Act.

Clause 3 - Legislation amended

Provides that the Amendment Regulation amends the *Gambling and Racing Control (Code of Practice) Regulation 2002* and the *Gaming Machine Regulation 2004*.

Part 2 Gambling and Racing Control (Code of Practice) Regulation 2002

Clause 4 – Schedule 1, new section 1.27B

Clause 4 inserts a new section 1.27B in Schedule 1 to the *Gambling and Racing Control (Code of Practice) Regulation 2002*. This clause provides for the times when gaming machines are not permitted to be operated. This clause was previously located at section 71 of the Regulation. The policy intent and operation of the provision has not been altered by the relocation of this provision.

Part 3 Gambling Machine Regulation 2004

Clause 5 - Section 3, note 1

Clause 5 substitutes the existing note 1 to provide for updated terminology in reference to the definition of 'single-user approval'. It is a formal provision providing that a note included in the Act is intended as explanatory information only and is not part of the Act.

Clause 6 - Part 2, heading

Clause 6 amends the heading for Part 2 of the Regulation to 'licences and authorisations' to apply a change in terminology.

Clause 7 - Section 6

This clause amends existing section 6 of the Regulation to give effect to the implementation of the new licensing and authorisation framework and introduction of the trading scheme under the Amendment Act.

New subsection 6(1) lists the type of applications and notifiable actions where there is a requirement to provide additional documents as part of the application or notification process. The specified circumstances that apply are:

- Class C licence applications and authorisation certificate applications;
- Class B licence and authorisation certificate applications; and
- transfers of authorisation certificates and in-principle authorisation certificates.

The note following paragraph 6(1)(e) has been inserted to provide clarification that section 6 of the Regulation also applies to an application for an in-principle approval for an authorisation certificates due to the requirement to comply with the Act (see new subsection 22(1) and section 38C of the Amendment Act).

New subsection 6(2) requires that any proposed or existing contractual arrangement for the use of premises to which the application or notification process relates (for example a lease for the premises where gaming machines will now be operated) must be provided to the Commission. This applies to all occurrences specified in new subsection 6(1) of the Regulation.

The requirement to supply contractual arrangement information has been applied since November 2004 and is integral to the Commission meeting its objectives under section 7 of the *Gambling and Racing Control Act 1999*. In particular, as far as practicable, the Commission must minimise the possibility of criminal or unethical activity in the gambling industry.

New subsection 6(3) specifies the documents that must accompany an application for a Class C licence application or a Class B licence and authorisation certificate application under subsection 6(1). Paragraph 6(3)(a) requires audited financial statements for the last three financial years, or under paragraph 6(3)(b) if not yet operating for three years, a statement for each financial year of operation. The requirement to supply audited financial statements by applicants applying for a licence has been adopted since the commencement of the Regulation in November 2004. Such statements assist the Commission in determining whether an entity is financially viable.

Clause 8 - Section 7, heading

This clause amends the heading for section 7 of the Regulation to apply new section numbers for the Act as a consequence of the Amendment Act.

Clause 9 - Section 7(3), definition of *GM*

GM is a key element of the existing formula used to determine the number of club members (for a club with a membership agreement). The formula to calculate the number of club members is:

$$\frac{GM \times TM}{TGM}$$

GM establishes the overall determination of the number of club members for a club.

Clause 9 amends current subsection 7(3) of the Regulation and describes the formula to calculate *GM* as: the maximum number of gaming machine authorisations applied for; or the maximum number of Class C gaming machine authorisations that can be held if the authorisation certificate amendment application were approved. The amendment adopts the new terminology implemented as part of the new licensing and authorisation framework under the Amendment Act.

Clause 10 - Section 7(3), definition of *TGM*

Clause 10 amends current subsection 7(3) of the Regulation and describes the formula to calculate *TGM*.

When an authorisation certificate is being sought by a club, *TGM* is the total of the maximum number of Class C gaming machine authorisations under the authorisation certificate/s for:

- the club premises that the authorisation certificate application relates to;
- all the applicant club's other premises; and
- any other clubs that are part of a membership agreement with the applicant club.

Similarly, when a club is seeking to amend its authorisation certificate to increase the maximum number of gaming machine authorisations, *TGM* is the total of the maximum number of gaming machine authorisations under the authorisation certificate/s for:

- the club premises if the amendment was approved;
- all the applicant club's other premises; and
- any other clubs that are part of a membership agreement with the applicant club.

The amendment also adopts the new terminology implemented as part of the new licensing and authorisation framework under the Amendment Act.

Clause 11 - Section 7(3), note

This clause substitutes the existing note (a) and (b) in subsection 7(3) and has been inserted to provide clarification that there is a requirement that section of the Regulation also applies to new section 23 and paragraph 38N(4)(b) of the Amendment Act.

Clause 12 - Section 8

This clause amends existing section 8 as a consequence of the introduction of the new licensing and authorisation framework under the Amendment Act. The schedule to the authorisation certificate will record specific information relevant to the operating features of the gaming machine, such as the type of game installed, basic stake denomination, percentage payout and any linked jackpot arrangements. This information was previously held as part of the licence schedule. The recording of this information supports the Commission in its objectives under section 7 of the *Gambling and Racing Control Act 1999*, especially in relation to consumer protection by being able to easily identify whether a particular gaming machine has had unauthorised changes to its programming.

Clause 13 - Section 9, new definition of *relevant gaming machine application*

This clause provides a new definition for what a relevant gaming machine application is for the purposes of Part 3 of the Regulation. Part 3 of the Regulation deals with social impact assessments.

A relevant gaming machine application is an application for: an authorisation certificate; an amendment to an authorisation certificate seeking to relocate a club to another suburb; an increase in the maximum number of authorisations under an authorisation certificate; or in-principle approval for an authorisation certificate.

Clause 14: Section 9, definition of *relevant premises*

Clause 14 substitutes the current definition under Part 3 of the Regulation of relevant premises for a social impact assessment. The definition provides clarity that the relevant premises means: the premises where the increased number of gaming machines may be operated; the premises where the operation of all gaming machines are to be relocated; and the address where in-principle approval is being sought to operate gaming machines.

Clause 15 - Section 10, heading

This clause amends the heading for section 10 of the Regulation to apply the new section number for the Act, paragraph 12(2)(a) of the Amendment Act, previously paragraph 18(2)(a).

Clause 16 - Section 10(1)

Clause 16 amends subsection 10(1) to apply the new definition of a relevant gaming machine application as set out in clause 13 above.

Clause 17 - Section 10(2)

Clause 17 provides an amendment to existing subsection 10(2) of the Regulation. The amendment is consequential and has been inserted to incorporate the terminology adopted under the Amendment Act for authorisation certificates. The policy intent and operation of the provision has not been altered by the amendment.

Clause 18 - Section 11, heading

This clause amends the heading for section 11 of the Regulation to apply the new section number for the Act, paragraph 12(2)(b), previously paragraph 18(2)(b).

Clause 19 - Section 11(1)

Clause 19 amends subsection 11(1) to apply the new definition of a relevant gaming machine application. A social impact assessment must address the matters listed in paragraph 11(1)(a) to paragraph 11(1)(g) of the Regulation. The policy intent and operation of the provision has not been altered by the amendment.

Clause 20 - Section 12, heading

This clause amends the heading for section 12 of the Regulation to apply the new section number for the Act, paragraph 12(2)(c), previously paragraph 18(2)(c).

Clause 21 - Section 12(1)

Clause 21 amends subsection 12(1) to apply the new definition of a relevant gaming machine application. To the extent that information is available to an applicant, a social impact assessment must provide the information specified in paragraph 12(1)(a) to paragraph 12(1)(d) of the Regulation. The policy intent and operation of the provision has not been altered by the amendment.

Clause 22 - Part 3A

Clause 22 removes existing Part 3A of the Regulation regarding social impact statements. Part 3A of the Regulation commenced on 1 January 2013 and was specifically inserted as part of the small-scale gaming machine relocation scheme. Social impact statements were an abridged form of a social impact assessment to cater for those circumstances where the Commission considered the risk did not necessitate a full social impact assessment to be undertaken.

Small-scale gaming machine relocation provisions will no longer apply under the Act with the introduction of the trading scheme arrangements under the Amendment Act. This makes Part 3A of the Regulation obsolete.

The removal of the provisions for social impact statements does not affect the requirements for social impact assessments to be undertaken and therefore does not impact on harm minimisation strategies.

Clause 23 - Section 14, note

This clause substitutes the existing note to provide for the updated section numbering applied throughout the Act as a consequence of the Amendment Act.

Clause 24 - Section 40, new definition of *single-user approval*

This clause inserts a definition for 'single-user approval' to give effect to the implementation of the new licensing and authorisation framework under the Amendment Act.

Clause 25 - Section 40, definition of *single-user authorisation*

This clause deletes the definition of single-user authorisation to give effect to the implementation of the new licensing and authorisation framework under the Amendment Act.

Clause 26 - Section 55, definition of *linked licence*

This definition has been omitted because the term is not used in the Regulation.

Clause 27 - New parts 9A and 9B

New Part 9A has been inserted to require information to be displayed on the storage permit for gaming machines under the Amendment Act.

New Part 9B is also as a result of the Amendment Act. Paragraph 173D(5)(b) of the Amendment Act provides that a regulation may prescribe a different number of days than specified under paragraph 173D(5)(a). New subsection 70B(1) prescribes that the number of days to process a notifiable action for a technical amendment to or transfer of an authorisation certificate; a surrender of a licence, authorisation certificate and authorisation; and disposal of a gaming machine, is set at 20 business days. The Regulation has been inserted to enable the initial transition to notifiable actions under the licensing and authorisation framework and will expire three months after the commencement of the Regulation.

Clause 28 - Section 71

This clause omits section 71 of the Regulation and is consequential to the amendment at Part 2. The entire provision has been relocated to the Code Regulation.

Clause 29 - New part 15

This clause inserts new Part 15 in the Regulation to clarify the transitional arrangements under Part 20 of the Act are modified by Schedule 1. The Part is to expire three years after the day the Amendment Regulation commences.

Clause 30 - New schedule 1

Subsection 310(2) of the Amendment Act provides that a regulation may modify the transitional arrangements established in Part 20 to make provision in relation to matters that are not, or are not adequately or appropriately, dealt with in that Part. New Schedule 1 inserts new section 309A and section 309B.

Transitional arrangements for in-principle approvals are provided at section 306 to section 309 of the Amendment Act. New section 309A has been inserted to provide a necessary transitional arrangement for a conversion of an in-principle approval. This is to retain the right for an existing in-principle approval granted under the Act to be converted. The current transitional arrangements under the Amendment Act only cater for those situations where an application was received by the Commission prior to the commencement of the Amendment Act. The amendment is within the scope and objects of the Act and has been confined to the power granted under the Amendment Act.

Subsection 309B provides that the Commission must issue a storage permit for a general purpose for 12 months, where prior to the commencement of the Amendment Act the Commission had approved the temporary storage of gaming machines under a licence. This is to enable a seamless transition for the temporary storage of gaming machines under the new licensing and authorisation framework and minimise the occurrences where a licensee may inadvertently be committing an offence under the Act. The amendment is within the scope and objects of the Act and has been confined to the power granted under the Amendment Act.

Clause 31- Dictionary, note 3

This clause amends the Dictionary, note 3 of the Regulation to apply the new section numbers and terminology under the Amendment Act.

Clause 32 - Dictionary, new definition of *expired gaming credits*

This amendment inserts a definition for a term defined in section 27 of the Act. This is consistent with current legislative drafting practice.

Clause 33 - Dictionary, definition of *gaming machine proposal*

This amendment deletes the definition of social impact statements and is consequential to the amendment at clause 22 of the Amendment Regulation.

Clause 34 - Dictionary, definition of *linked licence*

This amendment deletes the definition of linked licence and is consequential to the amendment at clause 26 of the Amendment Regulation.

Clause 35 - Dictionary, definition of *local community*

This amendment deletes the definition of local community and is consequential to the amendment at clause 22 of the Amendment Regulation.

Clause 36 - Dictionary, new definition of *relevant gaming machine application and single-user approval*

This amendment inserts the definition of relevant gaming machine application and single-user approval and is consequential to the amendments at clauses 13, 24 and 25 of the Amendment Regulation respectively.

Clause 37 - Dictionary, definition of *single user authorisation*

This amendment deletes the term ‘single-user authorisation’ to give effect to the implementation of the new licensing and authorisation framework under the Amendment Act.

Clause 38 - Further amendments, mentions of *authorisation etc*

This clause amends a number of provisions to adopt the term ‘approval’ in place of the term ‘authorisation’ to give effect to the implementation of the new licensing and authorisation framework under the Amendment Act.

Clause 39 - Further amendments, mentions of *licensed etc*

This clause amends a number of provisions to adopt the term ‘authorised’ in place of the term ‘licensed’ to give effect to the implementation of the new licensing and authorisation framework under the Amendment Act.

Clause 40 - Further amendments, mentions of *machine etc*

This clause amends a number of provisions to provide clarity with the term ‘gaming machine’ being inserted in place of the term ‘machine’.