

No. / of 2001

Gaming Machine (Amendment) Act 2001

Certified on: 22.08.09

INDEPENDENT STATE OF PAPUA NEW GUINEA



No. of 2001.

Gaming Machine (Amendment) Act 2001.

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INDEPENDENT STATE OF PAPUA NEW GUINEA



No. of 2001

AN ACT

entitled

Gaming Machine (Amendment) Act 2001,

Being an Act to amend the *Gaming Machine Act 1993*.

MADE by the National Parliament -

- (a) in respect of Section 10 to be deemed to have come into operation on 1 January 2001; and
- (b) in respect of Section 13 to be deemed to have come into operation on 15 September 1993; and
- (c) in respect of the remainder - to come into operation on certification.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely the right to privacy conferred by Section 49 of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in public order.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended -

- (a) by inserting after the definition of "Chairman" the following:-

"Community Benefit Fund" means the Community Benefit Fund established under Section 68A(1);

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"Community Benefit Fund Account" means the Community Benefit Fund Account opened in pursuance of Section 68A(1); and

(c) by inserting after the definition of "member" the following :-

""monitoring and control system" means the monitoring and control system approved by the Board in pursuance to Section 73A;".

3. POWERS OF THE BOARD (AMENDMENT OF SECTION 5).

Section 5 of the Principal Act is amended by inserting after the word "Act" the following:-

"and include the following powers :-

- (a) to borrow money from any licensed bank or licensed financial institution within the country, or any financial institution outside the country as approved in writing by the Bank of Papua New Guinea, to enable the Board to carry out its functions under this Act;
- (b) to mortgage, charge or pledge any of the assets of the Board including future assets or future income, as security for any borrowing of the Board;
- (c) to possess, own, operate or maintain any gaming machine in accordance with Section 34(2A);
- (d) to sell, lease or hire any gaming machine to the holder of a permit granted under Section 27 on such terms as the Board considers fit;
- (e) to enter into arrangements with any person or corporation for the purpose of enabling the Board to carry out its functions under this Act."

4. REPORTS (AMENDMENT OF SECTION 14).

Section 14(3) of the Principal Act is repealed.

5. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT* (AMENDMENT OF SECTION 17).

Section 17 of the Principal Act is amended by adding the following new subsection :-

"(2) The Board is declared to be a trading enterprise for the purposes of Section 62(2) of the *Public Finances (Management) Act 1995*."

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6. **NEW SECTION 17A.**

The Principal Act is amended by inserting after Section 17 the following new section:-

"17A. SURPLUS INCOME.

In January and July each year, the Board shall review the cost of carrying out its functions against income received for that purpose in the six months prior to the month of review, and after taking into account anticipated income and expenditure for the ensuing six months period, shall pay any funds then held and surplus to requirements in the ensuing six months, into the Community Benefit Fund Account."

7. **BOARD MAY GRANT OPERATORS LICENSES (AMENDMENT OF SECTION 34).**

Section 34 of the Principal Act is amended -

(a) by inserting after Subsection (2) the following new subsection :-

"(2A) The Board shall be deemed to be the holder of an operator's licence and may -

- (a) import approved gaming machines; and
- (b) supply approved gaming machines; and
- (c) acquire, own and possess gaming machines; and
- (d) service, repair and maintain gaming machines; and
- (e) install and operate gaming machines in premises in respect of which a permit or a special permit is in force; and
- (f) delegate to, or engage, a corporation to service, repair and maintain gaming machines; and
- (g) sell, lease or hire gaming machines to a site owner who is the holder of a permit granted under Section 27."; and

(b) in Subsection (3), by repealing the word "three" and replacing it with the following :-
"four".

8. **PERIODIC PROVISION OF INFORMATION BY THE HOLDER OF A LICENCE (AMENDMENT OF SECTION 64).**

Section 64 of the Principal Act is amended by adding the following new subsections :-

" (3) An agreement between an operator and a permit holder touching on any matter related to the operation of gaming machines shall be in writing, and a copy of the agreement shall be delivered to the Board by an operator within 30 days of the signing of the agreement or the coming into force of the *Gaming Machine (Amendment) Act 2001*, whichever is the latter.

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“(4) The Board –

- (a) shall disallow any term of an agreement referred to in Subsection (3) if, in the opinion of the Board, the term has the effect of placing either party to the agreement in breach of any provision of this Act; and
- (b) may disallow any term it considers not to be in the best interests of the industry.

“(5) An agreement not submitted to the Board as required by Subsection (3) or a term disallowed under Subsection (4), is unenforceable.”

9. DISTRIBUTION OF PROFITS (AMENDMENT OF SECTION 67).

Section 67 of the Principal Act is amended –

(a) by repealing Subsection (1) and replacing it with the following :–

“(1) A permit holder, and where an operator receives the gross profit, that operator, shall each banking day bank the gross profit derived from operating gaming machines during the previous day (or during the previous non-banking day or days) on each site on which he operates gaming machines under this Act (other than gaming machines the subject of a special permit) in a bank account or bank accounts approved by the Board for the purpose.”; and

(b) by inserting after Subsection (1) the following new subsections :–

“(1A) An operator shall monitor the banking obligations of all relevant permit holders pursuant to Section 67(1) and where a permit holder has not banked for three consecutive banking days, the operator shall request the Board to disable the gaming machines at that site in accordance with Section 73A(4).

“(1B) From the account or accounts referred to in Subsection (1), an operator shall make the payments prescribed by Section 67(2).”; and

(c) in Subsection (2) –

(i) by repealing the words “the month referred to in Subsection (1), pay, of the profits derived from operating gaming machines during the month referred to in Subsection (1) – ” and replacing them with the following :–

“pay, of the profits derived from operating gaming machines during the previous month , or deemed pursuant to Section 67(A) to have been so derived – ”; and

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(ii) by repealing Paragraph (c) and replacing it with the following:-

"(c) 20% to a trust account opened pursuant to the provisions of Section 68A(1)."; and

(d) by inserting after Subsection (2) the following new subsection :-

" (2A) Where an operator has not complied with the provisions of Section 67(1A), the amount of profit derived from operating gaming machines calculated in accordance with the provisions of Section 67(2) shall be deemed to include the amount of profit reported by the monitoring and control system in respect of the relevant site."; and

(e) in Subsection (3), by adding the following :-

"less the amount payable pursuant to Section 73A."; and

(f) by inserting after Subsection (7) the following new subsection :-

" (8) The Board may sue an operator or permit holder to recover any amount due to be paid by the operator or permit holder pursuant to this section."

10. NEW SECTION 67AA.

The Principal Act is amended by inserting after Section 67 the following new section:-

"67AA. NO CLAIM AGAINST BOARD, ETC.,

No claim, demand, action or proceedings may be commenced or continued or any judgement enforced against the National Executive Council, the Minister, the Registrar or his staff or the Board or its property in respect of -

- (a) any monies paid into accounts established under Section 67(2)(b) or (c) prior to the coming into operation of Section 10 of the *Gaming Machine (Amendment) Act 2001* or the payment of monies into those accounts or any payment of monies from those accounts; or
- (b) any monies which were required to be paid into accounts referred to in Section 67(2)(b) or (c) prior to the coming into operation of Section 10 of the *Gaming Machine (Amendment) Act 2001* which were paid into any other accounts or the payment of such monies into those other accounts or the payment of such monies from those other accounts."

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11. REPEAL AND REPLACEMENT OF SECTION 68.

Section 68 of the Principal Act is repealed and is replaced with the following :-

"68. PAYMENTS BY BOARD FOR HEALTH, WELFARE, ETC.,

(1) The Board shall consider applications received by the Board for financial or other assistance for health, welfare, community, sporting or rehabilitation purposes upon criteria and guidelines which the Board shall from time to time determine.

"(2) Where a -

- (a) person; or
- (b) community group,

makes -

- (c) an application under Subsection (1) for financial or other assistance for a sum not exceeding K100,000.00; or
- (d) two or more applications under Subsection (1) for financial or other assistance for sums the aggregate of which does not exceed K100,000.00,

the Board may approve and make payment from monies paid into the Community Benefit Fund Account under Section 68A.

"(3) Where applications received by the Board from an applicant pursuant to Subsection (2)(c) for a sum exceeding K100,000.00, or applications are received from an applicant pursuant to Subsection (2)(d) for an aggregate sum not exceeding K100,000.00, the Board shall make a recommendation to the Minister as to what payments, if any, should be made by the Board from the Community Benefit Fund Account under Section 68A.

"(4) The Minister, after considering the Board's recommendations under Subsection (3), shall direct the Board to make payments of such amounts, for such health, welfare, community, sporting or rehabilitation purposes, as are directed by the Minister to be made from monies paid in to the Community Benefit Fund Account under Section 68A.

"(5) An applicant shall be entitled to make only one successful application each year under Subsection (1) whether pursuant to Subsection (2) or (4).

"(6) The Board shall deduct from the Community Benefit Fund Account the expenses of operating the Board in accordance with the provisions of a budget approved by the Minister.

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"(7) The amount of payment made by the Board under Subsections (2) and (4) during a financial year, shall not exceed the credit balance in the Community Benefit Fund Account and the Board shall not cause the Community Benefit Fund Account to have a negative balance.

"(8) Payments made into and from any of the accounts mentioned in Section 67A(a) or (b) by the National Executive Council, the Minister, the Registrar or his staff or the Board between 20th July 1999 and the coming into force of the *Gaming Machine (Amendment) Act 2001* are deemed to have been authorized by this Act and lawfully applied for the purpose of this Act at the time they were made."

12. NEW SECTION 68A.

The Principal Act is amended by inserting after Section 68 the following new section:-

"68A. COMMUNITY BENEFIT FUND ACCOUNT.

(1) For the purposes of this Act, the Board shall establish a Fund to be called the "Community Benefit Fund" and shall open a Trust Account to be called the "Community Benefit Fund Account" into which shall be paid all monies due to the Community Benefit Fund under this Act and out of which shall be paid all monies due to be paid out of the Community Benefits Fund in accordance with this Act.

"(2) The payment to the Community Benefit Fund Account in accordance with Section 67(2)(c) is a debt due and payable by an operator to the Board.

"(3) An operator shall send to the Board with every payment to the Community Benefit Fund Account by him, a return in such form as the Board requires, setting out particulars of the profit and amount payable to the Community Benefit Fund Account by the operator and a copy of the bank statements for the accounts referred to in Section 67(1), in respect of that month."

13. NEW SECTION 73A.

The Principal Act is amended by inserting after Section 73 the following new section :-

"73A. MONITORING OF GAMING MACHINES.

(1) A permit holder and an operator shall have a gaming machine at a site electronically connected to a central monitoring and control system approved by the Board, by such means as the Board stipulates.

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"(2) An operator shall pay to the Board by the fifteenth day of each month, in respect of the previous month, the prescribed cost of monitoring each machine required to be connected to the central monitoring and control system.

"(3) The Board may, by notice in the National Gazette, prescribe the cost of monitoring each machine and the proportion in which the operator and the permit holder shall be liable for the cost and until prescribed the cost shall be K40 per month per machine of which K10 is payable by the permit holder and K30 by the operator.

"(4) The Board may utilize the monitoring and control system to disable gaming machines at a site if it receives a report from an operator that the relevant permit holder is in breach of its obligations under Section 67(1) or, in the opinion of the Board, the permit holder is in breach of any of the provisions of the Act."

14. NEW SECTION 93.

The Principal Act is amended by inserting after Section 92 the following new section :-

"93. BY - LAWS.

(1) The Board may, by notice in the National Gazette, make by-laws not inconsistent with this Act prescribing, in relation to premises in which gaming machines are installed -

- (a) the area of unoccupied floor space to be provided adjacent to a machine; and
- (b) the level of lighting required; and
- (c) the provisions to be made for ventilation, frequency of air changes, provisions for removal of smoke or other polluted air; and
- (d) the minimum requirement for provision of beverages for customers; and
- (e) the minimum requirement for the provision of food for customers; and
- (f) the provision of security; and
- (g) the provision of other forms of entertainment; and
- (h) prohibiting a class of persons from entering the premises; and
- (i) the hours of operation of gaming machines; and
- (j) the days when the premises shall be closed for business.

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" (2) By-laws may be made generally or in respect of a class of premises, specified premises or a geographical area."

I hereby certify that the above is a fair print of the *Gaming Machine (Amendment) Act 2001* which has been made by the National Parliament.

Clerk of the National Parliament

I hereby certify that the *Gaming Machine (Amendment) Act 2001* was made by the National Parliament on 7 August 2001 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.