

MEDIA RELEASE**27 April 2018****ACT clubs' community contributions**

ACT Auditor-General Dr Maxine Cooper's report on **ACT clubs' community contributions** was today presented to the Speaker for tabling in the ACT Legislative Assembly.

ACT clubs are required by the *Gaming Machine Act 2004* to make community contributions from the revenue from the use of gaming machines. 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'.

Dr Cooper says 'there are no supporting objectives or guidance on how to interpret the *Gaming Machine Act 2004* 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'.

The audit calls for the ACT Government to clearly state what objectives it is seeking from community contributions and in doing so specify the nature and type of expenditure that may be claimed. 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.

Dr Cooper says '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'.

The Summary of the **ACT clubs' community contributions** audit, with audit conclusions, key findings and the six recommendations is attached to this media release.

Copies of **ACT clubs' community contributions: Report No. 5/2018**, are available from the ACT Audit Office's website www.audit.act.gov.au . If you need assistance accessing the report please phone 6207 0833 or go to 11 Moore Street, Canberra City.

EXTRACT OF SUMMARY CHAPTER

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 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. 2.45

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: 2.53

- 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. 2.55

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. 2.56

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. 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 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 3.11

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.

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] 3.63

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

4.37

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.

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

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.