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**LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CASINO (ELECTRONIC GAMING) BILL 2017

REVISED EXPLANATORY STATEMENT

**Presented by
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CASINO (ELECTRONIC GAMING) BILL 2017

INTRODUCTION

This explanatory statement relates to the Casino (Electronic Gaming) Bill 2017 (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 Bill establishes a new Act – the Casino (Electronic Gaming) Act – to provide the framework for the introduction of electronic gaming products in the casino, subject to a redevelopment of the casino and the casino precinct occurring.

The Bill also makes consequential amendments to the:

- *Casino Control Act 2006*;
- *Gambling and Racing Control Act 1999*; and
- *Gaming Machine Act 2004*.

BACKGROUND

The new Casino (Electronic Gaming) Act (the Act) will form part of the suite of legislation which regulates gambling in the ACT.

The *Gambling and Racing Control Act 1999* provides for the administration of a range of gaming laws, including oversight and regulation of gaming and racing by the Gambling and Racing Commission established under that Act.

The Gambling and Racing Control Act is amended by the Bill to provide for the maximum number of electronic gaming authorisations allowed in the ACT. This maximum will include any gaming machine authorisations or fully automated table game (FATG) terminal authorisations held by the casino as well as authorisations for gaming machines in clubs and hotels.

The *Gaming Machine Act 2004* will continue to regulate gaming machines in clubs and hotels.

The new Act will regulate the acquisition of authorisations to operate casino gaming machines and FATG terminals, by the casino licensee. The Act also set outs the circumstances in which the licensee is able to operate gaming machines and FATG terminals,

including requirements about the gambling harm minimisation measures that must be in place.

The *Casino Control Act 2006* will continue to regulate the licensing and regulation of the casino. Under this Act, only one casino licence can be issued in the ACT.

OVERVIEW OF THE BILL

The Bill will establish a new Act which, among other things:

- requires the casino to undertake a Social Impact Assessment (SIA), including eight weeks of public consultation, before being issued a casino gaming machine authorisation certificate or a casino FATG authorisation certificate;
- provides for the casino licensee to acquire gaming machine authorisations from class B (hotel) and class C (club) licensees under the Gaming Machine Act;
- requires the casino to forfeit to the Territory one in every three gaming machine authorisations acquired;
- requires the casino to acquire at least half of its maximum number of authorisations from small and medium clubs or club groups or from hotels;
- provides that while class B and C licensees can sell authorisations to the casino, they cannot sell physical gaming machines to the casino;
- provides for gaming machine authorisations acquired by the casino licensee to be restricted so as not to permit the operation of gaming machines under the authorisations until the casino licensee has completed the prescribed stage of a casino redevelopment;
- provides that if the Gambling and Racing Commission is satisfied:
 - that the planning and land authority has certified that the casino licensee has completed the prescribed stage of development;
 - about the suitability of the gaming area and gaming rules and control procedures; and
 - of the sufficiency of harm minimisation strategies,the Commission must convert restricted authorisations into casino gaming machine authorisations and casino FATG terminal authorisations under which gaming machines and FATG terminals can be operated;
- provides for restricted authorisations to be forfeited to the Territory where a redevelopment does not proceed and the reason is within the control of the casino licensee;
- provides a limited period for restricted authorisations to be sold back to class C licensees where a redevelopment does not proceed in circumstances where the development approval coming to an end is not caused by the actions or omissions of the casino licensee;
- provides that where restricted authorisations are forfeited to the Territory the casino licensee cannot claim compensation;

- limits the number of gaming machine authorisations the casino can hold to a maximum of 200;
- limits the number of FATG terminal authorisations the casino can hold to 60, with one authorisation required for each FATG terminal (seat);
- provides for the following harm minimisation measures:
 - a requirement that any casino gaming machines or FATG terminals are able to be connected to a centralised monitoring system;
 - casino gaming machines are limited to a maximum stake amount of \$5, which can be reduced by regulation;
 - casino gaming machines can only be operated with a pre-commitment system that provides for the setting of a mandatory net loss limit and voluntary time limit.

Provisions of the new Act and consequential amendments to the Casino Control Act ensure that non-compliance with the requirements for the operation of gaming machines and FATG terminals by the casino will be subject to relevant disciplinary and offence provisions.

Consequential amendments insert new provisions in the Gambling and Racing Control Act providing for the maximum number of electronic gaming authorisations in the ACT. These provisions are relocated from the Gaming Machine Act which currently sets the maximum number of electronic gaming machine authorisations in the Territory, reflecting the fact that presently only clubs and hotels may acquire or operate these machines.

HUMAN RIGHTS IMPLICATIONS

During the Bill's development due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA). Through the operation of forfeiture provisions when the casino is acquiring authorisations, the measures introduced in the Bill support the Government's commitment to reduce the number of gaming machines in the Territory, which is intended to reduce gambling harm and support the right to protection of the family and children (section 11 HRA).

The pre-commitment provisions in the Bill engage the right to privacy and reputation (section 12 HRA).

The Bill includes a number of strict liability offences and may be seen as engaging the presumption of innocence until proven guilty (rights in criminal proceedings section 22(1) HRA).

An assessment of the Bill against section 28 of the HRA is provided below.

A Compatibility Statement under the HRA has been issued for the Bill by the Attorney-General.

Section 28 Human Rights Act Assessment

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (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; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Right to privacy and reputation, section 12

The nature of the right affected

Section 12 (Privacy and reputation) of the HRA 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.

The Bill requires a casino licensee to provide, operate and maintain a pre-commitment system (PCS) for casino gaming machines. It will be mandatory for all casino gaming machine players to set a net loss limit (the amount of money they are prepared to lose during a playing period). Players may also voluntarily set a time limit on play. The PCS interfaces with equipment or devices that identify a person intending to play the casino gaming machine. Therefore, in order for the PCS to function as intended, it will be necessary for a person wishing to play casino gaming machines to identify themselves. This requirement engages the right to privacy. The PCS provisions are set out in part 7 of the Bill.

The importance of the purpose of the limitation

The intent of the PCS is to minimise the harms of gambling to the individual player and society generally. The actions of one problem gambler negatively impacts the lives of between five and ten others¹, and the broader community is impacted through the financial, social and health impacts. Broader impacts associated with problem gambling include suicide, depression, relationship breakdown, lowered work productivity, job loss, bankruptcy and crime, such as fraud.²

¹ Productivity Commission (1999), *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, available at <http://www.pc.gov.au/inquiries/completed/gambling/report>.

² Productivity Commission (2010), *Gambling*, Report No. 50, AusInfo, Canberra, available at <http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>, page 16.

As noted in a Victorian study,³ low and moderate risk gamblers accounted for the majority of aggregate years of health life lost:

- 50.24 per cent of harm was experienced by low-risk gamblers;
- 34.52 per cent of harm was experienced by moderate-risk gamblers; and
- 15.24 per cent of harm was experienced by problem gamblers.

It has been suggested that pre-commitment systems may not be effective in reducing gambling harm. This view is often based on analyses of voluntary pre-commitment systems, which have not been particularly effective due to low player take-up. However, as noted by the Productivity Commission⁴, the significant social cost of problem gambling – estimated in 2010 to be at least \$4.7 billion a year across Australia – means that even policy measures with modest efficacy in reducing gambling harm are worthwhile for the individual and the community.

For the reasons outlined, current harm minimisation strategies are aimed at a population level rather than at the traditionally targeted ‘problem gamblers’. Making the PCS mandatory, which requires the provision of personal information, supports these aims. The provisions in the Bill are considered necessary and reasonable to fulfil the objectives, noting the protections on the use and disclosure of pre-commitment information.

The nature and extent of the limitation

A PCS engages and potentially limits the right to privacy as it will require individuals to provide personal information to the casino licensee (and the operator of a PCS if a third-party system is implemented), in order to use casino gaming machines. Both the casino licensee and the operator of a PCS may be able to access players' personal information when assisting players to update details, replace cards and change limits.

The PCS is only mandatory for individuals who wish to use casino gaming machines. The right to privacy is not absolute and may be reasonably limited by laws which can be demonstrably justified in a free and democratic society. The system does not authorise arbitrary or unlawful interferences in an individual's privacy – personal information collected for the PCS may only be used or disclosed with the individual's consent, except in limited and clearly defined circumstances, which are articulated in the Bill.

Pre-commitment information can only be used or disclosed with the relevant individual's consent, where required or authorised by or under an Australian law or a court or tribunal

³ Browne, M, Langham, E, Rawat, V, Greer, N, Li, E, Rose, J, Rockloff, M, Donaldson, P, Thorne, H, Goodwin, B, Bryden, G & Best, T (2016), *Assessing gambling-related harm in Victoria: a public health perspective*, Victorian Responsible Gambling Foundation, Melbourne, available at https://www.responsiblegambling.vic.gov.au/_data/assets/pdf_file/0007/28465/Browne_assessing_gambling-related_harm_in_Vic_Apr_2016-REPLACEMENT2.pdf.

⁴ Productivity Commission (2010), *Gambling*, Report No. 50, Canberra, available at <http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>, page 16.

order, for law enforcement purposes, to perform a function under the Act or another gaming law or where the information is already lawfully available to the public.

De-identified information may also be disclosed to the Minister or the administrative unit responsible for the Act, or for research purposes. Lastly, use or disclosure is also possible to lessen or prevent a serious threat to a person's life, health or safety or to public health or safety where it is unreasonable or impracticable to obtain consent.

Clause 35 of the Bill provides that a regulation may make provision for the approval and operation of a PCS. In particular, a regulation may provide for the collection and secure storage of pre-commitment information. It is intended that the regulation will address matters relevant to the Territory Privacy Principles.

Where pre-commitment information is used by or disclosed to the Commission and its staff, they are bound by the requirements under the *Information Privacy Act 2014*. 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. 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.

The relationship between the limitation and its purpose

The PCS is rationally connected to the purpose of the Bill; that is, to reduce the social harm caused by gambling by requiring people to place self-imposed constraints on their gambling behaviours. It provides a means of improving informed consent about the personal and social costs of gambling and allows users to more easily control their spending. Linking a person's identity to the PCS requires personal information.

The provision of identifying information is an essential part of the PCS's effectiveness in reducing gambling harm. Due consideration was given as to whether casino gaming machine players could engage in the PCS without identifying themselves (for example, through purchasing a card pre-loaded with the amount they wish to play on casino gaming machines), however, this would not achieve the intended aim as players could simply purchase more cards once they had reached the limit on the first card.

Less restrictive means reasonably available to achieve the purpose

In developing the legislation an assessment was made as to whether any less restrictive means were available to achieve the purpose of the Bill. There is no less restrictive means reasonably available as the provision of personal information is an important part of the effectiveness of a mandatory PCS in minimising gambling harm.

It was considered whether a voluntary PCS would achieve the intended aim. However, research evidence indicates that voluntary or 'opt-in' systems 'are of only very limited effectiveness, as uptake of these systems is typically very low.'⁵ Further, in a voluntary system consumers do not see pre-commitment as relevant because they do not have a gambling problem or consider that they can manage their gambling.⁶ The requirement that all players must engage de-stigmatises use of the PCS. Setting a net loss limit has benefits for all casino gaming machine players through requiring consideration of the amount they can afford to lose.

Where a person chooses not to disclose information sufficient for engagement with the PCS, non-participation in playing casino gaming machines is a necessary result of that decision. There is no less restrictive means available that will achieve the intended outcome of reducing gambling harm.

As outlined above, to the extent that a mandatory PCS engages a person's right to privacy, it is considered reasonable and demonstrably justified in a free and democratic society. The collection of personal information is proportionate and necessary to ensure the effectiveness of the PCS. To mitigate the human rights impacts, the Bill includes specific protections on the use and disclosure of information obtained in connection with the PCS.

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

The nature of the right affected

The Bill includes a number of strict liability offences and may be seen as engaging the presumption of innocence until proven guilty (rights in criminal proceedings section 22(1) HRA). The strict liability offences introduced by the Bill, with the exception of the use or disclosure of pre-commitment information, may only be committed by the casino licensee (a corporation). The strict liability offences are:

- acquire an authorisation other than in accordance with the Act (clause 18);
- allow a person to use a casino gaming machine where the machine has a stake amount more than \$5 or lower amount set by regulation (clause 26);
- operate a casino gaming machine without a casino gaming machine authorisation (clause 27);
- operate a FATG terminal without a casino FATG terminal authorisation (clause 29);
- operate a casino gaming machine that is not connected to a PCS, or where the machine is connected to a PCS but the PCS is not functioning in the manner approved by the Commission (clause 33); and

⁵ Livingstone, C, Rintoul, A, Francis, C (2014), 'What is the evidence for harm minimisation measures in gambling venues?', *Evidence Base*, The Australia and New Zealand School of Government, Issue 2 2014, page 10.

⁶ *Ibid*, page 11.

- use or disclose pre-commitment information otherwise than in specified circumstances (clause 34).

The imposition of strict liability offences has the potential to trespass on an individual's fundamental human right as set out in subsection 22(1) of the HRA which states that: "everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law".

The *Criminal Code 2002*, chapter 2 applies to all offences against the new Casino (Electronic Gaming) Act (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*).

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 the regulatory regime to achieve compliance through deterrence. In relation to the additional consideration of whether there are legitimate grounds for penalising a person even though they lack fault as a relevant mental element, it is relevant that all but one of the offences introduced by the Bill can only be committed by the casino licensee which is a corporate entity, rather than an individual.

The remaining offence - use or disclose pre-commitment information - may be committed by an individual person and may engage the person's right to the presumption of innocence until proven guilty under subsection 22(1) of the HRA. However, it is justifiably a strict liability offence given the privacy implications of an improper use or disclosure of information held within the PCS.

Strict liability offences more typically arise in a regulatory context where for reasons such as consumer protection and public safety, the public interest in ensuring that regulatory schemes are complied with, 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 importance of the purpose of the limitation

The potential risks of ineffective regulation of access to and the operation of gaming machines and FATGs include unregulated gambling in an environment where gambling harm minimisation and other consumer protection measures are not in place as well as loss of revenue to the ACT Government and community.

The ACT, like other jurisdictions, has in place comprehensive regulatory requirements for the operation of gaming venues and gaming equipment. These are important controls, not only for the protection of consumers of gaming products, but also to reduce other risks and criminal behaviour associated with illegal or underground gambling, including the risk of money laundering.

Some provisions of the Bill governing the acquisition of authorisations by the casino licensee are also intended to support Government gambling harm minimisation policies to reduce the overall number of gaming machines in the ACT. These include the provisions requiring half of the authorisations to be acquired from small to medium clubs or club groups and a one in three forfeiture requirement when acquiring authorisations.

The strict liability offences in the Bill are aimed at ensuring that authorisations are acquired and used, and that gaming machines are acquired, used and disposed of, by the casino licensee, only in accordance with the Act. For reasons of consumer protection, harm minimisation and maintaining the integrity of the industry, a strong deterrent to non-compliance is required.

A strong deterrent is also required against the improper use or disclosure of pre-commitment information. The information to be collected and stored within the PCS will be limited to information required for the effective operation of the system, in line with requirements under the Territory Privacy Principles, and unique to the system (including, for example, playing history for a period and the dollar/time limits set by a person). Applying strict liability offences to conduct associated with the use or disclosure of PCS information signals to persons accessing PCS information that they must guard against any use or disclosure that is not authorised by the Act.

The strict liability offences in the Bill carry a maximum penalty of 100 penalty units or 50 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 some offences that apply to the casino licensee and this aligns with the strong compliance regime provided by the existing gaming legislation (see, for example, similar offences applying to class B and C licensees in the Gaming Machine Act). Further justification of the strict liability offences with a maximum penalty of 100 penalty units is outlined below. The offence in clause 34 relating to the use or disclosure of PCS information, which applies to a 'person', is limited to a maximum penalty of 50 penalty units.

The nature and extent of the limitation

The impact on human rights is reduced through the fact that the strict liability offences apply in all but one instance only to the casino licensee – a corporate entity – and they are not applied to individual staff members at the casino or to other persons. The casino

licensee, as the entity with ultimate responsibility for the management of the casino, is well aware that casino operations are subject to robust regulatory requirements.

It is reasonable to expect that the casino licensee knows, or ought to know, its legal obligations. The operation of electronic gaming products is clearly a regulated activity within the scope of the decision in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154.

While the inclusion of strict liability limits the range of defences that may be available, 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 provides a specific defence to strict liability offences of mistake of fact. For example, where a person forwards PCS information to a researcher, mistakenly believing the information is de-identified, but a separate part of the electronic file allows identification of individual player information, a defence of mistake of fact may be available.

Subsection 23 (3) of the Criminal Code provides that other defences may also apply to strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code. An example of this defence may be where PCS information is disclosed as a result of a virus that accesses the information stored on a computer and sends it to everyone on a person's contact list, from that person's email address.

In recognition of human rights and in the interest of not unduly penalising a licensee, the Bill provides for specific defences for certain strict liability offences as follows:

- clause 26(7) provides for a reasonable steps defence in relation to the casino licensee ensuring compliance with the maximum stake amount for casino gaming machines; and
- clauses 33(2) and (4) provide for a reasonable steps defence in relation to the casino licensee ensuring that a casino gaming machine is connected to a PCS, and that the PCS is functioning in the manner in which it is approved by the Commission.

As indicated above, the one strict liability offence that applies to a 'person' rather than the casino licensee is necessary to protect players' right to privacy under section 12 of the HRA, through deterring and addressing the inappropriate use or disclosure of pre-commitment information. While this necessarily engages a person's right to the presumption of innocence, it is considered that there is no less restrictive means available that will achieve the purpose of safeguarding PCS information and protecting players' right to privacy.

The use or disclosure of pre-commitment information should be limited to those who have a legitimate need to access it – whether that is during a police or ACT Gambling and Racing Commission investigation or if authorised by a Court or tribunal, or in other circumstances set out in the Bill. The Bill provides that de-identified information can be used or disclosed

for research purposes. This element may result in wider use or disclosure of de-identified information, however, as long as the person doing so is acting in connection with research purposes, that use or disclosure would not be captured under the offence.

The relationship between the limitation and its purpose

The overriding rationale for the strict liability offences is to provide an appropriate deterrent to non-compliance with regulatory measures which support consumer protection and harm minimisation objectives and maintain the integrity of the industry.

The very nature of having to apply for, be granted, and retain a casino licence is a substantial undertaking. Therefore the licensee is on notice of their special relationship of responsibility to both gambling patrons and the broader community, and the licensee is well aware of their obligations to abide by the laws governing operations at the casino. A robust regulatory framework is important in deterring conduct that has the potential to bring harm to a range of people.

The offences are an important element in ensuring the policy intent of the requirements relating to acquisition of authorisations and use of electronic gaming products in the casino are realised, and that the use or disclosure pre-commitment information is tightly controlled.

The nature of mandatory pre-commitment requires trust that players' information will be held securely. The application of strict liability to offences relating to the use or disclosure of PCS information is important to the integrity of the system, and it would undermine deterrence to have to prove fault.

Less restrictive means reasonably available to achieve the purpose

In developing the legislation an assessment was made as to whether any less restrictive means were available to achieve the purpose of the Bill. There is no less restrictive means available as these offences are required to achieve the Government's intent.

An evidential onus, rather than a strict liability offence, would be less restrictive on the right to be presumed innocent until proven guilty. It would not, however, prove to be as effective in prosecuting the proposed offences. While the inclusion of strict liability limits the range of defences that may be available, as noted above, a number of defences remain open to an 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 apply to strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

In developing the Bill, consideration was given to the appropriate penalties for the strict liability offences. The Bill regulates access to, and the operation of, electronic gaming products at the casino. The offences do not have wide application across the community, with all but one applying only to the casino licensee. The Bill operates in conjunction with the existing frameworks established under the Casino Control Act, existing penalties that apply to gaming machine licensees under the Gaming Machine Act and the broader gaming and racing suite of legislation, including the *Gambling and Racing Control Act 1999*. While a number of strict liability offences in the Bill carry a maximum penalty of 100 penalty units, these offences apply only to the casino licensee, which is a corporation (as required under section 21(3) of the Casino Control Act).

Any limitation by the Bill on the right to the presumption of innocence until proven guilty is reasonable and proportionate, noting the public interest benefits in ensuring compliance of the casino licensee with provisions that support consumer protection, harm minimisation and maintaining the integrity of the gaming industry, and ensuring persons do not use or disclose information held within the PCS except in specified circumstances.

Revenue/Cost Implications

Implementation of the provisions of the Bill will be undertaken by Access Canberra on behalf of the Gambling and Racing Commission. Other than implementation costs, there are no other direct revenue or cost implications arising from the Bill.

CLAUSE NOTES

Part 1 - Preliminary

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act, once commenced, as the *Casino (Electronic Gaming) Act 2017* (the Act).

Clause 2 Commencement

This clause provides that the Act, apart from schedule 4, will commence on a day fixed by the Minister by written notice. If a provision has not commenced within 6 months of the day it is notified on the Legislation Register, the provision will automatically commence on the first day after that 6 month period.

Schedule 4 relates to uncommenced provisions of the *Gaming Machine (Reform) Amendment Act 2015*, which will apply a new method of determining the maximum number of gaming machine authorisations allowed in the ACT. These are scheduled to commence, by default, on 31 August 2018, and the Bill preserves the scheduled commencement of these reforms at that time.

Clauses 3 to 5 Dictionary, Notes, Offences against the Act – Application of Criminal Code

Clauses 3 to 5 are formal and technical provisions which, respectively:

- provide that the dictionary at the end of the Act is part of the Act;
- clarify that a note in the Act is explanatory and not part of the Act; and
- clarify that other legislation, such as the Criminal Code, applies in relation to offences against the Act.

Part 2 – Important concepts

Clause 6 Casino gaming machine authorisation certificate – *maximum possible number of authorisations*

Clause 6 sets 200 as the maximum possible number of casino gaming machine authorisations allowed under a casino gaming machine authorisation certificate.

Casino gaming machines are defined in the dictionary in the same terms as electronic class C gaming machines (otherwise known as poker machines) are defined under the Gaming Machine Act.

Clause 7 Casino FATG authorisation certificate – *maximum possible number of authorisations*

Clause 7 sets 60 as the maximum possible number of terminals connected to a fully automated table game (FATG) allowed under a casino FATG authorisation certificate.

FATGs are a new type of gaming product in the ACT and are defined in the dictionary as an electronic gaming system or equipment that allows more than one person to play a game that imitates a type of game played at a table, and can be played from different terminals and without a casino employee conducting the game.

Clauses 8 and 9 Meaning and publication of *social impact assessment*

Clause 8 explains what a social impact assessment (SIA) is for the purposes of an application by the casino licensee for an authorisation certificate for either casino gaming machines or FATGs. An SIA is a written assessment of the likely economic and social impact of the operation of casino gaming machines or FATGs under the proposed authorisation certificate. **Clause 8(2)** provides that regulations may make provision for the requirements to be satisfied and matters to be addressed by, and information to be given in, an SIA.

Clause 9 outlines requirements for publication of an SIA to give an opportunity for public comment on an SIA.

Clause 9(2) requires that the casino licensee give public notice of an application for a casino gaming machine authorisation certificate or a casino FATG authorisation certificate. The public notice must state that:

- the SIA for the application will be available for inspection by members of the public for eight weeks, during business hours at a place named on the Commission’s website and on the website; and
- any written submissions on the SIA must be made during the comment period.

Clause 9(3) requires that before the comment period begins, the casino licensee must give the Commission the SIA for the application and a copy of the public notice.

Clause 9(4) requires that on the day before the public notice is given, the casino licensee must place a sign containing information about the application in a prominent position

outside each public entrance to the premises to which the application relates. The casino licensee must ensure the sign stays there for the comment period.

Clause 9(5) provides that the requirements of **clause 9(4)** do not apply where it would be impractical to comply, and includes examples, such as where building work is being carried out.

Clause 9(6) sets out matters that must be included in the information sign, such as a statement of where and when the SIA will be available, an invitation to make written submissions to the Commission about the SIA and details of where to get more information about the application.

Clause 9(7) requires the Commission to make the SIA available for inspection by members of the public during the comment period, both at a place named on the Commission's website and on the website itself.

Clause 9(8) provides that the Commission can only decide an application for an authorisation certificate once the public comment period has ended.

Part 3 – Authorisations for electronic gaming

Part 3 consists of clauses 10 to 15 which deal with the process for a casino licensee to apply for a casino gaming machine authorisation certificate or a casino FATG authorisation certificate.

Clause 10 Casino gaming machine authorisation certificate – application

Clause 10 (1) provides for the casino licensee to apply to the Commission for an authorisation certificate to have up to the maximum possible number of authorisations for casino gaming machines at the casino.

Clause 10 (2) requires that the application state the maximum number of authorisations for casino gaming machines for which the authorisation certificate is sought and be accompanied by an SIA and any other prescribed documents.

Under **clause 10(3)** the Commission may require, within a specified time, the provision of more information that the Commission reasonably needs to decide the application.

Clause 10(4) provides that failure to comply with a requirement under **clause 10(3)** is grounds for the Commission to refuse to consider the application and that if the Commission refuses to consider the application, the application lapses.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to consider the application a reviewable decision.

Clause 11 Casino gaming machine authorisation certificate – decision on application

Clause 11 requires the Commission to issue an authorisation certificate to the casino licensee for the maximum number of authorisations for casino gaming machines applied for if the Commission has considered the SIA and any submission on the SIA and is satisfied the issue of the authorisation certificate is appropriate.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to issue a casino gaming machine authorisation certificate a reviewable decision.

Clause 12 Casino gaming machine authorisation certificate – form

Clause 12(1) sets out formal requirements for a casino gaming machine authorisation certificate. This includes that the certificate state:

- the maximum number of authorisations of casino gaming machines allowed under the authorisation certificate;
- that an authorisation under the certificate is a restricted authorisation;
- a restricted authorisation may be converted to a casino gaming machine authorisation under section 22; and
- a casino gaming machine may only be operated under a casino gaming machine authorisation.

The authorisation certificate must also include a schedule that contains a unique identifying number for each authorisation under the certificate.

Clause 12(2) provides that further requirements in relation to the form of an authorisation certificate or authorisation schedule may be prescribed by regulation.

Clause 13 Casino FATG authorisation certificate – application

Clause 13(1) provides for the casino licensee to apply to the Commission for an authorisation certificate to have up to the maximum possible number of authorisations for casino FATG terminals at the casino.

Clause 13 (2) requires that the application state the maximum number of authorisations for casino FATG terminals for which the authorisation certificate is sought and be accompanied by an SIA and any other prescribed documents.

Under **clause 13(3)**, the Commission may require, within a specified time, the provision of more information that the Commission reasonably needs to decide the application.

Clause 13(4) provides that failure to comply with a requirement under **clause 13(3)** is grounds for the Commission to refuse to consider the application and that if the Commission refuses to consider the application, the application lapses.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to consider the application a reviewable decision.

Clause 14 Casino FATG authorisation certificate – decision on application

Clause 14 requires the Commission to issue an authorisation certificate to the casino licensee for the maximum number of authorisations for casino FATG terminals applied for if the Commission has considered the SIA and any submission on the SIA and is satisfied the issue of the authorisation certificate is appropriate.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to issue a casino FATG authorisation certificate a reviewable decision.

Clause 15 Casino FATG authorisation certificate - form

Clause 15(1) sets out formal requirements for a casino FATG authorisation certificate. This includes that the certificate state:

- the maximum number of authorisations for casino FATG terminals allowed under the authorisation certificate;
- that an authorisation under the certificate is a restricted authorisation;
- a restricted authorisation may be converted to a casino FATG terminal authorisation under section 22; and
- only one casino FATG terminal may be operated under each casino FATG terminal authorisation.

The authorisation certificate must also include a schedule that contains a unique identifying number for each authorisation under the certificate.

Clause 15(2) provides that further requirements in relation to the form of an authorisation certificate or authorisation schedule may be prescribed by regulation.

Part 4 – Acquiring authorisations

Part 4 consists of **clauses 16 to 20** which set out how the casino licensee may acquire authorisations for the purpose of, eventually, using those authorisations to operate gaming machine and FATG terminals. All authorisations must be acquired by the casino licensee from existing class B (hotel) and class C (club) licensees.

Clause 16 Acquiring authorisations for casino gaming machines and casino FATG terminals

Clause 16 provides that if the casino licensee is issued a casino gaming machine authorisation certificate or a casino FATG authorisation certificate and the licensee has less than the maximum number of authorisations allowed under the certificate the licensee can acquire authorisations from class B and class C licensees.

Clause 16(2) provides that where the casino licensee intends to acquire a gaming machine authorisation for conversion to a casino gaming machine or a casino FATG terminal, the licensee must notify the Commission about the proposed acquisition.

The note to **clause 16(2)** points to other provisions of the Act which make certain actions, including the acquisition of a gaming machine authorisation for conversion to a casino gaming machine or casino FATG terminal authorisation, a notifiable action. Provisions in **part 10** apply in relation to notifiable actions, including provisions about when a notifiable action takes effect and the Commission's entitlement to seek more information about notifiable actions.

Clause 16(3) requires the casino licensee to acquire at least 50 per cent of the maximum number of authorisations allowed under its authorisation certificate(s) from small and medium clubs and club groups or hotel licensees (disposing licensees).

Clause 16(4) provides that an authorisation acquired from a disposing licensee, must be acquired without the gaming machine operated by the disposing licensee.

Clause 16(5) authorises the disposing licensee to dispose of one or more authorisations to the casino licensee.

The note to this clause explains that, under **clause 19**, the disposing licensee is required to apply to the Commission for an interim storage permit in respect of any related gaming machine of an authorisation disposed of to the casino licensee.

Clause 17 Acquiring authorisations – forfeiture requirement

Clause 17 provides that the casino licensee must, generally, acquire authorisations in groups of three and must forfeit one authorisation to the Territory for every three authorisations acquired.

Clause 17(1) provides that the casino licensee must acquire authorisations in groups of three authorisations (although all three in a group need not be from the same disposing licensee).

Clause 17(2) provides that an exception to acquisition of authorisations in groups of three is allowed if the disposing licensee intends to surrender their authorisation certificate and has less than three authorisations to dispose of under the certificate.

Clause 17(3) sets out the requirement for the casino to forfeit, to the Territory, one in three authorisations acquired. **Clause 17(4)** makes clear that no compensation may be claimed from the Territory for forfeited authorisations.

Clause 18 Offence – acquiring authorisations

Clause 18 makes it a strict liability offence for the casino licensee to acquire authorisations other than in accordance with the Act. The maximum penalty for this offence is 100 penalty units. (See also *Human Rights Implications* section above.)

Clause 19 Disposal of gaming machines – application for storage permit

Clause 19 applies where a class B or C licensee disposes of an authorisation to the casino licensee. The disposing licensee must apply for a storage permit for an interim purpose for any related gaming machine. The provisions for applying for a storage permit are in the Gaming Machine Act. The disposing licensee must also comply other laws in that Act relating to disposal of a gaming machine.

Clause 20 Restricted status of acquired authorisations

Clause 20 makes clear that an authorisation acquired from a class B or class C licensee becomes a ***restricted authorisation*** when it is acquired. The notes to this provision explain that a restricted authorisation cannot be used to operate a casino gaming machine or a casino FATG terminal. The restricted authorisation must first be converted, through an application to the Commission, to an authorisation which allows the operation of a casino gaming machine or a casino FATG terminal.

Part 5 – Conversion of restricted authorisations

Part 5 consists of **clauses 21 to 25** setting out how restricted authorisations are converted to either casino gaming machine authorisations or casino FATG terminal authorisations, which can be used to operate a gaming machine or a FATG terminal.

Clause 21 Conversion of restricted authorisations - application

Clause 21(1) provides for the casino licensee to apply to the Commission for conversion of a restricted authorisation to either a casino gaming machine authorisation or a casino FATG terminal authorisation.

Clause 21 (2) provides, among other things, that the application must state the number of restricted authorisations sought to be converted and to what kind of authorisation conversion is sought.

Reflecting the policy intent that the introduction of electronic gaming to the casino is contingent on a casino redevelopment occurring, **clause 21(3)** requires that the application for conversion of restricted authorisations must be accompanied by written evidence that the planning and land authority has approved a proposal for the redevelopment of the casino and the casino precinct, and certified that the casino licensee has completed a stage of the development prescribed by regulation for the maximum number of restricted authorisations to be converted. It is intended that regulations would be developed which describe what number or proportion of restricted authorisations are to be converted at particular stages of, or milestones in, the casino redevelopment.

Other requirements for the application for conversion of a restricted authorisation include provision to the Commission of:

- a plan of the development where casino gaming machines or casino FATG terminals are to be installed including details of the location, boundaries and dimensions of the proposed gaming area;
- a copy of rules for gaming to apply to the gaming machines or FATG terminals; and
- a copy of procedures to control the operation of the gaming machines or FATGs.

Clause 21(4) provides that the Commission may require the provision of more information that the Commission reasonably needs to decide an application for conversion of a restricted authorisation.

Clause 21(5) provides that the Commission may refuse to consider an application if the additional information sought is not provided.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to consider the application a reviewable decision.

Clause 22 Conversion of restricted authorisations - decision

Clause 22(1) provides that, in response to an application, the Commission can convert a restricted authorisation or refuse to convert a restricted authorisation.

Clause 22(2) provides that the Commission must convert the number of restricted authorisations stated in the application to casino gaming machine or casino FATG terminal authorisations, in accordance with the application, if satisfied:

- the planning and land authority has approved a proposal for the redevelopment of the casino and the casino precinct, and certified that the licensee has completed the stage of the development prescribed for number of restricted authorisations to be converted;
- the location, boundaries and dimensions of the gaming area are suitable for the installation of the number of gaming machines or FATG terminals;
- the casino licensee's gaming rules and control procedures are adequate; and
- the casino licensee has sufficient harm minimisation strategies in place.

Clause 22(3) allows the Commission to convert a lower number of restricted authorisations than applied for if satisfied that the size and layout of the proposed gaming area are suitable for the lower number of gaming machines or FATG terminals. This is a reviewable decision under **clause 45** and **Schedule 1**.

If the Commission refuses to convert a restricted authorisation, **clause 22(4)** requires the Commission to advise the casino licensee of the reason. The refusal to convert is a reviewable decision under **clause 45** and **Schedule 1**.

Clause 23 Status of restricted authorisations if development approval ends under Planning and Development Act 2007, s 184 or because no approval given

Clause 23 provides for the status of restricted authorisations in the event that a development approval for a casino redevelopment ends under section 184 of the *Planning and Development Act 2007*. Section 184 deals with circumstances, such as:

- the development does not commence within the time allowed;
- the development is not completed within the time allowed;
- the development approval is surrendered; or
- the development approval is revoked due to fraud or misrepresentation.

The clause also provides for the status of restricted authorisations where no development approval for the redevelopment of the casino and casino precinct is given within five years after the commencement of this section. The Bill provides examples of where no approval is given – including because no development application is made or because a development application that is made is later withdrawn.

Clause 23(2) provides that, where either of these circumstances apply, any restricted authorisations are forfeited to the Territory. **Clause 23(3)** clarifies that no compensation may be claimed from the Territory in respect of authorisations forfeited in accordance with **clause 23**.

Clause 24 Status of restricted authorisations if development approval ends in other circumstances

Clause 24 provides that where the development approval for the redevelopment of the casino and casino precinct ends other than under section 184 or because the development is completed, the casino licensee may dispose of any restricted authorisations to a class C (club) licensee within three months of the end of the development approval.

Clause 24(4) provides that a restricted authorisation not disposed of in this timeframe is forfeited to the Territory. **Clause 24(5)** provides that the licensee is not entitled to claim compensation from the Territory in relation to an authorisation forfeited under this provision.

This provision is intended to cover circumstances in which the development approval coming to an end is not caused by the actions or omissions of the casino licensee – in which case it would be reasonable to provide an opportunity for the licensee to sell authorisations which it cannot use.

Clause 25 Status of converted authorisations if development approval ends

Clause 25 clarifies the status of converted casino gaming machine authorisations and casino FATG terminal authorisations held by the casino licensee in a circumstance in which the casino development is not fully completed and the development approval ends. That is, the casino has met the requirements set out in clause 21 in order for those authorisations to be converted from restricted authorisations into operational casino gaming machine or casino FATG terminal authorisations.

Clause 25(2) makes clear that any such authorisations remain in force and are able to be used to operate gaming machines or FATG terminals. It is only restricted authorisations held when a development approval ends that must be either forfeited or disposed of.

Part 6 – Acquiring casino gaming machines and casino FATG terminals

Part 6 consists of **clauses 26 to 29** regulating the circumstances in which the casino licensee can acquire casino gaming machines and FATG terminals.

Clause 26 Acquiring casino gaming machine under authorisation

Clause 26(1) makes clear that the casino licensee can only acquire a casino gaming machine under an authorisation if, when the machine is acquired, the authorisation is a casino gaming machine authorisation. The casino licensee cannot acquire such a machine relying on a restricted authorisation. An acquisition is a notifiable action listed in **schedule 2**.

Clause 26(2) provides for harm minimisation measures for casino gaming machines, as follows.

Clause 26(2)(a) provides that a casino gaming machine must have a maximum stake amount (bet limit) of \$5 or a lower amount set by regulation.

Clause 26(2)(b) provides that a casino gaming machine must be able to be connected to a centralised monitoring system, approved by the Commission, that monitors the operation and performance of the machine and performs other related functions.

Clause 26(2)(c) provides that other harm minimisation requirements prescribed by regulation may apply to a casino gaming machine.

Under **clause 26(3)** the approval of a centralised monitoring system by the Commission is a notifiable instrument that must be notified on the Legislation Register.

Clause 26(4) establishes that a regulation may provide for the approval and operation of a centralised monitoring system.

Under **clauses 26(5) and 26(6)** it is strict liability offence if the casino licensee allows a person to use a casino gaming machine and the machine has a stake amount more than \$5 or lower amount set by regulation. The maximum penalty for this offence is 100 penalty units. (See also *Human Rights Implications* section above.)

Clause 26(7) provides the offence does not apply if the casino licensee took all reasonable steps to ensure that casino gaming machine had a stake amount that was not more than \$5 or lower amount set by regulation.

Clause 27 Offence – operating etc casino gaming machines without casino gaming machine authorisation

Clause 27 makes it an offence for a casino licensee to: possess a casino gaming machine; install or permit the installation of such a machine; or use or permit the use of such a machine without a casino gaming machine authorisation. This is a strict liability offence with a maximum penalty of 100 penalty units. (See also *Human Rights Implications* section above.)

Section 28 Acquiring casino FATG terminal under authorisation

Clause 28(1) makes clear that the casino licensee can only acquire a casino FATG terminal under an authorisation if, when the terminal is acquired, the authorisation is a casino FATG terminal authorisation. The casino licensee cannot acquire such a FATG terminal relying on a restricted authorisation. An acquisition is a notifiable action listed in **schedule 2**.

Clause 28(2) provides for harm minimisation measures for casino FATG terminals, as follows.

Clause 28(2)(a) provides that a casino FATG terminal must be able to be connected to a centralised monitoring system, approved by the Commission, that monitors the operation and performance of the terminal and performs other related functions.

Clause 28(2)(b) provides that other harm minimisation requirements prescribed by regulation may apply to a casino FATG terminal.

Under **clause 28(3)** the approval of a centralised monitoring system by the Commission is a notifiable instrument that must be notified on the Legislation Register.

Clause 28(4) establishes that a regulation may provide for the approval and operation of a centralised monitoring system.

Clause 29 Offence – operating etc casino FATG terminals without casino FATG terminal authorisation

Clause 29 makes it an offence for a casino licensee to: possess a casino FATG terminal; install or permit the installation of such a terminal; or use or permit the use of such a terminal without a casino FATG terminal authorisation. This is a strict liability offence with a maximum penalty of 100 penalty units. (See also *Human Rights Implications* section above.)

Part 7 – Casino gaming machines – pre-commitment system

Clause 30 Definitions – pt 7

Clause 30 establishes definitions of the terms ‘net loss’, ‘net loss limit’, ‘playing period’, ‘pre-commitment information’ and ‘pre-commitment system’.

Net loss is the total amount the person loses when playing the casino gaming machines, less the amount of winnings paid for playing the gaming machines.

Net loss limit, in relation to playing one or more casino gaming machines, means the amount a person playing the machines is prepared to lose during a playing period.

Playing period means 24 hours, or a prescribed period set by regulation, or a longer period set by a player.

Pre-commitment information means information obtained from the pre-commitment system operated by the casino licensee about a person using the system.

Pre-commitment system is defined in **clause 31**.

Clause 31 Meaning of *pre-commitment system* – pt 7

Clause 31 sets out the definition of ‘pre-commitment system’ (PCS) for casino gaming machines. A pre-commitment system is an electronic, computer or communications system, approved by the Commission, that interfaces with equipment or devices to identify a person and:

- requires a person to set a net loss limit when playing casino gaming machines (mandatory pre-commitment to a monetary limit);
- allows the person to set a limit on the period of play in a single visit (voluntary pre-commitment to a time limit); and
- prevents the person from playing a casino gaming machine if the net loss limit is reached or the time period ends.

Clause 31(2) provides that the Commission’s approval of a PCS is a notifiable instrument that must be notified on the Legislation Register.

Clause 32 Casino licensee must provide PCS for casino gaming machines

Clause 32(1) requires the casino licensee to provide, operate and maintain a PCS in connection with casino gaming machines operated in the casino, and provide any services associated with the PCS.

Clause 32(2) requires the casino licensee to ensure the PCS meets the following requirements:

- the PCS prevents a person (a player) playing a casino gaming machine until the person has set a net loss limit;
- the PCS allows a player to set the amount of a net loss limit as nil (this operates as a self-exclusionary measure);
- the net loss limit set by a player applies for a playing period;
- the PCS must prevent a player from setting a higher net loss limit within a playing period;
- the PCS allows a player to set a voluntary maximum period of play; and
- the PCS prevents a player from continuing to play casino gaming machines after whichever of the following happens first:
 - the player's net loss limit is reached;
 - if the player nominates a voluntary maximum period of play, the period ends.

Clause 33 PCS - offences

Clause 33(1) makes it an offence if a casino gaming machine is operated in the casino and it is not connected to a PCS. **Clause 33(3)** makes it an offence if the PCS is not functioning in the manner in which it is approved by the Commission to function. These are strict liability offences under **clause 33(5)**, with a maximum penalty of 100 penalty units. (See also *Human Rights Implications* section above.)

Clauses 33(2) and 33(4) provide that the offences do not apply if the casino licensee took all reasonable steps to ensure the casino gaming machine was connected to a PCS, or to ensure that it was functioning in the manner in which it was approved by the Commission to function.

Clause 34 PCS - use or disclosure of pre-commitment information

Clause 34 provides for the circumstances in which pre-commitment information can be used or disclosed, as follows:

- with the consent of the person to whom it relates;
- where required or authorised by or under an Australian law, or a court or tribunal order;
- disclosed to a law enforcement agency for use in connection with the detection, investigation or prosecution of an offence;
- in relation to the performance of a function under the Casino (Electronic Gaming) Act or another gaming law;
- where it has lawfully been made publicly available;

- disclosed to the Minister or administrative unit responsible for the Act and the information is de-identified;
- disclosed for research purposes where it has been de-identified;
- where it is unreasonable or impracticable to obtain content and use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of an individual, or to public health or safety. For example, if the person has a medical emergency in the casino.

Clause 34(2) makes it an offence to disclose pre-commitment information except in accordance with the circumstances listed above. This is a strict liability offence with a maximum penalty of 50 penalty units. (See also *Human Rights Implications* section above.)

Clause 34(4) points to the definition of ‘law enforcement agency’ in the *Spent Convictions Act 2000*, and includes an entity prescribed by regulation.

Clause 35 Regulations about PCS

Clause 35 establishes that a regulation may provide for the approval and operation of a PCS, in particular for the:

- period for which a pre-commitment is in force;
- collection of pre-commitment information; and
- secure storage of pre-commitment information.

Part 8 – Amendment, surrender and cancellation of authorisation certificates and authorisation schedules

Part 8 consists of **clauses 36 to 44** providing for the Commission to manage amendments to authorisation certificates or authorisation schedules and the cancellation or surrender of a certificate or authorisation.

Clause 36 Authorisation certificate amendment – application

Clause 36(1) allows the casino licensee to apply to the Commission to amend an authorisation certificate in relation to changes to the gaming area or the addition of another gaming area.

Clause 36(2) makes clear that an application for an authorisation amendment is not required to move a gaming machine from one part of a gaming area to another part of the gaming area.

Clause 37 Authorisation certificate amendment – contents of application

Clause 37(1) sets out the formal requirements for an application to amend an authorisation certificate. This must include an explanation of why the casino licensee is seeking the amendment.

Clause 37(2) provides that the Commission may, within the time stated, require the provision of more information that the Commission reasonably needs to decide an application for amendment of an authorisation.

Clause 37(3) provides that failure to comply with a requirement under **clause 37(2)** is grounds for the Commission to refuse to consider the application and that if the Commission refuses to consider the application, the application lapses.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to consider an authorisation certificate amendment application a reviewable decision.

Clause 38 Authorisation certificate amendment decision – gaming area amendment

Clause 38 provides that, in response to an application for a gaming area amendment of an authorisation certificate, the Commission may amend the certificate or refuse to amend the certificate. Under **clause 38(4)** the Commission must amend the certificate if it is satisfied that the gaming area proposed to be changed will be suitable for the operation of the number of casino gaming machines or casino FATG terminals the licensee may have under the certificate. **Clause 38(5)** requires that, in deciding whether the gaming area is suitable, the Commission must consider harm minimisation strategies for patrons.

Clause 38(3) requires the Commission to notify an applicant in writing and provide reasons where the Commission refuses to amend the certificate.

Clause 45 and **Schedule 1** of the Act make a decision to refuse to amend an authorisation certificate a reviewable decision.

Clause 39 Amendment of authorisation certificate and authorisation schedule

Clause 39 provides for the Commission to amend an authorisation certificate or authorisation schedule.

Clause 39(1) provides that the Commission may amend an authorisation certificate or authorisation schedule on its own initiative to correct a mistake, error or omission.

Clause 39(2) requires the Commission to amend an authorisation certificate to:

- record the conversion of a restricted authorisation to a casino gaming machine authorisation or to a casino FATG terminal authorisation; or
- amend the number of authorisations to reflect the forfeiture of restricted authorisations.

Clause 39(3) requires the Commission to amend the appropriate authorisation schedule where the casino licensee notifies the Commission about the acquisition of a casino gaming machine authorisation or a casino FATG terminal authorisation.

Clause 39(4) requires the Commission to amend the appropriate authorisation schedule where the casino licensee notifies the Commission about the disposal of a restricted authorisation.

Clause 39(5) requires the Commission to amend a casino gaming machine authorisation schedule to include the serial number of a casino gaming machine, where the casino licensee notifies the Commission about the acquisition of the casino gaming machine.

Clause 39(6) requires the Commission to amend the casino FATG terminal authorisation schedule to include the serial number of the casino FATG terminal, where the casino licensee notifies the Commission about the acquisition of the casino FATG terminal.

Clause 40 Re-issue of amended authorisation certificate and authorisation schedule

Clause 40 requires the Commission to issue a replacement authorisation certificate where the certificate has been amended and to issue a replacement authorisation schedule where the schedule has been amended.

Clause 41 Cancellation of authorisation certificates and authorisations on surrender of casino licence

Clause 41 applies where the casino licensee surrenders its casino licence under section 31 of the Casino Control Act.

Clause 41(2) requires the casino licensee to notify the Commission that the licensee has given the Minister written notice, under section 31(2) of the Casino Control Act, that the licensee surrenders the casino licence.

Clause 41(3) requires the Commission to, in turn, cancel all authorisation certificates held by the licensee and give the licensee a storage permit for an interim purpose for each casino gaming machine and casino FATG terminal under the cancelled certificates.

Clause 41(4) provides that where an authorisation certificate or authorisation is cancelled under this provision, the casino licensee is required to:

- take meter readings from each casino gaming machine and casino FATG terminal under the certificate or authorisation;
- render the machine or terminal inoperable; and
- within the prescribed time after the day of the cancellation, provide the Commission with the meter readings and any outstanding amount payable in relation to the casino gaming machine or casino FATG terminal (such as gaming tax).

Clause 42 Cancellation of authorisation certificates and authorisations – forfeiture

Clause 42 provides that if each authorisation certificate under the casino licence is cancelled under section 41, the casino gaming machine authorisations and casino FATG terminal authorisations under the cancelled certificates are forfeited to the Territory.

Clause 42(3) provides that the licensee is not entitled to claim compensation from the Territory in relation to an authorisation forfeited under this provision.

Clause 43 Surrender of authorisation certificates and authorisations

Clause 43 provides a process for the casino licensee to surrender an authorisation certificate or an authorisation.

Clause 43(2) provides for the casino licensee to surrender an authorisation certificate or authorisation by notifying the Commission that the licensee surrenders the authorisation certificate or authorisation.

Under **clause 43(3)**, where an authorisation certificate or authorisation is surrendered, the Commission must give the licensee a storage permit for an interim purpose for each casino gaming machine and casino FATG terminal under the surrendered certificates, if satisfied that the type of premises to be used for storage is suitable.

Clause 44 Offence – failure to dispose of casino gaming machines and casino FATG terminals

Clause 44 makes it an offence for the casino licensee, where an authorisation held by the licensee was cancelled under section 41 or surrendered under section 43, to fail to dispose of casino gaming machines and casino FATG terminals as required by the Commission or within the time stated in the interim storage permit.

The maximum penalty is 100 penalty units.

Under **clause 44(2)** the offence does not apply where the licensee has taken all reasonable steps to dispose of the casino gaming machine or casino FATG terminal as directed by the Commission and within the time stated.

Part 9 – Notification and review of decisions

Part 9 consists of **clauses 45 to 47** and provides for certain decisions of the Commission to be reviewable.

Clause 45 Meaning of *reviewable decision* – pt 9

Clause 45 provides that a *reviewable decision* is a decision mentioned in **schedule 1**. These are decisions to:

- refuse to consider an application for a casino gaming machine authorisation certificate if additional information is not given within a stated time;
- refuse to issue a casino gaming machine authorisation certificate;
- refuse to consider an application for a casino FATG authorisation certificate if additional information is not given within a stated time;
- refuse to issue a casino FATG authorisation certificate;
- refuse to consider an application for conversion of a restricted authorisation if additional information is not given within a stated time;
- convert a lower number of restricted authorisations than the number applied for;
- refuse to convert a restricted authorisation to a casino gaming machine authorisation or casino FATG authorisation;
- refuse to consider an authorisation certificate amendment application; and
- refuse to amend an authorisation certificate.

Clause 46 Reviewable decision notices

Clause 46 requires that if the Commission makes a reviewable decision it must give a reviewable decision notice to the casino licensee.

Clause 47 Applications for review

Clause 47 provides that the people who may apply to the ACT Civil and Administrative Tribunal for review of a reviewable decision are the casino licensee and any other person whose interests are affected by the decision.

Part 10 – Notifiable actions

Part 10 consists of **clauses 48 to 52** and provides for certain actions to be notifiable actions to which particular requirements apply.

Clause 48 Definitions – Act

Clause 48 defines the term ***notifiable action***. Notifiable actions are listed in schedule 2 and are:

- acquisition of an authorisation;
- disposal of an authorisation;
- acquisition of a casino gaming machine;
- acquisition of a casino FATG terminal; and
- surrender of a casino licence.

Clause 48 also defines the term ***prescribed number of days*** to mean ten business days or, if a regulation prescribes a different number of days – that number of days. This term is relevant to the provisions about when a notifiable action takes effect.

Clause 49 Notifiable actions

Clause 49(2) provides that a notification by the casino licensee, to the Commission about a notifiable action, must be in writing, be given to the Commission at least the prescribed number of days before the casino undertakes the notifiable action, and include anything else required by regulation.

Clause 49(3) provides for the Commission to, by notice, ask the casino licensee or a disposing licensee for more information about a notifiable action. Under **clause 49(4)**, where the Commission gives notice seeking more information the notice must state a reasonable time in which the information must be given.

Clause 50 Notifiable actions – date of effect

Clause 50 provides that a notifiable action does not take effect until:

- the prescribed number of days after the Commission receives notification about the notifiable action; or
- if the Commission allows the notifiable action to take effect on an earlier day – that day; or
- if the Commission gives a notice requesting more information about the notification - when the Commission has notified the licensee that it is satisfied in relation to the additional information.

Clause 51 Notifiable action – amendment or cancellation

Clause 51 applies where the casino licensee has given the Commission a notification about a notifiable action and wants to amend or cancel the notification.

Clause 51(2) requires that the casino licensee must give the Commission written notice of the amendment or cancellation before the notifiable action takes effect.

Clause 51(3) provides that an amendment of a notification about a notifiable action takes effect ten business days after the day the Commission receives written notice of the amendment.

Clause 51(4) provides that a cancellation takes effect when the Commission receives written notice of the cancellation.

The requirement for certain actions to be notified to the Commission for a period before they take effect is intended to ensure that the Commission can make any appropriate inquiries relating to the proposed action. The intent of notification requirements is to avoid the need for certain approvals in the Act, noting that the Commission has the power to request additional information in relation to a notifiable action before it takes effect. This approach is consistent with the move towards risk-based regulation without compromising the strong regulatory oversight of electronic gaming.

Clause 52 Notifiable actions – s 43

Clause 52 provides that where the licensee notifies the surrender of an authorisation certificate and authorisations under section 43, the licensee must provide, as part of the notification, the following information about the storage of a casino gaming machine or casino FATG terminal:

- the place where the casino gaming machine or casino FATG terminal is to be stored;
- the serial number of the casino gaming machine or casino FATG terminal.

Clause 52(3) provides that on the date of the notifiable action (the surrender) takes effect under section 50, the casino licensee must:

- take meter readings from the casino gaming machine or casino FATG terminal;
- render the casino gaming machine or casino FATG terminal inoperable; and
- give the Commission details of the meter readings.

Part 11 – Miscellaneous

Clause 53 Determination of fees

Clause 53 provides for the determination of fees by the Minister. A fee determination is a disallowable instrument.

Clause 54 Regulation-making power

Clause 54 is a regulation making power for the Act. **Clause 54(2)** provides that the regulations may make provision for matters including:

- the operation (including restriction of the operation) of peripheral equipment for casino gaming machines and casino FATG terminals (this includes, for example, note acceptors);
- the minimum payout for casino gaming machines; and
- harm minimisation requirements for casino gaming machines and casino FATG terminals.

Clause 54(3) provides that a regulation may create offences for contravention of the regulations and fix maximum penalties of not more than 30 penalty units. This maximum penalty limit is in line with the maximum established in the *Guide for Framing Offences*.

Gambling is necessarily highly-regulated for reasons of integrity, harm minimisation and consumer protection. Introducing new types of gaming products to the casino environment will necessitate controls beyond those that already exist. For this reason the regulation-making power in clause 54 has not been constrained to particular matters. However, any regulations made under the power conferred by this clause cannot be inconsistent with the principal Act.

The existing legislative framework for the casino and for the operation of gaming machines provides for significant penalties, and any penalties for offences under a regulation must align with that framework. For example, as part of the existing disciplinary framework, the casino licensee can be ordered under section 34(1)(c) of the Casino Control Act to pay a financial penalty to the Territory of up to \$1,000,000, and the Gaming Machine Act includes numerous offences with a maximum penalty of 100 penalty units.

Offences under the regulation will generally apply to the casino licensee, which is a corporation (noting that only one offence in the Bill applies to a ‘person’). Given the context of the Bill, a potential maximum penalty of 30 penalty units (at present, \$22,500 for a corporation or \$4,500 for an individual) is not considered excessive.

Part 12 – Consequential amendments

Clause 55 provides that the Act amends legislation mentioned in **schedules 3 and 4**. The legislation amended is the:

- *Casino Control Act 2006*;
- *Gambling and Racing Control Act 1999*; and
- *Gaming Machine Act 2004*.

Schedule 1 Reviewable decisions

Schedule 1 sets out the decisions which can be made under provisions of the Act which are reviewable under section 45.

Schedule 2 Notifiable actions

Schedule 2 sets out the actions which can be taken under provisions of the Act which are notifiable actions for the purpose of section 48 of the Act.

Schedule 3 Consequential amendments

Schedule 3 makes consequential amendments to the:

- *Casino Control Act 2006*;
- *Gambling and Racing Control Act 1999*; and
- *Gaming Machine Act 2004*.

Part 3.1 of schedule 3 makes amendments to the Casino Control Act.

Items 3.1 to 3.7 amend sections 6, 33 and 34 of the Casino Control Act, to insert references to the new Casino (Electronic Gaming) Act to:

- provide that the lawful operation of the casino, in accordance with section 6, is subject to both the Casino Control Act and the Casino (Electronic Gaming) Act;
- extend the existing grounds for disciplinary action under section 33 of the Casino Control Act, to include failure to comply with requirements of the Casino (Electronic Gaming) Act;
- extend the existing disciplinary actions that can be taken against the casino licensee, as set out in section 34 of the Casino Control Act, to include putting conditions on, or amending, a casino gaming machine authorisation certificate or a casino FATG authorisation certificate;
- include new disciplinary actions in section 34 - suspending or cancelling the licensee's casino gaming machine authorisation certificate or casino FATG authorisation certificate, ordering the forfeiture of the gross revenue from the

operation of any casino gaming machines or casino FATG terminals operated in excess of the maximum machines or terminals allowed under the casino gaming machine authorisation certificate or casino FATG authorisation certificate and directing the casino licensee about how to dispose of the excess casino gaming machines or casino FATG terminals; and

- clarify that if the casino licence is suspended or cancelled the casino gaming machine authorisation certificate and casino FATG authorisation certificate under the licence are also suspended or cancelled.

Item 3.8 amends the Casino Control Act, to insert new sections 38A and 38B about the consequences of certain disciplinary action that may be taken under the Act.

38A *Disciplinary action in relation to trading authorisations, casino gaming machines and casino FATG terminals – directions*

New section 38A applies if the Commission takes disciplinary action against the casino licensee in relation to the licensee acquiring authorisations for casino gaming machines or casino FATG terminals, disposing of restricted authorisations or acquiring casino gaming machines and casino FATG terminals.

New section 38A(2) requires the Commission to give the casino licensee written directions about how the licensee is to conduct the acquisition or disposal. New section 38A(3) provides that the directions must not be inconsistent with the Casino Control Act, the Casino (Electronic Gaming) Act, any other Territory law or a condition of the casino licence.

38B *Cancellation of casino licence and authorisation certificates – disposal of casino gaming machines and casino FATG terminals*

New section 38B provides that if the casino licence and authorisation certificates under it are cancelled under the disciplinary provisions of the Casino Control Act, the authorisations for casino gaming machines and casino FATG terminals under the cancelled authorisations are forfeited to the Territory and the casino licensee must dispose of the related gaming machines and FATG terminals as the Commission directs.

Failure to comply with this provision is an offence with a maximum penalty of 100 penalty units. However, the offence does not apply if the casino has a reasonable excuse for not complying with the Commission's direction.

Item 3.9 inserts new definitions in the dictionary in the Casino Control Act for defined terms in the Casino (Electronic Gaming) Act.

Part 3.2 of schedule 3 makes amendments to the Gambling and Racing Control Act.

Item 3.10 amends section 4(ba) of the Gambling and Racing Control Act to insert a reference to the Casino (Electronic Gaming) Act, in the list of Acts which constitute gaming laws for the purposes of the Gambling and Racing Control Act.

Item 3.11 inserts a new Part 6A in the Gambling and Racing Control Act to establish the maximum number of authorisations for electronic gaming in the ACT. As gaming machines are currently only authorised for use in clubs and hotels, the provision establishing the maximum gaming machine numbers is located in the Gaming Machine Act which regulates class B and class C licences.

As the Casino (Electronic Gaming) Act will provide for the casino to operate casino gaming machines and casino FATG terminals in accordance with the required authorisations, and as the total number of authorisations for gaming machines will include those for class B and class C licensees and the casino licensee, as well as the number of casino FATG terminals, it is appropriate to relocate the provision setting out the maximum number of gaming machine authorisations in the overarching Gambling and Racing Control Act.

Item 3.11 inserts new section 50 of the Gambling and Racing Control Act for this purpose. New section 50 closely follows the provisions of existing section 10 of the Gaming Machine Act which currently sets the maximum number of authorisations for gaming machines. It retains the existing formula for determining the maximum number. There are some changes to the wording of, and definitions for the purpose of, the provision to reflect that, in the future, electronic gaming will be allowed under authorisations issued to the casino and will include casino FATG terminals as well as gaming machines.

Item 3.12 inserts a new part 20 into the Gambling and Racing Control Act, which includes new sections 100 and 101. Section 100 is a transitional provision that ensures the existing maximum number of authorisations is retained when the transfer of the maximum number formula from the Gaming Machine Act to the Gambling and Racing Control Act occurs. A notice under section 10(3) of the Gaming Machine Act in force immediately before the commencement of section 55 of the Casino (Electronic Gaming) Act is taken to be a notice under section 50(3) of that Act.

Under section 101, this transitional provision will expire on the commencement of schedule 4 of the Casino (Electronic Gaming) Act.

Part 3.3 of schedule 3 amends the Gaming Machine Act.

Item 3.13 omits section 10 from Part 2A of the Gaming Machine Act, dealing with the maximum number of gaming machines, consequential on the inclusion of new Part 6A

(section 50) of the Gambling and Racing Control Act to set the maximum number of electronic gaming authorisations.

Items 3.14 to 3.16 amend sections 127C and 127I of the Gaming Machine Act, dealing with disposal of gaming machine authorisations, to allow class B and class C licensees to dispose of authorisations to the casino licensee.

Item 3.17 amends the dictionary of the Gaming Machine Act to insert a pointer to the definition of the term *casino licensee* in the Casino Control Act.

Schedule 4 Other amendments – maximum authorisation numbers

Part 4.1 of schedule 4 amends the Gambling and Racing Control Act.

Item 4.1 of the schedule is a technical provision which supports the relocation of an uncommenced provision setting the maximum number of gaming machine authorisations to the Gambling and Racing Control Act.

Section 50 incorporates uncommenced provisions of the 2015 reforms for determining the maximum number of authorisations in the ACT. The Gaming Machine (Reform) Amendment Act includes an uncommenced provision replacing section 10 of the Gaming Machine Act with a provision that sets the maximum number of authorisations at no more than 15 authorisations for every 1,000 adults living in the ACT. This amendment is scheduled to commence, by default, on 31 August 2018, if not commenced earlier by notice.

Part 4.2 of schedule 4 includes provisions that support the relocation of the uncommenced maximum number of authorisations.

Item 4.3 omits section 10 of the Gaming Machine Act, which is the current uncommenced provision under the Gaming Machine (Reform) Amendment Act. This provision sets the maximum number of authorisations at no more than 15 authorisations for every 1,000 adults living in the ACT and it will be located in the Gambling and Racing Control Act from the commencement of schedule 4.

Dictionary

The Dictionary provides definitions of key words and phrases used throughout the Bill. Certain terms relevant to the Bill are defined in the *Legislation Act 2001* and these are outlined at the start of the Dictionary. Note also that definitions relevant only to specific provisions may be included within individual clauses.