



New South Wales

# Gaming Machines Further Amendment Act 2002 No 102

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New South Wales

# **Gaming Machines Further Amendment Act 2002 No 102**

Act No 102, 2002

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An Act to amend the *Gaming Machines Act 2001* with respect to the allocation and transfer of poker machine entitlements, the provision of social impact assessments in relation to gaming machines and other administrative matters; to make miscellaneous amendments to the *Registered Clubs Act 1976*; and for other purposes. [Assented to 29 November 2002]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Gaming Machines Further Amendment Act 2002*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Gaming Machines Act 2001 No 127**

The *Gaming Machines Act 2001* is amended as set out in Schedule 1.

**4 Amendment of Registered Clubs Act 1976 No 31**

The *Registered Clubs Act 1976* is amended as set out in Schedule 2.

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## Schedule 1 Amendment of Gaming Machines Act 2001

(Section 3)

### [1] Section 3 Gambling harm minimisation and responsible gambling conduct are primary objects of this Act

Omit section 3 (1). Insert instead:

- (1) The primary objects of this Act are:
  - (a) gambling harm minimisation, that is, the minimisation of harm associated with the misuse and abuse of gambling activities, and
  - (b) the fostering of responsible conduct in relation to gambling.

### [2] Section 3 (2)

Insert “and the fostering of responsible conduct in relation to gambling” after “minimisation”.

### [3] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*AAD threshold* for a hotel or the premises of a registered club means:

- (a) except as provided by paragraph (b), the maximum number of approved amusement devices that, as at 2 April 2002, may have been authorised to be kept in the hotel or on those premises (*the initial AAD threshold*), or
- (b) if the initial AAD threshold is subsequently decreased in accordance with this Act—the maximum number of approved amusement devices that may, for the time being, be authorised to be kept in the hotel or on those premises.

***SIA threshold*** for a hotel or the premises of a registered club means the maximum number (as determined by the Board) of approved gaming machines that may be authorised to be kept in the hotel or on those premises before the provision of a social impact assessment under Division 1 of Part 4 is required.

***temporary premises*** means:

- (a) in the case of a hotelier's licence—the premises on which business under the licence may be temporarily carried on in accordance with section 93 of the *Liquor Act 1982*, or
- (b) in the case of a registered club—the premises to which the club temporarily moves in accordance with section 21 of the *Registered Clubs Act 1976*.

**[4] Section 13 Large-scale clubs required to reduce number of gaming machines**

Omit the section.

**[5] Section 15 Initial allocation of poker machine entitlements**

Insert after section 15 (5):

- (6) Despite subsection (1), the Board is not required to allocate a poker machine entitlement for any such approved poker machine unless the Board is satisfied that the hotel or registered club concerned:
  - (a) was lawfully in a position to keep the poker machine when the authorisation to keep the poker machine was granted, or
  - (b) would have been lawfully in a position to keep the poker machine by the date nominated in the application for the authorisation.
- (7) If a poker machine entitlement has been allocated in respect of a hotelier's licence or the premises of a registered club but the Board would, had subsection (6) been in force when the entitlement was allocated, not have been required to allocate the entitlement in accordance with that subsection, the hotelier or club must forfeit the entitlement to the Board.

**[6] Section 15A**

Insert after section 15:

**15A Large-scale clubs required to reduce their allocated number of poker machine entitlements**

- (1) A large-scale club must, before 2 April 2007 (*the 5-year period*), reduce the number of poker machine entitlements allocated under section 15 in respect of the premises of the club:
  - (a) by 10%, or
  - (b) by such number as would result in the number of poker machine entitlements held in respect of those premises not exceeding 450.
- (2) The following provisions apply in relation to the requirement under subsection (1):
  - (a) the large-scale club concerned must transfer, before the end of each year of the 5-year period, the number of poker machine entitlements (*the relevant entitlements*) that are required to be transferred in respect of that year as determined by the regulations,
  - (b) the transfer of any such relevant entitlements must be in accordance with this Division,
  - (c) if, at the end of the period of 3 months immediately following the end of each such year, any of the relevant entitlements have not been transferred, the remaining relevant entitlements are forfeited to the Board.
- (3) The regulations may:
  - (a) specify the relevant premises of the large-scale clubs to which this section applies, and
  - (b) authorise the Board to direct a large-scale club to transfer a specified number of poker machine entitlements by a specified date in order for the club to comply with the requirements of this section, and
  - (c) make provision for any other matter with respect to the requirements of this section.

- (4) This section is taken to have commenced on 2 April 2002. The regulations may also provide that any regulation made for the purposes of this section is taken to have commenced on that date.

**[7] Section 16 Further allocation of poker machine entitlements and certificate of entitlements**

Insert after section 16 (2):

- (3) The certificate issued under subsection (2) to a hotelier or registered club may also specify the SIA threshold for the hotel or the premises of the club concerned.
- (4) Any such certificate does not, by itself, confer any entitlement of any kind under this Act.

**[8] Section 17 Allocation of free poker machine entitlements in respect of certain clubs**

Insert “(referred to in this Division as a *free club entitlement*)” after “this section” in section 17 (3).

**[9] Section 17 (4)**

Insert after section 17 (3):

- (4) If any free club entitlements are allocated in respect of the premises of a registered club, the club must forfeit to the Board each of those free club entitlements before any other poker machine entitlements allocated in respect of those premises can be transferred under this Division.

**[10] Section 20 General requirements relating to transfer of poker machine entitlements**

Insert after section 20 (1):

- (1A) If a hotelier’s licence is removed under the *Liquor Act 1982* to other premises, the removed licence is, for the purposes of this Act, taken to be another hotelier’s licence to which poker machine entitlements allocated in respect of the hotelier’s licence may be transferred.

**[11] Section 20 (5) (b)**

Omit the paragraph. Insert instead:

- (b) the SIA threshold for the transferring hotel is not more than 8.

**[12] Section 21 Other provisions relating to transferring of poker machine entitlements**

Omit “, in any one calendar year, be transferred” from section 21 (1).

Insert instead “be transferred in any period of 12 months”.

**[13] Section 21 (2) and (3)**

Omit section 21 (2). Insert instead:

- (2) If, in the case of a registered club that has more than one set of premises or that establishes new or additional premises, poker machine entitlements allocated in respect of one of those sets of premises (*the transferring premises*) are transferred to another set of the club’s premises, the forfeiture to the Board of one entitlement per transfer block is required unless the other set of premises is:
  - (a) situated within 1 kilometre of the transferring premises (in the case where either one of the premises is situated within a metropolitan area), or
  - (b) situated within 50 kilometres of the transferring premises (in the case where both the other set of premises and the transferring premises are not situated in a metropolitan area).
- (3) Subsection (2) does not apply to or in respect of a large-scale club.



**[14] Section 21A**

Insert after section 21:

**21A Special provisions relating to transfer by large-scale clubs of poker machine entitlements**

- (1) This section applies to or in respect of a large-scale club that has more than one set of premises (whether or not as the result of an amalgamation with another registered club under the *Registered Clubs Act 1976*).
- (2) If, in the case of a large-scale club to which this section applies, poker machine entitlements allocated in respect of one of those sets of premises (*the transferring premises*) are transferred to another set of the club's premises, the forfeiture to the Board of one entitlement per transfer block is required regardless of the distance between the transferring premises and the other set of premises.
- (3) If an application to which Division 1 of Part 4 applies is made as the result of the transfer of 4 or more poker machine entitlements from the transferring premises of a large-scale club to another set of the club's premises, a class 2 social impact assessment (as referred to in Division 1 of Part 4) is required to be provided in connection with the application.
- (4) Subsection (3) has effect despite section 34 (2) or any provision of the regulations.

**[15] Section 22 Hoteliers may exchange approved amusement devices for poker machine entitlements**

Insert after section 22 (1):

- (1A) If a hotelier surrenders any such authorisation to keep approved amusement devices (referred to in this Act as the *surrendered AAD entitlements*):
  - (a) the surrendered AAD entitlements are taken to be forfeited to the Board, and
  - (b) the AAD threshold for the hotel is to be decreased by the number of surrendered AAD entitlements, and

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- (c) the hotelier cannot apply for authorisation under Part 5 to keep such number of approved amusement devices as would replace (wholly or partly) the number of surrendered AAD entitlements.

**[16] Sections 25 and 25A**

Omit section 25. Insert instead:

**25 Transfer of poker machine entitlements if hotelier's licence is removed to other premises**

- (1) If a hotelier's licence is removed under the *Liquor Act 1982* to other premises, any poker machine entitlements allocated in respect of the hotelier's licence may only be transferred to the removed licence if they are transferred in accordance with this Division.
- (2) If the other premises to which the hotelier's licence is removed are situated within 1 kilometre of the previous premises, the forfeiture to the Board of one entitlement per transfer block is not required.
- (3) However, subsection (2) does not apply if the hotelier's licence has been removed on more than one occasion in any period of 3 years and the premises to which the licence is removed are situated more than 1 kilometre from the premises where the hotelier last carried on business under the licence.

**25A Transfer of poker machine entitlements if club premises are removed to other premises**

- (1) If the premises of a registered club are removed under the *Registered Clubs Act 1976* to new or existing premises, any poker machine entitlements allocated in respect of the former premises may only be transferred to the other premises if they are transferred in accordance with this Division.
- (2) If the other premises to which the registered club is removed are situated within 1 kilometre of the previous premises, the forfeiture to the Board of one entitlement per transfer block is not required.

**[17] Section 29 Approval to keep hardship gaming machines**

Insert after section 29 (1):

- (1AA) The Board's approval under this section is subject to such conditions as may be imposed by the Board in relation to the keeping of hardship gaming machines by the hotelier or registered club concerned.

**[18] Section 31 Allocation of poker machine entitlements for hardship gaming machines**

Insert after section 31 (3):

- (4) The Board is not to allocate a poker machine entitlement in relation to a hardship gaming machine unless the Board is satisfied that the conditions (if any) applying to the Board's approval of the keeping of the hardship gaming machine have been complied with.

**[19] Part 3, Division 4**

Insert after Division 3:

**Division 4      Miscellaneous provisions**

**31A Forfeiture of other gaming machine entitlements in certain circumstances**

- (1) If a hotelier's licence:
- (a) is surrendered or cancelled, or
  - (b) is, under the *Liquor Act 1982*, removed to other premises (not being temporary premises) that are situated more than 1 kilometre from the previous premises,
- any gaming machine entitlements held by the hotelier, or held in respect of the hotelier's licence, must be forfeited to the Board.
- (2) If:
- (a) the certificate of registration of a club is surrendered or cancelled, or

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- (b) the premises of a registered club (*the previous premises*) are, under the *Registered Clubs Act 1976*, removed to other premises (not being temporary premises) that are situated more than 1 kilometre from the previous premises,

any gaming machine entitlements held in, or in respect of, the previous premises must be forfeited to the Board.

- (3) Subsection (2) does not apply in relation to the cancellation of a club's certificate of registration if that registration is the result of an amalgamation with another registered club in accordance with the *Registered Clubs Act 1976*.
- (4) In this section:

***gaming machine entitlement*** means:

- (a) in the case of a hotelier's licence:
- (i) any hardship gaming machine in respect of which a poker machine entitlement has not been allocated, and
  - (ii) any poker machine entitlement allocated under section 22 that is not transferable in accordance with that section, and
  - (iii) any authorisation comprising the AAD threshold for the hotel, or
- (b) in the case of the premises of a registered club:
- (i) any hardship gaming machine in respect of which a poker machine entitlement has not been allocated, and
  - (ii) any free club entitlement allocated under section 17 in respect of those premises, and
  - (iii) any authorisation comprising the AAD threshold for those premises,

but does not include a poker machine entitlement or a Liquor Act poker machine permit.

**31B Transfer of Liquor Act poker machine permits when hotelier's licence cancelled or surrendered**

- (1) In this section:

***Liquor Act poker machine*** means an approved poker machine for which a Liquor Act poker machine permit is held.

- (2) If:
- (a) a hotelier's licence is surrendered or cancelled, or
  - (b) a hotelier's authorisation under Part 5 to keep Liquor Act poker machines is surrendered or cancelled,
- any Liquor Act poker machine permits held in respect of the licence may, in accordance with such arrangements as are approved by the Director-General, be transferred to another hotelier's licence.
- (3) If, at the end of the period of 12 months immediately following the surrender or cancellation of the hotelier's licence or authorisation under Part 5, any such Liquor Act poker machine permits have not been transferred, the remaining permits are automatically forfeited to the Board.

**31C Consequences of moving to temporary premises**

- (1) If:
- (a) the business under a hotelier's licence is carried on at temporary premises, or
  - (b) a registered club moves to temporary premises,
- any poker machine entitlements allocated in respect of the hotelier's licence or the premises from which the club moves may, in accordance with Division 2 of this Part, be transferred to the temporary premises without the forfeiture of any of the entitlements to the Board.
- (2) The transferred poker machine entitlements may be subsequently transferred from the temporary premises back to the premises from which they were transferred without the forfeiture of any of the entitlements to the Board.
- (3) If:
- (a) the business under a hotelier's licence is carried on at temporary premises, or
  - (b) a registered club moves to temporary premises,
- any gaming machine entitlements (within the meaning of section 31A) held in respect of the hotelier's licence or the premises from which the club moves are taken to be transferred to or in respect of the temporary premises.

**[20] Section 32 Application and operation of Division**

Omit section 32 (1). Insert instead:

- (1) This Division applies to an application under Part 5:
  - (a) that would, if granted by the Board, increase the SIA threshold for the hotel or the premises of a registered club to which the application relates, or
  - (b) for authorisation to keep approved gaming machines on any temporary premises, or
  - (c) for authorisation to keep any approved gaming machines in a new hotel or a new club.
- (1A) If:
  - (a) a hotelier has, in accordance with section 22, surrendered the authorisation to keep any approved amusement devices, and
  - (b) the hotelier applies under Part 5 to increase the number of approved poker machines to be kept in the hotel (excluding those poker machines obtained in exchange for the surrendered AAD entitlements),the application is taken to be an application to which this Division applies regardless of whether it would increase the SIA threshold for the hotel.

**[21] Section 36 Advertising of social impact assessment**

Omit “the application and” wherever occurring from section 36 (1) (a) and (c) and (3) (b).

**[22] Section 36 (1) (b)**

Omit “about the application”.

Insert instead “in relation to the social impact assessment”.

**[23] Section 36 (4) and (5)**

Omit “application” wherever occurring.

Insert instead “social impact assessment”.

**[24] Section 37 Approval of social impact assessment**

Omit “approval” from section 37 (2). Insert instead “determination”.

**[25] Section 37 (2)**

Omit “decline to approve”. Insert instead “refuse to determine”.

**[26] Section 37A**

Insert after section 37:

**37A Restrictions on approval of social impact assessment**

The Board may not approve a social impact assessment that relates to the keeping of an approved gaming machine in a hotel or registered club that is part of a retail shopping centre as referred to in section 60.

**[27] Section 58 Cancellation of authorisations**

Insert after section 58 (3):

(4) A reference:

- (a) in subsection (2) to the removal of a hotelier’s licence to other premises includes a reference to the carrying on of the business under the licence on temporary premises, and
- (b) in subsection (3) to the premises of a registered club being removed to other premises includes a reference to the registered club moving from the premises occupied by it to temporary premises.

**[28] Section 59A**

Insert after section 59:

**59A Restrictions on authorisation to keep approved amusement devices**

An approved amusement device cannot be authorised to be kept in a hotel or on the premises of a registered club if the authorisation would result in an increase in the AAD threshold for the hotel or those premises.

**[29] Section 60 Gaming machines not permitted in retail shopping centres**

Insert “and section 60A” after “this section” in section 60 (1).

**[30] Section 60 (3A)**

Insert after section 60 (3):

(3A) Subsection (3) is subject to section 60A.

**[31] Section 60A**

Insert after section 60:

**60A SIA threshold for hotel or club to be decreased if poker machine entitlements are transferred from retail shopping centre**

- (1) This section applies to a hotel or registered club that is part of a retail shopping centre or proposed retail shopping centre.
- (2) If, in relation to a hotel or registered club to which this section applies, any poker machine entitlements allocated in respect of the hotelier’s licence or the premises of the club are transferred to another hotelier’s licence or to other premises in accordance with Division 2 of Part 3, the SIA threshold for the hotel or the premises of the club is to be decreased by the number of entitlements that are transferred.

**[32] Section 62A**

Insert before section 62:

**62A Gambling harm minimisation and related matters**

- (1) In exercising its functions under this Division, the Board is required to have due regard to the following matters:
  - (a) the need for gambling harm minimisation (as referred to in section 3 (1) (a)),
  - (b) the need to foster responsible conduct in relation to gambling,
  - (c) the need to minimise the potential for any harm that may result from the approval of technical standards under section 62 or from the declaration of a device as an approved gaming machine under this Division,



(d) whether, in the opinion of the Board, any feature, function or characteristic of any such device is likely to lead to an exacerbation of problem gambling.

(2) This section does not affect the operation of section 3 in so far as that section applies to the Board's functions under this Act.

**[33] Section 73 Sharing of receipts from gaming machines**

Insert after section 73 (2):

(3) A hotelier does not commit an offence under subsection (1) if any such receipts are shared with, or any such payment is made to, a person who:

(a) has a financial interest in the business authorised by the hotelier's licence, and

(b) is named in an affidavit (as required by section 38, 41 or 101 of the *Liquor Act 1982*) in relation to that licence.

**[34] Section 198 Penalties**

Insert after section 198 (1) (a):

(a1) cancel, suspend or modify any authorisation or approval under this Act for the hotelier or registered club to keep approved gaming machines,

(a2) disqualify the hotelier or registered club from keeping approved gaming machines for such period as the Court thinks fit,

**[35] Section 198 (2)**

Omit the subsection.

**[36] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Gaming Machines Further Amendment Act 2002*

**[37] Schedule 1, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of  
Gaming Machines Further Amendment  
Act 2002**

**12 Definition**

In this Part:

*amending Act* means the *Gaming Machines Further Amendment Act 2002*.

**13 Initial allocation of poker machine entitlements**

Anything done or omitted to be done by the Board under section 15 that would have been validly done or omitted to be done had the amendments to that section by the amending Act been in force when the thing was done or omitted to be done is validated.

**14 Transfer of poker machine entitlements by large-scale clubs**

Section 21A, as inserted by the amending Act, extends to an application to transfer poker machine entitlements made before the commencement of that section.

**15 Surrender of AAD entitlements**

The amendment made to section 22 by the amending Act extends to the surrender, before the commencement of that amendment, by a hotelier under that section of an authorisation to keep approved amusement devices.

**16 Conditions in relation to hardship gaming machine approvals**

Anything done by the Board that would have been validly done had section 29 (1AA), as inserted by the amending Act, been in force when the thing was done is validated.

**17 Determination of social impact assessments by Board**

The amendments made to section 37 by the amending Act extend to a social impact assessment that has been provided to the Board before the commencement of those amendments.

**18 Restrictions on authorisation to keep approved amusement devices**

Anything done or omitted to be done by the Board that would have been validly done or omitted to be done had section 59A, as inserted by the amending Act, been in force when the thing was done or omitted to be done is validated.

**19 Sharing of receipts from gaming machines**

Section 73 (3), as inserted by the amending Act, extends to:

- (a) receipts from the operation of approved gaming machines that have been shared by a hotelier, and
- (b) payments made by the hotelier in relation to those receipts,

before the commencement of that subsection.

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## Schedule 2 Amendment of Registered Clubs Act 1976

(Section 4)

### [1] Section 10 Requirements to be met by clubs

Insert “and provide the information to its members before each annual general meeting” after “to its members” in section 10 (1) (m).

### [2] Section 10 (1) (m) (i)

Omit the subparagraph. Insert instead:

- (i) in the case of the 5 highest paid employees of the club—the number of employees (if any) whose total remuneration for the financial year (comprising salary, allowances and other benefits) falls within each successive \$10,000 band commencing at \$100,000,

### [3] Section 10 (1) (m) (iv) and (v)

Omit the subparagraphs. Insert instead:

- (iv) the total amount of the profits (within the meaning of the *Gaming Machine Tax Act 2001*) from the operation of approved gaming machines in the club during the period of 12 months ending on 30 November in the financial year to which the report relates (*the gaming machine tax period*),
- (v) the amount applied by the club to community development and support under Part 4 of the *Gaming Machine Tax Act 2001* during the gaming machine tax period.

### [4] Section 17AH Clubs allowed to amalgamate if situated in same area only

Omit “parent” from section 17AH (2) wherever occurring.  
Insert instead “dissolved”.

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Schedule 2      Amendment of Registered Clubs Act 1976

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**[5] Schedule 2 Transitional provisions**

Insert at the end of clause 1A (1):

*Gaming Machines Further Amendment Act 2002*, to the extent  
that it amends this Act

[Second reading speech made in—

Legislative Assembly on 13 November 2002

Legislative Council on 21 November 2002]

BY AUTHORITY