



New South Wales

Gaming Machines Amendment (Leasing and Assessment) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Liquor and Gaming Legislation Amendment Bill 2018*.

Overview of Bill

The object of this Bill is to amend the *Gaming Machines Act 2001*, the *Gaming Machines Regulation 2010* and the *Casino Control Act 1992* as follows:

- (a) by changing the geographical area used for classifying local communities in the context of the local impact assessment scheme for gaming machines so that smaller local statistical areas will be used instead of local government areas,
- (b) by broadening various exemptions affecting the transfer of gaming machine entitlements within a local government area as a consequence of the proposed use of smaller local statistical areas to classify local communities,
- (c) by extending an existing exemption to allow a country hotel to transfer up to 6 gaming machine entitlements at the one time without forfeiture if the transfer will result in the venue's gaming machine threshold falling to zero (at present only one entitlement may be transferred in a 12-month period without forfeiture and may only be transferred to another country hotel),
- (d) by authorising the transfer of 2 blocks of gaming machine entitlements held by a country hotel in any period of 12 months to a hotel that is situated in a metropolitan area (at present only one block can be transferred),
- (e) by allowing the Independent Liquor and Gaming Authority (the **Authority**) to impose a cap on the number of gaming machine entitlements in certain areas of the State with that cap to prevent an increase in the overall gaming machine threshold for venues in the Fairfield local government area and to prevent an increase in the overall gaming machine threshold for

- venues in other designated areas unless a local impact assessment for the increase is not required,
- (f) by requiring venues that are exempt from the local impact assessment process to provide community organisations with a local impact statement if their application for an increase in gaming machine threshold is successful,
 - (g) by authorising the Authority to publish guidelines about the local impact assessment process,
 - (h) by allowing the Authority to have regard to additional positive contributions by a venue in connection with a proposed increase in gaming machine entitlements to reduce what is required to satisfy a community benefit requirement for the proposed increase,
 - (i) by providing that where a venue is not required to undertake a local impact assessment in connection with a gaming machine threshold increase the approved increase expires if it is not taken up after 12 months,
 - (j) by giving the Authority the discretion to extend the time that a venue has to acquire additional gaming machine entitlements following the approval of an increase in gaming machine threshold,
 - (k) by extending to Band 2 areas an existing exemption that reduces the community consultation and forfeiture requirements on a club that is establishing in a new development area,
 - (l) by adding certain community organisations to the list of organisations and agencies required to be notified and consulted about a threshold increase application and to require verification by statutory declaration of the organisations that have been notified,
 - (m) by introducing a 90-day consultation period in respect of a proposed threshold increase application that required to be accompanied by a class 2 local impact assessment,
 - (n) by increasing from 30 to 60 days the community consultation period for a threshold increase application required to be accompanied by a local impact assessment,
 - (o) by authorising the leasing of gaming machine entitlements with a lease of gaming machine entitlements to operate as a transfer of the entitlement for the term of the lease with a commensurate reduction in the gaming machine threshold for the lessor venue,
 - (p) by requiring the lessee of a gaming machine entitlement to pay a levy into the Responsible Gambling Fund (established under the *Casino Control Act 1992*),
 - (q) by requiring money paid into the Responsible Gambling Fund as a community benefit payment in connection with local impact assessment or the levy payable by a lessee of a gaming machine entitlement to be applied for such purposes as the Minister determines for the benefit of local communities in which gaming machine thresholds for venues have increased,
 - (r) by making miscellaneous minor amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Gaming Machines Act 2001 No 127 relating to local impact assessment

Classification of local statistical areas

Schedule 1 [1] (section 4 (1)) inserts definitions of terms used in other proposed amendments, including a definition of *local statistical area*, which is defined as a geographical area defined for

the time being as a Statistical Area Level 2 under the Australian Statistical Geography Standard published by the Australian Bureau of Statistics.

Schedule 1 [9] (section 33) changes the system of band classification of areas in the State (for the purposes of the provisions of the Act about local impact assessment) so that band classification will be based on the division of the State into local statistical areas rather than local government areas as at present. Band classification has an impact on whether or not a local impact assessment will be required to accompany any threshold increase application, on what information that assessment must contain and on the criteria the Authority will apply in the Authority's determination as to whether or not to approve the assessment and threshold increase. The amendment also establishes a hierarchy of band classification under which Band 1 LSA is ranked lower than both Band 2 LSA and Band 3 LSA, and Band 2 LSA is ranked lower than Band 3 LSA.

Schedule 1 [7], [11], [25] and [32] (sections 21 (1A), 35, 37A (2) (b) and 205 (1) (b)) make amendments that are consequential on the changes to the scheme for the classification of areas that will now be based on smaller local statistical areas instead of local government areas. The amendments change references to local government area to references to local statistical area and broaden certain existing concessions to balance the impact of classification based on smaller areas.

Schedule 1 [33] (Schedule 1) makes transitional arrangements for the proposed amendments to be made by the Bill. The amendments to be made by the Bill will extend to a threshold increase application made before the commencement of the amendments but on or after the date of introduction of the Bill into Parliament. Amendments relating to classification based on local statistical areas will not apply to an application for the Authority's approval of the transfer of gaming machine entitlements made before the commencement of the amendments unless the application that is made together with a threshold increase application.

Threshold increase applications and local impact assessment

Schedule 1 [10] (section 34 (4A)) requires the Authority to determine a threshold increase application within the time required by the regulations. At present there is no time limit for the Authority's determination of applications.

Schedule 1 [14] (section 35 (2) (b)–(d)) amends the circumstances in which a threshold increase application is not required to be accompanied by a local impact assessment if the application is made together with an application for approval of a transfer or lease of gaming machine entitlements. The amendments are consequential on the changes to the system of band classification under which band classification will be based on the division of the State into local statistical areas rather than local government areas. The existing exemption for a transfer within a local government area will become an exemption for a transfer within a local statistical area. There will be an additional exemption where the venue that proposes to increase entitlements and the transferring/lessor venue are in the same local government area, or are in adjoining local statistical areas, and the classification of the local statistical area of the transferring/lessor venue is the same as or ranked lower than the classification of the local statistical area in which the venue that proposes to increase entitlements is situated.

Schedule 1 [13], [15] and [16] (section 35 (2) and (2A)) make consequential amendments.

Schedule 1 [17] (section 35 (2B)) requires venues that were exempt from the local impact assessment process and that have had their threshold increase application approved to provide a local impact statement for the venue (containing the information required by the Authority) to the persons and bodies that the applicant would have been required to notify of the proposed application had it been required to be accompanied by a class 2 LIA.

Schedule 1 [20] (section 36 (3) (e)) adds, as a requirement that must be satisfied before a local impact assessment can be approved, the requirement that the Authority be satisfied that it is otherwise appropriate that the assessment be approved.

Schedule 1 [21] (sections 36A and 36B) inserts the following provisions about community benefit requirements for the purposes of section 36 (which provides that the Authority cannot approve a local impact assessment unless it is satisfied that the proposed increase in the gaming machine threshold for a venue will provide a positive contribution towards the local community where the

venue is situated or have an overall positive impact on the local community where the venue is situated):

- (a) **Proposed section 36A** provides that a community benefit requirement cannot be wholly or partly satisfied by a payment of money except a payment into the Responsible Gambling Fund under the *Casino Control Act 1992* and that such a payment is to be taken into account by the Authority in the determination of a threshold increase application as if it were a contribution to the local community where the venue is situated.
- (b) **Proposed section 36B** provides that, in determining a threshold increase application, the Authority is to have regard to certain additional positive contributions by the venue in connection with the proposed increase and may decide to treat those additional positive contributions as being in partial satisfaction of a community benefit requirement (so as to reduce what is required to satisfy a community benefit requirement).

Schedule 1 [22] (section 36C) gives the Authority the power to publish guidelines about the operation of the gaming machine threshold scheme, for the purpose of providing guidance in respect of the requirements of the scheme relating to threshold increase applications.

Schedule 1 [24] (section 37A (1)) extends the operation of a section that makes special provision for clubs establishing in new development areas, so that it applies to such areas of land in either a Band 1 LSA or Band 2 LSA. At present the section applies only to new development areas in a Band 1 LGA.

Schedule 1 [27] (section 37C (1) (a)–(a2)) amends the circumstances in which a threshold increase application is not required to be accompanied by a local impact assessment if the application is by a de-amalgamated club in respect of the premises that are transferred to it under the de-amalgamation. The amendment is consequential on the changes to the system of band classification under which band classification will be based on the division of the State into local statistical areas rather than local government areas. The existing exemption for a transfer within a local government area will become an exemption for a transfer within a local statistical area. There will be an additional exemption where the club that proposes to increase entitlements and the amalgamated club from which entitlements will be transferred are in the same local government area, or are in adjoining local statistical areas, and the classification of the local statistical area of the transferring club is the same as or ranked lower than the classification of the local statistical area in which the club to which entitlements will be transferred is situated. **Schedule 1 [26], [28] and [29]** (section 37C (1)) make consequential amendments.

Schedule 1 [33] (Schedule 1) provides that an amendment made to section 35 (by **Schedule 1 [11]–[18]**) does not apply in respect of a threshold increase application made before the commencement of the amendment.

Cap on gaming machine entitlements in certain areas

Schedule 1 [8] (section 32A) provides for the Authority to determine a cap on gaming machine entitlements for the Fairfield local government area and any Band 3 LSA that the Authority determines to be a restricted increase area. The consequences of the cap are that if granting a threshold increase application for a venue would result in the total of the gaming machine thresholds for all the venues in the area exceeding the area cap, the application must not be granted if the venue is in the Fairfield local government area and must not be granted for a venue in a restricted increase area unless the application is not required to be accompanied by a local impact assessment.

Schedule 1 [33] (Schedule 1) provides that an area cap does not apply in respect of a threshold increase application made before the area cap was determined under the proposed section 32A.

Time limits for acquiring gaming machine entitlements

Schedule 1 [23] (section 37) substitutes a section that limits the period within which gaming machine entitlements can be acquired by a venue pursuant to an approved increase in the venue's gaming machine threshold. The period is currently 2 years for a class 1 LIA or 5 years for a

class 2 LIA with no limit if the threshold increase application was not required to be accompanied by a local impact assessment.

The substituted section:

- (a) imposes a limit of 12 months on the acquisition of gaming machine entitlements for an approved threshold increase application that was not required to be accompanied by a local impact assessment, and
- (b) permits the Authority to allow additional time for a venue to acquire gaming machine entitlements, and
- (c) provides that if a gaming machine entitlement is acquired by lease, the limited period for acquiring gaming machine entitlement stops running during the term of the lease.

Country hotels

Schedule 1 [5] (section 20A) authorises a country hotel to transfer up to 6 gaming machine entitlements if the gaming machine threshold for the transferring hotel is not more than 6, the transfers of those gaming machine entitlements are all completed at the same time and will result in the number of gaming machine entitlements held by the transferring hotel being reduced to zero. Such a transfer will be exempt from the existing transfer block and forfeiture requirements of the Act which would otherwise require a transfer of gaming machine entitlements to comprise one or more blocks of 2 or 3 gaming machine entitlements and require one of those entitlements to be forfeited to the Authority.

The proposed section also contains an existing exemption to the transfer block and forfeiture requirements, which is transferred from section 20. That exemption applies to the transfer of one gaming machine entitlement in any period of 12 months if the transfer is to another country hotel and the gaming machine threshold for the transferring hotel is not more than 8.

The proposed section also provides that, when a transfer of 2 or more gaming machine entitlements authorised by the section reduces the number of gaming machine entitlements held by the transferring hotel to zero, the transferring hotel is not permitted to acquire any gaming machine entitlements for 24 months after the transfer.

Schedule 1 [3] and [4] (section 20 (3), (5) and (6)) make amendments that are consequential on the new provisions about country hotels, including by inserting a note directing the reader to the exception to the transfer block and forfeiture requirements for country hotels established by proposed section 20A.

Schedule 1 [6] (section 21 (1)) provides that no more than 2 blocks of gaming machine entitlements held in respect of a country hotel licence may be transferred in any period of 12 months to a hotel in a metropolitan area. At present the limit is one block.

Minor amendments

Schedule 1 [2] (section 4 (3)) makes it clear that a reference to a gaming machine entitlement held by a hotel or club, or to a gaming machine entitlement of a hotel or club, is a reference to a gaming machine entitlement held in respect of the hotel or club licence.

Schedule 1 [12], [19], [30] and [31] (sections 35, 36, 37C and 61A) make grammatical changes.

Schedule 1 [18] (section 35 (6) (b)) provides for the regulations to include a requirement to verify any information in a local impact assessment by statutory declaration.

Schedule 2 Amendment of Gaming Machines Act 2001 No 127 relating to leasing of gaming machine entitlements

Leasing of gaming machine entitlements

Schedule 2 [3] (Division 2A of Part 3) establishes a scheme for the leasing of gaming machine entitlements, as follows:

- (a) **Proposed section 24** limits the circumstances in which gaming machine entitlements can be leased as follows:
 - (i) a hotel that has a gaming machine threshold not exceeding 10 can lease gaming machine entitlements to another hotel,
 - (ii) a club that has a gaming machine threshold not exceeding 30 can lease gaming machine entitlements to another club.
- (b) **Proposed section 25** requires a lease of entitlements to be approved by the Authority and imposes requirements relating to an application for the Authority's approval.
- (c) **Proposed section 25A** allows the Authority to approve a standard form of lease of gaming machine entitlements.
- (d) **Proposed section 25B** provides for the effect of a lease of gaming machine entitlements, including that the venue that has leased the entitlements has the benefit of the entitlements (which are treated as entitlements acquired and held by that venue and count towards the total number of entitlements that it holds).
- (e) **Proposed section 25C** requires a levy to be paid in respect of a lease of a gaming machine entitlement at the time that it is approved by the Authority or at a later time specified by the Authority. The levy is to be paid into the Responsible Gambling Fund under the *Casino Control Act 1992*.

Schedule 2 [4] (section 32 (6)) provides that, for the purposes of the gaming machine threshold scheme, a hotel or club ceases to be a new hotel or club once a gaming machine entitlement held by the hotel or club has been leased.

Schedule 2 [5] (section 61A (5)) provides that an application for authorisation to keep a multi-terminal gaming machine (an *MTGM*) on the premises of a club cannot be granted if the application relies on an increase in the number of gaming machine entitlements held by the club that results from a lease to the club of those entitlements.

Minor consequential amendments

Schedule 2 [1] (section 14) inserts a note in a provision that imposes restrictions on the number of gaming machine entitlements that can be held, so as to direct the reader to the proposed provisions that describe the effect of a lease of entitlements on the number of entitlements that are held by the lessor and the lessee.

Schedule 2 [2] (section 19) inserts a note in a provision that provides for the transfer of gaming machine entitlements, so as to direct the reader to the proposed provisions that authorise the leasing of gaming machine entitlements.

Schedule 3 Amendment of Gaming Machines Regulation 2010

Consultation requirements for threshold increase applications

Schedule 3 [2] (clause 37 (2) (f)) requires a person who proposes to make a threshold increase application for which a class 2 LIA is required to first notify certain community services organisations. Those organisations are in addition to the other organisations that are already required to be notified.

Schedule 3 [3] (clause 37 (3)) requires a person who proposes to make a threshold increase application for which a class 2 LIA is required to invite submissions when notifying the local council, local police and the other organisations that are required to be notified, and to allow at least 90 days for those submissions to be made. The notice must also specify the date on which the person intends to make the application, which must allow at least 21 days after the deadline for submissions. At present, there is no obligation to invite submissions before an application is made.

Schedule 3 [4] (clause 37 (4)) requires a class 2 LIA that is provided with a threshold increase application to include a list (verified by statutory declaration of the hotelier or secretary of the club concerned) of the community services organisations notified of the proposed application. This is in addition to the existing requirement to include a report on the results of the consultation process.

Information to be provided with local impact assessments

Schedule 3 [5] (clause 38 (d)) requires a class 1 LIA to include details of any additional positive contributions by the venue that have been made in connection with the threshold increase application. Additional positive contributions may be taken into account by the Authority under proposed section 36B of the Act, which is inserted by **Schedule 1 [21]**.)

Schedule 3 [7] (clause 39 (2) (f)) requires a class 2 LIA to include details of any additional positive contributions by the venue that have been made in connection with the threshold increase application. This replaces a current requirement to specify details of appropriate harm minimisation and responsible gambling measures in addition to those already required by law that are in place at the venue.

Consultation after threshold increase applications are made

Schedule 3 [10] (clause 40A (3)) makes a consequential amendment.

Schedule 3 [11] (clause 41 (2) (b) (iv)) requires a person who has made a threshold increase application to notify certain community services organisations.

Schedule 3 [12] and [14] (clause 41 (3) and (5) (d)) extend, from 30 days to 60 days (for a class 1 LIA) or 90 days (for a class 2 LIA), the period for making submissions on a threshold increase application that has been lodged with the Authority.

Schedule 3 [13] (clause 41 (3A)) requires a person who has made a threshold increase application to provide the Authority with a list (verified by statutory declaration) of the community services organisations that have been provided with a copy of the application.

Handling of threshold increase applications

Schedule 3 [15] (clause 42) omits a spent transitional provision that made provision for the local impact assessment required to accompany certain threshold increase applications that involve a number of permits issued and in force under the *Liquor Act 1982* before its repeal.

Schedule 3 [16] (clause 44A) fixes the period within which the Authority is required to determine a threshold increase application, with provision for the period to be extended during periods allowed for an applicant to provide additional information. At present there is no time limit for the Authority's determination of applications.

Levies and fees

Schedule 3 [17] (clause 45B) fixes the amount of the levy that is payable in respect of a lease of a gaming machine entitlement. The amount fixed is the amount equal to 5% of the total of all lease payments due under the lease for the full term of the lease.

Schedule 3 [18] (clause 147AA) prescribes \$250 as the fee for an application for the Authority's approval of a lease of gaming machine entitlements.

Amendments consequential on proposed classification based on local statistical areas

Schedule 3 [1], [6] and [9] (clauses 37 (2) (e), 39 (1) (c) and 40A (2) (b)) make amendments that are consequential on the changes to the scheme for the classification of areas that will now be based on local statistical areas rather than local government areas (by changing references to local government area to references to local statistical area). **Schedule 3 [8]** (clause 40A (1)) also extends the operation of a concession for clubs establishing adjacent to new development areas so that the concession will operate in a Band 2 LSA in the same way as the concession in the Act for clubs establishing in new development areas is proposed to operate.

Schedule 3 [19] (clause 156A) updates the list of local government areas that comprise a metropolitan area for the purposes of the Act.

Schedule 4 Amendment of Casino Control Act 1992 No 15

Schedule 4 [1] (section 115 (4)) omits a requirement that any responsible gambling levy paid into the Responsible Gambling Fund in respect of a casino licence must be kept in a separate account in the Fund.

Schedule 4 [2] (section 115B) inserts a provision that is consequential on proposed provisions of the *Gaming Machines Act 2001* for payment of community benefit payments and gaming machine lease levy into the Responsible Gambling Fund under the *Casino Control Act 1992*. Money paid into the Responsible Gambling Fund as a community benefit payment or gaming machine lease levy will be required to be applied for such purposes as the Minister determines for the benefit of local communities in which gaming machine thresholds for venues have increased.