Australian Capital Territory

Gaming Machine Amendment Regulation 2026 (No 1)

Subordinate law SL2026–17

made under the

Gaming Machine Act 2004, s 178 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Gaming Machine Amendment Regulation 2026 (No 1)*(the Regulation) as made by the Executive. It has been prepared to assist the reader of the Regulation. It does not form part of the Regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the Regulation. It is not, and is not meant to be, a comprehensive description of the Regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

BACKGROUND

This Regulation amends the *Gaming Machine Regulation 2004* to ban EFTPOS machines at licensed venues where such machines allow for cash withdrawals.

Banning EFTPOS machines that allow for withdrawals within gaming venues will reduce immediate access to cash during gambling sessions, supporting harm minimisation by making it more difficult for players to access additional funds while gambling.

While the Regulation does not affect the use of automatic teller machines (ATMs) in gaming venues, EFTPOS machines can currently be used at gaming venues in the same way as ATMs (to withdraw cash). As such, the following evidence supports the ban on cash withdrawal via EFTPOS machines in gaming venues.

In 2004, the ACT Gambling and Racing Commission commissioned a study on the use of ATMs in ACT gaming venues. The study found compelling support from people experiencing gambling ham and their families and gambling and financial counsellors for the removal of ATMs in venues. It was reported that a significant

factor in the development and persistence of gambling harm was the convenient access to ATMs in venues.[1]

Following the removal of ATMs from Victorian venues in 2012, an evaluation report reported that problem gamblers typically spent significantly less money on electronic gaming machines after the removal of ATMs. Additionally, many gamblers found the removal of ATMs had increased their feelings of control over gambling spending, encouraging pre-planning and cutting down on impulsive over-spending.[2]

OVERVIEW OF THE REGULATION

This Regulation will amend the *Gaming Machine Regulation 2004* to ban EFTPOS machines at licensed venues where such machines allow for cash withdrawals.

The amendments provide that a licensee commits an offence where an EFTPOS facility located at the licensee's venue allows for cash to be obtained by a person. The offence is a strict liability offence with a maximum penalty of 10 penalty units.

A strict liability offence is appropriate in this context as the offence will only apply to a licensee as defined under the *Gaming Machine Act 2004*. As a license holder under a regulatory framework a licensee is expected to know of their legal obligations in operating a licensed venue. As such, the licensee is someone who knows, or ought to know, their legal obligations under the *Gaming Machine Regulation 2004* and *Gaming Machine Act 2004.* The creation of a strict liability offence will support the regulation of licensee behaviour in order to reduce the risk of gambling harm to consumers and other affected people.

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.

The Regulation will prevent licensees from having EFTPOS machines that are located at the licensee's authorised premises where such machines allow for cash withdrawals. The Regulation is not likely to impose appreciable costs on licensees as EFPTOS machines will still be allowed and available for all electronic transactions that do not involve cash withdrawal.

---

[1] J MicMillen, D Marshall and L Murphy, 'The use of ATMs in ACT Gaming Venues: An Empirical Study', ANU Centre for Gambling Research (2004), 14.

[2] Anna Thomas et al, 'Evaluation of the removal of ATMs from gaming venues in Victoria, Australia', Department of Justice, Victoria (2013), 14-15.

CLIMATE IMPACT

The Regulation will not have an impact on emissions production or abatement.

CONSISTENCY WITH HUMAN RIGHTS

The Regulation engages and limits the right to the presumption of innocence at section 22(1) of the *Human Rights Act 2004* (the HRA).

Section 22 – rights in criminal proceedings

1. ***Nature of the right and the limitation (s28(2)(a) and (c))***

Under section 22(1) of the HRA, everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The Regulation creates an offence which applies strict liability. A strict liability offence engages the right because there are no fault elements to such an offence. The absence of a fault element generally places a burden upon the defendant to challenge the prosecution case.

While the offence applies to licensees only and would not, in most cases, engage the HRA, this assessment considers the potential limitation of rights in criminal proceedings where a licensee operates as a sole trader. In those circumstances, the HRA is engaged and the rights analysis is therefore required.

2. ***Legitimate purpose (s28(b))***

The strict liability offence will ensure licensees' compliance with the obligation to not allow for cash withdrawals via EFTPOS at licensed venues. This will support the gaming machine regulatory scheme's purpose to prevent and reduce gambling harm and the risk of this harm to consumers and other affected people.

3. ***Rational connection between the limitation and the purpose (s28(d))***

Effective administration of the gaming machine regulatory scheme – and realisation of its harm minimisation intent – requires that suitable sanctions exist to encourage compliance by gambling licensees.

Strict liability offences typically arise in a regulatory context where, for reasons such as public safety and ensuring that regulatory schemes are complied with, strict compliance must be demanded. It also typically arises in cases where a defendant can reasonably be expected, because of their involvement with the regulated activity, to know what the requirements of the law are, and as such the mental, or fault, element can justifiably be excluded.

The offence only applies to licensees who should have a high degree of understanding of the regulatory framework. Strict liability applies to action or inaction which is administrative or procedural in nature, regarding which strict compliance must be demanded to ensure the gaming machine regulatory scheme fulfills its purpose. Strict liability ensures that any prosecution process is streamlined and will allow for immediate and appropriate action to be taken against licensees.

4. ***Proportionality (s28 (e))***

The limitation on rights in criminal proceedings is considered proportionate to the legitimate purpose, given the need to regulate and prevent gambling-related harm.

The licensee can be expected to have a high degree of awareness and understanding of the gaming machine regulation scheme and the purpose of regulating EFTPOS machine use at licensed venues because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know what the requirements are for EFTPOS machine use at licensed venues and therefore the fault element can justifiably be excluded. Strict compliance with the obligation to not allow for cash withdrawals from EFTPOS machines at licensed venues is central to the regulatory scheme's capacity to realise its harm minimisation intent.

CLAUSE NOTES

Clause 1 Name of regulation

Clause 1 names the Regulation as the *Gaming Machine Amendment Regulation 2026 (No 1).*

Clause 2 Commencement

Clause 2 provides for the commencement of the Regulation 6 weeks after its notification day.

Clause 3 Legislation amended

Clause 3 provides that the Regulation amends the *Gaming Machine Regulation 2004*.

Clause 4 Section 62A

Clause 4 substitutes a new section 62A which provides that it is an offence for a licensee to have an EFTPOS facility located at the licensee's authorised premises where that EFTPOS facility allows for cash to be obtained by a person.