

Gaming Machine Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (Human Rights Act), I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Gaming Machine Amendment Regulation 2021* (Amendment Regulation) made under the *Gaming Machine Act 2021* (Act)

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the Rules ancillary to gaming (Ancillary Rules) in Schedule 3 of the *Gaming Regulation 2002* (Regulation) to provide gaming machine licensees with the ability to make gaming machine payments (i.e. gaming machine winnings, credits and tokens) by EFT.

The Ancillary Rules require licensees to declare a cash limit for their premises of not more than \$5,000. For payments below the cash limit, the Amendment Regulation preserves all existing payment methods (cash, cheque, non-currency gaming tokens, a combination of these methods), with the addition of EFT. As now, the primary method of payment will be cash, and licensees will have the discretion to refuse a player's request for non-cash payment, including payment by EFT.

For winnings above the cash limit, the Ancillary Rules currently require the portion below the limit to be paid by cash and the remainder by cheque. Players may also request a larger portion or the whole amount to be paid by cheque. The Amendment Regulation allows licensees and players to agree that these cheque payments may instead be paid by EFT. The transfer must then be carried out in a way that ensures the amount above the cash limit is not accessible by the player until after the end of the gaming period (gaming trading day) for the venue at which the player becomes entitled to the payment.

The Amendment Regulation also inserts a new provision into the Regulation dealing with gaming machine payments made by licensed monitoring operators (LMOs). LMOs hold accumulated credits from multi-site linked jackpots on trust for licensees and are responsible for paying out these prizes. The new provision clarifies that that LMOs may make these payments by cheque or EFT. LMOs will also be required to ensure amounts paid by EFT are not accessible by players until after the gaming period in which the prize was won.

The Amendment Regulation also amends the Regulation to prescribe a departmental account for the payment of unclaimed winnings for section 242A of the Act.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Amendment Regulation contains provisions that obligate licensees and LMOs to make certain EFT payments in a way that ensures the funds are not accessible by players until after the gaming period in which the player becomes entitled to the payment.

These provisions engage section 24 of the Human Rights Act which protects the property rights of individuals.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Section 24(2) of the Human Rights Act offers protection against the arbitrary deprivation of a person's property. While 'arbitrary' is not defined in the Human Rights Act, it likely encompasses limitations on rights that are unjust, unreasonable, or disproportionate.

The question arises whether a person's right not to be arbitrarily deprived of their property has been limited by provisions of the Amendment Regulation that effectively delay a person's access to their gaming machine winnings.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Introducing EFT payments is intended to reduce regulatory burdens and offer convenience to both businesses and players. Obligating licensees and LMOs to make certain payments in a way that delays the player's access to their winnings addresses concern that EFT payments will increase the risk of gambling related harm. The risk of harm may increase if players have access to large sums of money that may be used to continuously gamble using gaming machines.

This approach is consistent with the existing requirement on licensees to pay winnings above the cash limit by a cheque that must be banked by the player before funds can be accessed. Delayed access to certain funds also helps achieve an object of the Act to protect players and the community though minimising the potential for harm from gaming machine gambling (section 1A(2)(c)).

To ensure that the limitation is not overly burdensome on players, licensees and LMOs are only required to ensure funds are not accessible before the end of the gaming period in which the player wins a relevant prize. Accordingly, the measure is considered to be consistent with a democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The obligation placed on licensees and LMOs to make certain EFT payments in a way that delays access to funds means that those winnings cannot be reinvested in gaming machines at least until the venue reopens. This achieves its harm-minimisation purpose by giving players a cooling off period before they continue gambling.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive and reasonably available way to achieve the purpose of minimising the risk of gaming machine gambling harm than by delaying access to large amounts of winnings that may be used for continuous gaming.

The measure has been tailored to ensure that it is reasonable and proportionate. This is achieved by only restricting access to significant sums and only until the end of the gaming period in which the player becomes entitled to the payment.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limitation balances the need to modernise gaming machine payments for the convenience of players while addressing the risk of introducing EFT which is a potentially instantaneous payment method. In these circumstances, the temporary deprivation of property (created by obligating licensees and LMOs to make certain EFT payments in a way that delays access to the funds) is not arbitrary and is considered to strike a fair balance between the protection of human rights and preventing gambling related harm.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the Amendment Regulation is compatible with the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

SHANNON FENTIMAN MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
MINISTER FOR WOMEN
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