

Community Benefit Statements: A new direction

Information Paper

Office of Gaming and Racing
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DEPARTMENT
OF JUSTICE

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Community benefit statements: a new direction

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COMMUNITY BENEFIT STATEMENTS: A NEW DIRECTION

1. INTRODUCTION

This paper outlines the Government's reforms to community benefit statements. It provides some background information on the purpose of community benefit statements and details on the Government's proposed changes. It also sets out a draft Ministerial order on what will be claimable as a community benefit under the new arrangements.

Comment is sought on the draft order prior to the Minister for Gaming issuing the order.

How to make a submission

Comments should be addressed to:

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Alternatively, submissions may be emailed to: cbs@justice.vic.gov.au.

All submissions will be treated as public documents unless otherwise requested.

The closing date for submissions is 15 June 2007.

2. BACKGROUND

In 2002, the Government introduced the requirement that hotels and clubs with electronic gaming machines lodge a community benefit statement.

The intention was to show the public exactly how gaming machines provide benefits to the community. Specifically, community benefit statements were designed to demonstrate that clubs make a contribution to the community that is at least equal to the additional tax that hotels pay into the Community Support Fund. This extra tax equals 8.33 per cent of a hotel's net gaming revenue and is not paid by clubs.

There have been, however, concerns that some community benefit statements are failing to meet the purpose for which they were introduced. These concerns relate mainly to the very wide range of activities that can be claimed by both clubs and hotels as a community benefit.

For example, in October 2006, Mr Peter Kirby made the following comment in relation to community benefit statements in his report *Gaming Machine Licence Arrangements Post-2012: Report by Peter Kirby on Public Consultations and Submissions*:

There was criticism of the inadequacy of the community benefit statements of venues... community benefit statements from different venues in two local areas were examined by two individuals, both accountants, who presented the results in consultations. They demonstrated conclusively that Community benefit statements had no utility in showing the benefits of gaming revenues to the community... There was near universal support for a revision of the community benefit statement to include only those benefits in cash or kind provided externally to the community (p.22).

In response to these concerns, the Government has reviewed the community benefit statements and concluded that the system is in need of reform.

3. EXISTING REGULATORY REQUIREMENTS

Tax differential between hotels and clubs

The requirement to lodge a community benefit statement stems from the different rates of tax paid by hotels and clubs.

Under section 3.6.6(2)(c) of the *Gambling Regulation Act 2003*, net gaming revenues from hotel venues are subject to an additional tax of 8.33 per cent, which is ultimately paid into the Community Support Fund.¹ Club venues do not pay this extra tax².

This means that hotel operators receive a lower share of net gaming revenues (25 per cent) than do clubs (33.33 per cent). The difference is intended to reflect the additional benefits that clubs, by their very nature, provide to the community.

Community benefit statements

Under section 3.6.9 of the *Gambling Regulation Act 2003*, all hotel and club operators are required to lodge, on an annual basis, an audited community benefit statement with the Victorian Commission for Gambling Regulation (Commission).

A community benefit statement quantifies the community benefits provided by the venue. It also states whether these community benefits meet or exceed an amount equal to 8.33 per cent of the venue's net gaming revenues.

While the requirement to lodge a community benefit statement currently applies to both hotels and clubs, it only has practical significance for clubs. In simple terms, if a club fails to demonstrate that it spends at least 8.33 per cent of its net gaming revenue on activities that benefit the community, then it may be required to pay the additional 8.33 per cent tax as if it were a hotel.

Specifically, if a club does not lodge an audited community benefit statement within the required timeframe, or if a club's audited community benefit statement indicates that its community benefit contribution is less than 8.33 per cent of its net gaming revenues, the Commission may declare that for 12 months commencing at the start of the next calendar year the club must pay the 8.33 per cent tax as if it held a hotel licence.

¹ Under section 3.6.12, \$45 million of the revenue raised from this source is retained in the Consolidated Fund, with the remainder paid into the Community Support Fund. In 2005-06, \$91 million was paid into the Community Support Fund from this source.

² Clubs are not subject to this tax provided they lodge a community benefit statement showing a community benefit contribution of at least 8.33 per cent of their net gaming revenues.

4. THE PROPOSED CHANGES

The Minister for Gaming will introduce a bill into the Parliament that will, among other things, amend the provisions of the *Gambling Regulation Act 2003* that relate to community benefit statements.

Under the proposal these amendments will:

- ensure that community benefit statements meet the objective of demonstrating a club's contribution to the community
- ensure that clubs contribute 8.33 per cent of their net gaming revenue either by way of direct community benefit or by the payment of additional tax
- remove the unnecessary administrative burden on hotels imposed by the current requirement to prepare, audit and lodge a community benefit statement whilst also paying an additional 8.33 per cent tax to the Community Support Fund
- require clubs that fail to make a community contribution of 8.33 per cent of their net gaming revenue to pay the shortfall by way of additional tax contributions to the Community Support Fund. Payment will be required within 60 days of notification by the Commission that payment is required. The Commission will be able to allow a longer payment period if it is satisfied that meeting this timeframe would expose the licence holder to significant financial hardship (this is intended to ensure that clubs do not close as a direct result of this tax penalty)
- require clubs that fail to lodge a community benefit statement to pay an additional 8.33 per cent of their net gaming revenue into the Community Support Fund until the community benefit statement is lodged.

5. ROLE OF THE VICTORIAN COMMISSION FOR GAMBLING REGULATION

Under the *Gambling Regulation Act 2003*, the Commission has the responsibility for:

- approving the community benefits form
- receiving and processing community benefit statements lodged by gaming venue operators
- investigating and taking action against operators who fail to lodge a community benefit statement within the required time
- analysing community benefit statements to ensure they comply with the legislative requirements and, in particular, that items claimed as community benefit comply with the Ministerial order
- determining whether clubs have demonstrated a community contribution equal to 8.33 per cent of their net gaming revenue
- deciding whether a club that fails to demonstrate the required contribution should pay the higher rate of tax as if it were a hotel.

Under the proposed reforms, the Commission will retain its important role in overseeing compliance with the community benefit requirements. The Commission will, for example, be able to issue guidelines in relation to lodging statements and about what can be claimed by clubs under the revised Ministerial order.

The Commission will no longer have a discretion regarding whether a club that fails to demonstrate the required community contribution should pay additional tax but will be required to determine how much the club must pay to make up the shortfall.

6. A NEW MINISTERIAL ORDER

The Government's reform of community benefit statements will clarify and strengthen the types of community contributions that clubs make to justify their reduced taxation rate by outlining tighter controls on what clubs can claim as a community benefit.

The proposed new Ministerial order setting out what will be claimable can be found on page 8.

The draft order sets out those matters that constitute the kind of 'activities or purposes' that constitute 'community purposes'. The intention of the draft order is to ensure that the community has confidence about clubs contribution to local communities.

For example, some activities claimed under the existing order are normal business expenses that are common to both hotels and clubs. This undermines the purpose of community benefit statements, which is to demonstrate why clubs pay less tax than hotels.

The draft order is, therefore, more specific than the current order and lists a range of activities that constitute community purposes.

It should be noted that the draft order excludes as community purposes activities conducted for profit.

It is designed to compliment existing services and programs, not replace existing services run by the State or other levels of government.

Some examples of what can be claimed under the current order and what would be claimable under the proposed order are set out on the following page.

Examples of what can and cannot be claimed under proposed new order

| Item | Claimable under current order | Claimable under proposed order |
|---|-------------------------------|--|
| Donations to schools | Yes | Yes, but not to a school run for profit |
| Donations to hospitals | Yes | Yes, but not to a hospital run for profit |
| Donations of equipment to a sports club | Yes | Yes |
| Cost of employing green-keeping staff at a bowling club | Yes | Yes |
| Cost of employing gaming staff | Yes | No |
| Cost of employing bar or restaurant staff | Yes | No |
| Cost of capital works (for example, renovation of the club dining room) | Yes | Yes, up to 3 per cent of net gaming revenue |
| Cost of fixed assets (for example, purchase on new computer system or art work for the venue) | Yes | Yes, up to a total of 3 per cent of net gaming revenue |
| Donation to charities | Yes | Yes |
| Cost of electricity | Yes | No |
| Rent | Yes | No |
| Cost of providing a car for personal use by an employee | Yes | No |
| Cost of bar fridge valued at \$500 | Yes | Yes, up to a total of 3 per cent of net gaming revenue |
| Provision of services to ex-service personnel by a venue operator that is an RSL club | Yes | Yes |
| Provision of subsidised meals | Yes | No |
| Cost of activities during Responsible Gambling Awareness Week | No | Yes |

7. PROPOSED NEW MINISTERIAL ORDER

I, Daniel Andrews MP, Minister for Gaming, pursuant to section 3.6.9(3) of the *Gambling Regulation Act 2003*, make the following determination of the kind of activities or purposes that constitute community purposes.

The purposes or activities that are community purposes are:

- (a) donations, gifts and sponsorships, including cash, goods and services, to another person resident in Victoria for the purposes set out below but excluding activities conducted for profit:
 - (i) any educational purpose, but excluding education provided for the benefit of the members of a professional or business association
 - (ii) the provision of health services or care
 - (iii) services for the prevention and treatment of problem gambling and drug and alcohol addictions
 - (iv) housing assistance for disadvantaged persons, including the provision of housing support and assistance to those experiencing homelessness or at risk of becoming homeless
 - (v) the relief of poverty
 - (vi) the provision of services and assistance for the aged
 - (vii) the provision of services and assistance for young people
 - (viii) the protection and preservation of the environment but excluding land conservation or rehabilitation activities conducted on private land
 - (ix) the provision of assistance to relieve distress caused by natural or other disasters
 - (x) the provision of advice, support and services to ex-service personnel, their carers and families, including donations to the Victorian Veterans Fund or a patriotic fund under the *Veterans Act 2005* or to any fund for that purpose established by the Returned and Services League Australia (Victorian Branch)
 - (xi) any other philanthropic or benevolent purpose including the promotion of art, culture, cultural diversity and community harmony, education or charity including the benefiting of organisations designated by the Australian Taxation Office as 'Income Exempt Charities'
 - (xii) any sporting or recreational purpose, including the benefiting of any sporting or recreational club or association, but excluding any club that holds a venue operator's licence.

Note 1: Paragraph (a) only applies to donations, gifts and sponsorships by a club to another person (including an incorporated entity) as a club cannot make a donation or give a gift to, or sponsor, itself.

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Note 2: It is intended to include as community purposes all donations, gifts and sponsorships for the purposes set out in paragraphs (i) to (xiii) but to exclude all activities conducted for profit.

- (b) the employment of staff engaged in activities that directly relate to the purpose of the club that holds the venue operator's licence (excluding State and Commonwealth taxes)

Note 3: This is intended to exclude the cost of employing staff engaged in for profit or income generating activities that a club may conduct that are not directly related to the club's purpose even if monies raised as a result of those activities are ultimately used by the club in furtherance of its purpose. It is intended to exclude staff employed in the gaming machine area and dining and bar staff but to include, for example, staff engaged in maintaining sporting facilities provided for the members of a sporting club.

Note 4: The cost of employing staff includes wages and salaries plus all on-costs such as superannuation and other entitlements, and benefits to the employee that attract fringe benefits tax.

- (c) the conduct of activities that are directly related to the club's purpose

Note 5: This includes, for example, cultural activities conducted by a cultural or social club.

- (d) the provision of buildings, plant or equipment that is directly related to the club's purpose

Note 6: This includes, for example, sporting equipment purchased, or a new sporting field constructed, by a sporting club.

- (e) the provision of buildings, plant or equipment acquired after 1 July 2007 to a maximum of three per cent of net gaming revenue and if claimed in accordance with guidelines issued by the Victorian Commission for Gambling Regulation

Note 8: Items purchased after 30 June 2007 can be claimed in accordance with guidelines issued by the Victorian Commission for Gambling Regulation and as amended from time to time. Intangible assets may not be claimed.

Note 9: It is not necessary that the buildings, plant or equipment directly relate to the club's purpose.

- (f) where the club that holds the venue operator's licence is a sub-branch of the Returned and Services League Australia (Victorian Branch), the provision of advice, support and services provided by that club to ex-service personnel, their carers and families
- (g) the provision of responsible gaming measures but excluding those required by law
- (h) the preparation and audit of a community benefit statement required under section 3.6.9 (1) of the *Gambling Regulation Act 2003* to a maximum of \$2,000.