

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Unlawful Gambling Bill 2009

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2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Unlawful Gambling Bill 2009

A Bill for

An Act relating to unlawful gambling, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Unlawful Gambling Act 2009*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

16 The dictionary at the end of this Act is part of this Act.

17 *Note 1* The dictionary at the end of this Act defines certain terms used in this
18 Act, and includes references (*signpost definitions*) to other terms
19 defined elsewhere in this Act.

20 For example, the signpost definition '*charitable organisation*—see the
21 *Duties Act 1999*, dictionary.' means that the term 'charitable
22 organisation' is defined in that dictionary and the definition applies to
23 this Act.

24 *Note 2* A definition in the dictionary (including a signpost definition) applies to
25 the entire Act unless the definition, or another provision of the Act,
26 provides otherwise or the contrary intention otherwise appears (see
27 Legislation Act, s 155 and s 156 (1)).

1 **4** **Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
4 notes.

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

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

8 The Criminal Code, ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2* *Penalty units*

15 The Legislation Act, s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

1 **Part 2** **Important concepts**

2 **6** **Meaning of *unlawful betting***

3 In this Act:

4 *betting* includes the placing or accepting of bets.

5 *unlawful betting* means betting that is not authorised under this Act
6 or another gaming law.

7 **7** **Meaning of *unlawful game***

8 (1) In this Act:

9 *unlawful game*—

10 (a) means—

11 (i) a game of chance, or of mixed chance and skill, in which
12 money or any other valuable thing is offered as a prize or
13 is staked or risked (by a participant or someone else) on
14 an event or contingency; or

15 (ii) a game declared by the commission under subsection (2);
16 but

17 (b) does not include an exempt game.

18 (2) The commission may declare a game to be an unlawful game.

19 (3) A declaration is a disallowable instrument.

20 *Note* A disallowable instrument must be notified, and presented to the
21 Legislative Assembly, under the Legislation Act.

1 **8** **Meaning of *unlawful gambling***

2 In this Act:

3 *unlawful gambling* means—

- 4 (a) the playing or conduct of an unlawful game; or
5 (b) unlawful betting.

6 **9** **Meaning of *exempt game***

7 (1) In this Act:

8 *exempt game* means any of the following:

- 9 (a) a game that is authorised under another territory law;
10 (b) an exempt private game;
11 (c) a game conducted in accordance with an approval under part 3;
12 (d) an exempt two-up game;
13 (e) a game declared by the commission under subsection (2).

14 (2) The commission may declare a game to be an exempt game.

15 (3) A declaration is a disallowable instrument.

16 *Note* A disallowable instrument must be notified, and presented to the
17 Legislative Assembly, under the Legislation Act.

18 **10** **Meaning of *exempt private game***

19 (1) In this Act:

20 *exempt private game* means a game that is conducted—

- 21 (a) by a person in the person's home; and
22 (b) otherwise than for a commercial purpose; and

- 1 (c) so that—
- 2 (i) the only way a participant in the game can make a profit
- 3 or gain any other benefit as a result of the conduct of the
- 4 game is by winning a bet; and
- 5 (ii) the rules of the game provide the same chance of winning
- 6 a bet for all participants; and
- 7 (d) in accordance with any conditions prescribed by regulation.
- 8 (2) Without limiting when a game is conducted for a commercial
- 9 purpose, a game is taken to be conducted for a *commercial purpose*
- 10 if—
- 11 (a) a fee is charged to participate in the game or to enter the place
- 12 where the game is conducted (other than a fee intended to
- 13 cover the reasonable cost of food or beverages provided at the
- 14 place); or
- 15 (b) a charge, commission or fee is deducted from any amount bet
- 16 or won by a participant in the game.
- 17 (3) In this section:
- 18 *home*, of a person, means the place where the person usually lives.

1 Part 3 Approval to conduct game

2 11 Application for approval to conduct game

- 3 (1) A charitable organisation may apply in writing to the commission
4 for approval to conduct a game.

5 *Note 1* If a form is approved under the Control Act, s 53D for an application,
6 the form must be used.

7 *Note 2* A fee may be determined under s 48 for this provision.

- 8 (2) The commission may, by written notice given to an applicant,
9 require the applicant to give the commission, within a stated
10 reasonable time, additional information or documents that the
11 commission reasonably needs to decide the application.

12 Examples

- 13 1 information about where the game is to be conducted
14 2 information about when the game is to be conducted
15 3 information about the amount (if any) that the applicant intends to retain from
16 the funds raised to cover the cost of conducting the game
17 4 information to establish that the applicant is a charitable organisation

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 12 Decision on application

- 22 (1) On an application for approval under section 11, the commission
23 must—
24 (a) approve the conduct of the game; or
25 (b) refuse to approve the conduct of the game.

- 1 (2) The commission must refuse to approve the conduct of the game
2 unless satisfied that—
- 3 (a) the charitable organisation is a suitable organisation to hold an
4 approval; and
- 5 (b) the rules of the game are fair and reasonable; and
- 6 (c) the rules and method of conduct of the game can be easily
7 understood by participants; and
- 8 (d) the primary purpose of conducting the game is to raise funds
9 for a stated entity for a stated charitable purpose; and
- 10 (e) the charitable organisation is to be responsible for the
11 promotion and conduct of—
- 12 (i) the game; and
- 13 (ii) the event at which it is to be conducted; and
- 14 (f) the game is not to be conducted at a place that is a gambling
15 facility of a licensee; and
- 16 (g) the approval would not result in the charitable organisation
17 having approval to conduct games at 3 or more events in a
18 12-month period; and
- 19 (h) any other criteria prescribed by regulation are met in relation to
20 the application.
- 21 (3) Subsection (2) does not limit the matters the commission may
22 consider.
- 23 (4) The commission's approval may be given subject to conditions.
- 24 (5) In this section:
- 25 **gambling facility**—see the *Gambling and Racing Control (Code of*
26 *Practice) Regulation 2002*, dictionary.
- 27 **licensee**—see the *Gambling and Racing Control (Code of Practice)*
28 *Regulation 2002*, section 5, paragraphs (a) to (e).

1 **13 Suitability of applicant to hold approval**

- 2 (1) In deciding whether an applicant is a suitable organisation to hold an
3 approval, the commission may have regard to any relevant matter,
4 including the following:
- 5 (a) the business reputation of the organisation;
- 6 (b) the character and business reputation of anyone who—
- 7 (i) is a member of the organisation's management
8 committee; or
- 9 (ii) the organisation proposes to engage to assist it to promote
10 or conduct the game or the event at which it is to be
11 conducted;
- 12 (c) the financial background and current financial position of the
13 organisation;
- 14 (d) the financial background and current financial position of
15 anyone who—
- 16 (i) is a member of the organisation's management
17 committee; or
- 18 (ii) the organisation proposes to engage to assist it to promote
19 or conduct the game or the event at which it is to be
20 conducted;
- 21 (e) anything else prescribed by regulation.
- 22 (2) An applicant is taken not to be a suitable organisation to hold an
23 approval if—
- 24 (a) the applicant has been refused approval, or had an approval
25 cancelled, at any time in the 12 months before the application
26 is made; or

- 1 (b) the applicant, or an agent or employee of the applicant, has at
2 any time in the 5 years before the application is made,
3 contravened this Act or a condition of an approval (whether or
4 not convicted or found guilty of an offence in relation to the
5 contravention).
- 6 (3) However, despite subsection (2), the commission may decide that
7 the applicant is a suitable organisation to hold an approval if
8 satisfied that—
- 9 (a) the conduct of the game would not be adversely affected if the
10 commission decided that the applicant was a suitable
11 organisation to hold the approval; and
- 12 (b) it is otherwise in the public interest that the conduct of the
13 game be approved.

14 **14 Form of approval**

- 15 (1) An approval must—
- 16 (a) be in writing; and
- 17 (b) identify or describe—
- 18 (i) the game approved to be conducted under the approval;
19 and
- 20 (ii) the event at which it is to be conducted; and
- 21 (c) state—
- 22 (i) the name and address of the charitable organisation to
23 which the approval is given; and
- 24 (ii) the name of the person within the organisation who is
25 responsible for the event; and
- 26 (iii) the name and address of the entity (if any) the
27 organisation proposes to engage to assist it to conduct the
28 game or the event at which it is to be conducted; and

- 1 (iv) the period for which the approval is given; and
2 (v) any conditions under section 12 or section 18 to which the
3 approval is subject; and
4 (vi) an identifying number given by the commission for the
5 approval.
- 6 (2) An approval may include anything else the commission considers
7 relevant.

8 **15 Conditions of approval**

9 An approval given to a charitable organisation is subject to the
10 following conditions:

- 11 (a) the organisation is to be responsible for the promotion and
12 conduct of—
13 (i) the game; and
14 (ii) the event at which it is to be conducted;
- 15 (b) the percentage disclosed under paragraph (c), or more, of the
16 funds raised by the event must be given to the entity and
17 charitable purpose stated in the application;
- 18 (c) the minimum percentage of funds raised by the event that is to
19 be given to the stated entity and charitable purpose must be
20 clearly disclosed to the public—
21 (i) in all promotional material for the game and the event at
22 which it is to be conducted; and
23 (ii) at all places where tickets for the event can be obtained;
24 and
25 (iii) while the game is being conducted—at the place where it
26 is being conducted;

- 1 (d) the identifying number given by the commission for the
2 approval must be included—
- 3 (i) in all promotional material for the game and the event at
4 which it is to be conducted; and
- 5 (ii) on all tickets for the event;
- 6 (e) the game must be conducted in a competent and fair manner;
- 7 (f) the game must be conducted by a person who is 18 years old or
8 older;
- 9 (g) each participant in the game must be 18 years old or older;
- 10 (h) the organisation must keep a record of any information
11 prescribed by regulation;
- 12 (i) the organisation must comply with any code of practice
13 prescribed under the Control Act that applies to the
14 organisation;
- 15 (j) the organisation must continue to be a charitable organisation;
- 16 (k) any condition imposed by the commission under section 12 or
17 section 18;
- 18 (l) any condition prescribed by regulation.

19 **16 Term of approval**

20 An approval is given for the period, not longer than 12 months,
21 stated in the approval.

1 **17 Application for amendment of approval**

- 2 (1) A charitable organisation may apply in writing to the commission
3 for amendment of the organisation's approval.

4 *Note 1* If a form is approved under the Control Act, s 53D for an application,
5 the form must be used.

6 *Note 2* A fee may be determined under s 48 for this provision.

- 7 (2) The commission may, by written notice given to the applicant,
8 require the applicant to give the commission, within a stated
9 reasonable time, additional information or documents that the
10 commission reasonably needs to decide the application.

11 **18 Decision on application for amendment of approval**

- 12 (1) On application under section 17, the commission must—

13 (a) amend the approval; or

14 (b) refuse to amend the approval.

- 15 (2) In deciding whether to amend the approval, the commission must
16 have regard to the matters mentioned in section 12 (2) and (3)
17 (Decision on application) as if the application were an application
18 for an approval.

- 19 (3) An amendment of an approval has effect only if the amendment is
20 stated in the approval.

- 21 (4) To remove any doubt, the amendment of an approval under this
22 section may include the imposition of a condition on the approval
23 and the amendment of a condition to which the approval is subject.

24 **19 Cancellation of approval**

25 The commission may cancel an approval if the commission believes
26 on reasonable grounds that the charitable organisation holding the
27 approval has failed to comply with the approval or a condition of the
28 approval.

1 **Part 4 Exempt two-up games**

2 **20 Meaning of *exempt two-up game***

3 In this Act:

4 *exempt two-up game* means a two-up game—

- 5 (a) played on 25 April (Anzac Day) in any year; and
6 (b) conducted in accordance with section 21.

7 **21 Conducting exempt two-up game**

8 A two-up game is conducted in accordance with this section if—

- 9 (a) the game is conducted with the permission of the owner or
10 person in charge of the place where the game is conducted; and
11 (b) the game is conducted by a person who is 18 years old or
12 older; and
13 (c) each participant in the game is 18 years old or older; and
14 (d) if there is a prize pool for the game—the prize pool comprises
15 all bets placed by players without the deduction of any charge,
16 commission or fee; and
17 (e) subject to section 22, people may observe or participate in the
18 game free of any charge, commission or fee; and
19 (f) the game is conducted in accordance with any condition
20 prescribed by regulation.

1 **22 When charge etc may be imposed**

2 For section 21 (e), a person conducting an exempt two-up game may
3 impose a charge, commission or fee for observing or participating in
4 the game only if the person—

5 (a) has the permission of the owner or person in charge of the
6 place where the game is conducted to impose the charge,
7 commission or fee; and

8 (b) tells each person paying the charge, commission or fee the
9 purpose for which it is sought; and

10 (c) gives all payments or benefits received from imposing the
11 charge, commission or fee to an entity for a charitable purpose;
12 and

13 (d) complies with any condition prescribed by regulation in
14 relation to the charge, commission or fee.

1 **Part 5 Offences**

2 **23 Cheating**

3 A person commits an offence if—

4 (a) the person—

5 (i) participates in a game of chance, or of mixed chance and
6 skill, in which money or any other valuable thing is
7 offered as a prize or is staked or risked (by a participant
8 or someone else) on an event or contingency; or

9 (ii) otherwise places or accepts a bet; and

10 (b) the person dishonestly—

11 (i) obtains for the person or someone else money, benefit,
12 advantage, valuable consideration or security; or

13 (ii) induces someone to deliver, give or credit to the person or
14 someone else money, benefit, advantage, valuable
15 consideration or security; and

16 (c) the person does so by—

17 (i) trick, device, sleight of hand or representation; or

18 (ii) a scheme or practice; or

19 (iii) the use of—

20 (A) an instrument of gambling; or

21 (B) anything else.

22 *Note Instrument of gambling*—see the dictionary.

23 Maximum penalty: 200 penalty units, 2 years imprisonment or
24 both.

- 1 **24** **Arranging unlawful gambling**
- 2 A person commits an offence if the person arranges an unlawful
3 game or unlawful betting.
- 4 Maximum penalty: 100 penalty units, imprisonment for 1 year or
5 both.
- 6 **25** **Conducting unlawful gambling**
- 7 (1) A person commits an offence if the person conducts an unlawful
8 game or unlawful betting.
- 9 Maximum penalty: 100 penalty units, imprisonment for 1 year or
10 both.
- 11 (2) A person commits an offence if—
- 12 (a) the person conducts an unlawful game or unlawful betting; and
- 13 (b) another person under 18 years old participates in the unlawful
14 game or unlawful betting.
- 15 Maximum penalty: 200 penalty units, imprisonment for 2 years or
16 both.
- 17 **26** **Owning etc place used for unlawful gambling**
- 18 A person commits an offence if—
- 19 (a) the person is the owner or person in charge of a place being
20 used for the conduct of an unlawful game or unlawful betting;
21 and
- 22 (b) the person knows the place is being used for the conduct of an
23 unlawful game or unlawful betting.
- 24 Maximum penalty: 100 penalty units, imprisonment for 1 year or
25 both.

- 1 **27 Advertising etc unlawful gambling or place where**
2 **unlawful gambling conducted**
- 3 A person commits an offence if the person—
- 4 (a) places, displays or broadcasts an advertisement for—
- 5 (i) an unlawful game or unlawful betting; or
- 6 (ii) a place being used, or to be used, for the conduct of an
- 7 unlawful game or unlawful betting; or
- 8 (b) does anything else that promotes, or entices a person to
- 9 participate in, an unlawful game or unlawful betting.
- 10 Maximum penalty: 50 penalty units.
- 11 **28 Inviting child to bet**
- 12 (1) A person commits an offence if the person sends to someone the
- 13 person knows is a child a document that invites, or may reasonably
- 14 be implied to invite, the child to—
- 15 (a) make a bet; or
- 16 (b) enter into or take a share or interest in a bet; or
- 17 (c) apply to someone or at a place to obtain information or advice
- 18 in relation to a bet.
- 19 Maximum penalty: 50 penalty units.
- 20 (2) In this section:
- 21 **bet** does not include—
- 22 (a) a bet that is part of a game declared by the commission under
- 23 section 9 (2); or
- 24 (b) the buying of a raffle ticket.

1 **29 Participating in unlawful gambling**

- 2 (1) A person commits an offence if—
- 3 (a) the person participates in an unlawful game; and
- 4 (b) the person knows the game is an unlawful game.
- 5 Maximum penalty: 50 penalty units.

- 6 (2) A person commits an offence if—
- 7 (a) the person participates in unlawful betting; and
- 8 (b) the person knows the betting is unlawful betting.
- 9 Maximum penalty: 50 penalty units.

10 **30 Receiving proceeds from unlawful gambling**

- 11 A person commits an offence if—
- 12 (a) the person receives proceeds from the conduct of an unlawful
- 13 game or unlawful betting; and
- 14 (b) the person knows the proceeds are from the conduct of an
- 15 unlawful game or unlawful betting.
- 16 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 17 both.

18 **31 Possessing instrument of gambling**

- 19 (1) A person commits an offence if—
- 20 (a) the person possesses an instrument of gaming; and
- 21 (b) the person possesses the instrument for a purpose related to the
- 22 conduct or proposed conduct of an unlawful game.
- 23 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 24 both.

- 1 (2) A person commits an offence if—
2 (a) the person possesses an instrument of betting; and
3 (b) the person possesses the instrument for a purpose related to the
4 conduct or proposed conduct of unlawful betting.
5 Maximum penalty: 100 penalty units, imprisonment for 1 year or
6 both.

7 **32 Failing to comply with condition of approval to conduct**
8 **game**

- 9 (1) A person commits an offence if—
10 (a) the person conducts a game under an approval; and
11 (b) the person fails to comply with a condition under section 15
12 (Conditions of approval) in relation to the game.
13 Maximum penalty: 50 penalty units.
14 (2) An offence against this section is a strict liability offence.

15 **33 Failing to comply with requirements about charge etc for**
16 **exempt two-up game**

- 17 (1) A person commits an offence if—
18 (a) the person conducts a two-up game on 25 April (Anzac Day) in
19 a year; and
20 (b) the person imposes a charge, commission or fee for observing
21 or participating in the game; and
22 (c) the person fails to comply with section 22 in relation to the
23 charge, commission or fee.
24 Maximum penalty: 50 penalty units.
25 (2) An offence against this section is a strict liability offence.

- 1 **34 Criminal liability of corporation officers**
- 2 (1) An officer of a corporation commits an offence if—
- 3 (a) the corporation contravenes a provision of this Act; and
- 4 (b) the contravention is an offence against this Act (the *relevant*
- 5 *offence*); and
- 6 (c) the officer was reckless about whether the contravention would
- 7 happen; and
- 8 (d) the officer was in a position to influence the conduct of the
- 9 corporation in relation to the contravention; and
- 10 (e) the officer failed to take all reasonable steps to prevent the
- 11 contravention.
- 12 Maximum penalty: The maximum penalty that may be imposed for
- 13 the commission of the relevant offence by an individual.
- 14 (2) This section applies whether or not the corporation is prosecuted for,
- 15 or convicted of, the relevant offence.
- 16 (3) In deciding whether the officer took (or failed to take) reasonable
- 17 steps to prevent the contravention, a court must have regard to the
- 18 following:
- 19 (a) any action the officer took directed towards ensuring the
- 20 following (to the extent that the action is relevant to the act or
- 21 omission):
- 22 (i) that the corporation arranged regular professional
- 23 assessments of the corporation's compliance with the
- 24 contravened provision;
- 25 (ii) that the corporation implemented any appropriate
- 26 recommendation arising from such an assessment;
- 27 (iii) that the corporation's employees, agents and contractors
- 28 had a reasonable knowledge and understanding of the
- 29 requirement to comply with the contravened provision;

- 1 (b) any action the officer took when the officer became aware that
2 the contravention was, or might be, about to happen.
- 3 (4) Subsection (3) does not limit the matters to which the court may
4 have regard.
- 5 (5) This section does not apply if the corporation would have a defence
6 to a prosecution for the relevant offence.
- 7 (6) In this section:
- 8 **officer**, of a corporation, means—
- 9 (a) a director or secretary of the corporation; or
- 10 (b) a person—
- 11 (i) who makes, or takes part in making, decisions that affect
12 all, or a substantial part, of the business of the
13 corporation; or
- 14 (ii) in accordance with whose instructions or wishes the
15 directors of the corporation are accustomed to act
16 (excluding advice given by the person in the proper
17 exercise of functions attaching to the person's
18 professional capacity or business relationship with the
19 directors or the corporation); or
- 20 (iii) who is a receiver, or receiver and manager, of the
21 corporation's property; or
- 22 (c) an administrator of the corporation; or
- 23 (d) an administrator of a deed of company arrangement executed
24 by the corporation; or
- 25 (e) a liquidator of the corporation; or
- 26 (f) a trustee or other person administering a compromise or
27 arrangement made between the corporation and someone else.

1 **Part 6** **Seizure and forfeiture of**
2 **instruments of gambling**

3 **35 Seizure of instruments of gambling**

4 An authorised officer may seize an instrument of gambling if the
5 officer believes on reasonable grounds that it has been, is being, or
6 is likely to be used for a purpose related to the conduct or operation
7 of an unlawful game or unlawful betting.

8 *Note* For the powers of entry and inspection of authorised officers—see the
9 Control Act, div 4.2 (Powers of investigation).

10 **36 Receipt for seized instrument of gambling**

- 11 (1) As soon as practicable after an authorised officer seizes an
12 instrument of gambling under section 35, the officer must give a
13 receipt for it to the person from whom it was seized.
- 14 (2) If, for any reason, it is not practicable to comply with subsection (1),
15 the authorised officer must leave the receipt, secured conspicuously
16 at the place where the instrument of gambling was seized.
- 17 (3) A receipt under this section must include the following:
- 18 (a) a description of the instrument of gambling;
- 19 (b) an explanation of why the instrument was seized;
- 20 (c) an explanation of the person's right to apply to a court under
21 section 38 for an order disallowing the seizure;
- 22 (d) where the instrument of gambling is to be taken;
- 23 (e) the authorised officer's name and information about how to
24 contact the officer.

37 Return of seized instruments of gambling

- 1 (1) An instrument of gambling seized under section 35 must be returned
2 to its owner, or reasonable compensation must be paid to the owner
3 by the Territory for the loss of the instrument, unless—
4
- 5 (a) a prosecution for an offence against a territory law in
6 connection with the instrument is begun within 1 year after the
7 day the seizure is made and the instrument is required to be
8 produced in evidence in the prosecution; or
- 9 (b) an application for the forfeiture of the seized instrument is
10 made to a court under the *Confiscation of Criminal Assets*
11 *Act 2003* or another territory law within 1 year after the day the
12 seizure is made; or
- 13 (c) all proceedings in relation to the offence with which the seizure
14 was connected have ended and the court has made an order
15 about the instrument.
- 16 (2) However, this section does not apply to an instrument of
17 gambling—
- 18 (a) if the commission believes on reasonable grounds that the only
19 practical use of the instrument in relation to the premises where
20 it was seized would be an offence against this Act; or
- 21 (b) if possession of it by its owner would be an offence.

38 Application for order disallowing seizure

- 22 (1) A person claiming to be entitled to an instrument of gambling seized
23 under section 35 may apply to the Magistrates Court within 1 year
24 after the day of the seizure for an order disallowing the seizure.
25
- 26 (2) The application may be heard only if the applicant has served a copy
27 of the application on the commission.
- 28 (3) The commission is entitled to appear as respondent at the hearing of
29 the application.

1 **39 Order disallowing seizure**

2 (1) On an application under section 38, the Magistrates Court must
3 make an order disallowing the seizure if satisfied that—

4 (a) the applicant would, apart from the seizure, be entitled to the
5 return of the seized instrument of gambling; and

6 (b) the instrument of gambling is not connected with the conduct
7 or operation of an unlawful game or unlawful betting; and

8 (c) possession of the instrument of gambling by the person would
9 not be an offence.

10 (2) The Magistrates Court may also make an order disallowing the
11 seizure if satisfied there are exceptional circumstances justifying the
12 making of the order.

13 (3) If the Magistrates Court makes an order disallowing the seizure, the
14 court may make 1 or more of the following ancillary orders:

15 (a) an order directing the commission to return the instrument of
16 gambling to the applicant or to someone else who appears to be
17 entitled to it;

18 (b) if the instrument of gambling cannot be returned or has
19 depreciated in value because of the seizure—an order directing
20 the Territory to pay reasonable compensation;

21 (c) an order about the payment of costs in relation to the
22 application.

23 **40 Adjournment pending hearing of other proceeding**

24 (1) This section applies to the hearing of an application under section 38
25 (Application for order disallowing seizure).

- 1 (2) If it appears to the Magistrates Court that the seized instrument of
2 gambling is required to be produced in evidence in a pending
3 proceeding in relation to an offence against a Territory law, the
4 court may, on the application of the commission or its own
5 initiative, adjourn the hearing until the end of that proceeding.

6 **41 Forfeiture of seized instrument of gambling**

- 7 (1) This section applies if—
- 8 (a) an instrument of gambling seized under section 35 has not been
9 returned under section 37; and
- 10 (b) an application for disallowance of the seizure under
11 section 38—
- 12 (i) has not been made within 1 year after the day the seizure
13 is made; or
- 14 (ii) has been made within 1 year after the day the seizure is
15 made, and the application has been refused or withdrawn
16 before a decision in relation to the application has been
17 made.
- 18 (2) If this section applies to the seized instrument of gambling the
19 instrument—
- 20 (a) is forfeited to the Territory; and
- 21 (b) may be sold, destroyed or otherwise disposed of as the
22 commission directs.

23 **42 Forfeiture of instrument of gambling etc if found guilty of
24 offence against Act**

25 If a person is convicted, or found guilty, of an offence against this
26 Act, any instrument of gambling or other article used by the person
27 in the commission of the offence, or to which the offence relates—

- 28 (a) is forfeited to the Territory; and

1 (b) may be sold, destroyed or otherwise disposed of as the
2 commission considers appropriate.

3 **43 Cost of disposal of things forfeited**

4 (1) This section applies if—

5 (a) a person is convicted, or found guilty, of an offence against
6 this Act in relation to something forfeited to the Territory
7 under this part; and

8 (b) the thing is connected with an offence against this Act; and

9 (c) the person was the owner of the thing immediately before its
10 forfeiture.

11 *Note Found guilty*—see the Legislation Act, dict, pt 1.

12 (2) If this section applies, costs incurred by or on behalf of the Territory
13 in relation to the lawful disposal of the thing (including storage
14 costs) are a debt owing to the Territory by the person.

1 **Part 7** **Notification and review of**
2 **decisions**

3 **44** **Meaning of *reviewable decision*—pt 7**

4 In this part:

5 *reviewable decision* means a decision mentioned in
6 schedule 1, column 3 under a provision of this Act mentioned in
7 column 2 in relation to the decision.

8 **45** **Reviewable decision notices**

9 If the commission makes a reviewable decision, the commission
10 must give a reviewable decision notice to each person mentioned in
11 schedule 1, column 4 in relation to the decision.

12 *Note 1* The commission must also take reasonable steps to give a reviewable
13 decision notice to any other person whose interests are affected by the
14 decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

15 *Note 2* The requirements for a reviewable decision notice are prescribed under
16 the *ACT Civil and Administrative Tribunal Act 2008*.

17 **46** **Applications for review**

18 The following people may apply to the ACAT for a review of a
19 reviewable decision:

20 (a) a person mentioned in schedule 1, column 4 in relation to the
21 decision;

22 (b) any other person whose interests are affected by the decision.

23 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*
24 *Act 2008* for the application, the form must be used.

1 **Part 8** **Miscellaneous**

2 **47** **Unlawful gambling agreements void**

3 An agreement, whether oral or in writing, relating to an unlawful
4 game or unlawful betting is void and no action may be brought in a
5 court to recover any money or other property that—

- 6 (a) is alleged to have been won or lost on a bet in relation to the
7 unlawful game or unlawful betting; or
- 8 (b) has been given to a person as a stakeholder for an event on
9 which a bet has been made in relation to the unlawful game or
10 unlawful betting.

11 **48** **Determination of fees**

- 12 (1) The Minister may, in writing, determine fees for this Act.

13 *Note* The Legislation Act contains provisions about the making of
14 determinations and regulations relating to fees (see pt 6.3).

- 15 (2) A determination is a disallowable instrument.

16 *Note* A disallowable instrument must be notified, and presented to the
17 Legislative Assembly, under the Legislation Act.

18 **49** **Regulation-making power**

19 The Executive may make regulations for this Act.

20 *Note* Regulations must be notified, and presented to the Legislative
21 Assembly, under the Legislation Act.

22 **50** **Legislation amended—sch 2**

23 This Act amends the following legislation:

- 24 • *Gambling and Racing Control Act 1999*
25 • *Legislation Act 2001*
26 • *Liquor Act 1975*
27 • *Lotteries Act 1964*

- 1 • *Pool Betting Act 1964*
2 • *Race and Sports Bookmaking Act 2001.*

3 **51 Legislation repealed**

4 This Act repeals the following legislation:

- 5 • *Games, Wagers and Betting Houses Act 1901* (A1902-18)
6 • *Gaming and Betting Act 1906* (A1906-13)
7 • *Unlawful Games Act 1984* (A1984-21)
8 • *Unlawful Games Regulation 2007* (SL2007-5).

1 **Schedule 1 Reviewable decisions**

2 (see pt 7)

column 1 item	column 2 section	column 3 decision	column 4 person
1	12 (1) (b)	refuse to approve conduct of game	applicant for approval
2	12 (4)	impose condition on approval	approval holder
3	18 (1) (b)	refuse to amend approval	approval holder
4	18 (4)	impose condition on, or amend condition of, approval	approval holder
5	19	cancel approval	approval holder

1 **Schedule 2 Consequential amendments**

2 (see s 50)

3 **Part 2.1 Gambling and Racing Control**
4 **Act 1999**

5 **[2.1] Section 4 (d) and (e)**

6 *omit*

7 **[2.2] Section 4 (l)**

8 *substitute*

9 (l) the *Unlawful Gambling Act 2009*.

10 **[2.3] Section 37 (d)**

11 *substitute*

12 (d) to any of the following, or to a person authorised to receive the
13 information by any of the following:

14 (i) for the purpose of the administration or enforcement of a
15 gaming law of a reciprocating jurisdiction—a person
16 who, or authority that, exercises functions under that law;

17 (ii) the auditor-general;

18 (iii) the Australian Competition and Consumer Commission;

19 (iv) the Australian Crime Commission;

20 (v) the Australian Federal Police;

21 (vi) the Australian Securities and Investments Commission;

22 (vii) the Australian statistician;

- 1 (viii) the Australian Transaction Reports and Analysis Centre
2 (AUSTRAC);
- 3 (ix) the chief police officer;
- 4 (x) the commissioner for revenue;
- 5 (xi) the Commissioner of Taxation of the Commonwealth;
- 6 (xii) the Commonwealth Department of Immigration;
- 7 (xiii) the Commonwealth Services Delivery Agency
8 (Centrelink);
- 9 (xiv) the ombudsman;
- 10 (xv) the police force or service of a State;
- 11 *Note* *State* includes the Northern Territory (see Legislation Act,
12 dict, pt 1).
- 13 (xvi) an authority or agency of a State that is responsible for
14 collecting or receiving taxation revenue of the State;
- 15 (xvii) a person prescribed by regulation; or

16 **[2.4] Dictionary, definition of *gaming***

17 *substitute*

18 *gaming* means conducting or playing a game of chance, or of mixed
19 chance and skill, in which money or any other valuable thing is
20 offered as a prize or is staked or risked (by a participant or someone
21 else) on an event or contingency.

22 **Part 2.2 Legislation Act 2001**

23 **[2.5] Schedule 1, part 1.1, items 13 and 18**

24 *omit*

1 **Part 2.3 Liquor Act 1975**

2 **[2.6] Dictionary, definition of *defined offence*, paragraph (d)**

3 *substitute*

4 (d) the *Unlawful Gambling Act 2009*;

5 **Part 2.4 Lotteries Act 1964**

6 **[2.7] Dictionary, definition of *unlawful game***

7 *omit*

8 *Unlawful Games Act 1984*

9 *substitute*

10 *Unlawful Gambling Act 2009*

11 **Part 2.5 Pool Betting Act 1964**

12 **[2.8] Dictionary, definition of *unlawful game***

13 *omit*

14 *Unlawful Games Act 1984*

15 *substitute*

16 *Unlawful Gambling Act 2009*

1 **Part 2.6** **Race and Sports Bookmaking**
2 **Act 2001**

3 **[2.9] New section 4A**

4 *in part 1, insert*

5 **4A Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1 Criminal Code*

8 The Criminal Code, ch 2 applies to the following offences against this
9 Act (see Code, pt 2.1):

- 10 • s 72A (Betting by or on behalf of child)
- 11 • s 73A (Bookmakers—unauthorised bookmaking).

12 The chapter sets out the general principles of criminal responsibility
13 (including burdens of proof and general defences), and defines terms
14 used for offences to which the Code applies (eg *conduct*, *intention*,
15 *recklessness* and *strict liability*).

16 *Note 2 Penalty units*

17 The Legislation Act, s 133 deals with the meaning of offence penalties
18 that are expressed in penalty units.

19 **[2.10] New section 72A**

20 *in part 9, insert*

21 **72A Betting by or on behalf of child**

22 (1) A child commits an offence if—

- 23 (a) the child places a bet with another person who is a race
24 bookmaker or sports bookmaker; and
- 25 (b) the child knows the other person is a race bookmaker or sports
26 bookmaker.

27 Maximum penalty: 10 penalty units.

- 1 (2) A child commits an offence if—
- 2 (a) the child places a bet with another person who is a race
- 3 bookmaker or sports bookmaker; and
- 4 (b) the child knows the other person is a race bookmaker or sports
- 5 bookmaker; and
- 6 (c) the child uses a false document of identification or someone
- 7 else's document of identification for the purpose of placing the
- 8 bet.
- 9 Maximum penalty: 10 penalty units.
- 10 (3) A person commits an offence if—
- 11 (a) the person is a race bookmaker or sports bookmaker; and
- 12 (b) the person accepts a bet placed by a child.
- 13 Maximum penalty: 50 penalty units.
- 14 (4) An offence against subsection (3) is a strict liability offence.
- 15 (5) A person commits an offence if—
- 16 (a) the person places a bet with another person who is a race
- 17 bookmaker or sports bookmaker; and
- 18 (b) the person places the bet on behalf of a child.
- 19 Maximum penalty: 20 penalty units.
- 20 (6) In this section:
- 21 ***document of identification***, for a person, means a document that—
- 22 (a) is a driver licence, proof of age card or passport; and
- 23 (b) contains a photograph that could reasonably be taken to be of
- 24 the person; and
- 25 (c) indicates that the person to whom the document was issued is
- 26 at least 18 years old.

1 *driver licence* means an Australian driver licence or a licence to
2 drive a motor vehicle (however described) issued under the law of
3 an external Territory or a foreign country.

4 **[2.11] Section 73 (1) (b)**

5 *substitute*

6 (b) at a sports bookmaking venue described in an approval given
7 under section 49 (1) (Issue or refusal of approval for sports
8 bookmaking venue) to the race bookmaker.

9 **[2.12] Section 73 (2) (b)**

10 *substitute*

11 (b) at a sports bookmaking venue described in an approval given
12 under section 49 (1) to the race bookmaker—

13 (i) who applied for the licence held by the race bookmaker's
14 agent; and

15 (ii) for whom the race bookmaker's agent is engaging in race
16 bookmaking at the venue.

17 **[2.13] New section 73A**

18 *insert*

19 **73A Bookmakers—unauthorised bookmaking**

20 (1) A sports bookmaker or sports bookmaker's agent commits an
21 offence if the sports bookmaker or sports bookmaker's agent accepts
22 a bet—

23 (a) at a place that is not a sports bookmaking venue; or

24 (b) on something that is not a sports bookmaking event.

25 Maximum penalty: 50 penalty units.

- 1 (2) A race bookmaker commits an offence if the race bookmaker
2 accepts a bet other than—
- 3 (a) at a race meeting; or
- 4 (b) at a sports bookmaking venue described in an approval given
5 under section 49 (1) to the race bookmaker.
- 6 Maximum penalty: 50 penalty units.
- 7 (3) A race bookmaker's agent commits an offence if the agent accepts a
8 bet other than—
- 9 (a) at a race meeting; or
- 10 (b) at a sports bookmaking venue described in an approval given
11 under section 49 (1) to the race bookmaker—
- 12 (i) who applied for the licence held by the race bookmaker's
13 agent; and
- 14 (ii) for whom the race bookmaker's agent is engaging in race
15 bookmaking at the venue.
- 16 Maximum penalty: 50 penalty units.
- 17 (4) A race bookmaker, or a race bookmaker's agent, commits an
18 offence if the race bookmaker or race bookmaker's agent accepts a
19 bet on something other than a race.
- 20 Maximum penalty: 50 penalty units.
- 21 (5) An offence against this section is a strict liability offence.

1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • ACAT
- 7 • ACT
- 8 • Executive
- 9 • fail
- 10 • function
- 11 • gambling and racing commission
- 12 • public servant
- 13 • the Territory.

14 *approval* means an approval under part 3.

15 *authorised officer* means an authorised officer under the Control
16 Act, section 20.

17 *charitable organisation*—see the *Duties Act 1999*, dictionary.

18 *charitable purpose* includes any benevolent, philanthropic or
19 patriotic purpose.

20 *commission* means the gambling and racing commission.

21 *Control Act* means the *Gambling and Racing Control Act 1999*.

22 *exempt game*—see section 9.

23 *exempt private game*—see section 10.

24 *exempt two-up game*—see section 20.

25 *gaming*—see the Control Act, dictionary.

26 *gaming equipment*—see the Control Act, dictionary.

27 *gaming law*—see the Control Act, dictionary.

- 1 ***instrument of betting*** means any electrical, electronic or mechanical
2 device or any other thing—
- 3 (a) used, or suitable for use, in connection with betting; or
4 (b) designed or adapted for use for or in relation to betting.
- 5 ***instrument of gambling*** means an instrument of betting or an
6 instrument of gaming.
- 7 ***instrument of gaming*** means gaming equipment or chips.
- 8 ***place*** includes premises, structure, vehicle and vessel.
- 9 ***unlawful betting***—see section 6.
- 10 ***unlawful gambling***—see section 8.
- 11 ***unlawful game***—see section 7.

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2009.
- 2 **Notification**
Notified under the Legislation Act on 2009.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.