

2024

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY STATEMENT OF AMENDMENTS

GAMING MACHINE (COMPULSORY SURRENDER) AMENDMENT BILL 2024

AMENDMENTS TO BE MOVED BY ANDREW BRADDOCK

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

____ August 2024

Overview of the Amendments

These amendments introduce best-practice, evidence-based gambling harm protections to electronic gaming machines (EGMs) - also called “poker machines” - in the ACT. Gambling on EGMs causes significant harm in the community. People in the ACT lose approximately \$180M annually on ACT EGMs. The harm from these losses includes financial, health, and relationship problems. The harm also extends beyond the individual and to the wider community. For every person whose behaviour is classified on the Problem Gambling Severity Index as “problem gambling”, six other people are negatively affected.¹

The measures proposed in this amendment will ensure that the ACT community is much better protected from the significant harms caused by gambling from EGMs. The measures introduced by the amendments are:

1. Universal account-based gambling, requiring anyone gambling on EGMs in the ACT to use an individual player card that will support cashless, account based gaming.
2. Binding precommitments with default loss limits (“net loss amount”) and time limits for all gamblers (managed through the card and an account). This requires limits to be set on how much money a person can lose on EGMs in the Territory in certain periods of time, and limits on how long a person can play EGMs in the Territory without breaks.
3. The player card will also facilitate an improved “self-exclusion” function, whereby people may exclude themselves from participating in EGM gambling, and their card and account will not allow them to gamble on EGMs. This allows people to protect themselves from gambling harm by choosing to restrict their own access. This system greatly improves on the existing ACT self-exclusion regime which requires staff at clubs to recognise excluded patrons and enforce exclusion.
4. A Central Monitoring System (CMS) ensuring the above protections apply to all EGMs in the ACT.

The amendments require the Executive to make a regulation establishing the above measures. The amendments require the above measures to be in operation by 30 June 2028, allowing time for procurement and establishment of the required CMS and account-based technology.

The account-based gambling, loss limits and time limits, will be achieved through adoption of a cashless “player card” required for any EGM gambling and linked to a player’s account. The account and protections will operate across all ACT EGMs, linked by the CMS. This ensures people can’t “venue hop” within the ACT to continue gambling and to exceed the predetermined loss limits.

The loss and time limits will be set in the regulation, approved by the Executive. It is expected that these loss and time limits will be based on expert independent advice as to the appropriate levels. The proposed starting point is the default loss limits that will be used in Tasmania, and which were informed by the research of the Tasmanian Liquor and Gaming Commission: \$5,000 a year, \$500 a month and \$100 a day. A person could set their precommitment at a stricter amount than the default limit.

Similar to the Tasmanian model, it is expected that a reasonable starting point for time limits is that a person is required to take a break from gambling of at least 10 minutes after 2 hours of continuous gambling. This would be facilitated by the card becoming inactive, or the person’s account becoming locked.

¹ Brett Hetherington and Tony Phillips 2023, *Discussion paper: Gambling harm and the online gambling environment*, Victorian Responsible Gambling Foundation, Melbourne.

In the absence of these measures, people gambling in the ACT remain exposed to EGMs and a gambling environment that is largely unfettered in terms of protections from harm, regardless of the number of machines in operation in the ACT.

In addition to these direct EGM protections, the amendments also change the operating hours of EGMs so that they must not operate during the hours that the most gambling harm occurs (typically late at night / early hours of the morning). The amendment therefore requires an EGM shutdown period from 2am to 10am. This requirement will commence 3 months after the notification of the provision, to allow clubs time to adjust their practices. As the other harm reduction measures proposed in these amendments – precommitment, loss limits, player card, a CMS – mitigate the need for a shutdown period once they commence, the amendment requires the Government to review EGM operating hours once the other measures commence.

These amendments come in a context where the ACT continues to lag behind other states and territories in terms of harm reduction measures introduced for EGMs, and where the gambling harm reduction policies of other political parties represented in the ACT Legislative Assembly are either non-existent or slow and ineffective.

Additional background context

Since as early as 1999, Parliamentary committees have been advised by government directorates and non-government organisations that a CMS is required in the ACT. Reasons for requiring such a system are multifaceted, including for consistency of regulation with other jurisdictions, and as an essential anchor for effective harm-minimisation strategies. These amendments give effect to that expert advice to require the implementation of a CMS in the ACT.

Human Rights Compatibility

Somewhat counter-intuitively, the bill and amendments to it do not actually engage with human rights. This is because, at its core, the Human Rights Act is about regulating government behaviour to protect the civil, political, economic, social and cultural rights in a person's dealings with the Government and those wielding the authority of the Crown. By contrast, the regulation of gambling operations deals with protecting a person's liberties and rights when dealing with an entity outside of government. Human rights therefore only become technically relevant insofar as the government might impose penalties or the deprivation of liberty upon persons through its regulatory actions.

These amendments do not introduce any new penalties beyond those already incorporated into the legislated framework. They also give full scope for the Minister to consider human rights in the implementation of the CMS, and it can be reasonably expected that the Minister will do so.

It is acknowledged that through implementing of a pre-commitment system with loss limits, the Territory may deprive a person of the choice on how to make use of their personal financial resources. Strictly speaking, these are not human rights within the scope of the *Human Rights Act 2004*, however they are acknowledged here for completeness' sake. The requirement for an account to gamble also requires the collection of personal data, which engage the right to privacy. Gambling on EGMs is a personal choice and people can choose to participate in the system, and hence to submit personal data. Both the loss limits and the collection of personal data are targeted to a specific purpose. The loss limits to ensure people, especially those susceptible to gambling addiction, cannot lose an unlimited amount of money; and the player account to make the system efficacious, so that people cannot use multiple accounts or trade accounts in order to circumvent

the loss limits. It is also relevant that the amendments requiring loss limit and player accounts are intended to protect the well-being of those vulnerable to predatory behaviour by the gambling industry, and to protect them from the greater harms wrought by a loss of financial means.

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

A delayed commencement is provided for the elements associated exclusively within these amendments, recognising that an implementation timeframe is warranted. It allows the Minister to select a date for implementation of the provisions in 7A to 7D, inclusive of dictionary amendments at 11A, but no earlier than 12 months after the Act is notified and later than 30 June 2028. Sections 15 and 16, concerning the hours of operation of gambling operations, commence 3 months after the notification day.

Clause 3 – Note

For clarity, the note that identifies what parts of the bill amend other legislation is updated to identify section 15 and 16.

Clause 4 – Proposed new clauses 7A to 7D

This substitutes the heading for section 66, the content of section 66(2) and 67(2), and adds a new section 66A.

The heading of section 66 is amended so that it describes definitions for the part more broadly than only for the definition of a centralised monitoring system.

The newly-substituted section 66(2) adds definitions for a *net loss amount*, a *playing period*, and a *pre-commitment system*. Recognition that an approval of a CMS under section 66(1) is a notifiable instrument is retained at a new section 66(3) and extended to include any approval of a pre-commitment system under the new section 66(2). Definitions are adapted from the *Casino (Electronic Gaming) Act 2017* for consistency with the as-yet unutilised framework that is in place for a casino.

The new section 66A describes the mandatory nature of the CMS, including its anchoring with the harm-minimisation measures contained in the pre-commitment system, the exclusion register, and mandated breaks in play. It also described the identity-linked ACT player card system which consistently enforces the harm-minimisation measures.

The newly-substituted section 67(2), supplemented by the new section 67(3), expressly requires that a regulation containing the matters contained in these amendments must be made and commence no later than 1 July 2028. A new section 67(4) allows for the expiry of 67(2) and 67(3) on 30 June 2029 due to being a transitional provision.

Clause 5 – Dictionary updates

This adds *net loss amount*, *playing period* and *pre-commitment system* to the dictionary, pointing to section 66(2).

Clause 6 – Hours of operation

This adds new sections 15 and 16 to the bill.

The new section 16 amends the excluded operating hours of EGM venues from 4-9am to 2-10am.

The new section 15 inserts a new section 27 into the *Gambling and Racing Control (Code of Practice) Regulation 2002*, to require the Minister to undertake a review of the changes in operating hours at a time that coincides with the implementation of the CMS.