

**2001**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CASINO CONTROL AMENDMENT BILL 2001**

**EXPLANATORY MEMORANDUM**

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# **Casino Control Amendment Bill 2001**

## **Outline and Policy Statement**

The purpose of the *Casino Control Amendment Bill 2001* is to correct a number of anomalies that have been discovered with the Principal Act, the *Casino Control Act 1988*.

A number of anomalies were realised following a Supreme Court case where disciplinary action proposed by the ACT Gambling and Racing Commission against the casino licensee was judged to be invalid.

The Supreme Court judgement (No. SC 458 of 2000) indicated that the provisions in the *Casino Control Act 1988* relating to the use of reasonable force were deeming provisions and therefore could not be breached. Disciplinary action could therefore not be taken against the casino licensee on this matter.

In addition, the judgement outlined that references to the casino licensee's responsibilities in conducting gaming did not necessarily include the actions of their agents and employees.

It was considered appropriate that amendments to the *Casino Control Act 1988* be made to ensure that regulatory control over the casino licensee was adequate and that the casino licensee took appropriate responsibility for the actions of its employees. It was considered important that the casino licensee had due regard for its patrons and took proper measures to protect their safety. This specifically related to the use of force only when necessary and reasonable as well as to ensure the proper conduct of casino games.

A number of other minor amendments have also been included which correct or clarify certain provisions of the *Casino Control Act 1988*.

The details of these amendments are outlined below.

## **Formal Clauses**

**Clauses 1, 2 and 3** are formal requirements and refer to the short title of the Bill, its commencement and identifies the Principal Act as the *Casino Control Act 1988*.

## **Definitions**

**Clause 4** amends the definition of “excluded person” in section 3 of the Principal Act by repealing the reference to section 65 and substituting section 64. This amendment corrects a drafting error in the Principal Act.

## **Designation of the casino**

**Clause 5** repeals section 4 of the Principal Act and substitutes a new section that provides for the Minister, in writing, to designate an area to be the casino. This designation is a disallowable instrument that must be notified and presented to the Legislative Assembly.

This amending provision is mainly technical in nature as it changes the method of designation of the casino from a Regulation made by the Minister to a disallowable instrument made by the Minister. Regulations are usually made by the Executive and it was considered more appropriate that the Minister undertake this task by disallowable instrument.

## **Casino licensee etc must comply with code of practice**

**Clause 6** repeals section 45A of the Principal Act and provides in the substituting sub-section (1) for the casino licensee to comply with the code of practice (if any), which is prescribed under the *Gambling and Racing Control Act 1999*. Sub-section (1) preserves the content of the repealed section 45A of the Principal Act.

Sub-section (2) requires that an agent or employee of the casino licensee must comply with the code of practice to the extent that the code applies to the agent or employee.

## **Minister may suspend or cancel casino licence in public interest**

**Clause 7** repeals section 48A of the Principal Act and recasts it in a more appropriate form to clarify the natural justice provisions. It separates Ministerial action against the casino licence from the disciplinary action that the Commission may take against the casino licensee.

The following sub-sections are substituted:

- (a) sub-section (1) provides for the Minister, if satisfied in the public interest, to either suspend the casino licence for a period considered appropriate, or to cancel the casino licence.

- (b) sub-section (2) requires the Minister, if action to suspend or cancel the casino licence is being considered, to write to each interested person (as defined in sub-section (7)) and advise that the proposed action is being contemplated, why the action is being contemplated and providing 21 days from the receipt of the notice to respond to the Minister about the matters raised.
- (c) sub-section (3) requires that the Minister, in deciding to take action to suspend or cancel the casino licence, must consider any response provided under sub-section (2).
- (d) sub-section (4) provides for the Minister, if having suspended the casino licence, to reduce the period of suspension.
- (e) sub-section (5) requires the Minister, if action to suspend or cancel the casino licence or to change the period of suspension is to be taken, to write to each interested person (as defined in sub-section (7)).
- (f) sub-section (6) provides that any action taken by the Minister under sub-sections (1) or (4) takes effect when written notice of the action is received by the casino licensee or at a later date if specified in the notice.
- (g) sub-section (7) defines "interested person" to be an owner of the casino, the casino lessee and the casino licensee.

#### **Grounds for disciplinary action**

**Clause 8** repeals existing sub-paragraph 48B(b)(iii) of the Principal Act and substitutes "any other agent or employee of the casino licensee". This corrects a minor anomaly in the Principal Act and allows for the person in charge of the casino (referred to in sub-paragraph 48B(b)(ii) of the Principal Act) to also be an agent or employee of the casino.

Paragraph (ba) is inserted as a new ground for disciplinary action. It provides that a ground exists if an agent or employee of the casino (including an agent or employee that is acting, or purporting to act, under sub-section 70F(1) or section 110 of the Principal Act) uses unlawful force against, or unlawfully detains, a person who is in, or seeks to enter, the casino.

Paragraph (bb) is also inserted as a new ground for disciplinary action. It provides that a ground exists if the casino licensee fails to comply with a direction included in a censure within the time specified in the censure. This was an omission from the Principal Act and is included for completeness.

#### **Administrative clause**

**Clause 9** is an administrative matter and provides for the renumbering of amended section 48B when the Principal Act is next republished.

#### **Procedure for disciplinary action etc by commission**

**Clause 10** repeals section 49 of the Principal Act and recasts it in a more appropriate form to clarify the natural justice provisions. It separates the disciplinary action that may be taken by the Commission from action that may be

taken by the Minister against the casino licence. The following sub-sections are substituted:

- (a) sub-section (1) requires the Commission, if disciplinary action is being considered, to write to each interested person (as defined in sub-section (8)) and advise that the proposed action is being contemplated, why the action is being contemplated and providing 21 days from the receipt of the notice to respond to the Commission about the matters raised.
- (b) sub-section (2) requires that the Commission, in deciding to take disciplinary action, must consider any response provided under sub-section (1).
- (c) sub-section (3) provides for the Commission to take disciplinary action outside sub-section (1) if the casino licensee has failed to comply with a direction under a censure.
- (d) sub-section (4) provides that if a member of the Commission has taken part in a decision to issue a censure, that member is not prevented from taking part in a decision about whether to take disciplinary action against the casino licensee for failure to comply with a direction included in the censure.
- (e) sub-section (5) provides that any disciplinary action taken by the Commission can be reduced in severity by the Commission at a later date.
- (f) sub-section (6) requires the Commission, if disciplinary action is to be taken or the severity of disciplinary action is reduced under sub-section (5), to write to each interested person (as defined in sub-section (8)).
- (g) sub-section (7) provides that any disciplinary action taken by the Commission or any action taken to reduce the severity of disciplinary action under sub-section (5), takes effect when written notice of the action is received by the casino licensee or at a later date if specified in the notice.
- (h) sub-section (8) defines "interested person" to be an owner of the casino, the casino lessee and the casino licensee.

#### **Approved system of controls and procedures must be implemented**

**Clause 11** repeals the existing heading of section 60A of the Principal Act and substitutes "Approved system of controls and procedures". This amendment more accurately reflects the content of section 60A.

**Clause 12** repeals existing sub-section 60A(4) of the Principal Act and substitutes:

- (a) sub-section (4) provides that the casino licensee must comply with the approved system. This sub-section provides for a criminal sanction for breaches including a maximum penalty of 50 penalty units. This is consistent with the penalty provisions of other sub-sections and with the penalty provision that was provided in sub-section 60A(4) of the Principal Act that was replaced.
- (b) sub-section (5) provides that an agent or employee of the casino licensee must also comply with the approved system to the extent that it applies to the agent or employee.

### **Casino licensee may notify persons of exclusion**

**Clause 13** replaces in sub-section 69(1) of the Principal Act “the person for the time being in charge” with “an agent or employee” in reference to the casino. This allows the more practical situation of an agent or employee of the casino being able to quickly exclude a person from the casino rather than waiting for the person in charge of the casino to undertake the task.

### **Notification of exclusion by the commissioner of police or the commission**

**Clause 14** repeals the existing heading of section 70A of the Principal Act and substitutes “Exclusion by chief police officer or commission”. This amendment more accurately reflects the content of section 70A and updates the reference to the most senior police officer.

**Clause 15** repeals existing sub-section 70A(1) of the Principal Act and recasts it in a more appropriate form to clarify its content. It also updates the reference to the most senior police officer. Sub-section 70A(1) provides that the Chief Police Officer or the Commission may, by providing written notice to the casino licensee, exclude a person (called “the subject”) from entering or remaining in the casino indefinitely or for a stated period.

**Clause 16** inserts sub-section 70A(4) which provides for the Commission, in deciding to issue or revoke a notice under sub-section (1), to ask the subject or anyone else to provide the Commission with any information relevant to the making of the decision. This power is provided irrespective of whether the Commission’s request for information is as a result of an application under section 70B or 70C. Sub-section 70A(4) allows the Commission to investigate whether a person (such as a problem gambler or a criminal) should be allowed back into the casino and includes the power to seek advice from other persons (such as professional counsellors or the police).

### **Conduct of Gaming**

**Clause 17** replaces in section 74 of the Principal Act “casino licensee” with “casino licensee, or an agent or employee of the casino”. This ensures that there is no doubt that an agent of the casino and casino employees must also abide by the legislative requirements for the conduct of gaming. It also clarifies the grounds for disciplinary action against the casino licensee if an employee or agent breaches the Act.

### **Detention of suspected person**

**Clause 18** repeals paragraph 110(1)(b) of the Principal Act and substitutes “any other agent or employee of the casino licensee”. This corrects a minor anomaly in the Principal Act and allows for the person in charge of the casino (referred to in

paragraph 110(1)(a) of the Principal Act) to also be an agent or employee of the casino.

**Clause 19** substitutes in sub-section 110(2) of the Principal Act “may” for “must”. This strengthens the conditions under which a person can be detained under sub-section (2) and clarifies the intent of the sub-section.

### **Transitional**

**Clause 20** provides for a new section to the Principal Act, section 136, which is mainly technical in nature and provides for the transitional arrangements for the amendments to section 4 of the Principal Act. The new provisions provide the following transitional arrangements:

- (a) sub-section (1) provides for any designation that was in effect immediately before the commencement date of the *Casino Control Amendment Act 2001*, continues to be in effect, on and after that date, under section 4 as substituted by this amendment Act.
- (b) sub-section (2) provides that a designation did not cease to be in effect merely because section 4 of the Principal Act was amended before the commencement date of the *Casino Control Amendment Act 2001*.
- (c) sub-section (3) provides that this transitional section (section 136 of the Principal Act) expires on the commencement date of the *Casino Control Amendment Act 2001*. The provisions of this section will have immediately served their purpose upon the commencement of the *Casino Control Amendment Act 2001* and would then be no longer required.
- (d) sub-section (4) provides that “commencement date” in this sub-section means the commencement of the *Casino Control Amendment Act 2001*. It is provided that “designation” means a designation under section 4 that took effect on or after 12 December 1988 (the commencement of the Principal Act) and before the commencement date (as defined above).

### **Revenue/Cost Implications**

The Bill will not have any revenue or cost implications for the ACT Government or the casino licensee.