

# Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020

Disallowable Instrument DI2020—139

made under the

Gaming Machine Act 2004, s166A (Emergency community purpose contribution declaration)

## EXPLANATORY STATEMENT

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### Background

Part 12 of the *Gaming Machine Act 2004* (the Act) provides for community contributions. A licensee that is a club (a ‘club’) is required to make community purpose contributions of at least eight per cent of the net gaming machine revenue that the club receives in a reporting year.

Section 166A of the Act provides that the Minister may make an *emergency community purpose contribution declaration*.

Under an emergency community purpose contribution declaration, the Minister may declare that a contribution by a club is a community purpose contribution, despite anything else in the Act.

In accordance with section 104 of the *Legislation Act 2001*, a reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation. Part 9 of the *Gaming Machine Regulation 2004* includes provisions relating to community purpose contributions. As a result, the making of a declaration under section 166A of the Act has the effect that the declared contribution is an emergency community purpose contribution, even where the Gaming Machine Act or Regulation provides otherwise.

A declaration may only be made if a COVID-19 emergency is in force or was in force at any time in the previous 12 months. Under section 164 of the Act, a COVID-19 emergency means:

- (a) a state of emergency declared under the *Emergencies Act 2004*, section 156 because of the coronavirus disease 2019 (COVID-19); or
- (b) an emergency declared under the *Public Health Act 1997*, section 119 (including any extension or further extension) because of the coronavirus disease 2019 (COVID-19).

The definition of community purpose in section 166 of the Act has been amended to include ‘providing relief or assistance to the community in relation to a COVID-19 emergency.’ Under section 165 of the Act, the *community* includes people living in the ACT or surrounding region.

A declaration may apply to anything that happens at any time during the reporting year in which the declaration is made. A reporting year for community contributions purposes is defined in section 164 of the Act. Clubs do not all report on a standard (July-June) financial year.

An emergency community purpose contribution declaration has effect for the period stated in the declaration and may be subject to any conditions declared by the Minister.

Under section 172(2A) of the Act, clubs must include in their annual report the percentage of net gaming machine revenue that was contributed for the purpose of providing relief or assistance to the community in relation to a COVID-19 emergency. This includes any emergency community purpose contributions. This requirement applies to annual reports for reporting years that end after 23 March 2020.

Where a club with gross gaming machine revenue of less than \$200,000 per annum does not prepare an annual report, community purpose contribution information must be set out in a written statement attached to the club’s certified income and expenditure statement (section 172(3) of the Act). For clubs with gross gaming revenue of \$200,000 per annum or more, this information must be set out in an audited community purpose contribution statement included in a club’s annual report (section 74A of the Regulation).

A declaration under section 166A is a disallowable instrument and must be tabled in the Legislative Assembly.

### **This Declaration**

A COVID-19 emergency is currently in force, since the *Public Health (Emergency) Declaration 2020 (No 1)*, NI2020-153, is currently in force.

The *Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020*, NI2020-169, provided for the closure of clubs at 11.59pm on 23 March 2020 as a result of the COVID-19 emergency. That Direction and subsequent closure Directions made under section 120 of the *Public Health Act 1997* have affected and continue to affect club operations, with consequent impacts on club staff.

This *Gaming Machine (Emergency Community Purpose Contribution—Club Employees) Declaration 2020* provides for certain payments to club staff to be community purpose contributions for the purpose of providing relief or assistance to the community in relation to a COVID-19 emergency.

### **Club Staff**

The contributions must be made to club employees or emergency-affected club employees. These terms are defined as follows for the purposes of the declaration:

- A *club employee* is a person employed by a club, other than an influential person for the licensee. ‘Influential person’ is defined in section 8 of the Act, and includes

executive officers and influential owners, and a person who can exercise as much influence as those persons. Under the Dictionary of the Act, an executive officer means any person who is concerned with, or takes part in, the corporation's management, however they are described and whether or not the person is a director of the corporation.

Club employees include staff who continued to be employed for their ordinary hours of work for all or part of the time that clubs were closed (for example, maintenance staff), and those employed for their ordinary hours of work once clubs reopen, noting that this declaration does not expire until 23 March 2021.

- An *emergency-affected club employee* is a person, other than influential person for the licensee, who was employed by a club on 23 March 2020 and who has been stood down or has had their hours of work reduced (including being reduced to 0 hours) as a result of a COVID-19 emergency.

### Contributions

The following payments are declared to be community purpose contributions:

- Wages or salary (including any relevant allowances) paid to a club employee, provided the amount is equal to, or more than, the amount (including any relevant allowances) that would be payable under the *Registered and Licensed Clubs Award 2010*.
- A payment made to an emergency-affected club employee, provided the amount is equal to, or more than, the hourly amount (including any relevant allowances) that would be payable under the *Registered and Licensed Clubs Award 2010*.

### Other Requirements of this Declaration

Only contributions that are made after 23 March 2020 and before 24 March 2021 are community purpose contributions under this declaration.

The club must reduce the amount of a community purpose contribution claimed by the amount of any other assistance or relief received from the Commonwealth or the Territory, however described, to support the club employee or the emergency-affected club employee. This includes any JobKeeper payments and funding received from the Diversification and Sustainability Support Fund (DSSF).

Example 1: A club has paid \$45,000 in wages to a club maintenance employee, who worked throughout the COVID-19 closure period and during the months afterwards to maintain club facilities. The club claimed \$19,500 in JobKeeper payments from the Commonwealth for this full-time employee. The club allocated \$2,000 in DSSF funding received from the Territory towards the employee's wages. The club can claim \$23,500 as a community purpose contribution.

Example 2: A club has paid \$10,000 in wages to an emergency-affected club employee. The club was not able to claim the JobKeeper payment for this short-term casual employee. The club allocated \$8,000 of DSSF funding received from the Territory towards the employee's wages. The club can claim \$2,000 as a community purpose contribution.

The club must keep records of any amount paid to a club employee or emergency-affected club employee that is claimed as a community purpose contribution.

Disapplication of *Legislation Act 2001*, section 47 (6)

Section 47 of the *Legislation Act 2001* (the Legislation Act) provides that a statutory instrument may make provision about a matter by applying a law or an instrument of the ACT or another jurisdiction, including the Commonwealth.

The *Registered and Licensed Clubs Award 2010* (the Award) is incorporated into this instrument. The Legislation Act, section 47 (6) provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, section 47 (6) may be displaced by the authorising law (the Act) or the incorporating instrument (this instrument) (see section 47 (7)). The Legislation Act, section 47 (6) is displaced here for the reasons outlined below.

The Award is a modern award under the *Fair Work Act 2009* (Cwlth). Under that Act, section 168 (Varied modern award must be published), the Fair Work Commission must publish on its website, or by any other means it considers appropriate, the Award as varied as soon as practicable.

As noted in the instrument, the Award is available at:

[https://www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000058/default.htm](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000058/default.htm).