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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELEVENTH ASSEMBLY

GAMING LEGISLATION AMENDMENT BILL 2025

REVISED EXPLANATORY STATEMENT

Presented by
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GAMING LEGISLATION AMENDMENT BILL 2025

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill amends the *Gambling and Racing Control Act 1999* and the *Gaming Machine Act 2004* as follows.

The Bill amends the Gambling and Racing Control Act to:

(a) authorise the release of information by the ACT Gambling and Racing Commission (the Commission), or an authorised officer, for the purpose of keeping a complainant informed of the status of an investigation of a complaint that they had made; and

(b) permit expanded uses of information (including the use of information in inter-agency engagement) for the purpose of advising other Ministers and the ACT Executive about policy matters or the operation of a gaming law.

The Bill amends the Gaming Machine Act to implement a two-year pause on payments into and out of the Diversification and Sustainability Support Fund (DSSF) while the inquiry into the future of the ACT club industry (the Inquiry) takes place.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Gambling and Racing Commission was consulted in the development of the Bill.

CLIMATE IMPACT

The Bill does not have any impact on climate change.

CONSISTENCY WITH HUMAN RIGHTS

Two measures in the Bill engage and may limit the right to privacy and reputation at section 12 of the Human Rights Act. Section 12 of the Human Rights Act protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence. The right encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from excessive government intervention and unsolicited intrusion by other individuals. Of relevance to the measures in the Bill, section 12 of the Human Rights Act protects communication and information privacy by protecting personal, confidential information, or secure mail, phone and electronic communications from unlawful or

arbitrary interference. This right is engaged and may be limited by the measures in the Bill because there is a possibility that personal information may be shared.

Disclosure of information in relation to an ongoing investigation

According to section 6 (2) (h) of the Gambling and Racing Control Act, one of the functions of the Commission is to investigate and conduct inquiries into issues related to gaming and racing, and activities of people in relation to gaming and racing, for the purpose of exercising functions under a gaming law. The Commission does not investigate complaints that are in relation to customer service at gambling venues, behavioural (including disciplinary) matters that are decided under a Club's constitution, and patron access to a venue's security or surveillance systems.

Under section 31 of the Gambling and Racing Control Act, a person may lodge a complaint with the Commission about compliance with a gaming law within the ACT. The amendment to section 31 authorises the Commission, or authorised officer, to release information to a complainant for the purpose of keeping the complainant informed of the status of an ongoing investigation of a complaint that they had made. It is anticipated that the type of information to be communicated to the complainant would largely involve procedural information about the investigation, such as where the investigation is up to and the next steps. As each complaint and investigation is different, the provision has been drafted to capture a variety of situations. The Commission, or authorised officer, is given the discretion to decide what information is appropriate to disclose, as long as they comply with the safeguards legislated:

(a) information must only be released to the complainant, if the complainant has a legitimate interest in the information;

(b) the type of information shared must not unreasonably prejudice the privacy or other interests of another person (for example, interests of an individual’s family members);

(c) the type of information shared must not prejudice the conduct of an investigation; and

(d) in giving the information, principles of procedural fairness must be complied with.

The objective of the amendment to section 31 of the Gambling and Racing Control Act is to address a concern that became evident by the Commission’s recent investigation into an ACT Club between 2020-2025. While the current disclosure in the Gambling and Racing Control Act allows the Commission to inform the complainant about the results of the investigation, it does not specify whether the Commission is allowed to disclose information in relation to an ongoing investigation for the purpose of keeping a complainant informed about the progress of the investigation. During its four-year investigation, the Commission was prohibited from providing updates to the complainant in relation to the investigation due to this legislative restriction.

This measure in the Bill accordingly has a legitimate purpose of facilitating access to information by a complainant about the progress of government regulatory action. The safeguards in new section 31 (2) of the Bill ensure that any disclosure of personal information is proportionate, as it will occur only to the extent that it promotes the complainant's legitimate interests and does not unreasonably prejudice the privacy of another person or their right to procedural fairness.

Disclosure of information for the purpose of advising or assisting other Ministers and ACT Government agencies

The amendment to section 37 (d) (ii) of the Gambling and Racing Control Act will allow a gaming officer to disclose information to the administrative unit responsible for the Act, the Commission or the Minister (or to a person authorised to receive the information by those entities), for the purpose of advising or assisting an administrative unit, the Minister, or any other Minister, about policy matters or the operation of a gaming law. This extends the ability to share information to the ACT Executive.

The intent of this amendment is to enable effective engagement across government agencies, for the purpose of robust policy development and providing considered advice to Ministers and the ACT Executive.

The existing provisions were made before the public service became increasingly integrated and does not reflect government and community expectations for the functioning of the public service as a single, harmonious entity. This amendment is necessary in order to enable cooperation across relevant government agencies in the development of robust policy and advice to Ministers on policy matters or the operation of a gaming law.

Gaming policy is such that it has interests affecting a range of portfolios. The amendment is drafted broadly to accommodate that dynamic and authorise all the recipients that might legitimately require information to support policy work and advice to Ministers, which includes sharing information that is necessary to respond to and prevent serious harm to community that may arise from gambling.

For example, a gaming officer who has acquired information under a gaming law or as a result of exercising functions under or in relation to a gaming law, may need to inform the Minister of this information for the purpose of highlighting a policy or operational issue in relation to a gaming law. Depending on the nature of this information, consultation may need to occur with other ACT Government directorates and ministers responsible for different, but relevant, portfolios. There is some uncertainty whether this type of consultation is within the scope of permissible disclosures under the existing provision, as a gaming officer can only share information for the purpose of advising the Minister responsible for the Gambling and Racing Control Act about a policy or operational issue in relation to a gaming law.

For the most part, the types of information that will likely be disclosed would relate to non-natural persons. This may include, for example:

- information about whether a corporation that applies for licence under a gaming law is an eligible person;
- information to process an application under the offset scheme in the Gaming Machine Act, such as information that relates to the *Planning Act 2023* or *Duties Act 1999*, which must be shared between directorates to process the incentives;
- information in relation to licence applications, including information about whether a licensee meets the conditions to hold a licence under a gaming law ('gaming law' is defined in section 4 of the Gambling and Racing Control Act);
- information about a contravention of a gaming law; and
- information about a disciplinary action undertaken under a gaming law.

Where information to be disclosed includes information about natural people (i.e. individuals), the information would typically be de-identified to prevent interference with the individual's privacy. As is already authorised by the Gambling and Racing Control Act, in rare occasions it may be necessary to share information about natural people that might directly or indirectly identify an individual. This is only authorised where the information is shared for the legitimate purposes allowed by the amended provision.

For example, there are some decisions made by the Minister under gaming laws that are informed by public service processes beyond Access Canberra and the ACT Gambling and Racing Commission. This is most clearly the case concerning the totalisator and casino licence where personal information is relevant to the eligibility of a licence-holder. Another conceivable example might arise when developing a policy response to a gambling harm incident that unavoidably results in a person being directly or indirectly identifiable.

There are safeguards contained within the secrecy framework of the Gambling and Racing Control Act, which will continue to apply alongside the amendment to section 37 (d) (ii). As per the definition of 'gaming officer' in section 34 of the Gambling and Racing Control Act, anyone who receives information under section 37 becomes 'gaming officers', and are thereby subject to the secrecy provisions in Division 4.4 of the Gambling and Racing Control Act. A person who is or has been a gaming officer is prohibited from:

- making a record of any confidential information about another person, except in the performance of their duties (section 35 (1));
- disclosing any information obtained under or in relation to the administration of a gaming law, except as permitted in Part 4;

- producing or disclosing a confidential document in or to the court, unless the court considers that it is necessary to do so for the administration or execution of a gaming law (section 39).

Additionally, a person must not disclose any information provided to them by a gaming officer in accordance with the Gambling and Racing Control Act unless the disclosure is made with the consent of the Commission or to enable the person to exercise a function given to them by law for the purpose of the enforcement of a law for protecting public revenue (section 38).

The *Information Privacy Act 2014* imposes further limits on the use and disclosure of personal information, which offer additional protections for the use and disclosure of information of natural persons.

These safeguards ensure that any sharing of personal information is proportionate to the legitimate purpose of enabling informed policy development and advice within government. The disclosure of information must only occur in connection with the purpose for which the information was collected. In this case, the information that is obtained under or in relation to the administration of a gaming law is for the purpose of advising or assisting with policy matters or the operation of a gaming law. Consequently, there is an inherent limit in the authorised scope of information about a natural person that could be shared because any confidential information shared must be demonstrably connected to that purpose to fall within the section as amended.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause names the short title of the Act as the *Gaming Legislation Amendment Act 2025*.

Clause 2 Commencement

This clause provides that the Act commences by Ministerial notice. If a Ministerial notice has not been enacted within six months of the Act being notified on the ACT Legislation Register, these provisions will automatically commence on the first day after that period.

Clause 3 Legislation amended

This clause lists the legislation amended by the Act, which are the:

- *Gambling and Racing Control Act 1999*
- *Gaming Machine Act 2004*

Part 2 Gambling and Racing Control Act 1999

Clause 4 Investigation of complaints

Section 31 (2)

Section 31 allows a person to lodge a complaint with the Commission about compliance with a gaming law.

This clause expands the current section 31 (2) by allowing the Commission, or an authorised officer (as defined in section 20 of the Gambling and Racing Control Act), to provide information to a complainant about the status or results of the investigation of a complaint that they had made. The Commission, or an authorised officer, may only give information about complaints that the Commission is investigating or has investigated.

This clause allows the Commission, or an authorised officer, to provide a complainant with information about the status or results of the investigation of a complaint that they had made if the information complies with the following safeguards:

- the complainant has a legitimate interest in the information
- the information given would not unreasonably prejudice another person's privacy or other interests
- the information given does not deny another person procedural fairness

- the information given does not adversely affect the conduct of the investigation.

This clause was drafted specifically to give the Commission, or authorised officer, discretion on the kind of information to disclose to the complainant, provided that they have assessed the information as suitable to disclose according to the safeguards legislated.

The intent of this amendment is to create a legislative avenue for the Commission, or authorised officer, to provide the complainant with information in relation to an ongoing investigation, for the purposes of keeping the complainant up to date on the status of the investigation, particularly if the investigation is taking several years to complete.

Clause 5 Permitted disclosures to particular people

Section 37 (d) (ii)

Section 37 permits a gaming officer (as defined in section 34 of the Gambling and Racing Control Act) to disclose information that they have obtained under or in relation to the administration of a gaming law under the circumstances prescribed in the section.

This clause amends the current section 37 (d) (ii) by expanding the purpose for which a gaming officer may use the information they obtained under administration of a gaming law. This clause allows for the information to be shared for the purpose of advising or assisting an administrative unit, the Minister or any other Minister about policy matters or the operation of a gaming law.

Additionally, there is an authorisation power in section 37 (d), which operates by allowing the recipients of the information (that is, the administrative unit responsible for the Gambling and Racing Control Act, the Commission or the Minister) to decide on a case-by-case basis who is authorised to receive the abovementioned information, depending on the policy development requirements. This means that information can be shared with authorised recipients, including persons who are engaged by the administrative unit under a contract, for the allowable purpose under section 37 (d) (ii).

The intent of this amendment is to enable robust policy advice to government by allowing information sharing between ACT Government policy areas, Ministers and any other authorised persons.

Clause 6 Payments to diversification and sustainability support fund

New section 163H (4A) and (4B)

Section 163H requires club licensees to pay a ‘required amount’ (as defined in subsection (3)) to the Commission for contribution to the DSSF.

This clause inserts new subsection (4A), which will pause the mandatory payments that club licensees contribute to the DSSF, for a two-year period. The two-year period will commence by Ministerial notice.

This clause also inserts new subsection (4B), which repeals subsections (4A) and (4B) three years after their commencement, as the two-year pause is intended to be temporary. As per section 84 of the *Legislation Act 2001*, the repeal of a law does not:

- revive anything not in force or existing when the repeal takes effect
- affect the previous operation of the law or anything done, begun or suffered under the law
- affect an existing right, privilege or liability acquired, accrued or incurred under the law.

The intent of this amendment is to ensure that club licensee payments into the DSSF are paused while the Inquiry considers the operation and effectiveness of the DSSF. Additionally, it will allow for the ACT Government to consider the Inquiry report, and respond to and implement appropriate recommendations.

Clause 7 Payments out of diversification and sustainability support fund

New section 163I (3) and (4)

Section 163I authorises the director-general to make a payment out of the DSSF if an application for the payment has been made, for a purpose mentioned in section 163F (2) of the Gaming Machine Act, and on Ministerial direction after the Minister has consulted with the DSSF Advisory Board in relation to the payment.

This clause inserts new subsection (3), which prohibits the director-general from making a payment out of the DSSF for any applications made during a two-year period. The two-year period will commence by Ministerial notice and will align with the two-year period as under clause 6.

Applications made before the two-year period commences are still able to be considered by the DSSF Advisory Board after the two-year period commences, and payments may be made if the application is successful and the Minister makes a direction under section 163I. Applications submitted during the two-year period cannot be considered and payments cannot be granted.

This clause also inserts new subsection (4), which repeals subsections (3) and (4) three years after their commencement, as the two-year pause is intended to be temporary. As per section 84 of the *Legislation Act 2001*, the repeal of a law does not:

- revive anything not in force or existing when the repeal takes effect
- affect the previous operation of the law or anything done, begun or suffered under the law

- affect an existing right, privilege or liability acquired, accrued or incurred under the law.

The intent of this amendment is to ensure that payments out of the DSSF are paused while the Inquiry considers the operation and effectiveness of the DSSF. Additionally, it will allow for the ACT Government to consider the Inquiry report, and respond to and implement appropriate recommendations.