

**2004**

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

**GAMING MACHINE BILL 2004**

**EXPLANATORY STATEMENT**

Circulated by the authority of  
Ted Quinlan MLA  
Minister for Sport, Racing and Gaming

## **BACKGROUND**

Paragraph 6(2)(f) of the *Gambling and Racing Control Act 1999* provides for the ACT Gambling and Racing Commission (the Commission) to review the ACT's legislation and policies related to gaming and racing as part of its functions. In a letter dated 20 December 2000, the then Chief Minister requested that the Commission review the *Gaming Machine Act 1987* (the Act) to ensure that its provisions meet the needs of the Government and the ACT community.

In reviewing such legislation, sub-section 8(1) of the *Gambling and Racing Control Act 1999* requires the Commission to consult the community.

The Commission developed a *Discussion Paper* in which it identified a number of issues that could be addressed in the review of the Act. It then undertook a period of public consultation on the Act from 3 March 2001 to 17 April 2001. During this consultation period the Commission circulated the *Discussion Paper* to specific interest groups and industry representatives. An advertisement was also placed in *The Canberra Times* on Saturday, 3 March 2001, which was supported by a media release and media interviews by the Commission Chair. A copy of the *Discussion Paper* was also placed on the Commission's website.

As result of this first period of community consultation, the Commission received 12 submissions in total.

Following consideration of these public submissions, the Commission developed a draft Policy Paper that contained a number of recommendations concerning the regulation of gaming machines in the ACT. The Commission subsequently publicly circulated this draft Policy Paper as a second stage of community consultation. This period of community consultation occurred from 7 December 2001 to 25 January 2002.

During the second period of consultation the draft Policy Paper was provided to specific interest groups and industry representatives. In addition, an advertisement was placed in *The Canberra Times* on 8 December 2001 and was again supported by a media release and media interviews by the Commission Chair. A copy of the draft Policy Paper was placed on the Commission's website as well as the 'Whole of Government' community consultation website. The Commission subsequently received 10 submissions in total.

On 28 October 2002, the Commission issued its final Policy Paper on the outcomes and recommendations of the review of the Act.

On 23 October 2003, the Government tabled its response to the Commission's review of the Act. Of the 49 recommendations put forward by the Commission, the Government fully supported 32, while seven were supported with some qualification. Only ten were not supported as it was considered that they were either too onerous on gaming machine licensees or not in the best interests of the industry overall.

This proposed legislation will replace the existing legislation by giving effect to the Government's response to the Commission's recommendations. Additionally, the

opportunity has been taken to update the legislation to provide for other drafting and minor amendments of a technical nature to ensure that the ACT's gaming machine legislation is effective in regulating gaming machine operations in the Territory.

This Bill also reaffirms that the Act will continue as the primary legislation for controlling all aspects of gaming machine operations in the ACT and that the Commission will remain responsible for licensing and regulating gaming machine operations in the ACT.

### **Penalty Provisions**

In this proposed legislation the penalties generally correspond to those in the superseded gaming machine legislation. Most offences are now offences of strict liability in accordance with current legal policy for regulatory offences with small or moderate penalties. This means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. The potential effect on the government's harm minimisation strategies and, as a consequence, the potential effect on club patrons, gaming machine players and problem gambling of a failure by a gaming machine licensee (or any other person given authority under a licence) to adequately fulfil the requirements under that licence or authority are the justification for strict liability provision. Where appropriate the Bill adds specific additional defences relevant to individual provisions in the Act.

As outlined under section 23 of the Criminal Code, a strict liability offence means that there are no fault elements for any of the physical elements of the offence. This means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code provides that other defences may still be available for use in strict liability offences.

It should also be noted that strict liability offences do not have a mental element, termed 'mens rea'. However, the 'actus reus', the physical actions, do have a mental element of their own, for example, voluntariness. For that reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

### **Revenue/Cost Implications**

The Gambling and Racing Commission will absorb any costs associated with the introduction and implementation of the new legislation and for providing any education programs and information sessions required to assist industry adjust to the new legislation.

## **Notes on Specific Provisions**

### **PART 1 PRELIMINARY**

#### **1 Name of Act**

This section provides that the name of the Act is the *Gaming Machine Act 2004*.

#### **2 Commencement**

This section provides that the Act commences on a day fixed by the Minister by written notice and may apply differently to different provisions.

#### **3 Dictionary**

This section provides that the dictionary at the end of the Act is part of the Act.

#### **4 Notes**

This section confirms that an explanatory note in the Act does not form part of the Act.

#### **5 Offences against Act—application of Criminal Code etc**

This section provides that other legislation applies in relation to offences under the Act, such as the Criminal Code.

### **PART 2 LICENCES**

#### **Division 2.1 Definitions and important concepts**

#### **6 Definitions for pt 2**

This section provides that for the purposes of this part the terms ***initial licence application*** and ***licence amendment application*** refer to those terms used in section 9.

#### **7 Meaning of *influential person* for Act**

This section outlines that an ***influential person***, for a corporation, means an executive officer of the corporation; a related corporation; an executive officer of a related corporation; an influential owner (as defined); and also includes any person who, though not already mentioned, can exercise as much influence over the actions of the corporation as someone that has been specifically mentioned.

This definition covers all persons that may influence the operations of an entity whether through official or formal means or otherwise.

In this section:

***influential owner*** of a corporation means a person who, whether directly or through intermediary corporate ownership or nominees can control 5% of the votes at an annual general meeting of the corporation or can control the appointment of a director of the corporation.

***related corporation*** means a related body corporate under the Corporations Act.

## **8      What licence authorises**

This section provides that a licence authorises the licensee:

- to acquire and dispose of gaming machines; and
- to install gaming machines on the licensed premises under the licence; and
- to operate the gaming machines stated in the licence on the licensed premises.

However, a licence does not authorise the licensee to operate gaming machines on more than one licensed premises under the licence. This means that a gaming machine licence is venue specific and only applies to one premises.

The regulations may prescribe times when licensees must not operate a gaming machine. This allows for general restrictions on the operation of gaming machines such as for harm minimisation purposes.

A licence may authorise the use of only class B and class C gaming machines only.

## **9      Kinds of applications under pt 2**

A person may apply to the commission for a licence (an ***initial licence application***) or amendment of a licence (a ***licence amendment application***).

## **10     Applications to be dealt with in order of receipt**

This section applies to initial licence applications or licence amendment applications if the application is to increase the number of gaming machines authorised to be operated under the licence. It provides that these applications must be dealt with in order according to when each application was received by the commission. If an application does not contain adequate information to allow the commission to decide the application, the critical receipt date is when that adequate information for the application is given to the commission.

However, this section does not apply to an application if the applicant has been authorised to operate 1 or more gaming machines because of the application; or the application has been refused. This provides that if one or more gaming machines are allocated pursuant to that application, that application is no longer under consideration or contention for any further allocation of machines.

## **Division 2.2 Issue of licences**

### **11 Initial licence application**

Subsection (1) provides the detail required by an initial licence application. The licence must:

- be in writing signed by the applicant; and
- state the applicant's name and address; and
- if the applicant is a corporation, state the name and address of each director of the corporation; and
- state the address and block and section number of the premises proposed to be licensed; and
- state the class, number, type, coin denomination and percentage payout of gaming machines in relation for which the licence is sought; and
- for a corporation, the licence must name each influential person for the corporation and the person's relationship with the corporation; and
- be accompanied by each of the required documents for the application.

Subsection (2) provides the detail of each ***required document*** to be lodged with every initial application. Required documents are a social impact assessment, a scaled plan of the proposed licensed premises (or part of the premises) showing where the gaming machines are to be installed, a copy of the licensee's rules to control the operation of gaming machines and a copy of the licensee's control procedures to control the operation of gaming machines. The regulations may provide for any other document as part of the application.

Subsection (3) provides the detail of each **additional required document** for an application by a club. These documents include a copy of the constitution, a list of names and addresses of current members, the grounds on which a club claims to be an eligible club and evidence that the members have voted in favour of the installation of gaming machines at a ballot conducted in accordance with the regulations. The ballot is to ensure that the members have been honestly consulted and their views obtained in a proper and transparent manner.

Subsections (4) and (5) provide that the regulations may prescribe other information or documents (including information or documents verified in a particular way) required in an application; and that the commission need not decide the application if the application does not include information or a document required under this section or verified in the required way. This ensures that all required information is available to the commission before making a decision.

### **12 Issue of licences**

This section applies to an initial licence application under section 11 and requires that the commission must issue a licence to the applicant provided:

- the applicant is an eligible person (see section 20 for individuals or section 21 for corporations);

- for an application by a club—a majority of the voting members of the club who voted in a ballot conducted under the regulations voted in favour of the operation of gaming machines on club premises; and
- the commission is satisfied about each additional mandatory requirement under section 13 in relation to the application; and
- authorising the use of the number of gaming machines to be authorised by the licence would not contravene section 35 (concerning the limit or cap on the maximum number of machines that can be approved in the Territory).

Subsection (3) provides that the commission may refuse to issue a licence if a ground specified under section 14 exists.

Subsection (4) provides that the licence may be conditional.

Subsection (5) provides that in deciding the number and kind of gaming machines to be allowed under a licence, the commission must consider the following:

- the size and layout of the premises the application relates to;
- the size and layout of the proposed gaming area;
- for an application by a club, the number of club members worked out under the regulations, the ratio of club members to the number and kinds of gaming machines held by the licensee and the extent to which the club contributed, or is likely to contribute, to and support and be beneficial to the community;
- the social impact assessment for the application and any submission made on the assessment within the 6-week comment period (section 19 refers);
- the restrictions on the number and type of machines provided under section 16.

### **13 Additional mandatory requirements for issue of licence**

This section provides that each of the following is a prescribed requirement under section 12(2)(c) for an application:

- for a corporation (including a club)—the rules and control procedures of the corporation to control the operation of gaming machines are adequate to control that operation;
- the size and layout of the proposed gaming area of the premises to which the application relates are suitable for the installation of gaming machines; and
- the applicant is likely to comply with this Act (including any licence issued to the applicant). This provision allows the commission to take into account any previous regulatory history of the applicant.
- if the applicant holds an on licence, the premises to which the application relates are used by people mainly for drinking alcohol. This provision ensures that applicants operate taverns or bars and not other premises that hold an on licence for entertainment or other purposes such as nightclubs, restaurants or motels.
- the social impact assessment for the application and any submissions received about the assessment within the 6 week comment period must be considered by the commission and the commission considers it appropriate to issue the licence.

Subsection (2) provides that in deciding whether a proposed gaming area is suitable for the installation of gaming machines, the commission must consider the safety and comfort of, and harm minimisation strategies for, patrons. This provision ensures that such matters as adequate access to emergency exists and toilets is maintained, there is a safe and comfortable distance between banks or rows of machines to allow patron movement and that the location of areas that may be frequented by children or have cash facilities located are adequately separated by distance or partitions.

#### **14      Grounds for refusing initial licence application by club**

This section provides that the commission may refuse to issue a gaming machine licence to an applicant that is a club if it is satisfied that:

- payments for the rental or lease of the club's premises are unreasonable or are related to the level of gaming machine performance; or
- someone, other than the lessor or leasing agent, will receive a payment or benefit during or at the end of a lease, agreement or arrangement entered into by the club for its premises; or
- the election of a member of the club's management committee or board has been decided, controlled or influenced in a significant way or to a significant degree, by people who are not voting members of the club or by only some voting members of the club; or
- the voting members of the club, taken as a group, do not have complete control over the election of all members of the club's management committee or board; or
- each voting member of the club does not have an equal right to elect people, and to nominate or otherwise choose people for election, to the club's management committee or board; or
- if the club does not own its premises - an executive officer or employee of the club is also the club's lessor, or an associate of the club's lessor; or
- an executive officer or employee of the club is a creditor, or an associate of a creditor, of the club; or
- the club's management committee or board does not for any reason have complete control over the club's business or operations, or a significant aspect of the club's business operations; or
- the club is being, or may be, used as a device for individual gain or commercial gain by someone other than the club.

These provisions are intended to ensure that the control of a club is open and transparent and that the voting members can fairly be involved in the management decisions of the club. They provide that individuals cannot gain or profit from special or favourable deals with a club.

#### **15      Form of licence**

This section requires that a licence must state the number and kind of gaming machines that the licensee is allowed to operate at the stated premises.

The licence must state the premises and each part of the premises (gaming areas) where the licensee is allowed to operate the gaming machines.

The licence must also include a schedule that contains the serial number of each gaming machine authorised to be operated under the licence.

The regulations may prescribe other requirements in relation to the form of a licence.

## **16      Restrictions on what commission may authorise—non-clubs**

This section applies if the commission issues a licence to an initial licence applicant that is not a club.

The commission may issue a licence that authorises the use of no more than 10 class B gaming machines, and no class C gaming machines, if a general licence applies to the premises to which the application relates and the premises have at least 12 rooms or more that are used for residential accommodation for lodgers or guests.

The commission may issue a licence that authorises the use of no more than 2 class B gaming machines, and no class C gaming machines, if a general licence applies to the premises to which the application relates but the premises have fewer than 12 rooms (including no rooms) that are used for residential accommodation for lodgers or guests.

The commission may issue a licence that authorises the use of 2 class B gaming machines, and no class C gaming machines, if an on licence applies to the premises to which the application relates.

## **17      No available gaming machines**

This section provides in the event the commission would have issued a licence to the applicant if gaming machines were available, but the maximum number of gaming machines allowed on all licensed premises in the ACT (as specified in section 35) has been reached.

In that event, the commission must tell the applicant that the maximum number of gaming machines allowed on all licensed premises in the ACT has been reached and give the applicant a certificate (*a certificate of suitability*) that states that the commission would otherwise have issued a licence to the applicant for the number of gaming machines stated in the certificate.

### **Division 2.3   Social impact assessments**

## **18      Social impact assessment**

This section explains that a social impact assessment is a written assessment of the likely economic and social impact of the operation of gaming machines under the proposed licence or the licence as proposed to be amended.

A social impact assessment is a requirement to ensure that all the consequences of locating gaming machines (or increasing the number of machines) in an area are thoroughly investigated and assessed before a decision is made to allow the machines

to be operated in that location. The assessment is to take account of both the likely social and economic impact of the operation of the gaming machines.

By way of example, a social impact assessment is required before a licence is first granted, if the number of machines to be used at premises is proposed to be increased or if the premises where the machines are operated is to change because the machines are proposed to be moved to different premises.

This section provides that the regulations may make provision in relation to social impact assessments, including, but not limited to, the requirements of what must be satisfied, matters to be assessed or addressed and information contained in a social impact assessment.

## **19 Publication of social impact assessments by applicant**

This section provides that the social impact assessments provided to the commission during the course of an application must be made available for public inspection at the commission's premises during business hours for a period of 6 weeks. This allows affected parties or the community to view the impact assessment and comment on the proposal or the content of the assessment.

This section provides that an applicant for a gaming machine licence must advertise its intention to apply for a licence in a local ACT newspaper and that the advertisement must contain certain information as to the availability of the social impact assessment for viewing and comment. The applicant must provide a copy of the advertisement and evidence of the date of publication to the commission to enable the commission to verify the content of the advertisement. The 6-week comment period commences when the commission receives the social impact assessment and the copy of the advertisement. The commission must make the social impact assessment available for inspection by members of the public during ordinary business hours during the 6-week comment period.

This section also provides that the commission must not make a decision on the application until the 6-week comment period has elapsed. This will ensure that all comments lodged within the 6 weeks will be considered by the commission.

## **Division 2.4 Eligible people**

### **20 Eligibility of individuals**

This section provides that an individual, other than an applicant for a licence, is an eligible person if there is not a disqualifying ground in relation to the individual

If an individual is an applicant for a licence, the person is an eligible person if the individual is an adult and the individual holds a general licence or an on licence, and has held that particular kind of licence for a continuous period of at least 1 year before the day the individual applies for a gaming machine licence. In addition, there must not be any disqualifying grounds in relation to the individual.

Subsection (3) provides that an individual is not eligible due to a disqualifying ground if the individual has been convicted, or found guilty, within the previous 5 years,

whether in the ACT or elsewhere, of an offence involving fraud or dishonesty; or is an undischarged bankrupt or, at any time in the last 5 years was an undischarged bankrupt.

This section also provides that an individual is not eligible if in the last 5 years they were involved in a corporation that became the subject of a winding up order or where a controller or administrator was appointed.

However, subsections (4) and (5) provide that the commission may decide that an individual is eligible under this section even though there is a disqualifying ground if it is satisfied that the operation of gaming machines by the individual would not adversely affect the public and that it was in the public interest that the individual be treated as an eligible person. These provisions allow some discretion by the commission in cases that are covered under subsections (1), (2) or (3) but the circumstances are such that it would be harsh or unreasonable to consider the individual as not eligible.

## **21 Eligibility of clubs and other corporations**

This section provides that a corporation is an eligible person if:

- each executive officer and influential person of the corporation is an eligible person; and
- for a club—it is an eligible club; or
- for a corporation that is not a club—the corporation holds a general licence or an on licence, and has held a licence of that kind for a continuous period of at least 1 year before the day it applies for a gaming machine licence; and
- the corporation is not the subject of a winding up order, and has not been the subject of a winding up order in the last 3 years; and
- a controller or administrator has not been appointed for the corporation in the last 3 years.

However, subsections (2) and (3) provide that the commission may decide that the corporation is eligible under this section if it is satisfied that the operation of gaming machines by the corporation would not adversely affect the public and that it was in the public interest that the corporation be treated as eligible. These provisions allow some discretion by the commission in cases that are covered under subsection (1) but the circumstances are such that it would be harsh or unreasonable to consider the corporation as not eligible.

## **Division 2.5 Licence amendments**

### **22 Licence amendment applications**

Subsection (1) provides the purposes for which a licensee may apply to amend a licence. A licensee may apply in writing to increase or reduce the number of licensed gaming machines allowed under the licence; or to change the licensed premises, whether by changing a part of the premises where the licensee is allowed to operate machines or by moving the gaming machines to different premises or whether to

change operational matters on a gaming machine such as the percentage payout, the basic stake denomination or the kind of machine licensed. In addition, any change to the information mentioned in the schedule to the licence is also included as a licence amendment.

Subsection (2) provides what documentation or other information that must accompany the application. If an application is for a change to licensed premises, it must be accompanied by a plan relating to the part of the premises where the machines are to be installed. An amended gaming machine licence in relation to an increase in the number of machines or moving to different premises must be accompanied by a social impact assessment.

This subsection also allows the commission to require other information or documentation that is relevant to the application.

### **23      Contents of licence amendment applications**

This section explains the detail and other information required to be included for the purposes of a licence amendment application to the commission.

It provides that the licence amendment application must:

- be in writing;
- set out the proposed amendment; and
- explain why the amendment is being sought.

The regulations may require an application to include particular information or be accompanied by particular documents.

The commission may not decide an application if the necessary information or documentation has not been provided.

### **24      Substantive licence amendments**

This section applies if a licensee has applied under section 22(1)(a) or 22(1)(b) for an amendment of the licence to increase the number of gaming machines allowed under the licence or to move the gaming machines to different premises respectively.

The section does not apply, however, to an amendment to temporarily move gaming machines that will not be operated in the different premises if there is a good reason for the temporary move. A good reason may be that there are renovations going on at the original premises and the machines need to be safely stored somewhere else.

The section details the matters that the commission must consider in determining if an applicant is eligible for an increase in the number of gaming machines or is eligible to move the gaming machines to different premises.

The commission must amend the licence if the application:

- by a club has indicated that a vote of the members has taken place in accordance with the ballot requirements under the regulations. This vote

ensures that the members are aware and support the application to amend the licence;

- in relation to an application to increase the number of gaming machines:
  - the commission is satisfied with the size and layout of the premises where the machines are to be located;
  - the maximum number of machines allowed on all licensed premises under section 35 has not been exceeded;
  - if the licensee is a club, the number of members worked out in accordance with the regulations is sufficient to justify the number of machines sought. This ensures that the membership numbers are fairly calculated and that there is sufficient demand for the additional machines.
  - if the licensee is a club, the extent to which the club has contributed to or is likely to make community contributions. Past allocations as well as budgeted future contributions can be taken into account.
- in relation to an application to move to new premises, the size and layout of the new premises is adequate.
- the social impact assessment and any submissions received during the 6-week comment period;
- there is no outstanding tax or fee under a gaming law due to the Territory;

Subsection (4) provides that in relation to an application to increase the number of gaming machines the commission may amend the licence by specifying a lower number of machines than the number sought in the application based on information contained in the social impact assessment or in any submission made during the 6-week comment period. In making such a decision, the commission must be satisfied that the new number of machines approved is appropriate. A lower number of machines may be approved if a lower number is necessary to avoid a contravention of section 35 (maximum number of machines allowed).

## **25 Technical licence amendments**

This section applies if a licensee has applied under section 22(1)(a) to reduce the number of machines, 22(1)(b) to change a gaming area, 22(1)(c), (d), (e) or (f) for an amendment to the licence to change the percentage payout of a licensed gaming machine used under the licence; or to change the basic stake denomination of a licensed gaming machine used under the licence; or to change the kind of a licensed gaming machine used under the licence or to amend the schedule to the licence respectively. The commission must consider that the change to the gaming machine is technically suitable having considered any technical evaluation of the machine.

In relation to deciding whether a gaming area is suitable for installation of gaming machines, the commission must consider the safety, comfort of and harm minimisation strategies for patrons.

## **26      Temporary licence amendment**

This section applies if a licensee has applied under section 22 for an amendment to the licence to change the licensed premises, whether structurally or by moving the gaming machines to different premises. The gaming machines need to be moved from the licensed premises for a good reason, and if the amendment is approved, the gaming machines are only to be moved to different premises temporarily and the gaming machines are not to be operated in the different premises.

A good reason may be that there are renovations going on at the original premises and the machines need to be safely stored somewhere else.

## **27      Request for return of licence**

This section applies if the commission proposes to amend a licence under this division and requires the commission to give the licensee written notice of the proposed amendment and to ask for the licence to be returned to the commission for amendment.

The licence can only be amended if the licensee forwards the existing licence to the commission or has told the commission of the licence's loss or destruction as required by section 38 of this Act.

## **28      Commencement of amendments**

This section requires that if the commission amends a licence under section 24, section 25 or section 26, the licence as amended must state the date the amendment is to commence.

## **29      Revocation of uncommenced licence amendments**

This section provides that the commission may revoke an amendment under section 24 or section 25 where the amendment does not commence within a reasonable time as considered by the commission.

The commission is required to give written notice to that effect to the licensee indicating that it may revoke the amendment if, after considering any submissions made within a 3-week period from the date of the notice, the commission is satisfied on reasonable grounds that the licensee has not implemented the changes authorised by the amendment.

## **Division 2.6   Transfer and surrender of licences**

### **30      Definitions for div 2.6**

This section provides that for the purposes of this division the terms *current licensee* and *prospective licensee* refer to those terms used in section 31(1).

### **31 Application for transfer of licence**

This section provides that a person (the *prospective licensee*) may apply to the commission for the transfer of a licence in relation to premises from another licensee (the *current licensee*).

An application for the transfer of a licence must:

- be in writing signed by the applicant; and
- state the full name and address—
  - for an application by an individual—of the applicant; and
  - for an application by a corporation—each executive officer of the corporation; and
- must be accompanied by:
  - a signed consent to transfer by the current licensee; and
  - anything else prescribed under the regulations.

### **32 Transfer of licence**

This section provides that the commission may, on application under section 31, transfer a licence if::

- the licence is not suspended; and
- a disciplinary notice has not been given in relation to the licence; and
- the prospective licensee is a licensee or has a certificate of suitability; and
- if the prospective licensee is a club—at a ballot, a majority of the voting members of the club who voted in the ballot conducted under the regulations voted for the transfer; and
- the prospective licensee would be issued an initial licence if an application was lodged; and
- if the current licensee is a club—at a ballot, a majority of the voting members of the club who voted in the ballot conducted under the regulations voted for the transfer; and
- the current licensee has met all requirements under section 33 relating to the obligations of providing the commission certain documents or payments.

The ballot of members of both clubs ensures that all members are made aware of the proposal and that a majority of members of each licensee are in favour.

Upon transfer, the commission must ensure that the prospective licensee (the new licensee) receives the licence and the machine access register as required under section 57 of the Act.

### **33 Current licensees obligations on proposed transfer of licence**

This section provides that if the commission proposes to transfer a licence, the current licensee must provide to the commission:

- the licence; and
- the current licensee's machine access register; and
- the accounts kept by the current licensee in connection with the licence that relate to money taken during the month in which the transfer is made; and
- any other accounts kept in connection with the licence under that section that the commission requires; and
- any outstanding amount payable by the licensee under this Act.

### **34      Surrender of licences**

This section applies to a surrender of a licence and only applies if the licensee does not owe the Territory an amount under this Act.

The licensee may surrender the licence by:

- giving the commission in writing that the licensee surrenders the licence; and
- if the licensee is a club, either:
  - including evidence that a majority of the voting members of the club who voted in a ballot conducted under the regulations voted in favour of the club surrendering the licence; or
  - including evidence that a vote would not be practical in all the circumstances, if, for example, where all memberships have expired and the club does not propose to continue operating; and
  - returning the licence to the commission.
- The surrender of the licence takes effect 4 weeks after the date of the notice given to the commission under subsection 2(a), or on a later date stated in the notice.

This section allows a club that has ceased to operate, or is not viable to continue to operate, to surrender its licence by agreement of members or by the directors or other persons responsible for club operations (such as an administrator) making the decision if it is not practical to seek the views of the members. If a club were in an unsound financial position, it would not be viable to conduct a ballot of the members if the club was to cease operations.

### **Division 2.7   Restriction on gaming machine numbers**

#### **35      Maximum number of gaming machines allowed**

This section provides that the maximum number of gaming machines allowed on all licensed premises in the ACT is 5200.

However, the Minister may alter this number by declaring in writing a new maximum number. In making a declaration, the Minister must take into account the commission's recommendation under section 36.

A declaration is a disallowable instrument. A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

This provision allows flexibility in setting the maximum number of gaming machines in the Territory with the appropriate safeguards of the commission's recommendations as well as scrutiny of the Legislative Assembly.

### **36 Minister must take into account commission's recommendation**

This section provides that the Minister may make a declaration under section 35 only if the Minister has asked the commission to make written recommendations to the Minister about the maximum number of gaming machines allowed on all licensed premises in the ACT, and the Minister has taken the recommendations into account.

Subsection (2) provides that the commission may make recommendations to the Minister at any time about the maximum number of gaming machines allowed on all licensed premises in the ACT and must make a recommendation to the Minister if asked to do so.

In making its recommendations to the Minister under this section, the commission must have regard to, but is not limited to, the following:

- the use on licensed premises of existing gaming machines;
- the public demand for gambling in the community;
- the incidence of problem gambling in the community and the availability of support services for problem gamblers.

This provision ensures that any change in the maximum number of gaming machines permitted in the Territory will be properly investigated by the commission to make sure that the proposed maximum level is appropriate.

## **Division 2.8 Gaming machine licences**

### **37 Register of licences**

This section requires that the commission keep a register of licences and enter in the register details of the following:

- the issue, amendment or transfer of a licence;
- the suspension or cancellation of a licence; and
- any other details prescribed under the regulations.

This provision ensures that up to date information on licensees is always available.

### **38 Issue of copy of licence**

This section provides that the commission may on application by the licensee, and if it is satisfied that the licence has been lost, stolen or destroyed, issue a replacement licence to the licensee. The commission may require the licensee to provide an explanation of the loss, theft or destruction of the licence.

## **PART 3                    CONDITIONS ON LICENCES**

### **Division 3.1    Compliance with licence conditions**

#### **39        Failure to comply with conditions of licence**

Subsection (1) provides that a licensee commits an offence if the licensee fails to comply with a requirement of a licence condition. A condition on a licence could be as imposed under this Act or as imposed by the commission.

Maximum penalty: 100 penalty units.

An offence against this section is a strict liability offence.

### **Division 3.2    General licence conditions**

#### **40        Compliance with directions**

It is a condition of a licence that the licensee complies with a written direction given to the licensee by the commission.

## **41      Display of licence at licensed premises**

This section requires that a licensee must display the licence (or a copy of the licence) at each entrance to each gaming area of the licensed premises.

However, the licensee does not have to display the schedule to the licence that provides details of each gaming machine that is licensed at the premises. The schedule could be quite large for some licensees and it would not be practical to display.

Subsection (3) provides that the licensee does not have to display the licence if the licence has been forwarded to the commission for amendment (under section 27 or 33) or the licence has been lost, stolen or damaged and the commission has been notified (under section 38).

## **42      Licence schedule to be kept at premises**

A licensee must keep a copy of the licence schedule at the licensed premises.

## **43      Rules and control procedures for operation of gaming machines and peripheral equipment**

This section provides that a licensee must not operate a gaming machine or peripheral equipment on its licensed premises other than in accordance with the licensee's rules and control procedures.

## **44      Installation in accordance with Act**

It is a condition of a licence that the licensee must not allow the installation of a gaming machine on the licensed premises otherwise than in accordance with this Act

## **45      Installation certificate**

This section applies if a gaming machine is installed on licensed premises and the commission gives the licensee a written notice under section 124 stating the details the commission needs to be told about the gaming machine.

It is a condition of the licence that the licensee gives the commission written notice of the stated details as soon as practicable, but no later than 3 days after the later of the following:

- the day the machine is installed; or
- the day the commission gives the notice.

## **46      Operation after installation**

This section applies if a gaming machine is operated on licensed premises. It is a condition of the licence that the licensee not allow the gaming machine to be operated on the licensed premises unless the licensee has given the commission a notice under section 45 for the machine.

## **47 Operation subject to correct percentage payout**

Subsection (1) provides that it is a condition of a licence that the licensee not operate a gaming machine on the licensed premises if the percentage payout on a gaming machine on the licensed premises is not the percentage payout specified by the licence for that machine.

Subsection (2) provides that subsection (1) does not prevent the operation of the gaming machine to adjust the percentage payout. This allows an approved supplier or approved technician to operate the machine for the purposes of maintenance.

## **48 Percentage payout of gaming machines to be displayed**

It is a condition of a licence that each licensed gaming machine has the percentage payout specified by the licence for the gaming machine clearly displayed on the machine in a position approved by the commission under section 126.

## **49 Maximum stake amount**

It is a condition of the licence that the licensee not operate a gaming machine with a stake amount that is more than the amount prescribed under the regulations.

## **50 Licensee to comply with relevant codes of practice**

This section makes it a condition of a licence that the licensee comply with the relevant code of practice (if any) prescribed under the Control Act.

This section ensures that all licensees must comply with the code of practice under the *Gambling and Racing Control Act 1999* and enables the commission to take disciplinary action against the licensee under this Act if a breach of the code of practice is detected.

## **51 Licensee to use gaming machines**

Subsection (1) makes it a condition of a licence that the licensee use the licensed gaming machines.

Subsection (2) provides, however, that a licensee does not contravene the condition under subsection (1) if:

- the period for which the gaming machine is not used is 1 month or less; or
- the gaming machine is not used because it is broken or damaged and the licensee has taken, or is taking, all reasonable steps to make the machine operational again; or
- the licensee has the commission's written approval for the gaming machine not to be used.

Subsection (3) provides that on written application by the licensee, the commission may approve the non-use of a gaming machine for a stated period if satisfied that the gaming machine is not being used for a good reason.

This section ensures that a licensee only holds gaming machines that it intends to use or needs to satisfy patron demand rather than hold machines for future repair, use or

to prevent other licensees from gaining access to them. The indefinite storage or the holding of machines for possible future use or growth is not permitted under this section.

The section does permit legitimate temporary non-use of machines such as for repair or storage while renovations are being undertaken or moving to new premises.

## **52 Accounts relating to gaming machines**

It is a condition of a licence that a licensee must:

- keep full and separate accounts of all amounts taken from each gaming machine on the licensed premises; and
- keep the accounts in a way that allows them to be conveniently and properly audited; and
- correctly balance the accounts at the end of each month.

### **Division 3.3 Club licence conditions**

#### **53 Conditions about inequitable benefits**

Subsection (1) provides that it is a condition of a licence for a club that nobody, whether or not a member of a club, directly or indirectly derives a benefit from the club other than a benefit that:

- is available equally to all voting members of the club; or
- arises under an agreement in which the parties are dealing with each other at arm's length; or
- is given to a member under a resolution passed at a general meeting of voting members.

Subsection (2) provides that it is a condition of a licence for a club that nobody, whether or not a member of a club, directly or indirectly derives a benefit that is not available equally to all voting members of the club from:

- the club having applied for a licence; or
- a licence being issued to the club; or
- any added value that may accrue to the premises of the club because of a licence being issued to the club.

Subsection (3) provides that for the purposes of this section, a person is not taken to be not dealing with the club at arm's length only because:

- the person and the club are corporations that are related under the Corporations Act, section 50; or
- the person, or an individual representing the person in dealings with the club, is an influential person for the club.

Subsection (4) provides that this section does not prevent a person taking a benefit if the person is entitled (whether or not under the rules of the club) to the benefit in the course of acting on behalf of the club and the benefit consists only of reasonable food

or refreshment or out-of-pocket expenses reasonably incurred and authorised by a resolution of the club's management committee or board.

This section ensures that a person does benefit or profit from the operations of a club or by dealing with or on-behalf of a club. It ensures transparency of club operations.

#### **54 Annual report of clubs**

It is a condition of a licence for a club that the club's annual report for a financial year include information about the following for the financial year:

- any contractual arrangement or consultancy entered into during the year with an influential person or for more than the amount prescribed under the regulations;
- any salary of the amount prescribed under the regulations or a higher amount.

This section ensures that there is full disclosure of contractual arrangements with an influential person and of any other contractual arrangement over an amount specified in the regulations. Transparency of club arrangements is essential to ensure that members are confident that their club is being conducted properly and in the best interest of members.

It also enables the commission to determine that the club is operating in accordance with the legislation, such as with its eligible objects and other areas relating to personal gain.

#### **55 Other conditions of club licences**

This section provides that each of the following is a condition of a club licence:

- the proceeds from the conduct of gaming are used in a way that promotes the objects of the licensee. This ensures that the eligible objects of the club are the main focus of its efforts;
- the licensee follows its objects or purposes honestly and seriously. This ensures that the club does not have a "hidden agenda" or secondary reason, such as individual profit or personal gain, as a motive for club operations;
- payments made under the licensee's objects are in the best interests of the licensee's members. This ensures that the payments and the levels of any such payments are both necessary and reasonable and are in the best interests of the members;
- payments made for things bought by the licensee are reasonable. This ensures that market value is paid for items and that inflated prices are not paid for individual profit or personal gain;
- salaries, wages, allowances or benefits paid or payable by the licensee to the licensee's executive officers and employees are reasonable. This ensures that market rates are paid for salaries, wages and allowances and that inflated amounts are not paid for individual profit or personal gain;
- payments for services provided to the licensee are reasonable and necessary, particularly in relation to the scale of the licensee's licensed business. This ensures that payments for services are made at market rates and that unnecessary expenditure is not made for services that are needed given the size or scale of operations. For example, expensive consultancy advice is not paid

for a small-scale operation with a small gaming machine turnover. This provision ensures that individual profits or personal gain is not made;

- the acquisition or disposal of land (for example, by lease or sublease) is put to the members of the club for approval and approved by a majority of the voting members who vote in a ballot conducted under the regulations. The decision on an important purchase such as of land or another premises should be made by the membership of the club and not just by the directors. This deals with the issue of transparency and control of club assets;
- guests must be signed in by a club member and accompanied by the member who signed them in. This ensures that the club is operated for its members and that any visitor or guest is accompanied by the member who signed them in. This provision prevents an “open door policy” from operating in a club that is established for the benefit of its members;
- only members and signed-in guests can play gaming machines in the club. This ensures that the club is operated for the benefit of the members;
- each requirement for the issue of a gaming machine licence is continually met by the licensee. This ensures that the eligibility criteria to obtain a gaming machine licence are continually met by all licensees (section 12 refers); and
- the licensee continues not to do anything that would, if the licensee were applying for a licence, cause the licensee to be refused a licence. This ensures the continuing eligibility of the licensee (section 14 refers).

## PART 4 DISCIPLINARY ACTION

### 56 Definitions for pt 4

This section provides that for the purposes of this part, the term *disciplinary action* refers to the term used in section 58; the term *disciplinary notice* refers to the term used in section 61; the term *ground for disciplinary action* against a licensee refers to the term used in section 57; *licence*, in relation to a person who is authorised to conduct a linked jackpot arrangement under section 134, means the authorisation and in relation to a permit-holder under part 7 (Linked jackpot arrangements), means a multi-user permit; and *licensee* includes a permit-holder under part 7.

### 57 Grounds for disciplinary action

This section provides for a list of each *ground for disciplinary action* against a licensee:

- the licensee gave information to the commission that was false, incomplete or otherwise misleading;
- the licensee, or an agent or employee of the licensee, has contravened this Act;
- the licensee is not an eligible person for a licence;
- for a corporation—an influential person is not an eligible person;
- for a licensee that is a club:
  - the club has been or is about to be wound up;

- the club has not operated for a period of 3 months or a longer period allowed by the commission;
- the club has ceased to be an eligible club;
- for a licensee in relation to an on licence, that the premises are not being used by people mainly for drinking alcohol; and
- the licensee has been a reprimand that included a direction and the licensee has not complied with the direction.

Subsection (2) provides that the may, in writing, approve a period under subsection (1)(e)(ii) if satisfied that there is a good reason why the club is not operating (such as major renovations, structural problems with the club building) and that the club will operate again after the end of the longer period.

## **58 Disciplinary action**

This section provides that each of the following is a *disciplinary action* when taken against a person:

- reprimanding the person;
- imposing conditions on, or amending the conditions of, the person's licence;
- ordering the person to pay to the Territory a financial penalty of not more than \$100 000;
- suspending the person's licence for a stated period or until a stated thing happens;
- cancelling the person's licence.

Subsection (2) provides that a reprimand may include a direction by the commission that the licensee ceases contravening this Act or rectifies something that was contributing to the ground for the disciplinary action. The direction may specify a stated time when the requirements must be met.

The power of direction is provided in this section to allow the commission to be specific in requiring the licensee to conduct operations in such a manner that is compliant with the legislation.

## **59 Criteria for disciplinary action**

This section sets out what the commission must consider when deciding what disciplinary action to take under section 58. The requirements are:

- whether disciplinary action has been taken against the licensee before. Compliance history must be considered by the commission in making its decision. A good compliance record will assist the licensee while repeat offenders could expect more severe action to be considered;
- whether the disciplinary ground on which the disciplinary action is to be taken endangered the public or the public interest. This provision ensures that serious breaches that endangered the public or public interest are dealt with accordingly;
- the seriousness of the disciplinary ground;

- the likelihood of further disciplinary action needing to be taken. This provision may relate to whether the ground for disciplinary action has occurred before or the attitude or actions of the licensee in attempting to rectify the cause; and
- any other relevant matter.

## **60 When disciplinary notice may be given**

This section provides that if the commission is satisfied that a ground for disciplinary action exists, or may exist, in relation to a licensee, the commission may give the licensee a disciplinary notice.

## **61 Disciplinary notices**

This section provides that a notice (a *disciplinary notice*) given to the licensee must state each grounds for disciplinary action that caused the notice to be given and tell the licensee that the licensee may, within 3 weeks after the day the licensee is given the notice, give a written response to the commission about the notice.

The notice does not have to specify the proposed action to be taken as the commission may decide this after the licensee's response (if any) to the notice has been received.

## **62 Commission may take disciplinary action against licensee**

This section provides that if a licensee has been given a disciplinary notice, the commission may take 1 or more disciplinary actions against the licensee if:

- the commission is satisfied that a licensee has contravened a direction in a reprimand; and
- after considering any responses given within the 3 week period in relation to the notice under section 61, the commission is satisfied that grounds for disciplinary action exist in relation to a licensee.

Disciplinary action takes effect when written notice of the action is received by the licensee, or on a later date stated in the notice.

## **63 Suspension of licences because of suspension of general and on licences**

This section provides that if a general licence or on licence relating to premises to which a gaming machine licence applies is suspended under the *Liquor Act 1975*, the gaming machine licence is suspended by force of this section for the period of suspension of the general licence or on licence.

On the basis that the liquor licence is a fundamental requirement for the issue of a gaming machine licence to these licensees, it follows that if the liquor licence is suspended then so should the gaming machine licence.

## **64 Cancellation of licences because of cancellation etc of general and on licences**

This section provides that if a general licence or on licence relating to premises to which a gaming machine licence applies is not renewed, or is cancelled, under the *Liquor Act 1975*, the gaming machine licence is cancelled by force of this section.

However, a gaming machine licence cancelled under this section is taken to be in force again if the decision to cancel the general or on licence which resulted in the gaming machine licence being cancelled is overturned or reversed on appeal.

On the basis that the liquor licence is a fundamental requirement for the issue of a gaming machine licence to these licensees, it follows that if the liquor licence is cancelled then so should the gaming machine licence.

## **65      Return of licence on cancellation**

This section applies if the commission cancels a person's licence under this part and the person is given notice of the cancellation. It also applies if a person's licence is cancelled under section 64 (1) or 64 (2) and the person has notice of the cancellation of the person's general or on licence.

Subsection (3) provides that the person must return the licence to the commission as soon as practicable, but in any case not later than 1 week after the day of effect.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

## **PART 5      CENTRAL MONITORING SYSTEM**

### **66      Meaning of *centralised monitoring system***

This section provides that in this Act a ***centralised monitoring system* (or CMS)** means a system approved in writing by the commission that:

- monitors the operation and performance of approved gaming machines; and
- facilitates the working out and checking for accuracy of tax liability, and the collection of tax, under this Act; and
- can perform other related functions.

Subsection (2) provides that an approval is a notifiable instrument. A notifiable instrument must be notified under the Legislation Act.

A CMS is a computer monitoring system established by the commission and connected to some or all licensed gaming machines in the Territory. The monitoring system through its connections to gaming machines automatically receives information about the operations of each machine.

If installed, it would enable the commission to quickly calculate gaming machine tax liabilities and to monitor gaming machine operations in real time.

## **67 Regulations about CMS**

This section provides that the regulations may specify the requirements for the establishment and operation of a CMS. In particular, the regulations may fix a date, or allow the commission to fix a date, by which stated machines must be connected to the CMS. This provision makes it clear that a date can be set (including by the commission) when the specified gaming machines must be connected to the CMS to allow them to be operated.

## **PART 6 APPROVAL OF GAMING MACHINES, PERIPHERALS, SUPPLIERS, TECHNICIANS AND ATTENDANTS**

### **Division 6.1 Approval of gaming machines and peripheral equipment**

#### **68 Meaning of *peripheral equipment* for Act**

This section provides that for the purposes of this Act *peripheral equipment*, for a gaming machine, means equipment, or a device, that is incidental to the basic operation of the gaming machine. The peripheral equipment is not part of the conduct of the game and is only ancillary to the play of the machine.

Examples of peripheral equipment include note acceptors, links such as linked jackpot arrangements, card readers for player swipe or “smart” cards and ticket readers used for entering or claiming gaming credits or other information.

#### **69 Approval of gaming machines and peripheral equipment**

Subsection (1) provides that the commission may, in writing, approve a gaming machine and any peripheral equipment for the gaming machine.

Subsection (2) provides that the commission must not approve something under subsection (1) unless the commission has considered the results of a technical evaluation of the gaming machine and any peripheral equipment by an approved entity.

Subclause (3) provides that the approval of a gaming machine is a notifiable instrument. A notifiable instrument must be notified under the Legislation Act.

Subclause (4) provides that an *approved entity* means an entity approved (however described) under a law of a local jurisdiction (the Dictionary provides that this means a State, other Territory or New Zealand) about gaming machines or a law in another jurisdiction to undertake technical evaluations of gaming machines and peripheral equipment.

#### **70 Cancellation or suspension of gaming machine and peripheral equipment approval**

This section provides that the commission may, in writing, cancel or suspend the approval of a gaming machine or peripheral equipment if the machine no longer operates as designed or the machine no longer operates as intended. The cancellation or suspension is a notifiable instrument.

To remove any doubt, this clause also provides that if an approval of a machine is cancelled or suspended under this section, it applies to all machines of that kind, whether or not a particular machine is operating as designed or intended or not.

This section provides that if a machine has a software anomaly or malfunction or an unintended consequence occurs because of a design flaw, the commission may suspend or cancel the approval of all machines of that type or where the commission considers that the software issue may affect a particular type of machine. Such problems may be that the machine does not pay out when it should or that it pays out too much on certain combinations or pays out when it shouldn't pay at all. Operations can usually recommence after a software modification has been made to the machine or the commission determines that the problem was isolated or is unlikely to reoccur.

## **71 Machine access register**

This section requires a licensee to keep a register (the ***machine access register***) for the licensed gaming machines on the licensed premises. The purpose of this is to record all access to the inside of a gaming machine.

Subsection (2) provides that if a gaming machine on the licensed premises is not working for a reason peculiar to the machine, the machine access register must record when and why the machine is not working. Examples include that the machine has a technical problem such as coin jam, the machine may be out of order temporarily while coins are added or removed from inside the machine by the licensee. If there is a blackout or some other reason why several gaming machines are not working then the machine access register does not need to be filled in.

Subsection (3) provides that if an approved supplier, approved technician or approved attendant opens or maintains (refer to Dictionary definition) a gaming machine on the licensed premises in any way, whether by opening the machine or not, the person must enter certain details in the machine access register. These details provide information on who accessed the machine, when and for what purpose. This information is essential to keep track of repairs or adjustments to the machine and to ensure that only authorised persons access the sensitive elements of the machine.

Subsection (4) makes it an offence for a person who is not an approved supplier, approved technician or approved attendant enters anything in the machine access register. This is a strict liability offence. The purpose of this provision is to ensure that only authorised persons that access the machine make entries in the official record of such machine. It prevents a non-authorised person from being involved with access to a gaming machine or completing paper work on behalf of someone else.

Maximum penalty: 10 penalty units.

An offence against this section is a strict liability offence.

## **Division 6.2 Approved suppliers**

## **72 Application and approval as supplier**

This section provides the approval mechanisms for a person who applies in writing for approval as a supplier.

The commission may approve the person as a supplier if satisfied that:

- the person sells, installs, or maintains gaming machines, peripheral equipment for gaming machines or systems (including a CMS) designed for use with gaming machines; and
- for an individual—the person is an eligible person; and
- for a corporation—each influential person for the corporation is an eligible person; and
- the person satisfies any other requirement prescribed under the regulations.

Subsection (3) provides that the commission must give the person a certificate stating that they are an approved supplier if the person has been approved as such.

## **73 Giving copy of certificate about approved supplier**

This section applies if an approved supplier tells the commission in writing about the loss, theft or destruction of a certificate given to the person under section 72.

The commission may by written notice require the supplier to give the commission a statement confirming and explaining the circumstances of the loss, theft or destruction of the certificate. The commission's request may require the response within a certain period and in a certain form that may include by statutory declaration.

If the commission is satisfied that the certificate has been lost, stolen or destroyed, the commission may give a replacement to the supplier.

### **Division 6.3 Approved technicians**

## **74 Application for approval as technician**

This section provides that an individual may apply in writing for approval as a technician for 1 or more suppliers and provides the detail as to the relevant criteria that must be satisfied for the commission to consider the application.

Subsection (2) provides details of the application and the statements that must accompany the application for the commission's consideration.

The requirement for a technician to be employed by a supplier is to ensure that a technician cannot adjust gaming machines without the authority or knowledge of an approved supplier. It places an extra check into the system to ensure a technician cannot adjust machines for their own benefit or for malicious purposes.

The supplier must be satisfied that the technician is competent and probity checks are undertaken by the commission as part of the approval process.

## **75 Approval of technicians**

This section provides that the commission may, on application under section 57, approve the applicant as a technician for 1 or more suppliers if satisfied that:

- the applicant is qualified to exercise the functions of an approved technician; and
- either—
  - the applicant is employed, or will be employed, by each supplier; or
  - the applicant is an approved supplier; or
  - the applicant is employed, or will be employed, by each supplier and is an approved supplier.

An approval is for 2 years.

If a short-term approval is in force in relation to the applicant (section 59 refers), the approval under this section starts when the approval under that section began.

Subsection (4) provides that a person is *qualified* to exercise the functions of an approved technician for a supplier if the person:

- is an individual; and
- is competent to maintain gaming machines supplied by the supplier; and
- is an eligible person; and
- satisfies any requirement prescribed under the regulations.

## **76 Short-term approval of technicians**

This section applies to a person who has applied for approval as a technician if the commission has not received the results of the police check of the person's criminal record but the commission would approve the person if the results of police check did not show that the person was not an eligible person.

The commission may approve the applicant as a technician (a *short-term approval*) for 6 months and the short-term approval cannot be renewed.

The short-term approval allows the commission to approve the technician on the basis of the declaration made in the application and permits the person to commence employment at an earlier date rather than waiting for the police check results.

## **77 Ending short-term approvals**

This section applies to a person if the person has a short-term approval as a technician and after considering the results of the technician's police check the commission is satisfied that the person is not an eligible person.

The commission must then, in writing, refuse the person's application for approval as a technician and cancel the person's short-term approval as a technician.

## **78 Transfer etc of technician's approval**

This section provides that on application in writing by an approved technician, the commission may approve the technician for another supplier or transfer the approval of the technician from 1 supplier to another (the *new supplier*).

Subsection (2) provides that the application must be accompanied by a written statement by the new supplier stating that the supplier employs, or has offered to employ, the applicant as a technician.

## **79 Cancellation etc of technician's approval**

This section applies if the commission stops being satisfied that an approved technician is qualified to exercise the functions of an approved technician (section 75 (4) refers) for each supplier for whom the technician is approved; or the approved technician is not an approved supplier and is not employed by an approved supplier; or the commission is satisfied that the technician has contravened this Act.

The commission may by written notice given to the technician:

- cancel the approval; or
- reprimand the technician; or
- suspend the technician's approval.

In considering whether to take action under this section, the commission must consider:

- whether action has been taken against the technician under this section before;
- the seriousness of the contravention of the Act;
- the likelihood of further action needing to be taken against the technician (such as indicated by the person's compliance history);
- the public benefit of technicians being regulated under this Act (the importance of technicians being properly regulated);
- any other relevant matter.

This section allows the commission to take action against a technician if the person is no eligible to be a technician as specified in section 75 or the technician breaches the Act for example by not filling out the machine access register correctly or by installing machines not in accordance with the gaming machine licence.

## **80 Certificates and identity cards for approved technicians**

This section provides that if the commission approves a technician under this part then the commission must give a certificate (the technician's *approval certificate*) to each approved supplier for the technician containing details of the approval and an identity card to the approved technician containing details of the approval.

This section ensures that the suppliers are informed of the approval and that identity cards are used by technicians to ensure that licensees are satisfied that the person is suitably qualified and approved.

## **81 Giving copy of certificate about approved technician or identity card**

This section applies if an approved supplier or approved technician tells the commission in writing about the loss, theft or destruction of a certificate or identity card given to the person under section 80.

The commission may by written notice require the person to give the commission a statement confirming and explaining the circumstances of the loss, theft or destruction of the certificate or identity card. The commission's request may require the response within a certain period and in a certain form that may include by statutory declaration.

If the commission is satisfied that the certificate or identity card has been lost, stolen or destroyed, the commission may give a replacement to the person.

## **82 Notice by supplier if technician no longer employed**

This section applies if a supplier is the supplier for an approved technician and the supplier stops employing the technician.

Subsection (2) provides that the supplier must tell the commission in writing within 1 week that the supplier no longer employs the technician.

Maximum penalty: 5 penalty units.

An offence against this section is a strict liability offence.

## **83 Return of approval certificates and identity cards for approved technicians**

Under this section if a technician's approval expires or is cancelled or suspended or a technician stops working for an approved supplier, the supplier must return the technician's approval certificate to the commission within 1 week after that particular event occurring.

Maximum penalty: 5 penalty units.

The technician must also return the technician's identity card to the commission within 1 week after that particular event occurring.

Maximum penalty: 5 penalty units.

An offence against this section is a strict liability offence.

This section ensures that the supplier is aware of the course of action being taken and the technician cannot continue to undertake the duties of a technician after cancellation, suspension or no longer working for a particular supplier.

#### **84      Renewal of technician's approval**

Under this section an approved technician may apply to the commission for renewal of the approval before the approval ends. Subsection (1) provides that the renewal application must be made no later than 1 month and no earlier than 3 months before the expiry of the current approval. This timeframe provides a practical reference for the renewal process and allows time for probity checks to be undertaken by the commission.

Subsection (2) provides that an application must be accompanied by an undertaking by the applicant to ask the police to check the applicant's criminal record using the applicant's fingerprints and to authorise the police to report the results of the check to the commission.

Subsection (3) provides that the commission must then renew an approval on application if satisfied that the applicant would be eligible to be approved if the application were for a new approval.

Subsection (4) provides that the renewal of the approval begins on the day after the approval being renewed ends. This provision ensures that the approval is continuous and allows for any minor delays experienced in gaining information from the police regarding the applicant's probity information. The timeframe specified in subsection (1) ensures that any delays in receiving probity information would be minor.

Subsection (5) provides that a suspended approval may be renewed but the period of suspension is unaffected.

#### **Division 6.4   Approved attendants**

#### **85      Application for approval as attendant**

This section provides that an individual may apply in writing for approval as an attendant for 1 or more licensees and provides the detail as to the relevant criteria that must be satisfied for the commission to consider the application.

Subsection (2) provides details of the application and the statements that must accompany the application for the commission's consideration.

The requirement for an attendant to be employed by a licensee is to ensure that an attendant cannot open gaming machines without the authority or knowledge of licensee. It places an extra check into the system to ensure an attendant cannot open machines for their own benefit or for malicious purposes. Probity checks are undertaken by the commission as part of the approval process.

#### **86      Approval of attendants**

This section provides that the commission may, on application under section 85, approve the applicant as an attendant for 1 or more licensees if satisfied that:

- the applicant is an eligible person; and
- the applicant is employed, or will be employed, by each licensee.

An approval is for 2 years.

Subsection (3) provides that if a short-term approval is in force in relation to the applicant (section 87 refers), the approval under this section starts when the approval under that section began.

### **87 Short-term approval of attendants**

This section applies to a person attendant who has applied for approval as an attendant if the commission has not received the results of the police check of the person's criminal history but the commission would approve the person if the results of police check did not show that the person was not eligible to exercise the functions of an approved attendant.

The commission may approve the applicant as an attendant (*a short-term approval*) for 6 months only, and the short-term approval cannot be renewed.

The short-term approval allows the commission to approve the attendant on the basis of the declaration made in the application and permits the person to commence employment at an earlier date rather than waiting for the police check results.

### **88 Ending short-term approvals**

This section applies to a person if the attendant has a short-term approval and after considering the results of the person's police check the commission is satisfied that the person is not an eligible person.

The commission must then, in writing, refuse the person's application for approval and cancel the person's short-term approval as an attendant.

### **89 Transfer of attendant's approval**

This section provides that on application in writing by an approved attendant, the commission may approve the attendant for another licensee or transfer the approval of the attendant from 1 licensee to another (*the new licensee*).

Subsection (2) provides that the application must be accompanied by a written statement by the new licensee stating that the licensee employs, or has offered to employ, the applicant as an attendant.

### **90 Suspension of attendant's approval for short-term unemployment**

This section provides that on application by an attendant, the commission may suspend an attendant's approval for up to 3 months from the date of application if the attendant is not employed by a licensee.

This allows the attendant to maintain their approval for up to 3 months while they are between jobs. The approval is suspended and so cannot be used and it avoids the unnecessary re-application for approval for short-term periods of unemployment.

## **91 Cancellation etc of attendant's approval**

This section applies if the commission stops being satisfied that an approved attendant is an eligible person (section 86 refers) or the attendant is no longer employed by a licensee (subject to suspension under section 90) or the commission is satisfied that the attendant has contravened this Act.

The commission may by written notice to the approved attendant then:

- cancel the approval; or
- reprimand the attendant; or
- suspend the attendant's approval.

In considering whether to take action under this section, the commission must consider:

- whether action has been taken against the attendant under this section before;
- the seriousness of the contravention of the Act;
- the likelihood of further action needing to be taken against the attendant (such as indicated by the person's compliance history);
- the public benefit of attendants being regulated under this Act (the importance of attendants being properly regulated);
- any other relevant matter.

This section allows the commission to take action against an attendant if the person is no eligible to be an attendant as specified in section 86 or the attendant breaches the Act for example by not filling out the machine access register correctly or attempting to maintain a gaming machine.

## **92 Certificates for approved attendants**

This section provides that if the commission approves an attendant under this part then the commission must give a certificate containing details of the approval (the attendant's *approval certificate*) to the attendant and a copy to each licensee for the attendant.

### **93 Giving copy of certificate about approved attendant**

This section applies if an approved attendant or licensee tells the commission in writing about the loss, theft or destruction of a certificate given to the person under section 92.

The commission may by written notice require the person to give the commission a statement confirming and explaining the circumstances of the loss, theft or destruction of the certificate. The commission's request may require the response within a certain period and in a certain form that may include by statutory declaration.

If the commission is satisfied that the certificate has been lost, stolen or destroyed, the commission may give a replacement to the person.

### **94 Notice by licensee if attendant no longer employed**

This section applies if a licensee is the licensee for an approved attendant and the licensee stops employing the attendant. In this case, the licensee must advise the commission in writing that the licensee no longer employs the attendant within 1 week after the day the licensee stops employing the attendant.

### **95 Return of approval certificates for approved attendants**

This section provides that if the attendant's approval expires or is cancelled or suspended or an attendant no longer works for at least 1 licensee, the attendant must return the attendant's approval certificate to the commission within 1 week after the day the attendant's approval expires or the day the attendant is given notice of the cancellation or suspension.

Maximum penalty: 5 penalty units.

An offence against this section is a strict liability offence.

### **96 Renewal of attendant's approval**

Under this section an approved attendant may apply to the commission for renewal of the approval before the approval ends. Subsection (1) provides that the renewal application must be made no later than 1 month and no earlier than 3 months before the expiry of the current approval. This timeframe provides a practical reference for the renewal process and allows time for probity checks to be undertaken by the commission.

Subsection (2) provides that an application must be accompanied by an undertaking by the applicant to ask the police to check the applicant's criminal record using the applicant's fingerprints and to authorise the police to report the results of the check to the commission.

Subsection (3) provides that the commission must then renew an approval on application if satisfied that the applicant would be eligible to be approved if the application were for a new approval.

Subsection (4) provides that the renewal of the approval begins on the day after the approval being renewed ends. This provision ensures that the approval is continuous

and allows for any minor delays experienced in gaining information from the police regarding the applicant's probity information. The timeframe specified in subsection (1) ensures that any delays in receiving probity information would be minor.

Subsection (5) provides that a suspended approval may be renewed but the period of suspension is unaffected.

## **Division 6.5 Gaming machine dealings**

### **97 Control procedures**

Under this section a person's control procedures for gaming machines and peripheral equipment must include operational details (including who is responsible) for each of the following:

- accounting and record keeping in relation to the gaming machines and peripheral equipment;
- access to and handling of cash in relation to the gaming machines;
- payment of winnings;
- access control to the gaming machines and peripheral equipment;
- security of the gaming machines and peripheral equipment;
- security of cash, records and keys in relation to the gaming machines;
- job descriptions (including responsibilities) of people operating and doing accounting for the gaming machines and peripheral equipment;
- any marketing and promotion of the gaming machines.

The control procedures may include other matters in addition to the prescribed list provided in subsection (1).

Subsection (2) provides that a person may change the person's control procedures by notice in writing given to the commission.

Subsection (3) provides that the regulations may make provision in relation to control procedures.

### **98 Acquisition of gaming machines—general**

This section provides that a person commits an offence if the person intentionally acquires a gaming machine and does not have the commission's approval under section 100 to acquire the machine.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **99 Application for approval of acquisition of gaming machines**

Subsection (1) provides that a person may apply in writing to the commission for approval (an *acquisition approval application*) to acquire a gaming machine.

Subsection (2) requires that the application must be accompanied by the proposed contract for the acquisition (including any proposed order) and details of any proposed arrangements for financing the acquisition.

This provision allows the commission to be aware, and investigate if necessary, any third party (i.e. not licensee) control of or influence over the gaming machines.

## **100 Decision on application for approval to acquire gaming machines**

This section provides that on an acquisition approval application, the commission must approve, or refuse to approve, the acquisition.

Subsection (2) provides that the commission must approve the acquisition of a gaming machine if:

- the applicant is a licensee; and
- the applicant's licence authorises the applicant to operate the machine; and
- the acquisition is to be under a written contract; and
- the gaming machine, and any peripheral equipment to be used with it, is approved under section 69; and
- the person from whom the machine is to be acquired:
  - is an approved supplier; or
  - is approved under section 113 to dispose of the machine; and
- for any proposed financial arrangement for financing the acquisition—the commission has approved, or proposes to approve, the arrangement under section 101.

## **101 Application and approval of financial arrangements**

This section provides that a licensee commits an offence if the licensee enters into an arrangement to finance the acquisition of a gaming machine or to encumber a gaming machine and the commission has not approved the arrangement.

Maximum penalty: 100 penalty units

Subsection (2) provides that a licensee may apply for approval of an arrangement (a *financial arrangement*) to finance the acquisition of a gaming machine or to encumber a gaming machine.

The application under subsection (2) must be accompanied by a copy of each document related to the proposed financial arrangement. This provision allows the commission to be aware, and investigate if necessary, any third party (i.e. not licensee) control of or influence over the gaming machines.

## **102 Decision on application for approval of financial arrangements**

This section provides that on application for an approval of a financial arrangement, the commission must approve or refuse to approve the arrangement.

Subsection (2) provides that the commission must approve a financial arrangement for a gaming machine. If the arrangement is to be under 1 or more written contracts and the arrangement relates to the acquisition of a gaming machine, the commission must approve the acquisition, or proposes to approve it, under section 100 (Decision on application for approval to acquire gaming machines). However, if the applicant is a club, if the commission is satisfied that the arrangement is not in the best interests of the club's members then the financial arrangement must not be approved.

Subsection (3) provides that it is a condition of an approval under this section that no contract forming part of the approved financial arrangement can be amended unless the commission approves the amendment.

### **103 Possession and operation of gaming machines**

This section provides that a person commits an offence if the person possesses or operates a gaming machine and the person is not authorised to possess or operate the gaming machine under this Act and the person is reckless about whether the person is authorised to possess or operate the gaming machine under this Act.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Subsection (2) provides that the commission may, in writing, authorise a person to possess or operate a gaming machine on stated conditions if:

- the person is a licensee's administrator, receiver, manager or liquidator and the licensee is authorised under this Act to possess or operate the gaming machine; or
- the machine is used only for training purposes; or
- the machine is being stored; or
- the machine is being displayed for sale or as a promotion; or
- the machine is being repaired, tested or evaluated.

This section allows temporary possession and control of a gaming machine for specified purposes. Other than the conduct of the operations by an administrator, receiver or liquidator, the gaming machines would not be used for gambling purposes.

### **104 Playing unlicensed gaming machines**

This section provides that a person commits an offence if the person plays a gaming machine that is not licensed and the person is reckless about whether the operation of the gaming machine is authorised under a licence.

Maximum penalty: 100 penalty units.

### **105 Operation of gaming machines other than in accordance with licences**

Subsection (1) provides that a person commits an offence if the person owns, occupies or manages licensed premises and the person fails to take all reasonable steps to stop a gaming machine on the premises being used otherwise than in accordance with the

licence and someone uses the gaming machine otherwise than in accordance with the licence.

Maximum penalty: 100 penalty units.

Subsection (2) provides that a person commits an offence if the person owns, occupies or manages premises other than licensed premises and the person fails to take all reasonable steps to stop a gaming machine on the premises being used and someone uses the gaming machine.

Maximum penalty: 100 penalty units.

An offence under this section is a strict liability offence.

## **Division 6.6 Repossession of gaming machines**

### **106 Offences by people repossessing gaming machines**

This section provides that it is an offence if a person repossesses a gaming machine otherwise than in accordance with an approval under section 108.

Maximum penalty: 100 penalty units.

Subsection (2) provides that it is also an offence if a person repossesses a gaming machine and the person fails to take all reasonable steps to stop the gaming machine being used and after the repossession of the gaming machine but before its disposal under this Act, someone else uses the machine.

Maximum penalty: 100 penalty units

An offence against this section is a strict liability offence.

Repossession may occur if, for example, a finance company or bank issues a loan for the purchase of a gaming machine or places an encumbrance on a gaming machine and the licensee defaults on that loan or financial arrangement.

### **107 Application for repossession approval**

This section provides that a person may apply to the commission in writing for approval to repossess a gaming machine and the application must be accompanied by information identifying—

- the person from whom the machine is to be repossessed; and
- the premises where the machine is currently held; and
- the class, kind and basic stake denomination of the machine.

### **108 Approval of repossession of gaming machines**

Subsection (1) provides that on application under section 107, the commission must approve, or refuse to approve, the repossession of the gaming machine.

Subsection (2) provides that the commission must approve the repossession unless the commission believes on reasonable grounds that the applicant would be likely to contravene a requirement of a condition on the approval. This subsection may be relevant if the commission had reliable information that the machine was likely to be operated during the period of repossession.

Subsection (3) provides that if an approval is given to repossess a gaming machine, after the machine is repossessed, but before it is disposed of, an authorised officer must:

- take meter readings from the machine; and
- seal the computer cabinet on the machine; and
- render the machine inoperable.

Subsection (4) provides that this section does not entitle a person to repossess a gaming machine if the person is not otherwise entitled to repossess it.

## **109 Conditions on approval to repossess gaming machine**

Subsection (1) provides that an approval to repossess a gaming machine under section 108 is subject to the following conditions:

- that the person given the approval take all reasonable steps necessary to prevent the repossessed gaming machine being played before its disposal; and
- that the person given the approval allows an authorised officer to exercise the commission's functions under section 108 (3).

Subsection (2) provides that the commission may impose any other condition on the approval in relation to the storage of the machine before its disposal that the commission considers appropriate.

## **110 Contravention of repossession approval conditions**

Subsection (1) provides that a person commits an offence if the person is approved under section 108 to repossess a gaming machine and contravenes a requirement of a condition on the approval.

Maximum penalty: 50 penalty units.

Subsection (2) provides that subsection (1) does not apply if the person took all reasonable steps to avoid a contravention of the requirements of the approval conditions.

An offence against this section is a strict liability offence.

## **Division 6.7 Disposal of gaming machines**

### **111 Unapproved disposal of gaming machines**

Subsection (1) provides that it is an offence if a person disposes of a gaming machine and the disposal is not in accordance with an approval under section 113.

Maximum penalty: 100 penalty units.

An offence against this section is a strict liability offence.

### **112 Application for approval for disposal of gaming machines**

This section provides that a person may apply to the commission in writing for approval to dispose of (Dictionary definition refers) a gaming machine and the application must be accompanied by information identifying—

- the person (if any) who is to acquire the machine; and
- the premises where the machine is currently held; and
- the class, kind and basic stake denomination of the machine.

### **113 Approval of disposal of gaming machines**

Subsection (1) provides that on application under section 112, the commission must approve, or refuse to approve, the disposal of a gaming machine.

Subsection (2) provides that the commission must, in writing, approve the disposal if:

- the person (if any) who is to acquire the machine is authorised—
  - to operate the machine under a licence; or
  - to sell, or to operate, the machine under a law of a State or another Territory or outside Australia; or
  - to destroy the machine; and
- for an applicant who has repossessed the machine—the repossession is approved under section 108 (Approval of repossession of gaming machines) and the commission has no reason to believe that the approval has been contravened.

Subsection (3) provides that the commission must not approve the lease or hire of a gaming machine by 1 licensee to another.

Subsection (4) provides that this section does not entitle a person to dispose of a gaming machine if the person is not otherwise entitled to dispose of the machine.

## **Division 6.8 Seizure of gaming machines**

### **114 Seizure of unlawful gaming machines**

Subsection (1) provides that this section applies if an authorised officer believes on reasonable grounds that a person possesses or operates a gaming machine and the person is not authorised to possess or operate the gaming machine under this Act.

Subsection (2) provides that an authorised officer may seize the gaming machine.

The power of seizure of an unlawful gaming machine prevents the machine's continued operation or it being sold or hidden from authorities.

### **115 Receipt for gaming machines seized**

Subsection (1) provides that as soon as practical after the gaming machine is seized, the authorised officer must give a receipt for it to the person from whom it was seized.

Subsection (2) provides that if, for any reason, it is not practicable to comply with subsection (1), the authorised officer must leave the receipt, secured conspicuously, at the place where the gaming machine was seized.

Subsection (3) requires that a receipt under this section must include the following:

- a description of the gaming machine;
- an explanation of why the gaming machine was seized;
- an explanation of the person's right to apply to a court under section 116 for an order disallowing the seizure;
- where the gaming machine is to be taken;
- the authorised officer's name, and how to contact the officer.

### **116 Application for order disallowing seizure**

Subsection (1) provides that a person claiming to be entitled to a gaming machine seized under this division may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.

Subsection (2) provides that the application may be heard only if the applicant has served a copy of the application on the commission.

Subsection (3) provides that the commission is entitled to appear as respondent at the hearing of the application.

### **117 Order for return of seized gaming machine**

Subsection (1) provides that this section applies if a person claiming to be entitled to a gaming machine seized under this division applies to the Magistrates Court under section 116 for an order disallowing the seizure.

Subsection (2) provides that the Magistrates Court must make an order disallowing the seizure if the court is satisfied that:

- the applicant would, apart from the seizure, be entitled to the return of the seized gaming machine; and
- the gaming machine is not connected with an offence against this Act; and
- possession of the gaming machine by the person would not be an offence.

Subsection (3) provides that the Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

Subsection (4) provides that if the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:

- an order directing the commission to return the gaming machine to the applicant or to someone else that appears to be entitled to it;
- if the gaming machine cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
- an order about the payment of costs in relation to the application.

## **118 Adjournment pending hearing of other proceedings**

Subsection (1) provides that this section applies to the hearing of an application under section 116 (Application for order disallowing seizure).

Subsection (2) provides that if it appears to the Magistrates Court that the seized gaming machine is required to be produced in evidence in a pending proceeding in relation to an offence against a Territory law, the court may, on the application of the commission or its own initiative, adjourn the hearing until the end of that proceeding.

## **119 Forfeiture of seized gaming machines**

Subsection (1) provides that this section applies if an application under section 116 for an order disallowing the seizure of a gaming machine has not been made within 10 days after the day of the seizure or has been made within that period, but the application has been refused or has been withdrawn before a decision on the application had been made.

Subsection (2) provides that the seized gaming machine is forfeited to the Territory and may be sold, destroyed or otherwise disposed of as the commission directs.

## **Division 6.9 Installation and operation of gaming machines**

### **120 Installation to be in accordance with approval of commission**

Subsection (1) provides that a licensee commits an offence if the licensee installs gaming machines on the licensed premises and the gaming machine is installed otherwise than in a gaming area.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

## **121 Offence to install gaming machines**

Subsection (1) provides that it is an offence if a person installs a gaming machine on licensed premises and the person is not an approved supplier or approved technician.

Maximum penalty: 50 penalty units

An offence against this section is a strict liability offence.

This provision ensures that only qualified persons that have undergone probity checks may install a gaming machine.

## **122 Certificate about meter readings**

Subsection (1) provides that it is an offence if a person installs a gaming machine on licensed premises and does not give the licensee as soon as practicable (but not later than 3 days) after installing the machine a certificate signed by the person stating the meter readings on the machine immediately after installation.

Maximum penalty: 20 penalty units.

An offence against this section is a strict liability offence.

This provision ensures that the calculation of the gaming machine tax liability for the licensee is accurately worked out.

## **123 Sealing computer cabinet**

Subsection (1) provides that the licensee commits an offence if a licensee allows the installation of a gaming machine on the licensed premises and the computer cabinet is not sealed in a way that prevents unauthorised access.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

This provision ensures that the critical or sensitive components of the gaming machine are sealed to prevent unauthorised access.

## **124 Commission may require information**

This section applies if a gaming machine is installed on licensed premises. The commission may give the licensee a written notice stating the details the commission needs to be told about the gaming machine.

The information may relate to the machine's settings on installation or settings after an amendment to the details of the machine contained in the licence schedule.

## **125 Operation to be subject to correct percentage payout**

Subsection (1) provides that an approved supplier or approved technician commits an offence if the person opens a gaming machine and makes an adjustment that will, or is likely to, affect the percentage payout of the machine and the percentage payout on a gaming machine on the licensed premises is not the percentage payout authorised by the licence for the machine.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

## **126 Position for percentage payout of gaming machines display**

This section provides that the commission may provide written approval for a position on a kind of gaming machine for the display of the percentage payout for the machine.

This approval is a notifiable instrument under the Legislation Act.

This provision ensures that patrons have information about the percentage return of each gaming machine available at the premises.

## **127 Maximum stake amount**

This section provides that a person commits an offence if—

- the person is an approved supplier or approved technician; and
- the person supplies or installs a gaming machine; and
- the person intentionally sets the stake amount for the gaming machine higher than the amount prescribed under the regulations.

Maximum penalty: 50 penalty units.

This provision ensures that the maximum stake or permitted bet is not exceeded. This is part of the harm minimisation strategy to help protect patrons from excessive gambling.

# **PART 7 REGULATION OF GAMING MACHINES GENERALLY**

## **128 Machine access generally**

Subsection (1) provides that a person commits an offence if the person does any of the following in relation to a licensed gaming machine on licensed premises:

- opens the machine;
- checks money in the machine;
- places money into the machine (other than to play the machine);
- removes money from the machine (other than money won or credited).

Maximum penalty: 50 penalty units.

Subsection (2) provides that subsection (1) does not apply to the following people:

- an authorised officer;
- an approved supplier;
- an approved technician;
- an approved attendant.

Subsection (3) provides that a person commits an offence if—

- the person maintains a licensed gaming machine on licensed premises; and
- the person is not an approved supplier or an approved technician.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

This section ensures that only approved persons can access the inside of a gaming machine.

## **129 Interference with gaming machines**

This section provides that a person commits an offence if the person:

- recklessly interferes with the operation of a gaming machine; or
- inserts into a gaming machine anything other than a coin, note or token of the kind stated on the gaming machine; or
- does anything intended to interfere with a gaming machine in such a way as to cause the machine to yield a reward less than or greater than the percentage payout specified in the licence for that machine; or
- does anything intended to render a gaming machine, either temporarily or otherwise, incapable of forming a winning combination.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Subsection (5) provides that subsection (1) does not apply in relation to anything done honestly for the maintenance of a gaming machine by an approved supplier, approved technician or authorised officer.

## **130 Opening computer cabinets**

Subsection (1) provides that a person commits an offence if the person opens the computer cabinet in a gaming machine and is not an approved supplier, approved technician or authorised officer.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

This section ensures that only approved persons can access the sensitive or critical components of a gaming machine.

## **131 Rendering gaming machines inoperable on licence ceasing to be in force**

This section provides that if a licence ceases to be in force, the commission must ensure that each gaming machine on the licensed premises is inoperable:

- if the licence ceased to be in force under section 64 (1) or because the licence expired—until the machines are removed from the premises; or
- if the licence is suspended—during the suspension; or
- if the licence has been cancelled—until the 1<sup>st</sup> of the following happens:
  - the machines are removed from the premises;
  - the decision of the commission cancelling the licence is set aside on an application for review of the decision.
- if the licence ceased to be in force under section 64 (2)—until the 1<sup>st</sup> of the following happens:
  - the machines are removed from the premises;
  - the licence is taken to be in force again under section 64 (3).

## **132 Removal of gaming machines from premises**

Subsection (1) provides that this section applies to a person who held a licence that has ceased to be in force, but not to a person whose licence is suspended.

Subsection (2) provides that the person commits an offence if, at the end of the required period, a gaming machine that was licensed is on the premises that were licensed.

Maximum penalty: 50 penalty units.

Subsection (3) provides that in this section:

***required period*** means—

- 2 weeks after the day—
  - the licence ceases to be in force; or
  - if an application for review of the relevant decision may be made but is not made—the time for applying for review of the decision ends; or
  - if an application is made to review the relevant decision—the application is withdrawn, dismissed or decided; or
- any further period the commission, whether before or after the end of the period, in writing, approves.
- ***relevant decision*** means the decision of the commission (if any) because of which the licence ceased to be in force.

## **PART 8 LINKED JACKPOT ARRANGEMENTS**

### **133 Operation of linked jackpot arrangements**

This section provides that a person commits an offence if the person operates a linked jackpot arrangement between gaming machines and the arrangement is not authorised under section 134 (single-user) or section 135 (multi-user permit).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **134 Single-user authorisation for linked jackpot arrangements**

Gaming machines at the one venue may be linked together to access a progressive or accumulative jackpot. Each machine connected to the linked jackpot contributes a set percentage of bets to be accumulated to the linked jackpot. The linked jackpot may be won from any of the machines connected to the linked jackpot.

Subsection (1) provides that a licensee may apply in writing to the commission for authorisation to operate a linked jackpot arrangement between gaming machines operated under the licence.

Subsection (2) provides that an application under subsection (1) must include details of each event by reference to which linked jackpots are to be payable under the proposed arrangement.

Subsection (3) provides that the commission must authorise the linked jackpot arrangement if:

- each gaming machine proposed to be linked under the proposed arrangement—
  - is operated under a single licence held by the applicant; and
  - is the same class; and
  - offers the same chance of winning linked jackpots as each other machine in the arrangement, if played with the same stakes; and
- the financial and operational aspects of the proposed arrangement are in accordance with the regulations; and
- the commission is satisfied, on reasonable grounds, that the proposed arrangement is satisfactory, having regard to the interests of the people playing the machines in the proposed linked jackpot arrangement.

Subsection (4) states that it is a condition of an authorisation under this section that each gaming machine in the linked jackpot arrangement displays at all times a sign stating clearly:

- that the machine is part of a linked jackpot arrangement with other machines on the licensed premises; and
- the percentage of the turnover of the machine set aside for the payment of linked jackpots.

Subsection (4) also provides that linked jackpots be payable for the authorised arrangement by reference to the event or events set out in the application for authorisation for the arrangement.

### **135 Issue of multi-user permits**

Gaming machines at more than one venue may be linked together to access a progressive or accumulative jackpot. Each machine connected to the linked jackpot contributes a set percentage of bets to be accumulated to the linked jackpot. The linked jackpot may be won from any of the machines connected to the linked jackpot.

Subsection (1) provides that a person (including other than a licensee) may apply in writing to the commission for a permit (a *multi-user permit*) to operate a linked jackpot arrangement between gaming machines operated under 2 or more licences.

Subsection (2) requires that the application must include details of the event or events by reference to which linked jackpots are to be payable under the proposed arrangement.

Subsection (3) provides that the commission must issue the multi-user permit if:

- the commission is satisfied, on reasonable grounds, that the applicant is an eligible person; and
- each licensee consents to the arrangement; and
- each gaming machine proposed to be linked under the proposed arrangement—
  - is the same class; and
  - offers the same chance of winning linked jackpots as each other machine in the arrangement, if played with the same stakes; and
- the financial and operational aspects of the proposed arrangement are in accordance with the regulations; and
- the commission is satisfied, on reasonable grounds, that the proposed arrangement is satisfactory, having regard to the interests of the people playing the machines in the proposed arrangement.

Subsection (4) provides that a multi-user permit must state:

- the full name and address of the permit-holder; and
- the gaming machines in the linked jackpot arrangement in relation for which the permit is issued, and the licensed premises where they are situated; and
- the conditions to which the permit is subject.

## 136 Conditions on multi-user permits

Subsection (1) provides that a multi-user permit is subject to the following conditions:

- each gaming machine in a linked jackpot arrangement under the permit displays at all times a sign stating clearly—
  - that the machine is part of a linked jackpot arrangement with machines on different licensed premises; and
  - the percentage of the turnover of the machine set aside for the payment of linked jackpots;
- linked jackpots are payable under the arrangement by reference to the event or events set out in the application for the permit for the arrangement;
- the financial and operational aspects of the arrangement must not be amended without the commission's approval under section 138;

- if the permit-holder is a corporation—the permit-holder must give written notice to the commission stating any of the following changes in relation to the corporation within 1 week after the day of the change:
  - a person becoming an influential person for the corporation;
  - a substantial change in the relationship of an influential person to the corporation;
  - a person ceasing to be an influential person for the corporation.

Subsection (2) provides that the commission may put any other reasonable condition on a multi-user permit that the commission considers appropriate, having regard to the interests of the people playing the machines in each linked jackpot arrangement under the permit.

### **137 Term of multi-user permits**

This section provides that a multi-user permit is for the period stated in the permit and can be up to 3 years. The permit could continue operation by the person re-applying for approval under section 135.

### **138 Amendment of multi-user permits in interest of users**

Subsection (1) provides that the commission may amend a condition of a multi-user permit on its own initiative if satisfied that it is appropriate to amend the condition, having regard to the interests of the people playing the machines in the linked jackpot arrangement under the permit.

Subsection (2) provides that the amendment takes effect on the date stated in the notice of the decision on the amendment given to the permit holder by the commission.

This provision provides an opportunity for the commission to amend the conditions of approval if it is in the best interests of the patrons playing on the linked jackpot arrangement.

### **139 Amendment of multi-user permit on request**

Subsection (1) provides that this section applies if a multi-user permit-holder applies in writing to the commission for an amendment of the permit to:

- reduce the number of gaming machines in a linked jackpot arrangement, or terminate a linked jackpot arrangement; or
- increase the number of gaming machines in a linked jackpot arrangement under the permit; or
- include a new linked jackpot arrangement under the permit; or
- include gaming machines on other licensed premises in a linked jackpot arrangement; or
- amend a condition on the permit.

Subsection (2) requires the commission to amend the multi-user permit, or refuse to amend the permit.

Subsection (3) provides that the commission must not amend the multi-user permit unless satisfied—

- if an additional gaming machine is proposed to be included in a linked jackpot arrangement, that the additional machine:
  - is the same class as the other machines in the arrangement; and
  - offers the same chance of winning linked jackpots as each other machine in the arrangement, if played with the same stakes; and
- if a new linked jackpot arrangement is proposed to be included under a permit, that each gaming machine to be linked:
  - is the same class; and
  - offers the same chance of winning linked jackpots as each other machine in the arrangement, if played with the same stakes; and
- if gaming machines on other licensed premises are proposed to be included in a linked jackpot arrangement (whether or not the arrangement is an existing arrangement)—that the financial and operational aspects of the arrangement are in accordance with the regulations; and
- that the proposed amendment is satisfactory having regard to the interests of the people playing the machines in each proposed linked jackpot arrangement.

Subsection (4) provides that an amendment takes effect on the date stated in the notice of the decision on the amendment given to the permit-holder by the commission.

#### **140 Amendment of financial and operational aspects of multi-user permits**

Subsection (1) provides that a multi-user permit-holder may apply in writing to the commission to amend the financial or operational aspects of a linked jackpot arrangement under a multi-user permit.

Subsection (2) provides that the commission must amend the multi-user permit, or refuse to amend the permit.

Subsection (3) provides that the commission must amend the multi-user permit in accordance with the application if:

- the financial and operational aspects of the arrangement, as proposed to be amended, are in accordance with the regulations; and
- the commission is satisfied that the proposed amendment is satisfactory, having regard to the interests of the people playing the machines in the arrangement.

#### **141 Transfer of multi-user permits**

Subsection (1) provides that the holder of a multi-user permit and a person (the ***proposed permit-holder***) to whom the permit is proposed to be transferred, may apply jointly in writing to the commission for transfer of the permit.

Subsection (2) requires the commission to transfer the permit to the proposed permit-holder if satisfied on reasonable grounds that the proposed permit-holder is an eligible person.

## **142 Surrender of multi-user permits**

Subsection (1) provides that this section applies to a multi-user permit-holder if the permit-holder does not owe the Territory an amount under this Act.

Subsection (2) provides that the multi-user permit-holder may surrender the permit by giving the commission a written notice stating that the permit-holder surrenders the permit and returning the permit.

Subsection (3) provides that the surrender of the multi-user permit takes effect 4 weeks after the day the notice under subsection (2) (a) is given to the commission by the permit holder, or on a later date stated in the written notice.

## **143 Unclaimed jackpots**

Subsections (1) and (2) provide that if an amount won under a linked jackpot arrangement authorised under section 134 for a licensee or approved under section 135 is not claimed within 1 year after the day it is won, the amount is forfeited to the Territory.

Subsection (3) provides that after the amount is forfeited, the winner of the amount:

- is not entitled to recover the amount from the licensee or permit-holder; and
- is entitled to recover the amount from the Territory within the period of 6 years after the day the person wins the amount; and
- is not entitled to recover interest on the amount from the Territory.

## **144 Undisbursed jackpots**

This section applies if an amount available for allocation as prizes in a linked jackpot arrangement authorised under section 134 or a multi-user permit has not been won, and cannot be won because the authorisation or permit for the arrangement has been cancelled or surrendered.

Subsection (2) provides that the commission may, in writing, approve an arrangement for the redistribution of the amount as prizes or additions to other jackpots if satisfied that the arrangement is equitable.

However, subsection (3) provides that the amount is forfeited to the Territory if:

- the person who held the authorisation or permit has stopped operating gaming machines; or
- an approval under subsection (2) has not been given for the amount 4 weeks after the end of the arrangement.

This provides that any accumulated jackpot amount that cannot be won due to circumstances that are beyond the control of patrons, the undistributed amount is returned to players through extra or bonus jackpots or payouts. However, this section allows for the possibility that a licensee ceases to operate and the undisbursed jackpot amount cannot be returned to patrons.

## PART 9 CLUB ADMINISTRATION

### 145 Eligible objects

Subsection (1) provides that an object of a club is an *eligible object* if:

- it furthers or promotes—
  - recreation; or
  - social, religious, political, literary, scientific, artistic, sporting or athletic purposes; or
  - cultural or educational purposes; or
- it is approved, in writing, by the commission; or
- it is substantially the same as an object mentioned above.

Subsection (2) provides that an approval under subsection (1) (b) is a disallowable instrument. A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 146 Eligible clubs

This section provides that a club is an *eligible club* if:

- the club is incorporated in the ACT (section 186 on transitional arrangements refers to this provision); and
- the club's statement of objects:
  - includes eligible objects; and
  - indicates that the eligible objects together make up the main part of its objects; and
- the club is conducted mainly to achieve eligible objects; and
- the rules of the club:
  - are in accordance with the regulations; and
  - are inconsistent with the licence conditions under part 9; and
  - do not prohibit the playing of games of chance for money on the club premises; and

- the club has at least 300 voting members (section 181 on transitional arrangements refers to this provision); and
- the number of life members of the club is not more than 5% of the number of voting members of the club (section 187 on transitional arrangements refers to this provision); and
- the premises occupied by the club, and the facilities and property of the club, are kept and maintained for the benefit of members generally.

#### **147 Associated organisations**

Subsection (1) provides that the commission may, in writing, declare that an entity is an associated organisation for a club.

Subsection (2), however, provides that the commission may make a declaration for an entity only if satisfied that:

- it is associated with the club; and
- it is not carried on for profit or gain to its members or anyone else; and
- it is incorporated; and
- its statement of objects:
  - includes eligible objects; and
  - indicates that the eligible objects together make up the main part of its objects; and
- it is conducted mainly to achieve eligible objects; and
- approval of the entity as an associated organisation would not cause the club to stop being conducted mainly to achieve eligible objects.

Subsection (3) provides that in this section a reference to the statement of objects of an entity incorporated under the Corporations Act is a reference to its memorandum and a reference to an eligible object of an entity that is not a club is a reference to an object that would be an eligible object if the entity were a club.

This section provides that any associated organisation must be established under the same organisation principles as the club itself. This ensures that there is no “leakage” of members funds or that individuals are able to make profits through an associated entity.

#### **148 Keeping records relating to club elections**

This section applies if a club has an election of members to the club’s management committee or board, or another position in the club.

Subsection (2) provides that a club commits an offence if the club does not, for at least 2 years after the day of an election, keep records in relation to the election.

Maximum penalty: 20 penalty units.

Subsection (2) provides that in subsection (1), ***club*** means a club in relation to whose premises a licence is in force; ***election*** of someone to a position includes re-election of the person.

#### **149 Power to require information about status of eligible clubs**

Subsection (1) provides that this section applies if the commission believes on reasonable grounds that a club is no longer an eligible club or may no longer be an eligible club.

Subsection (2) provides that the commission may, in writing, require the club to give the commission, within a stated period, information or documents relating to the club or an associated organisation for the club.

Subsection (3) provides that a club must comply with a requirement under subsection (2).

Subsection (4) provides that in subsection (2), ***club*** means a club in relation to whose premises a licence is in force.

This section ensures that the commission has sufficient power to investigate any possible issue associated with a club and whether it meets the eligibility criteria.

#### **150 Disclosure of gifts by executive officer**

Under this section a person commits an offence if the person is an executive officer of a club and the person receives a gift while exercising a function as executive officer and the person does not tell the management committee or the board about the gift.

Maximum penalty: 20 penalty units.

This section is a standard disclosure provision to ensure that an executive officer is not influenced in his or her decision making due to the receipt of a gift.

### **PART 10 GAMING AREAS**

#### **151 Warning notices**

Subsection (1) provides that the commission may, in writing, determine the form and minimum dimensions of a notice (a ***warning notice***) and the text of a warning notice.

Examples of what may be included in warning notice:

- risks associated with gambling;
- counselling or other support services available in relation to addictive or excessive gambling;
- the provisions of this division about children.

Subsection (2) provides that if the commission makes a determination under subsection (1), a licensee must ensure that a warning notice is displayed in a

prominent position on each gaming machine installed on the licensed premises and at or near the entrance to each gaming area within the licensed premises.

Subsection (3) provides that a licensee commits an offence if the licensee contravenes a requirement of subsection (2).

Maximum penalty: 5 penalty units.

Subsection (4) provides that an offence against subsection (3) is a strict liability offence.

Subsection (5) provides that a determination under subsection (1) is a disallowable instrument. A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Subsection (6) provides that unless the determination is disallowed by the Legislative Assembly, the determination commences 2 weeks after the last day when it could have been disallowed or on a later day if the determination provides.

This section is part of the harm minimisation strategy that must be followed by all gaming machines licensees to assist in the reduction of harm caused by gaming machines to some people.

## **152 External signs**

Subsection (1) provides that a licensee commits an offence if the licensee displays, or causes to be displayed, an external sign advertising gaming machines or promoting a gambling activity on the licensed premises.

Maximum penalty: 50 penalty units.

Subsection (2) provides that an offence against subsection (1) is a strict liability offence.

Subsection (3) provides that in this section:

***external sign***, in relation to licensed premises, means a sign that can be seen from outside the licensed premises but does not include an advertisement on television (but not closed-circuit television) or on the internet. This definition refers to, for example, any written, picture or symbolic display, whether electronic or a physical structure, such as billboards, banners, neon signs, balloons, painted signs or notices on front windows or doors or signs on fences.

***gambling activity*** means an activity which requires approval under a gaming law.

This section is part of the harm minimisation strategy that must be followed by all gaming machines licensees to assist in the reduction of harm caused by gaming machines to some people.

## **153 Cash facilities**

Subsection (1) makes it an offence if the licensee provides, or allows the provision of, a cash facility in a gaming area within the licensed premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Subsection (2) provides that if the commission is satisfied that there is not adequate physical separation between a gaming area of licensed premises and a cash facility on the premises, the commission may give the licensee a direction to separate the parts of the premises. This provision ensures that there is sufficient separation between the gaming area and access to any cash facility to provide a break for gamblers from gaining ready access to more cash for gambling.

Subsection (3) provides that in this section ***cash facility*** means an automatic teller machine, an EFTPOS facility or any other facility for gaining access to cash or credit. It does not include a facility where cash is exchanged for other denominations of cash, tokens, tickets or cards for the purpose of playing machines.

This section is part of the harm minimisation strategy that must be followed by all gaming machines licensees to assist in the reduction of harm caused by gaming machines to some people.

## **154 Lending or extending credit**

Subsection (1) provides that a person commits an offence if a person is a licensee or licensee's employee and the person lends or offers to lend money to a person who is in, or appears to be about to enter, the licensed premises or part of them. An offence is also committed if the person extends or offers to extend credit to a person to allow the person to play a gaming machine on the licensed premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Subsection (2) provides that in this section, ***credit*** includes accepting post-dated cheques, blank cheques and credit or debt cards.

This section is part of the harm minimisation strategy that must be followed by all gaming machines licensees to assist in the reduction of harm caused by gaming machines to some people.

## **155 Children must not enter gaming area**

Subsection (1) provides that a licensee commits an offence if the licensee allows a child to enter or remain in a gaming area.

Maximum penalty: 50 penalty units.

Subsection (2) provides that an employee of a licensee commits an offence if the employee allows a child to enter or remain in a gaming area. This ensures that all employees take very seriously their responsibilities in preventing a child from entering or remaining the gaming area.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

### **156 Children must not play gaming machines**

Subsection (1) provides that a licensee commits an offence if the licensee allows a child to play a gaming machine.

Maximum penalty: 50 penalty units.

An offence against this section is a strict liability offence.

### **157 Using false identification**

Subsection (1) provides that a person commits an offence if the person uses another person's identification or a form of identification that is forged to obtain entry to or remain in a gaming area or to play a gaming machine.

Maximum penalty: 10 penalty units.

An offence against this section is a strict liability offence.

## **PART 11 FINANCE**

### **Division 11.1 General**

#### **158 Audit of records**

Subsection (1) provides that a licensee must, as soon as practicable, but not later than 6 months after the end of each financial year, ensure that:

- the accounts relating to the operation of gaming machines on the licensed premises during the year are audited by a qualified accountant; and
- an income and expenditure statement is prepared for the year relating to:
  - the operation of gaming machines on the licensed premises; and
  - if the licensee is a club—the club's financial operations.

This provision ensures that an independent check is made of the gaming machine records and for a club the whole operations are independently checked to ensure transparency for the members.

Subsection (2) provides that a licensee must, as soon as practicable, but not later than 1 month after the preparation of an income and expenditure statement under subsection (1), give the commission a copy of the statement certified as correct by the person who prepared it, together with a report stating, as at the end of the period to which the statement relates:

- the class, number and kind of gaming machines installed on the licensed premises; and
- if the licensee is a club—the number of members of the club; and
- any other particulars the commission requires in writing.

## **159     Gaming machine tax**

Subsection (1) provides that gaming machine tax is payable on the gross revenue in relation to the operation of gaming machines each month, whether or not the operation is lawful.

Subsection (2) provides that the Minister may, in writing, determine the rate at which gaming machine tax is payable.

Subsection (3) provides that a determination under subsection (2) is a disallowable instrument. A disallowable instrument must be notified under the Legislation Act.

This section allows the Minister to determine the rate of gaming machine tax, including a level of tax for unlawful gaming machines. The approach to allow the Minister to determine the rate of tax is consistent with other gaming laws and allows scrutiny and disallowance by the Legislative Assembly.

## **160     Payment of gaming machine tax**

Subsection (1) provides that the gaming machine tax in relation to the operation of a gaming machine must be paid by:

- in relation to a machine operated lawfully—the licensee; or
- in relation to a machine operated unlawfully, the person receiving the gross revenue or the occupier of the premises where the machine is operated.

Subsection (2) provides that if subsection (1) (b) applies in relation to an unlawful gaming machine, the person receiving the gross revenue from the operation of the relevant gaming machine and the occupier of the premises where the machine is operated are jointly and severally liable to pay tax under subsection (1).

Subsection (3) provides that the gaming machine tax in relation to the operation of a gaming machine during a month is due on the 7th day after the end of the month.

## **161     Gaming machine tax returns**

Subsection (1) provides that within 1 week after the end of a month, a licensee must give the commission a return relating to the gross revenue in relation to the operation of gaming machines during that month under the licence.

Subsection (2) requires that a return must be in writing and in a certain form if so specified under the *Gambling and Racing Control Act 1999*.

Subsection (3) provides by way of clarification that the return may be given by emailing it to the commission. This allows the commission to specify the form of the return and to require it to be lodged electronically to assist in the efficient assessment of all licensees' returns.

## **162 Payment of gaming machine tax following transfer**

Subsection (1) provides that if a licence is transferred, the person from whom the licence is transferred must, within 1 week of the date of transfer, pay to the commission the prescribed amount.

Subsection (2) explains that for subsection (1), the *licensed period* means the period beginning on the 1<sup>st</sup> day of the month when the transfer happens and ending on the date of the transfer; and the *prescribed amount* is the amount of gaming machine tax payable by the person as a licensee during the licensed period if the transferor did not transfer the licence.

## **PART 12 COMMUNITY CONTRIBUTIONS**

### **163 Approval of community contributions**

Subsection (1) provides that 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 contributing to or supporting the development of the community or raising the community's, or part of the community's, standard of living.

The community may include the Territory or another community. Examples or categories of community contributions include charitable and social welfare, sport and recreation, non-profit activities and community infrastructure.

Subsection (2) provides that the regulations may make provision in relation to community contributions, including guidelines for approving contributions and how contributions may be claimed.

Subsection (3) provides that in this section:

*community* includes a community outside the ACT;

*contribution*, by a licensee includes the value of a contribution made in kind by the licensee but does not include the following:

- expenditure on commercial activities, or, if the licensee is a club, on the social or entertainment activities of the club for its members;
- expenditure intended to promote stated activities of the licensee;
- expenditure in relation to gambling, for example, the purchase of gaming machines or subsidised gambling or prizes.
- capital payments for assets owned, controlled or being acquired by the licensee or an associated entity that are not available to be used by the public;
- capital payments or other expenditure on assets owned, controlled or being acquired by the licensee if the assets are not in the ACT;
- notional provisions (for example long service and annual leave) other than depreciation;

- a contribution made out of donations collected by the licensee, or out of the proceeds of any special fundraising activity conducted by the licensee;
- a contribution to a business association, registered party, associated entity or trade union;
- if a contribution is made on a condition—the value to the licensee of that condition being fulfilled;
- if an asset is otherwise a contribution—the value of any income earned from the asset (for example, entry or hiring fees);
- a contribution made to another club under a reciprocal arrangement or agreement;
- the cost of borrowing funds to acquire an asset.

#### **164 Records of contributions**

Subsection (1) provides that a licensee must record each community contribution made by the licensee, stating the entity to which, and the purpose for which, each contribution was made and the amount or value of the contribution. The record must also include the date when, or period over which, the contribution was made.

Maximum penalty: 20 penalty units.

Subsection (2) explains that a record must relate to a single licensed premises. In other words, records must be kept that clearly identifies the contribution made by each licensee. Section 169 is relevant to corporations that own more than one licensee in determining shared contributions.

An offence against this section is a strict liability offence.

#### **165 Report about records and finances**

Subsection (1) provides that a licensee must, within 1 month after the end of a financial year, give the commission a copy of the records kept under section 164 that relate to the financial year, together with a financial report for the financial year.

Maximum penalty: 20 penalty units.

Subsection (2) provides that in this section:

***financial report*** means a report about the following:

- the gross revenue of the licensee;
- if the licensee is a club—the net revenue of the licensee;
- the total value community contributions.

#### **166 Commission must report to Minister**

This section provides that the commission must, within 4 months after the end of the financial year, give the Minister a report that summarises the extent of compliance by licensees with section 164 and section 165 for the financial year and analyses the

extent to which revenue received by licensees was being used to make community contributions during the financial year.

This provision ensures that the licensees' contributions are analysed and a report forwarded to the Minister.

### **167 Minister must present commission's report**

This section provides that the Minister must present a report given to the Minister under section 166 to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

This provision ensures that the Assembly and the community are informed about the level of contributions made by licensees.

### **168 Required community contributions**

Subsection (1) provides that for a licensee that is a club, the ***required community contribution*** for a financial year is 7% of the club's net revenue in the financial year, or the other proportion determined, in writing, by the Minister.

Subsection (2) provides that the Minister may, in writing, set a lower required community contribution for a club if satisfied, on application by the club, that:

- the gross revenue of the club in a financial year is, or is likely to be, less than \$200 000; and
- the application of subsection (1) to the club would so seriously affect the club's viability that it would not be just and equitable in the circumstances for subsection (1) to apply to the club.

This provision allows the Minister to take into account extreme circumstances where a club is struggling financially and the commitment to make the minimum level of contributions would be an unreasonable burden.

Subsection (4) provides that a determination under subsection (3) is a disallowable instrument. A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### **169 Corporations with several licences**

Subsection (1) provides that this section applies to a club that is a licensee if a corporation owns the club and at least 1 other club that is a licensee.

Subsection (2) requires that in working out the community contributions for the club, common expenditure on behalf of the different clubs must be allocated between the clubs in proportion to the number of gaming machines operated by each club.

This provision is based on the requirement that all licensees, regardless of whether they are part of a "group" of licensees or not, must individually make contributions to the community. This provision recognises that the corporation may make some contributions on behalf of its licensees. If this is the case, the contribution must be

divided amongst the relevant licensees in proportion to the number of gaming machines held under each licence.

## **170 Women's sport community contributions**

Subsection (1) provides that for every \$3 of women's sport community contributions that a club contributes to an entity under section 163 (1), the club's required community contributions must be worked out as if the club had contributed \$4.

Subsection (2) provides that in this section:

**women's sport community contributions** means community contributions that the commission is satisfied will benefit or enhance women's sport conducted in the ACT, or with participants mainly based within the ACT.

## **171 Community contribution shortfall tax**

Subsection (1) provides tax (the **community contribution shortfall tax**) is imposed on a community contribution shortfall of a licensee that is a club at the rate of 100%.

Subsection (2) provides that the community contribution shortfall tax must be paid by the licensee.

Subsection (3) provides that the community contribution shortfall tax is payable 30 days after the day the licensee receives an assessment under the Control Act, part 6.

Subsection (4) provides that if an amount of community contribution shortfall tax is paid, the commission must transfer the amount to the grants program fund, or to another fund, if any, prescribed under the regulations.

Subsection (5) provides that in this section:

**community contribution shortfall**, for a licensee that is a club, in relation to a financial year, means the amount (if any) by which the club's community contributions fall short of its required community contribution.

# **PART 13 MISCELLANEOUS**

## **172 Review of decisions**

Subsection (1) provides that an application may be made to the AAT for review of a reviewable decision.

Subsection (2) provides that if the commission makes a reviewable decision, the commission must give a written notice of the decision to each person affected by the decision.

Subsection (3) provides that the notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Subsection (4) provides that in this section:

***reviewable decision*** means a decision by the commission mentioned in schedule 1.

### **173        Acts and omissions of representatives**

Subsection (1) provides that in this section:

***person*** means an individual.

***representative***, of a person, means an employee or agent of the person.

***state of mind***, of a person, includes the person's knowledge, intention, opinion, belief or purpose and the person's reasons for the intention, opinion, belief or purpose.

Subsection (2) provides that this section applies to a prosecution for any offence against this Act.

Subsection (3) provides that if it is relevant to prove a person's state of mind about an act or omission, it is enough to show the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind.

Subsection (4) provides that an act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.

Subsection (5) provides that subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

Subsection (6) provides that a person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

### **174    Canberra Airport**

Subsection (1) provides that a licence must not be issued in relation to premises at Canberra Airport.

Subsection (2) provides that an approval must not be given under section 100 for the acquisition of a gaming machine to be operated at Canberra Airport.

Subsection (3) provides that in this section:

***Canberra Airport*** means block 3 of both sections 17 and 28, division of Pialligo in the district of Majura, and blocks 587, 594, 595, 614 and 660 in that district.

This provision relates to the harm minimisation strategy to limit the availability of gaming machines at Canberra airport by not approving the airport as premises for the operation of gaming machines. The regulation of gambling at airports is a matter for state or Territory control unless the Commonwealth enacts legislation that is inconsistent with the state or Territory laws. In the case of an inconsistency, the Commonwealth legislation would prevail.

## **175 Evidentiary certificates**

This section provides that in a prosecution for an offence against this Act, a certificate issued by the commission stating that the person named in the certificate was or was not on the date, or during the period, stated in the certificate the holder of a licence is evidence of the matters so stated.

## **176 Determination of fees**

Subsection (1) provides that the Minister may, in writing, determine fees for this Act.

Subsection (2) provides that a determination is a disallowable instrument. A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **177 Regulation-making power**

Subsection (1) provides that the Executive may make regulations for this Act.

Subsection (2) provides that the regulations may make provision in relation to the following:

- the operation (including the restriction of the operation) of peripheral equipment for gaming machines;
- the minimum payout for gaming machines.

Subsection (3) provides that the regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 10 penalty units for offences against the regulations.

## **178 Legislation amended and repealed**

Subsection (1) provides that Schedule 2 amends the *Gambling and Racing Control Act 1999*. A description of these amendments is included under the heading *Schedule 2* at the end of this Explanatory Statement.

Subsection (2) repeals the *Gaming Machine Act 1987* and all regulations and instruments made under that Act.

## **PART 14 TRANSITIONAL PROVISIONS**

### **179 Definitions for pt 14**

This section provides that in this part:

***commencement day*** means the day the *Gaming Machine Act 1987* is repealed.

***former gaming Act*** means the *Gaming Machine Act 1987* (repealed).

## **180      Licences**

Subsection (1) provides that a licence under the former gaming Act is taken to be a licence under this Act.

Subsection (2) removes any doubt that the conditions of a licence mentioned in subsection (1) includes the conditions included in a licence under this Act.

Subsection (3) provides that the rules adopted by the licensee under the former Act are taken to be the licensee's rules under this Act.

## **181      Clubs**

Subsection (1) provides that this section applies if a club that had a licence under the former gaming Act has less than 300 voting members on commencement day.

Subsection (2) provides that the commission must, by notice in writing to the club, cancel the club's licence under this Act if, 1 year after commencement day, the club does not have 300 or more voting members.

Subsection (3) provides that in deciding whether the club is an eligible club for this Act, section 146 (e) may not be taken into account in relation to the club for 1 year after commencement day.

## **182      Rules and control procedures**

Subsection (1) provides that this section applies to a person (the *licensee*) who was, immediately before commencement day, a licensee under the former gaming Act.

Subsection (2) provides that the licensee must, within 6 months after commencement day, give the commission a copy of the rules and control procedures the licensee has adopted to control the operation of gaming machines on the licensed premises.

Subsection (3) provides that if the commission is not satisfied that the rules and control procedures adequately control the operation of gaming machines on the licensed premises, the commission may give the licensee a direction in relation to the rules and procedures.

Subsection (4) provides that the licensee must comply with the direction.

Subsection (5) provides that section 43 (Rules and control procedures for gaming machine operation) does not apply to the person until the earlier of the following:

- the day the licensee adopts the rules and control procedures;
- 6 months after commencement day.

Subsection (6) provides that a decision to give a direction under subsection (3) is taken to be a reviewable decision.

## **183      Disciplinary proceedings under former gaming Act**

Subsection (1) provides that this section applies if the commission had begun to take disciplinary action against a person under the former Act, division 4.3 (Disciplinary

action by commission) and immediately before commencement day, the disciplinary action had not finished.

Subsection (2) provides that the disciplinary action may be continued under this Act as if it had been begun under this Act.

Subsection (3) provides that if something required to be done under this Act for disciplinary action has not been done because it was not required to be done under the former gaming Act:

- the failure to do the thing does not affect the action being taken; and
- the commission may take any action it considers appropriate to facilitate dealing with the disciplinary action under this Act.

This section provides for the continuance of disciplinary action under the former Act but does not provide any retrospectivity for any action.

#### **184 Approvals under former gaming machine Act**

Subsection (1) provides that this section applies if the commission had approved an amendment or transfer of a licence or approval or a gaming area, gaming machine, supplier, technician or attendant.

Subsection (2) provides that the approval is taken to be an approval under this Act.

#### **185 Linked jackpot arrangements**

Subsection (1) provides that this section applies if, immediately before commencement day, a club was approved to operate a linked jackpot arrangement under the former gaming Act, section 45A.

Subsection (2) provides that the club is taken to be authorised under section 134 to operate the arrangement.

#### **186 Clubs not required to be corporations for s 146**

Subsection (1) provides that this section applies to a club that—

- was a licensee on 30 June 2000; and
- in the financial year ending 30 June 2000 had a corrected gross revenue of less than \$500 000.

Subsection (2) provides that section 146 (a) does not apply to the club until the relevant period after a later financial year in which the club has a gross revenue of \$500 000 or more.

Subsection (3) provides that in this section:

***corrected gross revenue***—if the club is a licensee for only a fraction ( $F$ ) of a financial year, and has a gross revenue for that time of  $R$ , the club's ***corrected gross revenue*** for the year is  $R/F$ .

***relevant period*** means 6 months or any longer period, of not more than 2 years, which the commission allows in writing on the application of the club.

This section provides that smaller clubs with a corrected gross revenue of less than \$500 000 do not have to become corporations under section 130 and thus avoid that expense.

### **187 Clubs with too many life members for s 146**

Subsection (1) provides that this section applies to a club if, on 1 January 1992, more than 5% of the voting members of the club were life members.

Subsection (2) provides that the eligibility of the club is not to be taken to be affected only because it does not satisfy section 146 (f).

Subsection (3) provides that the club stops being an eligible club if—

- more than 5% of the voting members of the club are life members; and
- the club grants life membership to another voting member.

### **188 Expiry of pt 14**

This section provides that this part relating to transitional arrangements expires 1 year after the commencement day.

## **SCHEDULE 1 REVIEWABLE DECISIONS**

This schedule provides a list of 33 reviewable decisions for the purposes of this Act.

## **SCHEDULE 2 AMENDMENTS TO *GAMBLING AND RACING CONTROL ACT 1999***

This schedule outlines the following amendments for the *Gambling and Racing Control Act 1999*:

### **2.1 Section 3, Definition of *gaming law*, paragraph (b)**

*substitute*

- (b) in relation to the Commonwealth, a State, another Territory or a foreign country, (the *other jurisdiction*), means a law of the other jurisdiction that relates to gaming or racing.

This provision allows other jurisdictions, such as New Zealand, to be included.

### **2.2 Section 3, Definition of *reciprocating jurisdiction***

*omit*

or another Territory

*substitute*

, another Territory or New Zealand

This provision includes New Zealand as a possible reciprocating jurisdiction.

### **2.3        Section 4 (f)**

This section *substitutes* in section 4 (f) of the Control Act the words “the *Gaming Machine Act 2004*”.

This provides a new reference in the list of gaming laws covered by the Control Act.

### **2.4        Schedule 2, new clause 7**

This section *inserts* the following new clause 7 in schedule 2 of the Control Act:

“7 To remove any doubt, a member of the commission who has taken part in a decision to reprimand a person under a gaming law is not prevented from taking part in a decision about whether further disciplinary action should be taken under that law for contravention of a direction included in the reprimand, only because the member took part in the decision to give the reprimand.”

This provision allows a commission member to be involved in a decision relating to the taking of further disciplinary action where the member was involved with an earlier decision to reprimand a licensee. This provision is most properly placed in the Control Act where matters dealing with commission membership are located.

## **DICTIONARY**

This dictionary is the dictionary referred to in section 3.