



Australian Capital Territory

Unlawful Gambling Act 2009

A2009-39

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Australian Capital Territory

Unlawful Gambling Act 2009

A2009-39

An Act relating to unlawful gambling, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Unlawful Gambling Act 2009*.

2 Commencement

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

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

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

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

3 Dictionary

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

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

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

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

The chapter 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*).

Note 2 *Penalty units*

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

Part 2 Important concepts

6 Meaning of *unlawful betting*

In this Act:

betting includes the placing or accepting of bets.

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

7 Meaning of *unlawful game*

(1) In this Act:

unlawful game—

(a) means—

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

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

(b) does not include an exempt game.

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

(3) A declaration is a disallowable instrument.

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

8 Meaning of *unlawful gambling*

In this Act:

unlawful gambling means—

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

9 Meaning of *exempt game*

(1) In this Act:

exempt game means any of the following:

- (a) a game that is authorised under another territory law;
 - (b) an exempt private game;
 - (c) a game conducted in accordance with an approval under part 3;
 - (d) an exempt two-up game;
 - (e) a game declared by the commission under subsection (2).
- (2) The commission may declare a game to be an exempt game.
- (3) A declaration is a disallowable instrument.

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

10 Meaning of *exempt private game*

(1) In this Act:

exempt private game means a game that is conducted—

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

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

Part 3 Approval to conduct game

11 Application for approval to conduct game

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

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

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

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

Examples

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

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

12 Decision on application

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

- (2) The commission must refuse to approve the conduct of the game unless satisfied that—
- (a) the charitable organisation is a suitable organisation to hold an approval; and
 - (b) the rules of the game are fair and reasonable; and
 - (c) the rules and method of conduct of the game can be easily understood by participants; and
 - (d) the primary purpose of conducting the game is to raise funds for a stated entity for a stated charitable purpose; and
 - (e) the charitable organisation is to be responsible for the promotion and conduct of—
 - (i) the game; and
 - (ii) the event at which it is to be conducted; and
 - (f) the game is not to be conducted at a place that is a gambling facility of a licensee; and
 - (g) the approval would not result in the charitable organisation having approval to conduct games at 3 or more events in a 12-month period; and
 - (h) any other criteria prescribed by regulation are met in relation to the application.
- (3) Subsection (2) does not limit the matters the commission may consider.
- (4) The commission's approval may be given subject to conditions.
- (5) In this section:

gambling facility—see the *Gambling and Racing Control (Code of Practice) Regulation 2002*, dictionary.

licensee—see the *Gambling and Racing Control (Code of Practice) Regulation 2002*, section 5, paragraphs (a) to (e).

13 Suitability of applicant to hold approval

- (1) In deciding whether an applicant is a suitable organisation to hold an approval, the commission may have regard to any relevant matter, including the following:
 - (a) the business reputation of the organisation;
 - (b) the character and business reputation of anyone who—
 - (i) is a member of the organisation's management committee; or
 - (ii) the organisation proposes to engage to assist it to promote or conduct the game or the event at which it is to be conducted;
 - (c) the financial background and current financial position of the organisation;
 - (d) the financial background and current financial position of anyone who—
 - (i) is a member of the organisation's management committee; or
 - (ii) the organisation proposes to engage to assist it to promote or conduct the game or the event at which it is to be conducted;
 - (e) anything else prescribed by regulation.
- (2) An applicant is taken not to be a suitable organisation to hold an approval if—
 - (a) the applicant has been refused approval, or had an approval cancelled, at any time in the 12 months before the application is made; or

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

14 Form of approval

- (1) An approval must—
 - (a) be in writing; and
 - (b) identify or describe—
 - (i) the game approved to be conducted under the approval; and
 - (ii) the event at which it is to be conducted; and
 - (c) state—
 - (i) the name and address of the charitable organisation to which the approval is given; and
 - (ii) the name of the person within the organisation who is responsible for the event; and
 - (iii) the name and address of the entity (if any) the organisation proposes to engage to assist it to conduct the game or the event at which it is to be conducted; and

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

15 Conditions of approval

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

- (a) the organisation is to be responsible for the promotion and conduct of—
 - (i) the game; and
 - (ii) the event at which it is to be conducted;
- (b) the percentage disclosed under paragraph (c), or more, of the funds raised by the event must be given to the entity and charitable purpose stated in the application;
- (c) the minimum percentage of funds raised by the event that is to be given to the stated entity and charitable purpose must be clearly disclosed to the public—
 - (i) in all promotional material for the game and the event at which it is to be conducted; and
 - (ii) at all places where tickets for the event can be obtained; and
 - (iii) while the game is being conducted—at the place where it is being conducted;

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

16 Term of approval

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

17 Application for amendment of approval

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

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

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

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

18 Decision on application for amendment of approval

- (1) On application under section 17, the commission must—
 - (a) amend the approval; or
 - (b) refuse to amend the approval.
- (2) In deciding whether to amend the approval, the commission must have regard to the matters mentioned in section 12 (2) and (3) (Decision on application) as if the application were an application for an approval.
- (3) An amendment of an approval has effect only if the amendment is stated in the approval.
- (4) To remove any doubt, the amendment of an approval under this section may include the imposition of a condition on the approval and the amendment of a condition to which the approval is subject.

19 Cancellation of approval

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

Part 4 Exempt two-up games

20 Meaning of *exempt two-up game*

In this Act:

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

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

21 Conducting exempt two-up game

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

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

22 When charge etc may be imposed

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

- (a) has the permission of the owner or person in charge of the place where the game is conducted to impose the charge, commission or fee; and
- (b) tells each person paying the charge, commission or fee the purpose for which it is sought; and
- (c) gives all payments or benefits received from imposing the charge, commission or fee to an entity for a charitable purpose; and
- (d) complies with any condition prescribed by regulation in relation to the charge, commission or fee.

Part 5 Offences

23 Cheating

A person commits an offence if—

- (a) the person—
 - (i) participates in a game of chance, or of mixed chance and skill, in which money or any other valuable thing is offered as a prize or is staked or risked (by a participant or someone else) on an event or contingency; or
 - (ii) otherwise places or accepts a bet; and
- (b) the person dishonestly—
 - (i) obtains for the person or someone else money, benefit, advantage, valuable consideration or security; or
 - (ii) induces someone to deliver, give or credit to the person or someone else money, benefit, advantage, valuable consideration or security; and
- (c) the person does so by—
 - (i) trick, device, sleight of hand or representation; or
 - (ii) a scheme or practice; or
 - (iii) the use of—
 - (A) an instrument of gambling; or
 - (B) anything else.

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

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

24 Arranging unlawful gambling

A person commits an offence if the person arranges an unlawful game or unlawful betting.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

25 Conducting unlawful gambling

- (1) A person commits an offence if the person conducts an unlawful game or unlawful betting.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—

- (a) the person conducts an unlawful game or unlawful betting; and
- (b) another person under 18 years old participates in the unlawful game or unlawful betting.

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

26 Owning etc place used for unlawful gambling

A person commits an offence if—

- (a) the person is the owner or person in charge of a place being used for the conduct of an unlawful game or unlawful betting; and
- (b) the person knows the place is being used for the conduct of an unlawful game or unlawful betting.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

27 Advertising etc unlawful gambling or place where unlawful gambling conducted

A person commits an offence if the person—

- (a) places, displays or broadcasts an advertisement for—
 - (i) an unlawful game or unlawful betting; or
 - (ii) a place being used, or to be used, for the conduct of an unlawful game or unlawful betting; or
- (b) does anything else that promotes, or entices a person to participate in, an unlawful game or unlawful betting.

Maximum penalty: 50 penalty units.

28 Inviting child to bet

- (1) A person commits an offence if the person sends to someone the person knows is a child a document that invites, or may reasonably be implied to invite, the child to—
 - (a) make a bet; or
 - (b) enter into or take a share or interest in a bet; or
 - (c) apply to someone or at a place to obtain information or advice in relation to a bet.

Maximum penalty: 50 penalty units.

- (2) In this section:

bet does not include—

- (a) a bet that is part of a game declared by the commission under section 9 (2); or
- (b) the buying of a raffle ticket.

29 Participating in unlawful gambling

- (1) A person commits an offence if—
- (a) the person participates in an unlawful game; and
 - (b) the person knows the game is an unlawful game.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person participates in unlawful betting; and
 - (b) the person knows the betting is unlawful betting.

Maximum penalty: 50 penalty units.

30 Receiving proceeds from unlawful gambling

A person commits an offence if—

- (a) the person receives proceeds from the conduct of an unlawful game or unlawful betting; and
- (b) the person knows the proceeds are from the conduct of an unlawful game or unlawful betting.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

31 Possessing instrument of gambling

- (1) A person commits an offence if—
- (a) the person possesses an instrument of gaming; and
 - (b) the person possesses the instrument for a purpose related to the conduct or proposed conduct of an unlawful game.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person possesses an instrument of betting; and
 - (b) the person possesses the instrument for a purpose related to the conduct or proposed conduct of unlawful betting.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

32 Failing to comply with condition of approval to conduct game

- (1) A person commits an offence if—
- (a) the person conducts a game under an approval; and
 - (b) the person fails to comply with a condition under section 15 (Conditions of approval) in relation to the game.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

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

- (1) A person commits an offence if—
- (a) the person conducts a two-up game on 25 April (Anzac Day) in a year; and
 - (b) the person imposes a charge, commission or fee for observing or participating in the game; and
 - (c) the person fails to comply with section 22 in relation to the charge, commission or fee.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

34 Criminal liability of corporation officers

- (1) An officer of a corporation commits an offence if—
- (a) the corporation contravenes a provision of this Act; and
 - (b) the contravention is an offence against this Act (the *relevant offence*); and
 - (c) the officer was reckless about whether the contravention would happen; and
 - (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
 - (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
 - (ii) that the corporation implemented any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;

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

37 Return of seized instruments of gambling

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

38 Application for order disallowing seizure

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

39 Order disallowing seizure

- (1) On an application under section 38, the Magistrates Court must make an order disallowing the seizure if satisfied that—
 - (a) the applicant would, apart from the seizure, be entitled to the return of the seized instrument of gambling; and
 - (b) the instrument of gambling is not connected with the conduct or operation of an unlawful game or unlawful betting; and
 - (c) possession of the instrument of gambling by the person would not be an offence.
- (2) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (3) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
 - (a) an order directing the commission to return the instrument of gambling to the applicant or to someone else who appears to be entitled to it;
 - (b) if the instrument of gambling cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about the payment of costs in relation to the application.

40 Adjournment pending hearing of other proceeding

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

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

41 Forfeiture of seized instrument of gambling

- (1) This section applies if—
- (a) an instrument of gambling seized under section 35 has not been returned under section 37; and
 - (b) an application for disallowance of the seizure under section 38—
 - (i) has not been made within 1 year after the day the seizure is made; or
 - (ii) has been made within 1 year after the day the seizure is made, and the application has been refused or withdrawn before a decision in relation to the application has been made.
- (2) If this section applies to the seized instrument of gambling the instrument—
- (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the commission directs.

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

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

- (a) is forfeited to the Territory; and

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

43 Cost of disposal of things forfeited

- (1) This section applies if—
 - (a) a person is convicted, or found guilty, of an offence against this Act in relation to something forfeited to the Territory under this part; and
 - (b) the thing is connected with an offence against this Act; and
 - (c) the person was the owner of the thing immediately before its forfeiture.

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

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

Part 7 Notification and review of decisions

44 Meaning of *reviewable decision*—pt 7

In this part:

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

45 Reviewable decision notices

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

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

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

46 Applications for review

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

- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

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

Part 8 Miscellaneous

47 **Unlawful gambling agreements void**

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

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

48 **Determination of fees**

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

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

- (2) A determination is a disallowable instrument.

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

49 **Regulation-making power**

The Executive may make regulations for this Act.

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

50 **Legislation amended—sch 2**

This Act amends the following legislation:

- *Gambling and Racing Control Act 1999*
- *Legislation Act 2001*
- *Liquor Act 1975*
- *Lotteries Act 1964*

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

51 Legislation repealed

This Act repeals the following legislation:

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

Schedule 1 Reviewable decisions

(see pt 7)

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

Schedule 2 Consequential amendments

(see s 50)

Part 2.1 Gambling and Racing Control Act 1999

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

omit

[2.2] Section 4 (l)

substitute

(l) the *Unlawful Gambling Act 2009*.

[2.3] Section 37 (d)

substitute

- (d) to any of the following, or to a person authorised to receive the information by any of the following:
- (i) for the purpose of the administration or enforcement of a gaming law of a reciprocating jurisdiction—a person who, or authority that, exercises functions under that law;
 - (ii) the auditor-general;
 - (iii) the Australian Competition and Consumer Commission;
 - (iv) the Australian Crime Commission;
 - (v) the Australian Federal Police;
 - (vi) the Australian Securities and Investments Commission;
 - (vii) the Australian statistician;

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

[2.4] Dictionary, definition of *gaming*

substitute

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

Part 2.2 Legislation Act 2001

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

omit

Part 2.3 Liquor Act 1975

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

substitute

(d) the *Unlawful Gambling Act 2009*;

Part 2.4 Lotteries Act 1964

[2.7] Dictionary, definition of *unlawful game*

omit

Unlawful Games Act 1984

substitute

Unlawful Gambling Act 2009

Part 2.5 Pool Betting Act 1964

[2.8] Dictionary, definition of *unlawful game*

omit

Unlawful Games Act 1984

substitute

Unlawful Gambling Act 2009

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

[2.9] New section 4A

in part 1, insert

4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

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

The chapter 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*).

Note 2 Penalty units

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

[2.10] New section 72A

in part 9, insert

72A Betting by or on behalf of child

- (1) A child commits an offence if—
- (a) the child places a bet with another person who is a race bookmaker or sports bookmaker; and
 - (b) the child knows the other person is a race bookmaker or sports bookmaker.

Maximum penalty: 10 penalty units.

- (2) A child commits an offence if—
- (a) the child places a bet with another person who is a race bookmaker or sports bookmaker; and
 - (b) the child knows the other person is a race bookmaker or sports bookmaker; and
 - (c) the child uses a false document of identification or someone else's document of identification for the purpose of placing the bet.

Maximum penalty: 10 penalty units.

- (3) A person commits an offence if—
- (a) the person is a race bookmaker or sports bookmaker; and
 - (b) the person accepts a bet placed by a child.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

- (5) A person commits an offence if—
- (a) the person places a bet with another person who is a race bookmaker or sports bookmaker; and
 - (b) the person places the bet on behalf of a child.

Maximum penalty: 20 penalty units.

- (6) In this section:

document of identification, for a person, means a document that—

- (a) is a driver licence, proof of age card or passport; and
- (b) contains a photograph that could reasonably be taken to be of the person; and
- (c) indicates that the person to whom the document was issued is at least 18 years old.

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

[2.11] Section 73 (1) (b)

substitute

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

[2.12] Section 73 (2) (b)

substitute

- (b) at a sports bookmaking venue described in an approval given under section 49 (1) to the race bookmaker—
- (i) who applied for the licence held by the race bookmaker's agent; and
 - (ii) for whom the race bookmaker's agent is engaging in race bookmaking at the venue.

[2.13] New section 73A

insert

73A Bookmakers—unauthorised bookmaking

- (1) A sports bookmaker or sports bookmaker's agent commits an offence if the sports bookmaker or sports bookmaker's agent accepts a bet—
- (a) at a place that is not a sports bookmaking venue; or
 - (b) on something that is not a sports bookmaking event.

Maximum penalty: 50 penalty units.

- (2) A race bookmaker commits an offence if the race bookmaker accepts a bet other than—
- (a) at a race meeting; or
 - (b) at a sports bookmaking venue described in an approval given under section 49 (1) to the race bookmaker.

Maximum penalty: 50 penalty units.

- (3) A race bookmaker's agent commits an offence if the agent accepts a bet other than—
- (a) at a race meeting; or
 - (b) at a sports bookmaking venue described in an approval given under section 49 (1) to the race bookmaker—
 - (i) who applied for the licence held by the race bookmaker's agent; and
 - (ii) for whom the race bookmaker's agent is engaging in race bookmaking at the venue.

Maximum penalty: 50 penalty units.

- (4) A race bookmaker, or a race bookmaker's agent, commits an offence if the race bookmaker or race bookmaker's agent accepts a bet on something other than a race.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.

Dictionary

(see s 3)

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

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

- ACAT
- ACT
- Executive
- fail
- function
- gambling and racing commission
- public servant
- the Territory.

approval means an approval under part 3.

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

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

charitable purpose includes any benevolent, philanthropic or patriotic purpose.

commission means the gambling and racing commission.

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

exempt game—see section 9.

exempt private game—see section 10.

exempt two-up game—see section 20.

gaming—see the Control Act, dictionary.

gaming equipment—see the Control Act, dictionary.

gaming law—see the Control Act, dictionary.

instrument of betting means any electrical, electronic or mechanical device or any other thing—

- (a) used, or suitable for use, in connection with betting; or
- (b) designed or adapted for use for or in relation to betting.

instrument of gambling means an instrument of betting or an instrument of gaming.

instrument of gaming means gaming equipment or chips.

place includes premises, structure, vehicle and vessel.

unlawful betting—see section 6.

unlawful gambling—see section 8.

unlawful game—see section 7.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 October 2009.

2 Notification

Notified under the Legislation Act on 17 November 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Unlawful Gambling Bill 2009, which was passed by the Legislative Assembly on 10 November 2009.

Clerk of the Legislative Assembly

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