

ACT AUDITOR–GENERAL’S REPORT
ACT CLUBS’ COMMUNITY CONTRIBUTIONS
REPORT NO. 5 / 2018

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PA 17/17

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'ACT clubs' community contributions' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely



Mr Brett Stanton
Acting Auditor-General
(for Dr Maxine Cooper, Auditor-General)
27 April 2018

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SUMMARY

ACT clubs are required by the *Gaming Machine Act 2004* to make community contributions from the revenue from the use of gaming machines, of which there were 4 723 at 30 June 2017. 4 673 (99 percent) of the ACT's gaming machines are in clubs.

In 2016-17 gross gaming machine revenue (i.e. revenue after players' winnings have been paid) for ACT clubs was \$168.4 million and net gaming machine revenue (i.e. gross gaming revenue less gaming machine taxes and a 24 percent deduction for costs to manage the gaming machines) was \$94.6 million. ACT clubs reported total community contributions of \$11.9 million.

ACT clubs' compliance with their community contributions' obligations is regulated by the ACT Gambling and Racing Commission.

The ACT Gambling and Racing Commission relies on Access Canberra to conduct activities to regulate and monitor ACT clubs' compliance with the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*.

Overall conclusion

The *Gaming Machine Act 2004* identifies a community contribution as that which '[contributes] to or [supports] the development of the community' or '[raises] the standard of living of the community or part of the community'. There are no supporting objectives or guidance on how to interpret the legislation so that it can be effectively implemented. This means ACT clubs have considerable flexibility in allocating contributions. Consequentially the ACT Gambling and Racing Commission has approved a broad and diverse range of expenditure as community contributions. Until there are clear objectives and guidance, especially on what the term community means and the nature and type of expenditure that may be claimed as a contribution, there will be considerable disagreement as to the merits and value of community contributions.

Chapter conclusions

CLUBS' COMPLIANCE WITH LEGISLATIVE AND OTHER REQUIREMENTS

Access Canberra staff, on behalf of the ACT Gambling and Racing Commission, directly refer to the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004* when assessing the eligibility of clubs' community contributions. The lack of further guidance allows those assessing contributions significant discretion regarding whether a contribution is allowable or not.

There was insufficient information in clubs' annual returns with respect to the identification and documentation of the purpose and beneficiary of community contributions which means that the eligibility and appropriateness of some community contributions is not clear. A review of the annual

returns for ten clubs over a three year period (2013-14 to 2015-16) found that for 7.2 percent of all contributions reported; neither the recorded purpose nor recipient of the community contribution was clear; and therefore the benefit to the community of the contribution was not apparent. These contributions had a value of \$1.2 million from a total of \$5.7 million in community contributions made by these ten clubs.

BENEFITS OF CLUBS' COMMUNITY CONTRIBUTIONS

While it is apparent that benefits are being provided to the community through clubs' community contributions the lack of clarity with respect to objectives, the broad nature and type of expenditure that may be claimed as a contribution and the fact that the term community is undefined and therefore open to interpretation means that the benefits of community contributions cannot be evaluated.

Nevertheless, there are questions regarding the value and benefit of some claims. Types of community contributions that are questionable include expenditure associated with: the operation of professional and semi-professional sporting teams (including salaries and wages of coaching and ancillary staff, airline lounge memberships for team members and team transport and consumables); and the maintenance and upkeep of sporting infrastructure (especially where there is a lack of information on the community's access to this infrastructure).

MONITORING AND REGULATION OF CLUBS' COMMUNITY CONTRIBUTIONS

Access Canberra, in conducting desktop reviews and compliance checking activities on behalf of the ACT Gambling and Racing Commission, relies on guidance material that is out of date and has not been approved for use by the Commission. Access Canberra has adopted a risk-based approach to regulating clubs' community contributions which involves compliance checking for ten percent of clubs' community contributions, but there is insufficient information and documentation to justify this approach to regulation.

Key findings

CLUBS' COMPLIANCE WITH LEGISLATIVE AND OTHER REQUIREMENTS

Paragraph

The *Gaming Machine Act 2004* defines a *community contribution* very broadly, as that which '[contributes] to or [supports] the development of the community' or '[raises] the standard of living of the community or part of the community'. *Community* has not been defined by the Act or the *Gaming Machine Regulation 2004*. This means its definition is dependent on the interpretation of its general meaning which can encompass a very broad scope. The lack of a definition for community gives ACT clubs considerable flexibility in how they interpret community and therefore how contributions are allocated to recipients.

2.23

While clubs and Access Canberra staff involved in assessing clubs' community contributions rely on guidance in the *Gaming Machine Regulation 2004* as to what is an allowable contribution, the Regulation is open to interpretation. Further guidance to provide clarity is warranted. 2.26

Analysis of the eight clubs which made the largest community contributions (representing 87.1 percent of all clubs' contributions in 2016-17) and according to reportable categories shows: 2.30

- the sport and recreation category receives a significant amount of contributions from sports-focused clubs in the Territory. The community infrastructure category also receives a significant amount of contributions from sports-focused clubs, which primarily represents sporting clubs' expenditure on the sporting facilities their club members use. Collectively the top four sports-focused clubs in the ACT allocate between 78 percent and 93 percent of their community contributions to the sport and recreation, women's sport and community infrastructure categories; and
- clubs without a specific sports focus make contributions across a range of categories. Collectively the top four non-sports-focused clubs in the ACT allocate between 36 and 62 percent of their community contributions to the non-profit activities and charitable and social welfare categories. Between 28 percent and 40 percent, of their community contributions go to the sport and recreation and women's sport categories.

Sport and recreation-related contributions represented 58.1 percent of all contributions in 2016-17 with the significant majority of contributions claimed by sporting-focused clubs. While some of this expenditure related to support for junior-based sporting teams, including the provision of uniforms and equipment, it is also apparent that considerable expenditure related to semi-professional sporting teams was also claimed under this category, including salaries and wages of coaching and ancillary staff and airline lounge memberships for sporting team members. The lack of information in clubs' annual returns submitted to the ACT Gambling and Racing Commission relating to the purpose and beneficiary of recipients makes it difficult to understand the exact nature of the expenditure and the community contribution claimed. By way of example, one club claimed 56 separate contributions totalling \$663 755 in the annual return as 'sports donations' to a single senior sports team directly associated with the club, without any further on the nature of the expenditure. 2.44

The ACT Gambling and Racing Commission has approved, in accordance with section 67 of the *Gaming Machine Regulation 2004*, a wide and diverse range of expenditure associated with the maintenance and upkeep of ovals and sportsgrounds as community infrastructure-related contributions. Different analyses of the benefits of clubs' community contributions (including a September 2017 PwC report commissioned by the ACT Gambling and Racing Commission and an August 2017 Ironbridge Consulting Services report commissioned by the Justice and Community Safety Directorate) have questioned the appropriateness of allowing clubs to claim this expenditure given the difficulty in showing 'the nexus between contributions for 2.45

a club's own infrastructure maintenance to an incremental community benefit being delivered under the Scheme' and the lack of information associated with community access to the ovals and sportsgrounds.

The Audit Office's analysis of 8 925 (\$5.7 million) recorded community contributions from the annual returns of ten clubs over a three year period (2013-14 to 2015-16) showed that for 1 565 (17.5 percent), the beneficiary could not be identified as a community organisation or group. For example, the recorded beneficiaries may be:

- names of suppliers (for example 'BP Express' and 'Bunnings');
- names of individuals; or
- generic names for groups of individuals (for example 'Coaching Salaries' and 'Support Staff', 'Social Dance' or 'Wine Club').

When assessed with the recorded purpose 920 of the 1 565 contributions made to entities that could not be identified as a community group were explicable. This leaves 645 recorded community contributions (7.2 percent of a total of 8 925 contributions) for which the records did not identify as being directed to a community group or organisation. These contributions had a value of \$1.2 million of the \$5.7 million community contributions made by ten clubs.

For 1 455 recorded community contributions (16.3 percent) the benefit being provided could not be identified. For example, examples of recorded benefits included generic terms such as 'Community Support', 'Drinks', 'Car' or 'Van fuel'. When assessed with the recorded beneficiaries 810 of the 1 455 community contributions were provided to organisations identifiable as a community organisation or group.¹ While some of the community contributions were being made to identifiable community organisation or groups, it is still difficult to assess the apparent benefit that is being provided from the recorded description.

BENEFITS OF CLUBS' COMMUNITY CONTRIBUTIONS

Paragraph

The *Gaming Machine Act 2004* provides a very broad definition of community contribution and there is no further guidance in the *Gaming Machine Regulation 2004* as to what may constitute and be allowable as a community contribution. This makes it difficult to assess the benefits of these contributions, especially regarding the extent to which they are meeting the intent of government objectives. This is a matter needing Government consideration.

A review of ACT Legislative Assembly Hansard records for the introduction of legislation associated with community contributions by Reilly Associates indicates 'two broad (largely opposing) views were maintained in this ongoing debate' on what should be the focus of community contributions; a 'harm minimisation and broader community benefit' perspective or a 'clubs as community' perspective. The 'harm minimisation and broader community benefits' perspective suggests that 'gaming

¹ A total of 645 community contributions remained following this analysis, which accorded with the number outstanding from the earlier analysis, for which neither a recognisable beneficiary nor benefit could be identified.

machines and gambling generally creates negative impacts on individuals, families and the broader community and some of the proceeds from gaming machines should be returned to the community to help it deal with these consequences'. The other perspective of 'clubs as community' suggests that 'clubs are intimately connected with the ACT local and regional communities and operate in the broader community interest in providing significant social, recreational, entertainment and sporting facilities and amenity to its members'. These two broad perspectives were evident within the ACT community today and affect how those with these different perspectives evaluate the benefits of clubs' community contributions.

The August 2017 Ironbridge Consulting Services report identified 'there is a general concern that the proportion of contributions allocated to sport and recreation is too high, and by the same reasoning the proportion allocated to other purposes is too low'. The report further identified that to the extent that a policy objective of the community contributions scheme could be inferred from the 2002 and 2007 legislative changes allowing clubs to claim \$4 in community contributions for every \$3 (monetary and in-kind) made to the categories of women's sport and problem gambling, i.e. to support women's sport and problem gambling initiatives, these have not had an effect on influencing clubs' allocation of their contributions. 3.17

For the purpose of analysing the benefits of community contributions, the September 2017 PwC report noted that it was important to identify that there was an 'incremental impact' of community contributions, whereby 'only the contributions that will have an impact that otherwise would not have been realised should be considered'. The September 2017 PwC report identified that this was difficult to demonstrate for *own maintenance* contributions (relating to the 'maintenance, upkeep and management of infrastructure, generally sporting fields and greens'), *own team* contributions (relating to 'contributions made for the purpose of supporting a sports team...[including] sponsorship of a national professionalised league [and] payments to coaches and individual players, medical expenses, team transport and consumables') and *own event* contributions (relating to 'expenditure made by the club to host events that are open to the community ... [including] sporting fetes, Christmas parties (not hosted for a particular charity) or hosting visiting art or cultural exhibitions'. 3.22

With respect to *own maintenance* the September 2017 PwC report identified that contributions associated with this category were 'deemed not to be induced by the Scheme at all, because although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme'. With respect to *own team* the September 2017 PwC report identified this was 'harder to determine as incremental or not, because, as part of some clubs primary purpose, it is likely to occur in absence of the Scheme, but perhaps to a different extent ... supporting their own team to a higher level than otherwise is likely to be induced by the club having to meet Scheme reporting requirements'. 3.23

The September 2017 PwC report's analysis of the benefits of clubs' 2015-16 community contributions shows for a total of \$10.5 million in community 3.27

contributions there was an expected benefit to the community of between \$16.78 million and \$33.18 million. It also identified:

- *own event* contributions (\$79 636 of community contributions in 2015-16) were determined by PwC as not meeting an 'identified need' as 'these contributions are completely decided within the club with no nexus to the community need';
- *own maintenance* contributions (\$1 871 266 of community contributions in 2015-16) were determined by PwC as not having an 'incremental impact' as 'although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme'; and
- *own team* contributions (\$1 855 742 of community contributions in 2015-16) had no measurable impact for the low scenario because 'there was uncertainty as to whether the impact is incremental'. The category was given a 0 to 100 percent range, meaning that, at worst, none of the contributions under this 'measurement category' would have any measurable impact or, at best, all of the contributions under this 'measurement category' would have a measurable impact (estimated to be \$8.17 million).

Analysis of clubs' community contributions for 2016-17 undertaken by Reilly Associates shows: 3.34

- the majority of claimed community contributions (74.1 percent) were cash donations or expenditure, with the balance (25.9 percent) claimed as in-kind donations;
- affiliate donations (being support to specific professional, semi-professional, and amateur sports teams) represented the highest value category of community contributions; \$3 354 120 of contributions in 2016-17 (31.3 percent). Only \$36 411 (1.1 percent) of affiliate donations were claimed as an in-kind contribution; and
- the most frequently claimed community contribution was in-kind room hire, of which there were 6 533 claims in 2016-17, which represented \$2 331 424 (21.8 percent) of the value of all community contributions claimed.

It was found that 'the community contributions funding program administered by ACT clubs does provide substantial tangible and intangible benefit to the community inside and outside of the ACT. It is apparent, however, that these benefits tend to favour club constitutional purposes and the interests of club members. In addition, the view here is these 'benefits' may only be realistically evaluated within a context acknowledging the source of these benefits – i.e. gaming machine monetary losses in another section of the community - the gaming machine players' (Reilly Associates). 3.62

While a large number of entities did receive some form of benefit from community contributions, the annual returns showed that a significant proportion of monetary contributions was directed by clubs to organisations they have a close affiliation 3.63

with. Reilly Associates noted that '[a] major portion of the [monetary contributions] distributed under this community contributions program went to a club affiliated company, club affiliated sporting clubs, other club affiliated groups, and club associated sporting facilities. This club cash contributions funding comprised around 64% of the total funding. Non-affiliate community group direct cash funding was in the order of 3.5% of the total year contributions'.

Reilly Associates further stated 'it is acknowledged that the social culture of clubs, coupled with the ways this community contributions funding scheme is currently managed, does help to build social capital and enhance the social fabric of this club-oriented community. However, these 'community benefits' are often associated with club core interests and there are indications, notwithstanding the existing tangible and intangible contributions support currently distributed within the community, that these interests do not always align well with broader community norms and values in terms of balanced community support and development'.

3.65

MONITORING AND REGULATION OF CLUBS' COMMUNITY CONTRIBUTIONS

Paragraph

There is no evidence that the ACT Gambling and Racing Commission or Access Canberra have approved the two procedural documents which Access Canberra uses to conduct the desktop review. Both contain out of date references to the *Gaming Machine Act 2004* and there was no evidence to indicate the date of the last review or who reviewed the documents. These inadequacies present a risk that Access Canberra's staff in conducting the desktop review of clubs' community contributions may be inconsistent from year to year or from club to club. It is notable that in the 2015-16 desktop review that contributions not approved was at its lowest, being \$382. This is significantly lower than the prior year of \$5 803 (a subsequent compliance check, six months later, found an additional \$8 376 ineligible contributions).

4.16

While there is evidence that the *Proactive Compliance Inspector Program Scope* procedural document used by Access Canberra to guide its compliance checks has been approved by Access Canberra this is not the case for *Compliance Audit Workbook* or the *Gaming Machine Compliance Audit*. Furthermore, there are inconsistencies between the documents. This presents a risk that Access Canberra's staff conducting the compliance checks may be inconsistent from year to year or from club to club.

4.26

The absence of specific up-to-date and approved guidance on how to interpret the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004* creates risks including not providing consistency. This is needed especially given a lack of definition regarding what is meant by community contribution.

4.28

A review of ten clubs' annual returns over a three year period (2013-14 to 2015-16) shows that for a large number of these, the recorded purpose did not provide sufficient detail to demonstrate how the community contribution was eligible pursuant to the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*. This presents a risk that an inappropriate approval could be granted.

4.37

<p>The Access Canberra <i>Business Engagement Education and Compliance Business Plan for 2017-18</i> is a key document that establishes the risk-based regulatory approach undertaken by Access Canberra for a range of its activities, including the regulation of clubs' community contributions. The document has a number of internal inconsistencies and errors, including the incorrect articulation of risks and their ratings. If the risk ratings from the Access Canberra <i>Business Engagement Education and Compliance Business Plan for 2017-18</i> are relied upon to determine the regulatory approach, including the allocation of resources, then the miscalculations pose a risk that the regulatory matter in question will not be appropriately monitored, managed or resourced.</p>	4.49
<p>Since 2013-14 there has been a decrease in the total value of clubs' annual returns examined as part of compliance activities. Fifty percent of the total value of annual returns was examined during compliance activities up to 2013-14, which was reduced to 20 percent in 2014-15 and 10 percent in 2015-16. There is no documented analysis, risk analysis or otherwise, associated with the decision to decrease compliance activity coverage to ten percent. While the adoption of a risk-based approach to regulation was endorsed by the ACT Gambling and Racing Commission through a recommendation in the <i>Review of the Efficiency and Effectiveness of Community Contributions in the ACT</i> paper (December 2016) there is no further guidance on how this was to be informed by club-specific risks and 10 percent of all clubs' continue to be examined, irrespective of the size or risk profile of the club. In combination with the errors and miscalculations in the Access Canberra <i>Business Engagement Education and Compliance Business Plan for 2017-18</i> Access Canberra's ability to demonstrate the nexus between its 'risk based approach to regulation' and decisions which effect changes with reference to focus and resourcing for community contributions is impaired.</p>	4.55
<p>The role of the Chief Executive Officer of the ACT Gambling and Racing Commission is held by the Chief Operating Officer of Access Canberra. This presents a risk of conflict of interest, particularly in resolving potential issues and disagreements between the ACT Gambling Racing Commission and Access Canberra (as the provider of services to the ACT Gambling and Racing Commission).</p>	4.63
<p>The Memorandum of Understanding between Access Canberra and the ACT Gambling and Racing Commission states that Access Canberra will 'ensure that it takes reasonable steps to assist the [ACT Gambling and Racing Commission]' and that it will operate 'in accordance with the Access Canberra Accountability Framework' and 'flexibly to respond to emerging issues or directions identified by the Board'. It is a high level general agreement that is not supported by an annual work plan outlining services to be delivered according to a budget and timeline. This presents a risk that the activities undertaken by Access Canberra may not meet the requirements of the ACT Gambling and Racing Commission.</p>	4.68
<p>Accountability indicators in the ACT Gambling and Racing Commission's <i>Statement of Intent</i>, according to the Memorandum of Understanding, are to be used to assess the effectiveness of Access Canberra's services. These indicators are not an appropriate measure of the performance of services provided under the Memorandum of Understanding. While the indicators included in the <i>Statement of</i></p>	4.74

Intent are linked to activities that are outlined in Access Canberra divisional work plans they lack detail on the specific activities to be conducted by each division, i.e. the scope, timing and nature of activities that are to be conducted.

The Memorandum of Understanding does not outline a mechanism by which the ACT Gambling and Racing Commission can make changes to the nature and type of functions and activities conducted by Access Canberra. Nor does it provide the ACT Gambling and Racing Commission with remedies in the case of non-performance by Access Canberra.

4.80

Recommendations

RECOMMENDATION 1 COMMUNITY CONTRIBUTIONS OBJECTIVES

The ACT Government should clearly state what objectives it is seeking from clubs' community contributions. In doing so, the objectives should specify the nature and type of expenditure that may be claimed.

RECOMMENDATION 2 INTERPRETATIVE GUIDANCE

The ACT Gambling and Racing Commission should provide guidance on how to interpret and approve community contributions with respect to objectives (when defined by the ACT Government) and requirements in the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004*.

RECOMMENDATION 3 GUIDANCE MATERIALS (POLICIES AND PROCEDURES)

Access Canberra, in consultation with the ACT Gambling and Racing Commission, should:

- a) review and update the policies and procedures it currently uses to regulate clubs' community contributions; and
- b) implement a regular review process for the policies and procedures.

RECOMMENDATION 4 RECORDS OF BENEFICIARIES AND PURPOSE

Access Canberra should request, where currently not provided by clubs, further information regarding the beneficiary and purpose of a community contribution, before recommending its approval to the ACT Gambling and Racing Commission.

RECOMMENDATION 5 RISK-BASED APPROACH TO REGULATION

The ACT Gambling and Racing Commission, in cooperation with Access Canberra, should fully document its risk-based approach to the regulation of clubs' community contributions, including decision-making associated with the percentage of clubs' contributions to be subjected to compliance checking.

RECOMMENDATION 6**MEMORANDUM OF UNDERSTANDING BETWEEN ACT GAMBLING
AND RACING COMMISSION AND ACCESS CANBERRA**

Access Canberra, in conjunction with the ACT Gambling and Racing Commission, should:

- a) prepare an annual work plan to support the Memorandum of Understanding, which outlines services to be delivered according to a budget and timeline;
- b) revise the Memorandum of Understanding to clearly state procedures for the management of the potential conflict of interest of the Chief Executive Officer of the ACT Gambling and Racing Commission; and
- c) revise the Memorandum of Understanding to include appropriate and practical dispute resolution measures.

Agency responses

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the ACT Gambling and Racing Commission and Access Canberra were provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment.

The ACT Gambling and Racing Commission provided comments for inclusion in this Summary Chapter.

ACT Gambling and Racing Commission response

The ACT Gambling and Racing Commission welcomes the Auditor-General's findings about the need for the objectives for community contributions to be clearly defined by Government. This will provide greater certainty for ACT clubs and the Canberra community on the community benefits intended to be derived from gaming activity in the Territory. Further, it will allow Access Canberra to more effectively support the Commission, and in so doing, support industry to meet its obligations.

1 INTRODUCTION

ACT clubs

Gaming machines

- 1.1 At 30 June 2017 there were 4 723 gaming machines in operation across 45 clubs and five hotels and taverns in the ACT. The majority of gaming machines were held by clubs (4 673) with hotels and taverns having a small proportion (50).
- 1.2 In 2016-17 gross gaming machine revenue (i.e. revenue after players' winnings have been paid) for all clubs was \$168.4 million and net gaming machine revenue (i.e. gross gaming revenue less gaming machine taxes and a 24 percent deduction for costs to manage the gaming machines) was \$94.6 million.

Community gaming model

- 1.3 The ACT has a 'community gaming model' whereby the majority of gaming machines are held by clubs. In relation to the 'community gaming model' an August 2017 report prepared for the Justice and Community Safety Directorate by Ironbridge Consulting Services, *Community Contributions from Electronic Gaming Machine Revenues – Analysis and Options* (the August 2017 Ironbridge Consulting Services report),² stated:

In 1975, the gaming industry was established in the ACT in response to concerns that economic activity was flowing over the border through nearby NSW licensed clubs. Licences to operate gaming machines were limited to not for profit clubs to ensure that profits from gaming machine revenues were retained in the Territory and contributed to the community.

- 1.4 The essence of the 'community gaming model' is captured in a December 2009 ACT Government submission to the Productivity Commission's 2010 inquiry into gambling. The *ACT Government submission: Productivity Commission's Draft Report into Gambling* stated:

The ACT has adopted a community gaming model whereby the profits from gaming machines are returned, directly, to the community. This is a longstanding policy of governments in the ACT.

² The report was the result of a review that was commissioned by virtue of the *Parliamentary Agreement for the 9th Legislative Assembly for the Australian Capital Territory* (the Parliamentary Agreement) between the ACT Branch of the Australian Labor Party and the ACT Greens. The Parliamentary Agreement identified a number of agreed and priorities and outcomes including 'Review the current community contribution scheme, with a view to maximising the direct benefit to the community from the scheme'.

Community contributions

- 1.5 Section 169 of the *Gaming Machine Act 2004* requires each club to make a community contribution of at least eight percent of its net gaming machine revenue each year. Hotels and taverns are not required to make community contributions, but they must report it if they do.
- 1.6 By virtue of subsection 164(1) of the *Gaming Machine Act 2004*:
- The commission may approve contributions made by a licensee to a stated entity for a stated purpose as community contributions if satisfied the contributions will have the effect of—
- (a) contributing to or supporting the development of the community; or
 - (b) raising the standard of living of the community or part of the community.

Clubs' community contributions

- 1.7 In 2016-17 ACT clubs reported making \$11.9 million in community contributions, which represented 12.6 percent of clubs' net gaming machine revenue. Table 1-1 shows clubs' community contributions for the five years to 2016-17, according to the categories defined by the *Gaming Machine Act 2004*, and reported on, by the ACT Gambling and Racing Commission in the annual report it prepares for the Minister by virtue of section 167 of the *Gaming Machine Act 2004*.
- 1.8 Community contribution categories used for reporting purposes are:
- charitable and social welfare – subsection 164(1) of the *Gaming Machine Act 2004* provides four examples of categories of community contributions, including charitable and social welfare;
 - sport and recreation – one of four examples of categories of community contributions provided by subsection 164(1) of the *Gaming Machine Act 2004*;
 - non-profit activities - one of four examples of categories of community contributions provided by subsection 164(1) of the *Gaming Machine Act 2004*;
 - community infrastructure - one of four examples of categories of community contributions provided by subsection 164(1) of the *Gaming Machine Act 2004*;
 - problem gambling – by virtue of section 171A of the *Gaming Machine Act 2004* clubs can claim contributions made to entities that assist in alleviating program gambling, disadvantages that arise from problem gambling or providing information about problem gambling. Section 171A provides an incentive for clubs, which allows the club to claim \$4 as a community contribution for every \$3 (monetary or in-kind) contribution made;
 - Problem Gambling Assistance Fund – by virtue of section 163A of the *Gaming Machine Act 2004* clubs are required to pay 0.75 percent of their gross gaming machine revenue to the problem gambling assistance fund. Payments to the fund count towards the clubs' community contributions; and

- Women's sport - by virtue of section 171 of the *Gaming Machine Act 2004* clubs can claim contributions made to entities that will benefit or enhance women's sport conducted in the ACT, or with participants mainly based in the ACT. Section 171 provides an incentive for clubs, which allows the club to claim \$4 as a community contribution for every \$3 of (monetary or in-kind) contribution made.

1.9 Table 1-1 shows the value of the community contributions by reportable category between 2012-13 and 2016-17.

Table 1-1 ACT clubs' community contributions by reportable category (2012-13 to 2016-17)

	2012-13 (\$)	2013-14 (\$)	2014-15 (\$)	2015-16 (\$)	2016-17 (\$)	TOTAL (\$)
Charitable and Social Welfare	1 306 473	1 052 853	1 065 030	1 026 096	978 820	5 429 272
Problem Gambling (adjusted)	77 986	76 921	84 103	71 516	72 309	382 835
Problem Gambling Assistance Fund	1 059 555	1 020 923	1 001 525	1 006 133	1 010 696	5 098 832
Sport and Recreation	8 452 601	8 230 247	7 479 535	6 609 600	6 934 578	37 706 561
Women's Sport (adjusted)	479 140	621 250	445 057	356 083	316 999	2 218 529
Non-Profit Activities	1 599 363	1 660 263	1 738 284	1 893 556	1 704 672	8 596 138
Community Infrastructure	51 355	51 134	65 628	772 987	909 611	1 850 715
TOTAL	13 026 473	12 713 591	11 879 162	11 735 971	11 927 685	61 282 882

Source: ACT Audit Office, based on ACT Gambling and Racing Commission reporting

Note: The Problem Gambling and Women's Sport contributions are adjusted to reflect that for every \$3 of contributions made towards these categories, the club may claim \$4.

1.10 Analysis of ACT clubs' community contributions between 2012-13 and 2016-17 shows that between 2014-15 and 2016-17 the value of clubs' community contributions remained relatively stable (between \$11.7 million and \$11.9 million). Notwithstanding this the value of clubs' community contributions has declined by 8.4 percent between 2012-13 and 2016-17.

1.11 According to the August 2017 Ironbridge Consulting Services report 'gaming machine expenditure in the ACT has been on a downward trend for a number of years' and that 'from 2005-06 to 2014-15 there has been a 12.8% decline. In real terms this translates to a 31.1% reduction'. The report further states:

It is likely that gaming revenues in the ACT will continue to trend downwards, particularly in real terms, due to competition from other forms of gambling, in particular internet based

gambling, and changing demographics. **Therefore, it follows that tax revenues and community contributions will also decline in the future.**

- 1.12 The community contributions made by hotels and taverns for the financial year ending 30 June 2017 amounted to \$7 018. These contributions represent 2.1 percent of hotels and taverns' gross gaming machine revenue of \$341 541.

Regulation of community contributions in the ACT

- 1.13 The following section of this chapter outlines the evolution of community contributions legislative requirements.

Gaming Machine Act 1987 (May 1997 amendments)

- 1.14 Following the operation of the 'community gaming model' for a number of years (at least since the 1970s according to the August 2017 Ironbridge Consulting Services report) the regulation of community contributions first commenced in May 1997 when amendments were made to the *Gaming Machine Act 1987*.

- 1.15 Hansard records of the time indicate that the regulation of community contributions in 1997 was introduced as part of broader reforms of the gaming machine industry. The Chief Minister and Treasurer advised the ACT Legislative Assembly that the amendments would 'strengthen the accountability and reporting requirements of clubs in regard to their community contributions'. The Chief Minister and Treasurer further advised the ACT Legislative Assembly that the intent of regulating community contributions was to:

... ensure that all clubs provide adequate information on their operations, strengthen their accountability and reporting requirements, and are genuinely committed to supporting the Canberra community.

...

... enhance the transparency and accountability of clubs and provide clear evidence on the level of commitment of clubs to their members and to the wider community generally.

- 1.16 The May 1997 amendments required clubs to keep records of all contributions donated:
- (a) to a charitable organisation;
 - (b) for a charitable purpose; or
 - (c) to an organisation declared by the Minister by notice in the *Gazette* to be an organisation for the purposes of this section, being an organisation that has its principal purpose the benefit of the community or a section of the community.
- 1.17 The May 1997 amendments also required each club to provide an annual report, detailing for the financial year the community contributions made and the proportion of gross revenue taken by the club, to the ACT Gambling and Racing Commissioner. The *Gaming Machine Act 1987* required the Commissioner to provide a report to the relevant minister:
- summarising the extent of compliance by clubs with their reporting requirements;
 - and

- detailing the proportion of gross revenue received (or derived) from gaming machines by the clubs and analysing the extent to which this revenue was used by clubs to make community contributions during the financial year.

Gaming Machine Act 1987 (September 2000 amendments)

1.18 In September 2000 amendments were made to the *Gaming Machine Act 1987* that established minimum amounts for community contributions. The minimum amounts were to be progressively increased between 2000 and 2002, with a minimum required contribution of 7 percent to apply after 2002. Community contributions were also defined as either those:

- (a) ... contributing to, or developing or supporting the social fabric of the Territory or another community; or
- (b) assisting sport or other recreational activities conducted in the Territory, or with participants predominantly based within the Territory.

1.19 These amendments were made because ‘many clubs have fallen short of acceptable levels of community contributions’. The Treasurer, Attorney-General and Minister for Justice and Community Safety proposed the new amendments in the Legislative Assembly with the following statement:

The club industry has maintained that legislation is not required to ensure that clubs meet their obligation to contribute to charity, welfare and volunteer organisations, and other worthwhile causes.

... the Government recognises and applauds the contribution of those clubs which have made significant community contributions in the past. However, despite the industry’s assurances, many clubs have fallen short of acceptable levels of community contributions and the Government believes that legislation is necessary to redress this state of affairs.

The new requirements will ensure that all clubs pull their weight in achieving the aim of this legislation, namely that the club industry provides guaranteed minimum contributions towards specified community activities.

Gaming Machine Act 2004 (November 2004)

1.20 The *Gaming Machine Act 1987* was repealed and replaced by the *Gaming Machine Act 2004*. The *Gaming Machine Act 2004* redefined community contributions and, as noted in paragraph 1.6, subsection 164(1) of the *Gaming Machine Act 2004* provides that contributions would be approved by the Commission if they had the effect of:

- (a) contributing to or supporting the development of the community; or
- (b) raising the standard of living of the community or part of the community.

1.21 A key responsibility of the ACT Gambling and Racing Commission under the *Gaming Machine Act 2004* is to present a report to the responsible Minister on clubs’ compliance with legislative requirements for community contributions. Section 167 of the Act states:

Within 4 months after the end of the financial year, the commission must give the Minister a report—

- (a) summarising the extent of compliance by licensees with section 165 and section 166 for the financial year; and
- (b) analysing the extent to which revenue received by licensees was being used to make community contributions during the financial year.

1.22 The *Gaming Machine Act 2004* is supported by the *Gaming Machine Regulation 2004*, which provides information and guidance on clubs' community contributions.

Roles and responsibilities for the regulation of community contributions

ACT Gambling and Racing Commission

1.23 The ACT Gambling and Racing Commission is an independent body established by section 5 of the *Gaming and Racing Control Act 1999*. By virtue of subsection 6(1) of the Act its functions are:

- (a) to administer the gaming laws; and
- (b) to control, supervise and regulate gaming in the ACT; and
- (c) to exercise any other function given to the commission under this Act or any other territory law.

1.24 The ACT Gambling and Racing Commission's *2017-18 Statement of Intent* identified three strategic objectives:

- Ensure the Accuracy of returns by Operators for Gambling Related Taxes and Levies on Behalf of the ACT Government;
- Ensure Gambling Operators' Compliance with Legislation; and
- To Reduce the Impact of Gambling Harm.

1.25 The ACT Gambling and Racing Commission consists of a Board, established under section 11 of the *Gaming and Racing Control Act 1999*, and a Chief Executive Officer.

1.26 The ACT Gambling and Racing Commission's Board consists of four non-executive members comprising the Chairperson, Deputy Chairperson and two ordinary members. The Commission's Chief Executive Officer is also a member of the Board.

1.27 Under section 56 of the *Financial Management Act 1996*, the Board is responsible, under the Minister, for the efficient and effective financial management of the ACT Gambling and Racing Commission. By virtue of section 77 of the *Financial Management Act 1996* a governing Board has the following functions:

- setting the authority's policies and strategies;
- governing the authority consistently with the authority's establishing Act and other relevant legislation;
- ensuring, as far as practicable, that the authority operates in a proper, effective and efficient way; and

- ensuring, as far as practicable, that the authority complies with applicable governmental policies.

Access Canberra

1.28 In practice, the day-to-day regulatory activities of the ACT Gambling and Racing Commission are undertaken by Access Canberra. Access Canberra was established in December 2014 in order to bring ‘together key shopfront and regulator services to make it easier for business, community organisations and individuals to interact with the ACT Government’³ with a focus on ‘identifying better ways to integrate and coordinate regulatory and compliance roles, streamline processes, and provide even more accessible channels to do business with government’.⁴

1.29 According to the ACT Gambling and Racing Commission’s *2017-18 Statement of Intent*:

In December 2014 it was announced that a number of regulatory functions across the ACT Government, including gambling regulation, would be brought together to create Access Canberra. In August 2016 an agreement between Access Canberra and the Commission on “the provision of services for the administration of the gaming laws including the control, supervision and regulation of gaming and racing in the ACT” (the Agreement) was executed.

The Agreement states that the GRC will commission work from Access Canberra to fulfil its obligations under the Control Act, and satisfy its objectives through the Access Canberra Accountability Commitment and as outlined in the 2014-18 Strategic Plan, the 2016-17 Statement of Intent and the Gambling and Racing compliance framework.

Access Canberra acknowledges the responsibilities of the Commission as a statutory authority including those specified in the Control Act, other gaming laws, and the Commission’s Statement of Intent. Access Canberra provides staff and support to the Commission on a purchase service agreement to enable the Commission to meet its responsibilities and obligations.

1.30 The Chief Operating Officer of Access Canberra undertakes the role of the Chief Executive Officer of the ACT Gambling and Racing Commission.

1.31 The relationship between Access Canberra and the ACT Gambling and Racing Commission is informed by a Memorandum of Understanding that has been agreed between the two entities. The *2017-20 Memorandum of Understanding* identifies its purpose as follows:

This agreement documents the arrangement between Access Canberra and the GRC in relation to work commissioned by the GRC for the administration of the gaming laws including the control, supervision and regulation of gaming and racing in the ACT. The agreement provides for the GRC to perform its functions and obligations as specified in section 6 of the Control Act and as outlined in the GRC Statement of Intent.

³ Chief Minister, Treasury and Economic Development Directorate, *2014-15 Annual Report*

⁴ *ibid*

Audit objective and scope

Audit objective

- 1.32 The objective of this audit is to provide an independent opinion to the Legislative Assembly on the effectiveness of the ACT Gambling and Racing Commission's regulation of ACT clubs' community contributions.

Audit scope

- 1.33 The scope of the audit includes the ACT Gambling and Racing Commission's activities to oversee, monitor and regulate ACT clubs and the community contributions made by clubs under the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*. This includes consideration of the ACT Gambling and Racing Commission's activities to:

- provide policy or administrative guidance to clubs on eligible contributions;
- regulate clubs' compliance with legislative requirements and any policy or administrative guidance, e.g. through audit and compliance activities; and
- review or evaluate the benefits of clubs' community contributions.

- 1.34 Also considered is the effectiveness of clubs' community contributions against policy or legislative objectives or intentions, including whether:

- clubs are making community contributions in accordance with legislative requirements and any policy or administrative guidance; and
- clubs' community contributions are providing a benefit to the ACT community.

- 1.35 In examining the activities of the ACT Gambling and Racing Commission, it was necessary to consider its relationship with, and oversight of, Access Canberra and the extent to which the latter undertakes activities on its behalf.

Out of scope

- 1.36 The audit did not include examination of:
- the effects of gaming machine use on the community;
 - other types of contributions that might be made by clubs funded by other revenue streams;
 - the allocation of gaming machines to clubs; or
 - the ongoing funding of clubs.
- 1.37 The audit also did not include consideration of hotels and taverns' community contributions.

Audit criteria, approach and method

Audit criteria

1.38 The audit was conducted with reference to the following criteria:

- Criterion One: Does the ACT Gambling and Racing Commission monitor and regulate clubs' compliance with community contribution requirements under the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*?
 - Does the Commission have policies and procedures for the monitoring and regulation of community contributions made by clubs? Do these meet legislative requirements?
 - Does the Commission conduct activities that effectively regulate clubs' compliance with legislative requirements of community contributions?
- Criterion Two: Does the ACT Gambling and Racing Commission review clubs' community contributions against policy objectives and evaluate the benefit of clubs' community contributions for the community?
 - Are the policy objectives of community contributions clearly identified and articulated? This includes eligibility rules and criteria.
 - Does the Commission evaluate clubs' community contributions against policy objectives for community contributions and identify if they are being met?
 - Does the ACT Gambling and Racing Commission evaluate clubs' community contributions to identify the benefits for the community?
 - Are the community contributions made by clubs providing a benefit to the community?

Audit approach and method

1.39 The audit adopted the Office's Performance Audit Methods and Practices (PAMPr) and related policies, practice statements and guidance papers. These policies and practices have been designed to comply with the requirements of the *Auditor-General Act 1996* and relevant professional standards (including *ASAE 3500 – Performance Engagements*).

1.40 The audit approach and method consisted of:

- interviews and discussion with key staff of the ACT Gambling and Racing Commission and Access Canberra;
- identifying and reviewing relevant information and documentation including:
 - the governance and accountability framework for the monitoring and regulation of community contributions and related policy and procedures;
 - the policy objectives of community contributions;
- identifying and documenting activities used to give effect to the policies and guidance for monitoring and regulating community contributions and assessing if these activities meet the legislative requirements;

- identifying and documenting activities used by the ACT Gambling and Racing Commission for evaluating the community contribution's benefits to the community;
- examining the annual returns and compliance workbooks (and relevant documentation) for ten clubs, chosen at random, for a three year period between 2013-14 to 2015-16 to assess the ACT Gambling and Racing Commission's monitoring and regulation activities;
- analysing the annual returns for eight clubs reporting the largest value of community contributions for 2015-16 and 2016-17 to understand the nature of clubs' community contributions;
- consideration of studies, evaluations and other the reviews of community contributions; and
- the engagement of Reilly Associates (a social researcher) to provide advice on whether and how the community contributions being made are achieving a benefit to the community.

1.41 The Standard on Assurance Engagements *ASAE 3500 - Performance Engagements* requires that an audit considers events up to the date of the report. To achieve this, when seeking comments on the draft report, the Audit Office asked the ACT Gambling and Racing Commission to inform it of any significant events affecting audit findings since fieldwork ceased.

2 CLUBS' COMPLIANCE WITH LEGISLATIVE AND OTHER REQUIREMENTS

- 2.1 This chapter considers whether ACT clubs are making community contributions in accordance with legislative requirements and policy or administrative guidance.

Summary

Conclusions

Access Canberra staff, on behalf of the ACT Gambling and Racing Commission, directly refer to the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004* when assessing the eligibility of clubs' community contributions. The lack of further guidance allows those assessing contributions significant discretion regarding whether a contribution is allowable or not.

There was insufficient information in clubs' annual returns with respect to the identification and documentation of the purpose and beneficiary of community contributions which means that the eligibility and appropriateness of some community contributions is not clear. A review of the annual returns for ten clubs over a three year period (2013-14 to 2015-16) found that for 7.2 percent of all contributions reported; neither the recorded purpose nor recipient of the community contribution was clear; and therefore the benefit to the community of the contribution was not apparent. These contributions had a value of \$1.2 million from a total of \$5.7 million in community contributions made by these ten clubs.

Key findings

The *Gaming Machine Act 2004* defines a *community contribution* very broadly, as that which '[contributes] to or [supports] the development of the community' or '[raises] the standard of living of the community or part of the community'. *Community* has not been defined by the Act or the *Gaming Machine Regulation 2004*. This means its definition is dependent on the interpretation of its general meaning which can encompass a very broad scope. The lack of a definition for community gives ACT clubs considerable flexibility in how they interpret community and therefore how contributions are allocated to recipients.

Paragraph

2.23

While clubs and Access Canberra staff involved in assessing clubs' community contributions rely on guidance in the *Gaming Machine Regulation 2004* as to what is an allowable contribution, the Regulation is open to interpretation. Further guidance to provide clarity is warranted.

2.26

Analysis of the eight clubs which made the largest community contributions (representing 87.1 percent of all clubs' contributions in 2016-17) and according to reportable categories shows: 2.30

- the sport and recreation category receives a significant amount of contributions from sports-focused clubs in the Territory. The community infrastructure category also receives a significant amount of contributions from sports-focused clubs, which primarily represents sporting clubs' expenditure on the sporting facilities their club members use. Collectively the top four sports-focused clubs in the ACT allocate between 78 percent and 93 percent of their community contributions to the sport and recreation, women's sport and community infrastructure categories; and
- clubs without a specific sports focus make contributions across a range of categories. Collectively the top four non-sports-focused clubs in the ACT allocate between 36 and 62 percent of their community contributions to the non-profit activities and charitable and social welfare categories. Between 28 percent and 40 percent, of their community contributions go to the sport and recreation and women's sport categories.

Sport and recreation-related contributions represented 58.1 percent of all contributions in 2016-17 with the significant majority of contributions claimed by sporting-focused clubs. While some of this expenditure related to support for junior-based sporting teams, including the provision of uniforms and equipment, it is also apparent that considerable expenditure related to semi-professional sporting teams was also claimed under this category, including salaries and wages of coaching and ancillary staff and airline lounge memberships for sporting team members. The lack of information in clubs' annual returns submitted to the ACT Gambling and Racing Commission relating to the purpose and beneficiary of recipients makes it difficult to understand the exact nature of the expenditure and the community contribution claimed. By way of example, one club claimed 56 separate contributions totalling \$663 755 in the annual return as 'sports donations' to a single senior sports team directly associated with the club, without any further on the nature of the expenditure. 2.44

The ACT Gambling and Racing Commission has approved, in accordance with section 67 of the *Gaming Machine Regulation 2004*, a wide and diverse range of expenditure associated with the maintenance and upkeep of ovals and sportsgrounds as community infrastructure-related contributions. Different analyses of the benefits of clubs' community contributions (including a September 2017 PwC report commissioned by the ACT Gambling and Racing Commission and an August 2017 Ironbridge Consulting Services report commissioned by the Justice and Community Safety Directorate) have questioned the appropriateness of allowing clubs to claim this expenditure given the difficulty in showing 'the nexus between contributions for a club's own infrastructure maintenance to an incremental community benefit being 2.45

delivered under the Scheme' and the lack of information associated with community access to the ovals and sportsgrounds.

The Audit Office's analysis of 8 925 (\$5.7 million) recorded community contributions from the annual returns of ten clubs over a three year period (2013-14 to 2015-16) showed that for 1 565 (17.5 percent), the beneficiary could not be identified as a community organisation or group. For example, the recorded beneficiaries may be:

- names of suppliers (for example 'BP Express' and 'Bunnings');
- names of individuals; or
- generic names for groups of individuals (for example 'Coaching Salaries' and 'Support Staff', 'Social Dance' or 'Wine Club').

When assessed with the recorded purpose 920 of the 1 565 contributions made to entities that could not be identified as a community group were explicable. This leaves 645 recorded community contributions (7.2 percent of a total of 8 925 contributions) for which the records did not identify as being directed to a community group or organisation. These contributions had a value of \$1.2 million of the \$5.7 million community contributions made by ten clubs.

For 1 455 recorded community contributions (16.3 percent) the benefit being provided could not be identified. For example, examples of recorded benefits included generic terms such as 'Community Support', 'Drinks', 'Car' or 'Van fuel'. When assessed with the recorded beneficiaries 810 of the 1 455 community contributions were provided to organisations identifiable as a community organisation or group.⁵ While some of the community contributions were being made to identifiable community organisation or groups, it is still difficult to assess the apparent benefit that is being provided from the recorded description.

Legislative requirements

Gaming Machine Act 2004

2.2 Subsection 164(1) of the *Gaming Machine Act 2004* states the requirements for ACT clubs' community contributions as follows:

The commission may approve contributions made by a licensee to a stated entity for a stated purpose as community contributions if satisfied the contributions will have the effect of—

- (a) contributing to or supporting the development of the community; or
- (b) raising the standard of living of the community or part of the community.

⁵ A total of 645 community contributions remained following this analysis, which accorded with the number outstanding from the earlier analysis, for which neither a recognisable beneficiary nor benefit could be identified.

2.3 Subsection 164(1) of the *Gaming Machine Act 2004* provides 'examples of areas of contributions' as follows:

- charitable and social welfare;
- sport and recreation;
- non-profit activities; and
- community infrastructure.

2.4 Subsection 164(3) of the *Gaming Machine Act 2004* provides further guidance on what constitutes a contribution. Paragraph 164(3)(a) provides that a contribution 'includes the value of a contribution made in kind' and paragraph 164(3)(b) outlines sixteen different types of specific expenditure items which will not be approved by the Commission as a contribution, including, for example:

- 'expenditure on commercial activities, or, if the licensee is a club, on the social or entertainment activities of the club for its members' (sub-paragraph 164(3)(b)(i));
- 'expenditure intended to promote the licensee's activities' (sub-paragraph 164(3)(b)(ii));
- 'capital payments for assets owned, controlled or being acquired by the licensee or an associated organisation that are not available to be used by the public' (sub-paragraph 164(3)(b)(iv));
- 'a contribution made out of donations collected by the licensee, or out of the proceeds of any special fundraising activity conducted by the licensee' (sub-paragraph 164(3)(b)(x));
- 'a contribution to a business association, registered party, associated entity or trade union' (sub-paragraph 164(3)(b)(xi)); and
- 'the payment of a tax, fee or levy, other than a payment related to the Problem Gambling Assistance Fund' (sub-paragraph 164(3)(b)(xvi)).

Gaming Machine Regulation 2004

2.5 The *Gaming Machine Regulation 2004* provides further guidance on the nature and type of community contributions that may be made by clubs. With respect to what does not amount to an eligible community contribution, subsection 63(1) of the *Gaming Machine Regulation 2004* specifically states:

The commission must not approve an amount spent on the following as a contribution:

- (a) professional entertainment provided for patrons or used for the purpose of directly promoting activities associated with the operation of the licensee and, if the licensee is a club, with the operation of an associated organisation;
- (b) the provision of alcoholic beverages either directly or indirectly through the provision of gifts, donations or prizes;
- (c) the provision of expenditure, funds, subsidies or discounts relating in any way to a gambling activity;

- (d) subsidised or free meals, snacks, other food or beverages provided to a licensee's patrons.

2.6 Sections 64 to 67 of the *Gaming Machine Regulation 2004* provides some guidance on eligible contributions against the following categories of contributions:

- charitable and social welfare contributions (section 64);
- problem gambling contributions (section 64A);
- sport and recreation contributions (section 65);
- non-profit activities contributions (section 66); and
- community infrastructure contributions (section 67).

2.7 For each of the four areas of community contributions outlined in the *Gaming Machine Act 2004* (refer to paragraph 2.3), the *Gaming Machine Regulation 2004* provides criteria and/or specific examples of expenditure that would be considered a community contribution.

Charitable and social welfare contributions

2.8 With respect to charitable and social welfare community contributions, section 64 of the *Gaming Machine Regulation 2004* states:

The commission may approve a contribution as a charitable and social welfare community contribution only if—

- (a) the contribution is made to a charitable organisation; or
- (b) the contribution-
 - i. is made to another entity for charitable and welfare purposes; and
 - ii. in the commissions opinion, supports the development of a community or helps to raise the standard of living of a community.

2.9 Section 64 of the *Gaming Machine Regulation 2004* then provides several examples of charitable originations and also provides examples of activities that may support the development of the community or raises the standard of living of the community. The examples are:

Examples—par (a)

- 1 the Salvation Army
- 2 St Vincent de Paul
- 3 the Smith Family

Examples—contributions that may support the development of a community or help to raise the standard of living of a community

- 1 child protection and family support
- 2 drug and alcohol support
- 3 hospital equipment for use in retirement villages or facilities for use by residents of the villages or facilities.

Sport and recreation contributions

- 2.10 With respect to sport and recreation contributions subsection 65(1) of the *Gaming Machine Regulation 2004* states:

The commission may approve a contribution as a sport and recreation community contribution only if the contribution is made to promote, develop or encourage sport or sporting or recreational activities.

- 2.11 Subsection 65(2) of the *Gaming Machine Regulation 2004* provides the following guidance with respect to payments that 'promote, develop or encourage sport or sporting activities':

For this section, the following contributions promote, develop or encourage sport or sporting activities:

- (a) payment of a sportsperson's wages or expenses;
- (b) payment for sports uniforms and equipment;
- (c) payment for sporting coaches and umpires (however described);
- (d) maintenance of sporting facilities that are available to the public, whether generally available or only for limited periods;
- (e) payments to an entity that promotes or develops sport or sporting activities, whether or not the entity is part of the licensee or, if the licensee is a club, an associated organisation.

- 2.12 Subsection 65(3) of the *Gaming Machine Regulation 2004* provides the following guidance with respect to payments that 'promote, develop or encourage women's sport':

Without limiting subsections (1) and (2), the following contributions promote, develop or encourage women's sport:

- (a) payment for women's sporting teams;
- (b) payment for women's sporting events or programs;
- (c) payment for coaching, equipment, training or insurance for women's sporting activities.

- 2.13 However, notwithstanding the examples provided in subsections 65(2) and 65(3) subsection 65(4) of the *Gaming Machine Regulation 2004* states:

Subsections (2) and (3) do not limit the kind of contributions that promote, develop or encourage sport and sporting activities.

- 2.14 Subsection 65(5) of the *Gaming Machine Regulation 2004* provides the following guidance with respect to payments that 'promote, develop or encourage recreational activities':

For this section, the following contributions promote, develop or encourage recreational activities:

- (a) maintenance of recreational facilities that are available to the public, whether generally available or only for limited periods;
- (b) support for recreational activities or events that are available to the public, for example, bushwalking or orienteering;
- (c) payments to an entity that promotes or develops recreational activities, whether or not the entity is part of the licensee or, if the licensee is a club, an associated organisation.

- 2.15 Similarly to subsection 65(4) of the *Gaming Machine Regulation 2004*, subsection 65(6) states that subsection 65(5) 'does not limit the kinds of contributions that promote, develop or encourage recreational activities'.

Nature and definition of community

- 2.16 A key issue for consideration with respect to assessing whether clubs' community contributions comply with legislative or other requirements relates to the definition of 'community' for the purpose of the scheme.

Definition of community

- 2.17 The term *community contribution* is defined by the *Gaming Machine Act 2004* as meaning 'a contribution made by a licensee that is approved as a community contribution under section 164'. The *Gaming Machine Act 2004* also defines the term *contribution* as 'any money, benefit, valuable consideration or security'.
- 2.18 The word *community* is not defined in the *Gaming Machine Act 2004*, although it is noted that subsection 163(3) of the *Gaming Machine Act 2004* states that for the purpose of that section '**community** includes a community outside the ACT'.
- 2.19 In relation to the flexibility offered by the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004*, Reilly Associates noted 'where a term is not defined in relevant legislation, the understanding is that the word would have its common usage meaning' and for the term *community*, these meanings include:
- 'the people living in one particular area or people who are considered as a unit because of their common interests, social group, or nationality' (Cambridge Dictionary 2017); and
 - 'a group of people living in the same place or having a particular characteristic in common' (Oxford Dictionary 2017).
- 2.20 The term 'community' allows for a broad interpretation of potential recipients of community contributions. In this respect, Reilly Associates notes:
- Technically then, the term 'community' could mean a whole population community such as the city of Canberra, but could also refer to some other larger grouping at a territory, state or even national level. Neither does there appear to be any legislated lower constraint on what constitutes a 'community' and it seems it could be as small as two people with like-minded interests or other aspects in common.
- 2.21 In relation to the phrases 'development of the community' and 'raising the standard of living of the community or part of the community' Reilly Associates notes:
- In addition, the phrase 'development of the community' is undefined in the [*Gaming Machine Act 2004*], but its meaning(s) can be inferred from the community contributions guidelines in the associated legislation (i.e. [*Gaming Machine Regulation 2004*]). In a similar sense, the term 'raising the standard of living of the community or part of the community' is not defined and the view here is that both terms are open to a broad range of interpretations.

- 2.22 The *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004* provides for considerable flexibility in the definition of 'community'. Reilly Associates noted that the absence of any further guidance means that there are no constraints on the concept of 'community' and its interpretation under the legislation:

It is noted that, in both the [*Gaming Machine Act 2004*] and the [*Gaming Machine Regulation 2004*], there are no guidelines or stipulations around the proportioning of community contributions funds among the ... five nominated contributions areas. That is, technical compliance with the relevant legislation could allow a licensee to distribute all their available annual community contributions funds wholly into just one community-support category (e.g. 'community infrastructure') if they so choose and if it complies with all other aspects of the legislation.

- 2.23 The *Gaming Machine Act 2004* defines a *community contribution* very broadly, as that which '[contributes] to or [supports] the development of the community' or '[raises] the standard of living of the community or part of the community'. *Community* has not been defined by the Act or the *Gaming Machine Regulation 2004*. This means its definition is dependent on the interpretation of its general meaning which can encompass a very broad scope. The lack of a definition for community gives ACT clubs considerable flexibility in how they interpret community and therefore how contributions are allocated to recipients.

ACT Gambling and Racing Commission guidance

- 2.24 Administrative guidance that has been prepared by the ACT Gambling and Racing Commission for Access Canberra staff to use when assessing annual returns broadly covers the administrative tasks required to assess the returns (refer to paragraphs 4.10 to 4.16 and 4.19 to 4.26). This guidance refers users to relevant sections in the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004* but provides no interpretive guidance.
- 2.25 As discussed in paragraphs 2.5 to 2.15 the *Gaming Machine Regulation 2004* provides some guidance as to what is an allowable community contribution, however the Regulation is subject to differences in interpretation as it is not comprehensive in coverage. Therefore clubs and Access Canberra staff need to use their own judgment as to what may be considered a community contribution.
- 2.26 While clubs and Access Canberra staff involved in assessing clubs' community contributions rely on guidance in the *Gaming Machine Regulation 2004* as to what is an allowable contribution, the Regulation is open to interpretation. Further guidance to provide clarity is warranted.

Nature of clubs' community contributions

- 2.27 Table 2-1 shows the proportional allocation of clubs' community contributions in by reportable category between 2012-13 and 2016-17.

Table 2-1 Proportion of clubs' community contributions by reportable category (2012-13 to 2016-17)

	2012-13 (%)	2013-14 (%)	2014-15 (%)	2015-16 (%)	2016-17 (%)
Charitable and Social Welfare	10.0	8.3	9.0	8.7	8.2
Problem Gambling (adjusted)	0.6	0.6	0.7	0.6	0.6
Problem Gambling Assistance Fund Levy	8.1	8.0	8.4	8.6	8.5
Sport and Recreation	64.9	64.7	63.0	56.3	58.1
Women's Sport (adjusted)	3.7	4.9	3.7	3.0	2.7
Non-Profit Activities	12.3	13.1	14.6	16.1	14.3
Community Infrastructure	0.4	0.4	0.6	6.6	7.6
TOTAL	100.0	100.0	100.0	100.0	100.0

Source: ACT Audit Office, based on ACT Gambling and Racing Commission reporting

2.28 Analysis of clubs' community contributions by reportable category for 2012-13 to 2016-17 shows:

- sport and recreation-related contributions have consistently formed the highest proportion of clubs' community contributions, representing 58.1 percent in 2016-17;
- from 2015-16 there has been a significant increase in the value of contributions associated with community infrastructure. In 2016-17 these contributions represented 7.6 percent of the total value of community contributions, while in 2014-15 they represented 0.6 percent. (Contributions towards community infrastructure primarily represent sporting clubs' expenditure on sporting facilities);
- contributions associated with Problem Gambling have consistently been a low proportion of clubs' community contributions. Between 2012-13 and 2016-17 this category has represented less than one percent of the total value of contributions; and
- contributions to non-profit activities in 2016-17 received 14.3 percent of clubs' community contributions, while charitable and social welfare causes received 8.2 percent of clubs' overall community contributions.

Analysis of clubs' community contributions

2.29 To understand the nature of clubs' community contributions an analysis was conducted of the proportional allocation of contributions made in 2016-17 in the reportable categories by the eight clubs reporting the largest value of community contributions. Contributions made by these eight clubs represented approximately 87.1 percent of total community contributions for 2016-17.

Table 2-2 Selected clubs allocation of community contributions (2016-17)

Contribution Type	Tuggeranong Rugby Union Group (%)	Ainslie Football Club Group (%)	Canberra Raiders Group (%)	Easts Group (%)	Hellenic Club Group (%)	Canberra Southern Cross Group (%)	Canberra Labor Group (%)	Canberra Tradesmen's Union Club (%)
Charitable and Social Welfare	1	1	10	0	5	7	19	46
Problem Gambling	0	0	0	0	0	0	6	0
Problem Gambling Assistance Fund Levy	8	9	9	4	9	11	13	12
Sport and Recreation	86	63	56	89	26	39	31	28
Women's sport	4	0	2	0	2	0	9	3
Non-profit activities	1	3	3	3	57	43	17	11
Community Infrastructure	0	23	20	4	1	0	5	0

Source: ACT Audit Office, based on ACT Gambling and Racing Commission reporting

2.30 Analysis of the eight clubs which made the largest community contributions (representing 87.1 percent of all clubs' contributions in 2016-17) and according to reportable categories shows:

- the sport and recreation category receives a significant amount of contributions from sports-focused clubs in the Territory. The community infrastructure category also receives a significant amount of contributions from sports-focused clubs, which primarily represents sporting clubs' expenditure on the sporting facilities their club members use. Collectively the top four sports-focused clubs in the ACT allocate between 78 percent and 93 percent of their community contributions to the sport and recreation, women's sport and community infrastructure categories; and
- clubs without a specific sports focus make contributions across a range of categories. Collectively the top four non-sports-focused clubs in the ACT allocate between 36 and 62 percent of their community contributions to the non-profit activities and charitable and social welfare categories. Between 28 percent and 40 percent, of their community contributions go to the sport and recreation and women's sport categories.

Sport and recreation contributions

- 2.31 Clubs' sport and recreation community contributions were examined in more detail and some clubs' contributions are discussed and highlighted in the following section of the report. In undertaking this analysis it is acknowledged that all of these community contributions have been approved by the ACT Gambling and Racing Commission in accordance with section 65 of the *Gaming Machine Act 2004*. Paragraphs 2.2 to 2.15 discuss the legislative requirements for clubs' community contributions and paragraphs 2.16 to 2.26 discuss the broad interpretation that may be applied to the legislative requirements and the lack of further guidance for clubs and Access Canberra staff. The clubs are not specifically named because the community contributions have been approved by the ACT Gambling and Racing Commission and the Audit Office observed similar types of contributions in other clubs. For ease of reference, however, the clubs are referred to as Club A and Club B.
- 2.32 A review of data associated with one club's (Club A) community contributions in 2015-16 showed that, of the \$2.1 million claimed as community contributions, \$1.6 million was allocated to the sport and recreation category, including:
- 48 separate contributions totalling \$653 100 that were recorded in the annual return as 'sports donations' to a single senior sports team directly associated with the club; and
 - 244 separate contributions totalling \$365 469 to a wide range of suppliers for a range of goods and services related to a sports ground owned by the club and used primarily by the senior sports team. This included payments for rates, electricity, maintenance, vehicle registration, telephone, wages and salaries, security and insurance.
- 2.33 In addition, 100 percent of Club A's \$96 000 (ten payments to four suppliers) in contributions allocated to the community infrastructure category related to expenditure on the same private sports ground. The annual return did not include any further details of this expenditure.
- 2.34 In 2016-17 Club A claimed \$2.0 million as community contributions, of which \$1.7 million was allocated to the sport and recreation category, including:
- 56 separate contributions totalling \$663 755 being recorded in the annual return as 'sports donations' to the same single senior sports team directly associated with the club; and
 - 330 separate contributions totalling \$360 654 related to the same private sports ground owned by Club A. This included payments for rates, electricity, maintenance, vehicle registration and repairs, telephone, wages and salaries, security and insurance.

- 2.35 A review of data associated with another club's (Club B) community contributions in 2015-16 showed that, of the \$1.3 million allocated to the sport and recreation category, \$990 426 (279 contributions) was recorded as supporting the junior and semi-professional sports team; the annual returns, however, did not always provide detail on whether the contributions were for the junior team or the semi-professional team. Contributions to support these teams included:
- \$680 471 - salaries and wages costs (including superannuation) of coaching staff;
 - \$13 474 – travel and accommodation costs, including \$3 091 for airline lounge membership for seventeen members of the semi-professional team; and
 - \$1 700 – music costs at a team function;
 - \$2 103 – social dinner event for players; and
 - \$512 – wine for functions.
- 2.36 A review of data associated with Club B for community contributions in 2016-17 showed that, of the \$1.7 million claimed as community contributions \$1.5 million was allocated to the sport and recreation category including contributions for:
- \$243 – balloons for a presentation night;
 - \$700 – a mobile phone allowance for staff member;
 - \$1 705 – costs associated with the season launch at a non-club restaurant;
 - \$727 – entertainment at team function; and
 - \$363 – master of ceremony services at a team function.
- 2.37 These payments were recognised and approved by the ACT Gambling and Racing Commission as eligible community contributions aligning with the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*.

Sport and recreation-related community infrastructure

- 2.38 Two clubs' (Club C and Club D) community infrastructure contributions were examined in further detail. A review of data associated with Club C's community contributions showed that its community infrastructure contributions of \$123 410 for 2015-16 were solely for the maintenance of its sporting oval, including \$47 000 in water rates, \$60 999 in turf maintenance and \$7 651 for change room maintenance. In 2016-17 Club C's community contributions for infrastructure was \$278 505, including \$67 606 in water, \$60 999 in turf maintenance and \$149 899 in other maintenance.
- 2.39 A review of data associated with Club D's community contributions for community infrastructure showed that for both 2015-16 and 2016-17, the community contributions claimed similarly related to the maintenance of its sporting oval, including (for 2016-17) \$103 118 for water, \$131 458 for turf management and \$11 074 for electricity.

Appropriateness of sporting and recreation and community infrastructure contributions

2.40 Chapter 3 of this report considers the benefits associated with clubs' community contributions. Different analyses and evaluations have questioned the value of some of the clubs' sporting and recreation-related contributions and community infrastructure-related contributions. This analysis has focused on the nature of the contribution and the apparent recipient (i.e. beneficiary) and draws a distinction between contributions related to activities and facilities solely or primarily related to semi-professional teams and those related to junior teams.

2.41 The September 2017 *Community Contributions Scheme Impact Analysis* report prepared for the ACT Gambling and Racing Commission by PwC (the September 2017 PwC report) questioned the value of *own team* contributions (relating to 'contributions made for the purpose of supporting a sports team...[including] sponsorship of a national professionalised league [and] payments to coaches and individual players, medical expenses, team transport and consumables') and *own maintenance* contributions (relating to the 'maintenance, upkeep and management of infrastructure, generally sporting fields and greens'):

... closer consideration is required of own maintenance and own team categories to assess if they are incremental. Own maintenance is deemed not to be induced by the Scheme at all, because although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme. This incremental assessment is also backed up by the fact that clubs report this up-keep as a contribution but can also report in-kind use of this infrastructure as a contribution.

Own team is harder to determine as incremental or not, because, as part of some clubs primary purpose, it is likely to occur in absence of the Scheme, but perhaps to a different extent. This is unlike maintenance where a certain level of expenditure is required for a particular asset. Supporting their own team to a higher level than otherwise is likely to be induced by the club having to meet Scheme reporting requirements.

2.42 The September 2017 PwC report further noted in relation to sporting clubs' community contributions related to the maintenance of sporting ovals:

It is difficult to show the nexus between contributions for a club's own infrastructure maintenance to an incremental community benefit being delivered under the Scheme. Additionally, the level of community access to that infrastructure is not currently measured. The access may be only for specific times, or at a prohibitive cost. The only data that establishes community access is in-kind contributions of use of the infrastructure, which is captured elsewhere in the Scheme. Similarly, the impact of the club holding their own community events is difficult to illustrate given the lack of connection to identified need and therefore does not pursue the policy purpose.

2.43 The August 2017 Ironbridge Consulting Services report also noted, in relation to sporting and recreation-related contributions made by sporting-focused clubs that:

It is likely that much of this expenditure would be incurred in the normal operations of these clubs. As a consequence, it would appear easier for sport based clubs to achieve and/or exceed the mandatory level of contribution.

- 2.44 Sport and recreation-related contributions represented 58.1 percent of all contributions in 2016-17 with the significant majority of contributions claimed by sporting-focused clubs. While some of this expenditure related to support for junior-based sporting teams, including the provision of uniforms and equipment, it is also apparent that considerable expenditure related to semi-professional sporting teams was also claimed under this category, including salaries and wages of coaching and ancillary staff and airline lounge memberships for sporting team members. The lack of information in clubs' annual returns submitted to the ACT Gambling and Racing Commission relating to the purpose and beneficiary of recipients makes it difficult to understand the exact nature of the expenditure and the community contribution claimed. By way of example, one club claimed 56 separate contributions totalling \$663 755 in the annual return as 'sports donations' to a single senior sports team directly associated with the club, without any further on the nature of the expenditure.
- 2.45 The ACT Gambling and Racing Commission has approved, in accordance with section 67 of the *Gaming Machine Regulation 2004*, a wide and diverse range of expenditure associated with the maintenance and upkeep of ovals and sportsgrounds as community infrastructure-related contributions. Different analyses of the benefits of clubs' community contributions (including a September 2017 PwC report commissioned by the ACT Gambling and Racing Commission and an August 2017 Ironbridge Consulting Services report commissioned by the Justice and Community Safety Directorate) have questioned the appropriateness of allowing clubs to claim this expenditure given the difficulty in showing 'the nexus between contributions for a club's own infrastructure maintenance to an incremental community benefit being delivered under the Scheme' and the lack of information associated with community access to the ovals and sportsgrounds.

Assessment of clubs' contributions

ACT Gambling and Racing Commission assessment of clubs' community contributions

- 2.46 Access Canberra on behalf of the ACT Gambling and Racing Commission conducts two processes each year to review and approve community contributions made by clubs. Discussed in detail in Chapter 4, the first process is a desktop review of the annual returns submitted by the clubs, while the second process involves a more detailed review of the documentation held by the clubs to support the community contributions made.
- 2.47 Table 2-3 shows the value of community contributions submitted by clubs and subsequently not approved by the ACT Gambling Racing Commission, as part of both the desktop review process and the compliance process.

Table 2-3 Value of community contributions submitted by clubs and not approved by the ACT Gambling and Racing Commission

Financial year	Desktop review (\$)	Compliance assessment (\$)	Total (\$)
2011-12	257 185.34	156 092.00	413 277.34
2012-13	81 092.00	235 488.00	316 580.00
2013-14	3 357.00	122 207.00	125 564.00
2014-15	5 803.00	37 988.00	43 791.00
2015-16	382.00	83 792.28	84 174.28
Sub-total	347 819.34	635 567.28	983 386.62
2016-17	32 659.00	Note 1	32 659.00
Total	380 478.34	635 567.28	1 016 045.62

Source: ACT Audit Office, based on Gaming and Racing Commission reporting

Note 1: Compliance activities for the 2016-17 have not been finalised at the time of publication of this report.

2.48 A review of annual returns submitted by clubs and approved by the ACT Gambling and Racing Commission shows that:

- between 2011-12 and 2015-16 (the last year for which full compliance activities have been completed) clubs have attempted to claim \$938 387 in community contributions, which have subsequently not been approved by the ACT Gambling and Racing Commission as they did not meet the requirements of the *Gaming Machine Act 2004* or the *Gaming Machine Regulation 2004*; and
- between 2011-12 and 2015-16 there has been a decline in the value of community contributions assessed by the ACT Gambling and Racing Commission as not meeting the requirements of the Act and the Regulation for both the desktop review and compliance activities. For example, in 2011-12 the ACT Gambling and Racing Commission declined to approve a total of \$413 277 in contributions, while in 2015-16 a total of \$84 174 in contributions were declined.

Audit Office assessment of clubs' community contributions

2.49 The Audit Office reviewed the annual returns for ten clubs over a three year period (2013-14 to 2015-16) in order to assess whether the contributions were being made in accordance with the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004*.

2.50 The community contributions considered as part of this assessment had already been recognised and approved by the ACT Gambling and Racing Commission. In undertaking the analysis, the considerable breadth of activities towards which a community contribution may be made, by virtue of the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004*, was recognised as well as the lack of further interpretive guidance or material from the ACT Gambling and Racing Commission.

2.51 Accordingly, the analysis sought to assess whether the details recorded for each community contribution were sufficient to determine if:

- the beneficiary was identifiable as a community organisation or group; and
- the purpose recorded for each community contribution identified a benefit being provided to the community organisation or group.

2.52 Eight thousand nine hundred and twenty five recorded community contributions (\$5.7 million) for the ten clubs for the three year period were reviewed. In undertaking the review no attempt was made to assess the merits of the clubs' contributions. The extent to which clubs' community contributions provides a benefit to the community is discussed in Chapter 3.

Recognition of beneficiary as a community organisation or group

2.53 The Audit Office's analysis of 8 925 (\$5.7 million) recorded community contributions from the annual returns of ten clubs over a three year period (2013-14 to 2015-16) showed that for 1 565 (17.5 percent), the beneficiary could not be identified as a community organisation or group. For example, the recorded beneficiaries may be:

- names of suppliers (for example 'BP Express' and 'Bunnings');
- names of individuals; or
- generic names for groups of individuals (for example 'Coaching Salaries' and 'Support Staff', 'Social Dance' or 'Wine Club').

2.54 Of the 1 565 community contributions that were made to entities that could not be identified as a community group, the Audit Office then undertook a further assessment in order to determine if the recorded purpose of the contribution could infer that the recipient of the contribution was a community organisation or group. For example, a community contribution made to the beneficiary 'Woolworths' which had an identified purpose of 'Match day supplies – [football team name]' was assumed to be purchases to support the named football team.

2.55 When assessed with the recorded purpose 920 of the 1 565 contributions made to entities that could not be identified as a community group were explicable. This leaves 645 recorded community contributions (7.2 percent of a total of 8 925 contributions) for which the records did not identify as being directed to a community group or organisation. These contributions had a value of \$1.2 million of the \$5.7 million community contributions made by ten clubs.

Recognition of a benefit being provided to the a community organisation or group

2.56 For 1 455 recorded community contributions (16.3 percent) the benefit being provided could not be identified. For example, examples of recorded benefits included generic terms such as 'Community Support', 'Drinks', 'Car' or 'Van fuel'. When assessed with the recorded beneficiaries 810 of the 1 455 community contributions were provided to organisations

identifiable as a community organisation or group.⁶ While some of the community contributions were being made to identifiable community organisation or groups, it is still difficult to assess the apparent benefit that is being provided from the recorded description.

- 2.57 The lack of sufficient descriptions for the beneficiary and purpose is discussed in further detail at paragraphs 4.31 and 4.37 and is addressed by Recommendation 4.

⁶ A total of 645 community contributions remained following this analysis, which accorded with the number outstanding from the earlier analysis, for which neither a recognisable beneficiary nor benefit could be identified.

3 BENEFITS OF CLUBS' COMMUNITY CONTRIBUTIONS

- 3.1 This chapter considers whether clubs' community contributions are providing a benefit to the ACT community.

Summary

Conclusion

While it is apparent that benefits are being provided to the community through clubs' community contributions the lack of clarity with respect to objectives, the broad nature and type of expenditure that may be claimed as a contribution and the fact that the term community is undefined and therefore open to interpretation means that the benefits of community contributions cannot be evaluated.

Nevertheless, there are questions regarding the value and benefit of some claims. Types of community contributions that are questionable include expenditure associated with: the operation of professional and semi-professional sporting teams (including salaries and wages of coaching and ancillary staff, airline lounge memberships for team members and team transport and consumables); and the maintenance and upkeep of sporting infrastructure (especially where there is a lack of information on the community's access to this infrastructure).

Key findings

Paragraph

The *Gaming Machine Act 2004* provides a very broad definition of community contribution and there is no further guidance in the *Gaming Machine Regulation 2004* as to what may constitute and be allowable as a community contribution. This makes it difficult to assess the benefits of these contributions, especially regarding the extent to which they are meeting the intent of government objectives. This is a matter needing Government consideration.

3.3

A review of ACT Legislative Assembly Hansard records for the introduction of legislation associated with community contributions by Reilly Associates indicates 'two broad (largely opposing) views were maintained in this ongoing debate' on what should be the focus of community contributions; a 'harm minimisation and broader community benefit' perspective or a 'clubs as community' perspective. The 'harm minimisation and broader community benefits' perspective suggests that 'gaming machines and gambling generally creates negative impacts on individuals, families and the broader community and some of the proceeds from gaming machines should be returned to the community to help it deal with these consequences'. The other

3.11

perspective of 'clubs as community' suggests that 'clubs are intimately connected with the ACT local and regional communities and operate in the broader community interest in providing significant social, recreational, entertainment and sporting facilities and amenity to its members'. These two broad perspectives were evident within the ACT community today and affect how those with these different perspectives evaluate the benefits of clubs' community contributions.

The August 2017 Ironbridge Consulting Services report identified 'there is a general concern that the proportion of contributions allocated to sport and recreation is too high, and by the same reasoning the proportion allocated to other purposes is too low'. The report further identified that to the extent that a policy objective of the community contributions scheme could be inferred from the 2002 and 2007 legislative changes allowing clubs to claim \$4 in community contributions for every \$3 (monetary and in-kind) made to the categories of women's sport and problem gambling, i.e. to support women's sport and problem gambling initiatives, these have not had an effect on influencing clubs' allocation of their contributions.

3.17

For the purpose of analysing the benefits of community contributions, the September 2017 PwC report noted that it was important to identify that there was an 'incremental impact' of community contributions, whereby 'only the contributions that will have an impact that otherwise would not have been realised should be considered'. The September 2017 PwC report identified that this was difficult to demonstrate for *own maintenance* contributions (relating to the 'maintenance, upkeep and management of infrastructure, generally sporting fields and greens'), *own team* contributions (relating to 'contributions made for the purpose of supporting a sports team...[including] sponsorship of a national professionalised league [and] payments to coaches and individual players, medical expenses, team transport and consumables') and *own event* contributions (relating to 'expenditure made by the club to host events that are open to the community ... [including] sporting fetes, Christmas parties (not hosted for a particular charity) or hosting visiting art or cultural exhibitions').

3.22

With respect to *own maintenance* the September 2017 PwC report identified that contributions associated with this category were 'deemed not to be induced by the Scheme at all, because although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme'. With respect to *own team* the September 2017 PwC report identified this was 'harder to determine as incremental or not, because, as part of some clubs primary purpose, it is likely to occur in absence of the Scheme, but perhaps to a different extent ... supporting their own team to a higher level than otherwise is likely to be induced by the club having to meet Scheme reporting requirements'.

3.23

The September 2017 PwC report's analysis of the benefits of clubs' 2015-16 community contributions shows for a total of \$10.5 million in community contributions there was an expected benefit to the community of between \$16.78 million and \$33.18 million. It also identified:

3.27

- *own event* contributions (\$79 636 of community contributions in 2015-16) were determined by PwC as not meeting an 'identified need' as

'these contributions are completely decided within the club with no nexus to the community need';

- *own maintenance* contributions (\$1 871 266 of community contributions in 2015-16) were determined by PwC as not having an 'incremental impact' as 'although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme'; and
- *own team* contributions (\$1 855 742 of community contributions in 2015-16) had no measurable impact for the low scenario because 'there was uncertainty as to whether the impact is incremental'. The category was given a 0 to 100 percent range, meaning that, at worst, none of the contributions under this 'measurement category' would have any measurable impact or, at best, all of the contributions under this 'measurement category' would have a measurable impact (estimated to be \$8.17 million).

Analysis of clubs' community contributions for 2016-17 undertaken by Reilly Associates shows: 3.34

- the majority of claimed community contributions (74.1 percent) were cash donations or expenditure, with the balance (25.9 percent) claimed as in-kind donations;
- affiliate donations (being support to specific professional, semi-professional, and amateur sports teams) represented the highest value category of community contributions; \$3 354 120 of contributions in 2016-17 (31.3 percent). Only \$36 411 (1.1 percent) of affiliate donations were claimed as an in-kind contribution; and
- the most frequently claimed community contribution was in-kind room hire, of which there were 6 533 claims in 2016-17, which represented \$2 331 424 (21.8 percent) of the value of all community contributions claimed.

It was found that 'the community contributions funding program administered by ACT clubs does provide substantial tangible and intangible benefit to the community inside and outside of the ACT. It is apparent, however, that these benefits tend to favour club constitutional purposes and the interests of club members. In addition, the view here is these 'benefits' may only be realistically evaluated within a context acknowledging the source of these benefits – i.e. gaming machine monetary losses in another section of the community - the gaming machine players' (Reilly Associates). 3.62

While a large number of entities did receive some form of benefit from community contributions, the annual returns showed that a significant proportion of monetary contributions was directed by clubs to organisations they have a close affiliation with. Reilly Associates noted that '[a] major portion of the [monetary contributions] distributed under this community contributions program went to a club affiliated company, club affiliated sporting clubs, other club affiliated groups, and club associated sporting facilities. This club cash contributions funding comprised around 3.63

64% of the total funding. Non-affiliate community group direct cash funding was in the order of 3.5% of the total year contributions'.

Reilly Associates further stated 'it is acknowledged that the social culture of clubs, coupled with the ways this community contributions funding scheme is currently managed, does help to build social capital and enhance the social fabric of this club-oriented community. However, these 'community benefits' are often associated with club core interests and there are indications, notwithstanding the existing tangible and intangible contributions support currently distributed within the community, that these interests do not always align well with broader community norms and values in terms of balanced community support and development'.

3.65

Purpose and objectives of community contributions

- 3.2 In order to evaluate the benefits of clubs' community contributions, an understanding of the purpose and objectives of community contributions and the policy intent behind the scheme was examined. This was difficult, as there is no explicit or clear articulation of the public policy outcomes or objectives that are being sought from community contributions.
- 3.3 The *Gaming Machine Act 2004* provides a very broad definition of community contribution and there is no further guidance in the *Gaming Machine Regulation 2004* as to what may constitute and be allowable as a community contribution. This makes it difficult to assess the benefits of these contributions, especially regarding the extent to which they are meeting the intent of government objectives. This is a matter needing Government consideration.

ACT Legislative Assembly debates

- 3.4 In the absence of clearly identified or articulated policy or program objectives set by the Government, the Audit Office considered relevant Hansard records in the ACT Legislative Assembly with respect to the introduction of the relevant legislation.
- 3.5 In relation to the possible purpose or objectives of community contributions that may be inferred from Legislative Assembly debates Reilly Associates notes:
- ... ACT Government Hansard records provide some historical information relating to the Government proposer's intent of the *community contributions* funding program and associated legislation.
- It is noted that the information in the Hansard record is often mixed due to the robust and at times contentious and divergent views expressed in Assembly debates and speeches.
- 3.6 Reilly Associates identified that there were different objectives and purposes for community contributions that could be inferred from ACT Legislative Assembly Hansard records associated with the introduction of community contributions legislation:
- Whereas the early contributions emphasis in the debate and in the various Bill amendments submitted appeared to focus largely on clubs contributing to and supporting the development of sport in the ACT, over time this shifted to include the idea of contributions providing more

broad-based support for the wider community. It is clear in the debates and speeches that this proposed community contributions legislation had many direct and indirect purposes of:

- i) serving as some balancing contributions for the support and development of social fabric and social capital in the broader community in return for the substantial financial benefits the clubs received in having an exclusive right to gaming machine licencing in the ACT
- ii) limiting club gaming machine revenue being directed towards some ACT political parties in the form of political donations
- iii) providing community funding to alleviate the individual and general community harm created by gambling and gaming
- iv) providing a way for clubs to maintain their exclusive gaming machine licences in the context of a pre-1997 national competition policy agreement signed by the ACT government requiring 'deregulation of all monopolies unless a demonstrated community benefit can be shown' (emphasis added).

Community gaming model perspectives and views

3.7 Reilly Associates noted that 'views expressed in these Assembly proceedings varied widely and were often contentious, but it is apparent from the record that two broad (largely opposing) views were maintained in this ongoing debate':

- harm minimisation and broader community benefit perspective; and
- clubs as community perspective.

Harm minimisation and broader community benefit perspective

3.8 In relation to the harm minimisation and broader community benefit perspective, Reilly Associates advised that the rationale behind this perspective may be articulated as follows:

Gaming machines and gambling generally creates negative impacts on individuals, families and the broader community and some of the proceeds from gaming machines should be returned to the community to help it deal with these consequences.

Clubs have been given an exclusive right to generate very significant profits from gaming machines and a portion of this should be used to benefit the broader general community and support and develop the social capital and social fabric of the [ACT] territory community.

A club's own community activities perspective

3.9 In relation to the club's own community activities perspective, Reilly Associates advised that the rationale behind this perspective may be articulated as follows:

Clubs are intimately connected with the ACT local and regional communities and operate in the broader community interest in providing significant social, recreational, entertainment and sporting facilities and amenity to its members.

Many clubs have been created to support local sport and, in addition, also support associated local sporting bodies not directly linked to the club as per their club constitution.

Some clubs contribute broadly to charities as part of their assumed responsibilities in supporting the broader community.

Club supported sporting venues benefit the public through spectator attendance, involvement as players, trainers, coaches and umpires, as well as often providing public access to club owned / managed sports facilities.

Clubs provide clean, safe, well-managed, non-threatening facilities for the recreational and social interaction benefit of a significant proportion of the ACT population.

Clubs often support sporting and other recreational groups that have no other source of income.

- 3.10 Following the extensive consultation work undertaken for the purpose of the audit, Reilly Associates identified:

These two broad views are still evident within the ACT community today, and were very much to the fore in this current community contributions funding evaluation. ACT community clubs universally hold 'clubs as community' perspectives, views and attitudes. The community support and services sector (along with other community groups including contributions funding recipients) hold a range of views across the spectrum between the 'clubs as communities' and the 'harm minimisation and broader community benefit' perspectives. Community sector peak body groups predominately supported the latter perspective.

- 3.11 A review of ACT Legislative Assembly Hansard records for the introduction of legislation associated with community contributions by Reilly Associates indicates 'two broad (largely opposing) views were maintained in this ongoing debate' on what should be the focus of community contributions; a 'harm minimisation and broader community benefit' perspective or a 'clubs as community' perspective. The 'harm minimisation and broader community benefits' perspective suggests that 'gaming machines and gambling generally creates negative impacts on individuals, families and the broader community and some of the proceeds from gaming machines should be returned to the community to help it deal with these consequences'. The other perspective of 'clubs as community' suggests that 'clubs are intimately connected with the ACT local and regional communities and operate in the broader community interest in providing significant social, recreational, entertainment and sporting facilities and amenity to its members'. These two broad perspectives were evident within the ACT community today and affect how those with these different perspectives evaluate the benefits of clubs' community contributions.

Evaluation of the benefits of community contributions

- 3.12 In 2017 two key evaluation studies were commissioned into community contributions:

- *Community Contributions from Electronic Gaming Machine Revenues – Analysis and Options* (Ironbridge Consulting) (August 2017) (commissioned by the Justice and Community Safety Directorate); and
- *Community Contributions Scheme Impact Analysis* (PwC) (September 2017) (commissioned by the ACT Gambling and Racing Commission).

- 3.13 Each of these evaluation studies provided an opinion on the extent to which the community contributions were providing a benefit to the community.

Community Contributions from Electronic Gaming Machine Revenues – Analysis and Options (Ironbridge Consulting August 2017)

- 3.14 In commenting on the ability to evaluate the effectiveness of the program, the August 2017 Ironbridge Consulting Services report stated:

It is difficult to evaluate the effectiveness of a program such as this. The question to be answered is whether the program achieves the intended objectives. Therefore an understanding of the objectives is essential.

- 3.15 The August 2017 Ironbridge Consulting Services report further stated:

In the case of the community contributions scheme, it is necessary to infer the intended objectives from policy documents, including relevant legislation. Current legislation provides guidance as to the purposes to which contributions may be applied. For two classes of contribution, Women's Sport and Problem Gambling assistance, additional inducement is provided by way of allowing clubs to claim an additional dollar towards the contribution target for each three dollars contributed.

The design of the scheme would suggest that the intention was to encourage clubs to increase their contributions to the broader community (that is, outside their membership) but continue to allow clubs some discretion as to the application of contributions. It could be argued that as long as the contributions meet the letter and spirit of the law then the current scheme is achieving its objectives.

Concerns over the current scheme tend to focus on the scheme objectives rather than effectiveness. There is a general concern that the proportion of contributions allocated to sport and recreation is too high, and by the same reasoning the proportion allocated to other purposes is too low...

- 3.16 To the extent that a policy objective of the community contributions scheme could be inferred from the 2002 and 2007 legislative changes allowing clubs to claim \$4 in community contributions for every \$3 (monetary and in-kind) contribution made to the categories of women's sport and problem gambling, i.e. to support women's sport and problem gambling initiatives, the August 2017 Ironbridge Consulting Services report stated:

... incentives are provided in the form of allowing clubs to claim an extra dollar of contribution for each \$3 contributed to influence the distribution of funding. The two categories are Women's Sport and Problem Gambling. In 2015-16, these categories attracted 2.3% and 0.5% of total (unadjusted) contributions respectively. These low results would appear to indicate that the Government's preferred distribution of contributions is, at least to some extent, not occurring. Given that most clubs are comfortably exceeding the mandatory minimum, the ability to claim an extra dollar provides only limited incentive.

- 3.17 The August 2017 Ironbridge Consulting Services report identified 'there is a general concern that the proportion of contributions allocated to sport and recreation is too high, and by the same reasoning the proportion allocated to other purposes is too low'. The report further identified that to the extent that a policy objective of the community contributions scheme could be inferred from the 2002 and 2007 legislative changes allowing clubs to claim \$4 in community contributions for every \$3 (monetary and in-kind) made to the categories of women's sport and problem gambling, i.e. to support women's sport and problem gambling initiatives, these have not had an effect on influencing clubs' allocation of their contributions.

Community Contributions Scheme Impact Analysis (PwC September 2017)

- 3.18 In September 2017 PwC finalised its *Community Contributions Scheme Impact Analysis* report (the September 2017 PwC report), following its engagement by the ACT Gambling and Racing Commission to:

... determine whether the current Community Contribution scheme (the scheme) policy settings remain fit for purpose, by examining what impact contributions have on providing a benefit to the community and how that impact can be broadly measured eg social / economic / health / other.

- 3.19 Details of the method used by PwC for the purpose of its analysis, including its use of 'measurement categories' for the purpose of 'social return on investment analysis', are outlined in Appendix A of the report.

Evaluation and estimation of benefits

- 3.20 The September 2017 PwC report identified how the evaluation and estimation of benefits was undertaken through:

- the identification of the 'incremental impact' of the community contributions to the community; and
- the assignment of a 'quantification ratio of expected returns from those types of impacts' for the purpose of social return on investment analysis.

Incremental impact

- 3.21 In relation to the 'incremental impact' of community contributions, the September 2017 PwC report stated:

Only the contributions that will have an impact that otherwise would not have been realised should be considered. This includes contributions that would otherwise have to be funded by government or another means.

...

Without evidence to establish other drivers, all of the measurement categories of contribution that are administered outside of the club are deemed to be incremental. However, closer consideration is required of own maintenance and own team categories to assess if they are incremental. Own maintenance is deemed not to be induced by the Scheme at all, because although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme. This incremental assessment is also backed up by the fact that clubs report this up-keep as a contribution but can also report in-kind use of this infrastructure as a contribution.

Own team is harder to determine as incremental or not, because, as part of some clubs primary purpose, it is likely to occur in absence of the Scheme, but perhaps to a different extent. This is unlike maintenance where a certain level of expenditure is required for a particular asset. Supporting their own team to a higher level than otherwise is likely to be induced by the club having to meet Scheme reporting requirements.

- 3.22 For the purpose of analysing the benefits of community contributions, the September 2017 PwC report noted that it was important to identify that there was an 'incremental impact' of community contributions, whereby 'only the contributions that will have an impact that otherwise would not have been realised should be considered'. The September 2017 PwC report identified that this was difficult to demonstrate for *own maintenance* contributions (relating to the 'maintenance, upkeep and management of infrastructure, generally sporting fields and greens'), *own team* contributions (relating to 'contributions made for the purpose of supporting a sports team...[including] sponsorship of a national professionalised league [and] payments to coaches and individual players, medical expenses, team transport and consumables') and *own event* contributions (relating to 'expenditure made by the club to host events that are open to the community ... [including] sporting fetes, Christmas parties (not hosted for a particular charity) or hosting visiting art or cultural exhibitions').
- 3.23 With respect to *own maintenance* the September 2017 PwC report identified that contributions associated with this category were 'deemed not to be induced by the Scheme at all, because although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme'. With respect to *own team* the September 2017 PwC report identified this was 'harder to determine as incremental or not, because, as part of some clubs primary purpose, it is likely to occur in absence of the Scheme, but perhaps to a different extent ... supporting their own team to a higher level than otherwise is likely to be induced by the club having to meet Scheme reporting requirements'.

Social return on investment analysis

- 3.24 For the purpose of the 'social return on investment' analysis, the September 2017 PwC report calculated a 'total community impact (encompassing social, economic, health and other benefits)' by multiplying the total contributions in each measurement category by the 'social return on investment' proxy for that category. This analysis sought to measure the 'incremental impact' of the contributions 'or in other words the impact that would be lost or have to be replaced by other sources if the Scheme ceased to exist'. For the purpose of its analysis, PwC identified a low and high scenario, depending on the treatment of in-kind contributions.
- 3.25 In undertaking this analysis, however, no attempt was made to quantify any negative effects or costs associated with the source of clubs' community contributions, i.e. gaming machines.
- 3.26 Table 3-1 shows PwC's estimation of the monetary value of clubs' community contributions for 2015-16, according to the 'measurement categories' developed by PwC for the purpose of its study.

Table 3-1 September 2017 PwC report assessment of the value of clubs' community contributions (2015-16)

	Community contribution value (\$)	Proxy	Low	High
Activity	800 581	1:1.91	0.36	1.53
Community sport	3 825 408	1:4.4	13.8	16.83
Education	89 738	1:2.7	0.14	0.24
Gambling harm and substance abuse	60 031	1:1.79	0.09	0.11
Own event	79 636	-	-	-
Own maintenance	1 871 266	-	-	-
Own team	1 855 742	1:4.4 (0-100%)	-	8.17
Religious / culture / community	377 783	1:3.5	0.17	1.32
Social assistance	1 541 512	1:3.23	2.22	4.98
Total	10 501 697		16.78	33.18

Source: *Community Contributions Scheme Impact Analysis*, PwC, September 2017

3.27 The September 2017 PwC report's analysis of the benefits of clubs' 2015-16 community contributions shows for a total of \$10.5 million in community contributions there was an expected benefit to the community of between \$16.78 million and \$33.18 million. It also identified:

- *own event* contributions (\$79 636 of community contributions in 2015-16) were determined by PwC as not meeting an 'identified need' as 'these contributions are completely decided within the club with no nexus to the community need';
- *own maintenance* contributions (\$1 871 266 of community contributions in 2015-16) were determined by PwC as not having an 'incremental impact' as 'although these contributions meet a need of having community accessible infrastructure, they are required for the club to up-keep their own infrastructure and would occur regardless of the Scheme'; and
- *own team* contributions (\$1 855 742 of community contributions in 2015-16) had no measurable impact for the low scenario because 'there was uncertainty as to whether the impact is incremental'. The category was given a 0 to 100 percent range, meaning that, at worst, none of the contributions under this 'measurement category' would have any measurable impact or, at best, all of the contributions under this 'measurement category' would have a measurable impact (estimated to be \$8.17 million).

Conclusions and findings

3.28 A key finding of the September 2017 PwC report was that:

... if the policy purpose of the Scheme is to 'contribute to or support the development of the community' and 'raise the standard of living of the community or part of the community, then the Scheme is delivering that purpose'.

3.29 However, in relation to the purposes and objectives of the community contributions the September 2017 PwC report stated:

Although all contributions (except a very small amount for club's own community events) were found to meet an identified need, there could be a stronger nexus to prioritise needs in the Scheme. The possibility for this is shown in the current adjustment factor for problem gambling and women's sport.

It was suggested in consultations that a similar mechanism could be used to prioritise other purposes that the community particularly needs at a certain time. This could be done by establishing a category for reporting that either has an 4:3 type adjustment or a PGAF type required percentage. The content of that category could be more agile by being linked to ministerial statement that could be made intermittently when there are particular areas of need.

Alternatively the category could be met if a club is able to demonstrate the contribution meets an identified need in another way such as a published community plan which includes public consultation with the community on their needs. This means there is no burden of consultation on the club and being able to point to a public document of established need would be a relatively easy reporting mechanism.

Evaluation of community contributions

3.30 As discussed in paragraph 1.40 Reilly Associates was engaged to evaluate and assess whether community contributions were providing a benefit to the community.

Functional categories of community contributions

3.31 In order to form an opinion on the benefits of clubs' community contributions, Reilly Associates analysed the annual returns of clubs for 2015-16 and 2016-17. According to Reilly Associates 'individual club returns data for both financial years was compiled into two datasets' for the purpose of analysis.

3.32 In order to analyse the potential benefits of the community contributions, clubs' 2016-17 community contributions were allocated into 26 functional categories. In doing so, however, Reilly Associates noted:

... due to the ambiguous and vague nature of many entry descriptions in these club submitted returns, the amounts and the category sorting are not definitive, but the [categorisation of contributions according to the categories] does give a good working indication of the relative distribution of these community contribution funds – particularly with respect to the division between actual cash outlays and in-kind contributions.

3.33 Table 3-2 shows Reilly Associates' allocation of clubs' 2016-17 community contributions into the top nine 'functional categories', which accounted for 95.4 percent of the value of community contributions in 2016-17.

Table 3-2 Reilly Associates top nine functional categories for community contributions (2016-17)

Functional category	Count	Actual outlay (\$)	In-kind contribution (\$)	Subtotal (\$)	Percentage of sub-total to total (%)
Affiliate donation	966	3 354 120	36 411	3 390 531	31.3
In-kind room hire	6 533	29 195	2 331 424	2 360 619	21.8
Catering	1 975	4 190	187 171	191 361	1.8
Courts, greens and ovals	1 051	1 802 122	63 768	1 865 890	17.2
Salaries, wages and on-costs	212	961 307	6 017	967 324	8.9
Sports donations	219	369 034	7 400	376 434	3.5
Non-affiliate donation	432	336 925	45 084	382 009	3.5
Community rewards	882	269 530	8 029	277 559	2.6
Miscellaneous	191	490 280	38 655	528 935	4.9
All others	964	415 839	88 716	504 555	4.7
TOTAL		8,032,542	2,812,686	10,845,228	100.0

Source: Reilly Associates

Note: The 'All others' line item refers to the 17 remaining categories.

3.34 Analysis of clubs' community contributions for 2016-17 undertaken by Reilly Associates shows:

- the majority of claimed community contributions (74.1 percent) were cash donations or expenditure, with the balance (25.9 percent) claimed as in-kind donations;
- affiliate donations (being support to specific professional, semi-professional, and amateur sports teams) represented the highest value category of community contributions; \$3 354 120 of contributions in 2016-17 (31.3 percent). Only \$36 411 (1.1 percent) of affiliate donations were claimed as an in-kind contribution; and
- the most frequently claimed community contribution was in-kind room hire, of which there were 6 533 claims in 2016-17, which represented \$2 331 424 (21.8 percent) of the value of all community contributions claimed.

- 3.35 The benefits of functional categories for community contributions, except for the 'Miscellaneous' category and the seventeen categories aggregated into 'All others' (refer to Table 3-2) is discussed in the following sections. Contributions made under the 'Miscellaneous' category are highly diverse and it is difficult to draw meaningful conclusions as to the benefits of these contributions. The seventeen categories of contributions aggregated into 'All others' were diverse and comparatively small in value (collectively these categories represented 4.7 percent of all contributions in 2016-17) and were not analysed.

Benefits of community contributions by functional category

Affiliate donations

- 3.36 Reilly Associates identified that \$3.3 million in community contributions (31.3 percent of the value of all community contributions made in 2016-17) were made to sporting clubs and associations that were affiliated with clubs.

- 3.37 The data included in the annual returns was not sufficient to determine the purpose of these community contributions. However, from survey data and interviews with the recipients Reilly Associates found that the community contributions made by clubs were to:

...[meet] sporting group costs and overheads [that] could include but may not be limited to: venue overheads, management and administration costs, affiliation fees, insurances, salaries, training and coaching costs, player medical and physiotherapy costs, player overheads, match fines, travel, airline club membership, and team miscellaneous overheads.

Information from the one known private company recipient indicated it is involved in the administration, promotion, development and support of local junior and senior specific sporting code teams as well as teams in nationally played sporting code and competition supported by local ACT sporting clubs and teams who compete at this level. This includes support for promotion, training, coaching, and on-field team services such as first-aid and medical support.

- 3.38 Reilly Associates identified that 'it is clear the benefits here involve significant support to specific professional, semi-professional, and amateur sports teams' and that:

Given these substantial amounts contributed to individual organisations (including at least one private company), it is noted that few details are available to demonstrate what the funding given to these groups was used for. Whilst there are indications the funds may be used to meet the annual costs and overheads of the sporting club, the limited information in the club returns dataset could not validate this.

In-kind room hire

- 3.39 Reilly Associates identified that \$2.4 million in community contributions (21.8 percent of the value of all community contributions made in 2016-17) was made in the form of room and club facility hire.

- 3.40 Reilly Associates notes that:

Contributions were predominantly directed towards providing complimentary room use to a very large number and wide range of community groups. Many of these groups appeared to

have permanent room use arrangements with the community clubs, and so the contributions accounting was often entered on a monthly or annual basis.

Many individual groups, therefore, were gaining facilities hire contributions support to the value of tens of thousands of dollars. There were two instances of this value being over \$100,000.

3.41 Reilly Associates found that a wide range of community groups made use of the clubs' facilities, including:

- special-interest groups (e.g. singing; model-making; dancing; music; yoga);
- ethnic and cultural groups (e.g. expatriate support; cultural support; language skills);
- amateur sporting groups (running; cycling; rowing; cricket; softball, touch-football; swimming; gymnastics; martial arts; horse-riding);
- incorporated associations and clubs (e.g. theatre; arts; choirs; speech-making; armed forces; motoring; motor cycling; community service clubs);
- community support organisations (disability; autism; street patrol services providing meals and other support);
- religious groups;
- illness and medical support groups (e.g. cancer; diabetes; pregnancy; asthma);
- community education groups (e.g. U3A; speech making; language learning);
- club affiliated sporting groups (League; Union; AFL; soccer; cricket); and
- sub-Branches of national organisations

3.42 Feedback from discussions and surveys conducted by Reilly Associates indicated that:

... the free room hire recipients appreciated the clean and well-appointed facility that also offers options for equipment hire and the easy availability of refreshments and meals. In addition, the benefits of a well-known, easy-to-find location, clean venue, mostly friendly and helpful staff, as well as on-site or easy parking facility, are appreciated by user recipients.

For groups meeting regularly, and even multiple times weekly, the apparent cost savings were very considerable. For example, the [community group] runs up to 16 weekly classes from one community club, with a claimed room hire total value of around \$96,000 per annum (at room hire rates varying from \$109 to \$136 per session).

Catering

3.43 The catering functional category identified as part of Reilly Associates' analysis was closely aligned with the in-kind hire of clubs' rooms and facilities. Catering accounted for \$187 171 (6.7 percent of the value of all in-kind community contributions made in 2016-17). Reilly Associates identified that:

The *Catering* category here includes tea and coffee facilities associated with specific group room hire; discounts on food and drink at the club; and even full meals provided to charity and other community groups, and junior sporting groups. Several clubs have catering arrangements with ACT charities and service organisations providing meals for disadvantaged people in the community.

In-kind room hire and catering benefits

3.44 In relation to the in-kind room hire and associated catering functional categories, Reilly Associates found that:

Whilst ACT community clubs vary in how they implement and administer their community contributions obligations, it is noted that most of the value of the community contributions support provided to the broader community is done so in the form of in-kind value support.

The benefits of this are twofold, and combine direct and indirect benefits to different recipients.

Community organisations receive a mix of benefits through this in-kind support. For some the support is tangible in that it provides, for example, a venue for a fundraising function. In other instances, recipients gain access to a venue enabling skills acquisition, performance rehearsal, annual meetings, or a sports facility for training. For still others, the support is in enabling the regular meeting and social engagement of special interest groups such as Toastmasters, Rostrum, Probus, etc. These groups, whilst often having sizable memberships, often do not have premises in which to meet.

Whilst there are numerous other room and venue hire options in the community, ranging from church halls, community halls, scout halls, community organisation rooms, government venues, hotels, and commercial businesses, these options invariably carry cost implications and vary enormously in their availability and amenity. It is thus easy to understand why the club complimentary room hire option is so attractive and useful to community groups generally, particularly when combined with the associated catering facilities, often central location, and parking facilities.

It is also evident, however, that the clubs themselves receive substantial benefit from these arrangements. People from the broader community come to the club as part of a group and are often likely to spend significant amounts on food and drink. It is also likely that a significant number of these visitors may be moved to become club members, and for some to also engage in on-site gambling on a one-off or ongoing regular basis. In addition, these large numbers of visitors are being exposed to a comfortable club culture where gambling is normalised.

Courts, greens and ovals

3.45 Reilly Associates identified that \$1.9 million in community contributions (17.2 percent of the value of all community contributions made in 2016-17) were directed towards the maintenance, support and development of sporting facilities and infrastructure.

3.46 The purposes listed in the annual returns for these community contributions include:

- sports oval refurbishment, upgrade, maintenance, repair and other undefined costs;
- greens 'expenses';
- tennis court maintenance;
- pest eradication;
- water and electricity rates and consumption costs for sports infrastructure, insurances, security services, and telephone costs, land rent for ovals;
- vehicle costs including fuel, insurances, possible registration, and repair;

- undefined salary and wages including on-costs, workers compensation costs, superannuation provisions, holiday pay provisions; and
- depreciation provisions.

3.47 In relation to these contributions, Reilly Associates identified:

Specific sporting ovals are owned and leased by some ACT community clubs and contributions towards their maintenance and upkeep is claimed under mainly two community contributions categories: (i) Sport and Recreation, and (ii) Community Infrastructure. Under the relevant legislation, contributions directed towards club affiliated sporting infrastructure facilities help support sporting activity and may promote the availability of these facilities for the use and enjoyment of the public. This may occur through the public attending or participating in sporting activities and competitions at the venues, but also through potentially being able to informally use the facilities for recreation and enjoyment.

3.48 In relation to community contributions associated with courts, greens and ovals and the benefits and users of these, Reilly Associates found that:

Little information was available in the data in this category to identify many specific users or benefits. Current survey and discussion information confirms, however, that affiliated and non-affiliated sports clubs and sporting code teams use the facilities for team training, coaching and home game venues.

Salary, wages and on-costs

3.49 Reilly Associates identified that \$967 324 in community contributions (8.9 percent of the value of all community contributions made in 2016-17) were directed towards salaries, wages and on-costs.

3.50 The details recorded in the annual returns for these community contributions included:

- 'Football Staff' to which \$878 478 in cash payments was attributed;
- 'Wages' to which \$53 159 in cash payments was attributed;
- 'On-Costs' to which \$17 864 was attributed;
- 'May Wages' to which \$6 806 was attributed; and
- 'Salary' to which \$5 119 was attributed.

3.51 The benefits from the payment of these salary and costs could not be determined. The survey data collected did not provide any additional information. Reilly Associates found that:

No other associated information allowed any assessment of the use or benefits of this contributions expenditure.

Sports donations

3.52 Reilly Associates identified that \$369 034 in community contributions (3.5percent of the value of all community contributions made in 2016-17) were made as sports donations. These were identified by Reilly Associates as being provided to 'community sporting groups, associations and clubs with no obvious close affiliation with any community club'.

3.53 Reilly Associates found that:

Information in the dataset provided little information as to purpose or benefits of contributions in this category. 'Purpose' descriptors were mostly indeterminate, and included:

- Sports donations
- Donation
- Sports donation Uncommitted
- Spts Council – Affiliate Grant
- Sponsorship
- Community Grant

Other available information indicates that contributions here, at least in part, could be used to buy equipment including uniforms and specialised footwear as well as assisting with facilities hire in some instances, and helping to support the staging of competitions and events.

Non-affiliate donations

3.54 Reilly Associates identified that \$382 008 in community contributions (3.5 percent of the value of all community contributions made in 2016-17) were made as cash donations or funding 'provided to around 166 community-sector associations and groups, including charity organisations. These generally provide community services to the disadvantaged, ill and infirm within the ACT community. These groups have no obvious affiliate connection with clubs although it became evident that some entities have long-standing actual cash and/or in-kind donation arrangements with specific clubs or club groups'.

3.55 Reilly Associates found that:

Much detailed information on contribution purposes in this part of the club returns dataset is lacking. All the organisations here received this funding under either 'Non-profit' or 'Community and Social Welfare' areas of community contributions. Many organisations provide beneficial services and charitable support to sections of the community, whilst other contribution donations appear to support recreational and sporting pursuits.

Community rewards

3.56 Reilly Associates identified that \$277 559 in community contributions (2.6 percent of the value of all community contributions made in 2016-17) were made through the *Community Rewards Program* operated by one club.

3.57 According to Reilly Associates:

This Community Rewards program funding is sourced from club member spending on food, refreshments and drinks in the club group venues. Ten percent of this member spending on

food and drinks is set aside by the club to be donated to a member nominated or club sponsored organisation. Community organisations can apply to the club group for inclusion in this Rewards program. The Community Rewards program is promoted by the club as being a very important part of the many ways it generally supports the broader community. This club Community Rewards program distributed over \$269,000 in actual donations and over \$8,000 in in-kind support value to community groups in the 2016-17 financial year.

It is noted, however, that there is little distinction made by the club between its Community Rewards program and the community contributions it is mandated to donate to the community.

3.58 Reilly Associates advised:

It is acknowledged that the single club group Community Rewards program contributes significant actual cash funding (i.e. approximately \$269,000 in 2016-17) to a broad range of community groups, non-profits, and charities in the community. It does this under a system which nominally allows club members some choice in where the monies are directed as well as allowing community groups to apply to the club for inclusion in the approved list of Community Rewards recipients.

Measuring the benefits of community contributions

3.59 Reilly Associates reviewed the annual returns submitted by clubs for the 2015-16 and 2016-17 financial years to assess how community contributions were being distributed within the community. Reilly Associates advised:

From analysis of composite dataset records compiled from club community contributions annual returns (*club returns*), it is evident this contributions support was provided to a broad range of individuals, groups, educational and religious institutions, associations, sporting groups, clubs, businesses, and companies within and outside of the ACT. In the FY 2016-17, these numbered around 1500 separate recipients although some of these included contributions support to different parts of (and for different programs within) the same parent organisation or group. There appears to be no stipulation within either the *Act 2004* or *Regulation 2004* excluding any of the above groups of recipients as being outside of the definition and meaning of the term 'community'.

From the FY 2016-17 club returns dataset, it is clear a major portion of the actual cash funding distributed under this community contributions program went to a club affiliated company, club affiliated sporting clubs, other club affiliated groups, and club associated sporting facilities. This club cash contributions funding comprised around 64% of the total funding. Non-affiliate community group direct cash funding was in the order of 3.5% of the total year contributions.

3.60 In relation to overall community benefit Reilly Associates advised:

In a general sense, it was evident in this study that the community (as broadly defined in the legislation) does benefit substantially from the operation of the ACT community contributions funding scheme. It is reiterated though, that (in monetary terms) these benefits wholly emanate from a redistribution of monies from another section of the 'community' (i.e. a redistribution associated with an overall substantial monetary loss by gaming machine players).

These community benefits can be detailed in three categories: (1) monetary benefits; (2) community infrastructure benefits; and (3) social capital benefits

Monetary benefits

Considerable amounts of actual cash funding contributions were distributed by clubs to a broad range of entities in the financial years data examined. These beneficiaries included: individuals, sporting clubs and groups, special interest groups, community service organisations, charities, companies, community clubs, and government and other agencies.

The major contributions beneficiaries were club affiliated sporting groups. Lesser amounts of contributions funding in the form of cash donations was directed to club affiliated and non-affiliated community groups, organisations and charities. The remaining beneficiaries were companies and businesses supplying goods and services mostly associated with sporting activities.

Community Infrastructure Benefits

From the clubs return data, the beneficiaries of infrastructure contributions funding were not only the main sporting club users of these facilities, but also those individuals and business carrying out the maintenance and refurbishment work of these facilities (who received actual cash payments under this community contributions program).

Social Capital Benefits

This aspect of clubs, that of promoting and supporting people in a community to come together in many ways; in promoting healthy social, recreational and sporting activity, engagement and interaction; in providing employment and facilities that supports people's needs and interests, is a form of social capital support that can assist in community building through facilitating social, recreational and community service engagement with each other.

- 3.61 However, Reilly Associates noted that the 'affirmative conclusion' on the benefits of clubs' community contributions does not consider the following issues:

Net-benefit outcomes (e.g. the fact that these contributions funds are sourced from gaming machine player losses; the harm caused to gamblers and their families; etc)

Impartiality - Were these contribution funds distributed broadly across the community, or were they concentrated around and associated mainly with those groups who had influence over their distribution?

Needs-based community development - Were these funds directed to those areas in the broader community where they would have the most beneficial impact in terms of supporting the development of the community, or raising the standard of living of the community or part of the community?

- 3.62 It was found that 'the community contributions funding program administered by ACT clubs does provide substantial tangible and intangible benefit to the community inside and outside of the ACT. It is apparent, however, that these benefits tend to favour club constitutional purposes and the interests of club members. In addition, the view here is these 'benefits' may only be realistically evaluated within a context acknowledging the source of these benefits – i.e. gaming machine monetary losses in another section of the community - the gaming machine players' (Reilly Associates).

- 3.63 While a large number of entities did receive some form of benefit from community contributions, the annual returns showed that a significant proportion of monetary contributions was directed by clubs to organisations they have a close affiliation with. Reilly Associates noted that '[a] major portion of the [monetary contributions] distributed under this community contributions program went to a club affiliated company, club affiliated sporting clubs, other club affiliated groups, and club associated sporting facilities. This club

cash contributions funding comprised around 64% of the total funding. Non-affiliate community group direct cash funding was in the order of 3.5% of the total year contributions'.

Intangible social capital benefits

3.64 In relation to the intangible social capital benefits associated with clubs' community contributions, Reilly Associates advised:

It is in this area, as well as in how the terms 'community' and 'benefit' are defined and interpreted, that much of the perceptual differences and contention lies.

Social capital is an intangible property of communities, and is created, supported and developed through many different elements and facets within our societies, including in individuals, families, schools, colleges, universities, governments, government services, community service organisations, charities and other support groups, churches, special interest clubs and incorporated bodies, and even the broad 'church' of the internet. ACT Community clubs are a part of this larger social capital support network and framework, but due to the financial resources they have, through this community contributions funding, they appear to have significant influence.

This influence comes not only through its membership – ACT community clubs have upwards of 200,000 members which comprises around 50% of the current ACT population of approximately 410,000 people (ABS 2017; Clubs ACT 2017). In addition, through its community support programs (of which the community contributions funding scheme is a part), ACT community clubs provide some sort of support of over 1,100 community organisations (Clubs ACT 2017).

...

In the ACT there are around 45 clubs with gaming machines... It is accepted here that these community clubs provide very tangible benefits to their members in providing a comfortable venue and facilities. It is further accepted that these clubs also provide members and guests with significant intangible benefits through being a focal point for social, entertainment, recreational and sporting interaction and participation.

3.65 Reilly Associates further stated 'it is acknowledged that the social culture of clubs, coupled with the ways this community contributions funding scheme is currently managed, does help to build social capital and enhance the social fabric of this club-oriented community. However, these 'community benefits' are often associated with club core interests and there are indications, notwithstanding the existing tangible and intangible contributions support currently distributed within the community, that these interests do not always align well with broader community norms and values in terms of balanced community support and development'.

RECOMMENDATION 1 COMMUNITY CONTRIBUTIONS OBJECTIVES

The ACT Government should clearly state what objectives it is seeking from clubs' community contributions. In doing so, the objectives should specify the nature and type of expenditure that may be claimed.

4 MONITORING AND REGULATION OF CLUBS' COMMUNITY CONTRIBUTIONS

- 4.1 This chapter considers the ACT Gambling and Racing Commission's activities in monitoring and regulating clubs' community contributions.

Summary

Conclusion

Access Canberra, in conducting desktop reviews and compliance checking activities on behalf of the ACT Gambling and Racing Commission, relies on guidance material that is out of date and has not been approved for use by the Commission. Access Canberra has adopted a risk-based approach to regulating clubs' community contributions which involves compliance checking for ten percent of clubs' community contributions, but there is insufficient information and documentation to justify this approach to regulation.

Key findings

	Paragraph
There is no evidence that the ACT Gambling and Racing Commission or Access Canberra have approved the two procedural documents which Access Canberra uses to conduct the desktop review. Both contain out of date references to the <i>Gaming Machine Act 2004</i> and there was no evidence to indicate the date of the last review or who reviewed the documents. These inadequacies present a risk that Access Canberra's staff in conducting the desktop review of clubs' community contributions may be inconsistent from year to year or from club to club. It is notable that in the 2015-16 desktop review that contributions not approved was at its lowest, being \$382. This is significantly lower than the prior year of \$5 803 (a subsequent compliance check, six months later, found an additional \$8 376 ineligible contributions).	4.16
While there is evidence that the <i>Proactive Compliance Inspector Program Scope</i> procedural document used by Access Canberra to guide its compliance checks has been approved by Access Canberra this is not the case for <i>Compliance Audit Workbook</i> or the <i>Gaming Machine Compliance Audit</i> . Furthermore, there are inconsistencies between the documents. This presents a risk that Access Canberra's staff conducting the compliance checks may be inconsistent from year to year or from club to club.	4.26
The absence of specific up-to-date and approved guidance on how to interpret the <i>Gaming Machine Act 2004</i> and <i>Gaming Machine Regulation 2004</i> creates risks	4.28

including not providing consistency. This is needed especially given a lack of definition regarding what is meant by community contribution.

A review of ten clubs' annual returns over a three year period (2013-14 to 2015-16) shows that for a large number of these, the recorded purpose did not provide sufficient detail to demonstrate how the community contribution was eligible pursuant to the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*. This presents a risk that an inappropriate approval could be granted. 4.37

The Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* is a key document that establishes the risk-based regulatory approach undertaken by Access Canberra for a range of its activities, including the regulation of clubs' community contributions. The document has a number of internal inconsistencies and errors, including the incorrect articulation of risks and their ratings. If the risk ratings from the Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* are relied upon to determine the regulatory approach, including the allocation of resources, then the miscalculations pose a risk that the regulatory matter in question will not be appropriately monitored, managed or resourced. 4.49

Since 2013-14 there has been a decrease in the total value of clubs' annual returns examined as part of compliance activities. Fifty percent of the total value of annual returns was examined during compliance activities up to 2013-14, which was reduced to 20 percent in 2014-15 and 10 percent in 2015-16. There is no documented analysis, risk analysis or otherwise, associated with the decision to decrease compliance activity coverage to ten percent. While the adoption of a risk-based approach to regulation was endorsed by the ACT Gambling and Racing Commission through a recommendation in the *Review of the Efficiency and Effectiveness of Community Contributions in the ACT* paper (December 2016) there is no further guidance on how this was to be informed by club-specific risks and 10 percent of all clubs' continue to be examined, irrespective of the size or risk profile of the club. In combination with the errors and miscalculations in the Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* Access Canberra's ability to demonstrate the nexus between its 'risk based approach to regulation' and decisions which effect changes with reference to focus and resourcing for community contributions is impaired. 4.55

The role of the Chief Executive Officer of the ACT Gambling and Racing Commission is held by the Chief Operating Officer of Access Canberra. This presents a risk of conflict of interest, particularly in resolving potential issues and disagreements between the ACT Gambling Racing Commission and Access Canberra (as the provider of services to the ACT Gambling and Racing Commission). 4.63

The Memorandum of Understanding between Access Canberra and the ACT Gambling and Racing Commission states that Access Canberra will 'ensure that it takes reasonable steps to assist the [ACT Gambling and Racing Commission]' and that it will operate 'in accordance with the Access Canberra Accountability Framework' and 'flexibly to respond to emerging issues or directions identified by the Board'. It is a high level general agreement that is not supported by an annual work plan 4.68

outlining services to be delivered according to a budget and timeline. This presents a risk that the activities undertaken by Access Canberra may not meet the requirements of the ACT Gambling and Racing Commission.

Accountability indicators in the ACT Gambling and Racing Commission's *Statement of Intent*, according to the Memorandum of Understanding, are to be used to assess the effectiveness of Access Canberra's services. These indicators are not an appropriate measure of the performance of services provided under the Memorandum of Understanding. While the indicators included in the *Statement of Intent* are linked to activities that are outlined in Access Canberra divisional work plans they lack detail on the specific activities to be conducted by each division, i.e. the scope, timing and nature of activities that are to be conducted. 4.74

The Memorandum of Understanding does not outline a mechanism by which the ACT Gambling and Racing Commission can make changes to the nature and type of functions and activities conducted by Access Canberra. Nor does it provide the ACT Gambling and Racing Commission with remedies in the case of non-performance by Access Canberra. 4.80

Monitoring and regulation of clubs' community contributions

Annual returns

- 4.2 Section 166 of the *Gaming Machine Act 2004* requires each club to provide to the ACT Gambling and Racing Commission an annual return that records the entity who receives the contribution, the purpose of it, and the amount or value of the contribution. The annual return must also include financial details of the club's gaming activities, including:
- the gross gaming machine revenue;
 - total value of community contributions; and
 - the value of contributions made to registered political parties and associated entities.
- 4.3 Clubs are not required by the *Gaming Machine Act 2004* to produce documentation to support their community contribution claims made in the annual return. Club representatives are, however, required to make a declaration that:
- the information in the annual return is true and correct;
 - they have read the relevant sections of the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*; and
 - the annual return does not include community contributions that are ineligible as per the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*.

4.4 Access Canberra, on behalf of the ACT Gambling and Racing Commission, undertakes two processes to ascertain whether the community contributions made by clubs meet the legislative requirements of the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*:

- an initial desktop review of clubs' community contributions, as presented in the clubs' annual returns; and
- a compliance check.

Desktop review

4.5 A desktop review of clubs' annual returns is conducted to 'ascertain prima facie' that the contributions submitted by the clubs meet the legislative requirements and are eligible to be approved by the ACT Gambling and Racing Commission as a community contribution.

4.6 Access Canberra undertakes this review on behalf of the ACT Gambling and Racing Commission and, at its conclusion, provides to the ACT Gambling and Racing Commission Board:

- the results of the desktop review; and
- a draft report to be presented to the Minister by virtue of section 167 of the *Gaming Machine Act 2004*.⁷

4.7 At the conclusion of the desktop review the ACT Gambling and Racing Commission Board is presented with a list of potentially ineligible community contributions for its consideration. Once this list is approved by the ACT Gambling and Racing Commission each club is advised (via letter) of the value of their approved community contribution.

4.8 The report prepared by the ACT Gambling and Racing Commission for the relevant Minister outlines details of approved community contributions made during the current financial year. Section 167 of the *Gaming Machine Act 2004* states:

Commission must report to Minister

Within 4 months after the end of the financial year, the commission must give the Minister a report—

- (a) summarising the extent of compliance by licensees with section 165 and section 166 for the financial year; and
- (b) analysing the extent to which revenue received by licensees was being used to make community contributions during the financial year.

⁷ Section 167 of the *Gaming Machine Act 2004* requires the ACT Gambling and Racing Commission to prepare a report for the responsible Minister within four months of the end of the financial year 'summarising the extent of compliance by licensees with section 165 and section 166' and 'analysing the extent to which revenue received by licensees was being used to make community contributions during the financial year'.

- 4.9 The ACT Gambling and Racing Commission's report 'summarising the extent of compliance by licensees with section 165 and section 166 for the financial year' is based on the desktop review of community contributions from the current financial year which seeks to 'ascertain prima facie' that the transactions submitted by the clubs meet the legislative requirements. There is no evidence-based assessment of clubs' community contributions and their submitted returns until compliance checking occurs; this takes place predominantly between late November and early March.
- 4.10 Access Canberra relies on two procedural documents to guide the conduct of the desktop review:
- *[Standard Operating Procedure] - Community Contribution Returns*; and
 - *New Gaming Regulation Procedures Manual v1.1*.
- 4.11 The *[Standard Operating Procedure] - Community Contribution Returns* document provides guidance on the stages of the desktop review process; dates for the completion of each stage; and steps and guidance on how each stage is to be completed. The procedures also include templates for the various reports, letters and minutes to be used and produced during the review process.
- 4.12 The *New Gaming Regulation Procedures Manual v1.1* provides guidance for a wider range of activities conducted by Access Canberra and includes a section for the desktop review of community contributions. This document contains similar steps for the review process to the *[Standard Operating Procedure] - Community Contribution Returns* document, but in less detail, and also includes a replica of the relevant sections from the *Gaming Machine Act 2004*.
- 4.13 There is no evidence that these procedures have been approved for use by either the ACT Gambling and Racing Commission or Access Canberra. The documents are not dated and do not contain a history of when or who endorsed them for use.
- 4.14 The *[Standard Operating Procedure] - Community Contribution Returns* document also contains review comments and proposed amendments to be made to the document. This indicates that it is a draft, or working document, that may be subject to progressive review and amendment before being finalised. The sections of the *Gaming Machine Act 2004* that have been replicated in the *New Gaming Regulation Procedures Manual v1.1* are out of date and inaccurate, to the extent that they still include reference to a seven percent community contribution and parts of paragraph 164(3)(b) of the *Gaming Machine Act 2004*, which have since been repealed.
- 4.15 Evidence of the review and approval of these procedures was sought and Access Canberra advised that:
- The procedures and manual have been approved as they are in use, however there is not necessarily the evidence trail of their approval. They would have been approved by different people at different levels and at different times.

- 4.16 There is no evidence that the ACT Gambling and Racing Commission or Access Canberra have approved the two procedural documents which Access Canberra uses to conduct the desktop review. Both contain out of date references to the *Gaming Machine Act 2004* and there was no evidence to indicate the date of the last review or who reviewed the documents. These inadequacies present a risk that Access Canberra's staff in conducting the desktop review of clubs' community contributions may be inconsistent from year to year or from club to club. It is notable that in the 2015-16 desktop review that contributions not approved was at its lowest, being \$382. This is significantly lower than the prior year of \$5 803 (a subsequent compliance check, six months later, found an additional \$8 376 ineligible contributions).

Compliance check

- 4.17 Access Canberra, on the ACT Gambling and Racing Commission's behalf, undertakes compliance checks of clubs' community contribution returns between November and March. It involves Access Canberra attending clubs' premises to review documentation that supports the annual returns examined during the desktop review.
- 4.18 Following the conduct of compliance checking between November and March, a number of community contributions that were previously approved and reported by the ACT Gambling and Racing Commission to the Minister as being eligible community contributions have subsequently been found to be ineligible. Table 4-1 shows the value of these community contributions since 2011-12.

Table 4-1 Value of community transactions approved by the ACT Gambling and Racing Commission and subsequently found to be ineligible

2011-12 (\$)	2012-13 (\$)	2013-14 (\$)	2014-15 (\$)	2015-16 (\$)
156 092.00	235 488.00	122 207.00	37 988.00	83 792.28

Source: ACT Audit Office, based on ACT Gambling and Racing Commission reporting

- 4.19 Access Canberra relies on three procedural documents for the conduct of its compliance checking activities for community contributions:
- *Gaming Machine Compliance Audit* procedure document;
 - *Compliance Audit Workbook* (an Excel workbook); and
 - *Proactive Compliance Inspection Program Scope* document.
- 4.20 The *Gaming Machine Compliance Audit* procedure document provides detailed guidance on the purpose, objective and processes for the preparation, conduct and reporting of compliance audits.
- 4.21 This procedure document is supplemented by the *Compliance Audit Workbook* (an Excel workbook). This workbook provides additional guidance, including extracts from the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*, which is formatted

into a series of checklists. These checklists are used by Access Canberra staff to conduct and document the findings from the compliance audits.

- 4.22 There is no evidence in either the procedure or the workbook to indicate that the documents have been approved for use, who is responsible for the review and approval and, in the case of the *Gaming Machine Compliance Audit* procedure document, the date it was approved.
- 4.23 The Audit Office sought advice as to how the *Gaming Machine Compliance Audit* procedure document and the *Compliance Audit Workbook* had been reviewed and approved and was advised by Access Canberra:

[Standard operating procedures] were finalised in Sep 2015. These were cleared by [Access Canberra Manager] at the time, no formal approval was provided by the then CEO, as the transition into Access Canberra was underway.

- 4.24 The *Compliance Audit Workbook* had detailed guidance that was partially removed for the 2014-15 compliance activities (there were variations in the versions of the Workbooks used). Access Canberra advised that this detailed guidance was replaced by the more recent guidance document entitled *Proactive Compliance Inspector Program Scope* document, which is prepared each year.
- 4.25 While the *Proactive Compliance Inspector Program Scope* document is intended to replace the guidance that was included in the *Compliance Audit Workbook*, some elements do not agree with the *Gaming Machine Compliance Audit* procedure document which is also in use by Access Canberra. Elements that do not agree include: the scope of the audit, the minimum number of transactions to be selected and reviewed and the method for selecting these transactions. There are also differences between the administrative tasks required to conduct and finalise the compliance activities.
- 4.26 While there is evidence that the *Proactive Compliance Inspector Program Scope* procedural document used by Access Canberra to guide its compliance checks has been approved by Access Canberra this is not the case for *Compliance Audit Workbook* or the *Gaming Machine Compliance Audit*. Furthermore, there are inconsistencies between the documents. This presents a risk that Access Canberra's staff conducting the compliance checks may be inconsistent from year to year or from club to club.

Guidance for operational activities (interpreting the *Gaming Machine Act 2004*)

- 4.27 As discussed in paragraphs 2.24 to 2.26, the ACT Gambling and Racing Commission has not prepared detailed guidance that would assist Access Canberra staff in determining what community contributions may be approved under the *Gaming Machine Act 2004* or the *Gaming Machine Regulation 2004*. This lack of guidance is reflected in the policy and procedural documents; these documents refer users back to the relevant sections of the Act and the Regulation for guidance.

- 4.28 The absence of specific up-to-date and approved guidance on how to interpret the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004* creates risks including not providing consistency. This is needed especially given a lack of definition regarding what is meant by community contribution.

RECOMMENDATION 2 INTERPRETATIVE GUIDANCE

The ACT Gambling and Racing Commission should provide guidance on how to interpret and approve community contributions with respect to objectives (when defined by the ACT Government) and requirements in the *Gaming Machine Act 2004* and *Gaming Machine Regulation 2004*.

RECOMMENDATION 3 GUIDANCE MATERIALS (POLICIES AND PROCEDURES)

Access Canberra, in consultation with the ACT Gambling and Racing Commission, should:

- a) review and update the policies and procedures it currently uses to regulate clubs' community contributions; and
- b) implement a regular review process for the policies and procedures.

Audit Office's review of ten clubs' community contributions

- 4.29 The Audit Office examined Access Canberra's monitoring and regulation of clubs' community contributions that it undertakes on behalf of the ACT Gambling and Racing Commission's over a three year period (2013-14 to 2015-16). This focused on the annual returns associated with ten clubs that were randomly chosen (refer to paragraph 1.40) and involved an examination of the documentation associated with the desktop review and compliance checking activities for these ten clubs.

Desktop review of clubs' annual returns

- 4.30 Annual returns for the ten clubs were examined to determine if they met the requirements of the *Gaming Machine Act 2004* and ACT Gambling and Racing Commission policies and procedures. The review found with respect to process that:
- the returns submitted by the clubs had been assessed by Access Canberra for ineligible community contributions;
 - details of potentially ineligible community contributions identified by Access Canberra staff were referred to the ACT Gambling and Racing Commission for consideration and subsequent approval;
 - where ineligible community contributions were identified and not approved by the ACT Gambling and Racing Commission, the details of these were referred back to the club;

- the annual reports prepared by Access Canberra on behalf of the ACT Gambling and Racing Commission were appropriately approved by the ACT Gambling and Racing Commission's Board; and
- the figures published in the annual report to the Minister for the clubs agreed with the returns assessed by Access Canberra staff.

Descriptions in annual returns

4.31 The *[Standard Operating Procedure] - Community Contribution Returns* requires Access Canberra staff to undertake the following:

Check that each beneficiary and purpose is relevant to the category of claim and that the claim qualifies as a community contribution under the legislation. Investigate any unknown entries. Highlight any doubtful or ineligible claims for referral to the licensee.

4.32 As discussed at paragraphs 2.50 to 2.57 for a large number of returns, the recorded purpose for many of the approved community contributions did not provide sufficient detail to demonstrate how the community contribution was eligible pursuant to the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*.

4.33 Table 4-2 shows examples of transactions identified by the Audit Office that do not provide sufficient detail for an assessment to be made.

Table 4-2 Example transactions from the ten clubs reviewed by the Audit Office that do not provide sufficient detail to allow an assessment

ID#	Date	Beneficiary	Purpose	Amount (\$)
1	12/03/2016	7 Eleven Pheasents [sic] Nest	Fuel for mini buses (SS CC 539)	47.66
2	23/08/2015	Darts ACT	Community Support	180.00
3	29/07/2015	Wine Club	Community Support	183.98

Source: ACT Audit Office, data from clubs annual returns 2014/2015 and 2015/2016

4.34 The community contribution at Table 4-2, ID#1, has been categorised as a sports and recreation contribution by a club for the 2015-16 financial year. The purported beneficiary is a supplier of goods and services and the purpose included in the submission does not provide sufficient information to determine whether this expense meets legislative requirements or how this contribution might 'promote, develop or encourage sport and sporting activities' as required by the *Gaming Machine Regulation 2004*.

4.35 The community contributions at Table 4-2 ID#2 and ID#3 have been categorised as non-profit activity contributions by a club for 2015-16. For a community contribution to be approved as a non-profit activity contribution it must be 'made for a non-profit, non-political activity that benefits the community'. While 'Darts ACT' is listed as a registered association, the purpose listed in the annual return does not provide sufficient detail to assess how a benefit is being provided to the community. With respect to the community

contribution at ID#3 to the 'Wine Club', while community contributions can be made to any entity, the ACT Gambling and Racing Commission needs to be able to form the opinion that it is 'intended to develop a community, raise the standard of living of a community or help develop community spirit'. The purpose listed in the annual return is insufficient for this assessment to be made.

- 4.36 Reilly Associates found similar issues in its review of the annual return data for 2015-16 and 2016-17, noting that:

The club annual returns record for each of the above financial years do give some details for each contribution outgoing, but often lack sufficient detail to identify exactly what the contributions were used for.

- 4.37 A review of ten clubs' annual returns over a three year period (2013-14 to 2015-16) shows that for a large number of these, the recorded purpose did not provide sufficient detail to demonstrate how the community contribution was eligible pursuant to the *Gaming Machine Act 2004* and the *Gaming Machine Regulation 2004*. This presents a risk that an inappropriate approval could be granted.

RECOMMENDATION 4 RECORDS OF BENEFICIARIES AND PURPOSE

Access Canberra should request, where currently not provided by clubs, further information regarding the beneficiary and purpose of a community contribution, before recommending its approval to the ACT Gambling and Racing Commission.

Compliance checking activities

- 4.38 The Audit Office examined the activities conducted by Access Canberra on behalf of the ACT Gambling and Racing Commission to verify that the community contributions made by clubs and approved by the ACT Gambling and Racing Commission are eligible under the *Gaming Machine Act 2004*. For the ten clubs reviewed, compliance activities had been conducted by Access Canberra on behalf of the ACT Gambling and Racing Commission on:
- all ten clubs for the financial years 2013-14 and 2014-15; and
 - eight of the ten clubs for the 2015-16 financial year⁸.
- 4.39 While a *Compliance Audit Workbook* had been completed with respect to the compliance activities for all clubs:
- nine of the 28 workbooks did not contain signatures of the compliance officers or the supervisor, with five of these workbooks missing the page where the signature should appear;

⁸ Two clubs included in the selection made by the Audit Office surrendered their gaming machine licenses during the 2015-16 financial year.

- ten of the 28 workbooks did not show the required 50 percent of transactions to be reviewed as per the *Gaming Machine Compliance Audit* procedure document. However, as discussed in paragraph 4.25, the guidance in the *Compliance Audit Workbook* varies as to the minimum percentage to be reviewed. One of the 28 workbooks did not have minimum percentage review as per the requirements of the *Compliance Audit Workbook*.

Risk-based regulation

4.40 Access Canberra has adopted a risk-based regulatory approach and in doing so has referenced the Australian National Audit Office publication *Administering Regulation – Achieving the Right Balance* (2014).⁹

4.41 The Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* provides information on its risk-based approach to regulation. According to the Business Plan:

The purpose of this framework is to highlight the use of:

- a risk-based approach to prioritise efforts to assist compliance, and identify and enforce instances of non-compliance; and
- an outcome-based assessment on both the efficiency of regulatory actions and the effectiveness with which they contribute to regulatory outcomes.

4.42 According to the Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* 'a risk-based approach enhances consistency in decision making, maximises efficiency by allocating resources effectively, increases compliance by focusing on areas of risk and reduces compliance burden by minimising regulatory intervention'.

4.43 The Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* includes a risk register. According to the Business Plan:

Compliance activities are selected based on their risk profile, although the program is rounded out by the inclusion of a small random sample of areas, regardless of the level of risk. This approach results in two streams of inspection activity – a targeted inspection program, planned in advance through the annual audit review and a responsive inspection Program, triggered across the year in response to emerging issues.

4.44 The Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* includes 40 risks, one of which relates to clubs' non-compliance with their community contributions' requirements:

To ensure gaming machine licensees are dispersing the correct community contributions percentage.¹⁰

⁹ https://www.anao.gov.au/sites/g/files/net3416/f/2014_ANAO%20-%20BPG%20Administering%20Regulation.pdf

¹⁰ 'Risks' identified in the Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* are phrased as outcomes.

- 4.45 This 'risk' is rated as a 'Medium' risk, with a 'Possible' consequence and a 'Moderate' likelihood. (The consequence and likelihood descriptions and ratings were incorrectly inverted for this risk as well as some others on the *Access Canberra Business Engagement Education and Compliance Business Plan for 2017-18*). The 'source/cause' of this risk is identified as 'Clubs with Gaming Machine Licensees [sic] are not dispersing the required percentage of gross gaming machine revenue, under the *Gaming Machine Act 2004*, to community and sporting organisations'.
- 4.46 The following issues were noted as part of a review of the *Access Canberra Business Engagement Education and Compliance Business Plan for 2017-18* suggesting that the maturity of Access Canberra's current approach to risk management could be significantly enhanced, both in a strategic/operational and regulatory sense:
- in the *Access Canberra Business Engagement Education and Compliance Business Plan for 2017-18* it is apparent that the difference between the risk source and the risk itself is not clearly articulated. The 'risks' identified in the *Business Engagement Education and Compliance Business Plan for 2017-18* are not actually risks (i.e. they are phrased as outcomes) while the 'sources' of the risks are phrased in the nature of the actual risk itself;
 - fifteen (or 37.5 percent) of the 40 'risks' identified in the *Business Engagement Education and Compliance Business Plan for 2017-18* were incorrectly calculated. Of those 15 miscalculated risks six relate to activities of the ACT Gambling and Racing Commission; and
 - for some 'risks' the 'Source/Cause' field and the 'Actions Taken' within the *Business Engagement Education and Compliance Business Plan for 2017-18* were identical.
- 4.47 The allocation of responsibility (the risk owner) for all of the regulatory risks identified in the *Business Engagement Education and Compliance Business Plan for 2017-18* for the ACT Gambling and Racing Commission is to a senior manager despite a number of the risks being rated as 'Severe/Extreme'. The 'Severe' rating, as identified in Access Canberra's own matrix, should be attracting attention from the ACT Gambling and Racing Commission.
- 4.48 The *Business Engagement Education and Compliance Business Plan for 2017-18* also includes references to *Risk Treatment Action Plans*. The activities that are referenced are not actually 'risk treatment plans'. The 'plans' appear to only be a list of inspections and (in some instances) timeframes with the column for 'additional treatments required' being blank in all cases. With no further clarifying information in the Business Plan it is difficult to determine what purpose these 'risk treatment plans' serve.
- 4.49 The *Access Canberra Business Engagement Education and Compliance Business Plan for 2017-18* is a key document that establishes the risk-based regulatory approach undertaken by Access Canberra for a range of its activities, including the regulation of clubs' community contributions. The document has a number of internal inconsistencies and errors, including the incorrect articulation of risks and their ratings. If the risk ratings from the *Access Canberra Business Engagement Education and Compliance Business Plan for 2017-18* are

relied upon to determine the regulatory approach, including the allocation of resources, then the miscalculations pose a risk that the regulatory matter in question will not be appropriately monitored, managed or resourced.

Percentage of clubs' contributions examined as part of compliance checking activities

- 4.50 Table 4-3 shows the percentage of clubs' contributions examined as part of compliance checking activities since 2011-12.

Table 4-3 Percentage of total value of returns to be examined during compliance activities

2011-12 (%)	2012-13 (%)	2013-14 (%)	2014-15 (%)	2015-16 (%)	2016-17 (%)	2017-18 (%)
50	50	50	20	10	10	10

Source: ACT Audit Office

- 4.51 Since 2014-15 there has been a decrease in the total value of clubs' annual returns examined as part of compliance activities. Up to 2013-14, 50 percent of the total value of annual returns was examine during compliance activities. In 2014-15 this was reduced to 20 percent, while in 2015-16 it reduced to 10 percent and has stayed at that level ever since.
- 4.52 Information was sought from Access Canberra with respect to how the risk-based approach to regulation was used to inform the regulatory approach and compliance activities with respect to clubs' community contributions. Access Canberra advised:

In relation to your query as to whether there has been some analysis of the past three years regarding the risk management framework which led to the change from 20% of transactions being examined to 10%. There is not a specific paper per se in relation to your query. We have undertaken analysis on all our compliance related activities (which formed the basis for the teams Business plan) and have spent time reviewing the factors that made community contributions ineligible. You will note from the [summary of ineligible community contributions 2013-14 to 2015-16] that for the most part the ineligibility issues resulted from administrative errors i.e. the payment being made in the wrong financial year, Clubs not having sufficient records to support their claims.

Access Canberra's commitment to reduce unnecessary regulatory burden on industry and move to a risk based model, determined that we reconsider the compliance model for community contributions. The majority of licensees make contributions far in excess of the mandated 8%, with no licensee required to pay shortfall tax in the past 5 years. This means that in the past we committed significant resources to a process which has little material benefit, other than to ensure minor corrections are made to the final Community Contributions Report. It was on this basis that we chose to audit 10% of contributions as opposed to 20%. The capacity created has allowed the team to focus on other compliance activities (proactive and reactive) where there is a greater potential risk of 'harm' to our community.

Further, the change in the % transactions being examined for this particular compliance activity has to be considered in the broader context of the creation of Access Canberra. The staff that transitioned (from what was the Gambling and Racing Commission) over into Access Canberra combined with another team resulting in greatly expanding the scope of the teams compliance inspection activities.

4.53 While this response is acknowledged it is also noted that there has been no documented analysis, risk analysis or otherwise, associated with the decision to decrease compliance activity coverage from 20 percent to 10 percent.

4.54 Subsequent to this, the ACT Gambling and Racing Commission endorsed a recommendation by Access Canberra that a risk-based approach to regulating community contributions be implemented. The *Review of the Efficiency and Effectiveness of Community Contributions in the ACT* paper (December 2016) stated:

In the short term, the Commission has identified that there are opportunities to reduce the level of audit activity and still achieve the same level of assurance by taking a risk-based approach to selecting licensees to audit. This would result in higher-risk licensees being audited in more detail, with little to no audit activity being conducted on lower-risk licensees. By continuing to undertake audits and improve audit methods, the Commission would maintain the high level of oversight and compliance and the existing capability of staff. The risk assessment is driven by a number of factors including- the licensee's relationship to the recipient, the category of contribution, the size of the contribution and the licensee's history of adjustments.

4.55 Since 2013-14 there has been a decrease in the total value of clubs' annual returns examined as part of compliance activities. Fifty percent of the total value of annual returns was examined during compliance activities up to 2013-14, which was reduced to 20 percent in 2014-15 and 10 percent in 2015-16. There is no documented analysis, risk analysis or otherwise, associated with the decision to decrease compliance activity coverage to ten percent. While the adoption of a risk-based approach to regulation was endorsed by the ACT Gambling and Racing Commission through a recommendation in the *Review of the Efficiency and Effectiveness of Community Contributions in the ACT* paper (December 2016) there is no further guidance on how this was to be informed by club-specific risks and 10 percent of all clubs' continue to be examined, irrespective of the size or risk profile of the club. In combination with the errors and miscalculations in the Access Canberra *Business Engagement Education and Compliance Business Plan for 2017-18* Access Canberra's ability to demonstrate the nexus between its 'risk based approach to regulation' and decisions which effect changes with reference to focus and resourcing for community contributions is impaired.

RECOMMENDATION 5 RISK-BASED APPROACH TO REGULATION

The ACT Gambling and Racing Commission, in cooperation with Access Canberra, should fully document its risk-based approach to the regulation of clubs' community contributions, including decision-making associated with the percentage of clubs' contributions to be subjected to compliance checking.

Governance arrangements for Access Canberra and the ACT Gambling and Racing Commission

4.56 In examining the governance arrangement between Access Canberra and the ACT Gambling and Racing Commission following was considered:

- the role of the Chief Executive Officer of the ACT Gambling and Racing Commission; and
- the Memorandum of Understanding between the ACT Gambling and Racing Commission and Access Canberra, including:
 - the identification and articulation of actions and deliverables;
 - dispute resolution mechanisms; and
 - accountability mechanisms between the ACT Gambling and Racing Commission and Access Canberra.

Role of Chief Executive Officer of the ACT Gambling and Racing Commission

4.57 The role of the Chief Executive Officer of the ACT Gambling and Racing Commission is articulated in the *Governance Framework* for the ACT Gambling and Racing Commission as follows:

Chief Executive Officer

The Chief Executive Officer (CEO) of the independent body has responsibilities under the *Financial Management Act 1996* and the *Public Sector Management Act 1994*. As such, the CEO is responsible for all decisions taken within, and for all actions subsequently taken by, the ACT Gambling and Racing Commission.

The CEO has an important role in providing advice, implementing Board decisions and meeting the ACT Gambling and Racing Commission's objectives within a whole of government context. The CEO is entrusted to build the organisation to support the ACT Gambling and Racing Commission in administering the gambling and racing legislation and directs the staff of the ACT Gambling and Racing Commission.¹¹

4.58 The role of the Chief Executive Officer is held by the Chief Operating Officer of Access Canberra. As Access Canberra is providing services on behalf of the Gambling and Racing Commission this gives rise to a potential conflict of interest.

¹¹ https://www.gamblingandracing.act.gov.au/_data/assets/pdf_file/0005/744314/Gambling-and-Racing-Governance-Framework.pdf
page 10

- 4.59 With respect to *conflicts of interest*, specifically in this instance a *conflict of role*, the Australian National Audit Office report *Managing Conflicts of Interest in FMA Agencies*¹² states:

Conflict of role: arises when an officer is required to fulfil multiple roles that may be in conflict with each other to some degree. Unless properly handled, such conflicts can impair the quality of working relationships across government organisations and lead to a loss of credibility and effectiveness.¹³

- 4.60 The Chief Executive Officer of the ACT Gambling and Racing Commission advised that there were no issues with the combination of roles and that the ACT Gambling and Racing Commission was satisfied with the outcome of the negotiations with Access Canberra which led to this approach. The Chief Executive Officer of the ACT Gambling and Racing Commission further advised that, with reference to discussions/negotiations between the ACT Gambling and Racing Commission and Access Canberra, should there be any need to escalate issues or grievances the respective representatives would be the Chairman of the ACT Gambling and Racing Commission Board and the Deputy Director General for Access Canberra. The Audit Office was advised that the ACT Gambling and Racing Commission Board is supportive of this approach.

- 4.61 With respect to managing conflicts of interest, the Australian National Audit Office report *Managing Conflicts of Interest in FMA Agencies* states:

Effective management of conflicts of interest generally entails implementing principles and procedures designed to give an appropriate level of assurance that decision-making will not be, nor perceived to be, compromised by a lack of impartiality.¹⁴

- 4.62 While noting the Chief Executive Officer of the ACT Gambling and Racing Commission's assertions that the risks of conflict of interest have been managed to date, it would be prudent to put in place a management strategy to document and manage the conflict inherent in the combination of roles. As noted from the ANAO's *Managing Conflicts of Interest in FMA Agencies*¹⁵ conflicts of this nature, or even the perception thereof, have the potential to impair the quality of working relationships across government organisations and can lead to a loss of credibility and effectiveness.

- 4.63 The role of the Chief Executive Officer of the ACT Gambling and Racing Commission is held by the Chief Operating Officer of Access Canberra. This presents a risk of conflict of interest, particularly in resolving potential issues and disagreements between the ACT Gambling and Racing Commission and Access Canberra (as the provider of services to the ACT Gambling and Racing Commission).

¹² <https://www.anao.gov.au/work/performance-audit/managing-conflicts-interest-fma-agencies>

¹³ ANAO Audit Report No.47 2013–14 - Managing Conflicts of Interest in FMA Agencies. Page 28

¹⁴ ANAO Audit Report No.47 2013–14 - *Managing Conflicts of Interest in FMA Agencies*, page 29

¹⁵ <https://www.anao.gov.au/work/performance-audit/managing-conflicts-interest-fma-agencies>

Memorandum of Understanding

- 4.64 A memorandum of understanding between government entities can be a useful mechanism to provide a basic framework establishing roles, responsibilities, reporting requirements and a mutual intention to achieve a common goal or series of goals. Ideally, a memorandum of understanding should be supported by annual work plans to identify how the goals will be achieved by including sufficient detail on the deliverables or actions to be taken.
- 4.65 Since 2015-16, the ACT Gambling and Racing Commission has entered into a Memorandum of Understanding with Access Canberra for the provision of services to meet its legislative obligations. The current Memorandum of Understanding, which covers a three year period, was entered into in July 2017 following the expiration of preceding agreements.
- 4.66 The current Memorandum of Understanding between the ACT Gambling and Arcing Commission and Access Canberra sets out various governance and administration arrangements including:
- accountability indicators for the services;
 - dispute resolution processes;
 - funding arrangements; and
 - roles and responsibilities of both the ACT Gambling and Racing Commission and Access Canberra.

Commitments

- 4.67 Part 6 of the Memorandum of Understanding, entitled *Access Canberra Commitments*, outlines the principles by which Access Canberra will operate to meet the requirements of the ACT Gambling and Racing Commission. Part 6 of the Memorandum of Understanding states:
- (a) engagement between Access Canberra and the GRC will be firmly grounded on good will and an ongoing willingness to assist the GRC in its activities;
 - (b) Access Canberra will ensure that it takes reasonable steps to assist the GRC to meet its objectives and obligations under the Control Act, other Gaming Laws, and the 2017-18 GRC Statement of Intent;
 - (c) Access Canberra will focus on outcomes and outputs, rather than inputs or process;
 - (d) Access Canberra will operate in accordance with the Access Canberra Accountability Framework (Attachment A) which outlines service level standards and a risk-based approach to operations;
 - (e) Access Canberra will operate flexibly to respond to emerging issues or directions identified by the Board, including quality of technical advice and support and managing any conflicts of interests.
- 4.68 The Memorandum of Understanding between Access Canberra and the ACT Gambling and Racing Commission states that Access Canberra will 'ensure that it takes reasonable steps to assist the [ACT Gambling and Racing Commission]' and that it will operate 'in accordance with the Access Canberra Accountability Framework' and 'flexibly to respond to emerging

issues or directions identified by the Board'. It is a high level general agreement that is not supported by an annual work plan outlining services to be delivered according to a budget and timeline. This presents a risk that the activities undertaken by Access Canberra may not meet the requirements of the ACT Gambling and Racing Commission.

Accountability

- 4.69 Part 9 of the Memorandum of Understanding states that the accountability indicators in the ACT Gambling and Racing Commission's *Statement of Intent* will be used to assess if the services provided by Access Canberra meet the requirements of the Commission and the Memorandum of Understanding.
- 4.70 In 2017-18 the ACT Gambling and Racing Commission revised its accountability indicators. The revised indicators do not identify the specific activities that are to be conducted by the Commission and reported against. For example, an indicator measuring the number of inspections conducted and an indicator associated with the compliance of inspected licensees have been discontinued for the 2017-18 financial year and have been replaced by a measure that reports customer satisfaction.
- 4.71 The revised accountability indicators do not clearly measure the overall performance of Access Canberra in delivering services to, or for, the ACT Gambling and Racing Commission under the Memorandum of Understanding. The accountability indicators also do not measure how the activities that are being conducted by Access Canberra under the Memorandum of Understanding meet the legislative requirements of the ACT Gambling and Racing Commission, including the review and approval of community contributions.
- 4.72 While the accountability indicators may be appropriate to measure performance for the purposes of a *Statement of Intent*, they are not an appropriate to measure of the performance of services provided under a Memorandum of Understanding. Specific indicators should be used in the Memorandum of Understanding that clearly state the services to be provided and how they are being met. For example, the Memorandum of Understanding states that Access Canberra will 'ensure that it take reasonable steps to assist the GRC to meet its ... obligations under ... Gambling Laws'. Performance measures should be included in the Memorandum of Understanding to demonstrate how Access Canberra will meet this commitment (what are the reasonable steps) and if it has met these commitments.
- 4.73 It is acknowledged that the indicators included in the *Statement of Intent* are linked to activities that are outlined in work plans for each Access Canberra division, e.g. the Business Engagement Education and Compliance division and Licencing and Registrations division. However, a review of the work plans indicate that they lack detail on the specific activities to be conducted by each division, i.e. the scope, timing and nature of activities that are to be conducted.

- 4.74 Accountability indicators in the ACT Gambling and Racing Commission's *Statement of Intent*, according to the Memorandum of Understanding, are to be used to assess the effectiveness of Access Canberra's services. These indicators are not an appropriate measure of the performance of services provided under the Memorandum of Understanding. While the indicators included in the *Statement of Intent* are linked to activities that are outlined in Access Canberra divisional work plans they lack detail on the specific activities to be conducted by each division, i.e. the scope, timing and nature of activities that are to be conducted.

Dispute resolution

- 4.75 The Memorandum of Understanding provides that the ACT Gambling and Racing Commission Board has the discretion to determine the type of work that it commissions from Access Canberra. The Memorandum of Understanding states that:

The Board will assess the agreement's effectiveness as required and may request amendments to ensure the delivery of the Commission's requirements. Any amendments to the agreement or in the way services are delivered to GRC that have been agreed between parties will be implemented as soon as practical.

...

Access Canberra acknowledges the Board has complete discretion in the types of work it commissions from Access Canberra, which may include activities such as inspections or regulatory compliance activities, licensing, and research targeted at, but not limited to, minimising gambling harm. The GRC retains the right to change the nature and type of commissioned work at any time.

- 4.76 The Memorandum of Understanding does not outline a mechanism in the event that the ACT Gambling and Racing Commission wishes to make changes to the nature and type of functions and activities conducted by Access Canberra. Nor does the arrangement provide the ACT Gambling and Racing Commission with remedies in the case of non-performance by Access Canberra.
- 4.77 The Memorandum of Understanding is silent on resolutions for the ACT Gambling and Racing Commission in the case of non-performance by Access Canberra with section 14 (on dispute resolution) appearing to offer only the option of 'meeting and conferring' between staff and, failing that, 'further discussions' between staff at a senior manager level:

14. Dispute Resolution

For any matter in relation to this arrangement that may be in dispute between the parties, the parties will attempt to resolve the matter at a workplace level including, but not limited to;

The parties or their representatives meeting and conferring on the matter.

If the matter is not resolved at such a meeting, the parties arranging further discussions involving more senior levels of management meeting and conferring on the matter until such time as the matter is resolved.

- 4.78 Based on this section of the Memorandum of Understanding, and notwithstanding that these options are not limiting, there appears to be limited recourse for either party if discussions break down at a senior manager level and no provision for recompense should Access Canberra fail to deliver services as described.

- 4.79 As a general rule, dispute resolution measures in a memorandum of understanding would contain provisions outlining a right to third party mediation should discussions between parties to a given agreement break down at either the workplace or senior manager level, and is a crucial mechanism to ensure the ACT Gambling and Racing Commission has some means of appeal other than Access Canberra staff and the Chief Operating Officer.
- 4.80 The Memorandum of Understanding does not outline a mechanism by which the ACT Gambling and Racing Commission can make changes to the nature and type of functions and activities conducted by Access Canberra. Nor does it provide the ACT Gambling and Racing Commission with remedies in the case of non-performance by Access Canberra.

RECOMMENDATION 6

**MEMORANDUM OF UNDERSTANDING BETWEEN ACT
GAMBLING AND RACING COMMISSION AND ACCESS
CANBERRA**

Access Canberra, in conjunction with the ACT Gambling and Racing Commission, should:

- a) prepare an annual work plan to support the Memorandum of Understanding, which outlines services to be delivered according to a budget and timeline;
- b) revise the Memorandum of Understanding to clearly state procedures for the management of the potential conflict of interest of the Chief Executive Officer of the ACT Gambling and Racing Commission; and
- c) revise the Memorandum of Understanding to include appropriate and practical dispute resolution measures.

APPENDIX A: SEPTEMBER 2017 PWC REPORT

METHODOLOGY

In September 2017 PwC finalised its *Community Contributions Scheme Impact Analysis* report (the September 2017 PwC report). PwC was engaged by the ACT Gambling and Racing Commission to:

... determine whether the current Community Contribution scheme (the scheme) policy settings remain fit for purpose, by examining what impact contributions have on providing a benefit to the community and how that impact can be broadly measured eg social / economic / health / other.

In order to determine 'whether the current Community Contribution scheme (the scheme) policy settings remain fit for purpose' the approach taken by PwC was to:

... assess the social, economic, health and any other impacts of the community contributions – quantifying how much the Scheme is meeting its policy purpose of 'contributing to or supporting the development of the community' or 'raising the standard of living of the community or part of the community'.

The PwC report stated 'the question central to the development of this framework is 'what impact would be lost from the community if the Scheme did not exist?'' In order to answer this question, PwC:

- mapped community contributions into the following 'measurement categories':
 - activity;
 - community sport;
 - education;
 - gambling harm and substance abuse;
 - own event;
 - own maintenance;
 - own team;
 - religious/culture/community; and
 - social assistance'; and
- 'developed proxies for the benefits associated with contributions in these categories. These proxies provide a monetary value on a wide range of impacts (social, economic, health, and other) across the full range of stakeholders (individuals, relevant groups, government, the broader community, etc.)' This analysis sought to identify and quantify a 'social return on investment' for the community contributions.

Mapping of 'measurement categories'

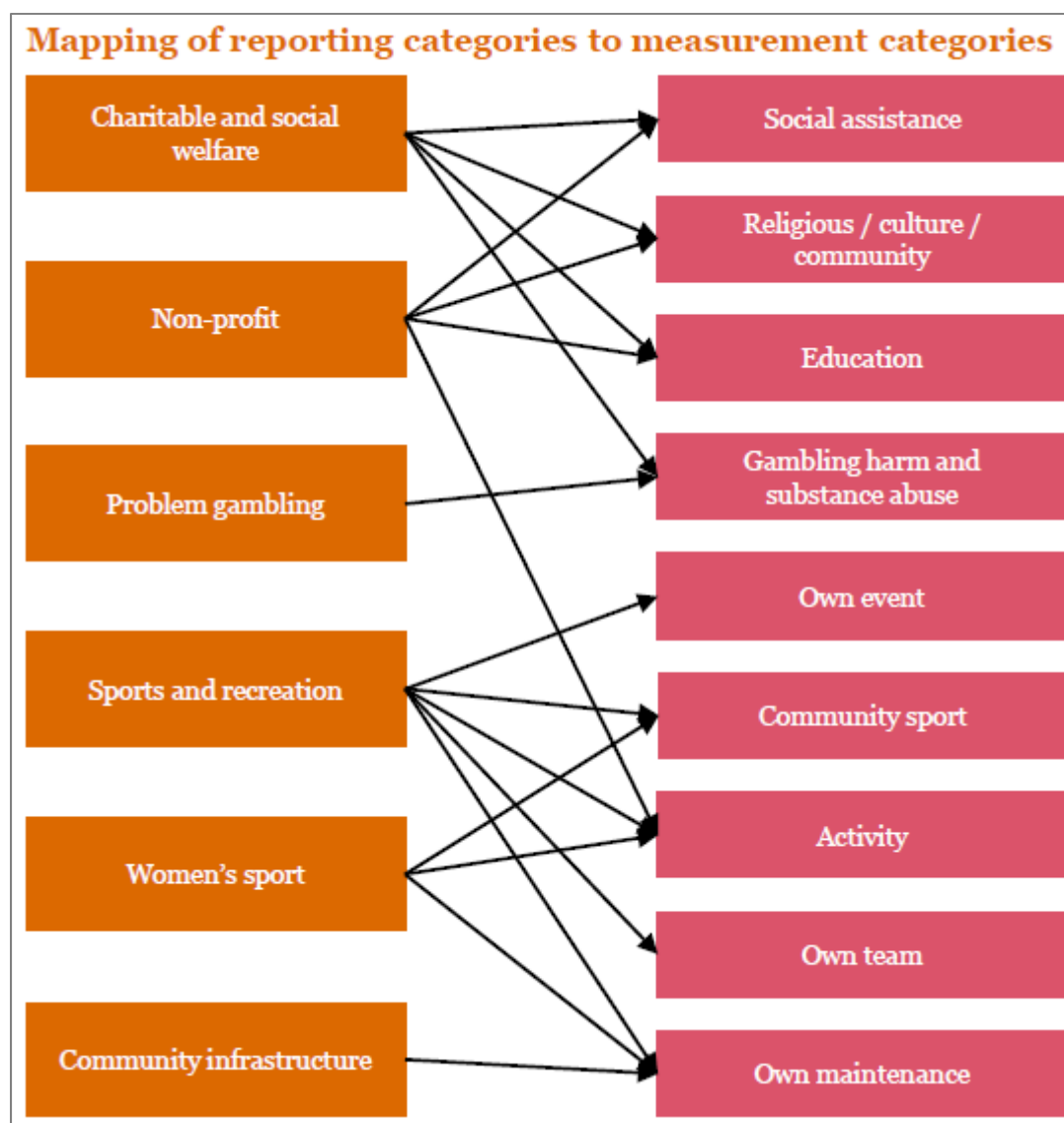
Figure A-1 shows how community contributions made under each of the existing legislative categories of contribution were mapped by PwC to 'measurement categories' to determine the possible impacts of the contributions.

PwC sought to map the current reporting categories to the 'measurement categories' in order to:

- 'group activities with like impacts together';

- ‘identify contributions that may be a primary purpose of the club’; and
- ‘identify contributions that may not be incremental’.

Figure A-1 PwC mapping of reporting categories to measurement categories



Source: *Community Contributions Scheme Impact Analysis*, PwC, September 2017

Table A-1 shows PwC’s definition of the ‘measurement categories’ and the nature of activities and impacts associated with the ‘measurement categories’.

Social Return on Investment (SROI) analysis

In relation to the ‘social return on investment’ analysis PwC notes it ‘is a common way of quantifying impact. A best practice SROI analysis places a monetary value on a wide range of impacts (social, economic, health, and other) across the full range of stakeholders (individuals, relevant groups, government, the broader community, etc)’. PwC advised:

... to quantify the impacts we have mapped from the community contributions, we would ideally use an SROI analysis. However, conducting an SROI analysis requires conducting surveys and collecting

data from a wide range of beneficiaries, which was outside the scope of this task. We explored a number of ways to quantify impact, and utilising the SROI framework through publicly available proxies was determined to be the most realistic and practical.

We have investigated publicly available SROI assessments that map similar impacts to our measurement categories. Each of the categories has been assigned a SROI proxy that best quantifies the range of impacts applicable to that category.

According to PwC, the 'social return on investment' proxies consider impacts across the following four categories:

- Social – 'e.g. social connectivity, increased self-confidence';
- Economic – 'e.g. employment potential, productivity benefits';
- Health – 'e.g. improved physical and mental health, reduced stress'; and
- Other – 'e.g. environmental benefits, other community benefits'.

To quantify the impacts, the review used social return on investment studies to quantify the benefits each of these impacts would have on the community.¹⁶ Table 3-1 shows the description of the 'measurement categories' used by PwC for the purpose of its analysis, the expected impacts for each of the measurement categories and the 'social return on investment' proxy used for the purpose of its analysis.

Table A-1 PwC's definition of measurement categories and expected impacts

Measurement category	Description of measurement category	Type of expected impacts	SROI proxy
Activity	This is defined as contributions to organisations whose purpose is for groups of people to get together for a particular recreation activity, but one that is not physical in nature. This includes support of organisations such as car clubs, fishing clubs, toastmasters, bands and choirs, theatre groups and darts. This category is separate from sports because there is generally less health impacts because of the lack of associated increase in physical activity. Otherwise the impacts of this category are similar to those of community sports.	Increased social network Sense of belonging Improved mental health	1:1.91
Community sport	This is all contributions to sporting activities that are managed independently in the community (as opposed to within a club). These contributions are made to organisations and teams as well as scholarships or grants to individuals. These contributions are for a very wide variety of sports and include junior and school aged through to elite individuals or seniors.	Social connectedness Improved mental and physical health Increased well-being Employment and productivity outcomes Healthcare savings	1:4.4
Education	These are all contributions made to organisation with an education purpose (whether early years education, school or higher education institution). This excludes any contribution made with a specific sport or recreation purpose, so is just contributions that are assumed to be	Employment and earning potential Personal development Social connectedness	1:2.7

¹⁶ For example, the review used a study from the Sheffield Hallam University that quantifies the benefits from sporting activities as having a SROI of 1:1.91, i.e. for every \$1 spent on a sporting activity there is benefit of \$1.91.

Measurement category	Description of measurement category	Type of expected impacts	SROI proxy
	used for the organisations general education purpose and includes parents and friends associations. Adult education with a more recreation based purpose is included in activity.		
Gambling harm and substance abuse	This is defined as contributions that are made with the aim of reducing the impact or incidence of harm from gambling or substance abuse. This is mostly made up of contributions in the current reporting category of problem gambling but also includes any contributions that are addressing drug or alcohol abuse due to the similar impacts. Although this is a specific aim of social welfare that may have been able to be included in the broad category of social assistance, it is kept separate due to the specific nexus to the policy of the Scheme.	Improved relationships with family and friends Increased community safety and well-being Healthcare savings	1:1.79
Own event	This is expenditure made by the club to host events that are open to the community. Examples include sporting fetes, Christmas parties (not hosted for a particular charity) or hosting visiting art or cultural exhibitions.	Increased social network	-
Own maintenance	This is expenditure made by the club for the maintenance, upkeep and management of infrastructure, generally sporting fields and greens. To be eligible as a community contribution this infrastructure must be accessible to the public, but is generally club owned and operated. Expenditure includes utilities, wages for groundskeepers, ground vehicles and general repairs.	This acts as an enabler to achieving sporting impacts	-
Own team	Like community sport, this is contributions made for the purpose of supporting a sports team. However, this is distinguished from community sport because these contributions are administered within the club (as opposed to a lump sum to an external organisation) indicating that the team is managed internally. This category also includes sponsorship of a national professionalised league. Expenditure includes payments to coaches and individual players, medical expenses, team transport and consumables. These are separated from community sport because although the types of impacts are likely to be the same, the incremental and identified need considerations are different.	Social connectedness Improved mental and physical health Increased well-being Education Employment Healthcare savings	1:4.4
Religious / culture / community	This is contributions for organisations that are set up for a group of people to get together because of a shared culture, community, religion or profession. This is distinguished from activity for two reasons. Firstly, it is similar to activity but there is likely to be deeper connection and support benefits from a group that is defined by who they are, rather than a shared interest. Secondly these groups often conduct their own community or social welfare activities, so they are similar to social assistance, even though the primary purpose is membership based. However, compared to social assistance, there is likely to be direct benefits to members conducting the social work, distinguished from charities or non-profits with staff.	Increased social networks Increased self-confidence and self-esteem Reduced stress Reduced domestic violence Decreased chance of substance abuse and crime	1:3.5
Social assistance	This is contributions made to organisations whose main purpose to conduct charitable social assistance work (rather than primary purpose as being membership based). This is the most broad measurement category in terms of expected impacts because they will be so	Improved mental and physical health Reduction in crime Increased confidence / resilience Reduced suicide	1:3.23

Measurement category	Description of measurement category	Type of expected impacts	SROI proxy
	dependent on the type of work the particular organisation does.	Sense of belonging Earning potential Relationships	

Source: PwC - Community Contributions Scheme Impact Analysis, September 2017

Audit reports

Reports Published in 2017-18	
Report No. 04 – 2018	2016-17 Financial Audits – Computer Information Systems
Report No. 03 – 2018	Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson
Report No. 02 – 2018	ACT Government strategic and accountability indicators
Report No. 01 – 2018	Acceptance of Stormwater Assets
Report No. 11 – 2017	2016-17 Financial Audits – Financial Results and Audit Findings
Report No. 10 – 2017	2016-17 Financial Audits – Overview
Report No. 09 – 2017	Annual Report 2016-17
Report No. 08 – 2017	Selected ACT Government agencies' management of Public Art
Reports Published in 2016-17	
Report No. 07 – 2017	Public Housing Renewal Program
Report No. 06 – 2017	Mental Health Services – Transition from Acute Care
Report No. 05 – 2017	Maintenance of Selected Road Infrastructure Assets
Report No. 04 – 2017	Performance information in ACT public schools
Report No. 03 – 2017	2015-16 Financial Audits – Computer Information Systems
Report No. 02 – 2017	2016 ACT Election
Report No. 01 – 2017	WorkSafe ACT's management of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses
Report No. 11 – 2016	2015-16 Financial Audits – Financial Results and Audit Findings
Report No. 10 – 2016	2015-16 Financial Audits – Audit Reports
Report No. 09 – 2016	Commissioner for International Engagement – Position Creation and Appointment Process
Report No. 08 – 2016	Annual Report 2015-16
Report No. 07 – 2016	Certain Land Development Agency Acquisitions
Reports Published in 2015-16	
Report No. 06 – 2016	Management and administration of credit cards by ACT Government entities
Report No. 05 – 2016	Initiation of the Light Rail Project
Report No. 04 – 2016	The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme
Report No. 03 – 2016	ACT Policing Arrangement
Report No. 02 – 2016	Maintenance of Public Housing
Report No. 01 – 2016	Calvary Public Hospital Financial and Performance Reporting and Management
Report No. 10 – 2015	2014-15 Financial Audits
Report No. 09 – 2015	Public Transport: The Frequent Network
Report No. 08 – 2015	Annual Report 2014-15
Reports Published in 2015	
Report No. 07 – 2015	Sale of ACTTAB
Report No. 06 – 2015	Bulk Water Alliance
Report No. 05 – 2015	Integrity of Data in the Health Directorate
Report No. 04 – 2015	ACT Government support to the University of Canberra for affordable student accommodation
Report No. 03 – 2015	Restoration of the Lower Cotter Catchment
Report No. 02 – 2015	The Rehabilitation of Male Detainees at the Alexander Maconochie Centre
Report No. 01 – 2015	Debt Management

These and earlier reports can be obtained from the ACT Audit Office's website at <http://www.audit.act.gov.au>.