

1998

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

GAMING AND RACING CONTROL BILL 1998

EXPLANATORY MEMORANDUM

Circulated by the authority of the Chief Minister and Treasurer

Kate Carnell, MLA

Gaming and Racing Control Bill 1998

Summary

The Gaming and Racing Control Bill 1998 establishes the ACT Gaming and Racing Commission. This Commission will be responsible for regulating and controlling gaming, racing and wagering activities in the ACT to ensure that they are conducted honestly, with integrity and free from criminal influence. The Commission will also provide policy advice in respect of gaming, racing and wagering.

The Bill abolishes the Casino Surveillance Authority and transfers its powers and functions to the Commission.

The Bill provides for the following:

- establishes the Commission,
- sets out the powers and functions of the Commission,
- sets out the constitution of the Commission,
- details the powers of investigation,
- regulates inquiries by the Commission,
- details the functions of the Commission in relation to the Casino Control Act and the Racing Act,
- appointment and terms of office as members of the Commission, and
- transitional and consequential amendments to the Casino Control Act.

Financial Implications

It is expected that creation of the Commission and the consolidation of all ACT gaming, racing and wagering activities under its control will create efficiencies and savings in administering and regulating the industry.

Complete self funding options are to be examined to meet the Commission's future costs.

Details of the Gaming and Racing Control Bill 1998

PART I - PRELIMINARY

Short Title

Clause 1 - provides for the short title of this Act to be the *Gaming and Racing Control Act 1998*

Commencement

Clause 2 - provides for section 1 of this Act to commence on the day on which it is notified in the *Gazette* and for the remaining provisions to commence on a day or days fixed by the Minister by notice in the *Gazette*. Any provision of the Act which has not commenced within 6 months of the Act being notified in the *Gazette* shall commence once that 6 month period has ended

Interpretation

Clause 3 - defines the following terms used in this Act

- 'casino' as defined in the *Casino Control Act 1988*,
- 'Commission' means the Gaming and Racing Commission,
- 'gaming' means playing or conducting any game of skill or chance, or skill and chance, with money or other valuable thing staked or risked on the outcome
- 'gaming law' means the Acts prescribed in section 4 or in relation to another jurisdiction, a gaming or racing law of that jurisdiction,
- 'gaming officer' means a member of the Commission, an authorised officer or any other person engaged in the administration or enforcement of a gaming law,
- 'inquiry' means an inquiry as provided for by Part IV,
- 'penalty unit' means -
 - ◊ for an individual - the amount set by section 33AA of the *Interpretation Act 1967*, and
 - ◊ for a corporation - 5 times that amount,
- 'racing' means racing conducted for the purpose of betting, and
- 'reciprocating jurisdiction' means the Commonwealth, State or another Territory whose law permits the giving of information to the Commission for the purposes of administering an ACT gaming law

Gaming Laws

Clause 4 - prescribes the following Acts as gaming laws for the purposes of this Act,

- (a) this Act,
- (b) the *Betting (ACTTAB Limited) Act 1964*,
- (c) the *Bookmakers Act 1985*,
- (d) the *Casino Control Act 1988*,

- (e) the *Games Wagers and Betting-Houses Act 1901* of New South Wales,
- (f) the *Gaming and Betting Act 1906* of New South Wales,
- (g) the *Gaming Machine Act 1987*,
- (h) the *Interactive Gambling Act 1998*,
- (i) the *Lotteries Act 1964*,
- (j) the *Pool Betting Act 1964*,
- (k) the *Racing Act 1998*,
- (l) the *Unlawful Games Act 1984*,
- (m) regulations made under an Act mentioned in paragraphs (a) to (l) inclusive

PART II - THE COMMISSION

Division 1 - Establishment, functions and powers of the Commission

The Gaming and Racing Commission

Clause 5 - establishes the Gaming and Racing Commission It provides

Subsection 5 (1) creates the ACT Gaming and Racing Commission

Subsection 5 (2) states that the Commission is a Statutory Authority with a common seal which may acquire, hold and dispose of real and personal property and which may sue and be sued

Subsection 5 (3) requires the Commission's common seal to be kept securely and used only as the Commission authorises

Subsection 5 (4) states that judicial authorities shall recognise the Commission's common seal affixed to a document and presume that it was properly affixed with the knowledge of the Commission

Functions of the Commission

Clause 6 - sets out the functions of the Commission It states

Subsection 6 (1) states that the Commission's functions are to administer the gaming laws and to control, supervise, regulate and develop gaming and racing in the ACT

Subsection 6 (2) further defines, without limiting the function in subsection (1), the functions of the Commission to include

- (a) regulating the activities of casinos, machine gaming, lotteries, racing, betting and interactive gambling,
- (b) approving gaming and racing activities,
- (c) reviewing legislation and policies related to gaming and racing and making recommendations to the Minister,
- (d) investigating and conducting enquiries into gaming and racing issues and the activities of persons which relate to the performance of functions or the exercise of powers under a gaming law only,
- (e) collecting taxes, fees or charges imposed by a gaming law,

(f) performing functions or exercising powers which this Act, or any other Act, gives to the Commission

Subsection 6 (3) allows the Minister to direct the Commission by giving guidelines which direct the way the Commission shall perform functions or by written directions which relate to particular matters

Subsection 6 (4) states that guidelines given under paragraph 3 (a) are disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*

Subsection 6 (5) requires that any direction given under paragraph 3 (b) be included in the Commission's annual report

Powers of the Commission

Clause 7 - empowers the Commission to do all things necessary or convenient in performing its functions

Delegation

Clause 8 - deals with delegation of the Commission's functions and powers

Subsection 8 (1) permits the Commission to delegate any of its functions or powers

Subsection 8 (2) delegates the functions and powers of the Commission, subject to this section, to the Chief Executive, who may, in turn, delegate them

Subsection 8 (3) allows the Commission to limit or restrict the delegation of functions or powers to the Chief Executive

Personal liability

Clause 9 protects Commission members and other authorised officers from liability for actions, or omissions, taken in good faith while administering a gaming law of the Territory or a reciprocating jurisdiction

Division 2 - Constitution of the Commission

Membership of the Commission

Clause 10 - deals with membership of the Commission It provides

Subsection 10 (1) states that the Commission shall comprise a Chief Executive, who shall be Chairperson, and 2 ordinary members

Subsection 10 (2) states that the conditions relating to the appointment and terms of office of members shall be as set out in Schedule 1

Meetings

Clause 11 - states that meetings of the Commission shall be in accordance with Schedule 2

Staff

Clause 12 - states that the staff of the Commission shall be members of the ACT Public Service

Use of consultants and contractors

Clause 13 - authorises the Commission to engage consultants and contractors

Annual report

Clause 14 - requires the Commission to comply with the provisions of the *Annual Reports (Government Agencies) Act 1995*.

PART III - POWERS OF INVESTIGATION

Division 1 - Authorised Officers

Authorised officers

Clause 15 - identifies authorised officers It provides

Subsection 15 (1) states that the members of the Commission are authorised officers

Subsection 15 (2) gives the Chief Executive the power to appoint persons as authorised officers

Subsection 15 (3) appoints a person who is administering or enforcing a gaming law of a reciprocating jurisdiction, and who is recognised as an authorised officer in writing by the Chief Executive, as an authorised officer for the time and purpose specified by the Chief Executive

Subsection 15 (4) appoints a gaming officer delegated functions under Division 2 (Powers of Investigation) by the Chief Executive as an authorised officer

Identity cards for authorised officers

Clause 16 - deals with identity cards for authorised officers

Subsection 16 (1) requires an authorised officer to be issued with an identity card, in a form approved by the Commission, which contains the officer's name and photograph and which identifies the officer as an authorised officer for the purpose of the gaming laws

Subsection 16 (2) permits the Commission to allow an officer of a reciprocating jurisdiction to use an identity card issued by that jurisdiction for the purposes of subsection 15 (3)

Subsection 16 (3) requires a person issued with an identity card, who ceases to be an authorised officer, to return the card to the Commission

Penalty 1 penalty unit

Division 2 - Powers of Investigation

Power to require information, instruments or records or attendance for examination

Clause 17 - deals with the Commission's powers of investigation It provides

Subsection 17 (1) authorises the Commission, by service of a written notice on a person, to require that person to provide information (written or oral), attend and give evidence or produce records or documents under that person's control, for the purposes of a gaming law

Subsection 17 (2) requires that a notice issued to a person under subsection (1), to determine that person's tax liability, must state that purpose In other cases the Commission is not required to identify a person in respect of whom information is sought

Subsection 17 (3) allows the Commission to decide whether information or evidence sought shall be written or oral, to require written evidence or information to include/incorporate a statutory declaration and require oral evidence to be given under oath or affirmation

Subsection 17 (4) makes it an offence for a person, without reasonable excuse, to refuse or fail to comply with a notice within the period specified or longer period allowed by the Commission or to comply with any other requirement of the Commission concerning information or evidence

Penalty 50 penalty units

Subsection 17 (5) states that a person required to attend to give oral evidence shall be paid expenses in accordance with the provisions of the *Taxation (Administration) Act 1987*

Subsection 17 (6) provides that a person, or a representative of a person, giving evidence in connection with the person's own obligations under a gaming law shall not be paid expenses in accordance with subsection (5)

Powers of entry and inspection

Clause 18 - sets out powers of entry and inspection It provides,

Subsection 18 (1) allows an authorised officer, administering or enforcing a gaming law, to enter and inspect premises at any reasonable time and do any of the following

- (a) remain on the premises;
- (b) examine all documents, and remove or take copies or extracts of any document;
- (c) inspect and/or remove any gaming equipment the officer reasonably believes to be connected with an offence against a gaming law;
- (d) remove anything that the officer reasonably believes might be evidence in a prosecution for an offence against a gaming law,
- (e) require any person on the premises to give information, including the person's own identity or the identity of another person,
- (f) require any person on the premises to produce any document in their control or custody and to provide it in a form which may not be its usual form
- (g) require any person on the premises to produce any gaming equipment in the person's control or custody,
- (h) require the owner or occupier of the premises to provide such assistance and facilities as the officer reasonably needs to carry out his/her duties

Subsection 18 (2) states that an authorised officer who enters premises under subsection(1) must, if requested by the occupier, identify himself/herself by producing his/her identity card, the officer may not remain on the premises unless the identity card is produced

Subsection 18 (3) states that an authorised officer cannot enter residential premises, in use of these powers, without the consent of the owner or occupier of the premises

Subsection 18 (4) defines "occupier" as a person who appears to be in charge of or responsible for the premises

Search Warrant

Clause 19 - concerns the issuing and use of search warrants It provides

Subsection 19 (1) allows a magistrate to issue a warrant, on application by the Chief Executive which is supported by affidavit or sworn evidence The magistrate must be satisfied that a document or gaming equipment relating to an offence against a gaming law may be found on certain premises The magistrate may issue a warrant authorising an authorised officer, together with assistants as described in the warrant, to

- (a) to enter those premises, using necessary force,
- (b) to search the premises including breaking open and searching anything in which documents or gaming equipment might be stored or concealed,
- (c) to seize and remove any document that seems to relate to a person's obligations under a gaming law, any gaming equipment which the officer reasonably believes to be connected with an offence against a gaming law or anything that the officer reasonably believes might be used as evidence in a prosecution of an offence against a gaming law

Subsection 19 (2) states that the powers to obtain and use search warrants are additional to, and do not diminish, any other powers conferred by law

Use and inspection of documents and records produced or seized

Clause 20 - sets out the conditions of use and inspection of documents and records produced to or seized by the Commission It provides

Subsection 20 (1) applies this section to a document produced to the Commission or seized by and removed by an authorised officer

Subsection 20 (2) permits the document to be retained as long as is reasonably necessary for it to be inspected, for copies, extracts or notes to be made and any determination about subsection (3) made

Subsection 20 (3) states that if a document is required by the Commission as evidence it may be retained until legal proceedings are completed

Subsection 20 (4) requires the Commission to allow a person, who would normally be entitled to inspect the document, to be allowed to inspect the document at any reasonable time

Subsection 20 (5) states that nothing in this section prejudices a lien a person has on the document

Use of goods produced or seized

Clause 21 - sets out the conditions of use of things, other than documents, produced to or seized by the Commission It provides

Subsection 21 (1) applies this section to any thing, other than a document, produced to the Commission or seized by an authorised officer

Subsection 21 (2) permits the thing to be retained as long as is reasonably necessary for it to be inspected and a determination about subsection (3) made

Subsection 21 (3) states that if the thing is required by the Commission as evidence it may be retained until legal proceedings are completed

Subsection 21 (4) states that if the owner of the thing is convicted as a result of the legal proceedings, the court may order forfeiture of the thing to the Territory In that case the thing may be disposed of as directed by the Minister

Subsection 21 (5) states that if a thing is no longer required but the Commission can not locate the owner to return it within 12 months, the Commission may dispose of it by auction, with the proceeds being held for the owner

Subsection 21 (6) states that nothing in this section prejudices a lien a person has on the thing

Self-incrimination

Clause 22 - deals with self-incrimination It provides

Subsection 22 (1) states that self-incrimination or liability to a penalty does not excuse a person from answering questions, providing information or producing a document when required to do so under this Act

Subsection 22 (2) provides that where a person objects to answering questions, providing information or producing a document on the ground of self-incrimination, the answer, information or document is not admissible evidence in criminal proceedings against the person The exception to this is proceedings for an offence relating to false or misleading statements, information or records or perjury

Hindering or obstructing authorised officers etc.

Clause 23 - deals with hindering or obstructing authorised officers It provides

Subsection 23 (1) provides that a person must not, without reasonable excuse, hinder or obstruct an authorised officer in the exercise of a power under this Division

Penalty 50 penalty units or imprisonment for 6 months, or both

Subsection 23 (2) states that a person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Division

Penalty 50 penalty units

Subsection 23 (3) states that a person is not guilty of an offence in respect of an authorised officer's entry onto premises unless, at the time of entry, the officer identified himself or herself as an authorised officer and warned the person that a refusal or failure to comply with a requirement constituted an offence

Impersonating authorised officer

Clause 24 - states that a person shall not impersonate or falsely claim to be an authorised officer

Penalty 50 penalty units or imprisonment for 6 months, or both

Access to public records without fee

Clause 25 - entitles the Commission to inspect and take copies of any public record kept under any Territory Act or law without payment of any fee

Division 3 - Co-operation with other jurisdictions

Co-operative agreements

Clause 26 - empowers the Commission to make agreements concerning co-operation under this Division with the responsible authorities of reciprocating jurisdictions

Investigation at request of reciprocating jurisdiction

Clause 27 - relates to an investigation at the request of a reciprocating jurisdiction It provides

Subsection 27 (1) provides that where an appropriate officer of a reciprocal jurisdiction makes a request, in writing, the Commission may authorise a gaming officer of the Territory or of that jurisdiction to investigate a matter relating to a gaming law of that jurisdiction

Subsection 27 (2) applies this Act to any such investigation as if it were an investigation into a matter relating to a gaming law of the Territory

Division 4 - Secrecy

Interpretation

Clause 28 - defines "gaming officer" to include persons who have accessed confidential documents or information under the provisions of a gaming law or in the course of exercising powers or carrying out functions relating to a gaming law

Gaming officers shall respect confidentiality

Clause 29 - states that gaming officers shall respect confidentiality It provides

Subsection 29 (1) states that a gaming officer shall not, except in the performance of his or her duties, make a record of confidential information relating to another person

Penalty 50 penalty units or imprisonment for 6 months, or both

Subsection 29 (2) states that a gaming officer shall not reveal any information relating to a gaming law, except as permitted by this Part

Penalty 50 penalty units or imprisonment for 6 months, or both

Subsection 29 (3) allows the Commission to require a gaming officer to make an oath or affirmation to maintain secrecy as required by this section The Commission shall specify the manner and form of the oath or affirmation in writing

Subsection 29 (4) states that, for the purposes of subsection (2), that information obtained by the Commission from a person acting in accordance with a law of the Commonwealth, a State or another Territory in relation to gaming or racing, is information obtained under this Act

Permitted disclosures of a general nature

Clause 30 - deals with permitted disclosures of information of a general nature It provides

Subsection 30 (1) permits the Commission to disclose information obtained under a gaming law that does not, and is not likely to, identify a particular person or reveal matters relating to the personal affairs of a particular person

Subsection 30 (2) allows the Commission to reveal statistical information which may identify a particular person or a particular person's affairs, because of the limited size of a statistical category, if the Commission is satisfied that it is in the public interest to disclose that information

Permitted disclosures to particular persons

Clause 31 - states that a gaming officer may disclose information obtained under a gaming law -

- (a) with the consent of the person to whom the information relates, or at the request of a person acting on behalf of that person,
- (b) in connection with the administration of a gaming law (including legal proceedings relating to a gaming law or a report of any such legal proceedings),
- (c) if required to do so by an Act, or
- (d) to the following persons, or a person authorised to receive information by them
 - (i) the Commissioner for Australian Capital Territory Revenue,
 - (ii) the Ombudsman,
 - (iii) the Commissioner of Police,
 - (iv) the Auditor-General;
 - (v) to a person who, or authority that, administers or enforces a gaming law of a reciprocating jurisdiction for the purpose of that law,
 - (vi) the Australian Statistician,
 - (vii) the National Crime Authority,
 - (viii) a person prescribed by the regulations

Prohibition on secondary disclosures of information

Clause 32 - prohibits the disclosure of information provided by a gaming officer to a person in accordance with this Act other than for the purpose of protecting the public revenue The Commission must authorise any such disclosure

Penalty 50 penalty units or imprisonment for 6 months, or both

Further restrictions on disclosure

Clause 33 - deals with restrictions on disclosure of information to a court. It provides

Subsection 33 (1) states that a gaming officer, or former gaming officer, shall not be required to produce a confidential document in a court or disclose confidential information to a court unless the court considers it necessary for the administration or execution of a gaming law.

Subsection 33 (2) defines, for this section, a "court" to include any tribunal, authority or person having the power to require the production of documents or the answering of questions.

PART IV - INQUIRIES

Starting an inquiry

Clause 34 - provides that the Commission will inquire into any matter referred to it by the Minister or relating to a gaming law. The Commission is also empowered to inquire into other matters as it thinks appropriate.

Interested persons may make submissions

Clause 35 - requires the Commission to give interested bodies or persons the opportunity to make submissions to an inquiry.

Hearings to be in public

Clause 36 - states that inquiries will be held in public unless the Commission has good reason to determine otherwise.

Adjournments

Clause 37 - allows the Commission to adjourn an inquiry at any time.

Record of Proceedings

Clause 38 - requires the Commission to keep a record of the proceedings of an inquiry.

Evidence

Clause 39 - authorises the Commission to inform itself in any way it considers appropriate.

Report and Recommendations

Clause 40 - deals with the report and recommendations of an inquiry conducted by the Commission. It provides

Subsection 40 (1) requires the Commission to report its findings in an inquiry to the Minister, other than for inquiries dealt with in subsection (2). The Commission is empowered to include recommendations in this report.

Subsection 40 (2) states that where a gaming law requires the Commission to make an inquiry prior to taking a specified action, the Commission shall include its findings in the annual report.

Subsection 40 (3) requires the Minister to table any reports and recommendations before the Legislative Assembly within 14 sitting days of receiving them.

Rules of the Commission

Clause 41 - allows the Commission to make rules for the procedure of an inquiry and provides that such rules will be disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

PART V - TAX ADMINISTRATION

Provisions of the Taxation (Administration) Act apply

Clause 42 - states that the provisions of the *Taxation (Administration) Act 1987*, except for Parts II and VII, apply as if

- (a) a reference to an authorised tax officer means an authorised officer under this Act,
- (b) a reference to the Commissioner means the Commission
- (c) a reference to the Minister means the Minister under this Act,
- (d) a reference to a tax law means a gaming law, and
- (e) a reference to a tax officer means a gaming officer

Commission may perform functions under Commonwealth Act

Clause 43 - empowers the Commission to exercise the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

PART VI - CASINO CONTROL

Interpretation

Clause 44 - defines, in this Part, "Casino Act" as the *Casino Control Act 1988*, unless stated otherwise.

Functions of the Commission in relation to the Casino Act

Clause 45 - deals with the functions of the Commission in relation to the casino It provides

Subsection 45 (1) states that the functions of the Commission in relation to the Casino Act are

- (a) to supervise the operation of the casino,
- (b) to determine the opening times of the casino,
- (c) to determine games to be played in the casino and the rules of those games,
- (d) to investigate and make recommendations to the Minister on the suitability of -
 - (i) a proposed developer, proposed proprietor or proposed casino lessee,
 - (ii) the casino licensee or a person nominated as the proposed casino licensee,
 - (iii) a proposed casino licence assignee, or
 - (iv) a proposed administrator for the purposes of section 51 of the Casino Act
- (e) to investigate and make recommendations to the Minister on matters relating to the control or operation of the casino which were referred by the Minister
- (f) to initiate inquiries into and make recommendations to the Minister on matters relating to the control and operation of the casino,
- (g) to make recommendations to the Minister on laws which relate to the control and operation of the casino

Subsection 45 (2) additionally gives the Commission all other functions conferred on it by the Casino Act

PART VII - RACING

Interpretation

Clause 46 - defines, in this Part, "Racing Act" as the *Racing Act 1998*, unless stated otherwise

Functions of the Commission in relation to the Racing Act

Clause 47 - states that the Commission has the functions conferred on it by the Racing Act

PART VIII - MISCELLANEOUS

Regulations

Clause 48 - deals with regulations It provides

Subsection 48 (1) allows the Executive to make regulations

Subsection 48 (2) enables a regulation to create an offence with a penalty not exceeding 20 penalty units

SCHEDULE 1

subsection 10(2)

APPOINTMENT AND TERMS OF OFFICE OF MEMBERS OF THE COMMISSION

Appointment of the Chief Executive

Clause 1 - provides that the Minister shall appoint a Chief Executive under the *Public Sector Management Act 1994*.

Appointment of ordinary members

Clause 2 - provides for the Minister to appoint suitably eligible persons as ordinary members of the Commission. This clause also provides the criteria for establishing if a person is eligible for appointment.

Acting appointments

Clause 3 - provides that the Minister may appoint, for a term not longer than 6 months, an eligible person to act in the place of a member of the Commission.

Term of office

Clause 4 - provides that a member of the Commission is appointed for a term not exceeding 3 years. This clause also provides that a member is eligible for re-appointment.

Removal of members

Clause 5 - provides that the Minister may terminate the appointment of a member of the Commission if the member resigns, ceases to be eligible, becomes bankrupt or fails to disclose a conflict of interest.

Remuneration and allowances

Clause 6 - provides for the payment of remuneration and allowances to members of the Commission.

Leave of absence

Clause 7 - provides that the Minister may grant a leave of absence to a member of the Commission.

Disclosure of interests

Clause 8 - provides that a member of the Commission must disclose to the Commission and the Minister information in relation to an acquisition of an interest that could conflict with the member's proper performance as a member of the Commission

SCHEDULE 2

section 11

MEETINGS

Clause 1 - provides that the Commission shall hold such meetings as are necessary for the efficient performance of its functions

Clause 2 - provides that the Commission shall meet at such times and places as the Commission may determine from time to time

Clause 3 - provides that the Chief Executive may, at any time, convene a meeting of the Commission

Clause 4 - provides that the Chief Executive is to preside at all meetings of the Commission

Clause 5 - provides for the rules of meetings of the Commission

Clause 6 - requires that the Commission is to keep minutes of its proceedings

