2015

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

GAMING MACHINE (REFORM) AMENDMENT BILL 2015

EXPLANATORY STATEMENT

Presented by
Joy Burch MLA
Minister for Racing and Gaming

GAMING MACHINE (REFORM) AMENDMENT BILL 2015

INTRODUCTION

This explanatory statement relates to the Gaming Machine (Reform) Amendment Bill 2015 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The *Gaming Machine Act 2004* (the Act) regulates the licensing of gaming machine operators, venues and all gaming machines. For the purposes of the Act, the *Gambling and Racing Control Act 1999* (the Control Act) provides the overarching legislative framework for gambling in the Territory. The *Gaming Machine Regulations 2004* (the Regulations) have also been made under the Act.

The Control Act established the ACT Gambling and Racing Commission (the Commission) with a governing board. The Commission has responsibility for administration of gaming laws and control, supervision and regulation of gaming in the Territory. The Commission must exercise its functions under section 7 of the Control Act in a way that best promotes the public interest, and in particular, as far as practicable-

(a) promotes consumer protection;
(b) minimises the possibility of criminal or unethical activity; and
(c) reduces the risks and costs, to the community and to the individuals concerned, of problem gambling.

BACKGROUND

The Bill amends the Act to give legislative effect to significant elements of the Gaming Machine Reform Package announced by the Government on 2 October 2014.

The first stage of reforms under the Package was introduced through the *Gaming Machine (Red Tape Reduction) Amendment Act 2014 (No 2)*, which commenced on 5 December 2014. These red tape reforms:

- amended provisions about authorised gaming areas to minimise the need for unnecessary administrative approvals when relocating gaming machines;
- clarified that an amendment of a club constitution at the direction of the Commission may occur without an election of voting members;
- removed the requirement to maintain machine access registers and replacing with them with computer cabinets access registers;
- increased licensing periods for technicians to three years;
- removed the requirement for the licensing of gaming machine attendants; and

- provided assistance to small clubs by redesigning the requirements for payment by licensees to the Problem Gambling Assistance Fund.

The Bill reaffirms that the Act will continue as the primary legislation for controlling gaming machine operations in the ACT. The amendments retain the Commission's responsibility for the administration of gaming laws and control, supervision and regulation of gaming machine operations in the Territory, and have been balanced with careful consideration of the legislative functions the Commission has mandated under section 7 of the Control Act (noted above).

OVERVIEW OF THE AMENDMENT BILL

The Bill provides amendments to the Act to enable the implementation of a trading scheme, new licensing framework, new taxation measures, a population-based ratio for the number of gaming machine authorisations in the Territory, and transitional provisions.

The purpose of the Bill is to:

- enhance existing licensing arrangements relating to the gaming machines to reduce administrative regulatory burden, without compromising the integrity of the industry.
- establish a regulatory framework to support gaming machine trading between licensees in the Territory.
- establish a two phased trading scheme mechanism to allow trading authorisations for gaming machines to be traded in an open market amongst licensees.
- reduce authorisation numbers for gaming machines in the ACT in two Phases:
    - Phase 1 – implement forfeiture arrangements for authorisations for gaming machines, with gaming machine trades between licensees subject to a one-in-four mandatory forfeiture; and provide for the quarantining of gaming machines and authorisations to enable structural adjustment.
    - Phase 2 – implement a maximum ratio of 15 authorisations for gaming machines for every 1,000 adults living in the ACT. Clubs will be required to surrender authorisations for gaming machines on a pro-rata basis to the extent needed to meet the ratio. In addition, clubs will be permitted to take gaming machines 'off the floor' without limit to the number or length of time. The one-in-four mandatory forfeiture of traded authorisations will no longer apply during Phase 2.
- facilitate opportunities for hotels and taverns to divest themselves of outdated Class B gaming machines by allowing existing establishments to access the trading scheme to sell their authorisations to operate these machines to the clubs. On sale, authorisations will convert to a Class C authorisation. In addition, new hotels and taverns will no longer be able to apply for Class B authorisations. There are, however, provisions facilitating the sale of existing businesses as a going concern.

- provide audit and fee arrangements to accommodate a streamlined licensing framework.
- enhance existing taxation mechanisms and regimes which introduce taxation changes applying to gaming machine revenue. Beginning on 1 July 2015, the existing tax free threshold will increase from $180,000 to $300,000 per annum. In addition, a new tax rate will be introduced for revenue above $7.5 million per annum. The arrangements for community contributions are unchanged in the Bill.

The Bill will repeal a number of functions, including but not limited to existing provisions relating to gaming machine pooling arrangements; and the existing arrangements for large and small scale gaming machine relocations.

The Bill amends the *Gaming Machine Act 2004*. No other legislation will be amended by this Bill.

The Bill is structured as follows:

- **Clauses 1-3** provide for preliminary matters, such as the name of the Act, commencement and the legislation amended.
- **Clause 4** replaces all of the existing Part 2 and Part 2A of the *Gaming Machine Act 2004*. This replacement was necessary to reflect extensive changes to terminology and structure of the provisions due to the introduction of the revised licensing and authorisation framework in the Bill that support the trading scheme. Many of the provisions in this clause mirror provisions in the existing Act apart from updated terminology. Others are intended to have similar legal effect but have been amended to reflect the revised framework.
- **Clauses 5-84** provide for amendments to separate sections of the *Gaming Machine Act 2004* that are required to support the policy intent outlined above. In particular, **clause 53** inserts a new Division 6.10 that sets out provisions for the trading of authorisations and gaming machines, and new Division 6.11 about the storage of authorisations and gaming machines.
- **Clause 85** provides for transitional matters to facilitate implementation of amendments made by the Bill.
- **Clauses 86-88** include amendments that replace or add schedules to the Act. Schedule 1 – Reviewable decisions and the Dictionary are replaced and a new Schedule 2 – Notifiable actions is introduced.
- **Clauses 89-90** provide tables of further amendments to the Bill to revise terminology in line with amendments made above.
- **Schedule 1** provides for the introduction of the ratio of 15 authorisations per 1,000 adults, including compulsory surrender provisions, in Phase 2 of the reforms.

HUMAN RIGHTS IMPLICATIONS

During the Bill's development, in so far as it is possible, due regard was given to the compatibility with human rights as set out in the *Human Rights Act 2004*. In consideration of human rights being subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society, provisions of the Bill have been given careful consideration to balance one individual's right with the need to be weighed against another individual's right. In deciding whether a limit is reasonable consideration has been given to subsection 28 (2) of the *Human Rights Act 2004*, which includes:

(a) the nature of the right affected;
(b) the importance of the purpose of the limitation;
(c) the nature and extent of the limitation;
(d) the relationship between the limitation and its purpose;
(e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The Bill as a law of the Territory may be seen as engaging a number of rights as set out in the *Human Rights Act 2004*. These are:

- privacy and reputation, section 12, provides that everyone has the right not to have his or her privacy, family, or home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked; and
- rights in criminal proceedings (presumption of innocence until proven guilty), section 22 (1), provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

In addition, the Bill may be seen as positively engaging the protection of the family and children (section 11) through the introduction of measures that aim to reduce the number of gaming machines in the Territory. Further, the Bill maintains a robust regulatory framework which includes harm minimisation at its core and oversees the integrity of the gambling industry within the Territory.

Privacy and reputation

Requirements about the provision of information

The Bill engages the right to privacy and reputation in a number of areas – specifically in relation to requirements to provide information including personal information and personal details, and the ability of the Commission to obtain such information. Principal among the provisions which establish these requirements are those in clause 4. The provisions within this clause may require a person to disclose personal details, including a person's criminal, financial and business history. Section 6 at clause 4 provides for disqualifying grounds for an individual based on that history. Provisions of this nature are not uncommon in licensing legislation where, for the purposes of protecting the public, the integrity of applicants and licensees must be rigorously assessed.

The requirement to include personal information in an application is to ensure proper identity of the person and to determine whether the person meets the necessary eligibility requirements. These eligibility requirements are an essential component of a regulatory scheme designed to ensure that only responsible persons operate the high risk activity of gambling. The industry is high risk as it is necessary to ensure that it is free from criminal influence and unethical or unfair behaviour. There is also substantial risk associated with problem gambling which needs to mitigated. There is an expectation from the community that this industry is properly controlled and regulated to ensure operator integrity, fairness and consumer protection.

Under subsection 7(b) of the *Gambling and Racing Control Act 1999*, the Commission must exercise its functions in the way that best promotes the public interest, and in particular, as far as practicable minimises the possibility of criminal or unethical activity. These provisions are essential so that the Commission can identify persons that may exert influence over the management of the licensee and who should not be involved in licensed gambling activities within the Territory. This approach in assessing an individual's eligibility is considered necessary and reasonable to fulfil the objectives of the Commission without unduly compromising the public interest, consumer protection and criminal and unethical behaviour. The requirement to provide personal information is limited to influential persons for licensees, it does not extend to employees.

Natural justice is afforded by providing an applicant for a licence and authorisation certificate with review and appeal rights on the basis of assessment of the person's eligibility, including having regard to personal information. A decision by the Commission to find a person ineligible to be licensed is subject to internal review mechanisms. The decision can also be appealed and heard by a tribunal, on the basis of the Minister refusing to issue the licence.

The Commission and its staff are strictly bound by the requirements under the *Information Privacy Act 2014* which protects the collection and consideration of an individual's information. Further strong safeguards are in place for the handling, confidentiality, and permitted disclosures of information that the Commission acquires, as a result of exercising functions under or in relation to a gambling law, under Division 4.4 (Secrecy) of the *Gambling and Racing Control Act 1999* (the Control Act). Offence provisions apply for a person making a record of confidential information other than in accordance with their duties and unauthorised disclosure. The maximum penalty that can be applied is 50 penalty units, imprisonment for 6 months or both.

Consideration was given to whether there was a less restrictive means reasonably available to achieve the purpose of maintaining the integrity of the gaming industry, providing consumer protection and supporting harm minimisation. Furthermore consideration was

given to the need for personal information. Information enabling the Commission to identify licensees and influential persons is necessary to properly establish the identity and suitability of proposed operators of gaming machines. There is no other reasonable means of obtaining this information. The requirement to provide this information is limited to those wanting to enter a regulated industry. The Commission's powers in this regard must only be exercised for the function of establishing a person's eligibility to be involved in the gaming machine industry.

The identity and behaviour of a person is fundamental to protecting the public and minimising criminal activities. Community confidence and integrity of the gambling industry in the Territory is liable to be compromised if the Commission is unable to positively identify individuals involved in gambling operations. Similar provisions have been enacted in a number of racing and gaming-related Acts, and these provisions have existed in the Act since 2004. Most recently, similar provisions were assessed as being compatible with human rights in the *Totalisator Act 2014*. Due consideration has been given to balancing the engagement of human rights with the need to ensure consumer protection, harm minimisation and maintaining the integrity of the industry. While the provisions engage the right to privacy and reputation, there is no other alternative means to achieve the required safeguards.

Requirement for list of club members

Section 16(h)(ii) of clause 4 of the Bill requires an applicant for a Class C licence to provide an alphabetical list of current club members to the Commission, including names and addresses. This requirement engages the right to privacy and reputation.

The requirement to provide this information mirrors the existing requirement in the Act under section 11(3)(b). The provision of this information is required as club membership is an important part of Commission considerations in determining the maximum number of authorisations that may apply to a venue (section 23(5)(d) of clause 4 mirrors existing section 12(5)(c)(ii) in the Act), and in determining whether a club is an eligible club (section 146 of the Act requires a minimum of 300 members). Further, the provision of a list of members allows the Commission to verify that reported membership does not include duplicates or members who are not financial.

This requirement has been in effect in the existing Act since 2004. It was assessed as compatible with the HRA at that time, and during the period since this provision has not resulted in any known adverse impact on privacy or reputation. As noted above, the *Information Privacy Act 2014* and the Control Act impose strict requirements on the Commission to maintain the privacy of information collected.

No less restrictive means would provide the Commission with the ability to verify membership numbers which is a key determinant in assessing whether a club is eligible to operate certain gaming machines and, if so, how many.

On balance, it is considered that the limitation of this right is reasonable and proportionate, noting the public interest in ensuring that those involved in operating gaming machines have been assessed by the Commission as being eligible to do so and in supporting harm minimisation through restricting numbers of gaming machine authorisations with regard to club size.

Rights in criminal proceedings (presumption of innocence until proven guilty), section 22 (1)

The Criminal Code, chapter 2 applies to all offences against the *Gaming Machine (Reform) Amendment Act 2015* (see Code, part 2.1). Chapter 2 sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct***,** *intention***,** *recklessness* and *strict liability*)**.**

Strict liability offences are 'those offences which do not require guilty intent for their commission, as proof of the conduct alone is sufficient to constitute a crime but for which the defendant does have a defence if the wrongful action was based on a reasonable mistake of fact'. Clause 23(3) of the Criminal Code provides that other defences may still be available for use in strict liability offences.

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

The liability is said to be strict for these offences because defendants can be convicted even though they did not intend or were reckless about their acts or omissions. Strict liability offences can only be successfully defended if the defendant can prove that the actual act did not occur or that the act occurred because of a reasonable mistake of fact.

<u>Application of strict liability offences in law</u>

The imposition of strict liability offences has the potential to trespass on an individual's fundamental human right as set out in article 14(2) of the *International Covenant on Civil and Political Rights (ICCPR)* which states that: "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law".

During the Bill's development, careful consideration has been given as to whether the punishment of offences not involving fault (strict liability offences) is likely to significantly enhance the effectiveness of an enforcement regime in deterrence value and whether there are legitimate grounds for penalising individuals even though they lack fault as a relevant mental element. As such the application of strict liability offences in the legislation has been given particular consideration in relation to:

(i) the merit of making or retaining certain offences as ones of strict liability;
(ii) the characteristics of an offence, or an element of an offence, as appropriate for strict liability;
(iii) applying or retaining (ii) consistently to all areas of the bill; and
(iv) whether these are offences unduly impinge on individual's human rights under the *Human Rights Act 2004.*

From a deterrent effect and policy considerations, the application of strict liability offences as presented in the Bill seem appropriately proportioned as strict liability offences arise in a regulatory context where for reasons such as consumer protection and public safety 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, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The potential effect on the government's harm minimisation strategies and, as a consequence, the potential effect on club patrons, gaming machine players and problem gambling of a failure by a gaming machine licensee to adequately fulfil the requirements under that licence are the justification for strict liability provisions. For this reason the Bill retains existing strict liability offences, and introduces a small number of new strict liability offences (see below). Where appropriate the Bill adds specific additional defences relevant to individual provisions in the Act.

<u>New strict liability offences – Clause 53, sections 127C, 127D, 127G, 127H and 127I</u>

To remain consistent with the existing Act, and in keeping with the broad policy intent to protect the community, the Bill includes a number of new strict liability offences. The new offences align with the broad policy intent in relation to the overall reduction in the number of gaming machines in the Territory and the phasing out of class B gaming machines and is therefore appropriate to insert offence provisions to deter persons from failing to comply with the Act.

Clause 53 of the Bill inserts five new strict liability offence provisions which include:

1. Subsection 127C (4) – class B licensee who sells business to a person who is not a class C or class B licence holder or an applicant for a class B licence and authorisation certificate under section 29 (Licence and authorisation certificate for class B gaming machines—restricted application);

2. Subsection 127D (2) - class B licensee sells class B gaming machine to another person and the sale of the class B gaming machine is not:
    a. part of the sale of a business operated by the class B licensee at authorised premises under a general or on licence; or
    b. approved by the commission under section 113 (Approval of disposal of gaming machines); or
    c. part of a method of disposal approved by the commission under section 113A (Disposal of gaming machines—notifiable action).
3. Subsection 127G (2) – licensee acquiring an authorisation or gaming machine for authorised premises and the acquisition is not in accordance with this Act;
4. Subsection 127H (2) – class C licensee sells class C gaming machine to person who is not a class C licensee or approved by the commission under section 11 (Approval of disposal of gaming machines); or part of a method of disposal approved by the commission under section 113A (Notifiable disposal of gaming machines);
5. Subsection 127I (2) – class C licensee sells an authorisation for a class C gaming machines to a person who is not a class C licensee.

Each of these strict liability offences carries a maximum penalty of 100 penalty units. In developing these offences due regard was given to the guidance provided in the *Guide for Framing Offences* that the maximum penalty is usually limited to 50 penalty units. It was considered necessary and appropriate to provide a higher penalty for these offences to align with the strong compliance regime provided by the existing Act. These offences are aimed at ensuring that gaming machines are only sold to licensed and authorised operators, in accordance with the Act, and that gaming machines are not sold or disposed of in an unapproved way. For reasons of consumer protection, harm minimisation and maintaining the integrity of the industry a strong deterrent is required and these provisions align with penalties in the existing Act.

The Bill introduces a small number of new offences that support and uphold existing provisions while moving towards risk-based regulation in a limited number of areas. These strict liability offences assist in maintaining efficacy in the supervision of the regulatory scheme and enabling matters to be dealt with expeditiously where this is deemed necessary to ensure public confidence in the regulatory regime.

While due consideration has been given to the framing of offences in the Bill and the impact on human rights, it should be noted that the new strict liability offences introduced by this Bill all apply to a licensee. In the vast majority of cases, a penalty resulting from a breach will apply to an entity rather than an individual as it is the nature of the Territory's gaming machine industry that almost all licensees operate within a corporate or association structure. A small number of individual licensees operate gaming machines within the context of running a hotel or tavern business as a sole trader. It is reasonable to expect that these persons know, or ought to know, their legal obligations. The operation of gaming

machines is clearly a regulated activity within the scope of the decision in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154.

Rights in criminal proceedings - reasonable defence provisions

While the inclusion of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Subsection 23 (3) of the Criminal Code provides that other defences may also be available for use for strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

In recognition of human rights and in the interest of not unduly penalising a licensee, the Bill inserts four new reasonable defence provisions, which allows the accused to raise honest and reasonable mistake of fact as a defence. That is, if an honest and reasonable fact existed, the accused's act would be innocent in what would otherwise be deemed an offence.

- Section 113D, subsection (4) provides a reasonable excuse provision in relation to an offence relating to the failure to dispose of a gaming machine within the required time.
- Section 127C, subsection (5) provides a reasonable excuse provision in relation to the selling of a class B authorisations if the class B licensee took all reasonable steps to ascertain whether the purchaser was a class C or class B licensee or an applicant for a class B licence and authorisation certificate under section 29 relating to a restricted application for a class B licence and authorisation certificate for class B gaming machines.
- Section 127H, subsection (3) inserts a reasonable defence provision in relation to the selling of class C gaming machines if the class C licensee took all reasonable steps to ascertain whether the person was a class C licensee.
- Section 127I, subsection (3) inserts a reasonable defence provision in relation to the selling of class C authorisations if the class C licensee took all reasonable steps to ascertain whether the purchaser was a class C licensee.

Revenue/Cost Implications

Proposed changes to taxation rates and thresholds applying to gaming machine revenue at clause 79 of the Bill are expected to provide for a marginal increase in revenue to the Territory over the forward estimates.

The ACT Gambling and Racing Commission will absorb any costs associated with the introduction and implementation of the amendments to the legislation and for providing

any education programs and information sessions required to assist industry adjust to the amendments.

Administration charges will apply to the trading scheme. These will be progressed through existing section 177 of the Act which provides for the determination of fees.

CLAUSE NOTES

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Gaming Machine (Reform) Amendment Act 2015*.

Clause 2 Commencement

Subclause 2 (1) provides that the Act will commence on a day fixed by the Minister by written notice. In accordance with subsection 77(1) of the *Legislation Act 2001*, different provisions may commence on a single day or time or on different days or times.
Subclause 2 (2) provides that if any provision (other than Schedule 1 (Other amendments-compulsory surrender)) has not commenced within 1 year beginning on the Act's notification day, it automatically commences on the first day after that period. Subclause 2 (3) provides that if Schedule 1 has not commenced within 3 years beginning on the commencement of section 52, it automatically commences in the first day after that period – this provision relates to the commencement of Phase 2. Subclause 2 (4) provides that section 79 (Automatic commencement of postponed law) of the *Legislation Act 2001* does not apply to this Act.

Clause 3 Legislation amended

This clause identifies that the *Gaming Machine Act 2004* (Act) will be amended.

Clause 4 Parts 2 and 2A [Replace]

Clause 4 replaces Part 2 (Licences) and Part 2A (In-principle approvals for licences, venue relocation amendments and new venue amendments) of the existing Act. These Parts are replaced in their entirety with the sections below.

PART 2 IMPORTANT CONCEPTS

This Part contains the key concepts for determining the eligibility of individuals, eligibility of corporations, influential person and proper completion of applications under the Act.

Sections 6 – 8

These sections provide the framework for the eligibility criteria, conditions and conduct that must be satisfied by an applicant or a licensee to be issued with a licence or maintain a licence.

Sections 6 and 7 amend the existing sections in relation to eligible person which includes eligibility of individuals and corporations. Under the new licensing framework section 6, subparagraph (2) (d) (ii) has been amended to include the cancellation of an authorisation under section 64 (Cancellation of authorisations because of cancellation etc of general and on licenses) as a disqualifying ground in addition to retaining the existing disqualifying grounds for a licence that is cancelled under section 58 (Disciplinary action).

The effect of this amendment is to ensure that a person who has had their licence or authorisation cancelled or an application refused on the ground of providing false or misleading information will not be able to reapply for a period of 12 months. This amendment prevents a person that has had their licence, authorisation or approval cancelled, such as through disciplinary action by the commission, from immediately being able to reapply for another licence, authorisation or approval.

This also applies to an applicant who provided false or misleading information such as failing to declare a criminal conviction or bankruptcy from applying for a 12 month period. However, this provision does not include a cancellation of a licence where a technician ceases employment with a licensee as a cancellation in this instance is purely employment related and does not reflect any contravention of the Act by a technician. Section 7 of the Bill retains the provisions in relation to the eligibility of corporations to assist the commission in deciding whether a corporation is an eligible person. This amendment protects the integrity of the Act's licensing and authorisation framework.

Section 8 of clause 4 retains the definition of 'influential person' established under section 7 of the existing Act, which covers all persons that may influence the operation of an entity.

Section 9 Proper completion – applications under Act

This section clarifies that an application under a provision of this Act must be properly completed in order meet the application requirements. If the application does not meet the requirements as outlined in section 9 then the application is deemed not properly completed and the commission may refuse to consider the application; and if the commission refuses to consider the application, the application will lapse. If the commission requires further information in order to consider the application, written notice will be sent to the applicant requesting reasonable additional information to be given to the commission within the time stated in the notification.

Clause 4, subsection 9 (1) clarifies the meaning of proper completion in relation to all applications under a provision of this Act. For the purposes of this Act section 9 clarifies that an application is taken to be properly complete only if the following requirements are met:

- if a form is approved under the Control Act, section 53D for the application—the form is used;
- the application includes all information and documents required under the provision to be included;
- a document required to be included with the application includes all information required under the provision to be included in the document and is substantially complete;

- the application, and any document or information included in the application, is verified in the way required by the provision; and
- if a fee is determined under section 177 of the existing Act for the application—the fee is paid.

An explanatory note is provided that subsection 255 (5) of the *Legislation Act 2001* provides clarity that in order for a form to be considered properly complete the following requirements must be complied with:

(a) the form to be signed;
(b) the form to be prepared in a particular way (for example, on paper of a particular size or quality or in a particular electronic form);
(c) the form to be completed in a particular way;
(d) particular information to be included in the form, or a particular document to be attached to or given with the form;
(e) the form, information in the form, or a document attached to or given with the form, to be verified in a particular way (for example, by statutory declaration).

This section is to be read in conjunction with Part 3.4 of the Criminal Code (providing false or misleading statements, information and documents).

Section 9 places a positive obligation on an applicant to ensure that the requirements are met or that an applicant provides further information as requested by the commission under subsection 9 (3). If an applicant does not comply with these requirements the commission may refuse to further consider the application and if the commission refuses to consider the application, it lapses.

The proper completion of forms is relevant also to section 14 – applications to be dealt with in order of receipt.

Under section 53D of the *Gambling and Racing Control Act 1999*, the commission may approve an application form. If such a form is approved the applicant must use the form when making an application to the commission. Information supplied under this clause becomes bound by the secrecy provisions contained in Division 4.4 of the *Gambling and Racing Control Act 1999* and as such will be protected by the confidentiality obligations. The commission may also determine a fee under section 177 of the existing Act.

PART 2A GAMING MACHINE AUTHORISATION NUMBERS

To accommodate the introduction of a trading scheme this Part provides the mechanism for establishing the maximum number of authorisations for gaming machines permitted on all authorised premises in the ACT.

Section 10 Maximum number of authorisations for gaming machines allowed in ACT

The formula at section 10 of clause 4 revises the formula under section 35 of the existing Act to accommodate the introduction of the new licensing and authorisation framework and arrangements.

Subsection 10 (1) provides that the maximum number of authorisations for gaming machines for all authorised premises in the ACT is worked out using a formula that takes into account the number at commencement less the number of authorisations surrendered, cancelled and forfeited.

Specifically, the number is calculated with reference to the 'relevant day', which is the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, section 4 as follows:

SN - (NS + NC + NF)

- *SN* means the number notified by the commission on the relevant day.
- *NS* means the total number of authorisations surrendered after the relevant day.
- *NC* means the total number of authorisations cancelled after the relevant day.
- *NF* means the total number of authorisations forfeited to the Territory after the relevant day.

Subsection 10 (2) provides that the total number of authorisations for gaming machines allowed under all authorisation certificates issued under this Act must not exceed the maximum number worked out under subsection 10 (1). The intent of this subsection is to ensure that during Phase 1, the combined total of all authorisations for gaming machines in the ACT for all licensees does not exceed the maximum number.

Note that this provision governs the total number of all authorisations in the Territory, and should not be confused with the maximum number of authorisations a licensee may have under an authorisation certificate. The combined total of all maximum numbers under all authorisation certificates may exceed the number notified as SN, because that number represents the maximum authorisations that may be held at all venues, based on considerations including the social impact assessment and venue size and layout, as well as club membership considerations for class C authorisation certificates. A licensee cannot exceed the maximum number of authorisations stated on their authorisation certificates, but may, in fact, hold less authorisations than that number. It is this variance that allows for trading to occur since otherwise, no authorisations could be traded without an amendment to the authorisation certificate.

Subsection 10 (3) provides a requirement for the commission to prepare a notice every time the maximum number of authorisations for gaming machines changes, which states the new

maximum number and the date of the change. This provision ensures that licensees are properly informed of the maximum number for the Territory.

A notification under subsection 10 (1), definition of SN and a notice under subsection 10 (3) are notifiable instruments in accordance with subsection 10 (4). The notification must be notified under the *Legislation Act 2001* on the ACT Legislation Register.

Subsection 10 (5) incorporates authorisations into the meanings of cancelled, final and surrendered to provide for the new licensing and authorisation framework and arrangements.

PART 2B LICENCES AND AUTHORISATIONS

Division 2B.1 Definitions and important concepts

In order to accommodate the introduction of a trading scheme in the ACT, amendments to the existing provisions in the Act reflect the new licensing and authorisation framework and arrangements.

Specifically, this part amends the existing provisions in the Act to provide a clear distinction between a licensee being assessed as eligible to operate gaming machines (*licence*) and the authorisation to have a maximum number of gaming machines at a designated premises (*authorisation certificate*).

The amendments introduced in clause 4 remove section 17 (No available gaming machines) of the existing Act as there will be no pool arrangements for gaming machines within the Territory.

Section 11 Definitions – pt 2B

Section 11 of clause 4 provides new and amended definitions to accommodate the new licensing framework and arrangements. This clause amends the existing provisions to reflect the policy changes to include authorisations to hold a maximum number of gaming machines and amendment of those authorisations. In this part:

- ***authorisation certificate amendment application*** is an application by a licensee to the commission for an amendment of an authorisation certificate.
- ***authorisation certificate application***, for class C gaming machines, is an application by a club for an authorisation certificate to have the maximum number of authorisations for class C gaming machines at the premises stated in the application.
- ***class B licence*** means a licence to operate class B gaming machines.
- ***class B licence and authorisation certificate application*** is an application by a person to the commission for a licence and authorisation certificate for class B gaming machines.

- ***class C licence*** means a licence to operate class C gaming machines. (An explanatory note is provided to clarify that an applicant who the commission is satisfied on reasonable grounds is an eligible person must be issued with a class C licence (see subsection 17 (3)).
- ***class C licence application*** is an application by a club to the commission for a licence for class C gaming machines.
- ***gaming area amendment*** is an application by a licensee to the commission for an amendment of an authorisation certificate to do any of the following at the authorised premises:
  (i) change the size and shape of a gaming area, or part of a gaming area;
  (ii) change the location of a gaming area;
  (iii) add another gaming area.
- ***increase maximum amendment*** is an application by a licensee to the commission to increase the maximum number of authorisations for class C gaming machines under the authorisation certificate.
- ***minor licence amendment application*** is an application by a licensee to the commission for an amendment of a licence only to change a minor detail in the licence.
- ***premises relocation amendment***—is an application by a licensee to the commission to enable the licensee to relocate all gaming machine operations allowed under the authorisation certificate to new premises.

Section 12 Meaning of social impact assessment

The requirements for Social Impact Assessments (SIAs) have been modified to reflect that SIAs are required on initial application for an authorisation certificate, for an amendment to an authorisation certificate for a change in venue – where it is not within the same suburb, for an amendment that increases the maximum number of authorisations under the authorisation certificate and as part of an application for an in-principle authorisation certificate. These changes are not intended to affect the integrity of the SIA process and provide an appropriate means of maintaining the commission's role in harm minimisation. Accordingly, the following applications will now be subject to a social impact assessment:

- An authorisation certificate application (see section 22 (2) (a)); and
- An authorisation certificate amendment application (see section 34 (f) (ii) (A) and section 37 (4) (a)); and
- An application for an in-principle authorisation certificate (see section 38C, which requires applications to comply with section 22 (1)).

Subsection 12 (2) provides that a regulation may make provisions in relation to social impact assessments.

Section 13 Social impact assessment – publication

This section mirrors the provisions from the existing Act and applies to an applicant that is required to provide an SIA under section 12. This section provides that the SIA provided to the commission during the course of an application must be made available for public inspection at the commission's premises during business hours for a period of 6 weeks. This allows affected parties or the community to view the impact assessment and comment on the proposal or the content of the assessment.

This section provides that an applicant must advertise its intention about the application in a daily newspaper and that the advertisement must contain certain information as to the availability of the SIA for viewing and comment. The applicant must provide the SIA for the application and a copy of the advertisement before the comment period begins.

This section provides that an information sign containing information about the application must be displayed on or the day before the advertisement in a prominent position outside each public entrance to the premises for an authorisation certificate application or authorisation certificate amendment application. For an application for an in-principle authorisation certificate, the sign containing information about the application must be displayed on the land at the address to which the approval applies (where practical).

The 6-week comment period commences when the commission receives the social impact assessment and the copy of the advertisement. The commission must make the social impact assessment available for inspection by members of the public during ordinary business hours during the 6-week comment period.

This section also provides that the commission must not make a decision on the application until the 6-week comment period has elapsed.

Section 14 Applications to be dealt with in order of receipt etc

Section 14 clarifies the order in which the commission must deal with licence and authorisation certificate applications for consideration. It provides that these applications must be dealt with in order according to when each application was received by the commission. If an application does not contain adequate information to allow the commission to decide the application, the critical receipt date is when that adequate information for the application is given to the commission.

This section does not apply to an application that is not properly completed. In order to avoid any confusion this section provides that if the application for a licence or authorisation certificate is not properly completed the commission may refuse to consider the application under subsection 9 (2). This new section provides that if that application is refused it is no longer under consideration by the commission and the application lapses. The notes at section 14 also provide clarity in relation to the interaction with

subsection 9 (4), which provides that if additional information in relation to an application is not given to the commission within the time required by the commission, and if the commission refuses to consider the application as a result, then the application lapses.

Division 2B.2 Class C licences – application and issue

With the introduction of the new licensing framework, the provisions in relation to class C and class B licence and authorisation certificate applications have been divided into separate divisions. Class C licence provisions are provided for at division 2B.2, with class C authorisation certificate provisions provided for at division 2B.3. Class B provisions in relation to restricted licence applications and class B authorisation certificates are dealt with at division 2B.4. A clear distinction has been made as the trading scheme applies differently to class B licensees.

Sections 15 to 17 Licence for class C gaming machines – application, contents and decision on application

These sections prescribe the manner and form of an application for a class C licence and sets out all necessary requirements to enable the commission to be satisfied that the persons involved in the operation of gaming machines are eligible persons, and will remain eligible under the Act.

The reference to legal entity at subsection 16 (b) includes a reference to a person exercising a function of the entity, whether under a delegation, sub delegation or otherwise. To remove any doubt reference to entity applies to all entities, including entities established under a law of another jurisdiction.

Section 18 Class C licence application – grounds for refusal

Section 18 (and section 24 below) retains the provisions set out in section 14 of the existing Act for grounds for refusal which are intended to ensure that the control of a club is open and transparent and that the voting members can be involved in the management decisions of the club. They provide that individuals cannot gain or profit from special or favourable deals with a club.

Section 19 Class C licence - conditions

Section 19 provides that a class C licence is subject to the conditions as mentioned in part 3 (Licences and authorisation certificates - conditions) or as imposed by the commission. This provision is consistent with gambling laws in the Territory, is in step with the provisions in other jurisdictions and is commonplace in most regulatory licensing regimes. Conditions may be used by the Commission to deal with specific concerns about an applicant, where refusal of the application would be too severe. Conditions may also be used to remedy conduct of a licensee; however, any such imposition of a condition would be the result of disciplinary action being taken under Act.

Section 20 Class C licence - form

This section stipulates the form of the licence to be issued by the commission. This section requires that a licence must be in writing and state the following:

- the licensee's name;
- if the licensee carries on business under a name other than the licensee's name—the name under which the licensee carries on business;
- the licensee's ABN;
- the licensee's ACN or association number;
- the date the licence comes into force;
- a unique identifying number (a ***licence number***);
- a statement that the licensee is entitled to operate class C gaming machines;
- the conditions on the licence.

A regulation may prescribe other requirements in relation to the form of a licence.

Division 2B.3 Authorisation certificate for class C gaming machines – application and issue

Clause 4, division 2B.3 inserts new provisions relating to the new authorisation framework and arrangements which provide the commission with the ability to issue an authorisation certificate to hold a maximum number of authorisations for class C gaming machines at an authorised premises. The intent is to provide a licensee with the flexibility to trade authorisations for class C gaming machines with little administrative burden. The specific reference to 'maximum' number of authorisations for gaming machines in this division is to capture those situations where a licensee may at any time wish to down-scale their operations, have machines in storage, or operate less than the maximum number of gaming machines than they were approved to have under a authorisation certificate.

This division inserts new provisions prescribing the manner and form required for a class C licensee or class C licence applicant to apply for an authorisation certificate to have the maximum number of authorisations for class C gaming machines at the authorised premises, and for the commission to be provided with information necessary to make decisions in relation to authorisation certificates.

Section 21 Authorisation certificate for class C gaming machines-application

Section 21 prescribes that a club that holds either a current class C gaming machine licence or has made a class C licence application, may apply to the commission for an authorisation certificate to hold a maximum number of authorisations for class C gaming machines at the authorised premises.

Section 22 Authorisation certificate for class C gaming machines—contents of application

Section 22 provides the manner and form of an application and sets outs necessary requirements to enable the commission to be provided with all relevant information in considering whether to issue an authorisation certificate for class C gaming machines.

The reference to legal entity at subsection 22 (1) (b) includes a reference to a person exercising a function of the entity, whether under a delegation, sub delegation or otherwise. To remove any doubt reference to entity applies to all entities, including entities established under a law of another jurisdiction.

Subsection 22 (2) provides for the detail of the required documents which must be accompanied with the authorisation certificate application for class C gaming machines. This subsection provides that required documents are a social impact assessment, a plan of the premises that is drawn to scale and clearly shows the location, boundaries and dimensions of the area in the premises where gaming machines are to be installed (the *proposed gaming area*), a copy of the current gaming rules the applicant has adopted in relation to the premises for which the authorisation is sought and a copy of the current control procedures to control the operation of gaming machines. A regulation may provide for any other document as part of the application.

Section 23 Authorisation certificate for class C gaming machines—decision on application

Section 23 provides that on receiving an authorisation certificate application for class C gaming machines, the commission must issue an authorisation certificate to the applicant if satisfied on reasonable grounds-

- that the applicant holds a class C licence; and
- the applicant's gaming rules and control procedures to control the operation of gaming machines are adequate to control that operation; and
- taking into consideration the social impact assessment for the application and any submission made on the assessment within the comment period under section 13 (Social impact assessment—publication), the issue of the authorisation certificate is appropriate; and
- the size and layout of the proposed gaming area are suitable for the installation of the number of gaming machines for which the authorisation certificate is sought.

Note that commission may refuse to issue an authorisation certificate to an applicant that is a club if a ground for refusing the authorisation exists under section 24 (Authorisation certificate application for class C gaming machines—grounds for refusal) (see below).

Subsection 23 (4) allows the commission to issue the authorisation certificate for a lower number of authorisations for gaming machines than the number stated in the application if satisfied the size and layout of the proposed gaming area are suitable for the installation of the lower number of gaming machines.

Subsection 23 (5) provides the factors to be considered by the commission in deciding the maximum number of authorisations for class C gaming machines. These include:

- the size and layout of the premises the application relates to;
- the size and layout of the proposed gaming area;
- the number of club members worked out under a regulation; and
- the ratio of club members to the maximum number of authorisations for gaming machines sought by the licensee;
- the extent to which the club has contributed to, or is likely to contribute to, the community and supported and benefited the community; and
- the social impact assessment for the application for the authorisation certificate and any submission made on the assessment within the comment period under section 13 (Social impact assessment—publication).

In deciding whether a proposed gaming area is suitable for the installation of the number of gaming machines the licensee may have under an authorisation certificate, the commission must consider harm minimisation strategies for patrons.

The commission may consider anything else prescribed by regulation.

Section 24 Authorisation certificate application for class C gaming machines—grounds for refusal

Section 24 provides that the commission may refuse to issue an authorisation certificate to a club if satisfied that a ground exists that-

- payments for goods and services supplied to the club; for example food and beverages, cleaning service or gaming machines, including the rental or lease payments for the club's premises, are related to the level of gaming machine performance; or
- someone, other than the lessor or leasing agent, will receive a payment or benefit during or at the end of a lease, agreement or arrangement entered into by the club for its premises.

In conjunction with section 18 above, this section retains provisions set out in section 14 of the existing Act which are intended to ensure that the control of a club is open and transparent. They provide that individuals cannot gain or profit from special or favourable deals with a club.

Section 25 Issue of authorisation certificate for class C gaming machines – number of gaming machines to be operated

Section 25 provides clarification that while a licensee may be issued with an authorisation certificate for a maximum number of class C gaming machines at the authorised premises, a licensee may at any time be permitted to operate the maximum number, or less than the maximum number of gaming machines allowed under the authorisation certificate.

Section 26 Authorisation certificate for class C gaming machines—conditions

Section 26 inserts the conditions imposed on an authorisation certificate as mentioned in part 3 (Licences and authorisation certificates-conditions) or as imposed by the commission.

Section 27 Authorisation certificate for class C gaming machines – form

This section inserts a provision that establishes the manner and form of an authorisation certificate. The authorisation certificate must:

- state the licensee's name, ABN and ACN or if the licensee is an incorporated association – association number;
- if the licensee carries on business under a name other than the licensee's name— state the name under which the licensee carries on business;
- state the licensee's licence number;
- include a unique identifying number (an ***authorisation certificate number***);
- state that class C gaming machines only are allowed under the authorisation certificate;
- state the details of the premises where the licensee is authorised to have the gaming machines;
- state the details of the part of the premises (the ***gaming areas***) where the licensee is allowed to operate gaming machines;
- state the maximum number of authorisations for gaming machines under the authorisation certificate; and
- include an authorisation schedule that contains the serial number and the authorisation number for each gaming machine the licensee has under the authorisation certificate.

An explanatory note is provided at subsection 27 (1) (g) to clarify that the ***maximum number*** of authorisations means the maximum number of authorisations for gaming machines that a licensee may have under an authorisation certificate.

An explanatory note is provided after subsection 27 (1) (h) to clarify that a licensee may also store gaming machines the licensee has under an authorisation (see division 6.11).

A regulation may prescribe other requirements in relation to the form of an authorisation certificate or authorisation schedule.

Division 2B.4 Licences and authorisation certificates - class B gaming machines

Under these provisions, non-clubs (hotels and taverns) are excluded from operating class C gaming machines. Further, no new applications under this division can be submitted for a class B gaming machine licence or authorisation certificate from the commencement of the amendments. Existing class B licensees will be unable to increase the number of class B gaming machine authorisations held.

The division provides for a restricted class B licence and authorisation certificate application for class B gaming machines only where the application relates to a business being purchased from the holder of a class B licence and the business is being operated under a general licence or on licence.

In conjunction with restrictions imposed by the trading scheme provisions at subdivision 6.10.2, the purchaser of a business will not be able to buy additional class B gaming machine authorisations from the market once they have met all eligibility conditions to operate gaming machines. A class B licensee is restricted to disposing authorisations to either a class C licensee or someone who is purchasing the disposing licensee's business as a going concern – this may be an existing class B licensee or an applicant for a class B licence (section 127C). Therefore, a class B licensee will only be able to operate the existing maximum number of class B gaming machines for the authorised premises or trade the class B authorisations to a class C licensee.

If an existing entity has submitted an application to become a licensee or an application to increase the number of gaming machines and that application has not been approved or finalised prior to the commencement of the amendments there are no transitional arrangements provided. This is intended to support the policy decision to effect the phasing out of class B gaming machines and licensees.

Section 28 Licence and authorisation certificate for class B gaming machines—restricted application

This section provides that a person may apply to the commission for a licence for class B gaming machines only if the application relates to a business being purchased from an existing holder of a class B licence and the business is operated under a general licence or on licence. As noted above, new applications for class B licences are not otherwise permitted.

These sections prescribe the manner and form required for a restricted application for a class B licence that meets all necessary requirements to enable the commission to be satisfied that the persons involved in the operation of gaming machines are eligible persons, and will remain eligible under the Act.

The reference to legal entity at subsection 28 (2) (b) (ii) includes a reference to a person exercising a function of the entity, whether under a delegation, sub delegation or otherwise. To remove any doubt reference to entity applies to all entities, including entities established under a law of another jurisdiction.

Section 29 Class B licence and authorisation certificate – decision on application

Section 29 provides that on receiving a class B licence and authorisation certificate application following the sale of a business, the commission may consider any matter prescribed by regulation and must issue the class B licence to the applicant if satisfied on reasonable grounds that the applicant is an eligible person.

Subsection 29 (4) provides that in issuing the authorisation certificate for the number of authorisations for class B gaming machines the selling licensee had at the time of the sale, the commission must be satisfied on reasonable grounds about the size and layout of the proposed gaming area; that the appropriate licences are held under the *Liquor Act 2010*; and that the applicant's gaming rules and control procedures are adequate.

Section 30 Class B licence and authorisation certificate—conditions and form

Section 30 inserts the conditions imposed on a class B licence as mentioned in part 3 (Licences and authorisation certificates-conditions) or as imposed by the commission. This section also provides for the manner and form of a class B licence. The class B licence must be in writing and include the following:

- if the licensee is an individual—the individual's full name;
- if the licensee is not an individual—the licensee's name;
- if the licensee carries on business under a name other than the licensee's name—the name under which the licensee carries on business;
- the licensee's ABN (if any);
- if the licensee is a corporation—the corporation's ACN;
- the date the licence comes into force;
- a unique identifying number (a ***licence number***);
- a statement that the licensee is entitled to operate class B gaming machines;
- the conditions on the licence.

The reference to legal entity at subsection 30 (3) (b) includes a reference to a person exercising a function of the entity, whether under a delegation, sub delegation or otherwise. To remove any doubt reference to entity applies to all entities, including entities established under a law of another jurisdiction.

Subsection 30 (3) applies following the commission's decision to issue a class B licence to an applicant under section 29 (Class B licence and authorisation certificate-decision on application) as a consequence of the sale of a business to the applicant.

Subsection 30 (3) provides for the manner and form of an authorisation certificate for a class B licence. An authorisation certificate must-

- state the licensee's name, address, ABN and ACN (if any);
- if the licensee is not an individual—state the name of the licensee's legal entity;
- if the licensee carries on business under a name other than the licensee's name—state the name under which the licensee carries on business;
- state the licensee's licence number;
- include a unique identifying number (an ***authorisation number***);
- state that class B gaming machines only are allowed under the authorisation certificate;
- include the details of the premises where the licensee is authorised to have the gaming machines;
- include details of the part of the premises (the ***gaming areas***) where the licensee is allowed to operate the gaming machines;
- state the number of authorisations for gaming machines under the authorisation certificate; and
- include a schedule (an ***authorisation schedule***) that contains—
  - the serial number of each gaming machine the licensee has under the authorisation certificate; and
  - a unique identifying number for each authorisation (an ***authorisation number***) under the authorisation certificate.

A regulation may prescribe other requirements in relation to the form of a class B licence or authorisation certificate for a class B licence.

This section provides an explanatory note to clarify that a licensee may also store gaming machines the licensee has under an authorisation certificate (see div 6.11). The note does not form part of the Act.

A regulation may prescribe other requirements in relation to the form of an authorisation.

Division 2B.5 Licences and authorisation certificates– amendments

Division 2B.5 inserts provisions to allow the commission the power to amend a licence or an authorisation if required under certain conditions.

Section 31 Licence amendment –application

Section 31 provides the application requirements for a licensee to apply to the commission in writing to amend a minor detail in the licence (a ***minor licence amendment application***). For example a licensee may need to change the licensee's trading name.

Subsection 31 (2) provides that an application for a ***minor licence amendment*** must:

- be in writing signed by the applicant; and
- set out the proposed amendment of the licence; and
- explain why the applicant is seeking the amendment; and
- include anything else required by regulation.

This subsection provides an explanatory note to clarify that it is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, part 3.4).

A regulation may require a ***minor licence amendment application*** to:

- include stated information; or
- be accompanied by stated documents.

Section 32 Licence amendment decision – minor amendment

Section 32 provides that on receiving an application for a ***minor licence amendment***, the commission may either amend the licence in accordance with the application; or refuse to amend the licence.

Subsection 32 (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 32 (3) provides a positive obligation on the commission to tell the licensee in writing of a decision made under subsection 32 (2) and if the commission refuses to amend the licence, the commission must provide a statement of reasons.

This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons

Section 33 Authorisation certificate amendment – application

This section provides that a licensee may apply to the commission in writing for an amendment to an authorisation certificate (an ***authorisation certificate amendment application***). Under an ***authorisation certificate amendment application*** a licensee may apply for:

- A gaming area amendment at the authorised premises to:
  - change the size or shape of a gaming area, or part of a gaming area;
  - change the location of a gaming area;

- add another gaming area.

- A premises relocation amendment to enable the licensee to relocate all gaming machines operations allowed under the authorisation certificate to a new premises.
- An increase maximum amendment to increase the maximum number of authorisations for class C gaming machines allowed under an authorisation certificate.

Subsection 33 (1) provides an explanatory note to clarify the meaning of ***gaming area*** as the part of the premises where the licensee is allowed to operate gaming machines.

Subsection 33 (1) (c) includes a number of explanatory notes. Note 1 clarifies that if a form is approved under section 53D of the Control Act, the form must be used. Note 2 indicates that a fee may be determined under section 177 of the existing Act for an application. Note 3 refers readers to section 34 which sets out what must be included in an authorisation certificate amendment application. Note 4 clarifies that an authorisation certificate may also be amended under the following sections:

- s 37A (a one-off increase maximum amendment)
- s 37B (a technical amendment)
- s 37C (an amendment of a licence, authorisation certificate or authorisation schedule on the commission's own initiative).

Subsection 33 (2) makes it clear that a licensee does not need to apply to the commission for a gaming area amendment, or any other authorisation amendment, to move a gaming machine from one part of a gaming area to another part of the gaming area. This is in line with the existing Act.

Section 34 Authorisation certificate amendment – contents of application

This section provides the manner and form required for an authorisation certificate amendment application to meet all necessary requirements to enable the commission to be satisfied on reasonable grounds to amend the authorisation certificate or to refuse to amend the authorisation certificate.

An authorisation certificate amendment application must—

- be in writing signed by the applicant; and
- set out the proposed amendment of the authorisation certificate; and
- explain why the applicant is seeking the amendment.

This section also provides varying requirements that must be included in the application depending on the type of amendment that the licensee is applying for, as follows:

- For a gaming area amendment the application must be accompanied by a plan of the premises, drawn to scale, that clearly shows the proposed changes to the gaming area;
- For a premises relocation amendment in relation to relocating all gaming machine operations to new premises within the same suburb, the application must state the address, and block and section number of the new premises; and be accompanied by a plan of the new premises, drawn to scale, that clearly shows the location, boundaries and dimensions of the proposed gaming area;
- For a premises relocation amendment in relation to relocating all gaming machine operations to new premises in another suburb, the application must state the address, and block and section number, of the new premises; and be accompanied by—
    - a social impact assessment; and
    - a plan of the new premises, drawn to scale, that clearly shows the location, boundaries and dimensions of the proposed gaming area; and
    - if the applicant is a club—evidence that a majority of the voting members of the club who voted in a ballot conducted under a regulation voted for the club relocating to the new premises.

Section 35 Authorisation certificate amendment decision – gaming area amendment

Section 35 provides that on receiving an application for a gaming area amendment, the commission may either amend the authorisation certificate in accordance with the application if it is satisfied that the gaming area proposed to be changed will be suitable for the operation of the number of gaming machines the licensee may have under the authorisation certificate; or refuse to amend the authorisation certificate.

Subsection 35 (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 35 (3) provides a positive obligation on the commission to tell the applicant in writing of a decision made under subsection 35 (2) and if the commission refuses to amend the licence, the commission must provide a statement of reasons.

This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

Subsection 35 (4) provides that the commission must amend the authorisation certificate in accordance with the application if satisfied that the gaming area proposed to be changed will be suitable for the operation of the number of gaming machines the licensee may have under the authorisation certificate.

Subsection 35 (5) provides a requirement that the commission consider the harm minimisation strategies for patrons in making their decision whether a gaming area will be suitable for the operation of the number of gaming machines the licensee may have under the authorisation certificate.

Section 36 Authorisation certificate amendment decision – premises relocation amendment

Section 36 provides that on receiving an application for a premises relocation amendment, the commission may either amend the authorisation certificate in accordance with the application or refuse to amend the authorisation certificate.

Subsection 36 (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 36 (3) provides a positive obligation on the commission to tell the applicant in writing of a decision made under subsection 36(2) and if the commission refuses to amend the licence, the commission must provide a statement of reasons.

This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

Subsection 36 (4) provides the commission with the authority to consider the following before deciding to amend the authorisation certificate:

- the application for the amendment;
- if the new premises are in another suburb—the social impact assessment for the application and each submission made about the social impact assessment within the comment period mentioned in subsection 13 (2) (Social impact assessment—publication).

Under subsection 36 (5) if the application is for a premises relocation amendment in relation to premises in another suburb the commission must amend the authorisation certificate if it is satisfied that:

- the size and layout of the new premises and the proposed gaming area are suitable for the operation of the number of gaming machines that would be allowed under the authorisation certificate; and
- a majority of the voting members of the licensee who voted in a ballot conducted under a regulation voted for the club relocating to the new premises; and
- taking into consideration the social impact assessment for the application and any submission made on the assessment within the comment period under subsection 13 (2), the amendment of the authorisation certificate is appropriate.

If the commission is not satisfied under subsection 36 (5) in relation to the maximum number of authorisations for gaming machines stated in the application but would be satisfied under subsection (5) (a) or (c) in relation to a lower maximum, subsection 36 (6) provides the ability for the commission to amend the authorisation certificate to allow a lower maximum number of authorisations for gaming machines at the new premises.

Under subsection 36 (7) if the application is for a premises relocation amendment in relation to premises in the same suburb, the commission must amend the authorisation certificate in accordance with the application if satisfied that the size and layout of the new premises and the proposed gaming area are suitable for the operation of the number of gaming machines that would be allowed under the authorisation certificate.

If the commission is not satisfied under subsection 36 (7) in relation to the maximum number of authorisations for gaming machines stated in the application but would be satisfied in relation to a lower maximum, subsection 36 (8) provides the ability for the commission to amend the authorisation certificate to allow a lower maximum number of authorisations for gaming machines at the new premises.

Section 37 Authorisation certificate amendment decision – increase maximum amendment

Section 37 provides that on receiving an application for an increase maximum amendment of an authorisation certificate, the commission may either amend the authorisation certificate or refuse to amend the authorisation certificate. Note that under the definition of an increase maximum amendment in section 33 (1) (c), this type of authorisation certificate amendment applies only to an increase in the maximum number of authorisations for class C gaming machines. A class B licensee is therefore ineligible to apply for an increase maximum amendment.

Subsection 37 (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 37 (3) provides a positive obligation on the commission to tell the applicant in writing of a decision made under subsection (2) and if the commission refuses to amend the licence, the commission must provide a statement of reasons.

This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

The commission must amend the authorisation in accordance with the application if it is satisfied that the application is accompanied by a social impact assessment that supports an increase in the maximum number of authorisations for gaming machines allowed at the authorised premises, and the size and layout of the premises mentioned in the authorisation certificate is suitable for the operation of the number of gaming machines that would be allowed under the authorisation certificate; or refuse to amend the authorisation certificate.

Subsection 37 (5) provides that in deciding the maximum number of authorisations for gaming machines under the amended authorisation certificate, the commission must consider:

- the number of club members worked out under a regulation;
- the ratio of club members to the maximum number of authorisations for gaming machines sought by the licensee; and
- the extent to which the club has contributed to, or is likely to contribute to, the community and supported and benefited the community.

Section 37A Authorisation certificate amendment – increase maximum to not more than relevant number

This section is intended to facilitate the introduction of the trading scheme through providing a one-off exemption from the requirement to complete a social impact assessment for licensees notifying the commission of a limited increase in the maximum number of authorisations for class C gaming machines. The increase is limited to 12 authorisations for licensees with less than a maximum of 120 authorisations. For licensees with a maximum of 120 or more authorisations, the increase is limited to 10% of that number, with a ceiling of 20. This exemption will remain for a three year period from the commencement of Phase 1 of the trading scheme until the commencement of Phase 2.

Licensees are only permitted to have one maximum number increase to their authorisation certificate under this provision during Phase 1. As the amendment relates to increasing the maximum number of class C authorisations under an authorisation certificate, class B licensees are ineligible to apply for a one-off increase maximum amendment.

Subsection 37A (1) provides an explanatory note to clarify the meaning of trading period at subsection 37 (4) which means the period commencing on the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, section 4 and ending on the commencement of that Act, schedule 1 (Other amendments—compulsory surrender).

Subsection 37A provides a positive obligation on the licensee to notify the commission about the proposed one-off increase maximum amendment.

Subsection 37A (2) provides an explanatory Note 1 to clarify that making a one-off increase maximum amendment of an authorisation certificate during the trading period is a notifiable action under part 13A and schedule 2. Note 2 clarifies that the notifiable action takes place:

- the prescribed number of days after the day the commission receives the notification (see section 173E (a));
- if the commission allows the notifiable action to take place on an earlier day—that day (see section 173E (b)); or
- if the commission asks for additional information under section 173E (c), when the commission has notified the licensee that it is satisfied in relation to the additional information (see section 173E (c)).

Once the commission has received notification from the licensee to an increase the maximum number to not more than the relevant number (see below), the commission must under subsection 37A (3) amend the authorisation certificate in accordance with the notification if it is satisfied that:

- the number of authorisations by which the licensee proposes to increase the maximum number the licensee may have under the authorisation certificate is not more than the relevant number; and
- the size and layout of the premises mentioned in the authorisation certificate are suitable for the operation of the number of gaming machines the licensee may have under the authorisation certificate, as amended; and
- the applicant has not previously notified the commission about a one-off increase maximum amendment during the trading period.

The ***relevant number*** for a one-off increase maximum amendment of an authorisation certificate at subsection 37 (4) means:

- if the licensee's authorisation certificate is for less than 120 authorisations when the application is made—12; or
- in any other case—10% of the total number of authorisations allowed under the authorisation certificate, up to a maximum of 20.

Subsection 37 (5) provides that section 37A expires on the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, schedule 1 (Other amendments –compulsory surrender), which is the commencement of Phase 2.

Section 37B Authorisation certificate amendment – technical amendment

A licensee may apply for a technical amendment for 1 or more changes including:

- change the percentage payout of the gaming machine;
- change the basic stake denomination of the gaming machine;
- change the game installed on the gaming machine;
- change any other technical detail mentioned in the authorisation schedule.

Subsection 37B (2) provides a positive obligation on the licensee to notify the commission about the proposed technical amendment.

Subsection 37B (2) provides an explanatory Note 1 to clarify that making a technical amendment to a gaming machine is a notifiable action under part 13A and schedule 2. Note 2 clarifies that the notifiable action takes place:

- the prescribed number of days after the day the commission receives the notification (see s 173E (a)); or
- if the commission allows the notifiable action to take place on an earlier day—that day (see s 173E (b))
- if the commission asks for additional information under s 173E (c), when the commission has notified the licensee that it is satisfied in relation to the additional information (see s 173E (c)).

Section 37C Amendment of licence, authorisation certificate etc– commission's own initiative

Section 37C provides that the commission may amend a licence, authorisation certificate or authorisation schedule on its own initiative if satisfied that it is appropriate to correct a mistake, error or omission on the licence or authorisation certificate or authorisation schedule; or if the maximum number of authorisations for gaming machines allowed under an authorisation certificate has changed—the commission may amend the authorisation certificate to record the correct maximum number.

The commission must amend the authorisation schedule if a licensee has notified the commission about the acquisition or disposal of an authorisation under division 6.10 (Trading of authorisations and gaming machines). For an acquisition, the authorisation schedule must be amended to include the authorisation number of the acquired authorisation and for a disposal, the authorisation number of the disposed authorisation must be removed.

Section 37D Re-issue of amended licence, authorisation certificate etc

This section provides a requirement that if the commission decides to amend a licence, authorisation certificate or authorisation schedule, the commission must issue a replacement to the licensee.

Subsection 37D (2) requires the replacement licence to state that the licence is a replacement licence, the date the replacement licence was issued; and the date the amendment commences; for example, the day a new trading name for the licensee is registered. An example is provided to clarify the meaning that the commencement of an amendment will take effect the day a new trading name for the licensee is registered.

Subsection 37D (3) provides that the commission must issue the licensee with an authorisation certificate that includes the amendment (a replacement authorisation certificate).

Subsection 37D (4) provides that the replacement authorisation certificate must state that the certificate is a replacement authorisation certificate, the date the replacement certificate was issued and the date the amendment commences.

Subsection 37D (5) provides that the commission must issue the licensee with an authorisation schedule that includes the amendment (a replacement authorisation schedule).

Subsection 37D (6) requires that the replacement schedule must state that the schedule is a replacement authorisation schedule, the date the replacement was issued and the date the amendment commences. An example is provided to clarify that the commencement of an amendment will occur the day the commission receives the installation certificate for a new gaming machine.

Division 2B.6 Transfer and surrender of licences and authorisation certificates

This division replaces sections 30, 31 and 32 of the existing Act and includes provisions under the new framework for the transfer of an authorisation certificate from an outgoing licensee to an incoming licensee. These provisions replace the requirement for a licensee to apply to the commission for approval in the existing Act and provide a requirement for the licensee to notify the commission about the transfer and surrender.

Section 37E Transferring an authorisation certificate

Subsection 37E (1) provides a positive obligation on the incoming licensee to notify the commission about the transfer of an authorisation certificate. This subsection provides an explanatory note to clarify that the transfer of an authorisation certificate is a notifiable action under part 13A and schedule 2.

Subsection 37E (2) provides the obligations for the proposed transfer on the outgoing licensee to give the commission:

- the outgoing licensee's computer cabinet access register;
- the accounts kept by the outgoing licensee under section 52 (Accounts relating to gaming machines) that relate to amounts taken during the month when the transfer is made;
- any other accounts kept in connection with the licence under section 52 that the commission requires;
- any outstanding amount payable by the outgoing licensee under this Act.

Explanatory notes are provided after subsection 37E (1) to clarify that:

- The transfer of an authorisation certificate is a notifiable action (see part 13A and schedule 2) which takes place:
  - the prescribed number of days after the day the commission receives the notification (see s 173E (a)); or
  - if the commission allows the notifiable action to take place on an earlier day—that day (see s 173E (b))
  - if the commission asks for additional information under s 173E (c), when the commission has notified the licensee that it is satisfied in relation to the additional information (see s 173E (c)).

An explanatory note is provided at 37E (2) (d) to clarify that amounts are payable by licensees under provisions including sections 143, 159 and 172.

Section 37F Surrender of licences, authorisation certificates and authorisations

This section provides that surrender may occur with a licence, one or more authorisation certificates under the licence, or an authorisation. If a licensee surrenders a licence, all authorisation certificates held by the licensee are cancelled. In the circumstances where there any physical gaming machines that were not traded at the time of surrender than those gaming machines must be disposed of as directed by the commission.
Subsection 37F (2) provides a positive obligation on the licensee to notify the commission of its intention to surrender a licence, authorisation certificate or authorisation. An explanatory note is provided to clarify that the surrender of a licence or authorisation is a

notifiable action under part 13A and schedule 2. Note 2 clarifies that the notifiable action takes place:

- the prescribed number of days after the day the commission receives the notification (see s 173E (a)); or
- if the commission allows the notifiable action to take place on an earlier day—that day (see s 173E (b))
- if the commission asks for additional information under s 173E (c), when the commission has notified the licensee that it is satisfied in relation to the additional information (see s 173E (c)).

Subsection 37F (2) (b) requires a licensee that is a club that is surrendering an authorisation certificate or authorisation to give the commission evidence that a majority of the voting members of the club who voted in a ballot conducted under a regulation voted for the club surrendering the authorisation certificate or authorisation; or that such a vote under would not be practical, for example if all memberships have expired and the club does not propose to continue operating.

The licensee in all circumstances is required to return the licence or authorisation certificate to the commission (paragraph 37F (2) (c)).

Subsection 37F(3) provides an obligation on the commission to cancel all authorisation certificates held by the licensee and issue an interim storage permit for each gaming machine under the cancelled authorisation certificates. Similarly, subsection 37F (4) requires that an interim storage permit must be issued for gaming machines under a surrendered authorisation certificate or authorisation. This will permit the physical gaming machines to be stored up to three months in order to facilitate disposal action of the machines.

Subsection 37F (5) outlines the obligations on the licensee which require the licensee at the time of surrender or cancellation to render the gaming machine inoperable and take meter readings from each gaming machine under the authorisation or certificate and within the prescribed number of days after the day the certificate or authorisation is surrendered or cancelled, give the commission the details of the meter readings taken and any outstanding amount payable by the licensee in relation to the operation of the gaming machine.

Section 37G Offence—failure to dispose of gaming machines

This section provides that it is an offence if a person fails to comply with the disposal conditions for a gaming machine as directed by the commission and within the time period stated in the storage permit. The purpose of this provision is to prevent a person from owning or possessing a non authorised gaming machine. This section provides an explanatory note to identify that division 6.7 addresses the disposal of gaming machines.

A maximum penalty of 50 penalty units is applied for an offence against this provision.

Division 2B.7 Licences, authorisation certificates and authorisations—register and replacement copies

This division replaces section 37 in the existing Act to require the commission to maintain and keep up to date a register of licences, authorisation certificates and authorisations to reflect the new licensing framework. For example, a detail in the register may be changed as a consequence of receiving notification under section 173D about a notifiable action. This division also inserts a new provision for amendment of the register to correct a mistake, error or omission – at the commission's initiative or the request of a licensee.

Section 37H Licences and authorisation certificates—register

This section provides the following details that must be included on the register for each licence, authorisation certificate and authorisation:

- the date of the issue, amendment or transfer of a licence or authorisation certificate;
- the date of the suspension or cancellation of a licence or authorisation certificate;
- for each authorisation certificate - the maximum number of authorisations for gaming machines a licensee may have under the authorisation certificate, the authorisation number for each authorisation and details of any gaming machines under each authorisation.

If a licensee has gaming machines stored under a permit the register must record the kind of permit and the serial number of the gaming machine and if the licensee holds the authorisation for the gaming machine – the authorisation number for the gaming machine.

Under paragraph 37H (2) (e) a regulation may require the inclusion of other details on the register.

Section 37I Licences, authorisation certificates and authorisation schedules—replacement copies

This section provides that the commission must on receiving a statutory declaration that a licensee's licence, authorisation certificate or authorisation schedule has been lost, stolen or destroyed, issue a replacement licence, authorisation certificate or authorisation schedule to the licensee. This section provides an explanatory note that a fee may be determined for the issue of a replacement licence, authorisation certificate or authorisation schedule under section 177 of the existing Act.

Note 1 clarifies that the *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws. Note 2 clarifies that it is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document under the Criminal Code at part 3.4.

Part 2C In-principle authorisation certificates

This part replaces part 2A in the existing Act to reflect the new licensing framework and inserts new provisions that relate to in-principle approval to have a maximum number of authorisations for gaming machines under an authorisation certificate at an address of unleased land. This part also repeals the provisions in the existing Act in relation to no reservable gaming machines as a consequence of repealing the provisions that refer to the pooling arrangements for gaming machines in the Territory under division 2.7 in the existing Act. It is the intent of this part to allow a person seeking to establish new club facilities in the Territory, where the Territory is releasing unleased land for the purpose of a club, to obtain an in-principle authorisation certificate that sets out the maximum number of authorisations for that site. This will be subject to a social impact assessment in all instances. An approval-holder with in-principle approval may only source the authorisations for class C gaming machines after the in-principle authorisation has been converted to an authorisation certificate, and then only by trading with existing ACT licensees or through the tender arrangements in Phase 2.

Division 2C.1 Preliminary

Section 38 Object – pt 2C

The section sets out the object of part 2C, which is to allow for the in-principle approval of a maximum number of gaming machine authorisations at an address of unleased land before the acquisition of an interest in the land or premises at the address is finalised, and where final licensing arrangements and configuration of the premises are prepared but not finalised for a club, but the voting members of the club support the club having gaming machines at the address.

An explanatory note is provided to clarify that the maximum number of authorisations means the maximum number of authorisations for gaming machines that a licensee may have under an authorisation certificate.

Section 38A Definitions for Act

This section inserts two new definitions to provide clarity for those terms used in this section:

- ***Approval-holder*** means a person who holds an in-principle approval for an authorisation certificate under this part.
- ***In-principle authorisation certificate*** means an in-principle approval for an authorisation certificate.

Division 2C.2 In-principle authorisation certificate – application

This division inserts new provisions prescribing the manner and form of an application for an in-principle authorisation certificate. This division provides all necessary requirements for an

application to enable the commission to be satisfied that they can issue an in-principle authorisation certificate.

Section 38B In-principle authorisation certificate – application

This section provides the eligibility of a person to be able to apply for an in-principle approval for a authorisation certificate if the person holds a class C licence or has applied for a class C licence and the land at the address for which the approval is sought is suitable land, meaning that it is land that is unleased land and to be leased with a purpose clause permitting use of the land for a club.

This section provides an explanatory note to clarify that if a form is approved under the Control Act, s 53D for an application, the form must be used. Note 2 clarifies that a fee may be determined under section 177 of the existing Act for this application.

Section 38C In-principle authorisation certificate application—contents

This section provides the manner and form of the application and sets out necessary requirements to enable the commission to be satisfied on reasonable grounds that an in-principle authorisation certificate may be issued. An application for an in-principle authorisation certificate must comply with the requirements for an authorisation for class C gaming machines – contents of application under section 22 (1), but not paragraphs 22 (2) (b) to (d) as these relate to matters that may not yet be finalised for a future venue, including a scale plan of the premises, and the gaming rules and control procedures applicable to the premises. Note that this information is, however, required at conversion (see division 2C.5).

Division 2C.3 In-principle authorisation certificate – issue

Section 38D In-principle authorisation certificate – decision on application

Section 38D provides that on receiving an application for an in-principle authorisation certificate, the commission may issue an in-principle authorisation certificate to the applicant if satisfied under subsection 38D (4), that taking into consideration the social impact assessment for the application, and any submission made on the social impact assessment within the comment period under section 13 (2), issuing the in-principle authorisation certificate is appropriate.

The commission may also refuse to issue an authorisation certificate to an applicant. Subsection 37D (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 37D (3) provides a positive obligation on the commission to tell the applicant in writing of a decision to refuse the application and the commission must provide a statement of reasons. This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

Section 38E In-principle authorisation certificate – form

This section provides for the manner and form of an in-principle authorisation certificate. The in-principle authorisation certificate must be in writing and state the following:

- the name of the approval-holder's legal entity (the ***approval holder's name***);
- if the approval-holder carries on business under a name other than the approval-holder's name—the name under which the approval-holder carries on business;
- the approval-holder's ABN;
- the approval-holder's—
    - ACN; or
    - if the approval-holder is an incorporated association—association number; and
- the address, and block and section number, to which the in-principle authorisation certificate applies;
- the maximum number of authorisations allowed under the in-principle authorisation certificate;
- the class of gaming machines;
- the conditions (if any) of the in-principle authorisation certificate.

The reference to legal entity at subsection 38E (1) (b) (i) includes a reference to a person exercising a function of the entity, whether under a delegation, sub delegation or otherwise. To remove any doubt reference to entity applies to all entities, including entities established under a law of another jurisdiction.

An explanatory note is provided that clarifies the meaning of an association number as defined in the dictionary. An association number for a licensee that is an associated incorporation means the association number on the licensee's certificate of incorporation under the *Associations Incorporation Act 1991*.

Note that while this section provides that the form of the in-principle authorisation certificate includes the class of gaming machines, under section 38B only a class C licensee or an applicant for a class C licence may apply for an in-principle authorisation certificate.

A regulation may prescribe other requirements in relation to the form of an in-principle authorisation certificate.

Section 38F In-principle authorisation certificate – conditions

Section 38F provides that the conditions imposed on an in-principle authorisation certificate are as prescribed by regulation or as imposed by the commission when the in-principle authorisation certificate is issued or extended. The power to impose conditions aligns with section 38K (2) of the existing Act.

Section 38G In-principle authorisation certificate—term

This section makes it clear that an in-principle authorisation certificate commences on the day it is issued and expires three years after the day it was issued or if the term of the in-principle authorisation certificate is extended under section 38K (In-principle authorisation certificate—extension decision)—on the date to which the in-principle authorisation certificate is extended. This provision aligns with section 38L of the existing Act.

Division 2C.4 In-principle authorisation certificate—transfer

This division provides for the transfer of an existing in-principle authorisation certificate. One example of when this provision might be exercised is if there was a change in a joint-venture seeking to acquire the unleased lead for a club, which required a change to the approval-holder. The division also provides for an extension to the term of the in-principle authorisation certificate and a surrender provision. These provisions mirror and replace sections 38O 38P, 38Q, 38R and 38S of the existing Act.

Section 38H In-principle authorisation certificate—application to transfer

This section provides that an approval-holder (the current approval-holder) may apply to the commission in writing to transfer the in-principle authorisation certificate to another person (the ***proposed new approval-holder***).

An application must:

- be signed by the current and proposed new approval-holder;
- state the full name and address—
    - the proposed new approval-holder; and
    - each director of the proposed new approval-holder.
- state the name of each influential person for the applicant and the person's relationship with the applicant.

Further stated information for an application or the inclusion of stated documents may be required under a regulation.

The explanatory notes clarify:

- if a form is approved under the Control Act, section 53D for an application, the form must be used.

- a fee may be determined under section 177 of the existing Act for an application.

Section 38I In-principle authorisation certificate—transfer decision

Section 38I provides that on receiving an application to transfer an in-principle authorisation certificate under section 38H, the commission may transfer the in-principle authorisation certificate to the proposed new approval-holder; or refuse to transfer the in-principle authorisation certificate to the proposed new approval-holder.

The explanatory notes at subsection 38I (1) clarify that an approval-holder who makes an application under s 38H must hold a class C licence or must have applied for a class C licence (see s 38B (1) (a)).

Subsection 38I (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 38I (3) provides a positive obligation on the commission to tell the applicant in writing of a decision to refuse the application for to transfer the in-principle authorisation certificate and the commission must provide a statement of reasons. This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

Subsection 38I (4) provides that the commission must transfer the in-principle authorisation certificate to the proposed new approval-holder if satisfied that the proposed new approval holder holds a licence or has applied for a licence.

Section 38J In-principle authorisation certificate—application for extension

This section provides that an approval-holder may apply to the commission in writing to extend the term of an in-principle authorisation certificate.

An application for an extension must be signed by the approval-holder and state why the approval-holder is seeking the extension.

Subsection 38J (3) provides that the in-principle authorisation certificate will remain in force until the application for extension is decided by the commission.

The explanatory notes in this section clarify that:

- Section 38G sets out the term of an in-principle authorisation certificate.

- If a form is approved under the Control Act, section 53D for an application, the form must be used.
- A fee may be determined under section 177 of the existing Act for an application.

Section 38K In-principle authorisation certificate—extension decision

Section 38K provides that on receiving an extension application for an in-principle authorisation certificate under section 38J, the commission may extend the term of the in-principle authorisation certificate; or refuse to extend the term of the in-principle authorisation certificate.

Subsection 38K (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9 (2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9 (4)).

Subsection 38K (3) provides a positive obligation on the commission to tell the applicant in writing of a decision to refuse the application to extend the in-principle authorisation certificate and the commission must provide a statement of reasons. This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

Subsection 38K (4) provides that the commission may extend the term of the in-principle authorisation certificate for a period not longer than 12 months.

Section 38L In-principle authorisation certificate—surrender

This section provides for an approval-holder to surrender an in-principle authorisation certificate by giving written notice to the commission and returning the in-principle authorisation certificate to the commission.

Division 2C.5 In-principle authorisation certificate—conversion

This division provides for the conversion of an in-principle authorisation certificate to an authorisation certificate. The conversion will only occur if a current licence to operate gaming machines has been issued by the commission. In addition, for conversion all required information and documents must be provided to the commission, including evidence that the approval-holder has acquired an interest in the land, a scale plan, and copy of the current gaming rules and control procedures. Only after conversion is a licensee able to source authorisations from existing licensees, up to the maximum number on the authorisation certificate. This division is similar in intent to division 2A.5 of the existing Act.

Section 38M Conversion of in-principle authorisation certificate to authorisation certificate—application

This section provides that on application in writing signed by the applicant, the commission may approve the conversion of an in-principle authorisation certificate to an authorisation certificate.

The application must be accompanied by evidence that the approval-holder has acquired an interest in the land, or premises, at the address to which the in-principle authorisation certificate applies; and other required documents, including a scale plan, copy of the current gaming rules and a copy of the current control procedures (i.e. the documents required by section 22 (2) (b) to (d), excluded from the earlier application for an in-principle authorisation certificate by section 38C).

A regulation may require an application to include other documents.

The explanatory notes in this section clarify that:

- If a form is approved under the Control Act, section 53D for an application, the form must be used.
- A fee may be determined under section 177 of the existing Act for an application.

Section 38N Conversion of in-principle authorisation certificate to authorisation certificate—decision

This section provides that on receiving an application to convert an in-principle authorisation certificate to an authorisation certificate under section 38M, the commission may convert the in-principle authorisation certificate to an authorisation certificate; or refuse to convert the in-principle authorisation certificate to an authorisation certificate.

Subsection 38N (2) provides an explanatory note to clarify that the commission may refuse to consider an application that is not properly completed and if the commission refuses to consider the application, it lapses (see subsection 9(2)). If additional information in relation to an application is not given to the commission within the time required by the commission, the commission may refuse to consider the application and if the commission refuses to consider the application, it lapses (see subsection 9(4)).

Subsection 38N (3) provides a positive obligation on the commission to tell the applicant in writing of a decision to refuse the application to convert the in-principle authorisation certificate to an authorisation certificate and the commission must provide a statement of reasons. This subsection provides an explanatory note to clarify that section 179 of the *Legislation Act 2001* outlines what must be included in a statement of reasons.

Subsection 38N (4) provides that the commission must convert the in-principle authorisation certificate to an authorisation certificate for the number of authorisations stated in the in-principle certificate if satisfied that the approval-holder:

- has acquired an interest in the land, or premises, at the address to which the in-principle authorisation certificate applies; and
- were the application an application for an authorisation certificate under section 21 (Authorisation certificate for class C gaming machines—application), the commission would issue the authorisation certificate under section 23 (Authorisation certificate for class C gaming machines—decision on application).

Subsection 38N (5) provides that the commission may convert the in-principle authorisation certificate to an authorisation certificate for a lower number of authorisations for gaming machines than the number stated in the application if satisfied that the size and layout of the proposed gaming area are suitable for the installation of the lower number of gaming machines.

Subsection 38N (6) provides that if the commission decides to convert an in-principle authorisation certificate to an authorisation certificate, the certificate must be issued to the applicant in the same terms, and subject to the same conditions, as the in-principle authorisation certificate.

Section38O Consequences of conversion—other in-principle authorisation certificates for the land or premises expire

This section applies if the commission converts an in-principle authorisation certificate to an authorisation certificate under section 38N.

An in-principle authorisation certificate applies to a particular site, being unleased land to be leased for the purpose of a club (see section 38B above). For conversion to occur, an approval-holder must show they have acquired an interest in the land to which the in-principle authorisation certificate relates. Once conversion has occurred, this section has the effect of terminating all other in-principle authorisation certificates in relation to the land, or premises, to which the in-principle authorisation certificate applied.

This section places a positive obligation on the commission to notify each approval-holder whose in-principle authorisation certificate expires under subsection 38O (2) that their in-principle authorisation certificate has expired.

Clause 5 Part 3 heading - Licences and authorisation certificates—conditions [Amendment]

This clause replaces the heading at Part 3 of the existing Act to 'Licences and authorisation certificates – conditions' to reflect the new licensing and authorisation framework and arrangements.

Clause 6 Section 39 heading - Offence—failure to comply with condition [Amendment]

This clause replaces the heading at section 39 of the existing Act to 'Offence – failure to comply with condition'.

Clause 7 Section 39 (1A) [New provision]

This clause provides an offence provision for a licensee under new section 39 (1A) if an authorisation certificate held by the licensee is subject to a condition and the licensee fails to comply with a requirement of the condition. This offence is necessary as a result of the introduction of authorisation certificates as part of the revised licensing and authorisation framework.

The maximum penalty for this offence is 100 penalty units, in line with the offence in section 39 (1) of the existing Act in relation to failure to comply with licence conditions.

Clause 8 Division 3.2 heading -General licence and authorisation certificate conditions [Amendment]

This clause replaces the heading at division 3.2 of the existing Act to 'General licence and authorisation certificate conditions' to reflect the new licensing and authorisation framework and arrangements.

Clause 9 Section 39A Compliance with requirements for issue of licence and authorisation certificate [Amendment]

Clause 9 amends the heading and section 39A in the existing Act to reflect the new conditions for the issue of an authorisation certificate on the licensee.

Section 39A retains the provisions in relation to compliance with requirements for the issue of a licence and retains the condition of a licence that a licensee not do anything that would cause the licensee to be refused the licence if the licensee was applying for a licence. This section inserts a new explanatory note to clarify that the requirements for the issue of a licence can be found at section 17, in relation to class C gaming machines, and section 29 in relation to class B gaming machines.

The explanatory note at subsection 39A (1) (b) has been amended to clarify that the grounds for refusing to issue a class C licence are provided in section 18. These grounds for refusal do

not apply to a class B licence – class B licenses are subject to restricted application provisions under division 2B.4.

To reflect the new authorisation framework, subsection 39A (2) inserts a new provision that it is a condition of an authorisation certificate that the licensee continually meets each requirement for the issue of an authorisation certificate; and continues not to do anything that would, if the licensee were applying for an authorisation certificate, cause the licensee to be refused the authorisation certificate.

An explanatory note is provided to clarify that the grounds for refusing to issue an authorisation certificate to a class C licensee, see section 24. These grounds for refusal do not apply to a class B licence – class B authorisation certificates are subject to restricted application provisions under division 2B.4.

Clause 10 Sections 41 and 42 - Display of licence and authorisation certificate at authorised premises [Amendment]

This clause amends the heading and updates sections 41 and 42 of the existing Act to reflect the revised licensing and authorisation framework, but otherwise preserves the intent of the sections.

Subsection 41 (1) provides that it is a condition of a licence that the licence and authorisation certificate or a copy of the licence and a copy of the authorisation certificate be displayed in a prominent position at the main entrance to each gaming area of the authorised premises.

Subsection 41 (2) clarifies that it is not a requirement for a licensee to display the authorisation schedule to the authorisation certificate.

Subsection 41 (3) expands on the provisions in the existing Act in relation to the surrender, loss, theft or destruction of the licence to include the authorisation certificate.
Subsection 41 (3) (b) also clarifies that subsection 41 (1) does not apply if the licensee gave the commission a statutory declaration under section 37I (Licences, authorisation certificates and authorisation schedules—replacement copies) about the loss, theft or destruction as soon as practicable after becoming aware of the loss, theft or destruction.

Clause 10 amends section 42 of the existing Act to reflect the new licensing and authorisation arrangements, and requires the licensee to keep a copy of the authorisation certificate and the authorisation schedule at the authorised premises to which the certificate pertains.

Clause 10 also inserts a new section 42A which places a condition on a licensee that reasonable assistance must be given to the commission in the conduct of any review the

commission undertakes. An explanatory note is provided to clarify that non-compliance with this section is a ground for disciplinary action under section 57 (1) (c) of the existing Act).

Clause 11 Section 47 (1) Operation subject to correct percentage payout [Amendment]

Clause 11 amends the wording at section 47 (1) of the existing Act to give effect to the new licensing and authorisation framework and arrangements and as such replaces licence with authorisation schedule for the gaming machine.

Clause 12 Section 48 Percentage payout of gaming machines to be displayed [Amendment]

Clause 12 amends the wording at section 48 of the existing Act to give effect to the new licensing and authorisation framework and arrangements and as such replaces licence with authorisation schedule and adds a reference to authorised premises.

Clause 13 Section 51 Licensee to use gaming machines [Repeal]

Clause 13 removes the condition for a licensee to use the gaming machines at section 51 of the existing Act. This objective of this condition was to ensure that a licensee only held gaming machines that it intended to use or needed to satisfy patron demand. This section also prohibited the indefinite storage or the holding of machines for possible future use or growth.

This section is now obsolete due to the introduction of the authorisation framework and new provisions for storage arrangements (see division 6.11).

Clause 14 Section 56 heading - Definitions—pt 4 [Amendment]

This clause amends the heading at section 56 of the existing Act to 'Definitions – pt 4' in line with existing drafting practice.

Clause 15 Section 56, new definitions [Amendment]

This clause inserts two new definitions at section 56 of the existing Act, 'cancelled' and '*final*', to provide clarity for those terms used in this section.

cancelled includes—a licence, and each authorisation certificate under the licence, is ***cancelled*** under this part if—

(a) the licence, and each certificate, is cancelled under—
  (i) section 62 (Commission may take disciplinary action against licensee); or
  (ii) section 64 (Cancellation of authorisations because of cancellation etc of general and on licences); and
(b) the cancellation has become final.

final—a cancellation of a licence becomes ***final*** when—

(a) the time for any appeal or review in relation to the decision has ended; or

(b) any appeal or review in relation to the decision has been decided or withdrawn.

Clause 16 Section 56, definitions of *licence* and *licensee*, note [Amendment]

This clause amends the definition of licence for Part 4 to include an in-principle authorisation certificate. 'Licence' is defined for the Act as a whole in the Dictionary (as stated in explanatory note 2). The amendment also removes the definition of 'licensee' as section 157 of the *Legislation Act 2001* provides that 'licensee' has a meaning corresponding to the meaning of 'licence' (as stated in explanatory note 3).

Clause 17 Section 57 (3) Grounds for disciplinary action [Repeal]

This clause removes the requirement on the commission at section 57 (3) of the existing Act in deciding whether an approval-holder is an eligible person under subsection (1) (d) and (e). This is a consequential amendment on the omission of section 20 (2) (a) (ii) and section 21 (1) (c). Note also that approval-holders must be a class C licensee or an applicant for a class C licence under new section 38B, the general licence and on licence requirements relate to class B licensees.

Clause 18 Section 58 (1) (b) and (d) Disciplinary action [Amendment]

This clause amends existing section 58 (1) (b) and (d) of the existing Act to insert 'or authorisation certificate' after 'licence' to reflect the new licensing and authorisation framework and arrangements.

Clause 19 New section 58 (1) (f) and (g) [Amendment]

Clause 19 inserts a new subsection (f) at section 58 (1) that disciplinary action when taken against a person includes suspending the person's authorisation certificate in relation to the stated premises.

This clause also inserts a new subsection (g) at section 58 (1) which applies where the licensee is operating more gaming machines than is allowed under the authorisation certificate. The commission may order that the licensee must forfeit 100 per cent of the gross gaming machine revenue of the excess gaming machines to the Territory. The commission is provided the power to direct the person about how to dispose of the excess gaming machines. This provision is necessary to support the new licensing and authorisation framework and storage provisions. Licensees will be granted flexibility in managing the number of authorisations and gaming machines operated within the maximum number set out in the authorisation certificate, and this flexibility brings with it the responsibility to ensure that this number is not exceeded at any time. There should be no financial advantage to a licensee of this unauthorised operation.

Note that it is also an offence to operate a gaming machine otherwise than in accordance with an authorisation certificate (see clause 41) and to intentionally acquire a gaming machine where an authorisation for the gaming machine is not held (clause 36, subsection 98(4)).

Clause 20 New section 58 (1A) [New provision]

This clause inserts new section 58 (1A) in the existing Act to give effect to the new licensing and authorisation framework and arrangements, and provides that all authorisation certificates under the suspended or cancelled licence are also suspended or cancelled.

Clause 21 Section 58 (2), new notes [Amendment]

This clause inserts two new explanatory notes at section 58 (2) of the existing Act to aid the interpretation of this provision.

Note 1 clarifies that a reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see *Legislation Act 2001*, section 104).

Note 2 clarifies that the power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see *Legislation Act 2001*, section 46).

Clause 22 New section 62 (4A) Commission may take disciplinary action against licensee [New provision]

This clause inserts a new section 62 (4A) of the existing Act to provide that if taking disciplinary action against a licensee under section 58 (1) (g) (i) for operating more gaming machines than is allowed under the authorisation certificate, the commission must include in the written notice to the licensee the amount the licensee is required to forfeit to the Territory.

This clause provides absolute transparency to the licensee if disciplinary action consists of an action mentioned in section 58 (1) (g) (i).

This is a consequential amendment to the amendments in clause 19.

Clause 23 New section 62A Disciplinary action in relation to trading authorisations and gaming machines—directions [New provision]

Clause 23 inserts new section 62A of the Act to extend the commission's power to take disciplinary action against a licensee in relation to acquiring or disposing of an authorisation or gaming machine under division 6.10 (Trading of authorisations and gaming machines).

This clause provides the commission with an ability to issue a written direction to a licensee about how the licensee is to conduct the acquisition or disposal. The commission's power here is limited by the requirement that a direction cannot be inconsistent with the Act or any other territory law; or a condition of the licensee's licence.

Explanatory notes are provided to clarify that the power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see *Legislation Act 2001*, section 46).

Note 2 clarifies provisions for the disposal of gaming machines are set out in division 6.7.

Subsection 62A(4) requires the licensee to comply with directions made by the commission under this section.

Clause 24 Section 63 heading - Suspension of licence and authorisation certificate because of suspension of general and on licenses [Amendment]

This clause replaces the heading at section 63 of the existing Act to include a reference to authorisation certificates in line with the new licensing and authorisation framework and arrangements.

Clause 25 Section 63 (2) [Amendment]

This clause amends the wording at section 63 (2) of the existing Act to 'licence, and each authorisation certificate under the licence' to reflect the new licensing and authorisation framework and arrangements.

Clause 26 Section 64 heading - Cancellation of authorisations because of cancellation etc of general and on licences [Amendment]

This clause replaces the heading at section 64 of the existing Act to include the cancellation of authorisation certificates in line with the new licensing and authorisation framework and arrangements.

Clause 27 Section 64 [Amendment]

This clause replaces 'a gaming machine licence' at section 64 of the existing Act with 'an authorisation certificate' to reflect the new licensing and authorisation framework and arrangements.

Clause 28 Section 64 [Amendment]

This clause replaces 'the gaming machine licence' at section 64 of the existing Act with 'the authorisation certificate' to reflect the new licensing and authorisation framework and arrangements.

Clause 29 Section 65 heading - Return of licence and authorisation certificate on cancellation [Amendment]

This clause replaces the heading at section 65 of the Act to include the return of authorisation certificates on cancellation, in line with the new licensing and authorisation framework and arrangements.

Clause 30 Section 65 (1) (a) [Amendment]

This clause amends subsection 65 (1) (a) of the existing Act to include 'or an authorisation certificate' to reflect the new licensing and authorisation framework and arrangements.

Clause 31 Section 65 (2) [Amendment]

This clause replaces subsection 65 (2) in the existing Act to reflect that it is an authorisation certificate that would be cancelled under section 64 (2) or section 64 (3), in line with the amendments at clause 27 and 28 above.

Clause 32 Section 65 (3) [Amendment]

This clause replaces subsection 65 (3) in the existing Act to extend the application of this provision to include that, following cancellation, a person must return the authorisation certificate (including the authorisation schedule) as well as the licence to the commission. This amendment reflects the new licensing and authorisation framework and arrangements.

The licence or authorisation certificate (including the authorisation schedule) must be returned to the commission as soon as practicable, but no later than one week after the day the cancellation takes effect. A failure to do so is a strict liability offence, with a maximum penalty of 50 penalty units. This offence provision has been retained from the existing Act and is necessary to ensure that licensees are not purporting to be licensed and authorised to operate gaming machines when they are not. (Note also discussion of *Human Rights Implications* above).

Clause 33 New section 65A - Cancellation of licences and authorisation certificate – disposal of gaming machines [New provision]

This clause inserts a new section 65A in part 4 of the Act which provides for the forfeiture of authorisations to the Territory and allows the commission to give directions about the disposal of gaming machines where a licence and authorisation certificates have been cancelled under the disciplinary provisions of part 4.

Given that the person would no longer be a licensee at that point in time, as their licence would have been cancelled, a specific offence provision has been included requiring compliance by the person with the commission's direction on the disposal of any gaming machines. Subsection 65A (3) provides for a maximum penalty of 50 penalty units.

The explanatory note clarifies that section 23 of the Control Act provides that an authorised officer may enter and inspect any premises at any reasonable time to do the things mentioned in that section, including inspecting and removing any gaming equipment the officer believes on reasonable grounds to be connected with an offence against a gaming law. This may include seizing gaming machines that have not been disposed of in accordance with this section.

Clause 34 Section 71 (1) – Computer cabinet access register [Amendment]

This clause replaces the wording of 'licensed gaming machines' at section 72 (1) of the existing Act with 'gaming machines'.

Clause 35 New part 6A heading – Part 6A Gaming machine dealings [New provision]

This clause provides a new part heading at 6A in the existing Act for clarity.

Clause 36 Sections 98 to 100 [Amendments]

The amendments in this clause are necessary as a consequence of the introduction of the new licensing and authorisation framework. It will no longer be a requirement for a licensee to seek the commission's approval to acquire a gaming machine. However, the amendments below reflect that any acquisition needs to be in line with the new framework.

Section 98 in the existing Act is replaced to provide for offences if a person intentionally acquires a gaming machine or peripheral equipment for a gaming machine; and

- does not have a licence and authorisation certificate allowing the operation of the gaming machine at the person's premises (unless they have been appointed as an external administrator and the commission has received written notice of the appointment);
- the gaming machine or peripheral equipment is not approved by the commission for use in the Territory under section 69 (Approval of gaming machines and peripheral equipment); or
- does not hold an authorisation for the gaming machine.

To remove any doubt in relation to the meaning of acquiring a gaming machine, an explanatory note is provided at subsection 98 (1) (a) to refer to the Dictionary which defines acquire to mean taking possession of the gaming machine for the purposes of using it for gaming.

This section retains the maximum penalty of 100 penalty units, imprisonment for 1 year or both which applies to section 98 in the existing Act where a person intentionally acquires a gaming machine without the commission's approval. It is considered that a strong deterrent to the unauthorised acquisition of gaming machines is required.

A cross reference is provided at section 98 (5) to the definition of external administrator at section 105A, meaning any of the following appointed to manage the licensee's affairs:

- an administrator of the licensee;
- a liquidator of the licensee;
- a receiver of the licensee;
- a receiver and manager of the licensee.

Section 99 in the existing Act is amended to reflect the policy intent to substitute the commission's approval processes with a notification mechanism, where the onus is on the licensee to notify the commission about the proposed acquisition of authorisations and gaming machines for authorised premises.

The clause provides an explanatory note clarifying that the acquisition of an authorisation or gaming machine is a notifiable action (see part 13A and schedule 2). Note 2 clarifies that It is a condition of a licence that the licensee give the commission written notice of the details of a gaming machine installed on authorised premises within 3 days after the machine is installed or the commission gives the licensee a notice under section 124 (see section 45).

It is also a condition of a licence that the licensee not allow the gaming machine to be operated on the authorised premises until the notice under section 45 has been given to the commission (see section 46).

The requirement under section 99 of the existing Act for the licensee to provide the proposed contract for the acquisition and details of any proposed arrangements for financing the acquisition has been removed as it is now redundant given the person is no longer required to make an application for approval.

Section 100 of the existing Act has been amended to align with the new notification obligation and requires the commission to amend the authorisation schedule for the authorised premises to record the gaming machine serial number in the amendment and also provides the commission with the power to amend any other record held to include the information contained in the notice.

Subsection 100 (3) operates in conjunction with the forfeiture provisions of the trading scheme at section 127F (Trading authorisations – forfeiture requirement) and provides that the commission must amend the licensee's authorisation schedule to remove one authorisation for a gaming machines for every four authorisations the licensee acquires. This subsection and subsection 100 (5) expire on the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, schedule 1 (Other amendments – compulsory surrender).

A number of explanatory notes are provided for the purposes of clarification.
Subsection 100 (2) provides:

- *Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see *Legislation Act 2001*, section 104).
- *Note 2* The licensee must not acquire a gaming machine for the premises authorised under an authorisation certificate if the licensee does not hold an authorisation for the gaming machine (see section 98 (4)).

Subsection 100 (3) provides:

- *Note 1* On receiving a notice under this section, the commission must also amend the register of licences and authorisations to include details about the maximum number of authorisations for gaming machines to be held by the licensee after acquiring the gaming machines mentioned in the notice (see subsection 37E (2)).
- *Note 2* ***Maximum number*** of authorisations—see the dictionary.

Clause 37 Section 103 (2) (a) – Possession and operation of gaming machines [Amendment]

This clause replaces the wording of administrator, receiver, manager or liquidator in paragraph 103 (2) (a) of the existing Act with external administrator as section 105A provides that the definition of ***external administrator*** for a licensee, means any of the following appointed to manage the licensee's affairs:

(a) an administrator of the licensee;
(b) a liquidator of the licensee;
(c) a receiver of the licensee;
(d) a receiver and manager of the licensee.

Clause 38 New section 103 (3) [New provision]

This clause inserts a new cross reference at subsection 103 (3) of the existing Act to the definition of external administrator at section 105A, meaning any of the following appointed to manage the licensee's affairs:

- an administrator of the licensee;
- a liquidator of the licensee;
- a receiver of the licensee;
- a receiver and manager of the licensee.

Clause 39 Section 104 [Amendment]

Clause 39 replaces section 104 of the existing Act to modify the existing offence provision so that it applies to the operation of unauthorised or stored gaming machines.

Subsection 39 (1) extends the offence provision to include that a person commits an offence if the operation of the gaming machine is not allowed under an authorisation certificate.

A new subsection 39 (2) is provided which makes it an offence if a person operates a gaming machine and a storage permit applies to the gaming machine and the person is reckless about whether a storage permit applies to the gaming machine.

This clause retains the maximum penalty of 100 penalty units as provided in the existing Act in line with industry integrity, harm minimisation and consumer protection considerations.

Clause 40 Section 105 heading - Operation of gaming machines other than in accordance with authorisations [Amendment]

This clause replaces the heading at section 105 of the existing Act to replace 'licences' with 'authorisations' to reflect the new authorisation arrangements.

Clause 41 Section 105 (1) (b) and (c) [Amendment]

This clause replaces the word 'licence' with 'authorisation certificate' in line with the new authorisation framework and arrangements.

Clause 42 New section 105A Definitions – division 6.6 [New provision]

This clause inserts a new section 105A in the existing Act to include definitions of ***approval*** and ***external administrator*** to provide clarity for those terms used in this division.

The clause provides that, in this division:
approval means an approval under section 108 to repossess a gaming machine.
external administrator, for a licensee, means any the following appointed to manage the licensee's affairs:

(a) an administrator of the licensee;
(b) a liquidator of the licensee;
(c) a receiver of the licensee;
(d) a receiver and manager of the licensee.

Clause 43 Section 107 Approval for repossession – application [Amendment]

This clause amends section 107 of the existing Act to provide a specific approval mechanism for either a person enforcing a financial agreement or a supplier to apply to the commission for approval to repossess a gaming machine.

This clause retains the requirements for an application to be accompanied by information identifying-

- the person from whom the gaming machine is to be repossessed; and
- the premises where the gaming machine is currently held; and

- the details of the gaming machine.

This clause retains the explanatory notes at subsection (1) to provide clarity that:

- if a form is approved under the Control Act, s 53D for an application, the form must be used.
- a fee may be determined under s 177 for an application.

Clause 44 New section 109A - Repossessed gaming machines—amendment of authorisation schedule [New provision]

This clause inserts a new section 109A in the existing Act to provide that the commission must amend the authorisation schedule on receiving advice about the repossession of a gaming machine by either a person enforcing a financial agreement or a supplier who repossess a gaming machine from a licensee.

The clause also provides a requirement for the commission to issue the licensee with a replacement authorisation schedule to reflect the amendment.

Clause 45 New section 110A - Appointment of external administrator [New provision]

Clause 45 inserts a new section 110A in division 6.6 in the existing Act.

This clause provides a new section 110A for an obligation to be placed on an external administrator to notify the commission in writing of their appointment as external administrator as defined under section 105A.

Subsection (2) allows the commission to request in writing from the external administrator further information about their appointment.

Clause 46 Section 111 (2) - Unapproved disposal of gaming machines [Amendment]

Section 111 of the existing Act relates to the unapproved disposal of gaming machines. This clause replaces subsection 111 (2) to clarify that subsection 111 (1) does not apply if the person disposes of the gaming machine under a notification under section 113A (Disposal of gaming machines—notifiable action).

An explanatory note is provided to clarify that the defendant has an evidential burden in relation to the matters mentioned in section (2) (see Criminal Code, section 58).

Subsection 111 (3) retains the strict liability offence provision in the existing Act for this section (but is renumbered). (Note also discussion of *Human Rights Implications* above).

Clause 47 Section 112 (2) (c) Application for approval for disposal of gaming machines [Amendment]

Clause 47 replaces subsection 112 (2) (c) to simplify that the notification of the disposal of gaming machines under the authorisation certificate must be accompanied by information identifying the details of the gaming machine and removes the requirement to provide information about the class, kind and basic stake denomination of the machine.

Clause 48 New subsection 112 (3) [New provision]

Clause 48 inserts a new subsection 112 (3) to align with the new notification requirements under section 113A (Notifiable disposal of gaming machines) which contemplates disposal of gaming machines other than when the gaming machine is traded with the authorisation under division 6.10 (Trading of authorisations and gaming machines).

Clause 49 Section 113 (2) (a) (i) Approval of disposal of gaming machines [Amendment]

This clause replaces the reference to 'a licence' with 'an authorisation certificate' in line with the new authorisation framework and arrangements.

Clause 50 New sections 113A to 113D [New provisions]

Clause 50 inserts new sections 113A to 113D in division 6.7 in the existing Act to reflect the requirements for disposal of the physical gaming machines under the new licensing and authorisation framework.

Section 113A Disposal of gaming machines-notifiable action

Section 113A provides a positive obligation on the licensee to notify the commission of the proposal to dispose of the gaming machine for any of the reasons stated in subsection 113A (1), including:

- the authorisation for the gaming machine under division 6.10 (Trading of authorisations and gaming machines) is to be traded without the gaming machine;
- the gaming machine is to be sold to another licensee in the ACT or a local jurisdiction;
- the gaming machine is to be replaced with a new gaming machine;
- the gaming machine is to be returned to the approved supplier who sold the gaming machine;
- the gaming machine is to be sold to an approved supplier;
- the authorisation for the gaming machine is to be surrendered under section 37F (Surrender of licences and authorisations);
- the licensee's licence is to be cancelled under section 58 (Disciplinary action).

An explanatory note is provided after subsection 113A (1) (a) to clarify that a licensee must apply for a storage permit for gaming machines that are not being traded with an authorisation (see division 6.11 about storage permits).

These notifiable actions are subject to the licensee notifying the commission of the disposal process to be undertaken prior to any disposal or destruction action occurring. The provision must be read in conjunction with part 13A and schedule 2 about notifiable actions and specifically section 173E which provides for the date of effect of notifiable actions.

This clause provides a power to the commission to approve a proposed means of disposal.

Subsection 113A (4) provides that an approval by the commission under subsection (3) is a notifiable instrument that must be notified on the ACT Legislation Register under the *Legislation Act 2001*.

Section 113B Destruction of gaming machines-commission's attendance

This section provides that for any destruction of a physical gaming machine approved by the commission, the commission has the right to decide to be present to observe the actual destruction of the machine.

Subsection 113B (1) provides that the commission may elect to attend the approved gaming machine destruction and subsection (2) provides that any such attendance would require the commission to notify the licensee in writing of the commission's decision to attend within a reasonable time before the gaming machine is destroyed.

Explanatory notes are provided at section 113B to clarify that a fee may be determined under s 177 of the existing Act for this provision. A second note is provided at subsection 113B (3) in relation to the service of documents, and refers to part 19.5 of the *Legislation Act 2001*.

Section 113C Disposal of gaming machines-direction about manner of disposal

Subsection 113C (1) provides for the commission to be able to direct a licensee in writing as to the manner in which a disposal is to be undertaken. Subsection 113C (2) provides that a licensee must comply with the commission's direction within the reasonable time stated in the direction under subsection (1).

Section 113D Offfence-failure to dispose of gaming machine within required time

This clause provides an offence provision at section 113D for non-compliance with the disposal requirements as stated in the direction by the commission under section 113C. Section 113D applies if:

- the commission issues a storage permit to a licensee; and

- the licensee fails to dispose of a gaming machine to which the permit applies within the time stated in the permit.

Subsection 113D (2) provides that the commission must direct the licensee to destroy the gaming machine in the way, and within the time, stated in the written direction.
Subsection 113D (3) provides that a failure to comply with a direction of the commission under subsection (2) is an offence that attracts a maximum penalty of 100 penalty units. However, subsection (4) provides that subsection (3) does not apply if the licensee has a reasonable excuse. This penalty has been set at this level to align with the penalty for an unapproved disposal in section 111 of existing Act.

Clause 51 Section 125 (1) (b) - Operation to be subject to correct percentage payout [Amendment]

This clause inserts the wording 'on authorised premises' after 'gaming machine' at section 125 (1) (b) of the existing Act.

Clause 52 Section 125 (1) (c) - Operation to be subject to correct percentage payout [Amendment]

This clause removes the wording 'on the licensed premises' from section 125 (1) (c) of the existing Act.

Clause 53 New divisions 6.10 and 6.11 [New provisions]

Clause 53 inserts two new divisions which provide for the trading scheme at division 6.10 and new storage provisions at division 6.11.

Division 6.10 Trading of authorisations and gaming machines

Division 6.10 provides the specific parameters for the trading of authorisations and gaming machines in the Territory.

Subdivision 6.10.1 Preliminary

Section 127A Objects – division 6.10

Section 127A at subdivision 6.10.1 provides an objects clause to outline the underlying purpose of division 6.10. The objects clause may assist to resolve uncertainty and ambiguity. The objects of division 6.10 are to facilitate:

(a) the trading of class C authorisations, with or without the related gaming machines, between class C licensees; and

(b) the reduction of the number of class B authorisations in the Territory by—

(i) allowing the trading of class B authorisations, without the related gaming machines, to class C licensees; and

(ii) the conversion of traded class B authorisations to class C authorisations.

An explanatory note is provided to clarify that the acquisition of an authorisation or gaming machine under division 6.10 is a notifiable action (see section 99). A second explanatory note clarifies that if a class C licensee acquires a class B authorisation, on receiving notification of the trade, the commission will amend the class C licensee's authorisation schedule to record the authorisation as a class C authorisation.

127B Definitions – division 6.10

To provide clarity, the following definitions have been inserted at section 127B for division 6.10:

- ***class B licensee*** means a licensee who is licensed to operate class B gaming machines in the ACT.
- ***class C licensee*** means a licensee who is licensed to operate class C gaming machines in the ACT.

Subdivision 6.10.2 Trading class B authorisations

Section 127C Selling class B authorisations

Clause 53 inserts provisions at section 127C for the selling of class B authorisations by a class B licensee known as the disposing licensee. One or more authorisations for class B gaming machines made be disposed of to a class C licensee, or, only where a business is being purchased, to a class B licensee or an applicant for a class B licence.

Other than in accordance with paragraph 127C (1) (b) which operates to facilitate the sale and purchase of an existing business with class B gaming machines, Class B licensees are not permitted to sell a class B authorisation to another class B licensee.

It is a requirement under subsection 127C (2) that the disposing licensee notify the commission about the disposal of a class B authorisation to a class C licensee. An explanatory note following subsection (2) clarifies that the disposal of a class B authorisation is a notifiable action (see part 13A and schedule 2). A second explanatory note is provided which clarifies that a notifiable action takes place –

(a) the prescribed number of days after the day the commission receives the notification (see section 173E (a)); or
(b) if the commission allows the notifiable action to take place on an earlier day—that day ((see section 173E (b)); or
(c) if the commission asks for additional information under section 173E (c)—when the commission has notified the licensee that it is satisfied in relation to the additional information (see section 173E (c)).

This clause inserts a new offence provision at subsection 127C (3) for the selling of class B authorisations for gaming machines through the sale of a business (an authorised premises) by a class B licensee to another person who is not a class B licensee or an applicant for a class B licence and authorisation certificate under section 28 (Licence and authorisation certificate for class B gaming machines—restricted application).

The maximum penalty prescribed is 100 penalty units. This offence is prescribed as a strict liability offence and this is discussed further in the *Human Rights Implications* above. The person who has been charged with an offence under this provision bears an evidential burden in relation to the matters if they wish to deny criminal responsibility under section 58 of the *Criminal Code 2002*. In recognition of human rights and in the interest of not unduly penalising a licensee, the Bill inserts a reasonable defence provision. Where a class B licensee took all reasonable steps to ascertain whether the purchaser was either a class B licensee or an applicant for a class B licence and authorisation certificate under section 28 (Licence and authorisation certificate for class B gaming machines—restricted application), the strict liability offence does not apply.

An explanatory note is also included to note the positive obligation on the acquiring licensee to notify the commission if they intend to acquire an authorisation from a class B licensee (see section 99).

Subsection 127C (7) clarifies that the selling of class B authorisations is subject to the forfeiture requirements for trading authorisations at section 127F. During Phase 1, an eligible class C licensee may acquire the class B gaming machine authorisations in groups of four (except in limited circumstances set out in subsection 127F (3)) and these may be acquired from more than 1 class B licensee. The acquiring class C licensee must forfeit one gaming machine authorisation to the Territory for every four acquired, meaning that the acquiring class C licensee will only receive three gaming machine authorisations.

The class B authorisations for gaming machines that have been acquired by the class C licensee will be converted to class C authorisations by the commission following notification.

Subsection 127C (8) provides that both subsection (7) and (8) expire on the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, schedule 1 (Other amendments—compulsory surrender), when Phase 2 commences.

Section 127D Offence – selling class B gaming machines

Offence provisions are provided at section 127D making it clear that a class B licensee is strictly prohibited from trading the actual physical machine in any circumstance other than in accordance with subsection 127D (1) (b). It is an offence for a class B licensee to sell the class B gaming machine where it is not part of the sale of an existing business, or approved

by the commission under section 113 or in accordance with a method of disposal under section 113A.

Subsection 127D (1) provides a maximum penalty of 100 penalty units and subsection (2) clarifies that an offence against section 127D is a strict liability offence. (Note also discussion of *Human Rights Implications* above).

Subdivision 6.10.3 Trading class C authorisations and gaming machines

Section 127E Trading class C authorisations and gaming machines

Clause 53 provides for the trading of class C authorisations and gaming machines at subdivision 6.10.3. Section 127E provides the parameters for the trading of class C authorisations and gaming machines. The restrictions on the sale of class B gaming machines in section 127C do not apply to class C licensees, who are permitted to trade authorisations with or without the related gaming machines.

Subsection 127E (1) provides that this section applies if an acquiring licensee –

- is allowed to operate class C gaming machines under an authorisation certificate issued for stated premises (the ***authorised premises***); and
- has less than the maximum number of authorisations for class C gaming machines under the authorisation certificate.

An explanatory note is provided to clarify that the ***maximum number*** of authorisations means the maximum number of authorisations for gaming machines that a licensee may have under an authorisation certificate.

Subsection 127E (2) provides that the acquiring licensee may acquire authorisations for the authorised premises (with or without the related gaming machines) from 1 or more class B or class C licensees (a ***disposing licensee***). Explanatory notes are provided after subsection (2) to clarify that a class C licensee who intends to acquire an authorisation or gaming machine under this subdivision must tell the commission about the acquisition under section 99. The acquisition is a notifiable action under section 99, section 173D and schedule 2. In addition if the class C licensee notifies the commission about the acquisition of a gaming machine for authorised premises, the class C licensee's authorisation schedule for the authorised premises will be amended by the commission to record the gaming machine's serial number (see section 100 (2)).

Subsection 127E (3) provides that the disposing licensee may dispose of 1 or more authorisations to the acquiring licensee.

Subsection 127E (4) clarifies that section 127E is subject to the 1 in 4 forfeiture requirement at section 127F. Subsection (5) provides that both subsection (4) and (5) expire on the

commencement of the *Gaming Machine (Reform) Amendment Act 2015*, schedule 1 (Other amendments—compulsory surrender), when Phase 2 commences.

Section 127F Trading authorisations - forfeiture requirement

Section 127F provides for the forfeiture requirements under Phase 1 of the trading scheme.

Subsection 127F (1) provides that forfeiture requirements apply to the acquiring licensee whether the acquisition is with or without the related gaming machine. Section 127F (2) clarifies that the acquiring licensee must acquire the gaming machine authorisations in groups of four and may acquire them from more than one class B or class C licensee. An example is provided here to assist in understanding the operation of the provision.

Subsection 127F (3) provides a limited exception to the 'bundling' requirement that four authorisations must be acquired. This exception applies where the disposing licensee intends to surrender an authorisation certificate under section 37F (Surrender of licences, authorisation certificates and authorisations) and has less than 4 authorisations to dispose of under the authorisation certificate. This provision is intended to support trading by licensees with a small number of authorisations (or a small residual number of authorisations after trading others in bundles of four), where they no longer intend to operate gaming machines.

Subsection 127F (4) provides that in all circumstances it is the responsibility of the acquiring licensee to forfeit one authorisation to the Territory for every four authorisations the licensee acquires. Subsection 127F (5) makes it clear that the acquiring licensee is not entitled to claim compensation from the Territory for an authorisation forfeited to the Territory under the trading scheme at subsection (4).

Under subsection 127F (6), the forfeiture provisions will be repealed at the commencement of the *Gaming Machine (Reform) Amendment Act 2015*, schedule 1 (Other amendments—compulsory surrender), when Phase 2 commences.
In Phase 2, a licensee will still be able to trade authorisations to other ACT licensees, however, forfeiture will no longer apply as the maximum number of authorisations will be limited to 15 authorisations per 1,000 adults.

Section 127G Offence – acquiring authorisations and gaming machines, 127H Selling class C gaming machines and 127I Selling class C authorisations

Clause 53 provides offence provisions at sections 127G, 127H and 127I respectively. Subsection 127G (1) provides that an offence is committed if the acquiring licensee acquires an authorisation or gaming machine for authorised premises; and the acquisition is not made in accordance with this Act. A maximum penalty of 100 penalty units applies and this is classed as a strict liability offence under subsection 127G (2).

Subsection 127H makes it an offence to sell a class C gaming machine to anyone who is not a class C licensee. However, it is not an offence if the sale of class C gaming machines is approved by the commission under section 113 (Approval of disposal of gaming machines); or part of a method of disposal approved by the commission under section 113A (Disposal of gaming machines - notifiable action).

Subsection 127I provides that it is an offence to sell a class C authorisation to a person who is not a class C licensee.

The offence provisions at section 127H and 127I are prescribed as strict liability offences and both include a reasonable defence provision in the interest of not unfairly penalising a licensee. The strict liability offence does not apply where a class C licensee took all reasonable steps to ascertain whether the purchaser was a class C licensee. The maximum penalty applied is 100 penalty units. (Note also discussion of *Human Rights Implications* above).

Subdivision 6.10.4 Trading authorisations and gaming machines - miscellaneous

Section 127J Trading authorisations—disposal of gaming machines

Where an authorisation is disposed of under division 6.10 by the disposing licensee but the related gaming machine is not disposed of with the authorisation, section 127J requires the disposing licensee to apply for an interim storage permit under section 127O (Storage permit – application) for the gaming machine and dispose of the gaming machine in accordance with the notifiable action requirements for disposal of gaming machines at section 113A.

Section 127K Trading authorisations and gaming machines - regulations

Section 127K provides subordinate law making powers prescribing conditions and requirements for the trading of authorisations and gaming machines under division 6.10 and provides that the commission may make recommendations to the Minister for regulations in relation to the operation of the trading scheme.

Subsection 127K (1) provides that a regulation may prescribe the conditions relating to the trading of authorisations and gaming machines under division 6.10, including—

- restricting or suspending the trading of authorisations or gaming machines in a stated location; or for a stated period, or until a stated event occurs; and
- any other requirements in relation to the trading of authorisations (with or without gaming machines) under division 6.10, including in relation to arrangements for acquiring or disposing of gaming machines.

Subsection 127K (2) provides a mechanism for the commission to make recommendations to the Minister for appropriate regulations under subsection (1), including in relation to:

- whether the increase of trading in authorisations (with or without gaming machines) in a particular location will have an adverse effect on problem gamblers;
- whether it is in the public interest to restrict or suspend the trading of authorisations (with or without gaming machines) either generally or in a specific locations.

Subsection (3) provides that if the commission makes recommendations to the Minister under subsection (2), the Minister must consider those recommendations.

Division 6.11 Storage of authorisations and gaming machines

Clause 53 provides for new storage and quarantine permit provisions at division 6.11.

Subdivision 6.11.1 Interpretation

Section 127L Meaning of storage permit - Act

This clause introduces a new meaning of storage permit at section 127L that provides that a ***storage permit*** means a permit that authorises a licensee to store one or more gaming machines, with or without the authorisations for the gaming machines for the purpose, period and at the place as stated in the permit.

Section 127M Definitions – division 6.11

This clause inserts twelve new definitions at section 127M to provide clarity for those terms used in division 6.11, including:

- ***general purpose*** means a storage permit to store 1 or more gaming machines and the authorisations for the gaming machines for a stated period of not longer than 12 months.
- ***inspection notice*** means a written notice given by the commission to a licensee who holds a permit.
- ***interim purpose*** means a storage permit to store 1 or more gaming machines to be disposed of or destroyed for a period of not longer than 3 months.
- ***permit*** means a quarantine permit or a storage permit.
- ***quarantined authorisation*** means an authorisation stored under a quarantine permit.
- ***quarantined gaming machine*** means a gaming machine stored under a quarantine permit.
- ***quarantine period***, for a gaming machine and authorisation to which a quarantine permit applies, means the period for which the gaming machine and authorisation are to be stored under the permit.
- ***quarantine permit*** means a permit for storing the gaming machines and authorisations where the licensee wants to remove 1 or more gaming machines and the authorisations for the gaming machines from the authorised premises where the gaming machines are being operated.

- ***storage period***, for a gaming machine or authorisation to which a storage permit applies, means the period for which the gaming machine or authorisation is to be stored under the permit.
- ***storage rules*** means the rules determined by the commission in relation to the storage of gaming machines and authorisations under a permit in section 127ZF.
- ***stored authorisation*** means an authorisation stored under a storage permit.
- ***stored gaming machine*** means a gaming machine stored under a storage permit.

Subdivision 6.11.2 Storage permits—application and decision

Section 127N Storage permits - purpose

The new storage permit provisions provide for three types of storage permits which replace the previous storage arrangements at section 26 of the existing Act. Under the new storage arrangements a licensee may apply under section 127N for a storage permit for the following purposes:

- a general purpose storage permit under section 127N (a) - to store 1 or more gaming machines, and the authorisations for the gaming machines, for a stated period of not longer than 12 months. For a general storage permit only, the commission can, on application, extend the term of the general purpose storage permit under section 127W.
- an interim storage permit under section 127N (b) – to store 1 or more gaming machines to be disposed of or destroyed for a period of not longer than 3 months.
- a quarantine storage permit under section 127Q – remove 1 or more gaming machine and the authorisations for the gaming machines from the authorised premises and to store the gaming machines and authorisations for a period to be agreed with the commission noting that the minimum quarantine period is 1 year and not more than 3 years. The provisions relating to quarantine storage permits will apply from the commencement of the trading scheme and will be repealed at the commencement of Phase 2 of the trading scheme.

Section 127O Storage permit - application

This provision provides for the application requirements under section 127N that apply to a licensee for an application for a storage permit. Class B licensees may only apply for a storage permit for a general purpose where the permit is required for a good reason (such as during renovations or where premises have been damaged). Class C licensees are not required to provide a reason.

Subsection 127O (1) provides that a licensee may apply to the commission for a storage permit to store 1 or more gaming machines and the authorisations for the gaming machines (if any).

Subsection 127O (2) clarifies that the application must –

- be in writing;
- state the purpose and period for which the storage permit is required;
- if the application is by a class B licensee for a storage permit for a general purpose, state why the storage permit is needed;
- state the class of gaming machine to be stored under the storage permit;
- state the place where each gaming machine to be stored is located;
- state the type of premises where each gaming machine is to be stored;
- state whether the premises will be used to store gaming machines for two or more licensees;
- state the serial number for each gaming machine to be stored under the storage permit; and
- state the authorisation number for each authorisation to be stored under the storage permit.

Explanatory notes are provided to clarify that:

- A class B licensee will not be issued with a storage permit for a general purpose unless the commission is satisfied that the storage permit is needed for a good reason (see section 127P (2) (c)).
- It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, part 3.4).
- If a form is approved under the Control Act, section 53D for an application, the form must be used.
- A fee may be determined under section 177 of the existing Act for this provision.

Section 127P Storage permit – decision on application

Under section 127P, the commission must issue the storage permit for applications received under section 127O to the licensee if satisfied:

- that the gaming machine and the authorisation (if any) to be stored under the permit are from the same authorised premises;
- that the type of premises where the gaming machines are to be stored are suitable for the storage of gaming machines;
- that, where a class B licensee has applied for a storage permit for a general purpose, the storage permit is needed for a good reason; and
- if 2 or more licensees are to store gaming machines at the premises—
  - that the premises where the gaming machines are to be stored are suitable for the storage of gaming machines by that number of licensees; and
  - that each licensee has applied for a storage permit under section 127O.

Examples are provided for paragraph 127P (2) (c) to indicate that renovations to the authorised premises or damage to the authorised premises may be considered good reasons.

An explanatory note is provided to clarify that the commission must include in the register the serial number of, and authorisation number for, a gaming machine stored under a storage permit for a general purpose (see section 37H (2) (d)).

Additional explanatory notes are included to cross reference the refusal provision at subsection 9 (2) where an application that is not properly completed does not need to be considered by the commission and provides that under these circumstances the application lapses. This clause also provides that if additional information in relation to an application is not given to the commission within the fixed time stated by the commission, the commission may refuse to consider the application and the application lapses if it is refused, (see subsection 9 (4)).

Subdivision 6.11.3 Quarantine permits

Section 127Q Quarantine permits—notification and issue

This section facilitates the quarantining of authorisations and gaming machines during Phase 1. The ability to quarantine gaming machines and authorisations supports structural adjustment leading up to the commencement of Phase 2 and the introduction of the ratio of 15 authorisations per 1,000 adults.

Section 127Q applies if a licensee wants to remove 1 or more gaming machines, and the authorisations for the gaming machines, from the authorised premises where the gaming machines are operated; and store the gaming machines and authorisations for a period to be agreed with the commission but not less than twelve months and not greater than three years. Whilst stored during the quarantine term, the gaming machines can be traded but cannot be returned to service until the minimum twelve month period has been served.

Licensees will be permitted to take any number of gaming machines off the floor and store them for a minimum period of twelve months. The Commission will monitor the number of quarantined gaming machines and authorisations and will report to the Minister.

Subsection 127Q (2) makes it a positive obligation on the licensee to notify the commission that a ***quarantine permit*** is required. On receiving a notification under subsection 127Q (3), the commission must issue a quarantine permit to the licensee for the period agreed between the commission and the licensee, however subsection 127Q (4) requires that it must be for a minimum period of 1 year and not longer than 3 years.

Explanatory notes are provided to clarify that it is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document

(see Criminal Code, part 3.4). If a form is approved under the Control Act, section 53D for an application, the form must be used. A fee may be determined under section 177 of the existing Act for an application. An additional explanatory note is provided after subsection 127Q (3) to require the commission to include in the register the serial number of, and authorisation number for, a gaming machine stored under a quarantine permit (see section 37H (2) (d)).

Section 127R Quarantine permits-extension

An extension provision is inserted at section 127R for a licensee to notify the commission of the period of extension sought. Under subsection 127R (2), once the commission has received a notification under subsection 127R (1) a new quarantine permit must be issued to the licensee by the commission for the extended period sought, as long as when the notification is made, the quarantine permit has not been in force for three years.

Subdivision 6.11.4 Permits-form

Section 127S Permit - form

Section 127S provides the form of a permit, that it must be in writing and include:

- the name of the licensee;
- the kind of permit;
- the day the permit comes into force and the day it expires;
- the authorised premises where each gaming machine and authorisation (if any) to be stored under the permit was operated;
- the number of gaming machines and authorisations (if any) to be stored under the permit;
- the conditions on the permit;
- a statement that a breach of a condition of the permit may be a ground for disciplinary action;
- a statement that it is an offence under section 104 (Operating unauthorised or stored gaming machines) to operate a stored or quarantined gaming machine during the period of the permit;
- a schedule containing the information mentioned in subsection (2);
- anything else prescribed by regulation.

Subsection 127S (2) requires that the schedule must state the serial number of and authorisation number for each gaming machine to be stored under the permit.

Under section 127S (1) (x) a regulation may prescribe other requirements in relation to the form of a permit.

Subdivision 6.11.5 Permits – conditions

Section 127T Permit – conditions

Clause 53 provides that a storage permit is subject to certain conditions imposed under subsection 127T (1) or subject to any other condition under subsection 127T (2) as prescribed by regulation, determined by the commission under the storage rules; or as imposed by the commission when the permit is issued, renewed or amended, if it is necessary to ensure the safe-guarding of gaming machines generally.

Subsection 127T (1) provides that a permit is subject to the following conditions:

- the licensee must comply with this Act;
- the licensee must not exchange a stored or quarantined gaming machine with another gaming machine that the licensee may operate under an authorisation certificate;
- the licensee must—
  (i) take meter readings from each gaming machine to be stored or quarantined under the permit; and
  (ii) immediately after taking the meter readings, render the gaming machine inoperable; and
  (iii) give the commission details of the meter readings taken under subparagraph (i);
- the licensee may dispose of a stored or quarantined gaming machine if—
  (i) the disposal is in accordance with division 6.10 (Trading of authorisations and gaming machines) or an approval under section 113 (Approval of disposal of gaming machines) or section 113A (Disposal of gaming machines—notifiable action); and
  (ii) the licensee gives the commission a notification under section 127X (Permit amendment—notification) to amend the permit ;
- a stored or quarantined gaming machine must not be operated during the period of the permit;
- the licensee must not operate another gaming machine under the authorisation for a stored or quarantined gaming machine;
- the licensee may trade a stored or quarantined authorisation with another licensee if—
  (i) the trade is in accordance with division 6.10 (Trading of authorisations and gaming machines); and
  (ii) the licensee applies for an amendment of the permit under section 127ZB (Trading authorisations under permits—procedure);
- if the licensee receives an inspection notice, the licensee must allow an authorised officer to inspect the stored or quarantined gaming machines and the premises where the gaming machines are stored;
- for a storage permit issued for an interim purpose—the licensee must dispose of the gaming machine stored under the storage permit before the storage permit ends.

The note at subsection 127T (1) clarifies that the licensee must apply for—

(a) an amendment of the permit to remove the details of the stored or quarantined gaming machine; and

(b) if a new gaming machine is to be stored in place of the stored or quarantined gaming machine—a new permit for the new gaming machine.

The notes at subsection 127T (2) clarify that –

- A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see *Legislation Act 2001*, section 104).
- A permit may be amended under section 127Y or section 127Z.

Section 127U Permit - term

Section 127U provides for the term of a storage permit. Subsection 127U (1) and (3) respectively provide that a permit comes into force and expires on the day stated in the permit. Subsection 127U (2) provides that the commission must not issue a storage permit for a general purpose for longer than one year; or a storage permit for an interim purpose for longer than 3 months.

The following explanatory notes are provided:

- Note 1 See section 127Q for the period for which a quarantine permit may be issued.
- Note 2 The commission may extend the period of a quarantine permit (see section 127R).
- Note 3 The commission may extend the period of a storage permit for a general purpose (see section 127W).

Section 127V Storage permit – application for extension

This clause provides the ability and requirements for a licensee who holds a general storage permit to apply to the commission in writing for an extension under subsection 127V (1). Under subsection 127V (2) the application must be in writing signed by the licensee; and state why the licensee is seeking the extension. Subsection 127 V (3) provides that a storage permit will remain in force until the application for an extension is decided by the commission.

Section 127W Storage permit – extension decision

Subsection 127W (1) applies if the commission receives an application for a general storage permit extension under section 127V and subsection 127W (2) provides that the commission may either extend the storage permit or refuse to extend the term of the general storage permit if the permit has been in force for three years at the time of the application for an extension under subsection 127W (3).

If the application is refused the commission must provide the reasons in writing to the applicant under subsection 127W (4), consistent with the requirements outlined in section 179 of the *Legislation Act 2001*. Subsection 127W (5) provides that the commission may extend the term of the storage permit for a period not longer than 12 months.

Subdivision 6.11.6 Permits – amendment

Section 127X Permit amendment - notification

Section 127X provides the commission with the ability to amend storage permits in the following circumstances:

- to dispose of a stored or quarantined gaming machine in accordance with division 6.10 (Trading of authorisations and gaming machines) or an approval under section 113 (Approval of disposal of gaming machines); or
- to remove a stored gaming machine from storage under the permit so that it may be returned to operation at the authorised premises.

Subsection 127X (2) places a positive obligation on the licensee to notify the commission about the proposed disposal or proposed removal.

Explanatory notes are provided to clarify that:

- A proposed disposal or proposed removal is a notifiable action (see part 13A and schedule 2).
- The licensee is not required to provide a social impact assessment for the proposed removal.
- A failure to comply with subsection 127X (2) is a ground for disciplinary action (see section 57 (1) (c)).

Section 127Y Permit amendment - decision

Once the commission has received the notification about a proposed disposal or proposed removal under section 127X and any further information requested under section 173D (Notifiable actions) the commission may amend the permit within the time required under section 173D.

Section 127Z Permit amendment – commission's own initiative

The commission has been granted power under section 127Z to amend a permit on its own initiative to correct an administrative mistake, omission or error on the permit.

Section 127ZA Permit amendment – reissue of permit

The commission must reissue a permit under section 127ZA if the commission decides to amend the permit under section 127Z.

Subdivision 6.11.7 Permits—trading authorisations under permits

Section 127ZB Trading authorisations under permits - procedure

Section 127ZB provides for the circumstances where the stored or quarantined authorisation is traded during the term of the permit to an acquiring licensee under division 6.10 (Trading of authorisations and gaming machines). Subsection 127ZB (2) provides a positive obligation on the disposing licensee to notify the commission under part 13A and schedule 2 and to provide the commission with the details of the acquiring licensee and provide written notice to either:

- amend the disposing licensee's permit to remove references to the stored or quarantined authorisation and the gaming machine permitted under the authorisation; and
- if the physical gaming machine is not be going sold to the acquiring licensee - give the disposing licensee a storage permit for an interim purpose for the physical gaming machine to be stored.

Explanatory notes are provided which clarify that:

- The trading of a stored or quarantined authorisation is a notifiable action (see part 13A and schedule 2).
- If a form is approved under the Control Act, section 53D for an application, the form must be used.
- A fee may be determined under section 177 of the existing Act for an application.
- A failure to comply with this section is a ground for disciplinary action (see section 57 (1) (c)).

Section 127ZC Trading authorisations under permits—decision on application by disposing licensee

If the commission receives written notification from a disposing licensee for an interim storage permit under section 127ZB (2) for a non traded gaming machine to be disposed of under the trade mentioned in that section, the commission must issue the storage permit to the disposing licensee for a period not longer than 3 months, subject to the conditions in section 127T and in the form referred to in section 127S.

Section 127ZD Trading authorisations under permits—issue of permit to acquiring licensee

If the commission receives written notification from a disposing licensee under section 127ZB (2) (Trading authorisations under permits—procedure) in relation to the trade of an authorisation to an acquiring licensee and the disposing licensee also trades the gaming machine allowed under the authorisation to the acquiring licensee, the commission must issue a quarantine permit to the acquiring licensee if the disposing licensee holds a quarantine permit in relation to the gaming machine and authorisation.

The term of the quarantine permit must be issued for the remainder of the 12 months remaining on the quarantine permit under which the gaming machine and authorisation was previously stored.

Subdivision 6.11.8 Permits—miscellaneous

Section 127ZE Gaming machines and authorisations under permits—inspection

Section 127ZE provides arrangements and procedures for an authorised officer of the commission to undertake an inspection of the gaming machines and authorisations (if any) under a permit, and the premises where they are stored, by written notice within a stated reasonable time.

If the licensee does not comply with the inspection requirements at section 127ZE (1), disciplinary action may result and the commission may exercise its powers under the Control Act to undertake an inspection. Subsection 127ZE (2) provides that an inspection notice provided to the licensee must provide a statement to that effect. An explanatory note clarifies that the commission's powers of inspection under this section are in addition to the commission's powers of inspection under the Control Act (see Control Act, part 4).

Section 127ZF Storage of gaming machines and authorisations—rules

Section 127ZF provides the commission with the ability to make determinations in relation to the rules for the storage of gaming machines and authorisations. Subsection 127ZF (1) provides that the commission may determine rules in relation to-

- the class of gaming machine to which the rules apply;
- the type of premises where gaming machines must be stored;
- the circumstances in which premises may be used for storing gaming machines for two or more licensees;
- the minimum standard for security arrangements and safeguards for storing gaming machines under a permit;
- who may have access to a gaming machine stored under a permit;
- who is to be responsible for the storage of gaming machines under a permit;
- the records that must be kept for gaming machines and authorisations under a permit;
- the procedures for enabling the commission to inspect premises where gaming machines are stored.

Subsection 127ZF (2) provides that a determination made by the commission under section 127ZF (1) is a disallowable instrument which must be notified and presented to the Legislative Assembly under the *Legislation Act 2001*.

Clause 54 Divisions 6.5 to 6.11 – (as amended) [Amendment]

Clause 54 renumbers these divisions in the existing Act to 6A.1, 6A.2, 6A.3, 6A.4, 6A.5, 6A.6 and 6A.7.

Clause 55 Section 131 - Rendering gaming machines inoperable on authorisation ceasing to be in force [Amendment]

This clause amends section 131 in the existing Act to give effect to the policy decision that gaming machines are to be made inoperable on an authorisation certificate ceasing to be in force. Under section 131 the commission must ensure that each gaming machine on the authorised premises is inoperable if the following applies under subsection (a) to (d) –

(a) if the authorisation certificate ceased to be in force under section 64 (2) (Cancellation of authorisation certificate because of cancellation etc of general and on licences) or because the certificate expired—until the gaming machines are removed from the authorised premises; or

(b) if the authorisation certificate for the premises is suspended—during the suspension; or

(c) if the authorisation certificate for the premises has been cancelled—until the first of the following happens:

  (i) the gaming machines are removed from the authorised premises;

  (ii) the decision of the commission to cancel the authorisation certificate is set aside on an application for review of the decision; or

(d) if the authorisation certificate for the premises ceased to be in force under section 64 (3)—until the first of the following happens:

  (i) the gaming machines are removed from the authorised premises;

  (ii) the authorisation certificate is taken to be in force again under section 64 (4).

An explanatory note is inserted to clarify that section 64 (3) provides that a person's authorisation certificate for premises is cancelled if the person's general or on licence for the premises is cancelled.

Clause 56 Section 132 (1) Removal of gaming machines from premises [Amendment]

Clause 56 amends section 132 (1) of the existing Act by inserting the term 'or authorisation certificate' after 'licence', to give effect to the policy intent that gaming machines must be removed from a licensed premises when a licence or authorisation certificate ceases to be in force.

Clause 57 Subsection 132 (2) [Amendment]

This clause replaces subsection 132 (2) from the existing Act in line with the new authorisation framework. The section is revised so that it is an offence for a gaming machine to remain on a premises at the end of the required period and after the authorisation certificate ceases to be in force. This clause retains the maximum penalty of 50 penalty units.

Clause 58 Subsection 132 (3) Definition of relevant decision [Amendment]

Clause 58 amends the definition of relevant decision to add the term 'or authorisation certificate' to reflect the new licensing and authorisation framework.

Clause 59 Subsection 132 (3) Definition of required period, paragraph (a) (i) [Amendment]

Clause 59 amends the definition of required period in sub-paragraph (a) (i) of subsection 132 (3) of the existing Act to add the term 'or authorisation certificate' to reflect the new licensing and authorisation framework.

Clause 60 Section 133 (b) – Operation of linked-jackpot arrangements [Amendment]

Clause 60 amends the wording at section 133 (b) to replace 'authorised' with 'approved' in relation to linked-jackpot arrangements to avoid confusion with the new definition of authorisation that applies throughout the Bill as part of the new licensing and authorisation framework.

Clauses 61 to 72 Section 134 heading to section 144 (3) (b) [Amendments]

Clauses 61 to clause 72 primarily provide amendments to the wording of 'authorised', 'authorisation' and 'authorise' and replace it with 'approved', 'approval' and 'approve'. These amendments will avoid confusion with the new definition of authorisation that applies throughout the Bill as part of the new licensing and authorisation framework. Clauses 62, 64 and 67 replace 'licence' with 'authorisation certificate' to align with the terminology in the new licence and authorisation framework.

Clause 73 Section 146 (d) (ii) – Eligible clubs [Amendment]

Clause 73 inserts the wording 'and authorisation certificate' after licence to remain consistent with the new licence and authorisation framework.

Clauses 74 to 76 Section 148 (3) to section 149 (4), definition of club [Amendments]

Clauses 74 to clause 76 amends the wording in relation to the definition of a 'club' to replace the existing definition of club to reflect the new licensing framework. The existing provision states club 'means a club in relation to whose premises a licence is in force', and this will be replaced with club 'means a club for which a licence is in force'.

Clause 77 Section 153A (4), definition of at the licensed premises – Offence – ATM allowing withdrawals exceeding $250 [Amendment]

This clause omits the definition of 'at the licensed premises' at section 153A (4) of the existing Act to align with the new licence and authorisation framework. This clause must be read in conjunction with clause 78 below, which provides a replacement definition that aligns with the new licensing and authorisation framework.

Clause 78 Section 153A (4), new definition of *at the licensee's authorised premises* [Amendment]

This clause inserts a new definition at section 153A (4) of the Act and replaces the existing definition with '*at the licensee's authorised premises* includes in or on an exterior wall of the authorised premises'. As noted at clause 77 above, this change aligns with the new licensing and authorisation framework which provides that the premises are authorised not licensed.

Clause 79 Section 159 (3) Gaming machine tax –definition of prescribed percentage, paragraph (a) [Amendment]

Clause 79 provides for changes to taxation rates announced by the Minister as part of the Gaming Machine Reform Package.

This clause substitutes the definition of *prescribed percentage* in paragraph (a) in subsection 159 (3) of the existing Act that outlines the percentage of tax that is payable on monthly gaming machine revenue by clubs. This amendment increases the monthly revenue thresholds used to calculate the percentage of tax payable, and either reduces or increases the percentage payable according to the thresholds reached. Paragraph (a) provides in relation to a licensee that is a club—

(i) for the part of the gross revenue of the club for the month that is $25 000 or less—nil; and
(ii) for the part of the gross revenue of the club for the month that is more than $25 000 but less than $50 000—17%; and
(iii) for the part of the gross revenue of the club for the month that is more than $50 000 but less than $625 000—21%; and
(iv) for the part of the gross revenue of the club for the month that is $625 000 or more—23%.

Subsection 159 (3) retains the existing paragraphs (b) and (c) that the prescribed percentage, for a month, means:

(b) in relation to a licensee that is not a club – 25.9% or
(c) in any other case – 100%.

Clause 80 Section 162 (1) - Gaming machine tax returns [Amendment]

Clause 80 replaces the wording 'the licence' with 'all authorisation certificates held by the licensee' at subsection 162 (1) of the Act to align with the new licensing and authorisation framework.

Clause 81 Part 13A – New Part - Notifiable actions [New provision]

This clause inserts a new Part 13A and sections into the existing Act that relate to notifiable actions where licensees are required to notify the commission in relation to future proposed actions. The intent of the new notification requirements where possible is to replace existing approvals in the Act noting that the Commission will have powers to void or modify

transactions. These provisions represent a move towards risk-based regulation in the specific areas outlined in schedule 2, without compromising the strong regulatory oversight of gaming machines provided through the existing Act and the Control Act.

Section 173C Meaning of notifiable action – part 13A

Clause 81 inserts a new section 173C into the Act which outlines the meaning of a notifiable action, as an action that is mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the action.

Section 173D Notifiable actions

Clause 81 inserts a new section 173D into the Act that outlines the procedure for a licensee to inform the commission in writing about a notifiable action. Under subsection (2) the notification must –

- be in writing; and
- be given to the commission at least the prescribed number of days before the day the licensee undertakes the notifiable action; and
- include anything else required by regulation.

Explanatory notes are provided for clarity and do not form part of the Act. The following is provided to clarify that –

- Part 19.5 of the Legislation Act provides for how documents may be given.
- It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, part 3.4).
- If a form is approved under the Control Act, section 53D for this provision, the form must be used.
- A fee may be determined under section 177 of the existing Act for this provision.
- It is a condition of a licence that the licensee give the commission written notice of the details of a gaming machine installed on authorised premises within 3 days after the machine is installed or the commission gives the licensee a notice under s 124 (see section 45). It is also a condition of a licence that the licensee not allow the gaming machine to be operated on the authorised premises until the notice under section 45 has been given to the commission (see section 46).

Under subsection (3) on receipt of the notification the commission may request further information from the person giving the notification or if the notifiable action relates to the trading of a gaming machine under division 6.10 (Trading of authorisations and gaming machines), the disposing licensee; and the acquiring licensee. Subsection (3) provides an explanatory note to clarify that part 19.5 of the Legislation Act provides for how documents may be served.

Under subsection (4) the commission must state a reasonable time that the information is due to the commission. Subsection (4) provides an explanatory note to clarify that a failure to comply with section 173D is a ground for disciplinary action (see section 57 (1) (c)).

Subsection (5) clarifies that ***the prescribed number of days*** means 10 business days or if a regulation prescribes a different number of days – that number of days.

Section 173E Notifiable actions – date of effect

Clause 81 inserts a new section 173E which clarifies when a notifiable action takes effect. The general principle under this section is that all actions take effect the prescribed number of days after the day the commission receives a notification action, or where the commission allows the action to occur on an earlier day then the action will take effect from that day. This section also provides for instances where the commission has given a notice under section 173D (3) requesting further information in relation to the notification that the action may occur once the commission has advised the licensee that the required information has been received and it is satisfied in relation to the further information. An explanatory note is provided that clarifies for working out periods of time generally, see the Legislation Act, section 150.

Section 173F Notifiable actions – amendment or cancellation

Clause 81 inserts a new section 173F that provides the necessary mechanism for a licensee to notify the Commission if they wish to void or modify an action that they have previously notified the commission under the notification requirements. Written notice must be provided to the Commission by the licensee before the notifiable action takes place. Subsection (2) provides explanatory notes to clarify that –

- It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, part 3.4).
- Part 19.5 of the Legislation Act clarifies how documents may be given.
- If a form is approved under the Control Act, section 53D for this provision, the form must be used.
- A fee may be determined under section 177 of the existing Act for this provision.

An amendment under this section will take effect 10 business days after the day the commission receives written notification of the amendment. Whereas a cancellation will take effect on the date that the commission receives written notification of the cancellation.

Section 173G Notifiable actions under s 37F

This clause inserts a new section 173G into the Act that outlines the information required for a notifiable action made under section 37F of the Act in relation to the surrender of licences, authorisations certificates and authorisations. If the notification relates to a gaming machine stored under a storage permit it must include information relating to the place

where the gaming machine is to be stored and the gaming machine's serial number. Subsection (2) provides an explanatory note to clarify that section 127P provides for the issue of a storage permit. The licensee must provide the commission with the gaming machines meter readings taken from the gaming machine from the date that the notifiable action takes effect under section 173E (Notifiable actions – date of effect) and also render the machine inoperable from that same date. It is a requirement that the licensee give the commission the details of the meter readings under subsection (3) (c).

Section 173H Notifiable actions under div 6.10 – disposal of gaming machines

This clause inserts a new section 173H into the Act that outlines the information required for a notifiable action made under division 6.10 of the Act in relation to the trading of authorisations and gaming machines. The information required for this notification includes:

- the name of the disposing licensee;
- the date and licence number of the disposers licence;
- the authorisation number of the disposers authorisation for the gaming machine;
- the date of disposal;
- details of the gaming machine, including class, serial number and the game installed on the gaming machine.

If the notification relates to a class B gaming machine that is to be sold or returned to a supplier, information relating to the identity of the person or supplier who is acquiring the gaming machine is required, and if the gaming machine is to be sold or operated in a local jurisdiction, evidence that the acquirer is authorised to have the gaming machine under a law of the local jurisdiction.

Where a gaming machine is to be destroyed, the information required in the notification must include details of how the gaming machine is to be destroyed, information identifying the person destroying the gaming machine, the date and time the gaming machine is proposed to be destroyed and the identity of the person destroying the gaming machine and the identity of the representative of the licensee at the gaming machine's destruction.

This clause provides an alternative at subsection (3) for the licensee to negotiate a date as agreed with the commission if the disposal did not occur on the intended date as mentioned in subsection (2) (d). The licensee must provide the commission with the gaming machines meter readings taken from the date that the notifiable action takes effect under section 173E (Notifiable actions – date of effect), render the machine inoperable from that same date and provide the commission with the details of the meter readings.

Section 173I Notifiable actions under division 6.10 – trading of class B authorisations

This clause inserts a new section 173I in the Act that relates to the conversion of class B authorisations to class C authorisations. This section applies if the commission receives a notice from a class B licensee in relation to the disposal of a class B authorisation to a class C

licensee under division 6.10 which relates to the trading of authorisations and gaming machines. The commission must amend the class C licensee's authorisation schedule to include the details of the acquired authorisations if the class B authorisations are acquired by a class C licensee. The commission must also either cancel the class B licensee's licence and authorisation certificate if all the class B authorisations are disposed or in any other case amend the authorisation schedule to remove the authorisations to be disposed. An explanatory note is provided that calcifies for the acquisition of class B authorisations as part of the purchase of a disposing licensee's business, see division 2B.4.

Clause 82 New section 174A Licences and authorisations not personal property – PPS Act [New provision]

Clause 82 inserts a new section 174A into the existing Act. Section 174A provides that a licence or authorisation certificate is not ***personal property*** under section 10 of the *Personal Property Securities Act 2009* (Cwlth).

Clause 83 Section 175 (2) Canberra Airport [Amendment]

This clause removes subsection 175 (2) in the existing Act that prohibits an approval being given under section 100 to acquire a gaming machine to be operated at Canberra Airport and replaces it with a provision that prohibits an authorisation certificate being given for the operation of gaming machines at Canberra Airport. This change is consequential to the introduction of the new licensing and authorisation framework and arrangements. There is no change to the existing policy position in relation to the prohibition of the operation of gaming machines at Canberra Airport.

Clause 84 Evidentiary certificates Section 176 [Amendment]

Clause 84 amends section 176 of the Act by inserting 'or authorisation certificate' after the word 'licence' to reflect the new licensing and authorisation framework and arrangements.

Clause 85 New part 20 – Transitional – Gaming Machine (Reform) Amendment Act 2015 [New provision]

As a result of amending the existing Act, this clause provides transitional provisions to deal with the transition from the old law to the new law, including ensuring those who are licensed under the old law continue to be licensed under the new law.

Clause 85 provides that the transitional provisions commence the day the *Gaming Machine (Reform) Amendment Act 2015*, section 4 commences.

For the purposes of the transitional provisions an *old licence* means a licence issued under section 12 (Issue of licences) under the existing Act, as in force before the commencement day, where that licence is in force immediately before the commencement day. An *old licence application* means an application for a licence made under section 10A (Initial licence applications – eligibility), as in force before the commencement day.

Clause 85 provides for transitional provisions specifically in relation to:

- Old licences – class B gaming machines (section 301);
- Old licences – class C gaming machines (section 302);
- Class B gaming machines – application (section 303);
- Class C gaming machines – application (section 304);
- Large-scale machine relocation amendment application (section 305);
- In-principle approval application (section 306);
- Application to transfer in-principle approval (section 307);
- Application for extension of in-principle approval (section 308); and
- Application to convert in-principle approval to licence (section 309).

Section 310 of clause 85 provides for transitional regulations which may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Gaming Machine (Reform) Amendment Act 2015*. A regulation may modify part 20 (including in relation to another Territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is adequately or appropriately, dealt with in part 20 of the Act. A regulation has effect despite anything elsewhere in this Act or another territory law.

The capacity to modify an Act through subordinate legislation is referred to as a 'Henry VIII' clause. It is acknowledged that these clauses are generally not preferable. In developing the Bill, every attempt has been made to foresee issues arising in the transition. However, it is considered that this provision is necessary in this Bill as there is no practical alternative available to ensure that any unforeseen matters which might arise during the implementation of the Bill's provisions can be addressed expediently. This power is limited by time and is confined to the purpose of supporting the enactment of the Bill.

Transitional provisions are kept in the Act for a limited time and as such the transitional provisions at part 20 expire 4 years after the commencement day. Transitional provisions are repealed on expiry but continue to have effect after repeal (see *Legislation Act 2001*, section 88).

Clause 86 Schedule 1 Reviewable decisions [Amendment]

This clause provides for an amended schedule 1 which provides for the review of certain decisions made under the Act and specifies who is entitled to seek a review under the Act.

Clause 86 establishes a list of 49 decisions that may be reviewed under the Act. The schedule should be read in conjunction with Part 13 – Reviewable decisions, to establish which decisions may be reviewable. Each reviewable decision is noted with its relevant clause. The schedule table is replaced in its entirety, so the decisions listed include reviewable decisions provided under the existing Act.

Clause 87 Schedule 2 Notifiable actions [New provision]

This schedule inserts a new schedule 2 and provides a list of nine notifiable actions for the purposes of this Act. This schedule should be read in conjunction with section 173C – Notifiable actions which defines a notifiable action to mean an action mentioned in column 3 in this schedule under a provision of this Act mentioned in column 2 in relation to the action.

Clause 88 Dictionary [Amendment]

This clause replaces the Dictionary in the existing Act in its entirety. The Dictionary provides the definitions of key words and phrases used throughout the entire Act. Certain terms relevant to the Act are defined in the *Legislation Act 2001* and these are outlined at the start of the Dictionary. Note that definitions relevant only to specific provisions may be included within individual clauses and these definitions have a more limited application.

Clause 89 Further amendments, mentions of *licensed* etc [Amendment]

This clause inserts a new list of amendments in relation to any mention of *licensed* throughout the existing Act. The words listed in column 4 replace those words listed in column 3. Column 2 refers to those specific provisions which are affected by the amendments.

Clause 90 Further amendments, mentions of *machine* etc [Amendment]

Clause 90 inserts a new list of amendments in relation to any mention of *machine* throughout the existing Act. The word *gaming* in column 4 is inserted before the word *machine* in column 3. Column 2 refers to those specific provisions which are affected by the amendments.

Schedule 1 Other amendments – compulsory surrender [New provisions]

Schedule 1 should be read in conjunction with the revised part 2A introduced by clause 4. This schedule provides the Phase 2 provisions as outlined above in the *Overview*, including the introduction of a population-based ratio for the maximum number of gaming machine authorisations and the compulsory surrender required to achieve the ratio. The schedule also provides for the 2-yearly analysis of the ratio to be undertaken by the Minister and establishes the framework for a tender process to release further authorisations, at the Minister's discretion, provided that the maximum ratio is not exceeded.

The quarantine provisions do not apply during Phase 2 of the reforms once the ratio has commenced. A number of the amendments in schedule 1 provide consequential amendments that remove references associated with quarantine permits (see below).

The commencement provisions in clause 2, in conjunction with section 77 (1) of the *Legislation Act 2001*, provide the Minister with the discretion to commence this schedule on

a day fixed by written notice. This discretion might be exercised, for example, should the Minister consider that the quarantine provisions are not operating effectively to reduce the number of gaming machines being operated as part of the structural adjustment leading up to the commencement of Phase 2 and the introduction of the ratio.

In accordance with subsection (3) of clause 2, if schedule 1 has not commenced within three years beginning on the commencement of clause 53 (the trading provisions), it will automatically commence on the day after that period. Note that automatic commencement under section 79 of the *Legislation Act 2001* does not apply to this Act.

Amendment 1.1 Part 2A - Gaming machine authorisation numbers

Section 10 Maximum number of authorisations for gaming machines allowed in ACT

The commencement of this schedule in Phase 2 will introduce a new mechanism where the maximum number of authorisations for gaming machines for all authorised premises in the ACT must not exceed 15 authorisations for every 1,000 adults living in the ACT. Note also the discussion at clause 4, section 10 above in relation to the maximum number of authorisations during Phase 1.

There is no Ministerial discretion to vary this maximum ratio (15 authorisations per 1,000 adults), an amendment to the Act would be required.

Section 10A Gaming machine numbers - 2-yearly analysis

The schedule provides that the Minister must undertake an analysis to establish the maximum number of authorisations for gaming machines for all authorised premises in the ACT. A report of this analysis must be tabled in the Legislative Assembly within three months after it is undertaken. The first analysis must be undertaken on the commencement of Phase 2 (the commencement of this section), and at least once every two years after that.

Section 10B Gaming machine numbers-compulsory surrender if maximum exceeded

Section 10B provides for the compulsory surrender of authorisations on the commencement of Phase 2 if the number of authorisations for gaming machines for all authorised premises in the ACT exceeds the maximum number allowed under section 10 (Maximum number of authorisations for gaming machines allowed in ACT).

Subsection 10B (2) provides that licensees allowed to have 20 or more authorisations for gaming machines under their authorisation certificate are required to surrender the number of gaming machines prescribed by regulation. Smaller venues with less than 20 authorisations will not be required to contribute to the compulsory surrender.

Subsections 10B (3), (4) and (5) set out obligations of the licensee and the commission in relation to the gaming machines, the amendment of authorisation certificates and

authorisation schedules as a result of the surrender, and the issuing of storage permits as a result of the compulsory surrender.

A 28 day transitional period is provided for the licensee to comply with these requirements. If the licensee does not comply within the 28 days, the commission will give the licensee a notice stating they have a further 14 days to comply and advise the commission of the authorisations for gaming machines including the details that are subject to the surrender. A failure to comply with the commission's requirements may be subject to disciplinary action and the relevant offence provisions will be breached.

Subsection 10B (6) provides that the commission must give the licensee a storage permit for an interim purpose under division 6.11 for each gaming machine under an authorisation to be surrendered to the Territory. These stored gaming machines will be subject to the disposal provisions at section 127N (b) which require the stored gaming machines to be disposed of within three months or before the interim storage permit ceases. No further extensions of time will be granted by the commission after the three month period of the interim storage permit expires.

Section 10C Maximum gaming machine authorisation numbers exceeded - compulsory surrender

Section 10C includes similar provisions to section 10B, however, section 10B applies at the commencement of Phase 2 and this section applies if the 2-yearly analysis under section 10A shows that the total number of authorisations for gaming machines has exceeded the maximum 15 authorisations per 1,000 adults under section 10A. This would only occur as a result of population decline.

Section 10C (2) requires that the Minister undertake an analysis of the population growth of the ACT for the period prescribed by regulation. This will provide an indication of trends in the population growth and whether any decline in population is expected to be sustained or temporary.

Under section 10C (3), if 18 months after the analysis under section 10A, the number of authorisations for gaming machines for all authorised premises in the Territory continues to exceed the maximum number allowed under section 10, each licensee must surrender the number of authorisations prescribed by regulation.

Subsections 10C (4), (5) and (6) set out obligations of the licensee and the commission in relation to the gaming machines, the provision of certain information, the amendment of authorisation certificates and authorisation schedules as a result of the surrender, and the issuing of storage permits as a result of the compulsory surrender.

A 28 day transitional period is provided for the licensee to comply with these requirements. If the licensee does not comply within the 28 days, the commission will give the licensee a notice stating they have a further 14 days to comply and advise the commission of the authorisations for gaming machines including the details that are subject to the surrender. A failure to comply with the commission's requirements may be subject to disciplinary action and the relevant offence provisions will be breached.

Subsection 10C (7) provides that the commission must give the licensee a storage permit for an interim purpose under division 6.11 for each gaming machine under an authorisation to be surrendered to the Territory. These stored gaming machines will be subject to the disposal provisions at section 127N (b) which require the stored gaming machines to be disposed of within three months or before the interim storage permit ceases. No further extensions of time will be granted by the commission after the three month period of the interim storage permit expires.

Section 10D Maximum gaming machine authorisation numbers not exceeded—authorised tender

Section 10D applies if the analysis under section 10A shows that the total number of authorisations for gaming machines is below 15 authorisations per 1,000 adults in the Territory.

The Minister may declare under subsection 10D (2) that additional authorisations may be acquired by licensees through an authorisation tender. Note, however, that such a declaration is at the Minister's discretion and the Minister is under no obligation to release additional authorisations.

If the Minister declares that a tender process will be held to increase the number of authorisations, the trading scheme is to cease for the duration of the authorisation tender process to facilitate the authorisations to be traded and sold under a tender process.

Under subsection 10D (3) the Minister's declaration is a notifiable instrument.

Subsection 10D (4) provides a regulation making power in relation to the conduct of an authorisation tender. The regulation may prescribe the following:

- the frequency of, and the conditions for holding, authorisation tenders;
- the conditions under which an authorisation tender is to be conducted, including how a licensee may apply to participate in the tender;
- how a reserve or maximum price for an authorisation is to be determined, including the formula to be applied for calculating the reserve or maximum price for an authorisation;
- who is to conduct an authorisation tender;

- that a licensee may nominate a maximum amount for which the licensee will sell or buy an authorisation;
- whether a licensee will need a social impact assessment for acquiring an authorisation by tender.

Section 10E Acquisition of authorisations by tender

Section 10E provides that a licensee acquiring authorisations under an authorisation tender is required to notify the commission about the gaming machine acquired under the authorisation. This acquisition of a gaming machine is a notifiable action under part 13A and schedule 2.

Amendment 1.2 Section 127M, definitions

The definitions of permit, quarantined authorisation, quarantined gaming machine, quarantine period and quarantine permit will be omitted from the definitions at section 127M. These definitions will no longer be relevant once schedule 1 Other amendments - compulsory surrender has commenced, as quarantined permits will no longer exist.

Amendment 1.3 Subdivision 6.11.3

Subdivision 6.11.3 in the Act relates to quarantine permits. These permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced. Subdivision 6.11.3 will be repealed in its entirety at that time.

Amendment 1.4 Section 127S (1) (b) (ii) examples

This amendment will remove the reference to 'quarantine permit' in the examples at section 127S (1) (b) (ii) as these permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced.

Amendment 1.5 Section 127S (1) (b) (viii)

The reference to 'or quarantined' will be removed from section 127S (1) (b) (viii) as quarantine permits will no longer exist once schedule 1 other amendments – compulsory surrender has commenced.

Amendment 1.6 Section 127T (1)

The reference to 'or quarantined' will be removed from section 127T (1) as quarantine permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced.

Amendment 1.7 Section 127U (2), notes 1 and 2

Notes 1 and 2 at section 127U (2) refer to a quarantine permit. These notes will be omitted as quarantine permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced.

Amendment 1.8 Section 127X (1)

The reference to 'or quarantined' will be removed from section 127X (1) as these permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced.

Amendment 1.9 Section 127ZB

The reference to 'or quarantined' will be removed from section 127ZB as these permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced.

Amendment 1.10 Section 127ZD

Section 127ZD of the *Gaming Machine (Reform) Amendment Act 2015* relates to the issue of a quarantine permit to the acquiring licensee under the trading of authorisations. This amendment deletes section 127ZD as quarantine permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced.

Amendment 1.11 New section 173FA

Once schedule 1 Other amendments – compulsory surrender has commenced under the *Gaming Machine (Reform) Amendment Act 2015*, new section 173FA will become applicable. Section 173FA applies to a notifiable action under section 10E in relation to the acquisition of authorisations by tender. Subsection 173FA (2) requires that a notification must include information in relation to the gaming machine the licensee acquired under the authorisation, including the gaming machine's serial number, the gaming machine's meter reading at the time of the acquisition and the gaming machine's authorisation number.

Amendment 1.12 Schedule 2, new item 1A

Once schedule 1 Other amendments – compulsory surrender has commenced under the *Gaming Machine (Reform) Amendment Act 2015*, the table of notifiable actions provided under schedule 2 of the Act will be amended to include a new item 1A in relation to the acquisition of a gaming machine as a consequence of an authorisation acquired under an authorisation tender.

Amendment 1.13 Dictionary

Once schedule 1 Other amendments – compulsory surrender has commenced under the *Gaming Machine (Reform) Amendment Act 2015*, the definitions of permit, quarantined authorisation, quarantined gaming machine, quarantine period and quarantine permit will be omitted as these definitions will no longer exist.

Amendment 1.14 Further amendments, mentions of *permit*

Amendment 1.14 inserts a new list of amendments in relation to any mention of *permit* throughout the entire Act. The words *storage permit* or *storage permits* in column 4 substitutes the word *permit* or *permits* in column 3. Column 2 refers to those specific

provisions which are affected by these amendments. The term 'permit' refers to both storage permits and quarantine permits in the listed provisions. As quarantine permits will no longer exist once schedule 1 Other amendments – compulsory surrender has commenced under the *Gaming Machine (Reform) Amendment Act 2015*, reference to permit/s will be amended to storage permit/s.