2024

LEGISTLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY STATEMENT OF AMENDMENTS

GAMING MACHINE (COMPULSORY SURRENDER) AMENDMENT BILL 2024

AMENDMENTS TO BE MOVED BY ANDREW BRADDOCK MLA

This explanatory statement related to amendments (the Amendments) to the Gaming Machine (Compulsory Surrender) Amendment Bill 2024 (the Bill) presented to the Legislative Assembly for the Australian Capital Territory (ACT) to amend the Gaming Machine Act 2004 (the Act). It has been prepared in order to assist the reader of the Amendments and to help inform debate on it. It does not form a part of the bill nor amendments and has not been endorsed by the assembly.

Signed: _____

Andrew Braddock MLA

____ August 2024

Overview of the Amendments

These amendments target the conflict of interest between gambling operators and political parties by requiring that direct associations between political parties and gambling licence-holders be severed.

The amendments will amend what the eligible objects of a club are and how these are considered in the assessment of whether a club is an eligible club to hold a license for electronic gaming machines. A club which includes in its objectives the promotion of a particular party grouping, as per the definitions of the Electoral Act, will not meet the requirements to be an eligible club. This is distinct from having objectives for political activity more generally, which remains an eligible objective consistent with the Australian Constitution's implied freedom of political communication.

The amendments would effectively require clubs that wish to be an eligible club to hold a gaming licence to reform their articles of incorporation, amending their objectives to sever their ties to a party grouping.

If an affected club does not take one of these actions before date of commencement of these amendments, scheduled for 12 months after the bill is notified, they may become subject to disciplinary action by the Gambling and Racing Commission under Part 4 of the Act.

Additional background context

Gambling policy is fraught and long term challenging policy issue in the ACT, and it has been demonstrated that the ACT Government struggles to reach consensus on a proper policy response to gambling harm-minimisation reforms. This paralysis is consistent with the gambling industry's preferred outcome for no meaningful reforms to laws or regulations. The fact of the Government's inability to settle policy is a demonstration of the intractable conflict of interest impacting on political decision-making, and a signal that this conflict of interest must be curtailed if evidence-based regulatory reform is to be achieved in the future.

Human Rights Compatibility

These amendments do not have a direct bearing on human rights. Human rights apply to people, not organisations. The right to peaceful assembly and freedom of association (*Human Rights Act 2004*, section 15) is preserved as a person's ability to choose to join a club of any kind is not affected by these amendments. The freedom of expression (*Human Rights Act 2004*, section 16) is preserved as a person who is a member of a club is not restricted from any form of political communication or activity.

The freedom of expression in section 16 is supported by ensuring that a broader diversity of views can be heard by decision makers, unconstrained by a perceived or actual conflicts of interest. These are further outlined in the section on the implied freedom of political communication below.

Implied Freedom of Political Communication

Any reforms which pertain to restriction or prohibitions concerning political activity are prudent to assess against the Australian Constitution's implied freedom of political communication.

The majority judgement of *McCloy v New South Wales* [2015][1] confirmed that the purpose of the implied freedom exists to ensure that the people of the Commonwealth may exercise a free and

[1] https://eresources.hcourt.gov.au/showCase/2015/HCA/34

informed choice as electors in accordance with the judgement of *Lange vs Australian Broadcasting Corporation* [1997], with relevant tests established in that case and modified in *Coleman v Power* [2004]. The 2015 judgement says that the implied freedom "may be subject to legislative restrictions serving a legitimate purpose compatible with the system of representative government for which the Constitution provides, where the extent of the burden can be justified as suitable, necessary and adequate, having regard to the purpose of those restrictions."

Importantly, political capture is recognised as undermining Australia's system of representative democracy. In the *McCloy* judgement, the High court recognised the risks posed by "quid-pro-quo", "clientelism" and "war-chest corruption"[2]. It is from this concern that a legitimate purpose to restrict the flow of finance of political parties that was suitable and necessary can be derived, and found that this was able to be evidenced in the context of political donations from property developers which had a corrupting influence on Australia's system of representative democracy.

Drawing upon this foundation of understanding, it can be demonstrated that restricting the conflict of interest of gambling entities being directly associated with political parties is an equally suitable objective, is necessary by virtue of not being possible to resolve through other means which would not impact the implied freedom, and adequate in its balance in that it burdens the implied freedom no more than is necessary to achieve the legitimate objective.

Suitability: It is widely recognised that regulating gambling activity is a wicked issue in Australian politics, with action on the issue made more difficult due to the capture of political parties by gambling industry interests, and specifically the operators of electronic gaming machines. An article by the ABC from 2021 is representative in visualising the scale of the problem.[3] In the ACT, the issue is particularly pronounced due to the structural operation of the Canberra Labor Club, where the profits from gambling operations have historically funded the operations of the Labor party, and more recently have provided the funds to establish an investment vehicle (the 1973 Foundation) that provides baseline funding for the Labor party into the future.[4] This makes it practically impossible for the Labor party to consider reforms to gambling regulations without also considering the impact on their past and future income, and similarly risks outcomes which provide a direct or financial benefit for the gambling assets that support them. The aforementioned ABC article quotes Monash University's Charles Livingstone, who identifies that the Labor party is "impossibly compromised" by this when it comes to regulating gambling machines. The ability of the Labor party to run elections in a manner with which it is accustomed is effectively entrenched with the fortunes of gambling license-holders, and this has the practical effect of severely limiting the access and influence of other stakeholders to political and government decision-making – a fundamental tenant of the implied freedom.

Unlike in the case of property developers presenting a corrupting influence on representative democracy, the evidence lies not in the decisions taken, but in the inaction and resistance to action over the period since the formation of an ACT Labor Government in October 2000. The gambling industry benefits from the minimum possible regulation being in place, such that efforts to enhance

---

[2] See paragraph 36 of *McCloy*.

[3] https://www.abc.net.au/news/2021-10-14/how-the-gambling-industry-cashed-in-on-political-donations/100509026

[4] Evidence is available in the annual returns to Elections ACT. Capital transfers from the Canberra Labor Club to the 1973 Foundation are shown in the returns for 2011-12 ($3.6m) and 2013-14 ($2.5m). https://www.elections.act.gov.au/funding-disclosures-and-registers/annual-returns

regulations and restrictions upon the industry are stymied, and such that what regulation remains in place is of such a nature as to not threaten the profitability of gambling operations.

The historic records show that, on at least four occasions since 1999, the public service and independent experts have presented the government with compelling evidence that a centralised monitoring system (CMS) is necessary to ensure effective regulation of electronic gaming machines into the future. The four identifiable instances are:

- In 1999, before an inquiry by the Select Committee on Gambling of the 4th Assembly.[5]
- In 2004, amidst the creation of CMS-approving regulatory powers in Part 5 of the *Gaming Machine Act 2004* that have never enlivened, which is not the normal expectation.[6]
- In 2015, before an inquiry by the Public Accounts Committee of the 8th Assembly.[7]
- In 2024, before an inquiry by the Justice and Community Safety Committee of the 10th Assembly.[8]

Despite an authorising environment for the public service to investigate or develop reforms for a centralised monitoring system, the ACT government has repeatedly not acted on compelling evidence and quality advice before it or on the recommendations from Assembly Committees.

In the most recent case, Minister Rattenbury as Minister for Gaming has sought to advance a proposal for a CMS to cabinet. This proposal is predicated based on sound advice from his directorate that in the modern context of a data-linked operational environment, a CMS is the essential backbone required to implement effective harm-minimisation in gambling operations. Minister Rattenbury has described fierce opposition from members of the parliamentary Labor party, including to describe his cabinet submissions as "being given the go-slow treatment".[9] This is evidence of the obstruction of sound and evidence-based reforms.

The parliamentary experience is that the parliamentary ACT branch of the Australian Labor Party is, consistent with the description made by Professor Livingstone, "impossibly compromised" in the field of gambling reform through its association with gambling license-holders.

Necessary and Adequate in Balance: It is clear that as the problem is the conflict of interest between gambling license holders and political party groupings, only reforms which expressly target that relationship will be effective in achieving a rebalancing of access to the implied freedom. This necessarily burdens the implied freedom in one way in order to make it more broadly accessible.

Therefore, the amendments very specifically target a club's ongoing association with a political party, and only where the club also wishes to hold a license for the operation of electronic gaming machines. The amendments do not restrict clubs from having political objectives more generally

---

[5] https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/Select-Committees-Fourth-Assembly/Select-Committee-on-Gambling/The-Social-and-Economic-Impacts-of-Gambling-in-the-ACT-final-report

[6] https://www.legislation.act.gov.au/b/db_11166/

[7] https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-eighth-assembly/Public-Accounts/inquiry-into-elements-impacting-on-the-future-of-the-act?inquiry=710257

[8] https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-cashless-gaming

[9] Committee Hansard for Budget Estimates 2024-25, p1128 https://www.hansard.act.gov.au/Hansard/10th-assembly/Committee-transcripts/est32.pdf

under section 145(1)(a)(ii) of the Act, and a club can maintain its links or establish new links to a specific political party if they divest themselves of their electronic gaming machine licenses. A club can continue to publicly lobby and politically communicate, but they will be required to do without the tools for political capture which place a political party in a compromising conflict of interest.

Individuals who are members of a club are in no way restricted from joining a political party of their choice nor restricted from engaging in political activities, be it through a club of which they are a member or otherwise.

Donations made to political parties by gambling license-holders are not in the scope of these amendments as they are not appropriate to legislate through this Act, but they may be a matter for future reviews of the *Electoral Act 1994*.

In this manner, the restrictions on the implied freedom go no further than is necessary to achieve an improvement in the health of the Australian democratic system.

CLAUSE NOTES

Clause 1 – Name of the Act

The name of the Act is amended to the Gaming Machine Amendment Act 2024, reflecting the broader scope included in the bill once these amendments are passed.

Clause 2 – Commencement provisions

This amends the commencement provisions, so that elements introduced in these amendments will commence 12 months after the bill's notification day, but that the rest of the bill will remain as commencing on the day after the bill's notification day.

Clause 3 – Eligible Objects and Eligible Clubs

This adds new clauses 7A to 7G to the bill.

7A introduces a new section 145(1A) which clarifies that an *eligible object* of a club under the Act precludes objects which further or promote only 1 party grouping or associated entity, or which have substantially the same objective as this.

7B inserts at section 145(3) the definition of a party grouping and associated entity, by reference to the *Electoral Act 1992*.

7C substitutes sections 146(b)(ii) and 146(c) to clarify how the eligible objects of a club are assessed to discern if the club is an eligible club, such that the new ineligible object created in section 145(1A) must not be within the club's statement of objects at all, as distinct from being precluded from only their main objects.

7D inserts a new section 146(2) containing a definition of a party grouping and associated entity, with reference to section 145(3), created at 7B above.

7E omits the words 'or a registered party' from section 147(2)(d). This is a technical amendment, as retaining this language would otherwise be inconsistent with the amendments to the definition of an *eligible object*.

7F substitutes sections 147(2)(e)(ii) and 147(2)(f) in a similar manner to 7C, such that the same requirements apply when declaring that an entity is an associated organisation for a club. It can be noted that this will make it impossible for a political party to be declared as an associated entity of a

club, because all political parties include in their objects, directly or indirectly, the furthering or promotion of themselves.

7G inserts a new section 147(4) containing a definition of a party grouping and associated entity, with reference to section 145(3), created at 7B above.