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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

GAMBLING AND RACING CONTROL (GAMBLING EXCLUSION) AMENDMENT BILL 2026

EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)

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GAMBLING AND RACING CONTROL (GAMBLING EXCLUSION) AMENDMENT BILL 2026

The Gambling and Racing Control (Gambling Exclusion) Amendment Bill 2026 (the Bill) **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (the HRA).

OVERVIEW OF THE BILL

Gambling harm is a significant issue facing the ACT population, with the 2024 ACT Gambling Survey (Survey) finding that 15.8% of ACT adults experienced some form of gambling-related harm in the 12 months preceding the Survey in 2024.[1] This includes harm from their own gambling, someone else's gambling or legacy harm, meaning harm that has lasting effects after past gambling harm events.

- Notwithstanding this, the Survey report also notes that help-seeking remains low, with only 1.5% of people who had participated in gambling ever wanting help for their gambling. While almost all people who wanted help sought help, this comprised mostly informal avenues such as talking to family members and trying self-help strategies like budgeting. Respondents were twice as likely to report having accessed informal supports than formal supports, with only 34.5% of those who wanted help seeking help through self-exclusion.[2]
- While uptake of gambling self-exclusion is low in the ACT, its perceived helpfulness and levels of awareness of it are high. Of those classified as 'problem gamblers', 69.9% were aware of the ACT's self-exclusion scheme.[3]
- Self-exclusion had the highest reported perceived helpfulness of any help or support investigated as part of the Survey, with 52% of respondents who had utilised self-exclusion finding it 'very helpful' (the most helpful category).[4] Supports from family and friends, self-help, and professional health support had higher uptake rates but were only perceived as very helpful by much lower proportions of those who had used them: at 37%, 33%, and 23% respectively.

This evidence demonstrates that there is a need to reform the ACT's gambling harm minimisation framework with a focus on ensuring accessibility of the option for people to self-exclude from gambling.

The Bill addresses this need by making changes to strengthen the ACT's gambling harm reduction legal framework, particularly the existing gambling exclusion scheme

[1] 2024 ACT Gambling Survey pg 9.
[2] 2024 ACT Gambling Survey pg 158.
[3] 2024 ACT Gambling Survey pg 142.
[4] 2024 ACT Gambling Survey pg 163.

(the scheme) and clarify the roles and obligations of licensees to prevent gambling harm.

The Bill elevates the existing exclusion scheme from its current basis in the Gambling and Racing Control (Code of Practice) Regulation 2002 (the Code of Practice), which is a subordinate law to the *Gambling and Racing Control Act 1999* (the Act), providing it with a clearer statutory foundation.

The Bill aims to improve the accessibility of gambling exclusion, which the Survey evidence demonstrates is highly useful in addressing gambling harm yet underutilised by the community relative to its helpfulness, by streamlining, clarifying, and modernising gambling exclusion processes. The Bill clarifies the definition and signs of gambling harm risk and clarifies licensees' obligations to monitor for risk of gambling harm and take appropriate action to prevent and minimise gambling harm.

'Gambling exclusion' means the voluntary or involuntary prohibition of a person's access to participate in a gambling activity licensed in the ACT. The gambling exclusion scheme encompasses 'self-exclusion' and 'licensee exclusion' and associated rights and protections in relation to how the scheme facilitates exclusion from gambling in the ACT.

Gambling 'self-exclusion' means a request made by a person to prevent themselves from accessing any ACT-licensed gambling activity or venue they choose. This can include gambling activities such as electronic gaming machines (EGMs), TAB and casino and specific venues such as clubs, club groups and hotels. Survey evidence shows that self-exclusion is very helpful for people who want to pause or take control of their gambling, but it is underutilised relative to its helpfulness. This demonstrates the need for reforms to improve the self-exclusion scheme.

Gambling 'licensee exclusion' means the involuntary exclusion of a person from a gambling activity conducted by a gambling licensee. It is initiated by the licensee and is a harm reduction intervention that a licensee must put into place in certain circumstances to prevent the risk of gambling harm to a person engaging in a gambling activity, or risk of harm to another person with a connection to the person engaging in the activity. It is an intervention which the licensee must implement when a gambling activity controlled by the licensee is causing harm to a person or there is a risk of harm.

The gambling exclusion scheme is part of the gambling harm reduction legislative framework.[5] The framework sets out:

1. a person's right to self-exclude from certain gambling activities licensed in the ACT, and
2. gambling licensees' obligations to:
    a. take action to prevent gambling harm, including recording signs of the risk of gambling harm, providing information about support services; and

    b. exclude a person from gambling if the person is at risk of harm and exclusion is the most proportionate response to that risk; and

    c. take appropriate action to exclude a person who has chosen to self-exclude from a gambling activity conducted by the licensee.

The Bill establishes a new 'Gambling harm' part in the Act (Part 2) which strengthens the existing gambling exclusion scheme by improving clarity in relation to licensees' obligations to observe, record, and respond to risks of gambling harm. The Bill also clarifies the definition upon which these obligations rely: the definition of when a person is *at risk of gambling harm*.

These changes seek to achieve the purpose of the Bill, which is to prevent and minimise gambling harm by strengthening the existing gambling exclusion scheme with appropriate consumer protections and clarifying the obligations gambling licensees must comply with when operating licensed gambling activities. In alignment with the movement away from using the definition of 'problem gambling' as the cornerstone for these laws and towards gambling harm risk, this reform situates the responsibility for preventing potential harm associated with gambling products with organisations seeking to supply those products to the community. It clarifies these responsibilities and streamlines the processes to properly meet them.

The Bill ensures the new gambling harm framework is underpinned by contemporary evidence about gambling harm, with a revised list of signs of risk of gambling harm defined in the Act that reflect best practice research. This threshold is supported by clear and risk-responsive obligations to act which embed an early intervention and prevention ethos, recognising that the responsibility to prevent harm rests with those providing potentially harmful products. Since the Code of Practice was originally created in 2002, evidence informing understanding of gambling harm has developed significantly and the need to modernise the ACT's gambling harm minimisation laws is critical. It is well documented that gambling harm causes serious health, social, physical, financial and emotional impacts to people, including others affected by a person's gambling. The ACT's gambling harm minimisation framework must respond

[5] The 'framework' means the gambling harm reduction protections established in the *Gambling and Racing Control Act 1999* and other associated Acts and Regulations.

to this reality by including clear, evidence-based thresholds for intervention and risk-responsive actions with clear, consistent obligations.

The Bill replaces stigmatising language such as ‘problem gambler’ and ‘gambling problem’ contained in the Code of Practice with contemporary language to describe gambling harm which is non-stigmatising towards people experiencing harm. This further recognises that the risk or problem to be addressed is the harm from the gambling activity, rather than the individual participating in the activity.

The amendments in the Bill modernise the scheme, shift the approach towards the prevention of harm, remove barriers to self-exclusion, and clarify key definitions and thresholds, including the definition of risk of gambling harm, thus providing greater clarity of licensees’ harm minimisation responsibilities.

The Bill modernises the scheme by removing the inflexible implementation requirements associated with a private law deed-based scheme as established by the Code of Practice. This currently requires that individuals seeking to self-exclude complete a formal deed which carries a range of rigid legal requirements. These strict requirements are impractical and administratively burdensome for the individual seeking to self-exclude, as they require extensive steps to print, sign and have the paper deed form witnessed contemporaneously before submitting it, which is inconsistent with contemporary expectations of government service delivery. The requirements also create administrative burden for licensees and the Commission who must manage the receipt and storage of the paper records, also out of step with modern expectations and ways of working.

By elevating the scheme to the Act and avoiding prescriptive implementation requirements associated with a private law scheme, the Bill facilitates implementation of flexible options for the approach(es) to seeking self-exclusion, in line with modern expectations. While implementation details remain to be considered and approaches may fluctuate over time, this could include enabling individuals to give their self-exclusion notices digitally.

The new gambling harm framework maintains consistency with existing Code of Practice requirements that will be familiar to licensees, and therefore the changes are expected to carry minimal operational impacts for licensees. In summary, the Bill seeks to balance the need for strong consumer protection and a focus on protecting the community from gambling harm, without significantly increasing the regulatory burden on local licensed gambling operations and businesses. It is expected licensees and their staff will undertake training to ensure they understand their obligations under the revised framework to protect consumers from gambling harm.

As this Bill relates to the Act and Regulation (Code of Practice) which were first published in 1999 and 2002 respectively (prior to the introduction of the ACT’s *Human Rights Act 2004*) this explanatory statement includes an expanded human rights analysis of the relevant amendments to the Act and Regulation (Code of Practice).

CONSULTATION ON THE PROPOSED APPROACH

JACS engaged with the Gambling and Racing Commission and Access Canberra on the development of this Bill.

JACS consulted the 'Cashless Gaming Working Group' about the Government's planned gambling exclusion reforms on 29 January 2026. This consultation focused on the ACT's exclusion scheme (self-exclusion and licensee exclusion) and sought feedback from the club sector and community sector about how gambling exclusion works, including barriers and opportunities for improvement. Earlier consultation with industry in previous reform phases also directly informed the approach taken in this Bill.

JACS consulted Relationships Australia, Care Financial Counselling, and a representative from the Gambling Harm Lived Experience Experts group on 19 February 2026. Stakeholders shared reflections about gambling harm minimisation policies, including gambling exclusion, emphasising the importance of harm reduction strategies and the need to support people experiencing harm, including the need to ensure approaches are non-stigmatising to encourage people to seek help or support.

JACS consulted other government jurisdiction officials in relation to gambling exclusion policies, including the Tasmanian and South Australian Governments, and to discuss reform to the National Self-Exclusion Register (BetStop), which informed policy consideration for the exclusion reforms in this Bill.

While not specifically related to gambling exclusion, an Independent Inquiry into the future of the ACT club industry took place in 2025-26.[6] This inquiry developed a transition pathway to support community clubs' efforts to diversify away from reliance on gambling revenue and highlighted the need to address gambling harm through a range of harm reduction measures.

[6] Independent Inquiry into the future of the ACT Club Industry, June 2026

CLIMATE IMPACT

This Bill does not have a climate impact.

CONSISTENCY WITH HUMAN RIGHTS

Rights Engaged

The Bill engages the following sections of the *Human Rights Act 2004* (**HRA**):

- Section 9 – right to life (promoted)
- Section 12 – right to privacy and reputation (promoted and limited)
- Section 18 – right to liberty and security of person (promoted)
- Section 8 – right to equality and non-discrimination (limited)
- Section 13 – right to freedom of movement (limited)
- Section 22 – rights in criminal proceedings (limited)
- Section 27B – right to work (limited)

The ways in which the Bill engages these rights are set out below.

Rights Promoted

Section 9 – Right to life

Section 9 of the HRA provides that everyone has a right to life and no-one may be arbitrarily deprived of life. The United Nations Committee on Human Rights provides: 'the right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.'[7] The right to life includes a positive obligation on government to take reasonable actions to safeguard life and protect individuals.

A range of provisions promote the right to life by protecting health and wellbeing of people that experience gambling harm. This includes provisions which:

- Define the risk of gambling harm
- Clarify licensed gambling operators' responsibilities to prevent and respond to risk of harm, and
- Enhance individuals' access to methods to take a break from gambling, via reform to the self-exclusion process.

[7] UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, accessed 28 October 2023, available at: https://www.refworld.org/docid/5e5e75e04.html.

Section 12 – Right to privacy

Under section 12 of the HRA, everyone has the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily and not to have their reputation unlawfully attacked. This right also encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from excessive government intervention and unsolicited intrusion by other individuals.[8] The right to privacy is engaged and promoted by enabling individuals to choose to initiate self-exclusion if they are concerned about the potential impacts of their gambling. This enables individuals to exercise their autonomy with respect to addressing their risk of gambling harm.

Section 18 – Right to liberty and security of person

The right to security of person obliges government to take appropriate measures to protect individuals to foreseeable threats to life or bodily integrity from public authorities or private individuals.[9] The provisions which enable gambling self-exclusion (self-exclusion) or require exclusion as an intervention to prevent harm (licensee exclusion) are important community safety measures that will likely promote the right to security of person as they will help to reduce the serious impacts of gambling harm in the community.

Rights Limited

The Bill engages and limits the following rights pursuant to the HRA:

- Section 8 – right to equality and non-discrimination
- Section 12 – right to privacy
- Section 13 – right to freedom of movement
- Section 22 – rights in criminal proceedings
- Section 27B – right to work

The preamble to the HRA notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights. Section 28 of the HRA requires that any limitation on a human right be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate.

[8] UN Human Rights Committee, General Comment No. 16: Article 17, the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (1988) (‘General Comment No. 16’) [1]

9 UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person) (2014)(‘General Comment No. 35’), [9].

Section 8 – right to recognition and equality before the law

1. *Nature of the right and the limitation (s28(2)(a) and (c))*

Under section 8 of the HRA, everyone has the right to enjoy their human rights without distinction or discrimination of any kind. Everyone also has the right to equal protection of the law without discrimination.

The Bill may engage and limit the right to equality and non-discrimination through section 17C which defines 'risk of gambling harm,' Division 3.3 which provides for the monitoring and reduction of risk of gambling harm, and section 19J which empowers licensees to give people a notice of gambling exclusion if there is a risk of gambling harm. Section 17C includes subjective elements that present as a sign of gambling harm risk (such as a decline in personal appearance and heightened emotion) which limit the right to equality as they may have a discriminatory impact on some individuals.

2. *Legitimate purpose (s28(2)(b))*

The legitimate purpose pursued is preventing and responding to gambling harm among individuals experiencing this or at risk of experiencing this.

3. *Rational connection between the limitation and the purpose (s28(2)(d))*

Preventing someone from gambling, and from accessing a gambling area, is highly effective in preventing gambling harm because it removes the cause of harm.

4. *Proportionality (s28(2)(e))*

The limitation on the right to equality and non-discrimination is considered proportionate as an exclusion notice will only be initiated if a licensee considers there is risk of harm to the individual pursuant to section 17C. The Commission must also review licensee exclusion notices and may refuse to make an exclusion determination if not satisfied as to the matters the licensee raises in their notice, providing a level of oversight of these decisions.

The Bill also includes provisions enabling individuals to revoke their self-exclusion at their own choice and to seek review of licensee exclusion (first by the Commission and then at ACAT).

Section 12 – right to privacy and reputation

1. *Nature of the right and the limitation (s28(2)(a) and (c))*

Under section 12 of the HRA, everyone has the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily and not to have their reputation unlawfully attacked.

This right is engaged and limited by a range of provisions included in the Bill which create new statutory duties and powers to record, store, access and share personal information between parties about individuals who are at risk of gambling harm (for example, sections 19C, 19D, 19E and 19F). Information collected, stored, and shared includes instances of risk of gambling harm relating to a person, the person's identifying details such as name, date of birth, contact details or sufficient details to identify the person, actions a licensee has taken in relation to gambling harm risk, which may include a notice of exclusion in relation to the person, or an exclusion determination in relation to the person.

2. Legitimate purpose (s28(2)(b))

The limitation on the right to privacy pursues the legitimate purpose of facilitating effective administration and delivery of a gambling exclusion scheme in the ACT, and consequently, the promotion of community safety and reduction of gambling harm.

Specifically, enabling collection, storage, and sharing of personal information ensures:

- Risk of gambling harm is effectively recorded. This is essential to monitoring gambling harm risk over time, by different staff members, and across venues. It is therefore essential to ensuring compliance with exclusion notices and determinations and to ensuring licensees can implement a risk-responsive approach to reducing gambling harm.
- Effective identification of individuals who are at risk of gambling harm or subject to an exclusion notice or determination. In order to be able to identify an excluded person there needs to be a record created for the individual, including identifying data. In recognition of this, the Commission has an obligation to verify the identity of a person to whom an exclusion notice relates, which cannot be undertaken without identifying information.

3. Rational connection between the limitation and the purpose (s28(2)(d))

Effective implementation of a gambling exclusion relies on the availability of information about people at risk of gambling harm, or to whom a gambling exclusion notice or determination relates.

If personal information is not collected, it would be impossible to:

- Know who is at risk of gambling harm, and for licensees to identify and take responsive action to prevent harm or further harm. This would compromise licensees' ability to effectively respond to risk of harm over time, particularly that which is demonstrated by iterative and compounding evidence.
- Know who is subject to an exclusion notice or determination, and therefore, must be excluded from the gambling activity in order to comply with the law.

Ultimately, without collecting, storing, and sharing personal information, the exclusion scheme would not be operationalisable and it would fail to realise its intent to prevent and reduce gambling harm.

4. Proportionality (s28(2)(e))

The amendments requiring collection, storage, access and sharing of personal information are no more expansive than necessary to facilitate effective delivery of a gambling exclusion scheme.

There are safeguards against unauthorised access to exclusion information (section 19E) with an associated offence, and the amount and type of personal information within the Bill's remit has been limited only to data that is required for compliance and incident reporting purposes which is proportionate to the level of risk associated with the gambling activity and the responsibility of licensees to observe and act appropriately to prevent the risk of harm. The Bill includes protection that the information is only collected for the purpose of exclusion, if self-exclusion is requested by a person, or the information is collected by a licensee to issue a licensee exclusion notice to prevent risk of gambling harm. Only certain approved staff of a licensed gambling activity may access the register, which is protected by strict access control.

These safeguards are supported by existing safeguards outside the Act. This includes safeguards pursuant to the *Privacy Act 1988* (Cth) which imposes requirements on the collection, use, disclosure and storage of personal information, and gives individuals a complaints mechanism pathway for mishandling of their personal information as well as a private action in tort if an entity commits a serious invasion of their privacy involving their private information. While most safeguards apply to corporate entities with an annual turnover of more than $3 million, smaller businesses which are related to a larger bodies corporate that are subject to the Privacy Act or have voluntarily opted into the Privacy Act, must also comply and in 2023 following a review of the Privacy Act, the Australian Government indicated in principle that the general exemption for small businesses from requirements to protect data will likely be removed.[10]

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[10]Government Response – Privacy Act Review Report (2023): https://www.ag.gov.au/sites/default/files/2023-09/government-response-privacy-act-review-report.PDF.

Therefore, given the information privacy safeguards in place within the Bill and the existing legal framework and that limitations on privacy are inherent to delivering the exclusion scheme and associated harm minimisation intent, the Bill comprises a proportionate limitation on the right to privacy and reputation.

Section 13 – right to freedom of movement

1. Nature of the right and the limitation (s28(2)(a) and (c))

Under section 13 of the HRA, everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose their residence in the ACT. This right is engaged and limited by licensee gambling exclusion as it limits a person's movement or access and involuntarily prohibits a person from an area or facility where the gambling activity takes place under that licensee's control, for example a casino or community club. The Bill provides that the maximum term for a licensee exclusion is 5 years.

2. Legitimate purpose (s28(2)(b))

This limitation has a legitimate purpose as gambling exclusion is an evidence-based harm reduction intervention which prevents and limits the risk of gambling harm. Involuntary gambling exclusion (licensee exclusion) is an existing policy in the ACT, and the amendment establishes this within the gambling exclusion scheme consistently with current licensee requirements whereby a licensee must monitor for signs of gambling harm. The amendment aims to promoting a higher degree of community and consumer safety in environments where gambling activities take place. Licensee exclusion has a legitimate purpose as gambling harm requires licensee to act when involuntary exclusion is a necessary and proportionate intervention to prevent the risk to a person's welfare due to gambling.

3. Rational connection between the limitation and the purpose (s28(2)(d))

The requirement that a licensee must exclude a person at risk of gambling harm plays an important role in ensuring consumer and community safety by requiring licensees to respond appropriately to observed risk of gambling harm. This intervention limits and prevents harm experienced through gambling as preventing someone from gambling when they are at risk of harm is highly effective in reducing that risk. Without this legislative requirement for gambling exclusion intervention by licensees, people experiencing harm or at risk of harm may not be able to pause gambling or seek help, presenting a significant safety and wellbeing risk for people experiencing gambling harm, noting that gambling harm can also extend to other people such as family members.

4. Proportionality (s28(2)(e))

The limitations on freedom of movement are considered proportionate to the legitimate purpose. There are several elements of the scheme that balance the limitation on freedom of movement, including:

- The grounds for licensee exclusions are considered by the Commission which will determine if they are fair and reasonable.
- A person who is excluded by a licensee has the right of review of a which balances the limitation. The ability to review a licensee exclusion notice ensures that a person's right to freedom of movement is not unfairly restricted with unsubstantiated reasons.
- The Bill provides that the maximum term of gambling an exclusion is 5 years.

Therefore, exclusions are neither absolute nor permanent.

Section 19J provides that a licensee exclusion notice excludes a person from participating in a certain gambling activity where risk of harm is observed. Exclusion from a gambling activity is considered less restrictive than exclusion from an entire place or venue, because it does not preclude a person from attending another part of the venue where the gambling activity takes place. Sanctions for an individual failing to comply with an exclusion determination were considered, however were not included given:

a. the harm minimisation intent of the Bill

b. recognising the challenges individuals may face in overcoming a compulsion to continue gambling, and

c. that those at risk of gambling harm may already be experiencing financial disadvantage.

Ultimately, there is no less restrictive option available to give effect to an exclusion scheme – exclusion from gambling inherently requires some limitation to freedom of movement as preventing a person who is excluded from gambling is central to delivering an effective exclusion. This is also reinforced by the safeguards described above.

These amendments represent a reasonable and justifiable limitation on the right to freedom of movement, as the limitation is targeted and proportionate to the legitimate objective of reducing risk of gambling harm and improving community safety.

<u>Section 22 – rights in criminal proceedings</u>

1. Nature of the right and the limitation (s28(2)(a) and (c))

Under section 22(1) of the HRA, everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The Bill includes provisions which limit the right to be presumed innocent. Several offences in the Bill provide for strict liability offences (sections 19D, 19E, 19O, 19K, 19U, 19P, 19V, and 19W). Also, some offences reverse the legal or evidential burden to the defence (sections 19A, 19B, 19J, 19O), albeit to a lower standard of proof (see *Criminal Code 2002*, section 58 and 59). These provisions are outlined below.

While some of the provisions below apply to licensees and would not, in most cases, engage the HRA, this assessment considers the potential limitation of rights in criminal proceedings where a licensee operates as a sole trader. In those circumstances, the HRA is engaged and the rights analysis is therefore required.

The following tables list the offences in the Bill which engage human rights and the nature of the limitation each creates on rights in criminal proceedings.

Section	**Nature of the limitation**
Section 19A Licensees must monitor risk of gambling harm	Provides an offence for licensees failing to monitor for risk of gambling harm in relation to people engaging in gambling activities, at the licensee's premises or dealing with the licensee. There is a defence if the defendant proves they took all reasonable steps to monitor the risk. The defendant has legal burden in relation to this defence. Shifting the legal burden to the defendant limits the right to be presumed innocent.
Section 19B Licensees must take action to reduce risk of gambling harm	Provides an offence for licensees failing to reduce risk of gambling harm in relation to people engaging in gambling activities, at the licensee's premises or dealing with the licensee. There is a defence if the defendant proves they took all reasonable steps to reduce the risk. The defendant has legal burden in relation to this defence. Shifting the legal burden to the defendant limits the right to be presumed innocent.
Section 19D Offences – licensees not entering records in gambling harm risk register	Provides an offence for a licensee failing to enter observation of 1 or more signs of gambling harm in the register within 3 consecutive trading days of observing the instance of harm. This is a strict liability offence so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent.
Section 19E Accessing etc the gambling harm risk register	Provides an offence for a person accessing and amending or removing details on the register and the person is not authorised to do so. This is a strict liability offence so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent.

Section	Nature of the limitation
Section 19J Licensees giving people notice of gambling exclusion	Provides for an offence for a licensee failing to give a licensee exclusion notice to a person at risk of gambling harm, as soon as practicable. There is a defence available if the licensee considered another action more proportionate to the risk of gambling harm, and so undertook that action and duly recorded this. The defendant will have a legal burden in relation to this defence. Shifting the legal burden to the defendant limits the right to be presumed innocent.
Section 19O Exclusion of people named in gambling exclusion notice or gambling exclusion determination	Provides for an offence if the licensee fails to stop a person from gambling within the exclusion period if they have given notice of their self-exclusion or they have been excluded by the licensee. There is a defence available if the licensee takes all reasonable steps to stop the person from engaging in the gambling activity. The defendant will have a legal burden in relation to this defence. Shifting the legal burden to the defendant limits the right to be presumed innocent. Strict liability also applies to elements of this offence so the prosecution will not be required to prove fault elements for these issues. Therefore, this limits the right to be presumed innocent.
Section 19K Licensees must tell commission about gambling exclusion notices	Provides for an offence if the licensee fails to tell the Commission with 3 trading days that the licensee has given a person a licensee exclusion notice. This offence is strict liability so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent. There is a defence available if the licensee does not accept a person's self-exclusion notice under section 19I(3), for example because it is incomplete. The defendant will have an evidential burden in relation to this defence. Shifting the evidential burden to the defendant limits the right to be presumed innocent.
Section 19U Licensees must comply with decision to revoke or amend gambling exclusion determination based on licensee exclusion notice	Provides an offence for the licensee failing to give effect to the Commission's or ACAT's decision to revoke or amend a licensee exclusion determination. This offence is a strict liability offence so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent.

Section	Nature of the limitation
Section 19P Exclusion procedures	Provides an offence for a licensee failing to prepare written procedures about how a person subject to a exclusion notice or determination is to be excluded from the activity. Also provides an offence for a person failing to comply with a written directions from the Commission about exclusion procedures to ensure compliance with the procedures. This offence is a strict liability offence so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent.
Section 19V Offence—using accounts of excluded people	Provides an offence for a licensee allowing someone to use an excluded person's account to engage in the gambling activity. This offence is a strict liability offence so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent.
Section 19W Offence—sending promotional material to excluded people	Provides for an offence for a licensee giving information or promotional material in relation to gambling to an excluded person. This offence is a strict liability offence so the prosecution will not be required to prove fault elements. Therefore, this limits the right to be presumed innocent.

2. Legitimate purpose (s28(b))

Each of the offence provisions will play an important role in ensuring effective administration of the ACT's gambling exclusion scheme and ensuring licensees' compliance with their obligations. These contribute to the scheme's overall intent to prevent and reduce gambling harm and the risk of this harm.

Section	Legitimate purpose
Section 19A Licensees must monitor risk of gambling harm	To ensure licensees are proactive in monitoring for the risk of gambling harm, to facilitate a risk-responsive early intervention ethos to harm minimisation measures and support effective delivery of licensees' obligations to record gambling harm risk. The reverse legal burden is necessary to ensure this offence can be effectively prosecuted.

Section	**Legitimate purpose**
Section 19B Licensees must take action to reduce risk of gambling harm	To ensure licensees are proactive in reducing the risk of gambling harm, to facilitate a risk-responsive early intervention ethos to harm minimisation measures. This moves away from responsive approaches aimed at addressing problems when they arise, towards embedding safety through gambling operations. The reverse legal burden is necessary to ensure this offences can be effectively prosecuted.
Section 19D Offences – licensees not entering records in gambling harm risk register	To ensure licensees monitor the risk of gambling harm and ensure relevant information observed about the risk of gambling harm is recorded in a timely manner, to prevent harm.
Section 19E Accessing etc the gambling harm risk register	To safeguard individuals' personal information by ensuring only authorised people with a need to know can access the register for the purposes of monitoring and preventing gambling harm risk.
Section 19J Licensees giving people notice of gambling exclusion	To prevent gambling harm by ensuring the licensee takes appropriate and timely action to exclude a person at risk of gambling harm.
Section 19O Exclusion of people named in gambling exclusion notice or gambling exclusion determination	To prevent gambling harm by ensuring licensees take appropriate action to prohibit excluded people from the gambling activity.
Section 19K Licensees must tell commission about gambling exclusion notices	To facilitate effective administration of the gambling exclusion scheme – and thereby prevention of gambling harm – by ensuring licensees provide the Commission with a self-exclusion notice or licensee notice in a timely manner to allow effective information sharing with relevant licensees and a timely determination of the licensee exclusion.

Section	Legitimate purpose
Section 19U Licensees must comply with decision to revoke or amend gambling exclusion determination based on licensee exclusion notice	To facilitate effective administration of the gambling exclusion scheme – and thereby prevention of gambling harm – by ensuring licensees comply with a Commission decision in relation to an exclusion.
Section 19P Exclusion procedures	To facilitate licensees' compliance with the exclusion scheme – and thereby prevention of gambling harm – by ensuring licensees prepare written procedures to manage and be compliant with exclusion requirements and adhere to the Commission's direction in relation to exclusion procedures.
Section 19V Offence—using accounts of excluded people	To facilitate effective administration of the gambling exclusion scheme – and thereby prevention of gambling harm – by ensuring licensees do not allow someone to use an excluded person's account to engage in the gambling activity.
Section 19W Offence—sending promotional material to excluded people	To facilitate effective administration of the gambling exclusion scheme – and thereby prevention of gambling harm – by ensuring licensees do not give information or promotional material in relation to gambling to an excluded person.

3. Rational connection between the limitation and the purpose (s28(d))

Effective administration of the exclusion scheme – and realisation of its harm minimisation intent – requires that suitable sanctions exist to encourage compliance by gambling licensees. Without sanctions, there is a possibility that gambling licensees may defer to financial incentives to encourage continued gambling despite there being reason for a person to no longer gamble due to risk of harm. Similarly, sanctions are necessary to ensure that non-compliance of gambling licensees' obligations carries legal consequences.

Strict liability offences typically arise in a regulatory context where, for reasons such as public safety and ensuring that regulatory schemes are complied with, strict compliance must be demanded. It also typically arises in cases where a defendant can reasonably be expected, because of their involvement with the regulated activity, to know what the requirements of the law are, and as such the mental, or fault, element can justifiably be excluded.

Strict liability applies in the Bill to offences which apply to licencees who should have a high degree of understanding of the regulatory framework. They also relate to action or inaction which is administrative or procedural in nature, regarding which strict compliance must be demanded to ensure the scheme fulfills its purpose. For example, staff of licensees can be reasonably expected to be aware of requirements and subsequent offences associated with record-keeping or information sharing obligations. Strict liability ensures that the ongoing administration of the scheme is not compromised by simple administrative oversights or failures, about which staff should have a high degree of knowledge.

Certain offences (sections 19A, 19B, 19J, 19O) provide defences that impose a legal or evidential burden on the defendant. To this extent, the offences limit the right to be presumed innocent in criminal proceedings. The limitation is necessary because requiring the prosecution to disprove matters that are uniquely within the defendant's knowledge could undermine the effective operation of the offence. Should the prosecution be required to disprove all possible defences, even those that are irrelevant or fanciful, then prosecution of the offences would inevitably be impossible to pursue or rarely, if ever, succeed. Placing the evidential burden on the accused seeking to rely on the defence reinforces the regulatory expectation that licensees monitor for the risk of gambling harm and take appropriate action in response to observation of this risk.

Accordingly, the limitation of a person's rights under s 22 of the HRA resulting from imposing an evidential or legal burden on the accused where a defence is raised are necessary to ensure that appropriate regulatory action can be taken.

4. Proportionality (s28 (e))

The limitation on rights in criminal proceedings is considered proportionate to the legitimate purpose, given the need to regulate and prevent gambling-related harm. The table below outlines why the limitation is reasonable in relation to each provision

Section	**Proportionality** *Reason why the limitation is reasonable*
Section 19A Licensees must monitor risk of gambling harm	Proactive monitoring for risk is key to delivering gambling harm minimisation through a risk-responsive early intervention ethos where risks of harm are addressed before harm and problems eventuate. The reverse legal burden for the defence that the licensee took reasonable steps is necessary to facilitate effective prosecution of this offence given that whether the defendant took reasonable steps to monitor risk of gambling harm is uniquely within the knowledge of the defendant.

Section	**Proportionality** *Reason why the limitation is reasonable*
Section 19B Licensees must take action to reduce risk of gambling harm	Proactive efforts to reduce the risk of gambling harm is key to delivering gambling harm minimisation through a risk-responsive early intervention ethos where risks of harm are addressed before harm and problems eventuate. The reverse legal burden for the defence that the licensee took reasonable steps is necessary to facilitate effective prosecution of this offence given that whether the defendant took reasonable steps to reduce risk of gambling harm is uniquely within the knowledge of the defendant.
Section 19D Offences – licensees not entering records in gambling harm risk register	The licensee can be expected to have a high degree of awareness and understanding of the gambling harm framework because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know what the record keeping requirements are, and therefore the fault element can justifiably be excluded. Strict compliance with the obligations to record gambling harm risk is also inherent to the exclusion scheme's capacity to realise its harm minimisation intent.
Section 19E Accessing etc the gambling harm risk register	The licensee can be expected to have a high degree of awareness and understanding of the gambling harm framework and the purpose of the gambling harm risk register because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know what the requirements are for approved persons accessing the gambling harm risk register, and therefore the fault element can justifiably be excluded. Strict compliance with the obligations to safeguard individuals' privacy will also foster trust and confidence in the exclusion scheme and support more individuals to initiate self-exclusions, which is central to the exclusion scheme's capacity to realise its harm minimisation intent.
Section 19J Licensees giving people notice of gambling exclusion	Placing the evidential burden on the accused to demonstrate that they appropriately considered another action and took this action instead of exclusion if they seek to raise the defence avoids imposing a significant burden on the prosecution in requiring them in every case of suspected non-compliance to prove the counterfactual (i.e. prove that there was a risk of gambling harm and that another action was not more appropriate licensee did not take appropriate action). Placing the evidential burden on the accused also ensures that licensees are incentivised to keep adequate records of risk of gambling harm and actions taken to address the risk. This ensures effective administration of the scheme and compliance with it.

Section	Proportionality *Reason why the limitation is reasonable*
Section 19O Exclusion of people named in gambling exclusion notice or gambling exclusion determination	This offence does not apply under sub-section (3) if the licensee takes all reasonable steps to stop the person from engaging in the gambling activity. It would impose a significant burden on the prosecution if they were required in every case of suspected non-compliance to prove the counterfactual (i.e. prove that an excluded person engaged in a gambling activity and the licensee did not take all reasonable steps to prevent the person from doing this). Placing the evidential burden on the accused also ensures that licensees are incentivised to put appropriate procedures in place and actively monitor to ensure excluded people are not permitted to engage in the gambling activity. This ensures effective administration of, and compliance with, the scheme.
Section 19K Licensees must tell commission about gambling exclusion notices	The licensee can be expected to have a high degree of awareness and understanding of the gambling exclusion framework because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know what the administrative requirements are in relation to providing self-exclusion notices to the Commission within 3 trading days, and therefore the fault element can justifiably be excluded. Strict compliance with administrative information sharing provisions is also inherent to the exclusion scheme's functioning and capacity to realise its harm minimisation intent.
Section 19U Licensees must comply with decision to revoke or amend gambling exclusion determination based on licensee exclusion notice	The licensee can be expected to have a high degree of awareness and understanding of the gambling exclusion framework because of their involvement with the regulated activity. Strict compliance with the obligations to comply with directions under this section is critical to ensuring effective administration of the scheme, and is inherent to the exclusion scheme's capacity to realise its harm minimisation intent.

Section	**Proportionality** *Reason why the limitation is reasonable*
Section 19P Exclusion procedures	The licensee can be expected to have a high degree of awareness and understanding of the gambling exclusion framework because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know they must have procedures in place and follow the Commission's directions in those procedures, and therefore the fault element can justifiably be excluded. Strict compliance with the obligations to prepare procedures and comply with the Commission's direction in relation to these is critical to ensuring effective delivery of the exclusion scheme, and is inherent to the exclusion scheme's capacity to realise its harm minimisation intent.
Section 19V Offence—using accounts of excluded people	The licensee can be expected to have a high degree of awareness and understanding of the gambling exclusion framework because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know their obligations to follow the Commission's directions in relation to gambling exclusion procedures, and therefore the fault element can justifiably be excluded. Strict compliance with the obligations to not allow individuals to use the accounts of excluded people is critical to ensuring effective delivery of the exclusion scheme, and is inherent to the exclusion scheme's capacity to realise its harm minimisation intent.
Section 19W Offence—sending promotional material to excluded people	The licensee can be expected to have a high degree of awareness and understanding of the gambling exclusion framework because of their involvement with the regulated activity. Therefore, the licensee can be reasonably expected to know their obligations to prevent a person using the account of an excluded person to engage in a gambling activity, and therefore the fault element can justifiably be excluded. Strict compliance with the obligations to not send promotion material to excluded people is critical to ensuring effective delivery of the exclusion scheme, and is inherent to the exclusion scheme's capacity to realise its harm minimisation intent. It would impose a significant burden on the prosecution if they were required in every case of suspected non-compliance to prove the counterfactual (i.e. prove that the promotional material was not made available to the public). This ensures effective administration of, and compliance with, the scheme.

Section 27B – right to work and other work-related rights

1. Nature of the right and the limitation (s28(2)(a) and (c))
Under section 27B of the HRA, everyone has the right to work. There is the potential for this right to be limited by implications of licensees failing to comply with the regulations the Bill imposes. If such failures result in a licensee no longer being permitted to operate, its employees may no longer be able to work until/unless they secure alternative employment. This may limit their right to work.

2. Legitimate purpose (s28(b))
To purpose of this limitation is to prevent and respond to gambling harm among individuals experiencing this, or at risk of experiencing this, by delivering an effective gambling harm minimisation and exclusion scheme.

3. Rational connection between the limitation and the purpose (s28(d))
A robust regulatory framework, with consequences, sanctions, and penalties for licensees who fail to comply with this scheme, is necessary to deliver an effective gambling harm minimisation and exclusion scheme, and realise its harm minimisation intent. Without an effective regulatory framework licensees may defer to financial incentives to circumvent their obligations thereby rendering the scheme ineffective.

4. Proportionality (s28(e))
While there may be licensing implications for licensees who fail to comply with obligations included in the Bill, affecting employees and workers reliant on the licensee for employment, this is a necessary deterrent to prevent circumvention of licensees' obligations to prevent and respond to harm, including facilitating the gambling exclusion scheme. There is no less restrictive approach available, as a regulatory framework with no possibility of sanctions is unlikely to be effective at realising its intent. Given the significance of the intent at the heart of the gambling harm minimisation and exclusion scheme, the risk of licensing implications for licensees who fail to meet their obligations, and associated employment impacts for employees of those licensees, is proportionate to the aim of realising this intent.

Gambling and Racing Control (Gambling Exclusion) Amendment Bill 2026

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Gambling and Racing Control (Gambling Exclusion) Amendment Bill 2026**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004.*

…………………………………………………

Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause names the short title of this Act as the *Gambling and Racing Control (Gambling Exclusion) Amendment Act 2026*.

Clause 2 Commencement

This clause provides that sections 3 and 25 of this Act commence on the day after this Act's notification day. Section 3 describes the legislation amended by the Act and section 25 provides for the validation of certain deeds of exclusion. Section 25 ensures that all previous and existing deeds of exclusion are valid to give effect to an exclusion, even if there is a defect or irregularity in the deed or the execution of the deed, from the day after this Act is notified.

This clause provides that the remaining provisions of the Act commence on a day fixed by the Minister by written notice. However, subject to the Legislation Act 2001 section 79, the remaining provisions of the Act will commence on the day 6 months after the notification of the Act, even if the minister has not made written notice.

Clause 3 Legislation amended

This clause lists the legislation amended by this Act, which are the:

- *Gambling and Racing Control Act 1999*
- Gambling and Racing Control (Code of Practice) Regulation 2002

The Act makes consequential amendments to the:

- *Casino Control Act 2006*
- *Gaming Machine Act 2004*
- Gaming Machine Regulation 2004
- *Race and Sports Bookmaking Act 2001*
- *Racing Act 1999*
- Racing Regulation 2010
- *Totalisator Act 2014*
- *Unlawful Gambling Act 2009*

Part 2 Gambling and Racing Control Act 1999

Clause 4 Dictionary

Section 2, note 1

This clause is a technical amendment that amends the dictionary at the end of the Act and includes signpost references to other terms defined elsewhere.

Clause 5 New Section 3A

This clause inserts a new section about offences against this Act. It states how the Criminal Code 2002 applies to certain offences in the Act and how the Legislation Act deals with the meaning of offence penalties expressed in penalty units.

Clause 6 Functions of commission

New section 6 (2) (ca)

This clause inserts a new Gambling and Racing Commission (Commission) function in relation to preventing gambling harm. The clause provides that it is a function of the Commission to implement and oversee programs and strategies to prevent and reduce gambling harm. This new function is consistent with the Commission's broad role in reducing gambling harm.

Clause 7 Governing board members

Section 12 (1)

This clause substitutes language to reflect a requirement that the knowledge, experience or qualifications of at least 1 of the board members must be related to providing counselling services to people experiencing or at risk of gambling harm.

Clause 8 Commission's staff

New section 14 (3)

This clause is a technical amendment to clarify the scope of the new term 'employ' which this Act adds to the dictionary.

Clause 9 New division 2.3 heading

This clause creates a new division with the heading 'Role of commission in reducing gambling harm'.

Clause 10 Part 3 and division 3.1 headings

This clause amends the title of part 3 to 'Gambling harm'. The clause also amends the title of division 3.1 to 'Preliminary'.

Clause 11 Monitoring and research

Section 17

This clause relocates section 17 'Monitoring and research' to section 16, division 2.3 'Role of commission in reducing gambling harm' as this section appropriately sits in the division of the Act dealing with the role of the Commission in reducing gambling harm.

Clause 12 New sections 17A to 17C

This clause inserts new sections in division 3.1 'Preliminary'. The clause inserts several definitions at section 17A, the meaning of licensee at section 17B, and the meaning of risk of gambling harm at section 17C, which are terms used in the new Gambling Harm part of the Act.

<u>17A – Definitions – part 3</u>

Section 17A provides new definitions for part 3 to support the gambling harm framework in part 3 of the Act.

Section 17A provides new definitions for:

- Exclusion period
- Gambling activity
- Gambling exclusion determination
- Gambling exclusion notice
- Gambling facility
- Gambling harm risk register
- Licensee
- Licensee exclusion notice
- Risk of gambling harm
- Self-exclusion notice
- Sign of gambling harm risk
- Support person
- Trading day

<u>17B – Meaning of licensee – part 3</u>

Section 17B provides the meaning of licensee of a gambling activity for the purposes of part 3 of the Act. This is consistent with the existing meaning of licensee at section 5 of the Regulation (Code of Practice), except that it does not include lottery and pool betting licensees. This is because the definition applies to the whole of part 3, which includes a range of obligations and functions (such as the gambling exclusion scheme) that do not currently apply to lottery and pool betting licensees. This Act does not propose to extend the application of the gambling exclusion scheme and gambling harm framework to lottery and pool betting licensees, due to the lower risk of harm, higher frequency of play and casual participation associated with lotteries.

<u>Meaning of risk of gambling harm – part 3</u>

Section 17C defines the *risk of gambling harm* in relation to a person which is central to the gambling harm framework. This new definition replaces the concept of 'problem gambling' as defined in the Regulation (Code of Practice) at schedule 1, section 1.2 and definition of a 'problem gambling incident at schedule 1, section 1.6A of the Regulation (Code of Practice). The new definition of risk of gambling harm is consistent with, and clarifies, the 'problem gambling' definition at schedule 1, section 1.2 of the Regulation (Code of Practice) and the Examples – signs that person has gambling problem at schedule 1, section 1.6A of the Regulation (Code of Practice). It reflects contemporary evidence and understanding that the problem or risk is the gambling activity, rather than the individuals participating in the activity. This approach moves the gambling harm framework to a preventive approach by focusing on preventing the cause of gambling harm and addressing the risk of such harm, rather than only acting after harm has occurred.

The amendments also embed contemporary evidence around the indicators of gambling harm and gambling harm risk, moving beyond the signs and examples described in the Regulation (Code of Practice) to provide a revised evidence-based list of the signs of gambling harm risk to a person engaging in a gambling activity. The new list of signs at section 17C (1) (a) (i–vii) is non-exhaustive and when one or more is present, risk of harm will be taken to be present in relation to a person. Further to the list of signs at (1) (a), sub-section (1) (b) also provides that risk of gambling harm is present in relation to a person if the person is experiencing, or is reasonably likely to experience, an adverse social, emotional, physical or financial effect resulting from their gambling, or another person’s gambling. This reflects contemporary evidence that gambling harm has wide-ranging adverse effects, which extend beyond financial impacts and can also extend to another person (or people) connected to the person engaging in the gambling activity.

Clause 13 Division 3.2 heading

This clause is a technical amendment which substitutes the heading of division 3.2

Clause 14 New section 18A

This clause expands the definition of licensee in Part 3 introduced in clause 12 for the purpose of Division 3.2 only. The expanded definition includes lottery and pool betting licensees, as well as the categories included in clause 12. This is necessary to enable provisions of the Code of Practice to apply to lottery and pool betting licensees, while the remainder of Part 3 continues to not apply to those licensees per section 17B.

Clause 15 Code of practice

Section 18 (1) (c)

This clause is a technical amendment consequential to inserting a definition of employ in the dictionary.

Clause 16 Section 18 (2) (d)

This clause is a technical amendment which omits paragraph (d) because the gambling exclusion mechanisms described as being part of a code of practice have been moved from the Code of Practice to the Act.

Clause 17 Section 18 (2) (e)

This clause substitutes the language used in sub-section 18 (2) (e) without changing the substantive requirements in paragraph (e) and of section 18 (2). The amendment emphasises that a code of practice may *reduce the risk* of gambling harm to people, rather than *deal with people* experiencing gambling harm. This amendment ensures that the code of practice primarily focuses on dealing with the cause rather than symptoms of problems caused by gambling.

Clause 18 Section 18 (2) (f)

Similar to above, this clause is a technical amendment which substitutes the language in this paragraph to emphasise that a code of practice may include addressing the *risk* of gambling harm to people, rather than dealing with people experiencing gambling harm.

Clause 19 Section 18 (2) (h)

This clause is a technical amendment to ensure consistent language throughout the Act.

Clause 20 Section 18 (4)

This clause is a technical amendment to clearly describe that the code of practice relates to a gambling activity conducted by a licensee.

Clause 21 Education and counselling

Section 19 (1) (a)

This clause is a technical amendment to clarify that the Commission may sponsor counselling for people at risk of gambling harm, in addition to people experiencing gambling harm.

Clause 22 Section 19 (1) (b) (i)

This clause is a technical amendment to align the language in the Act which describes different gambling 'activities'.

Clause 23 Section 19 (1) (b) (ii) and (iii)

This clause is a technical amendment to clarify that this section means publicity and education programs about the risk of gambling harm to people.

Clause 24 Section 19 (as amended)

This clause is a technical amendment which relocates section 19 (as amended) to division 2.3 as section 16A as this section is relevant to the role of the Commission.

Clause 25 New divisions 3.3 to 3.5

This clause inserts new divisions 3.3 to 3.5 which outline the rights, obligations and processes in relation to monitoring, reducing and recording gambling harm risk and the ACT's gambling exclusion scheme.

<u>Division 3.3 Monitoring and reducing risk of gambling harm</u>

This clause inserts a new division 'Monitoring and reducing risk of gambling harm' which establishes licensees' obligations to monitor and reduce the risk of gambling harm. This division clarifies that licensees must take proactive steps to monitor and reduce the risk of gambling harm and reactively responding to harm is insufficient.

<u>19A – Licensees must monitor risk of gambling harm</u>

Section 19A provides that licensees must monitor the risk of gambling harm in relation to people engaging in gambling activities conducted by the licensee, present at the licensee premises, and communicating with the licensee. This is a positive obligation on licensees requiring them to proactively monitor the risk of gambling harm in relation to people engaging with them, their premises, and the gambling activities they facilitate. There is an offence for failing to comply with this obligation.

19B – Licensees must take action to reduce risk of gambling harm

Section 19A provides that licensees must take action to reduce the risk of gambling harm in relation to people engaging in gambling activities conducted by the licensee, present at the licensee premises and communicating with the licensee. Examples of actions to reduce the risk of gambling harm include talking to people about the effects of gambling harm, giving information about support services, telling people about self-exclusion, and making licensee exclusion notices.

This is a positive obligation on licensees requiring proactive steps to be taken to reduce the risk of gambling harm in relation to people engaging with them, their premises and the gambling activities they facilitate. Section 19B provides that it is an offence for failing to comply with this obligation.

Division 3.4 Gambling harm risk register

This inserts new division 3.4 'Gambling harm risk register' into the Act, which describes the requirement that the Commission keep a gambling harm risk register, the purpose of the register, when and how licensees must record matters relating to gambling harm risk in the register, and who is authorised to access and amend the register.

19C – Gambling harm risk register

Section 19C renames the 'problem gambling incident register' as the gambling harm risk register, previously described in the Regulation (Code of Practice). This clause retains consistency with the requirements under the Regulation (Code of Practice) Division 1.2.2 sections 1.6 and 1.6A which prescribe that the Commission must establish a register to record problem gambling incidents, and licensees must use this register to record such incidents, while reframing requirements to focus on a risk-responsive framework and early intervention ethos, rather than a problem-responsive framework.

The requirements described in new section 19C align with the overall approach of the gambling harm framework, requiring that licensees must proactively monitor for gambling harm risk signs and record any such matters observed in the register. Licensees must also record in the register any actions taken in relation to observed signs of gambling harm risk, including actions to reduce this risk. The register is also to be used by licensees where a licensee tells the Commission that it has received a self-exclusion notice from a person or given a person a licensee exclusion notice. The Commission must advise a licensee if it makes a gambling exclusion determination which affects the licensee of the gambling activity.

Section 19C (3) prescribes the information that licensees must include in relation to any matter that is entered into the register. This includes the relevant person's name, date of birth and contact details for the purpose of identifying the person at risk of harm to ensure appropriate action can be taken by the licensee and the Commission to prevent harm to the person, including giving effect to a person's request to self-exclude from a gambling activity.

19D – Offences – licensees not entering records in gambling harm risk register

Section 19D provides that it is an offence for licensees to possess information about gambling harm risk, such as taking action to reduce the risk of gambling harm, or giving or receiving an exclusion notice, but fail to enter a record of that information in the gambling harm risk register within 3 trading days of coming into possession of the relevant information or taking the relevant action.

The intention of these amendments is to clarify licensees' existing obligations under division 1.1.2 of the Regulation (Code of Practice) to monitor for signs of the risk of gambling harm, take appropriate action in response to observed risk, and record the relevant matters and actions in the register promptly. Personal information is collected for the purposes of identifying a person at risk of gambling harm, and to ensure the licensee take steps to prevent risk of harm to that person.

19E – Accessing etc the gambling harm risk register

Section 19E describes who is authorised to access the gambling harm risk register for the purposes of the gambling harm framework. Access to the register which contains the personal information of people who have self-excluded, or the licensee has excluded, or identified are at risk of harm, is limited to licensees and staff working under the licensee to operate the gambling activity. Access to the register is controlled by the Commission. Licensees and their staff must request access and be approved by the Commission to access the register. This section authorises the Commission and people approved to access the register to use the information for legitimate purposes required to exercise functions under the Act and comply with the Act. Section 19E includes an offence for unauthorised access to the register and unauthorised addition, deletion or amendment of information on the register.

19F – Offence–licensees failing to review gambling harm risk register information

Section 19F provides that it is an offence for a licensee to fail to review information relating to a notification about a record being added, amended or removed from the register. The purpose of the offence is to ensure licensees regularly review the register and note any additions, changes or updates to ensure they meet their obligations under the Act.

Division 3.5 Exclusion from gambling

The Bill inserts a new division 3.5 into the Act which provides a statutory basis for gambling exclusion in the ACT. It describes the rights and obligations of individuals and licensees in the context of the ACT's new statutory gambling exclusion scheme. This includes both self-exclusion and licensee exclusion.

Subdivision 3.5.1 Preliminary

19G – Application–div 3.5

Section 19G

provides that the division, other than sections 19J, 19O, and subdivision 3.5.6, does not apply to a licensed provider under the *Interactive Gambling Act 1998*. The ACT does regulate online wagering services (e.g. sports bookmakers) and the Commission does not issue interactive gambling licences. Online sports bookmakers based in the ACT must hold an ACT Sports Bookmaking Licence.

19H – Meaning of internal reviewer–div 3.5

Section 19H is a technical amendment which provides a signpost to the meaning of internal reviewer used at Section 19R (5), which is a person who reviews a gambling exclusion determination, who did not make the original determination.

Subdivision 3.5.2 Gambling exclusion notices

The Bill inserts a new subdivision about rights and obligations in relation to gambling exclusion notices – both self-exclusion notices and licensee exclusion notices.

19I – People giving notice of self-exclusion

Section 19I replaces the deed of self-exclusion process in the Regulation (Code of Practice) (Section 1.13 – Deeds of exclusion). The amendments provide that an eligible person wishing to self-exclude from a gambling activity or place where licensed gambling activities occur can give written notice to the Commission and/or a licensee of their intent to be self-excluded. Section 19I (1) specifies that a support a person, such as a friend, family member, or counsellor, may assist with this. Section 19I (6) defines ‘eligible person’ as a person who is an adult or at least 17 years old and intends on self-excluding from one or more licensed gambling activities on or after reaching 18 years of age. This means that a person who is 17 years of age, but not yet 18, may opt to self-exclude before they are legally old enough to participate in the gambling activity.

This section gives effect to the intention to deliver a statutory self-exclusion scheme in the ACT and remove the requirement for individuals to give effect to their choice to self-exclude via completion of a self-exclusion deed.

Section 19I requires that a self-exclusion notice must include the person’s details to confirm their identity, including name, date of birth, contact details, and the gambling activity/activities or place/s the person wishes to be excluded from. The self-exclusion notice must include the person’s consent to provide their personal details and their agreement to not engage in the gambling activity they nominate. The consent also includes that they may be removed from the place or prevented from entering the place where the gambling activity occurs. The self-exclusion notice must specify the period of the self-exclusion, which can be between 6 months and 5 years.

Section 19I (3) provides that a licensee must accept a self-exclusion notice, unless the notice does not comply with the requirements for a valid/complete notice. If a licensee does not accept the notice on these grounds, they must explain to the person why they cannot accept the notice, and give the person or their support person information about how to comply with the requirements. The licensee must also make a record in the register about being given the self-exclusion notice and any actions taken.

19J – Licensees giving people notice of gambling exclusion

Section 19J replaces Section 1.14 of the Regulation (Code of Practice) which provides the grounds for licensees to exclude people at risk of gambling harm. Section 19J provides that a written 'licensee exclusion notice' must be given to a person engaging in a gambling activity if there is risk of gambling harm in relation to that person engaging in that activity, and the person is not already named in a gambling exclusion notice or determination in relation to the activity. The notice must include sufficient details to identify the person, the reasons for the exclusion, and the period of the exclusion, which is determined by the licensee, and can be for a period of no longer than 5 years.

Section 19J (4) provides that it is an offence if a licensee is required to give a licensee exclusion notice to a person at risk of gambling harm and fails to do so as soon as practicable, but not later than 3 trading days after the requirement to give the notice arises. This offence carries a maximum of 30 penalty units. The purpose of this offence is to ensure licensees respond proportionately to the risk of gambling harm. It is a defence to a prosecution of this offence if the defendant proves that giving a licensee exclusion notice to the person was not proportionate to the risk of gambling harm to the person at the time and other more proportionate measures were taken to address the risk. This defence states that the defendant must record the decision and action or measure taken in the gambling harm risk register. The defendant has a legal burden in relation to this defence.

<u>19K – Licensees must tell commission about gambling exclusion notices</u>

Section 19J provides that a licensee must tell the Commission if they receive a self-exclusion notice (and accept the notice) or give a person a licensee exclusion notice. There is an offence for failing to do so within 3 trading days after receiving or giving the notice.

<u>19L – End of gambling exclusion notices</u>

Section 19L provides that a gambling exclusion notice ends either on the day the exclusion period ends, the day after a gambling exclusion determination starts, or the day after the commission gives notice that the Commission has decided not to make a gambling exclusion determination – whichever is the earliest. This is necessary to avoid a notice and determination operating concurrently.

<u>Subdivision 3.5.3 Gambling exclusion determinations</u>

<u>19M – Commission must make gambling exclusion determination</u>

Section 19M provides that the Commission must make a gambling exclusion determination within 3 days if it is told about a self-exclusion notice or a licensee exclusion notice. A gambling exclusion determination made by the Commission verifies that the appropriate details have been provided as part of the notice to confirm the identity of the person and the term for the exclusion. In the case of a licensee exclusion, the determination will also confirm that the Commission is satisfied as to the term of exclusion, the scale of the exclusion (i.e. activities from which the person is excluded), and the reasons for exclusion provided by the licensee. The Commission must give a copy of the determination to the person it applies to and record the details of the determination in the gambling harm risk register. The Commission need not make a determination if it is not satisfied about the person's identity or the matters stated by the licensee, and may ask the person or licensee for further information needed to make the determination.

If the Commission decides not to make a gambling exclusion determination, the Commission must tell the person to whom the notice relates (and their support person if relevant) and the licensee who made the notice if it is a licensee exclusion notice.

A gambling exclusion determination starts on the day stated in the determination or, if not stated, then the day after the Commission gives the determination to the person and records relevant details in the gambling harm risk register.

19N – End of gambling exclusion determinations

Section 19N provides that a gambling exclusion determination ends when revoked by the person (for a self-exclusion notice), when revoked by the ACT Civil and Administrative Tribunal (ACAT) or the Commission, or when the exclusion period ends – whichever is the earliest.

Subdivision 3.5.4 Exclusion of people from gambling activities

19O – Exclusion of people named in gambling exclusion notice or gambling exclusion determination

Section 19O provides that it is an offence if a licensee fails to stop a person from engaging in a gambling activity if, at that time, they are excluded under a self-exclusion notice or determination or a licensee notice or determination. This offence applies to a licensee and carries a maximum of 30 penalty units. The purpose of this offence is to ensure compliance with the gambling exclusion framework by establishing the obligation that licensees must exclude people subject to a current gambling exclusion from gambling to prevent risk of gambling harm. Sub-section 4 provides that the licensee must not use unreasonable force or subject the person to any greater indignity than necessary to stop the person from engaging in the activity. Sub-section 3 makes a defence to a prosecution for this offence if the licensee proves they took all reasonable steps to stop the excluded person from gambling.

19P – Exclusion procedures

Section 19P provides that it is an offence if a licensee does not prepare written procedures about how a person subject to a gambling exclusion notice or determination is to be excluded from the gambling activity. New section 19P also makes it an offence if a licensee fails to comply with a direction from the Commission in relation to the exclusion procedures. Both offences are strict liability offences with a maximum of 10 penalty units. The purpose of these offences is to ensure that licensees establish gambling exclusion procedures that achieve the intent of preventing risk of gambling harm, and that the procedures are easy to understand by staff using them to ensure compliance with the Act.

Subdivision 3.5.5 Amending etc gambling exclusion decisions

19Q – Amending or revoking a gambling exclusion determination based on self-exclusion notice

Section 19Q provides that a person may apply to the Commission to amend or revoke their self-exclusion, based on the gambling exclusion determination. This request can be made no earlier than 3 months from the time the Commission made the determination, and the Commission must amend or revoke the determination, not sooner than 5 days after receiving the request from the person. The person may withdraw their application at any time within the 5-day cooling off period after making the application to the Commission. The purpose of this section is to give a person who has self-excluded, the opportunity to change the details of their self-exclusion or cancel it. The minimum period of 3 months before the application can be made provides a period of time for the person to pause, reflect and access assistance if needed, before deciding whether they wish to cancel or undo their self-exclusion.

Amendments or revocations take effect either on the date stated in the person's application for revocation or amendments, or the day after the commission gives the person a copy of the amended determination or written notice of revocation.

<u>19R – Application for internal review of gambling exclusion decisions based on licensee exclusion notice</u>

Section 19R provides that a person who has been excluded by a licensee, or a licensee who has made a licensee exclusion notice, may apply to the Commission for an internal review of an exclusion decision. On receipt of this request, the Commission must arrange for a person who did not make the determination to conduct the review of the determination.

<u>19S – Internal review of gambling exclusion decisions based on licensee exclusion notice</u>

Section 19S specifies the process for an internal review of a licensee exclusion determination. The internal review process includes that the Commission must reconsider the determination and confirm, revoke or amend the gambling exclusion determination within 20 working days.

If the applicant for internal review is a person named in a gambling exclusion determination decision (either to make the determination or to not make the determination), then the Commission must give the licensee who gave the licensee exclusion notice written notice that the licensee may give the Commission a written response about the matters stated in the notice within 14 trading days. The commission must then consider any written response provided by the licensee.

If the applicant for internal review is a licensee of a gambling activity stated in a gambling exclusion determination decision, then the commission must give the person named in the decision written notice that they may give the commission a written response about matters stated in the notice within 14 days. The commission must then consider any written response provided by the person.

The reviewer must give written notice of the decision to the applicant and the licensee in the form of a reviewable decision notice. If the internal reviewer does not make a decision within 20 working days after receiving the application, there is no change to the initial determination.

An internal review decision takes effect on the day stated in the decision or if no day is stated, then when the internal reviewer gives notice of their decision to the person and licensee.

<u>19T – Review by ACAT of gambling exclusion decisions based on licensee exclusion notice</u>

Section 19T provides that a person named in, or a licensee of a gambling activity stated in a gambling determination decision based on a licensee exclusion notice can apply to the ACT Civil and Administrative Tribunal (ACAT) for review of an internal review decision under section 19S.

<u>19U – Licensees must comply with gambling exclusion decision based on licensee exclusion notice</u>

Section 19U requires that a licensee must follow a direction from the Commission in relation to an internal review of a gambling exclusion decision made under section 19S or a decision or order of the ACAT in relation to an application for review under section 19T. This section makes it a strict liability offence for a licensee failing to comply with the Commission's direction with a maximum of 10 penalty units. The purpose of this offence is to ensure the licensee complies with the outcome of the review of the determination.

Subdivision 3.5.6 Offences relating to people excluded from gambling

19V – Using accounts of people excluded from gambling

New subdivision 3.5.6 creates offences in relation to people excluded from gambling. Section 19V provides that it is an offence if a licensee fails to stop a person using an account of an excluded person to engage in the gambling activity. This offence applies to a licensee and is a strict liability offence, carrying a maximum of 10 penalty units. The purpose of this offence is to prevent any unauthorised use of a person's account who is excluded.

19W–Sending promotional material to people excluded from gambling

Section 19W provides that it is an offence if a licensee sends promotional material about the gambling activity directly to a person who is excluded from the gambling activity. This offence is a strict liability offence, carrying a maximum of 10 penalty units. The examples provided describe what is meant by giving material directly to a person, for example personally addressed mail or email.

Clause 26 Permitted disclosures to particular people

New section 37 (d) (iva)

This clause is a technical amendment that amends section 37 of the Act to add paragraph (iva) to add the new Gambling harm part as a relevant purpose to permit disclosure of certain information as part of the administration of a gaming law.

Clause 27 New section 53CB

This clause inserts a new section which provides that a licensee or another person is not civilly liable for anything done or omitted that is done honestly, and without recklessness for the purpose of complying with a requirement under the new Gambling harm part of the Act. This protection does not apply if the licensee's or other person's act contravenes another law.

Clause 28 New part 21

Clause 28 inserts Part 21 which provides for the validation of deeds of exclusion. It makes deeds of exclusion that were completed under the Gambling and Racing Control (Code of Practice) Regulation 2002 valid regardless of any defect or irregularity in the deed or in the execution of the deed. Sub-section 3 makes anything done in relation to the deed valid regardless of any defect in the deed. The purpose of this section is to address that any past deeds that did not adhere to the strict requirements for the execution of deeds are taken to be effective and in force.

This validation part expires 5 years after the commencement of section 29 of the Act.

Clause 29 New part 22

This clause inserts new part 22 'Transitional–Gambling and Racing Control (Gambling Exclusion) Amendment Act 2026'. Section 105 makes existing deeds of self-exclusion, and any other notices of exclusion (any current exclusion documents at the time the Bill commences) continue undisrupted at the commencement of the Bill. This section also makes existing indefinite self-exclusion deeds or notices of exclusion conclude 5 years after the commencement of the Bill. This change reflects the intent of the Bill that any exclusion made is for a maximum term of 5 years

Section 106 requires licensees to provide the Commission with any exclusion records no later than 6 months after the commencement of the Bill. The purpose of this section is that existing paper records are provided to the Commission to create digital records, because the intent of the legislation is to move away from any necessary requirement to initiate self-exclusion in hard copy format. The licensee may still retain their own records.

Section 107 makes Part 22 expire 5 years after the commencement day.

Clause 30 Dictionary, note 2

This clause is a technical amendment which inserts 'document', 'working day' and 'writing' into the dictionary as terms the *Legislation Act 2001* defines, as these terms are used in the new parts of the Act.

Clause 31 Dictionary, new definitions

This clause is a technical amendment which inserts relevant new definitions into the Act's dictionary.

Part 3 Gambling and Racing Control (Code of Practice) Regulation 2002

Clauses 32-78

Clauses in Part 3 make necessary technical amendments to the Code of Practice consequential to the above changes.

Schedule 1 Consequential amendments

These clauses make consequential technical amendments to the:

- *Casino Control Act 2006*
- *Gaming Machine Act 2004*
- Gaming Machine Regulation 2004
- *Race and Sports Bookmaking Act 2001*
- *Racing Act 1999*
- Racing Regulation 2010
- *Totalisator Act 2014*
- *Unlawful Gambling Act 2009*.

These amendments to the above Acts/Regulations are consequential technical changes to wording and cross references to align with the Bill.