

**2005**

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

**CASINO CONTROL BILL 2005**

**EXPLANATORY STATEMENT**

Circulated by the authority of  
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## INTRODUCTION

### **The Nature of Casino Regulation**

Historically, casinos evolved in North America and Europe from dubious backgrounds amidst allegations of control or influence by organised crime. The legitimisation of casino operations to allow crime-free operations was a challenge faced by many jurisdictions including the ACT.

The *Casino Control Act 1988* was introduced into the Territory with the aim of providing a safe regulatory model to allow a legitimate casino to operate. Its provisions were based on ideas and experiences relevant at the time of its drafting, many of which are still valid today.

The nature of casino operations, where large amounts of cash (chips) are used in frequent betting transactions where little or no record or audit trail is kept, poses unique problems for the legislators and regulators. The “cash economy” of betting transactions creates significant difficulties for Governments trying to tax casino operations. Extensive controls of cash and chip transactions are required to ensure that there is no leakage of funds or skimming by casino operators or casino staff.

Equally, the cash nature of the casino business leaves the industry vulnerable to criminal activity ranging from petty theft by staff or patrons to organised money laundering by large gangs.

Legislators have the task of removing or keeping out criminal influence from casino operations. As a result, extensive controls including the licensing of the casino operator are introduced to ensure that, as far as possible, this aim is achieved.

The key objective of this legislation is to provide the community with the confidence that the ACT casino is a legitimate and safe place to visit and for people to spend their money if they wish to do so. The legislation is designed to ensure that the casino is free from criminal influence and that appropriate harm minimisation strategies in relation to problem gambling have been provided.

The necessity of this approach has resulted in a carefully considered position in relation to proportionality. An individual’s rights and freedoms have, in some cases, been slightly fettered on the basis that it is in the wider public interest that the casino be properly regulated and gambling activity controlled. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

## Background to the Revised Legislation

Section 6(2)(f) of the *Gambling and Racing Control Act 1999* provides for the ACT Gambling and Racing Commission (the Commission) as part of its functions to review the ACT's legislation and policies related to gaming and racing. In reviewing such legislation, 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 April 2003 that identified a number of issues that could be addressed in the review of the *Casino Control Act 1988*. Following a period of public consultation where submissions were received on the content of the *Discussion Paper*, the Commission developed a more detailed *Options Paper* that was circulated for comment in April 2004.

The *Options Paper* canvassed a number of different approaches or possibilities on operational issues associated with the regulation of the casino, such as casino employee licensing, operating hours, approval of casino games and their rules, approval of gaming equipment, approval of supply contracts and approval of the casino's operational procedures.

Fundamental issues such as the eligibility of the casino licensee and the issue or transfer of the casino licence was largely determined by best practice controls in this area along with the Commission's own regulatory experience.

Following consideration of the public submissions received as part of the second consultation stage, the Commission developed a *Policy Paper* that contained a number of recommendations concerning the regulation of the casino in the ACT. The *Policy Paper* was forwarded to the Minister for consideration in December 2004.

On 15 March 2005, the Government tabled its response to the Commission's review of the Act. Of the 37 recommendations put forward by the Commission, the Government fully supported 36 and noted one.

The *Casino Control Bill 2005* 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 completely update the legislation to provide for other drafting and minor amendments of a technical nature to ensure that the ACT's casino control legislation is consistent with current drafting policy (including offence provisions) and is effective in regulating casino operations in the Territory.

## Offence Provisions

The *Criminal Code 2002* applies to the offences in the Bill.

The Bill contains offences of strict liability. 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. A strict liability offence has a defence of mistake fact in addition to the other defences in part 2.3 of the Criminal Code and any other defence included in the Act.

Strict liability offences, where considered appropriate, are generally applied against the casino licensee as the corporation responsible for the casino's operations.

In some circumstances strict liability offences are applied against casino employees or other officials following careful consideration of these offence provisions. In these situations, a defence to the prosecution is provided as part of the offence provision or in the case of the conduct of gaming in the casino a significantly lower level of penalty for individuals is provided. The conduct of gaming is considered a unique set of circumstances as the integrity of the casino is dependent upon the honesty and reliability of the casino employees that conduct games on behalf of the casino licensee. These matters are discussed in more detail in this Explanatory Statement in the comments made on Division 6.3 of the Bill.

Strict liability offences generally arise in a regulatory context where, for reasons such as public safety or protection of the public revenue, it is necessary to ensure the integrity of the regulatory scheme. In these circumstances, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement in the particular industry, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

This rationale is relevant in the tightly regulated casino industry where trained and licensed casino employees engaged in performing functions in the casino (as opposed to members of the general public or persons in some other professions) can be expected to be aware of their duties, obligations and responsibilities. Additionally, the potential effect on the government's gambling harm minimisation strategies and, as a consequence, the potential effect on casino patrons and the level of problem gambling of a failure by the casino licensee (or any other person given authority under that licence) to adequately fulfil the requirements of that licence or authority further justifies strict liability. As outlined above, the Bill adds specific additional defences where appropriate and relevant to individual provisions in the Act.

The strict liability offences have penalties that generally range between 20 and 50 penalty units for casino employees and up to 100 penalty units for the casino licensee as a corporation. The higher penalty for the casino corporation is considered appropriate because the corporation carries a higher level of responsibility and will be more aware of their obligations under their licence and the legislation. Therefore in these circumstances a breach by the casino licensee will be a serious matter and should be able to be adequately dealt with by the judicial system.

## **Financial 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.

Overall, the revised legislation should provide additional flexibility to the casino licensee in undertaking its operations which may lead to a more responsive approach to its patrons' requirements and more efficient operations.

The Commission is likely to realise some operational efficiencies under the revised legislation by being able to continue to enhance its risk management approach to casino regulation while maintaining an appropriate level of control or monitoring of casino activity.

## NOTES ON SPECIFIC PROVISIONS

### Part 1 Preliminary

#### 1. Name of Act

This section provides that the name of the Act is the *Casino Control Act 2005*.

#### 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.

#### 6. Lawfulness of casino operation

Subsection (1) provides that despite any other Territory law the operation of the casino is lawful. However, casino operations are subject to the provisions of this Casino Control Act and all of the controls that have been provided to legitimise the operations of the casino licensee.

Specifically, this subsection provides for the casino licensee or a casino employee to conduct an authorised game in the casino, a person to play an authorised game in the casino and a person to use approved gaming equipment or chips in the conduct and playing of an authorised game in the casino.

Subsection (2) provides that the casino is not a public or private nuisance only because it is used as a gaming house. This subsection is necessary to ensure that the provisions of the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906* do not apply to the casino, particularly in relation to a common gaming house or a betting house.

Subsection (3) provides that an action cannot be brought in a court to recover:

- (a) an amount won in the course of gaming in the casino;
- (b) an amount, or a cheque or other instrument, given in payment of an amount mentioned in paragraph (a); or

- (c) an amount wagered in the course of gaming in the casino, that was lent in the knowledge that it was to be applied in that way.

However, this section does not prevent an action against the casino licensee to recover an amount legitimately won at gaming in the casino or the amount of a cheque that was later dishonoured and given by the casino licensee in payment of an amount won at the casino.

This section generally provides that the operations of the casino, as permitted under this Act, are lawful.

## **Part 2 Casino Administration**

### **Division 2.1 Definitions and Important Concepts**

This Division provides some important definitions that are frequently used and generally apply to the whole of the Act.

#### **7. Eligibility of individuals**

Subsection (1) provides that for the whole of this Act an individual is an *eligible person* if the individual is an adult and there is not a disqualifying ground for the individual.

Subsection (2) provides that each of the following is a *disqualifying ground* for an individual:

- (a) the individual has been convicted, or found guilty, in the last 5 years, whether in the ACT or elsewhere, of an offence involving fraud or dishonesty or against a law about gaming;
- (b) the individual has been convicted, or found guilty, in Australia in the last 5 years of an offence punishable by imprisonment for at least 1 year;
- (c) the individual has been convicted, or found guilty, outside Australia in the last 5 years of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year;
- (d) the individual is an undischarged bankrupt or, at any time in the last 5 years was an undischarged bankrupt or had executed a personal insolvency agreement; or
- (e) at any time in the last 5 years the individual was involved in the management of a corporation when the corporation became the subject of a winding-up order or a controller or administrator was appointed.

Subsection (3) provides that despite the disqualifying grounds outlined in subsection (2), the Minister or the Commission as appropriate may decide that an individual is an *eligible person* if satisfied that the operation of the casino would not be adversely affected if the individual was considered as an eligible person and that it was otherwise in the public interest that the individual be treated as an eligible person.

Subsection (3) provides that in certain circumstances some element of discretion is provided to the decision maker (the Minister or Commission as appropriate to the relevant provision) in determining whether a person is an eligible person.

## 8. Eligibility of Corporations

Subsection (1) provides that for the whole of this Act a corporation is an *eligible person* if:

- (a) each executive officer and influential person of the corporation is an eligible person; and
- (b) 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
- (c) a controller or administrator has not been appointed for the corporation in the last 3 years.

Despite the disqualifying grounds outlined in subsection (1), the Minister or the Commission may decide that a corporation is an *eligible person* if satisfied that:

- (a) the operation of the casino would not be adversely affected if the Minister or the Commission decided that the individual is an eligible person; and
- (b) it is otherwise in the public interest that the corporation be treated as an eligible person.

Subsection (2) provides that in certain circumstances some element of discretion is provided to the decision maker (the Minister or Commission as appropriate to the relevant provision) in determining whether a corporation is an eligible person.

## 9. Meaning of *influential person*

Subsection (1) provides that for the whole of this Act, *influential person* for a corporation means an executive officer of the corporation, a related corporation, an executive officer of a related corporation or an influential owner of the corporation. It also includes a person who, though not mentioned above, can exercise as much influence over the conduct of the corporation as someone already mentioned.

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

Also, a *related corporation* for this section means a related body corporate under the Corporations Act.

## 10. Meaning of *owner*

For the whole of this Act, *owner* of the casino means a person who, alone or jointly with others, is the lessee of land where the casino, or part of the casino, is located. This section also provides that a reference to *the owner* of the casino is a reference to all such people.

The lease of the land includes the buildings and other improvements.



## **Division 2.2 Ownership of casino**

### **11. Owner must be eligible person**

A person may be an owner of the casino only if the person is an eligible person and can carry out the person's obligations as an owner of the casino under this Act.

### **12. Application for approval for change of ownership**

An owner of the casino may apply in writing to the Minister for approval to sell or otherwise dispose of the owner's interest in the lease of the casino, or part of the interest, to someone else.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

### **13. Approval of proposed owner**

On application under section 12, the Minister must approve or refuse to approve the sale or other disposal of an owner's interest in the lease of the casino, or part of the interest, to the proposed owner. In deciding whether to approve the proposed sale or other disposal the Minister must consider any recommendation made by the Commission on this matter.

The decision to refuse to approve is a reviewable decision (section 137 of this Act refers).

Subsection (2) provides that the Minister must not approve the sale or other disposal of the lease of the casino (or part of the interest) unless satisfied that the proposed owner is an eligible person and that a control agreement, if relevant, is entered into.

This provision ensures that any proposed change in the casino lease arrangements are properly scrutinised by the Commission and that any new owner of the casino is a party to a control agreement under Division 2.4 of this Act if it is applicable.

### **14. Change of ownership without approval**

Subsection (1) provides that an owner of the casino commits an offence if the owner sells or otherwise disposes of the owner's interest in the lease of the casino, or part of the interest, to someone else and the sale or other disposal has not been approved by the Minister under section 13.

The maximum penalty for an offence against this section is 50 penalty units.

An offence against this section is a strict liability offence.

### **Division 2.3 Lease of casino**

#### **15. Application for approval of proposed casino lease**

Subsection (1) provides that the owner of the casino may apply to the Minister for approval to enter into a lease of the casino with someone else.

Subsection (2) provides that an application for approval must be in writing and be accompanied by the proposed lease, the name and contact details of the proposed lessee and particulars of the financial standing, relevant managerial experience and business reputation of the proposed lessee.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

This provision allows the casino owner to use another organisation, or have another organisation involved, in relation to the casino. Such an arrangement would effectively be a sub-lease of the casino to another organisation.

#### **16. Approval of proposed casino lease**

Subsection (1) provides that on application under section 15, the Minister must approve or refuse to approve the owner of the casino entering into the proposed lease of the casino with the proposed lessee. In deciding whether to approve the owner of the casino entering into a proposed lease, the Minister must consider any recommendation made by the Commission on this matter.

The decision to refuse to approve is a reviewable decision (section 137 of this Act refers).

Subsection (2) provides that the Minister must not approve the owner entering into the proposed lease of the casino with the proposed lessee unless satisfied that the proposed lessee is a corporation, the corporation is an eligible person, the proposed lessee can carry out its obligations as the lessee under this Act and the conditions of the proposed lease are satisfactory in relation to the control and operation of the casino.

This section provides that appropriate scrutiny of the proposed lessee is undertaken by the Commission and that the control and operation of the casino is not compromised by the execution of the proposed leasing arrangements.

#### **17. Application for approval to amend casino lease**

Subsection (1) provides that the parties to a casino lease may apply to the Minister for approval to amend the lease. An application for approval must be in writing signed by the parties to the casino lease as well as be accompanied by the proposed amendment of the lease.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

## **18. Approval of amendment of casino lease**

On application under section 17, the Minister must approve, or refuse to approve, the amendment of the casino lease.

The decision to refuse to approve is a reviewable decision (section 137 of this Act refers).

In deciding whether to approve the amendment, the Minister must consider any recommendations made by the Commission about the amendment as well as its likely effect on the control and operation of the casino.

This section provides that appropriate scrutiny of the proposed amendment to the lease is undertaken by the Commission and that the control and operation of the casino is not compromised.

## **Division 2.4 Control agreement**

### **19. Control agreement**

Subsection (1) provides that if the owner of the casino, the casino lessee (if any) and the casino licensee are not all the same person, a control agreement, approved by the Minister, must be in force between them.

Subsection (2) provides that the control agreement must be in writing and cover the roles and responsibilities of the parties to the control agreement; the control and operation of the casino and anything else the Minister considers necessary or desirable.

Subsection (3) provides that the control agreement may, with the Minister's approval, be amended or terminated and replaced with a new control agreement.

An example is provided where the relevant parties to an agreement must enter into a new control agreement if there is a change in ownership of the casino, or if there is a new casino licensee or lessee.

Subsection (4) provides that in deciding whether to approve an agreement or amendment, the Minister must consider any recommendations made by the Commission about the agreement or amendment and the likely effect of the agreement or amendment on the control and operation of the casino.

A control agreement is an important regulatory mechanism that explicitly provides information to the Government and the Commission about the relationships between controlling parties involved with the casino. This is an essential component as the operational controls and influences must be correctly placed with the casino licensee where the legislation clearly outlines the operational responsibilities and the resultant regulatory mechanisms.

## **Part 3 Casino licence**

### **Division 3.1 Grant of casino licence**

This Division deals with the granting of the casino licence to a person.

#### **20. One casino only**

This section provides that only 1 casino licence may be in force under this Act at any particular time and that the casino licence is to apply to 1 casino only.

#### **21. Grant of casino licence**

Subsection (1) provides that the Minister may invite applications for a casino licence authorising the licensee to operate a casino in the ACT in accordance with this Act.

The decision whether to invite applications for a casino licence, or whether to issue a casino licence, is a matter for the Minister to decide. Even if an applicant, however this is determined (such as by a tender or other selection or invitational process), meets all of the legislative criteria and any other criteria specified in the selection process, there is no obligation on the Minister to grant a casino licence.

Subsection (2) provides that on application under subsection (1), the Minister may grant or refuse to grant a casino licence to the person.

A decision to refuse to grant a casino licence on the ground that the applicant is not an eligible person is a reviewable decision (section 137 of this Act refers). However, as outlined above, there remains no obligation on the Minister to issue a licence to that applicant or to any other applicant.

Subsection (3) provides that the casino licensee must be a corporation. If there is a casino lease in place (see section 16 of this Act), the casino licensee must be the casino lessee or a corporation nominated by the casino lessee. If there is not a casino lease in place, the casino licensee must be the casino owner or a corporation nominated by the casino owner.

This subsection has been included to ensure that the system of licensee nomination is consistent with control arrangements outlined in Part 2 of this Act concerning the possible control by a lessee.

In addition, subsection (3) importantly provides that the proposed casino licensee must be an eligible person.

Subsection (4) provides that in deciding whether to grant a casino licence, the Minister must consider any recommendations made by the Commission about the eligibility of a corporation nominated as the proposed casino licensee. This subsection provides that appropriate scrutiny of the proposed licensee is undertaken by the Commission.

In addition, the regulations may prescribe criteria in relation to the grant of a casino licence that must be complied with by the Minister.

The criteria that may be prescribed by the regulation may relate to the control of any corporation affected by this Act or an influential person in relation to, or foreign participation in, the prospective licensee.

The regulations are used in this context to provide some flexibility in ensuring that the requirements for a casino licence are current in relation to control over any prospective licensee including possible foreign ownership.

## **22. Licence conditions**

This section provides that a casino licence is subject to any condition the Minister puts on the licence when granting the licence or by written notice given to the casino licensee at any other time.

The decision to place a condition on the casino licence, other than when granting the licence, is a reviewable decision (section 137 of this Act refers). The application of a condition on the initial licence is not reviewable as the decision to issue a casino licence is at the discretion of the Minister and any conditions would be available for scrutiny by any intending licensee. See also the comments regarding the granting of a casino licence under section 21 of this Explanatory Statement.

## **23. Form of casino licence**

This section relates to the form of the casino licence and provides that the licence must include its date of issue and expiry; the name of the casino licensee; the address of the casino; any other particulars prescribed by regulation and must identify the area designated by regulation to be the casino.

A Note to this section advises that a regulation may designate an area to be the casino for this Act pursuant to section 62 of this Act.

The casino licence may also include any other particulars relating to the casino the Minister considers appropriate.

## **24. Period of casino licence**

This section provides that the casino licence remains in force from the day of issue until the end of the expiry date stated in the licence. However, if the licence is surrendered or cancelled before the expiry date, the licence is valid until the end of the day when the licence is surrendered or cancelled.

This section also provides that if the casino licence is suspended (see section 38 of this Act), the licence is not in force for the period of the suspension.

## **25. Compliance with code of practice**

This section provides that the casino licensee must comply with the code of practice prescribed under the Control Act.

The Note to this section highlights the fact that a failure to comply with the code of practice is a ground for disciplinary action (see section 33(1)(c) of this Act).

### **Division 3.2 Casino licence fee**

#### **26. Determination of casino licence fee**

This section provides that the Minister may determine a fee for the casino licence but this determination must not be made more than once in any 12-month period.

Subsection (3) provides that the casino licensee must pay the casino licence fee to the Commission at the times and in the way provided in the casino licence fee determination.

The original casino licence fee was determined under the *Casino Control Act 1988* when the casino licence was initially issued. A full explanation and background to the casino licence fee will be provided in the Explanatory Statement when the fee is determined under this Act.

A casino licence fee determination is a notifiable instrument and must therefore be tabled in the Legislative Assembly.

#### **27. Late payment penalty for casino licence fee**

This section applies if any amount of a casino licence fee that the casino licensee is liable to pay under a casino licence fee determination is not paid within 14 days after the day by which it must be paid.

The casino licensee is liable to a daily penalty on the unpaid amount of the casino licence fee for each day after the 14th day that the fee remains unpaid. The penalty rate is 20% per year and compounds at 3-monthly intervals. The Commission may waive all or part of a penalty that has been imposed on the casino licensee.

#### **28. Licence fee payable even if casino licence suspended**

This section applies if the casino licence is suspended by the Minister under section 38(1).

Despite section 24(2) relating to the suspension of the casino licence, the casino licensee must pay the casino licence fee for the period during which the casino licence is suspended.

A Note to this section advises that if the Commission is owed an amount by the casino licensee under this Division, the Commission may recover the amount as a debt owing by the casino licensee to the Commission in a court of competent jurisdiction (see the Legislation Act, s 177).

### **Division 3.3 Transfer and surrender of casino licence**

#### **29. Application for transfer of casino licence**

This section provides that the casino licensee may apply to the Minister to transfer the casino licence to another corporation.

The application must be in writing signed by the licensee and be accompanied by a signed consent to the proposed transfer by the person (if any) who nominated the licensee under section 21(3)(b).

The signed consent of any nominating organisation (section 21(3)(b) refers) is required to ensure that this organisation supports the proposed transfer.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

### **30. Transfer of casino licence**

On application under section 29, the Minister must transfer the casino licence, or refuse to transfer the licence, or ask for further information about the proposed transfer. Any such request for further information must be in writing and state a reasonable time within which the information must be given.

The decision to refuse to transfer is a reviewable decision (section 137 of this Act refers).

Subsection (3) provides that if the Minister asks the casino licensee for further information about the application, the Minister must not approve or refuse to approve the transfer of the casino licence until the Minister has received the information or the time stated for giving the information has elapsed.

Subsection (4) provides that the Minister may approve the transfer of the casino licence if the casino licence is not suspended and a disciplinary notice (see Division 3.4 of this Act) is not outstanding in relation to the casino licensee. In addition, it is a requirement that the prospective licensee would have been granted the casino licence under section 21 relating to the initial issue of the licence.

This section provides that the Minister has access to all of the relevant information concerning an application and that the prospective licensee meets all of the requirements as if they had applied directly for the casino licence.

### **31. Surrender of casino licence**

If the casino licensee does not owe the Territory or the Commission an amount under this Act, the casino licensee may surrender the casino licence by giving the Minister a written notice to that effect.

The surrender of the casino licence takes effect 4 weeks after the day the notice is given to the Minister or, if the notice states a later date of effect, on that date.

A minimum period of 4 weeks is provided to ensure that casino patrons have sufficient opportunity to cash in any outstanding chips and to ensure that all appropriate regulatory arrangements (such as payout of accumulated jackpots) are in place prior to the casino's shutdown.

### **Division 3.4 Disciplinary action against casino licensee**

#### **32. Definitions—Division 3.4**

This section provides that in relation to this Division, *casino licensee* includes an administrator appointed under section 39.

*Disciplinary action* refers to section 34.

*Disciplinary notice* refers to section 36.

*Ground for disciplinary action* against the casino licensee refers to section 33.

#### **33. Grounds for disciplinary action against casino licensee**

Subsection (1) provides that each of the following is a *ground for disciplinary action* against the casino licensee:

- (a) the casino licensee has given information to the Commission that was false or misleading;
- (b) the casino licensee has failed to give information required to be given under this Act or the Control Act;
- (c) the casino licensee, or an agent or employee of the casino licensee, has contravened this Act;
- (d) the casino licensee has contravened a requirement by the Treasurer of the Commonwealth in relation to foreign investment;
- (e) the casino licensee has contravened a condition of the casino licence;
- (f) the casino premises are not suitable for conducting casino operations;
- (g) the casino licensee is not, or is no longer, an eligible person;
- (h) the casino licensee is not, or is no longer, in control of the casino because the casino licensee has been taken over by another corporation or is under the influence of someone else;
- (i) the owner is not, or is no longer, an eligible person;
- (j) the casino lessee is not, or is no longer, an eligible person;
- (k) the casino licensee has been given a reprimand that included a direction, and has not complied with the direction;
- (l) the casino licensee has failed to pay to the Territory a financial penalty imposed under section 37;
- (m) a proceeding to wind up the casino licensee has been started.

Importantly, subsection (2) expands the reference to “this Act” in subsection (1)(c) by including references to certain elements of the Criminal Code.

Specifically, contraventions of the Criminal Code are included that relate to extensions of criminal responsibility for an offence against or in relation to this Act; the completion, keeping or giving of documents (or the requirement to do so) under or in relation to this Act; or anything else done (or not done) under or in relation to this Act.



These inclusions will allow the Commission to take disciplinary action, where appropriate, if an unlawful activity relating to casino operations has occurred, such as theft, fraud or falsifying a document or return that was required by this Act or the Commission.

### **34. Disciplinary action against casino licensee**

Subsection (1) provides that each of the following is a *disciplinary action* when taken by the Commission against the casino licensee:

- (a) reprimanding the casino licensee;
- (b) placing conditions on, or amending the conditions of, the casino licence;
- (c) ordering the casino licensee to pay to the Territory a financial penalty of not more than \$1 000 000;
- (d) recommending to the Minister that the casino licence be suspended for a stated period or until a stated thing happens;
- (e) recommending to the Minister that the casino licence be cancelled.

A reprimand, as outlined in subsection (1)(a), may include a direction by the Commission that the casino licensee, within a stated time, must stop contravening this Act or correct something that contributes to the ground for disciplinary action.

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

On the basis that the Minister has the authority under section 21 to grant a casino licence, it is appropriate that only the Minister may suspend or cancel that licence. Therefore the disciplinary actions that are possible by the Commission are limited to providing recommendations to the Minister regarding such action against the licence.

Subsection (3) provides that a financial penalty imposed under this section may be recovered as a debt payable to the Territory. In addition, it is a ground for further disciplinary action if the monetary penalty is unpaid (section 33(1)(l) refers).

### **35. Criteria for disciplinary action against casino licensee**

This section provides that in deciding whether disciplinary action should be taken, or what disciplinary action should be taken against the casino licensee, the Commission must consider the following:

- (a) whether disciplinary action has previously been taken against the casino licensee;
- (b) whether the ground for which the disciplinary action is to be taken endangered the public or the public interest;
- (c) the seriousness of the ground for disciplinary action;
- (d) the likelihood of further disciplinary action needing to be taken against the casino licensee.

In addition to the matters specifically identified in this section, subsection (2) provides that the Commission may also consider any other relevant matter.

### **36. When disciplinary notice may be given to casino licensee**

This section provides that if the Commission is satisfied in relation to the casino licensee that a ground for disciplinary action exists (see section 33 of this Act), or may exist, the Commission may give the casino licensee a notice (a *disciplinary notice*).

The Note to this subsection indicates that the Commission need not give a disciplinary notice if the grounds for disciplinary action are the contravention of a direction in a reprimand (see section 37(1) of this Act).

The disciplinary notice given to the casino licensee must state the ground for disciplinary action and inform the casino licensee that a written response may be provided within 3 weeks after the day the casino licensee is given the notice.

### **37. Taking disciplinary action against casino licensee**

This section provides that the Commission may take disciplinary action if it is satisfied that the casino licensee has contravened a direction in a reprimand or, after considering any response under section 36, it is satisfied that a ground for disciplinary action exists.

The decision to take disciplinary action is a reviewable decision (section 137 of this Act refers).

Subsection (4) provides that the disciplinary action taken by the Commission may consist of 2 or more of the actions mentioned in section 34(1)(a) to (d).

The disciplinary action mentioned in section 34(1)(a), (b) or (c) takes effect when the casino licensee receives written notice of the action or, if the notice provides for a later time of effect, that time.

If the Commission considers that the disciplinary action that should be taken is recommending to the Minister that the casino licence be suspended or cancelled, the Commission must give the Minister a written notice outlining its recommendation and the reasons for that decision.

As outlined in the comments on section 34 of this Act, only the Minister has the appropriate authority to suspend or cancel the casino licence. Therefore the disciplinary actions that are possible by the Commission are limited to providing recommendations to the Minister regarding such action against the licence. A Note to section 37 of this Act indicates this situation.

### **38. Suspension or cancellation of casino licence**

This section deals with the suspension or cancellation of the casino licence by the Minister.

It provides that the Minister may suspend or cancel the casino licence if the Minister receives a notice from the Commission under section 37(6) recommending that the casino licence be

suspended or cancelled as result of proposed disciplinary action. In addition, the Minister may suspend or cancel the licence if it is considered to be in the public interest.

The decision to suspend or cancel is a reviewable decision (section 137 of this Act refers).

In deciding whether to suspend or cancel the casino licence under subsection (1)(a) relating to proposed disciplinary action, the Minister must consider the Commission's recommendations. If the Minister rejects the Commission's recommendations, the Minister may refer the matter back to the Commission for reconsideration.

If the Minister proposes to suspend or cancel the casino licence under subsection (1)(b) relating to a public interest decision made by the Minister, the Minister must give the casino licensee a written notice stating why it is considered that the casino licence should be suspended or cancelled. The casino licensee must be provided with a 3 week period to give a written response to the Minister about the notice.

The Minister, after considering any response to the notice given within the 3-week period, may suspend or cancel the casino licence under subsection (1)(b).

If the Minister decides to suspend the casino licence under this section, the licence may be suspended for a stated period or until a stated thing happens.

### **39. Appointment of administrator for casino**

This section provides that if the casino licence is suspended or cancelled, the Minister may appoint an administrator for the casino if satisfied that it is in the public interest to make the appointment.

Various notes have been included in this section regarding the making of appointments (including acting appointments) and the respective references in the *Legislation Act 2001* that deal with these matters.

In appointing a person to be an administrator, subsection (2) requires that the Minister must consider any recommendations made by the Commission about the suitability of the person.

This subsection provides that appropriate scrutiny of the proposed administrator is undertaken by the Commission.

Subsection (3) provides that the appointment of an administrator ends if the casino licence is transferred under section 30 of this Act.

### **40. Administrator's duties**

This section provides that an administrator appointed under section 39 must assume full control of, and responsibility for, the business of the casino licensee in relation to the casino.

The administrator must conduct casino operations, or ensure that casino operations are conducted, in accordance with this Act.

This provision ensures that it is explicit that an administrator must take full responsibility for casino operations and must fully comply with all legislative requirements, such as paying taxes and fees. This also means that the administrator would be subject to disciplinary provisions (see Division 3.4 of this Act) if there was a breach of the Act while the administrator's appointment was valid.

## **Part 4 Casino employees**

### **Division 4.1 Casino employee licences**

#### **41. Employees must hold licence to work**

Subsection (1) provides that the casino licensee commits an offence if, on a day, a person performs a prescribed function in relation to the casino and the person either does not hold a casino employee licence to perform the function or the person is not competent to perform the function.

The maximum penalty for a breach by the casino licensee is 5 penalty units for each day.

Subsection (2) provides that a person commits an offence if, on a day, a person performs a prescribed function in relation to the casino and the person does not hold a casino employee licence to perform the function.

The maximum penalty for a breach by a person is 5 penalty units for each day.

The offences outlined in subsections (1) and (2) are strict liability offences. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading "Offence Provisions".

However, subsection (1)(b)(ii) does not apply in relation to a function performed by a casino employee if the employee performs the function in accordance with a condition of the employee's casino employee licence that allows the employee, until the employee is competent to perform the function, to perform the function under the supervision of a casino employee who is licensed, and competent, to perform the function.

This provision allows for on-the-job training where an inexperienced casino employee is instructed in the duties by being directly supervised by a licensed and experienced casino employee. The inexperienced casino employee must always be supervised by a licensed employee until the casino licensee testifies that the new employee has reached a sufficient standard of skill that are deemed to be competent to perform the relevant functions and therefore no longer need to be supervised.

#### **42. Application for casino employee licence**

This section provides that an individual may apply to the Commission in writing for a casino employee licence.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

Subsection (2) provides details of what must be included in an application and specifies the following requirements:

- (a) a written statement from the casino licensee:
  - (i) that the casino licensee employs, or has offered to employ, the applicant; and
  - (ii) setting out the functions that the applicant will perform in the casino; and
  - (iii) that the applicant is competent to perform the functions or will be supervised by a casino employee licensed, and competent, to perform the functions until the applicant is competent; and
- (b) an undertaking by the applicant to allow the applicant's fingerprints to be taken by a police officer; and
- (c) a consent by the applicant for a police officer to check the applicant's criminal record using the applicant's fingerprints and report the results of the check to the Commission; and
- (d) 4 recent passport-size photographs of the applicant.

This section ensures that the Commission has sufficient information to be able to properly identify the applicant and to make a decision on the applicant's suitability to hold a casino employee's licence. It also provides for sufficient information to be provided by the casino licensee in relation to the applicant's duties and the level of competence to allow the Commission to be satisfied that the functions to be performed will be of a satisfactory standard. A person's competence could be checked initially and periodically by the casino licensee by undertaking appropriate training and testing each person's skill level.

#### **43. Amendment of application for casino employee licence**

This section applies if, before an application under section 42 is decided, a change happens in relation to something mentioned in the application or a document (or something mentioned in a document) that accompanied the application.

Subsection (2) provides that the applicant must give the Commission a written statement setting out the details of the change and asking the Commission to amend the application to include the change.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

Subsection (3) provides that the statement must be signed by the applicant.

#### **44. Approval of application for casino employee licence**

This section relates to the approval of an application for a casino employee's licence by the Commission.

The Commission must, on application under section 42, approve or refuse to approve the application.

The decision to refuse to approve is a reviewable decision (section 137 of this Act refers).

This section also provides for the amendment of the application in accordance with a statement given to the Commission under section 43.

Under subsection (2), the Commission may also ask for further information in relation to the application from the casino licensee, the applicant or anyone else associated with the applicant who is, in the Commission's opinion, relevant to the application.

Any such request for further information made by the Commission must be in writing and state a reasonable time within which the information must be given. It may also be a request to produce or provide a copy of a stated document, or a document of a stated kind, relating to the application. The request may include a requirement that any information given in accordance with the request be verified by a statutory declaration signed by the person giving the information.

The Commission may also require that the person authorise another stated person to comply with a requirement mentioned above.

A Note advises that the *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

If the Commission asks for further information in relation to the application, it must not approve or refuse to approve the application for a casino employee licence until the Commission has received the information or the time stated for giving the information has elapsed.

The Commission must approve the application if it is satisfied that the applicant is an eligible person and the casino licensee has given the Commission a written statement that the applicant has been employed or offered employment by the casino licensee. The Commission must also have been provided a statement that the applicant is competent to perform the functions set out in the statement or will be supervised by a casino employee who is licensed, and competent, to perform the functions until the applicant is competent.

The Commission may refuse to approve the application if the required further information under his section and section 43 relating to amended applications has not been complied with.

In considering the application, the Commission may inquire into anything relating to the application it considers relevant. This ensures that the Commission may investigate any relevant matter that may have resulted from the application.

If the Commission approves the application the Commission may decide to put conditions on the casino employee licence it gives the applicant.

The decision to put conditions on a casino employee licence is a reviewable decision (section 137 of this Act refers).

#### **45. Issue of casino employee licence**

If the Commission approves an application for a casino employee licence, it must give a casino employee licence to the applicant and give a copy of the licence to the casino licensee.

In relation to the form of the casino employee licence, it must state when the licence starts, what are the prescribed functions that the licence-holder may perform in relation to the casino and any conditions under section 50(c) of this Act to which the licence is subject. These conditions are in addition to the conditions imposed by section 50(a) and (b) of this Act.

A casino employee licence is valid for 2 years and may be renewed (see section 47).

If a short-term licence has been given to the applicant (see section 48 of this Act), the licence under this section is taken to have started when the short-term licence started.

This ensures that the duration of each licence is only 2 years and provides for administrative simplicity.

#### **46. Replacement of casino employee licence**

This section applies if a person tells the Commission, in writing, that a casino employee licence given to the person has been lost, stolen or destroyed.

The Commission may provide a written notice given to the person requiring them to give the Commission, within a stated period, a statement confirming, and explaining the circumstances of, the loss, theft or destruction.

An approved form under section 53D of the Control Act may be required for this provision.

If the Commission is satisfied that the person's casino employee licence has been lost, stolen or destroyed, the Commission may give a replacement to the person.

The decision to refuse to issue a replacement is a reviewable decision (section 137 of this Act refers).

A fee may be determined under section 143 of this Act for this provision.

#### **47. Renewal of casino employee licence**

This section provides that a casino employee may apply to the Commission for renewal of his or her casino employee licence (other than a short-term licence) not later than 1 month, and not earlier than 3 months, before the day the term of the licence ends. This timeframe provides a practical reference for the renewal process and allows time for probity checks to be undertaken by the Commission.

An approved form under section 53D of the Control Act may be required for this provision.

The application must be accompanied by a consent by the applicant for a police officer to check the applicant's criminal record using the applicant's fingerprints and report the results of the check to the Commission.

The Commission must approve the application if satisfied that the applicant would have been issued a casino employee's licence under an initial application.

The decision to refuse to approve a renewal is a reviewable decision (section 137 of this Act refers).

The renewal of the casino employee licence begins on the day after the term of the licence being renewed ends and is for a period of 2 years. This provision ensures that there is continuity of licence where a renewal is provided.

In similar terms to the issue of an initial licence, if the Commission approves the application for renewal, the Commission must give a casino employee licence to the casino employee and give a copy of the licence to the casino licensee.

To ensure clarity, a casino employee licence that is suspended may be renewed, but the renewed licence is suspended until the end of the suspension.

#### **48. Short-term casino employee licence**

This section is relevant to a person who has applied for a casino employee licence (see section 42), or for renewal of a casino employee licence (see section 47), and the Commission has not received the results of the police check of the person's criminal record. If the Commission would issue a casino employee licence to the person, or renew the person's licence, on the basis that nothing in the results of the police check showed that the person was not an eligible person, the Commission may give the applicant a casino employee licence under section 42 or renew the licence under section 47 as applicable.

A licence given or renewed under this section (*a short-term licence*) is for a maximum period of 6 months and cannot be renewed.

In the same manner as for full-term licences, the Commission must give a copy of the short-term licence to the casino licensee. The short-term licence must state when the licence starts, what prescribed functions the licence holder may perform in relation to the casino and any conditions mentioned in section 50(c) to which the licence is subject.

A note advises that a short-term licence is also subject to the conditions mentioned in section 50(a) and (b).

If, after considering the results of the police check of the person's criminal record, the Commission is satisfied that the person is not an eligible person, the Commission must, by written notice given to the person cancel the person's short-term licence.



A short-term approval allows the Commission to approve a casino employee licence on the basis of the declaration made in the person's application. It permits the person to commence employment at an earlier date rather than waiting for the police check results.

## **Division 4.2 Conditions of casino employee licence**

### **49. Contravention of conditions of casino employee licence**

This section provides that the casino licensee commits an offence if, a casino employee performs a prescribed function stated in the casino employee's licence in relation to the casino and the casino employee's licence is subject to a condition and the casino employee contravenes that condition.

The maximum penalty for a breach of this provision is 5 penalty units for each day.

An offence against subsection (1) is a strict liability offence.

A casino employee commits an offence if the person's casino employee licence is subject to a condition and the person engages in conduct that contravenes that condition.

The maximum penalty for a breach of this provision is 5 penalty units. This offence provision is to act as a deterrent to casino employees but includes a fault element as a defence.

### **50. Conditions of casino employee licence**

This section outlines general obligations placed on all casino licensees relating to the provision of information relevant to the administration or enforcement of this Act. These general conditions provide explicit notice to all casino employees about their obligations and ensure that the Commission has sufficient basis for seeking information or conducting investigations in relation to the Act.

A casino employee licence is subject to the following conditions:

- (a) the condition that the licence-holder must comply with any written request from the Commission to:
  - (i) give stated information relevant to the administration or enforcement of this Act;
  - (ii) produce a stated document, or a document of a stated kind, relevant to the administration or enforcement of this Act;
  - (iii) allow the examination, copy or removal of extracts of a stated document, or documents of a stated kind, relevant to the administration or enforcement of this Act;
  - (iv) verify by statutory declaration any of the above information or documents; and
  - (v) authorise a stated person to do anything mentioned in paragraphs (i) to (iv) above.
- (b) the condition that, if a change happens in relation to something mentioned in section 43(1)(a) or (b) in relation to the licence-holder, the licence-holder must, as soon as

- practicable after the change happens, give the Commission a written statement setting out the details of the change; or
- (c) any condition the Commission puts on the licence when giving the licence or at any other time.

### **51. Amendment of conditions of casino employee licence**

This section provides that the Commission may amend the conditions of a casino employee licence on its own initiative or on application by the licence-holder or the casino licensee.

If the Commission receives an application to amend the conditions of a casino employee licence, the Commission must approve, or refuse to approve, the application.

The decisions to amend a casino employee licence at its own initiative or to refuse to amend a licence condition are reviewable decisions (section 137 of this Act refers).

If the Commission amends the conditions of a casino employee licence, it must give an amended casino employee licence to the applicant and give a copy of the amended licence to the casino licensee.

The amendment takes effect on the date stated in the amended casino employee licence.

This section does not apply to a condition mentioned in section 50(a) or (b) which are the general conditions of licence applied by this Act.

In this section, *amend* means to put a condition on the licence or to revoke a condition of the licence.

## **Division 4.3 Changes in relation to casino employee licences**

### **52. Change of prescribed functions**

This section provides that the holder of a casino employee licence may apply in writing to the Commission for an amendment of the licence to change the prescribed functions that may be performed by the holder in relation to the casino.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

The application must be accompanied by a written statement from the casino licensee setting out the new functions that the applicant will perform in relation to the casino and that the applicant is competent to perform the functions or will be supervised by a casino employee who is licensed, and competent, to perform the functions until the applicant is competent.

The Commission must approve, or refuse to approve, the application.

The decision to refuse to approve is a reviewable decision (section 137 of this Act refers).

If the Commission approves the application, it must give an amended casino employee licence to the applicant and give a copy of the amended licence to the casino licensee.

The amendment takes effect on the date stated in the amended casino employee licence.

### **53. Employee no longer working in casino**

This section provides that if a casino employee stops working in the casino, the Commission must cancel the employee's casino employee licence.

This section is consistent with the requirement of a casino employee licence that the person must be employed by the casino licensee (section 42 of this Act refers).

### **54. Obligation to return casino employee licence**

This section applies to a person if the term of the person's casino employee licence ends or the person is given an amended casino employee licence or the person's casino employee licence is cancelled or suspended or the person is a casino employee who stops working in relation to the casino.

The person must return their casino employee licence to the Commission within 1 week after the day the term of the licence ends or the person is given the amended casino employee licence or the day the person is given notice of the cancellation or suspension or the day the person stops working in relation to the casino.

The maximum penalty for a breach of this provision is 5 penalty units.

An offence against this section is a strict liability offence.

Importantly, subsection (4) provides that this section does not apply if the person has a reasonable excuse for not returning the licence. Such an excuse may include that the licence has been lost or destroyed – a circumstance that the Commission may require to be verified by statutory declaration.

If a person returns the person's casino employee licence to the Commission because it is suspended, the Commission must return the licence to the person at the end of the suspension unless the term of the licence has ended.

## **Division 4.4 Disciplinary action against casino employees**

### **55. Definitions—Division 4.4**

In this Division:

*disciplinary action* refers to section 57.

*disciplinary notice* refers to see section 59.

*ground for disciplinary action* against a casino employee refers to section 56.

## 56. Grounds for disciplinary action against casino employee

This section provides that each of the following is a *ground for disciplinary action* against a casino employee:

- (a) when the Commission decided the casino employee's application for a casino employee licence or for renewal of the licence, grounds existed to refuse to approve the application but the Commission was not aware of them;
- (b) the casino employee has given information to the Commission that was false or misleading;
- (c) the casino employee has failed to give information required to be given under this Act;
- (d) the casino employee has contravened this Act;
- (e) the casino employee has contravened a condition of the employee's casino employee licence;
- (f) the casino employee is not, or is no longer, an eligible person;
- (g) the casino employee is not, or is no longer, competent to perform the functions for which the employee holds a casino employee licence.

However, subsection (2) provides that subsection (1)(g) does not apply in relation to a function performed by the employee if the casino employee performs the function in accordance with a condition of the employee's casino employee licence that allows the employee, until the employee is competent to perform the function, to perform the function under the supervision of a casino employee who is licensed, and competent, to perform the function.

Importantly, subsection (3) expands the reference to "this Act" in subsection (1)(d) by including references to certain elements of the Criminal Code.

Specifically, contraventions of the Criminal Code are included that relate to extensions of criminal responsibility for an offence against or in relation to this Act; the completion, keeping or giving of documents (or the requirement to do so) under or in relation to this Act; or anything else done (or not done) under or in relation to this Act.

These inclusions will allow the Commission to take disciplinary action, where appropriate, if an unlawful activity relating to casino operations has occurred, such as theft, fraud or falsifying a document or return that was required by this Act or the Commission.

## 57. Disciplinary action against casino employee

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

- (a) reprimanding the casino employee;
- (b) placing conditions on, or amending the conditions of, the casino employee's licence;
- (c) amending the casino employee's licence to change the prescribed functions the casino employee may perform in relation to the casino;
- (d) suspending the casino employee's licence;

(e) cancelling the casino employee's licence.

As outlined in section 59(4) of this Act, more than one disciplinary action may be taken against a casino employee.

### **58. Criteria for disciplinary action against casino employee**

In deciding whether to take disciplinary action, or what disciplinary action to take, against a casino employee, the Commission must consider whether action has previously been taken against the casino employee; the seriousness of any contravention of this Act and the likelihood of further disciplinary action needing to be taken against the casino employee.

In addition to the matters specifically identified in this section, subsection (2) provides that the Commission may also consider any other relevant matter.

### **59. Taking disciplinary action against casino employee**

This section provides that if the Commission is satisfied that a ground for disciplinary action exists, or may exist, in relation to a casino employee, the Commission may give the casino employee a notice (a *disciplinary notice*).

The disciplinary notice must state the ground for disciplinary action and tell the casino employee that the casino employee may, within 3 weeks after the day the casino employee is given the notice, give a written response to the Commission about the notice.

If, after considering any responses given within the 3-week period, the Commission is satisfied that a ground for disciplinary action exists in relation to the casino employee, the Commission may take disciplinary action against the casino employee. The proposed disciplinary action may consist of 2 or more of the possible actions mentioned in section 57(a) to (d).

The decision to take disciplinary action against a casino employee is a reviewable decision (section 137 of this Act refers).

The disciplinary action takes effect when the casino employee receives written notice of the action or, if the notice provides for a later time of effect, that time.

### **60. Effect of suspension of casino employee licence**

This section provides that if a casino employee licence is suspended under section 59, the licence is not in force for the period of the suspension.

However, the suspension does not affect any civil or criminal liability incurred by the licence-holder or the exercise of the functions of the Commission or an authorised person in relation to the licence-holder or the casino employee licence.

The Commission may shorten or end the period of suspension, by written notice to the licence-holder.

For this section *authorised person* does not include a casino employee.

## **Division 4.5 Information about casino employees**

### **61. Casino licensee to give Commission information about employees**

This section provides that the casino licensee must give to the Commission information relating to employees a written notice about a person starting work in relation to the operation of the casino no later than the day the person starts work. In addition, a written notice must be provided relating to a person stopping work in relation to the operation of the casino within 1 week after the day the person stops work.

Subsection (2) provides that the Commission may, by written notice given to the casino licensee, require the casino licensee to give the Commission, within a stated reasonable period, a list of casino employees; a list of people employed or otherwise work in relation to the operation of the casino; and a list of people employed by the casino licensee in any other capacity.

A Note to the section advises that if a form is approved under section 53D of the Control Act for this provision the form must be used.

The Commission must not give the casino licensee a notice under subsection (2) more than twice in any 12-month period. This provision ensures that there is not an unreasonable administrative burden placed on the casino in this regard.

Subsection (4) provides that the casino licensee commits an offence if the licensee fails to give the Commission, in accordance with this section, information required to be given under this section.

The maximum penalty for a breach of this provision is 20 penalty units.

An offence against this section is a strict liability offence.

This section allows the Commission to ensure that it has up to date information about persons working in relation to the casino and that this information may then be used to check those persons that are licensed to perform, or are performing, authorised functions.

## **Part 5 Casino operations**

### **Division 5.1 Designation and operation of casino**

#### **62. Designation of casino**

Subsection (1) provides that a regulation may designate an area to be the casino for this Act.

Subsection (1) has effect despite the *Land (Planning and Environment) Act 1991*, section 8 and section 9 in relation to the Territory Plan and variations to that Plan.

Other than this exception, this Act does not authorise the doing of anything, or the approval of the doing of anything, that would be inconsistent with the Territory Plan.

The designation of an area to be the casino provides for certain areas of the premises to be specifically identified as the casino. Conversely, it also provides for certain areas to be excluded from the casino area and therefore available to be used for other purposes not relating to gaming.

### **63. Directions in relation to casino**

This section provides for the Commission to give the casino licensee a direction, in writing, in relation to the following matters:

- (a) the conduct of any operation in the casino;
- (b) the layout of the casino;
- (c) the operating times for the casino;
- (d) the content or implementation of control procedures;
- (e) the separation of cash facilities from the casino.

The decision to give a direction is a reviewable decision (section 137 of this Act refers).

Subsection (2) provides that the casino licensee must not engage in conduct that contravenes a direction given to the casino licensee under this section.

The maximum penalty for a breach of this provision is 50 penalty units.

This section allows the Commission to correct any operational difficulties or unsatisfactory activity (or inactivity) in relation to the casino. It allows a requirement, consistent with the intent of the legislation, to be explicitly provided to the casino licensee.

## **Division 5.2 Layout of casino**

### **64. Meaning of *current layout* in Division 5.2**

In this Division, *current layout* of the casino means the plans for the layout of the casino approved, from time to time, by the Commission.

### **65. Casino to be operated in accordance with current layout**

This section provides that the casino licensee must operate the casino in accordance with the current layout of the casino.

The maximum penalty for a breach of this provision is 50 penalty units.

A Note to this section advises that the Commission may give the casino licensee a direction in relation to the layout of the casino (see section 63(1)(b) of this Act).

An offence against this section is a strict liability offence.

The layout of the casino is required to be specified so that regulatory requirements, such as gaming monitoring and inspection, can be met. The layout of the casino includes not only

the physical location of gaming tables, but also the camera surveillance design and the lighting of gaming and other casino activity.

#### **66. Notice of proposed change to current layout etc**

This section provides that the casino licensee must give the Commission notice of a proposed change to the current layout of the casino or a proposed new layout for the casino.

The notice must be in writing and state the date when the casino licensee proposes to implement the change to the current layout or the new layout. The notice must be made at least 1 week before that date and be accompanied by a copy of the plans showing the changed layout or new layout.

The casino licensee must not implement the proposed change to the current layout or the proposed new layout earlier than 1 week after the day the notice is given to the Commission. This timeframe is to allow the Commission to consider the application and whether there are any security or integrity issues associated with the proposed changes.

#### **67. Decision on proposed change to current layout etc**

This section provides that on receiving a notice under section 66, the Commission may, by written notice given to the casino licensee approve or reject the plans accompanying the notice.

The decision to reject plans is a reviewable decision (section 137 of this Act refers).

The Commission may also ask the casino licensee to demonstrate how the plans or the layout comply with the requirements mentioned in subsection (4); or ask for further information about the plans; or ask for further time to consider the plans.

Subsection (2) provides that if the Commission gives a notice under subsection (1)(b) or (c) the notice must state a reasonable time within which the demonstration or information must be given. The Commission must not approve or reject the plans until the Commission has received the demonstration or information or the time stated for giving the demonstration or information has elapsed.

A notice under subsection (1)(d) must state the further time needed to consider the plans.

The Commission must not approve the plans, or allow the plans to be approved under subsection (5) or (6), unless satisfied that:

- (a) the plans clearly identify the gaming area of the casino; and
- (b) the proposed layout adequately takes into account the safety and comfort of, and harm minimisation strategies for, patrons; and
- (c) the proposed layout includes adequate closed-circuit television coverage in the casino; and
- (d) the plans and proposed layout are in accordance with this Act.



Importantly, subsection (5) provides that the Commission is taken to have approved the plans if a notice under subsection (1) is not given to the casino licensee within 1 week after the day the Commission receives the notice under section 66.

If the Commission asks for further time to consider the plans, the Commission is taken to have approved the plans if a notice rejecting the plans is not given to the casino licensee within the later period requested by the Commission.

The provisions relating to the plans being taken to have been approved have been included to provide a simple mechanism for routine changes to the layout. However, adequate notice (1 week) must be provided to the Commission to enable sufficient time to check on the proposal and to ensure that appropriate security and safety considerations have been made.

In this section, *adequate* in relation to closed-circuit television coverage being *adequate* means that the Commission is satisfied that the coverage provides proper monitoring of all patron and gaming activity; the storage of gaming equipment, cash and chips in the casino; at least 1 camera is continually monitoring each gaming table that is being used for gaming; and all images captured by closed-circuit television in the casino are continuously recorded.

### **Division 5.3 Casino operating times**

#### **68. Operating times**

This section provides that the casino licensee must operate the casino during core trading hours but may decide longer operating times for the casino.

The core operating times provide a minimum period where the casino must be open in order to provide some certainty to casino patrons and to ensure that the casino, as a place of employment and of a tourist attraction, provides a regular facility for the Territory.

Subject to this Division, the core hour concept provides flexibility to the casino licensee to determine its actual trading times within certain constraints.

A Note to this section advises that the Commission may give the casino licensee a direction in relation to the operating times for the casino (see section 63(1)(c) of this Act).

The Commission may exempt the casino licensee from operating the casino during core trading hours for a stated time if the Commission considers there is a good reason to give the exemption. For example, the casino needs significant repairs or the occurrence of a significant power failure affecting the casino.

This provision recognises that there may be exceptional circumstances where the casino cannot trade or it would be unsafe or a security risk to do so.

The casino licensee may operate the casino on a public holiday.

In this section, *core trading hours* means the core trading hours prescribed by regulation.

## **69. Notice of operating times**

This section provides that the casino licensee must place a sign stating the operating times for the casino in a prominent position outside each public entrance to the casino.

If the casino licensee changes the operating times, the casino licensee must, at least 24 hours before the change happens, give the Commission written notice of the changed operating times and publish an advertisement about the changed operating times in a newspaper published daily and circulating in the ACT. In addition, a sign stating the changed operating times must be placed in a prominent position outside each public entrance to the casino.

The requirement for 24 hours notice provides some element of certainty to casino patrons. It also prevents the casino from closing its operations on short notice as a reaction to a punter either winning large amounts or in an attempt to prevent a punter that has lost a large amount of money from being able to win it back.

A Note to this section advises that if a form is approved under section 53D of the Control Act, for an advertisement, the form must be used.

### **Division 5.4 Termination of supply contracts**

#### **70. Meaning of *supply contract* in Division 5.4**

In this Division, *supply contract* means a contract relating to the supply of goods or services to the casino and a contract prescribed by regulation as a contract to which this Division applies. However, it does not include a control agreement; a casino lease; a contract relating to the construction of the casino or a contract declared by regulation to be a contract to which this Division does not apply.

The possible termination of a supply contract is an important regulatory mechanism available to the Commission to remove the possible influence on casino operations of a person that is not an eligible person. The public interest test is to apply.

An associated entity may be able to influence casino operations by having some financial hold over the casino licensee. This is a situation that should be avoided in relation to keeping criminal influence out of casino operations.

Any decision to terminate a supply contract is a reviewable decision.

#### **71. Notice about proposed termination of supply contract**

This section provides that if the Commission considers that it is not in the public interest for a supply contract to remain in force, the Commission must give each party to the supply contract a written notice stating the reasons why the Commission considers that it is not in the public interest for the contract to remain in force. The Commission must also tell the party that the party may, within 3 weeks after the day the party is given the notice, give a response to the Commission about the notice.

In deciding whether or not it is in the public interest for a supply contract to remain in force, the Commission must consider whether each party to the supply contract is an eligible person and the operation of the supply contract.

The Commission may also consider any other relevant matter.

The Commission may require a party to a supply contract to give the Commission information the Commission reasonably needs for exercising its function under this section.

## **72. Terminating supply contracts**

This section applies if the Commission has given notice under section 71 in relation to a supply contract.

If the Commission is not satisfied, after considering any responses given to it within the 3-week period mentioned in section 71(1)(b), that it is in the public interest for the supply contract to remain in force, the Commission must terminate the contract by written notice given to each party to the contract.

The decision to terminate a supply contract is a reviewable decision (section 137 of this Act refers).

In deciding whether or not it is in the public interest for the supply contract to remain in force, the Commission must consider the matters mentioned in section 71(2) and may also consider any other relevant matter.

The supply contract is terminated on the date stated in the notice.

## **73. Effect of termination of supply contract**

This section provides that if a supply contract is terminated under this Division, the following provisions apply in relation to the supply contract in order to protect the Territory and the Commission:

- (a) a right acquired, or a liability incurred, by a party to the contract before the termination is not affected by the termination;
- (b) a party to the contract does not incur a liability for breach of contract only because of the termination;
- (c) no liability is incurred by the Territory or the Commission because of the termination.

## **Division 5.5 Casino facilities**

### **74. Maintenance of casino facilities**

This section provides that the casino licensee must maintain in good order and condition, to the satisfaction of the Commission, all security and surveillance equipment for the casino and all gaming equipment and chips.

In order to ensure that the critical security and surveillance equipment is properly maintained and functioning, this section also requires the casino licensee to regularly carry out testing on all security and surveillance equipment.

### **Division 5.6 Control procedures**

In the context of the nature of casino regulation outlined in the introduction to this Explanatory Statement, control procedures are an important method of ensuring that casino operations are undertaken adequately and that any activity that is unusual or unexpected (ie. not in accordance with procedures) stands out to the casino security and surveillance personnel and to the regulators.

The control procedures cover the detailed operations of the casino and are an essential part of a regulatory scheme that requires the casino licensee, agents and casino employees to undertake their activities in a best practice and predictable way.

As control procedures are fundamental to the regulation of casino activity, it is essential that an appropriate deterrent is used to ensure that the casino licensee, agents and casino employees adhere to them. In this regard, offence provisions have been included for breaches of the procedures. Strict liability offences have been used due to the seriousness of the need to comply with the procedures and accordingly a relatively low level of penalty is provided for breaches. Further discussion on the use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

### **75. Establishing control procedures**

This section provides that the casino licensee commits an offence if the casino licensee has not established control procedures for the operation of the casino that include the operational details mentioned in subsection (3) and comply with any regulation made for subsection (4) or that the casino licensee has given the Commission a written copy of the control procedures.

The maximum penalty for a breach of this provision is 50 penalty units.

A Note to this section advises that the Commission may give the casino licensee a direction in relation to the content or implementation of control procedures (see section 63(1)(d) of this Act).

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

The control procedures must include operational details (including who is responsible) for each of the following:

- a) accounting and record keeping in relation to gaming operations, including premium players and commission-based players;
- b) the conduct of authorised games;
- c) access to and handling (including storage) of cash and chips;

- d) payment of winnings;
- e) access to, and storage and maintenance of, gaming equipment;
- f) security of the casino, including gaming equipment, cash, chips, and patron safety;
- g) operation and maintenance of the casino's closed-circuit television system and other security systems;
- h) job descriptions (including responsibilities) of people involved in the operation of, and doing accounting and record keeping in relation to, the casino;
- i) anything else prescribed by regulation.

This list of operational matters covers those areas of casino activity that are important in relation to casino gaming activity including financial or revenue matters, patron safety and security.

A regulation may make provision in relation to the control procedures.

In this section, *commission-based player* means a person visiting the casino as part of a commission-based player scheme.

A *premium player* means a person visiting the casino who is offered or given privileges by the casino licensee based on the person's level of gaming activity in the casino but is not participating in a commission-based player scheme.

## **76. Changing control procedures**

This section provides that the casino licensee may change the control procedures by written notice given to the Commission.

The notice must state the date when the casino licensee proposes to commence the change to the control procedure and be made at least 1 week before that date.

However, the Commission may accept the notice even if it is not given in accordance with subsection (2)(b) relating to the 1-week timeframe.

On receiving a notice under subsection (1), the Commission may, by written notice given to the casino licensee approve or reject the proposed change.

The decision to reject a proposed change is a reviewable decision (section 137 of this Act refers).

The Commission may also direct the casino licensee to include other changes or to change the control procedures in another way. In addition, the Commission may direct that the casino licensee amend the date for the change to commence or ask for further information or clarification about the proposed change.

The decision to issue a direction in relation to control procedures is a reviewable decision (section 137 of this Act refers).

If the Commission gives a notice under subsection (4)(e) in relation to seeking further information, the notice must state a reasonable time within which the information or clarification must be given. The Commission must not make a decision under

subsection (4)(a) to (d) until the Commission has received the information or clarification or the time stated for giving the information or clarification has elapsed.

The Commission is taken to have approved the proposed change if a notice under subsection (4) is not given to the casino licensee within 1 week after the day the Commission receives the notice under subsection (1).

This method of changing the procedures provides time for the Commission to consider the proposed change but allows an efficient method for a quick approval of small amendments to the procedures with minimal administrative effort.

In addition, the Commission may, at any time on its own initiative and by written notice given to the casino licensee, direct the casino licensee to make a stated change to the control procedures.

### **77. Complying with control procedures**

Subsection (1) provides that the casino licensee commits an offence if the licensee contravenes the control procedures.

The maximum penalty for a breach of this provision is 50 penalty units.

Subsection (2) provides that an agent of the casino licensee commits an offence if the agent operates, or performs a function in relation to, the casino and the agent contravenes the control procedures.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against subsection (1) or (2) is a strict liability offence. See comments above under the Division 5.6 heading in relation to the use of a strict liability offence.

An agent of the casino is an organisation or person performing functions or activities under contract to the casino licensee, such as security or surveillance. The agent would be acting on behalf of the casino licensee and therefore it is necessary to ensure that there is a clear responsibility in relation to compliance with the control procedures.

Subsection (3) provides that a casino employee commits an offence if the casino employee performs a function in relation to the casino and the casino employee engages in conduct that contravenes the control procedures.

The maximum penalty for a breach of this provision is 10 penalty units. This offence provision is to act as a deterrent to casino employees but includes a fault element as a defence.

### **Division 5.7 Exclusion from casino**

This Division covers the exclusion of persons from the casino for reasons such as the person is underage, for cheating or attempting to cheat and for behavioural issues where the orderly conduct of the casino is disrupted. It also covers exclusions by the Commission and the Chief Police Officer.

Exclusion from the casino for reasons relating to problem gambling is covered under the provisions of the *Gambling and Racing Control (Code of Practice) Regulation 2002*. Under this regulation, a person may apply for self-exclusion or may be the subject of a licensee-initiated exclusion in certain circumstances.

All gaming licensees are covered by the *Gambling and Racing Control (Code of Practice) Regulation 2002* as this provides consistency and transparency across the gaming industry in relation to problem gambling matters.

#### **78. Definitions—Division 5.7**

In this Act, *document of identification* for a person means a document that is a driver licence, proof of age card or passport and contains a photograph that could reasonably be taken to be of the person and indicates that the person to whom the document was issued is at least 18 years old.

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

*Excluded person* means a person who is excluded from entering or remaining in the casino by a notice under section 82 (Exclusion by casino official) or section 84 (Exclusion by Chief Police Officer or Commission).

*Exclusion notice* refer to section 82(1).

*Proof of age card* includes a document corresponding to a proof of age card that has been issued under the law of a State.

#### **79. Entry to casino**

Subsection (1) provides that a person may enter or remain in the casino only by the licence of the casino licensee.

Without limiting subsection (1), a casino official may refuse to allow a person to enter or remain in the casino unless the person satisfies the official of his or her age by showing a document of identification.

A regulation may prescribe conditions for members of the public to satisfy to enter or remain in the casino.

This section provides the casino licensee with the discretion to refuse entry to a person and provides that the casino is not a public place.

#### **80. Children must not enter casino**

It is a fundamental part of the Government's harm minimisation strategy in relation to gambling to ensure that persons under the age of 18 are not exposed to casino gaming or the casino "atmosphere". In the context of the nature of casino regulation outlined in the introduction to this Explanatory Statement, the protection of a child from this type of gaming

is sufficiently serious to require appropriate deterrents to ensure that the casino licensee, agents and casino employees use considerable effort to comply with the restriction. Therefore appropriate penalty provisions have been included to encourage compliance and ensure responsible behaviour from those that are in position to apply this requirement.

The detailed operating procedures that the casino licensee and all casino employees must follow outlines the various responsibilities in terms of checking the age of persons, particularly those that are attempting to enter the casino premises. The primary responsibility, as outlined in the casino's control procedures, lies with the casino security staff that control the casino entrance and perform monitoring duties of casino patrons within the casino. To a lesser degree and ancillary to their usual duties, all casino staff are required to monitor or observe patrons, such as being underage, intoxication or whether they are an excluded person. If anything untoward was discovered or reasonably suspected, such a staff member would be required to inform their supervisor or a security person to undertake any appropriate action.

This section provides that a casino official commits an offence if the official allows a child to enter or remain in the casino.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading "Offence Provisions".

However, it is a defence to a prosecution for an offence against this section if the child was at least 16 years old and the defendant proves that the child had shown a document of identification before entering the casino and the defendant believed that the child was at least 18 years old.

This defence provides a reasonable excuse in the circumstances where the casino official made appropriate enquiries and made a judgement in good faith about the person's age.

### **81. Child using false identification**

This section provides that a child commits an offence if the child uses a false document of identification or someone else's identification for the purpose of obtaining entry to or remaining in the casino.

Based on the comments provided in relation to section 80, it is essential that a child does not attempt to enter the casino using fraudulent means. The offence provision acts as a deterrent and is an indicator of how serious the Government is in ensuring that a responsible approach is taken to gambling.

The maximum penalty for a breach of this provision is 10 penalty units.



## **82. Exclusion by casino official**

This section provides that a casino official may exclude a person from entering or remaining in the casino by giving the person notice (an *exclusion notice*) either orally or in writing.

In the interests of ensuring the proper and secure operation of the casino, a casino official must give a person an exclusion notice if the official believes, on reasonable grounds, that the person is affecting the orderly functioning of the operations of the casino or appears to be cheating, or attempting to cheat, in the casino.

A Note to the section advises that a person may also be excluded from the casino under the *Gambling and Racing Control (Code of Practice) Regulation 2002*, schedule 1, section 1.14 (Exclusion of people at risk or excluded under Deed).

A written exclusion notice must state that the notice is made under this section; the period for which the person is to be excluded; the reasons for the exclusion and that the person may apply to the Commission for a review of the decision to exclude the person from the casino.

A person given an oral exclusion notice may be removed from the casino while a casino official prepares a written exclusion notice for the person. An oral exclusion cannot be longer than 2 weeks.

## **83. Appeal against exclusion notice**

This section provides that a person may appeal in writing to the Commission against a decision under section 82 to give the person an exclusion notice.

A Note to this section advises that if a form is approved under section 53D of the Control Act for this provision the form must be used.

After considering submissions from the person and the casino licensee, the Commission must confirm, change or revoke the exclusion notice.

The decision to confirm, change or revoke an exclusion notice is a reviewable decision (section 137 of this Act refers).

This section provides a method of review of the casino official's decision to exclude a person from the casino and ensures that all exclusion decisions are reasonable in the circumstances.

## **84. Exclusion by Chief Police Officer or Commission**

This section provides that the Chief Police Officer or the Commission may, by written notice given to the casino licensee, exclude a person named in the notice from entering or remaining in the casino for a period stated in the notice or indefinitely.

The Chief Police Officer or the Commission may wish to exclude a person for security reasons or that the person is a known criminal identity and would not be desirable for the person to be frequenting the casino.

However, in making such a decision the Chief Police Officer or the Commission must be satisfied that it is in the public interest to give the exclusion notice.

The decision to issue an exclusion notice is a reviewable decision (section 137 of this Act refers) and is subject to the issue of a certificate under section 140 regarding the security of the casino.

The notice must state that the notice is made under this section and that the person is to be excluded for the stated period or indefinitely.

The issue of such an exclusion notice by the Chief Police Officer or the Commission is not a reviewable decision as it is not appropriate for such an important security related decision to be reviewable. The decision to exclude a person under this section would not be taken lightly and would only be made in the greater public interest.

To ensure that the casino licensee can undertake the exclusion, the notice must be accompanied by a recent photograph of the person to be excluded, or if it is not practicable to obtain a recent photograph, a description of the person sufficient to enable the casino licensee to readily identify the person.

#### **85. Casino official not to allow excluded person to enter casino**

This section provides that a casino official commits an offence if the official allows an excluded person to enter or remain in the casino. An excluded person could have been excluded under section 82 (by a casino official) or 84 (by the Chief Police Officer or the Commission) of this Act.

The maximum penalty for breaching this provision is 50 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds to believe that the person was an excluded person.

This reasonable excuse ground ensures that if an excluded person has changed their appearance or the description or photograph is not clear then a casino official is able to provide a defence for their actions.

#### **86. Excluded person not to enter casino**

Subsection (1) provides that a person who is excluded from entering or remaining in the casino by a notice under section 82 (relating to an exclusion by a casino official) must not enter or remain in the casino.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against subsection (1) is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

Subsection (3) provides that a person who is excluded from entering or remaining in the casino by a notice under section 84 (relating to an exclusion by the Chief Police Officer or the Commission) must not enter or remain in the casino.

The maximum penalty for a breach of this provision is 50 penalty units.

#### **87. Revocation of exclusion notice**

This section provides that a person may apply, in writing, to the Commission to have an exclusion notice given to the person under section 82 revoked.

This allows an excluded person to have their exclusion reconsidered during the period of the notice. This is in addition to the review of the decision to exclude the person in the first place (section 83 refers).

If the Commission receives an application, the Commission must revoke, or refuse to revoke, the exclusion notice.

The decision to refuse to revoke an exclusion notice is a reviewable decision (section 137 of this Act refers).

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

#### **88. Removing etc excluded people**

Subsection (1) provides that a police officer, or an agent or employee of the casino licensee, may with any force that is reasonable and necessary prevent an excluded person from entering the casino or remove an excluded person from the casino.

This allows reasonable and necessary force to be used in excluding a person but provides that if a police officer or agent or employee of the casino uses excessive force then an offence is committed. This protects the person being excluded from being assaulted or suffering from unnecessary or unwarranted abuse.

An agent or employee of the casino licensee commits an offence if the agent or employee uses more force than is necessary and reasonable in exercising a power under subsection (1).

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

A person commits an offence if the person obstructs, hinders or intimidates an agent or employee of the casino licensee in the exercise of a power under subsection (1) and the person knows that the agent or employee is an agent or employee of the casino licensee.

The maximum penalty for a breach of this provision is 50 penalty units.

This provision ensures that a person exercising their functions under subsection (1) can do so in a proper manner without interference or hindrance.

### **89. Record of excluded people**

This section provides that the casino licensee must keep a record of excluded people that must be made available for inspection by casino employees. This enables the employees to undertake their responsibilities in relation to excluded persons.

The record must include the following information in relation to each excluded person:

- (a) the period for which the person is excluded from the casino;
- (b) the name or a description of the excluded person;
- (c) the name of the person who gave the exclusion notice;
- (d) whether the person was excluded under section 82 (Exclusion by casino official) or section 84 (Exclusion by Chief Police Officer or the Commission).

The casino licensee commits an offence if the licensee fails to keep a record of excluded people in accordance with this section.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence.

## **Part 6 Gaming**

### **Division 6.1 Gaming equipment and chips**

#### **90. Definitions—Part 6**

In this Act, *approved rules*, for an authorised game, means the rules approved for the game under section 96 and, if amendments of the rules have been approved under section 97, the rules as so amended.

*Authorised game* means a game declared under section 95 to be an authorised game.

*Gaming equipment* means any electrical, electronic or mechanical device or anything else (other than chips) used, or suitable for use, in relation to gaming and includes a device or other thing that is incidental to the basic operation of gaming equipment.

#### **91. Approval of gaming equipment and chips**

Subsection (1) provides that the Commission may, in writing, approve for use in the casino gaming equipment and chips manufactured by a stated manufacturer and supplied by a stated supplier.

However, the Commission must not approve gaming equipment or chips under subsection (1) unless it has considered the results of any technical evaluation of the gaming equipment or chips by an approved entity and whether the supplier and manufacturer of the gaming equipment or chips are eligible people.

The decision to refuse to approve gaming equipment or chips is a reviewable decision (section 137 of this Act refers).

This section recognises the critical importance of gaming equipment and chips to the integrity of casino operations and the need to ensure that there is no criminal influence exercised through the supply or manufacture of these items. It also ensures that the Commission has considered any technical evaluation that is available in assessing the suitability and acceptability of the gaming equipment or chips.

In this section *approved entity* means an entity approved (however described) under a law of a local jurisdiction about gaming equipment or chips to undertake technical evaluations for the law.

*Technical evaluation*, of gaming equipment or chips, includes an evaluation of the design and operation of the gaming equipment or chips and whether the gaming equipment or chips are easily interfered with, copied or forged.

## **92. When approval of equipment or chips not required**

This section applies if the casino licensee acquires gaming equipment or chips that are identical to gaming equipment or chips in relation to which an approval is in force under section 91.

The casino licensee may use the gaming equipment or chips in the casino without the Commission's approval if the casino licensee verifies, by written notice given to the Commission, that the gaming equipment or chips are identical to gaming equipment or chips in relation to which an approval is in force under section 91.

This section effectively allows for the automatic approval of gaming equipment and chips if identical equipment and chips have already been approved. For example, identical playing cards do not need further checking and approval; whereas a roulette wheel from a different manufacturer that has not been previously examined and approved would need explicit approval from the Commission. This scheme prevents unnecessary delays in the approval of previously examined equipment and chips and allows a more efficient casino operation.

## **93. Suspension or cancellation of gaming equipment or chips approval**

This section provides that the Commission may, by written notice to the casino licensee, suspend or cancel the approval of gaming equipment or chips if the gaming equipment no longer operates as designed or the gaming equipment no longer operates as intended or the supplier or manufacturer of the gaming equipment or chips ceases to be an eligible person.

The decision to suspend or cancel an approval is a reviewable decision (section 137 of this Act refers).

This section is clarified to indicate that a suspension or cancellation of gaming equipment or chips under this section applies to all equipment or chips of that kind, whether or not particular equipment or chips are operating as designed or intended.

This means that if a manufacturing or design fault is discovered in one piece or example of equipment, then all equipment of the same kind or type may have the approval withdrawn on the basis that the fault is likely to be in all samples or examples.

#### **94. Possession or use of gaming equipment or chips**

This section provides that the Commission may authorise a person to possess or use, outside the casino, gaming equipment that is approved for use in the casino under section 91. It also provides a number of offence provisions relating to the unauthorised possession of gaming equipment or chips.

The decision to refuse to issue an authorisation under subsection (1) is a reviewable decision (section 137 of this Act refers).

Generally the Commission may authorise the use or possession of gaming equipment or chips outside the casino for purposes that may be legitimate in the circumstances, such as getting equipment repaired, using chips or equipment in promotional photography. Also, gaming equipment or chips that is not approved may be possessed inside the casino in certain circumstances with Commission approval (see subsection (5)).

In general terms, the unauthorised possession of gaming equipment or chips (particularly in the casino) is a fundamental breach of the requirement to control the quality and operation of gaming equipment and the use of only legitimate chips. The control of these matters is fundamental to the integrity of casino gaming and the accountability of revenue.

Subsection (2) provides that a person commits an offence if the person possesses gaming equipment outside the casino and the gaming equipment is approved for use in the casino under section 91 and the person is not authorised by the Commission to possess the gaming equipment outside the casino.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Subsection (3) provides that a person commits an offence if the person uses gaming equipment outside the casino and the gaming equipment is approved for use in the casino under section 91 and the person is not authorised by the Commission to use the gaming equipment outside the casino.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Subsection (4) provides that a person commits an offence if the person possesses gaming equipment or chips in the casino or uses gaming equipment or chips in the casino and the gaming equipment or chips are not approved for use in the casino under section 91.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Subsection (5) provides that subsection (4)(a)(i) does not apply to the casino licensee if the casino licensee possesses gaming equipment or chips and has told the Commission in writing that the gaming equipment or chips need to be assessed for approval under section 91 and will not use the gaming equipment or chips until they are approved for use in the casino under section 91.

This subsection allows gaming equipment to be brought into the casino prior to approval by the Commission to allow for evaluation and testing by the casino licensee and the Commission.

Subsection (6) provides that the Commission may authorise a casino official to possess, outside the casino, chips that are approved for use in the casino under section 91.

The decision to refuse to issue an authorisation under subsection (6) is a reviewable decision (section 137 of this Act refers).

Subsection (7) provides that a casino official commits an offence if the official possesses chips outside the casino and the chips are approved for use in the casino under section 91 and the official is not authorised by the Commission to possess the chips outside the casino.

This prevents, for example, a casino employee from possessing approved chips outside the casino which acts as a further deterrent to the theft of chips by staff and reinforces the fact that there is no valid reason for a casino employee to possess chips outside the casino.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

Subsection (8) provides that a casino official commits an offence if the official allows another casino official (the *second official*) to possess chips outside the casino and the chips are approved for use in the casino under section 91 and the second official is not authorised by the Commission to possess the chips outside the casino.

This subsection is for the same purpose as subsection (6) and is included to prevent a supervisor or the casino licensee from encouraging or requiring another casino official from breaching this section.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

## **Division 6.2 Authorised games**

### **95. Declaration of authorised games**

This section provides that the casino licensee may apply in writing to the Commission for a declaration that a game is an authorised game.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

On application under this section, the Commission may declare, or refuse to declare, the game to be an authorised game.

The decision to refuse to declare a game to be an authorised game is a reviewable decision (section 137 of this Act refers).

A declaration is a notifiable instrument and may include conditions in relation to the playing of the authorised game.

The decision to include a condition on the approval of the authorised game is a reviewable decision (section 137 of this Act refers).

The declaration of games is part of a regulatory scheme to ensure that games and their rules (see section 96 of this Act) are appropriate to be played in the casino and are fair and equitable to casino players.

The approval of games is a notifiable instrument and therefore is readily available for public scrutiny.

## **96. Rules for authorised games**

This section provides that the casino licensee may apply in writing to the Commission for approval of the rules for an authorised game.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

On application under this section, the Commission must approve, or refuse to approve, the rules for an authorised game.

The decision to refuse to approve is a reviewable decision (section 137 of this Act refers).

The approval of rules of authorised games is to ensure that the games are conducted in a fair and equitable manner and that an appropriate return to player is provided by the game.

The approval of rules of games is a notifiable instrument and therefore the rules are readily available for public scrutiny.

## **97. Amendment of rules for authorised games**

This section provides that the casino licensee may apply in writing to the Commission for approval of an amendment of the approved rules for an authorised game.



*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

On application under this section, the Commission must approve, or refuse to approve, the amendment of the approved rules for the authorised game.

The decision to refuse to approve an amendment to the rules is a reviewable decision (section 137 of this Act refers).

The approval of rules of games is a notifiable instrument and therefore the rules are readily available for public scrutiny.

### **Division 6.3 Offences relating to gaming**

In the context of the nature of casino regulation outlined in the introduction to this Explanatory Statement, this Division outlines a number of offence provisions relating to the conduct of gaming in the casino.

Maintaining the integrity of gaming and of casino operations is the fundamental principle behind this legislation. The Government, patrons and the community must have confidence in the conduct of gaming. The offences in this Division are to ensure that casino operations are conducted properly and there is sufficient deterrent to the casino licensee and employees from conducting unauthorised or unlawful gaming.

The reference in some of the offence provisions in this Division to “allowing” someone to undertake certain activities generally refers to the person’s role as a supervisor or someone that has authority to direct the activities of others. A supervisor’s role is defined in the control procedures where responsibilities and the manner in which casino activities are undertaken are outlined. The element of “allow” would not apply to a casino employee who has no knowledge or responsibilities in relation to the conduct involved.

The conduct of games in the casino requires casino employees to operate the games on behalf of the casino licensee. The casino games require the employees to make decisions in relation to the games strictly in accordance with approved rules and control procedures (sections 75 and 96 of the Bill refer). This ensures that the games are properly and consistently conducted. This is fundamental to the integrity of the operations of the casino as an individual casino employee could incorrectly conduct a game (with or without intended fraud or malice) by making erroneous decisions or false monetary payouts. The casino employee, casino patrons or both could quickly reap large benefits of cash in such circumstances and the reputation of the casino could be irreparably tarnished.

#### **98. Dealing cards**

This section provides that a casino official commits an offence if the official is conducting an authorised game in the casino involving playing cards and the official does not deal the playing cards from a card shoe.

A card shoe is a box-like device that holds the cards for dealing. It prevents a dealer from manipulating the delivery order of the cards by, for example, dealing from the bottom of the pack.

The maximum penalty for a breach of this provision is 100 penalty units for the casino licensee and 20 penalty units for a casino employee.

A differential penalty for this section reflects the seriousness of a breach by the casino licensee but takes into account a breach by an individual.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

A strict liability offence is considered appropriate in this section as the chances of a casino employee accidentally or mistakenly dealing a card that is not from a card shoe are so remote as to be considered negligible.

### **99. Issue of chips**

This section provides that a casino official commits an offence if the official issues, or allows someone else to issue, chips for gaming in the casino and the chips are not paid for in money to the face value of the chips or by chip purchase vouchers issued in accordance with the control procedures or the procedure prescribed by regulation.

This section ensures that chips for their full monetary value are issued without a commission or fee being charged.

The maximum penalty for a breach of this provision is 100 penalty units for the casino licensee and 20 penalty units for a casino employee.

A differential penalty for this section reflects the seriousness of a breach by the casino licensee but takes into account a breach by an individual.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

### **100. Conduct of authorised games**

This section provides that a casino official commits an offence if the official conducts, or allows someone else to conduct, an authorised game in the casino and the game is not conducted in accordance with conditions included in the declaration of the authorised game under section 95 or the approved rules for the authorised game.

The maximum penalty for a breach of this provision is 100 penalty units for the casino licensee and 20 penalty units for a casino employee.

A differential penalty for this section reflects the seriousness of a breach by the casino licensee but takes into account a breach by an individual.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

### **101. Placement and payment of wagers**

This section provides that a casino official commits an offence if the official allows a wager to be placed on an authorised game conducted in the casino and the wager is not placed using chips or, if another way of placing wagers is stated in the approved rules for the authorised game, in that way.

This ensures that only authorised chips are used for gaming and ensures that no unofficial wagers or side bets are placed as part of gaming activity.

The maximum penalty for a breach of this provision is 100 penalty units for the casino licensee and 20 penalty units for a casino employee.

A differential penalty for this section reflects the seriousness of a breach by the casino licensee but takes into account a breach by an individual.

A casino official commits an offence if the official pays a wager won in playing an authorised game in the casino and the official deducts an amount for a commission or levy from the amount paid for the wager and the commission or levy is not provided for in the approved rules for the game.

This subsection ensures that a casino employee does not take a deduction or tip from wagers and that the rules of games and the cost of playing those games are transparent.

The maximum penalty for a breach of this provision is 100 penalty units for the casino licensee and 20 penalty units for a casino employee.

A differential penalty for this section reflects the seriousness of a breach by the casino licensee but takes into account a breach by an individual.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

### **102. Exchange of chips or chip purchase vouchers**

This section provides that the casino licensee commits an offence if during the operating times for the casino, a person asks for the exchange of a chip purchase voucher for chips or the exchange of chips for other chips or the redemption of chips or chip purchase voucher for money to the value of the face value of the chips or chips purchase voucher and the casino licensee does not comply with the request.

This section ensures that the casino licensee will exchange chips or chip purchase vouchers for cash and ensures that patrons are confident in the use (and value) of chips in the casino.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

### **103. Charge for entering or playing in casino**

This section provides that the casino licensee commits an offence if the licensee charges a fee (whether directly or indirectly) for a person to enter the casino.

The maximum penalty for a breach of this provision is 50 penalty units.

The casino licensee commits an offence if the licensee charges a person a fee (whether directly or indirectly) to play an authorised game in the casino and the fee is not provided for in the approved rules for the game.

This section ensures that the casino licensee does not allow anyone to make a deduction or to take a tip from an entry charge or from wagers. This provision ensures that the rules of games and the cost of playing those games are transparent.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

In this section, *fee* includes a deposit, charge, commission, levy or a fee that is refundable.

### **104. Gaming by authorised person**

This section provides that an authorised person commits an offence if the person plays an authorised game in the casino and the playing of the game is not part of the person’s functions under this Act, the person’s employment or a function the person is exercising for the Territory or Commission in relation to this Act.

This section allows an authorised person to undertake their employment or perform their functions but prevents such a person from gambling in the casino as this would be a conflict of interest (or at least the perception of a conflict of interest).

The maximum penalty for a breach of this provision is 20 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

### **105. Gratuities for casino employees or agents**

This section provides that a casino employee, or an agent of the casino licensee, commits an offence if the employee or agent solicits or accepts a gratuity from a person in the casino or in relation to the operation of the casino.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

However, this section does not apply to a gratuity in relation to the provision of food or beverages to people in the casino, the undertaking of valet parking in relation to the casino or the undertaking of cleaning duties in relation to the casino.

This section is to ensure that casino employees involved with gaming and security related areas do not accept gratuities or tips of any kind as this may compromise the integrity of casino operations by tempting a casino employee to favour a big-tipping patron. Accepting gratuities or tips by casino employees is a conflict of interest, or at least may be perceived as a conflict of interest.

Exemptions are provided to those areas that are not involved in gaming or security related activities and traditionally receive tips as part of their employment.

### **106. Children must not play authorised games**

As outlined in relation to restricting a child from entering the casino (section 80 of this Act refers), it is a fundamental part of the Government's harm minimisation strategy in relation to gambling to ensure that persons under the age of 18 are not exposed to casino gaming or the casino "atmosphere". The protection of a child from this type of gaming is sufficiently serious to require appropriate deterrents to ensure that the casino licensee, agents and casino employees use considerable effort to comply with the restriction. Therefore appropriate penalty provisions have been included to encourage compliance and ensure responsible behaviour from those that are in position to apply this requirement.

This section provides that a casino official commits an offence if the official allows a child to play an authorised game in the casino.

This offence provision is in addition to section 80 of this Act that prevents a child from entering the casino. It ensures that a person under the age of 18 does not engage in casino gambling.

The maximum penalty for a breach of this provision is 100 penalty units for the casino licensee and 20 penalty units for a casino employee.

A differential penalty for this section reflects the seriousness of a breach by the casino licensee but takes into account a breach by an individual.

A child commits an offence if the child plays an authorised game in the casino.

This provision acts as a deterrent to a child from attempting to gamble in the casino and is also important to preventing any repeat offenders.

The maximum penalty for a breach of this provision is 10 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement under the heading “Offence Provisions”.

However, subsection (4) provides that it is a defence to a prosecution for an offence against subsection (1) if the child was at least 16 years old and the defendant proves that the child had shown a document of identification before entering the casino and the defendant believed that the child was at least 18 years old.

This defence provides a reasonable excuse in the circumstances where the casino official made appropriate enquiries and made a judgement in good faith about the person’s age.

### **107. Gaming machines**

This section provides that the casino licensee commits an offence if the licensee does any of the following in the casino:

- (a) possesses a gaming machine;
- (b) permits the installation of a gaming machine;
- (c) installs a gaming machine;
- (d) permits the use of a gaming machine;
- (e) uses a gaming machine.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence.

### **108. Cheating**

This section outlines a number of offence provisions relating to cheating in the casino. This section is specifically worded to cover incidents that are likely or possible to occur in the context of a casino environment. While the Criminal Code provides an array of offences relating to fraudulent conduct (Part 3.3 of the Criminal Code refers), it was considered appropriate to be certain that particular cheating offences in the casino would be covered.

Subsection (1) provides that a person commits an offence if the person is in the casino and the person dishonestly obtains for the person or someone else or induces someone to deliver, give or credit to the person or someone else, money, chips, benefit, advantage, valuable consideration or security and the person does so by trick, device, sleight of hand, representation, a scheme or practice, the use of gaming equipment or the use of an instrument or article of a kind (or appearing to be of a kind) used in relation to gaming or anything else.

The maximum penalty for a breach of this provision is 500 penalty units, imprisonment for 5 years or both.

Subsection (2) provides that a person commits an offence if the person uses, or has in the person's possession in the casino, chips that the person knows are bogus or counterfeit chips or cards, dice, tokens, coins or other gaming equipment that the person knows have been marked or tampered with.

The maximum penalty for a breach of this provision is 200 penalty units, imprisonment for 2 years or both.

Subsection (2) does not apply to the possession by a casino official, authorised officer or police officer of a thing seized for destruction or for use as evidence in relation to a proceeding for an offence or the taking of disciplinary action under this Act against the casino licensee (see section 37) or a casino employee (see section 59).

Subsection (4) provides that a person commits an offence if the person has in the person's possession in the casino any equipment, device or other thing that facilitates or allows cheating or stealing and the person possesses the thing with the intention of using it for cheating or stealing.

The maximum penalty for a breach of this provision is 200 penalty units, imprisonment for 2 years or both.

In this section, *device* includes an electrical, electronic or mechanical device and a computer.

### **109. Forgery**

In similar terms to section 108 of this Act dealing with cheating, this section outlines a number of offence provisions relating to forgery in the casino. This section is specifically worded to cover incidents that are likely or possible to occur in the context of a casino environment. While the Criminal Code provides an array of offences relating to fraudulent conduct (Part 3.3 of the Criminal Code refers), it was considered appropriate to be certain that particular forgery offences in the casino would be covered (eg. relating to chip purchase vouchers).

This section provides that a person commits an offence if the person forges a chip, chip purchase voucher, licence under this Act or form of identification used for this Act or utters counterfeit chips or a forged or counterfeit chip purchase voucher, licence under this Act or form of identification used for this Act.

The maximum penalty for a breach of this provision is 500 penalty units, imprisonment for 5 years or both.

## **Division 6.4 Providing money for gaming**

### **110. Cash facilities**

This section provides that the casino licensee commits an offence if the licensee provides, or allows the provision of, a cash facility in the casino.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

A Note to this section advises that the Commission may give the casino licensee a direction in relation to the separation of cash facilities from the casino (see section 63(1)(e) of this Act).

In this section, *cash facility* means an automatic teller machine, an EFTPOS facility or any other facility for gaining access to cash or credit. However, it does not include a facility where cash is exchanged for other denominations of cash, chips, tokens, tickets or cards for the purpose of playing games in the casino.

This section provides a harm minimisation strategy by preventing access to cash within the casino. It is proposed that a gambler in the casino would need to leave the casino premises to access more cash, and in doing so, has some form of forced break from gambling and a chance to rethink whether further cash should be obtained. This provision is a standard harm minimisation strategy for all gambling facilities.

If necessary, the Commission can issue a direction that ensures that there is adequate separation of any cash facility from the casino.

### **111. Lending or extending credit**

This section provides that a casino official commits an offence if the official lends, or offers to lend, money to a person who is in, or appears to be about to enter, the casino or a part of it. This section also provides that a casino official commits an offence if the official extends, or offers to extend credit to a person who is in, or appears to be about to enter, the casino or a part of it.

The maximum penalty for a breach of this provision is 50 penalty units.

In this section, *extend credit* includes accept postdated cheques, blank cheques and credit and debit cards.

This section is another harm minimisation strategy aimed at preventing access to additional cash within the casino or to someone about to enter the casino. The provision of credit to a gambler would likely result in the gambler spending more money than intended or that they could afford. This provision is a standard harm minimisation strategy for all gambling facilities.

### **112. Acceptance of cheques**

Subsection (1) provides that the casino licensee commits an offence if the licensee accepts a cheque from a person and the cheque is not a cheque prescribed by regulation or is not accepted in a way prescribed by regulation.

The maximum penalty for a breach of this provision is 10 penalty units.

Subsection (2) provides that the casino licensee commits an offence if the licensee accepts or cashes a cheque at the request of a person and the licensee has previously accepted or cashed a cheque at the request of the person that was not honoured on presentation and the debt incurred by the dishonoured cheque has not been discharged.



The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

Subsection (3) provides that the casino licensee commits an offence if the licensee accepts a cheque that has not been redeemed under section 114 and the licensee does not present the cheque for payment within the time determined by the Commission under section 115.

The maximum penalty for a breach of this provision is 10 penalty units.

This section is not a requirement for the casino licensee to accept or cash a cheque.

The acceptance of cheques is regulated to ensure that the casino licensee does not use this as a method of providing credit to gamblers and that gamblers do not use cheques to overextend the amount of money they spend on gambling.

### **113. Deposit accounts**

This section provides that the casino licensee may establish a deposit account for a person (the *account holder*).

The casino licensee may give the account holder chips, chip purchase vouchers, money or a cheque to the value of the credit of the account holder's deposit account.

The casino licensee must credit to the account holder's deposit account the amount of any money or cheque the account holder has given the licensee for deposit to the account, or the amount of any money transferred by the account holder to the account directly from an account operated by the account holder with a financial institution.

The casino licensee must debit the account holder's deposit account the value of any chips, chip purchase vouchers, money or a cheque that has been issued to the account holder. In addition, a deposit account must be debited with the value of any amount transferred to the account holder's financial institution account.

The casino licensee must not credit an amount to the account holder's deposit account, or debit the deposit account with an amount, except in accordance with this section.

The provisions in this section safeguard the gambler from unauthorised transactions and ensure that a person's money is protected. It also ensures that the casino licensee does not use this scheme to provide credit to gamblers.

### **114. Redemption of cheques**

This section provides that a person may redeem a cheque previously accepted by the casino licensee if the licensee agrees and the cheque is redeemed before the cheque is presented for payment or before the end of the time determined under section 115 for presentation of the cheque for payment.

The person may redeem the cheque by giving, to the cash desk at the casino, the amount of the cheque to be redeemed in the form of cash or chips. If more than 1 cheque is being redeemed, a cheque for the total value of the cheques to be redeemed may be provided.

The provisions relating to the redemption of cheques allow a patron of the casino to cash in a cheque or cheques and therefore use the opportunity to reduce their future debt.

### **115. Time for presentation of unredeemed cheque**

This section applies if the casino licensee accepts a cheque that has not been redeemed under section 114.

The Commission may determine the time within which the casino licensee must present the cheque for payment.

This section ensures that the casino licensee cannot hold onto a cheque for an extended or indefinite period and thereby effectively providing the gambler with a form of credit. Holding on to a patron's cheque would also be a method of enticing the person back into the casino to continue to gamble.

A determination under this section is a notifiable instrument and therefore available for public scrutiny.

### **116. Proceedings etc in relation to gaming**

This section provides that despite any other Territory law, the casino licensee may take action against a person to recover the amount of a cheque drawn in relation to a gaming debt incurred in the casino and later dishonoured.

Subsection (2) provides that the casino licensee commits an offence if a person incurs a gaming debt in the casino because of the dishonour of a cheque drawn by the person and accepted by the licensee and the licensee has a right in relation to the gaming debt and the licensee assigns the right, or part of the right, to someone else.

The maximum penalty for a breach of this provision is 50 penalty units.

Despite any other Territory law, a person may take action against the casino licensee to recover an amount won at gaming in the casino or the amount of a cheque given by the casino licensee in payment of an amount won at gaming that was later dishonoured.

## **Part 7 Enforcement**

As outlined in the introduction remarks to this Explanatory Statement, the main objective of this legislation is to ensure that the casino is free from criminal influence. An individual's rights and freedoms have, in some cases, been slightly fettered on the basis that it is in the wider public interest that the casino be properly regulated and gambling activity controlled. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve the policy objective.

## **Division 7.1 Powers of entry, search and seizure**

### **117. Definitions—Part 7**

In this part, *conduct* means an act or omission to do an act.

*Connected* in relation to being *connected* with an offence, means that the offence has been committed in relation to it, or it will provide evidence of the commission of the offence, or it was used, is being used, or is or was intended to be used, to commit the offence.

*Offence* means any conduct engaged in that is, or that it is believed on reasonable grounds to be an offence against this Act; or a contravention of the Criminal Code in relation to a document completed, kept or given, or required to be completed, kept or given, under or in relation to this Act; or a contravention of the Criminal Code in relation to anything else done, or not done, under or in relation to this Act.

### **118. Power of police to enter casino**

This section provides that a police officer may, at any time, enter and be in any part of the casino if the police officer is at or above the rank of sergeant, or is authorised to do so by another police officer at or above the rank of sergeant, or is asked to do so by an authorised person.

This section does not affect the power of a police officer under any other Territory law to enter and be in the casino.

This section ensures that a police officer of a suitable rank or duly authorised may enter the casino at any time. This provision is necessary since the casino by virtue of section 79 of this Act is not a public place.

A Note to this section advises that section 23 of the Control Act provides that an authorised officer may enter and inspect the casino at any reasonable time to do the things mentioned in that section.

### **119. Powers of police to search and seize**

Subsection (1) provides that if a police officer suspects, on reasonable grounds, that a particular thing is connected with a particular offence, the police officer may search a person, or enter premises and search, for the thing and if the thing is found during the search seize it.

If during a search under this section a police officer finds a thing that the police officer believes, on reasonable grounds, is connected with another offence or will provide evidence in relation to the commission of an offence, the police officer may seize the thing.

A police officer must not exercise a power under this section unless the police officer believes, on reasonable grounds, that it is necessary to exercise the power to prevent the thing seized from being concealed, lost or destroyed, or used in relation to the offence or another offence and the circumstances are so serious and urgent that they require the police

officer to seize the thing immediately without a court order or warrant issued under this Act or another Territory law.

Where there is insufficient time or opportunity to obtain a warrant, these powers are necessary to ensure that any evidence of criminal activity is preserved to enable appropriate action to be taken. This power to search and seize and is essential in the identified circumstances as it is fundamental to the integrity of casino operations and of the casino licensee. The conduct of unlawful gaming activity in, or in relation to, the casino may require the Commission and the Minister to look very closely at the suitability of the casino licensee to continue to operate.

## **120. Search of people**

This section provides some powers and guidance in relation to a search being conducted under section 119 of this Act.

It provides that if a police officer conducts a search of a person under section 119, the police officer may also search the clothing worn by the person and any property under, or apparently under, the person's immediate control.

In searching a person under section 119, a police officer must not use more force than is necessary and reasonable.

This allows reasonable and necessary force to be used in searching a person but provides that a police officer cannot use excessive force or they may be liable to disciplinary action under policing governance arrangements or prosecution for assault. This protects the person being searched from being assaulted or suffering from unnecessary or unwarranted abuse.

A person searched under section 119 must be searched by a police officer of the same sex. However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.

A Note to this subsection advises that the meaning of *transgender person* and *intersex person* is outlined in the Legislation Act.

If the transgender or intersex person requires the search to be conducted by a male, the person is taken, for this section, to be male. If the transgender or intersex person requires the search to be conducted by a female, the person is taken, for this section, to be female.

Section 119 does not authorise a police officer to carry out a search by way of an examination of a body cavity of a person.

## **Division 7.2 Detention of suspected person**

### **121. Detention of suspected person**

This section applies if a casino official suspects, on reasonable grounds, that a person (the *suspected person*) in the casino is committing, or has committed, an offence.

The official must detain the suspected person in a suitable place in the casino until a police officer arrives.

Subsection (3) provides that the official commits an offence if the official detains the suspected person and uses more force than is necessary and reasonable or fails to tell the suspected person of the reasons for the detention or fails to immediately tell a police officer of the detention and the reasons for the detention.

This section provides a casino official with the power to detain a person that is committing an offence or has committed an offence in the casino. On the basis that the casino licensee has a sophisticated system of camera surveillance along with trained surveillance and security officers, there is high probability of detecting criminal activity in the casino. This detection may be in real time (ie. at the time of the offence) or it may be at a later time when surveillance tapes are reviewed.

If illegal activity is detected by tape review at a later date, the person that committed the offence may return to the casino. If this is the case, this provision allows a casino official that has identified the person to detain the suspected offender pending the attendance of a police officer.

The offences committed in the casino could be cheating at gaming, assault of another person or official or theft of an item such as chips, a handbag or item of clothing such as a leather jacket.

While it is essential to the security and integrity of the casino to have this section, it is also essential to protect the patron from any possible abuse or assault. Therefore a safe guard has been included to ensure that essential requirements are met if a person is to be detained. The penalty provisions reflect the seriousness of breaching these requirements in undertaking these functions. The casino licensee's and the relevant employees' activity in this regard are closely monitored by the Commission as regulator of casino operations.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

### **Division 7.3 Offences**

#### **122. Impersonating licence holder**

This section provides that a person commits an offence if the person impersonates the holder of a casino employee licence.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

#### **123. Conflicts of interest**

This section provides for a number of offence provisions relating to conflicts of interest by authorised persons as defined for this section. An authorised person is likely to have regulatory dealings with the casino licensee, casino employees and casino activity and

therefore it is essential that there is no conflict or potential compromise in any regulatory decision.

In this section, an *involved person* means the casino licensee, an owner of the casino, the casino lessee or a casino employee.

An *official* means an authorised person other than a casino employee.

An official commits an offence if the official is employed in any capacity by an involved person.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

Further, a person who ceases to be an official commits an offence if, within one year after the day the person ceases to be an official, the person ceases or accepts employment with an involved person. This prevents the relationship from being established immediately after leaving the relevant position and taking advantage of the knowledge of influence that may still exist.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

An involved person commits an offence if the involved person employs an official in any capacity or employs a person in any capacity within 1 year after the day the person ceases to be an official.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

An official commits an offence if the official has (directly or indirectly) a business or financial interest or association with an involved person and the interest could conflict with the proper exercise of the official's functions in relation to the casino and the involved person fails to disclose the interest to the Commission as soon as possible after becoming aware of it.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

An involved person commits an offence if the involved person has (directly or indirectly) a business or financial interest or association with an official and the interest could conflict with the proper exercise of the official's functions in relation to the casino and the official fails to disclose the interest to the Commission as soon as possible after becoming aware of it.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

An official commits an offence if the official has (directly or indirectly) a business or financial interest or association with a person who is an applicant for a casino employee

licence and the interest could conflict with the proper exercise of the person's functions as a casino employee and the official knows the person is an applicant for a casino employee licence and the official does not tell the Commission, in writing, about the interest or association as soon as possible after becoming aware that the person is an applicant for a casino employee licence.

The maximum penalty for a breach of this provision is 50 penalty units, imprisonment for 6 months or both.

These offence provisions are to ensure that a casino official (as defined for this section) does not have an interest with a significant casino person, such as the casino licensee or a casino employee. This is to ensure that there is no conflict of interest, or perception of a conflict of interest, with the duties performed by a casino official. These provisions must be broadly cast to ensure that all possible financial relationships that may compromise the integrity of gaming are covered.

#### **124. Acts and omissions of representatives of individuals**

In this section, *fault element*, includes knowledge, intention, opinion, belief or purpose but does not include negligence.

*Offence against this Act* includes an offence against the Criminal Code in relation to a document completed, kept or given, or required to be completed, kept or given, under or in relation to this Act and an offence against the Criminal Code in relation to anything else done, or not done, under or in relation to this Act.

*Person* means an individual. A Note to this section advises that the Criminal Code, Part 2.5, for provisions about corporate criminal responsibility.

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

This section applies to a prosecution for any offence against this Act but does not apply in relation to disciplinary action taken by the Commission.

Conduct engaged in by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been engaged in by the person. However, this does not apply if the person establishes that the person took all reasonable steps to prevent the conduct.

In deciding whether the person took all reasonable steps to prevent the conduct, a court must consider any action the person took to ensure that the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision and the level of management, control or supervision that was appropriate for the person to exercise over the representative. This section does not limit the matters that the court may consider.

If it is relevant to prove that a person had a fault element or was negligent in relation to a physical element of an offence, it is enough to show that the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the

representative's actual or apparent authority and the representative had the fault element or was negligent in relation to the physical element.

A person may rely on the Criminal Code, section 36 (Mistake of fact—strict liability) in relation to conduct by a representative that would make up an offence by the person only if the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have been an offence. The person would need to prove that the person exercised appropriate diligence to prevent the conduct.

A person may not rely on the Criminal Code, section 39 (Intervening conduct or event) in relation to a physical element of an offence brought about by someone else if the other person is a representative of the person.

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 (7).

## **Part 8 Finance**

### **Division 8.1 Tax**

#### **125. General tax**

General tax is payable on the noncommission-based profit derived in each month from the operation of the casino.

The *noncommission-based profit* derived in a month from the operation of the casino is:

- (a) if the value of unredeemed chips at the end of the month is greater than the value of unredeemed chips at the beginning of the month:

$$(T - W) + (UC2 - UC1)$$

- (b) if the value of unredeemed chips at the end of the month is less than the value of unredeemed chips at the beginning of the month:

$$(T - W) - (UC1 - UC2)$$

The choice between the two formulae depends on whether the level of unredeemed chips (ie. those that are outstanding or unaccounted for) has increased or decreased for the month. If the level of unredeemed (outstanding) chips has increased, the casino licensee effectively pays tax on these chips as though they were a gaming loss. This is to prevent the casino licensee from removing chips from circulation or from encouraging patrons to remove chips from the casino, such as to artificially boost profits. Conversely, it encourages the casino licensee to ensure chips that were previously unredeemed are returned to the casino.

The rate at which general tax is payable is 10.9% of the noncommission-based profit derived in the month from the operation of the casino.



Unlike under the provisions of the repealed Act, the payment of this tax liability does not include a credit for GST paid on gaming activity.

In this section, *chips* means chips supplied by the casino licensee for noncommission-based gaming.

*Noncommission-based gaming* means gaming other than commission-based gaming.

*T*, for a month, means the total amount of revenue the casino licensee receives from noncommission-based gaming in the casino in the month.

*UC1*, for a month, means the value of unredeemed chips at the beginning of the month.

*UC2*, for a month, means the value of the unredeemed chips at the end of the month.

*W*, for a month, means the total amount paid as winnings in relation to non-commission based gaming in the month.

## **126. Exemption from general tax**

The Minister may exempt the casino licensee from payment of general tax in relation to a gaming activity in the casino if the activity is subject to a tax under another Territory law.

An exemption is a disallowable instrument and therefore is subject to scrutiny by the ACT Legislative Assembly.

This provision allows for a tax exemption on an activity that is already subject to Territory taxation, such as ACTTAB operations. This prevents unintended double taxing of this type of gaming activity.

## **127. Commission-based player tax**

Commission-based gaming (player scheme) is “high-roller” or “junket” gaming scheme where the players enter into special negotiated arrangements with the casino licensee where certain benefits are provided to players based on their level of gaming activity. These benefits may include travel, food, beverages and commissions or rebates.

The programs or arrangements entered into by commission-based players are treated separately in this Act as the programs may last for several days or even a week and therefore it is not possible to isolate the outcome or result of the program until it has been completed. This has implications for casino tax calculations that are normally based on a calendar month period. A commission-based program may start in one month but not be completed until the following month.

This section provides that commission-based player tax is payable on the completed commission-based profit derived in each month from the operation of the casino.

The *completed commission-based profit* derived in a month from the operation of the casino is the total profit derived in the month from completed commission-based player schemes (whether or not the profit relates to gaming happening in that month or a previous month) is:

- (a) if the total value at the end of the month of all unredeemed commission-based player chips held by participants after the completion of the schemes is greater than the total value at the beginning of the month of unredeemed commission-based player chips (originally purchased for previous schemes) used in the course of commission-based gaming in relation to the schemes:

$$(CGA - W) + (UCC2 - UCC1)$$

- (b) if the total value at the end of the month of all unredeemed commission-based player chips held by participants after the completion of the schemes is less than the total value at the beginning of the month of unredeemed commission-based player chips (originally purchased for previous schemes) used in the course of commission-based gaming in relation to the schemes:

$$(CGA - W) - (UCC1 - UCC2)$$

The choice between the two formulae depends on whether the level of unredeemed chips (ie. those that are outstanding or unaccounted for) has increased or decreased for the month. If the level of unredeemed (outstanding) chips has increased, the casino licensee effectively pays tax on these chips as though they were a gaming loss. This is to prevent the casino licensee from removing chips from circulation or from encouraging patrons to remove chips from the casino, such as to artificially boost profits. Conversely, it encourages the casino licensee to ensure chips that were previously unredeemed are returned to the casino.

The rate at which commission-based player tax is payable is 0.9% of the completed commission-based profit derived in the month from the operation of the casino.

Unlike under the provisions of the repealed Act, the payment of this tax liability does not include a credit for GST paid on gaming activity.

In this section, *CGA*, for a month, means the total amount the casino licensee receives in the month from commission-based gaming in the casino under completed commission-based player schemes.

*Commission-based player chips* means chips supplied by the casino licensee for commission-based gaming.

*completed commission-based player scheme*, in relation to a month, means a commission-based player scheme (as defined in the Dictionary) under which commission-based gaming is completed during the month, whether or not the commission-based gaming started in that month or the previous month.

*UCC1*, for a month, means the total value at the beginning of the month of unredeemed commission-based player chips (originally purchased for previous schemes) used in the course of commission-based gaming in relation to commission-based player schemes.

*UCC2*, for a month, means the total value at the end of the month of all unredeemed commission-based player chips held by participants in completed commission-based player schemes.

*W*, for a month, means the total amount paid as winnings in relation to completed commission-based player schemes in the month.

### **128. Payment of tax**

General tax and commission-based player tax must be paid by the casino licensee.

General tax and commission-based player tax in relation to the operation of the casino during a month are payable on the 10th day after the end of the month.

### **129. Monthly tax returns**

Within 10 days after the end of each month, the casino licensee must give the Commission a written return relating to the noncommission-based profit derived in the month from the operation of the casino and the completed commission-based profit derived in the month from the operation of the casino.

A Note to this section advises that if a form is approved under section 53D of the Control Act for a return, the form must be used.

In this section, *completed commission-based profit* refers to section 127(2).

*Noncommission-based profit* refers to section 125(2).

### **130. Payment of tax during suspension**

If the casino licence is suspended under section 38, the casino licensee must pay the Commission the amount of general tax and commission-based player tax that would have been payable in relation to the period of the suspension as if the licence had not been suspended.

## **Division 8.2 Accounts and records**

### **131. Approval of banking accounts**

Subsection (1) provides that the casino licensee may apply, in writing, to the Commission for approval to use a banking account.

*Note 1* advises that if a form is approved for an application under section 53D of the Control Act then that form must be used.

*Note 2* advises that a fee may be determined under section 143 of this Act for this provision.

An application under subsection (1) must be in writing and the Commission must approve, or refuse to approve, the use of a banking account by the casino licensee.

The decision to refuse to approve a bank account is a reviewable decision (section 137 of this Act refers).

The Commission may approve more than 1 banking account for use by the casino licensee and the Commission must not approve a banking account unless the account is kept with an authorised deposit-taking institution and if the account is kept outside the ACT the Commission is satisfied that there is good reason for the casino licensee to keep the account outside the ACT. The casino licensee must authorise the institution to give details of the account to the Commission on request.

The Commission may place restrictions on the use of a banking account kept outside the ACT.

This section ensures that the Commission has access to the casino licensee's banking transactions, if required, to verify that all revenue is being properly declared and that there are not payments being made to any undisclosed supply contracts (see Division 5.4 of this Act). The use of overseas bank accounts may be a way of hiding information or making banking transactions difficult to trace so this section provides for the Commission to place restrictions on the use of such accounts.

### **132 Use of approved banking account**

This section provides that the casino licensee must use an approved banking account for each banking transaction that relates to the operation of the casino or the control agreement.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence.

This section supports section 131 and ensures that only approved banking accounts are used and that all casino transactions are transparent.

### **133. Access to bank records**

Subsection (1) provides that the Commission may, by written notice, ask an authorised deposit-taking institution (an *ADI*) to give the authorised officer named in the notice, during the hours and on the day stated in the notice, access to a statement of an approved banking account and any other particulars relating to the account stated in the notice.

The hours stated in a notice under subsection (1) must be during the normal business hours of the ADI.

Subsection (3) provides that the Commission may, by written notice, ask an ADI to give the authorised officer named in the notice a copy of a statement of an approved banking account within 30 days after the day it receives the notice.

Subsection (4) provides that an ADI commits an offence if the ADI is given a notice from the Commission under this section and the ADI fails to comply with the notice.

The maximum penalty for a breach of this provision is 50 penalty units.

Subsection (4) does not apply if the ADI took all reasonable steps to comply with the notice.

This section supports sections 131 and 132 of this Act and ensures that only approved banking accounts are used and that all casino transactions are transparent and can be properly checked.

#### **134. Accounts**

This section provides that the casino licensee must keep accounts of all transactions relating to the operation of the casino.

The accounts must be kept in accordance with generally accepted accounting practice. The casino licensee must also ensure that all payments by the casino licensee are correctly made and authorised, adequate control is maintained over incurring liabilities and adequate control is maintained over assets in the possession or custody of the licensee.

This section ensures that adequate accounts are kept so that the Commission may properly monitor casino activity and transactions in relation to the operation of the casino.

#### **135. Keeping of records**

This section provides that the casino licensee commits an offence if the licensee does not keep records for at least 7 years after they are made of all transactions carried out, and all business of the licensee, in relation to the operation of the casino or the control agreement.

The maximum penalty for a breach of this provision is 20 penalty units.

An offence against this section is a strict liability offence.

This section ensures that adequate records are kept for a minimum period of 7 years to allow revenue audits to be undertaken for this period and to review historical data, particularly on revenue or tax matters. This historical data may be important if a recent issue was revealed or some anomaly was discovered in casino operations and it was necessary or important to review previous operational records.

#### **136. Audit of records**

This section provides that the casino licensee must ensure that the accounts and financial statements of the casino are audited, as soon as practicable after the end of each financial year, by an auditor approved in writing by the Commission.

The casino licensee commits an offence if the licensee does not give the auditor's report and audited accounts to the Commission as soon as practicable, but no later than 6 months after the end of the financial year to which the report relates.

The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence.

In this section, *financial statements*, for a financial year, includes the trading accounts, if applicable, for the financial year; the profit and loss accounts for the financial year; and any other statements that are necessary to fairly reflect the financial operations of the casino licensee in relation to casino operations during the year and its financial position at the end of the year.

This section ensures that an independent auditor acceptable to the Commission undertakes an annual check of the casino licensee's accounts and that an audit report is provided to the Commission in a timely manner.

## **Part 9          Review of decisions**

### **137.    Reviewable decisions**

Table 137 in this part of the Act lists the reviewable decisions (other than a security-related decision – section 140 of this Act refers).

Each of these reviewable decisions is separately identified in the relevant section of this Explanatory Statement where the authority to make the decision is provided.

### **138.    Review of decisions**

This section provides that an application may be made to the AAT for review of a reviewable decision.

### **139.    Notice of reviewable decisions**

This section provides that a person who makes a reviewable decision must give a written notice of the decision to each person affected by the decision.

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).

## **Part 10        Miscellaneous**

### **140.    Security-related decisions—certificate**

This section applies that if the Commission makes a decision mentioned in table 137 based on a matter relating to the security of the casino or an authorised game, the Commission must give a certificate to each person affected by the decision, stating that the decision is based on a matter relating to the security of the casino or an authorised game and give a copy to the Minister.

Subsection (3) applies if the Minister makes a decision under section 16 refusing to approve the owner of the casino entering into a proposed lease of the casino to a proposed lessee or under section 18 refusing to approve an amendment of a casino lease or under section 22 to place a condition on the casino licence (other than when granting the licence) or under

section 38 suspending or cancelling the casino licence and the decision is based on a matter relating to the security of the casino or an authorised game.

Subsection (3) provides that the Minister must give a certificate to each person affected by the decision, stating that the decision is based on a matter relating to the security of the casino and give a copy to the Commission.

A security related decision is an important decision made by the Commission or the Minister that is critical to the proper conduct or control of casino operations or is essential to ensure that there is no criminal influence associated with casino control or operations. In these circumstances, it is not appropriate for such decisions to have merit review through the AAT.

#### **141. Recommendations of Commission**

This section provides that if the Executive or the Minister is required to consider any recommendations made by the Commission about a matter, the Executive or Minister may accept the recommendation, reject the recommendation or refer the matter back to the Commission for further investigation or consideration.

#### **142. Evidentiary certificates and other matters**

This section provides that in a prosecution for an offence against this Act, a certificate signed by the Minister or the Commission that includes any of the following statements is evidence of the matter stated:

- (a) a statement that, at a stated time or during a stated period, a stated person was, or was not, the holder of a stated licence;
- (b) a statement that a stated direction, notice, order, requirement, decision or licence was given, made, granted or issued under this Act.

In a prosecution for an offence against this Act, evidence that a person accepted service of a document is evidence of the authority of the person to accept service of the document.

A document that purports to have been signed by an authorised person is taken to have been so signed, unless the contrary is proved.

In this section, *offence against this Act* includes an offence against the Criminal Code in relation to a document completed, kept or given, or required to be completed, kept or given, under or in relation to this Act. An offence against this Act also includes an offence against the Criminal Code in relation to anything else done, or not done, under or in relation this Act.

#### **143. Determination of fees**

This section provides that the Minister may, in writing, determine fees for this Act.

A Note to this section advises that the Legislation Act contains provisions about the making of determinations and regulations relating to fees (see Part 6.3).

A determination is a disallowable instrument.

All fees associated with the previous (repealed) 1988 Act will be repealed and new fees associated with this Act determined.

#### **144. Regulation-making power**

This section provides that the Executive may make regulations for this Act.

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

- (a) the control of the casino or its operations;
- (b) the accounts, records or other documents to be kept by the casino licensee;
- (c) the regulation of commission-based player schemes.

A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

In making a regulation in relation to a matter mentioned in subsection (2)(a), the Executive must consider any recommendations made by the Commission.

### **Part 11 Transitional**

#### **145. Definitions—Part 11**

In this part, *commencement day* means the day this Act commences.

*Repealed Act* means the *Casino Control Act 1988*.

#### **146. Existing licences**

Subsection (1) provides that a licence in force under the repealed Act immediately before the commencement day is taken to be a licence under this Act.

A licence referred to in this section includes the casino licence as well as casino employees' licences.

To remove any doubt, the conditions of a licence mentioned in subsection (1) include the conditions put on a licence under this Act. This ensures that the conditions applied under the new Act are consistently applied to all licences.

#### **147. Approvals by Minister under repealed Act**

This section provides that an approval in relation to the lease of the casino to a corporation, a control agreement or an amendment (however described) of a lease that is in force under the repealed Act immediately before the commencement day is taken to be an approval under this Act.



#### **148. Certain approvals and authorisations by Commission under repealed Act**

This section provides that an approval or authorisation in relation to any of the following that is in force under the repealed Act immediately before the commencement day is taken to be an approval or authorisation under this Act:

- (a) plans for the layout of the casino;
- (b) the use of gaming equipment or chips;
- (c) a bank account;
- (d) an auditor.

#### **149. Tax adjustment in relation to GST**

This section applies in relation to the casino licensee's liability for a global GST amount if the liability was incurred before, and paid after, the commencement day.

The amount of general tax or commission-based player tax for which the casino licensee is liable for a month is reduced by the GST paid in that month.

This section provides that the casino licensee may still claim a credit for GST paid after the commencement day (see section 145) as long as the GST paid was in relation to a GST liability earned prior to this Act's commencement. This transitional arrangement is necessary to allow for the time lag where the casino licensee can only claim a GST credit for the GST paid (rather than when the GST liability was actually incurred).

In this section, for *global GST amount* see *A New Tax System (Goods and Services Tax) Act 1999*(Cwlth), section 126-10 (which deals with tax on gambling revenue).

#### **150. Disciplinary proceedings under repealed Act**

This section applies if the Commission had started to take action against the casino licensee under the repealed Act, section 48 (Commission may take disciplinary action against casino licensee) or against a casino employee under the repealed Act, section 100 (Suspension and cancellation of casino employee's licence) and immediately before the commencement day, the action had not finished.

The action may be continued under this Act as if it had been started under this Act.

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 repealed 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.

#### **151. Control procedures**

The approved system under the repealed Act (section 60A refers) as in force immediately before the commencement day is taken to be the control procedures established under section 75 of this Act until the end of 2 months after the commencement day.

This section provides that the casino licensee has 2 months from the commencement of the new Act to update or redraft control procedures (previously known as the “approved system”) and submit them to the Commission for approval to ensure that the control procedures are compliant with the new legislation.

### **152. Excluded people under repealed Act**

This section provides transitional arrangements for those persons that are the subject of an exclusion notice under the repealed Act and ensures that there is consistency and transparency in the continuity arrangements dealing with excluded persons.

This section applies to a person who, immediately before the commencement day, was excluded under the repealed Act, section 69 or section 70A from entering or remaining in the casino.

If the person was excluded under the repealed Act, section 69, the person is taken to be an excluded person for this Act and to have been given an exclusion notice under this Act, section 82. This type of exclusion is by a casino official and may relate to the orderly functioning of the casino or if the person was cheating or attempting to cheat.

If the person was excluded under the repealed Act, section 70A (other than because of a request made under that Act, section 70B), the person is taken to be an excluded person for this Act and to have been excluded under this Act, section 84. This type of exclusion is by the Chief Police Officer or the Commission.

If the person was excluded under the repealed Act, section 70A because the person made a request under that Act, section 70B, the person is taken to have entered into a deed under the *Gambling and Racing Control (Code of Practice) Regulation 2002*, schedule 1, section 1.13. This type of exclusion is a self-exclusion because the person has recognised that they may have a problem managing their gambling activity. It is appropriate that all previous self-exclusions are considered as a deed under the Code of Practice for consistency and continuity purposes. Under the new legislation the casino licensee will be responsible for these deeds of exclusion rather than the Commission as was previously the case under the repealed Act.

### **153. Transitional regulations**

A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

A regulation may modify this Part to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this Part. Such a regulation under this section has effect despite anything elsewhere in this Act.

This section provides for a regulation to quickly correct or cover a matter that may have been inadvertently left out or needs amending or correcting.

#### 154. Expiry of Part 11

As this Part covers transitional arrangements, it expires 1 year after the commencement day. However, the effect of the transitional arrangements continue after their expiry by virtue of section 88 of the Legislation Act.

#### 155. Legislation amended—Schedule 1

This Act amends the following legislation:

*Gambling and Racing Control Act 1999*

*Gambling and Racing Control (Code of Practice) Regulation 2002*

*Gaming Machine Act 2004*

*Smoke-free Areas (Enclosed Public Places) Act 1994*

*Spent Convictions Act 2000*

*Tobacco Act 1927.*

Schedule 1 of this Act outlines the amendments, including consequential amendments, to other legislation.

#### 156. Legislation repealed

The *Casino Control Act 1988*, A1988-72, is repealed.

The *Casino Control Regulation 1992*, SL1992-26, is repealed.

The following instruments are repealed:

- *Casino Control (American Roulette) Approval 2005 (No 1)* NI2005-62
- *Casino Control (Blackjack) Approval 2005 (No 1)* NI2005-63
- *Casino Control (Commission-Based Player Tax) Determination 2000* DI2000-222
- *Casino Control Declaration 2002 (No 1)* NI2002-26
- *Casino Control Declaration 2002 (No 2)* NI2002-44
- *Casino Control (Fees) Determination 2000* DI2000-14
- *Casino Control (Fees) Determination 2000* DI2000-210
- *Casino Control (General Tax) Determination 2000* DI2000-224
- *Casino Control (Licence Fees) Determination 1994* DI1994-112
- *Casino Control (Mini-Baccarat) Approval 2005 (No 1)* NI2005-70
- *Casino Control (Money Wheel) Approval 2005 (No 1)* NI2005-78
- *Casino Control (Pai Gow) Approval 2005 (No 1)* NI2005-72
- *Casino Control (Poker – Canberra Manila) Approval 2005 (No 1)* NI2005-64
- *Casino Control (Poker – Canberra Poker) Approval 2005 (No 2)* NI2005-199
- *Casino Control (Poker – Draw Poker) Approval 2005 (No 1)* NI2005-66
- *Casino Control (Poker – Faro) Approval 2005 (No 1)* NI2005-67
- *Casino Control (Poker – Five Card Stud) Approval 2005 (No 1)* NI2005-68
- *Casino Control (Poker – Hold-em) Approval 2005 (No 2)* NI2005-69

- *Casino Control (Poker – Omaha) Approval 2005 (No 1)* NI2005-71
- *Casino Control (Poker – Seven Card Stud) Approval 2005 (No 1)* NI2005-74
- *Casino Control (Poker – Three Card Manila) Approval 2005 (No 1)* NI2005-76
- *Casino Control (Pontoon) Approval 2005 (No 1)* NI2005-73
- *Casino Control (Sic Bo) Approval 2005 (No 2)* NI2005-75
- *Casino Control (Tax Rate) Determination 1994* DI1994-113
- *Declaration of authorised games* NI2001-129

## **Schedule 1                    Consequential amendments**

This Schedule provides the details of the amendments to other legislation as a result of this Act. Those Acts to be amended were identified in section 155 of this Act.

### **Part 1.1                    *Gambling and Racing Control Act 1999***

#### **1.1                    Section 4(c)**

*substitute*

(c) see the *Casino Control Act 2005*;

This is an update of the legislative reference.

#### **1.2                    Parts 7, 8 and 8A**

*omit*

These parts are no longer required or are duplicated elsewhere.

Part 7 relates to the functions of the Commission under the Control Act that are already covered in the Commission's functions identified in Division 2.1 of that Act. Also, some areas are covered by specific provisions in this Casino Control Act and it is unnecessary to duplicate them in this part of the Control Act.

Part 8 of the Control Act refers to functions that the Commission is empowered to perform under the *Racing Act 1999* and it is unnecessary to duplicate them in this part of the Control Act.

Part 8A of the Control Act refers to the service of documents which is covered by Part 19.5 of the *Legislation Act 2001*. These provisions are an unnecessary duplication.

#### **1.3                    Part 9**

*Renumber as part 7*

#### 1.4 Dictionary, definition of *casino*

*substitute*

*casino* means the casino under the *Casino Control Act 2005*.

This is an update of the legislative reference.

### Part 1.2 *Gambling and Racing Control (Code of Practice) Regulation 2002*

#### 1.5 Section 13(2)

*substitute*

- (2) Also, this division, other than section 15(1) (Exclusion of people at risk or excluded under deed), section 21 (Accounts of certain excluded people), and section 22 (Promotional material not to be sent to certain excluded people), does not apply to a licensed provider under the *Interactive Gambling Act 1998*.

*Note* The *Interactive Gambling Act 1998* contains provisions about excluded or disqualified people.

Division 2.4 of the *Gambling and Racing Control (Code of Practice) Regulation 2002* provides for the exclusion from gambling for persons that have a problem managing their gambling activity. Section 13(2) outlines where Division 2.4 does not apply. The amendment to section 13(2) outlined above removes the previous reference to *Casino Control Act 1988* from the exemptions as the Code of Practice Regulation now applies to the casino licensee.

#### 1.6 Schedule 1, section 1.1, definition of *licensee*, paragraphs (a) and (b)

*substitute*

- (a) a gaming machine licensee; or

*Note* *Gaming machine licensee* is defined in the dictionary.

- (b) a casino licensee; or

*Note* *Casino licensee* is defined in the *Casino Control Act 2005*, dictionary.

These amendments update the legislative reference to the *Casino Control Act 2005* and recast the drafting style so that it is consistent with identical references in section 5 of the Code of Practice Regulation.

**1.7 Schedule 1, section 1.12(2)***substitute*

- (2) Also, this division, other than section 1.14(1) (Exclusion of people at risk or excluded under deed), section 1.19 (Accounts of certain excluded people) and section 1.20 (Promotional material not to be given to certain excluded people), does not apply to a licensed provider under the *Interactive Gambling Act 1998*.

*Note* The *Interactive Gambling Act 1998* contains provisions about excluded or disqualified people.

In similar terms to Division 2.4 of the *Gambling and Racing Control (Code of Practice) Regulation 2002*, Division 1.2.3 provides for the exclusion from gambling for persons that have a problem managing their gambling activity. Section 1.12(2) outlines where Division 1.2.3 does not apply. The amendment to section 1.12(2) outlined above removes the previous reference to *Casino Control Act 1988* from the exemptions as the Code of Practice Regulation now applies to the casino licensee.

**1.8 Schedule 1, section 1.19***substitute***1.19 Accounts of excluded people**

If a person who holds an account with a licensee is excluded by the licensee under this division, the licensee must not allow someone else to use the person's account.

This amendment reflects that the casino licensee is now covered by the Code of Practice Regulation in relation to the exclusion of persons. The previous reference to an exclusion under the *Casino Control Act 1988* is no longer valid and is now covered by exclusions under the Code of Practice Regulation.

**1.9 Schedule 1, section 1.20(1) (except examples)***substitute*

- (1) The licensee of a gambling facility must not give any information or promotional material about gambling at the facility directly to a person excluded by the licensee under this division.

This amendment reflects that the casino licensee is now covered by the Code of Practice Regulation in relation to the exclusion of persons. The previous reference to the exclusion under the *Casino Control Act 1988* has been replaced by a reference to the Code of Practice Regulations.

**1.10 Section 1.22(4), definition of *commission-based player scheme***

*substitute*

*commission-based player scheme*—see the *Casino Control Act 2005*, dictionary.

This is an update of the legislative reference.

**1.11 Section 1.30(2)(a)**

*substitute*

- (a) the promotion of a commission-based player scheme under the *Casino Control Act 2005*; or

This is an update of the legislative reference.

**1.12 Dictionary, definition of *casino licensee***

*substitute*

*casino licensee*—see the *Casino Control Act 2005*, dictionary.

This is an update of the legislative reference.

**Part 1.3 *Gaming Machine Act 2004***

In the development of the *Casino Control Act 2005* the identification of grounds for disciplinary action was based on the Commission's regulatory experience with both the casino licensee as well as with gaming machine licensees. Similar gaming issues, and therefore the need for similar regulatory responses, were identified.

On this basis, the grounds for disciplinary action applicable under section 57 of the *Gaming Machine Act 2004* were also given consideration to ensure that they were adequate and that they were consistent with the regulation of other gaming licensees. Some amendments have been made to the grounds for disciplinary action under the *Gaming Machine Act 2004* to improve their effectiveness, to ensure a consistent regulatory approach and to clarify the wording in some areas.

**1.13 Section 57(1)(a)**

*substitute*

- (a) the licensee has given information to the Commission that was false or misleading;
- (ab) the licensee has failed to give information required to be given under this Act or the Control Act;

This amendment clarifies the meaning of existing section 57(1)(a) and adds paragraph (ab) to subsection (1) relating to the failure to give information under the *Gaming Machine Act 2004* or the *Gambling and Racing Control Act 1999*. This new paragraph covers the previously identified “*incomplete*” information criteria removed from paragraph (a) and includes the failure to provide information to the Commission such as through an approved form (section 53D of the Control Act refers) or through a notice or requirement under sections 22 or 23 of that Act.

#### **1.14 Section 57(1)(c)**

*substitute*

- (c) the licensee is not, or is no longer, an eligible person;

This amendment clarifies the previous wording to ensure that it includes the situation where a person was an eligible person but no longer meets the eligibility criteria.

#### **1.15 Section 57(1)(g)**

*substitute*

- (g) the licensee has been given a reprimand that included a direction and has not complied with the direction;
- (h) the licensee has failed to pay to the Territory a financial penalty imposed under section 62.

The amendment provides that paragraph (g) remains unaltered and new paragraph (h) has been added. Paragraph (h) provides that disciplinary action may be taken against a licensee for failing to pay a monetary penalty imposed under section 62 of the *Gaming Machine Act 2004*. Prior to the amendment the only course of action that could be taken by the Territory was to recover the debt through the courts. The amendment would allow further disciplinary action to be taken such as the suspension of the licence until the penalty was paid.

#### **1.16 Section 57(1)(ab) to (h)**

*renumber as section 57(1)(b) to (i)*

### **Part 1.4 Smoke-free Areas (Enclosed Public Places) Act 1994**

#### **1.17 Section 2, definition of *licensed premises*, paragraph (b)**

*substitute*

- (b) premises licensed under the *Casino Control Act 2005*;

This is an update of the legislative reference.



## **Part 1.5 Spent Convictions Act 2000**

### **1.18 Section 19(1)(b)(iv)**

*substitute*

(iv) as a casino employee under the *Casino Control Act 2005*; or

This is an update of the legislative reference.

### **1.19 Section 19(6)**

*substitute*

(6) Section 6 does not apply in relation to the making of a decision under the *Casino Control Act 2005* about whether a person is an eligible person for that Act.

This is an update of the legislative reference.

## **Part 1.6 Tobacco Act 1927**

### **1.20 Section 16(1)(b)**

*substitute*

(b) the casino under the *Casino Control Act 2005*; or

This is an update of the legislative reference.

### **1.21 Section 56(5) definition of *liquor or gaming licence*, paragraphs (b) and (c)**

*substitute*

- (b) *Casino Control Act 2005*;
- (c) *Gaming Machine Act 2004*.

This is an update of the legislative reference.

## **Dictionary**

The Dictionary referred to in section 3 of this Act includes specific definitions for this Act. It should be noted that there are common items that are defined in the *Legislation Act 2001* that are applicable to all legislation.

