

2018

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

GAMING MACHINE (OFFSET AMOUNTS) REGULATION 2018

SL2018-27

EXPLANATORY STATEMENT

**Circulated by the authority of
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OVERVIEW

The *Gaming Machine Act 2004* (the Gaming Machine Act) and the *Gaming Machine Regulation 2004* (the Gaming Machine Regulation) regulate gaming machine operators, venues and gaming machines. For the purposes of the Gaming Machine Act, the *Gambling and Racing Control Act 1999* (the Control Act) provides the overarching legislative framework for gambling in the Territory.

The ACT Government has committed in the *Parliamentary Agreement for the 9th Legislative Assembly* to reduce the number of gaming machine ‘licences’ (‘authorisations’ in the Gaming Machine Act) to 4,000 by 1 July 2020, as part of a range of measures intended to reduce gambling harm.

The *Pathway to 4,000 Gaming Machine Authorisations by 2020* announced by the Government includes financial and non-financial incentives for gaming machine licensees that voluntarily surrender gaming machine authorisations by 31 January 2019. The incentives for voluntary surrender will be reflected in a voluntary surrender agreement with the Territory.

One of the financial incentives for clubs that voluntarily surrender authorisations is an offset amount that can be applied against amounts payable to the Territory relating to Lease Variation Charges (LVC), deconcessionalisation payout amounts and other Government land, lease and planning and development fees and charges.

The legislative framework for the voluntary surrender of authorisations has been established through amendments to the Gaming Machine Act by the *Gaming Legislation Amendment Act 2018*, relevant provisions of which took effect on 11 December 2018.

This Regulation, made under section 10H of the Gaming Machine Act, lists the fees, charges and other amounts payable that clubs are eligible to use their offset amount ‘credits’ for, up to the amount established under a voluntary surrender agreement, and for a period of seven years ending in 2026.

HUMAN RIGHTS IMPLICATIONS

The Regulation does not engage any human rights set out in the *Human Rights Act 2004* as the offset amounts are only accessible under a voluntary surrender agreement entered into by a gaming machine licensee and the Territory. As outlined in the Government’s *Pathway to 4,000 Gaming Machine Authorisations by 2020*, eligibility for offset amounts is restricted to gaming machine licensees that are clubs, and all club licensees operate within a corporate or incorporated association structure.

REGULATORY IMPACT STATEMENT

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement where a subordinate law is likely to impose appreciable costs on the community, or a part of the community.

Since this Regulation reduces the costs to clubs of undertaking prescribed land, planning and development activities, a regulatory impact statement has not been prepared in this instance.

NOTES ON CLAUSES

Clause 1 Name of regulation

Clause 1 is a formal provision setting out the name of the Regulation as the *Gaming Machine (Offset Amounts) Regulation 2018*.

Clause 2 Commencement

Clause 2 provides the commencement date for the Regulation. The Regulation is taken to have commenced on the commencement of the *Gaming Legislation Amendment Act 2018* (the Amendment Act), section 20.

Section 20 of the Amendment Act inserted new part 2A in the *Gaming Machine Act 2004*. This new part provides for the reduction in the number of authorisations in the ACT to 4,000 or fewer by 2020, as set out in the *Pathway to 4,000 Gaming Machine Authorisations by 2020* document tabled by the Attorney-General in the Legislative Assembly on 23 August 2018.

Section 20 of the Amendment Act commenced on 11 December 2018.

The retrospective commencement of this Regulation is non-prejudicial and is necessary to support clubs being able to access the offset amounts from the commencement of the Amendment Act.

Clause 3 Notes

Clause 3 provides that notes included within the Regulation are explanatory and not part of the Regulation. This is a standard clause that explains the legal status of notes in the Regulation, in accordance with section 127 of the *Legislation Act 2001*.

Clause 4 Offset amounts—Act, s 10H (4), definition of offset amount, paragraph (a)

The Regulation operates with the Gaming Machine Act's provisions and a voluntary surrender agreement to become the source of the entitlement to a deemed payment

or partial payment of an amount otherwise owing to the Territory, up to the amount set out in the voluntary surrender agreement.

Section 10H of the Gaming Machine Act applies to a person if the person:

- becomes liable to pay an offset amount to the Territory before 1 April 2026; and
- is entitled under a voluntary surrender agreement, to the deemed payment or partial payment of an offset amount; and
- claims the entitlement under any process set out in the voluntary surrender agreement before 1 April 2026.

An offset amount is defined in section 10H(4) as a fee, charge or other amount that is prescribed by regulation for the purposes of that subsection and payable under the Acts listed in that subsection.

As the offset amounts endure for seven years and it is not possible to forecast changes in the legislative framework for land, planning and development payments, fees and charges across that period, the list of Acts for which offset amounts may be prescribed can be expanded by Regulation if required in future (section 10H(4)(b)(viii)).

Clause 4 prescribes the following fees, charges and other amounts as offset amounts:

- (a) a fee determined for a matter under any of the following provisions:
 - (i) the *Building Act 2004*, section 150;
 - (ii) the *Community Title Act 2001*, section 96;
 - (iii) the *Electricity Safety Act 1971*, section 64;
 - (iv) the *Gas Safety Act 2000*, section 67;
 - (v) the *Unit Titles Act 2001*, section 179;
 - (vi) the *Water and Sewerage Act 2000*, section 45;

- (b) a fee determined for a matter under the *Planning and Development Act 2007*, section 424 in relation to any of the following provisions of that Act:
 - (i) part 5.3 (Variations of territory plan other than special variation or technical amendments);
 - (ii) part 7.2 (Assessment tracks for development applications);
 - (iii) part 7.3 (Development applications);
 - (iv) part 8.2 (Environmental impact statements);
 - (v) part 8.3 (Inquiry panels);
 - (vi) part 9.2 (Grants of leases generally);

- (vii) part 9.3 (Grants of further leases);
 - (viii) part 9.4 (Concessional leases);
 - (ix) part 9.6 (Lease variations);
 - (x) part 9.9 (Leases—certificates of compliance and building and development provisions);
 - (xi) part 9.11 (Licences for unleased land);
- (c) a payout amount for the discharge of a concessional lease worked out under the *Planning and Development Act 2007*, section 263;
- (d) a lease variation charge for a chargeable variation of a nominal rent lease under the *Planning and Development Act 2007*, section 276C.

Where the offset amount listed above relates to a fee determined for a matter under an Act, the current fee determination may be accessed on the ACT Legislation Register.