

# Gaming Machine (Determination of Surrender Obligations) Guidelines 2019

## Disallowable instrument DI2019–21

made under the

**Gaming Machine Act 2004, section 10K (Guidelines for determination)**

## EXPLANATORY STATEMENT

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### INTRODUCTION

The *Pathway to 4,000 Gaming Machine Authorisations by 2020* (Pathway) was tabled in the Legislative Assembly on 23 August 2018. The Pathway sets out the steps to achieve the Government's commitment to reduce the number of gaming machine authorisations in the ACT to 4,000 by 2020.

The Pathway outlined incentives for gaming machine licensees for the voluntary surrender of gaming machine authorisations in advance of the compulsory surrender of authorisations in April 2019 and April 2020, and for a range of club industry diversification support measures to assist the industry in diversifying income streams away from gaming machine revenue.

The *Gaming Legislation Amendment Act 2018* inserted, among other amendments, new part 2A of the *Gaming Machine Act 2004* (the Act) as part of the implementation of the Pathway. Part 2A provides for reducing the cap on the number of authorisations in the ACT to 4,000 or fewer, including through voluntary and compulsory surrender of authorisations.

Division 2A.3 of the Act provides for the compulsory surrender of authorisations where the cap on authorisations (the number of authorisations for electronic gaming for all authorised premises in the ACT) is above 4,000.

Section 10J of the Act provides that the Minister (the Attorney-General) must determine the surrender obligation of each licensee for each compulsory surrender day. Under section 10I, licensees that held 19 or fewer authorisation for gaming machines on the census day (23 August 2018 – when the Pathway document was tabled in the Legislative Assembly) are not subject to compulsory surrender. This exemption includes a number of smaller clubs and all hotel licensees.

Section 10K of the Act provides that the Minister may make guidelines for the determination of surrender obligations under section 10J.

## **BACKGROUND**

Section 10 of the Act provides that there are two compulsory surrender days. The first compulsory surrender day is 1 April 2019 and the second compulsory surrender day is 30 April 2020.

As indicated above, section 10J of the Act provides that the Minister must determine the surrender obligation of each licensee for each compulsory surrender day.

Section 10J(2) provides that the total of the surrender obligations for a licensee for both compulsory surrender days must not exceed 20% of the authorisations held by the licensee in relation to the authorised premises on the census day.

Section 10J(3) sets out a number of principles that the Minister must consider when determining a surrender obligation. The relevant provisions are as follows:

- (3) In determining a surrender obligation, the Minister must, as far as practicable—
  - (a) ensure that the cap on authorisations in the ACT will reach the target of 4 000 authorisations by the second compulsory surrender day; and
  - (b) subject to subsection (6), determine the surrender obligation of a licensee in proportion to the number of authorisations held by the licensee under the authorisation certificate for the authorised premises on the census day; and
  - (c) reduce a licensee's surrender obligation by taking into account the number of authorisations surrendered by the licensee in relation to the authorised premises under section 37F during the period beginning on the census day and ending on the day before a determination is made; and
  - (d) if the surrender obligation is for a licensee that is a disposing licensee under section 127F (1)—reduce the licensee's surrender obligation by taking into account the number of authorisations from the authorised premises that were forfeited by the acquiring licensee under section 127F (4) during the period beginning on the census day and ending on the day before the determination; and
  - (e) reduce a licensee's surrender obligation by taking into account the number of the licensee's surrendered authorisations under section 10D—
    - (i) for the authorised premises; or
    - (ii) if the licensee nominates other authorised premises of the licensee under section 10B (3)—for the nominated premises; and
  - (f) apply any guidelines made under section 10K.

Also of relevance, sections 10J(4) to (6) of the Act provide:

- (4) Any authorisations taken into account under subsections (3) (c) and (d) in a determination for the first compulsory surrender day must not be taken into account to reduce a surrender obligation in a determination for the second compulsory surrender day.

- (5) Any authorisations taken into account in relation to subsection (3) (e) must, as far as practicable, be evenly distributed between the determinations for the first compulsory surrender day and the second compulsory surrender day.
- (6) The Minister must—
  - (a) round a surrender obligation to the nearest whole number; and
  - (b) starting with the licensee that holds the greatest number of authorisations and working down to the licensee that holds the fewest authorisations, adjust the surrender obligations of the licensees to add additional surrenders of authorisations that are necessary to ensure the cap on authorisations reaches the target of 4 000 authorisations under subsection (3) (a).

## **GUIDELINES**

Section 10J(3)(f) of the Act provides that the Minister must, as far as practicable, apply any guidelines made under section 10K when determining a surrender obligation.

The *Gaming Machine (Determination of Surrender Obligations) Guidelines 2019* set out additional principles that the Attorney-General must apply, as far as practicable, in making a determination under section 10J.

Section 10J(3)(e) of the Act provides that surrendered authorisations can be counted to reduce the surrender obligation of another of the licensee's authorised premises. Guidelines (i) and (ii) provide this same flexibility in relation to authorisations surrendered under section 37F or forfeited under section 127F (and counted against a disposing licensee's obligation). In both instances, the Guidelines provide that the Minister must only count a surrendered authorisation once when determining a surrender obligation.

Guideline (iii) sets out that if the combined surrender obligations for both compulsory surrender days for an authorised premises is an uneven number, the Minister should determine that the higher number is surrendered on the first compulsory surrender day.

Guideline (iv) sets out that the Minister should apply the upwards balancing adjustment allowed for under section 10J(6)(b) on the second compulsory surrender day.

Guideline (v) provides further detail about how the upwards balancing adjustment is to be applied. It sets out that if the upwards balancing adjustment allowed for under section 10J(6)(b) is required, the Minister should apply the adjustment to the surrender obligation of the licensee's authorised premises with the highest remaining surrender obligation. Where the licensee has two or more authorised premises with the same remaining surrender obligation, the Minister should add the adjustment to the surrender obligation of the authorised premises holding the greatest number of authorisations on the day before the determination is made.

Guideline (vi) is similar to the upwards balancing adjustment allowed for under section 10J(6)(b), except that it addresses the situation where the working out of the surrender obligations would result in the number of authorisations reaching fewer than 4 000 on the second compulsory surrender day. This Guideline provides for a downwards balancing adjustment, starting with the licensee that holds the fewest number of authorisations.

Guideline (vii) provides further detail about how the downwards balancing adjustment is to be applied. It sets out that, if under Guideline (vi) any authorisations are subtracted, they must be subtracted from the surrender obligation of the licensee's authorised premises with the lowest remaining surrender obligation or, where the licensee has two or more authorised premises with the same remaining surrender obligation, must be subtracted from the surrender obligation of the authorised premises holding the fewest number of authorisations on the day before the determination is made

The Guidelines must be read in conjunction with the Act and any determination made under section 10J.

### **COMMENCEMENT**

The Guidelines commence on 4 March 2019.