

2004

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

**GAMBLING AND RACING CONTROL (CODE OF PRACTICE)
AMENDMENT REGULATIONS 2004 (NO 1)**

Subordinate Law No SL2004-31

EXPLANATORY STATEMENT

Circulated by the authority of
Ted Quinlan MLA
Minister for Sport, Racing and Gaming

BACKGROUND

Paragraph 6(2)(f) of the *Gambling and Racing Control Act 1999* provides for the ACT Gambling and Racing Commission (the Commission) to review the ACT's legislation and policies related to gaming and racing as part of its functions.

The *Gambling and Racing Control (Code of Practice) Regulations 2002* are made pursuant to section 18 of the *Gambling and Racing Control Act 1999*. Section 18 also provides for the Commission to review the Code of Practice.

The *Gambling and Racing Control (Code of Practice) Regulations 2002* present gambling operators with a minimum set of standards that should be met in providing patrons access to their gambling products. The development of the Code of Practice recognises that some people have difficulties in controlling their gambling behaviour. The provisions of the Code of Practice Regulations provide a consistent approach that provides some protection or harm minimisation by ensuring that a minimum level of consumer information is available. It also ensures additional protection for those patrons who have difficulty in using gambling products in a controlled manner.

The *Gambling and Racing Control (Code of Practice) Regulations 2002* commenced on 1 December 2002 with some provisions having a delayed commencement of 1 May 2003. At the time of its implementation, the Commission gave an undertaking that the Code of Practice would be reviewed after 12 months of operation.

Policy Issues

The Commission conducted a comprehensive review of the Code of Practice including consultation with the industry, interested stakeholders and the community. Taking into account submissions received as part of the consultation process and its own regulatory experience, the Commission made recommendations to the Minister for possible amendments to the Regulations.

In general terms, the Commission concluded that the Code of Practice was operating well with most licensees taking their responsibilities seriously. The suggested amendments that arose from the review were mostly technical in nature and sought to improve or clarify the original intent of the Regulations.

The fundamental policy intent of the Regulations and their operation remains unaltered with these amending Regulations enhancing and clarifying the application of the Code of Practice.

Revenue/Cost Implications

There will be no additional cost to industry as a result of these amendments. The Gambling and Racing Commission will absorb any additional costs associated with informing the industry of the changes including the printing of new information brochures.

Notes on Specific Provisions

PART 1 PRELIMINARY

Regulation 1 Name of Regulations

This regulation provides that the name of the regulations is the *Gambling and Racing Control (Code of Practice) Amendment Regulations 2004 (No 1)*.

Regulation 2 Commencement

This regulation provides that the regulations commence on the day fixed by the Minister by written notice.

Regulation 3 Legislation amended

These regulations amend the *Gambling and Racing Control (Code of Practice) Regulations 2002*.

Regulation 4 Regulation 3, note 1

This regulation substitutes a new *Note 1* relating to the dictionary at the end of these regulations and provides a new example.

Regulation 5 Regulation 5(f)(ii)

This regulation substitutes new regulation 5(f)(ii) that outlines that an exemption is provided for a trade promotion, other than a trade promotion that involves gambling, in which participants are given free entry to a contest that promotes a trade or business and involves an element of chance in the allocation of the prize.

This amendment provides that a trade promotion that involves gambling (as defined in the dictionary of the original regulations and includes the playing of a gaming machine, betting at ACTTAB or at the casino), is now covered by these regulations. This amendment provides that gambling is no longer exempt by being included as part of a trade promotion. It ensures that patrons involved in gambling as part of a trade promotion are afforded the protection of the Code of Practice regulations.

Regulation 6 Regulation 5(f)(v)

This regulation substitutes new regulation 5(f)(v) that provides an exemption for an *exempt lottery* other than Housie.

This amendment provides that the exemption from the application of these regulations to an exempt lottery, such as a private lottery, does not include Housie. This ensures that Housie operations, which often involve large prize values and rapidly conducted games, are covered by these regulations. The type of gaming activity that involves rapidly repeating games, such as gaming machines or Housie, is that type of activity that is more likely to result in problem gambling. It is appropriate that all Housie operations are covered by these regulations and are not exempt because they are conducted as an exempt lottery (for example, a private lottery).

Regulation 7 Regulation 5, note 1

This regulation substitutes a new *Note 1* relating to the definition of *exempt lottery*.

Regulation 8 Regulation 8(2)

This regulation provides for the omission of existing regulation 8(2) as the reference is redundant.

Regulation 9 Regulation 8

This regulation provides for the renumbering of subregulations in regulation 8 when these regulations are next republished.

Regulation 10 Regulation 11(1)

This regulation provides for the omission of the reference to *clause 9* in regulation 11(1) and the substitution of *clause 9(1) (Gambling contact officers)*.

This amendment provides for a different reference to the clause 9 provisions relating to Gambling Contact Officers – amending regulation 22 refers.

Regulation 11 Regulation 11(2) and (3)

This regulation provides for the omission of subregulations 11(2) and 11(3).

These provisions have been more appropriately relocated into Schedule 1 of the regulations – amending regulation 22 refers.

Regulation 12 Regulation 11

This regulation provides for the renumbering of subregulations in regulation 11 when these regulations are next republished.

Regulation 13 Regulation 14(1)

This regulation provides for the omission of “clause 13(1) (which is about failing to sign a deed of exclusion if asked)” in regulation 14(1) and the substitution of “clause 13 (Deeds of exclusion)”.

This amendment provides for a different reference to the clause 13 provisions relating to deeds of exclusion – amending regulation 23 refers.

Regulation 14 Schedule 1, clause 1(f)(ii)

This regulation provides an identical amendment to clause 1(f)(ii) as described under amending regulation 5 for regulation 5(f)(ii).

Regulation 15 Schedule 1, clause 1(f)(v)

This regulation provides an identical amendment to clause 1(f)(v) as described under amending regulation 6 for regulation 5(f)(v).

Regulation 16 Schedule 1, clause 1, note

This regulation provides an identical amendment to Note 1 at the end of clause 1 as described under amending regulation 7 for Note 1 in regulation 5.

Regulation 17 Schedule 1, clause 4(1)(a)(i)

This regulation provides for the substitution of subclause (1)(a)(i) with new subclause (1)(a)(i) “has successfully completed an approved training program within the previous 5 years; and”.

The addition that the training must have been completed in the last 5 years ensures that all staff required to undertake training have current knowledge based on up-to-date standards to ensure that they are effective in undertaking their staffing duties.

Regulation 18 Schedule 1, clause 4(2)(a)

This regulation provides for the substitution of subclause (2)(a) with new subclause (2)(a) “has successfully completed an approved training program within the previous 5 years; and”.

The addition that the training must have been completed in the last 5 years ensures that all people in charge of the specified facilities that are required to undertake training have current knowledge based on up-to-date standards to ensure that they are effective in undertaking their duties.

Regulation 19 Schedule 1, clause 4(3)(a)(i)

This regulation provides for the substitution of subclause (3)(a)(i) with new subclause (3)(a)(i) “has successfully completed an approved training program within the previous 5 years; and”.

The addition that the training must have been completed in the last 5 years ensures that all staff required to undertake training have current knowledge based on up-to-date standards to ensure that they are effective in undertaking their staffing duties.

Regulation 20 Schedule 1, clause 4(3)(b)

This regulation provides for the substitution of subclause 4(3)(b) with a replacement subclause (b) and new subclause (c).

The amendments are as follows:

- (b) each staff member is made aware of his or her obligations under this code of practice; and
- (c) if the person will be absent from the facility for more than 1 week – the licensee is told who will be in charge of the facility during the person’s absence.

This amendment provides for the circumstances where a person in charge of a gambling facility is not going to be at the facility for more than a week. In these circumstances the person in charge who is going to be absent must inform the licensee of their impending absence. This notification ensures that the licensee can fulfil their statutory obligations under this clause in relation to training the person in charge. Having been informed that a new person will be in charge of the facility, the licensee must then ensure that appropriate training occurs.

Regulation 21 Schedule 1, clause 4(4) and (5)

This regulation provides for the substitution of subclauses (4) and (5) with:

- (4) for subclause (1)(a)(ii), (2)(b) and (3)(a)(ii), *staff member* of a gambling facility includes-
- (a) a person who is full time, part time or casual staff member of the facility; and
 - (b) anyone who has worked in the facility in any other capacity within the previous 7 days.

The amendment ensures that it is clear that a *staff member* covers all persons that are employed in any capacity at the facility, including “one-off” persons that may work on only one occasion or sporadically and are not listed as one of the facility’s employees. The examples in the regulation indicate that contractors, such as gaming machine technicians or persons working under contract to provide services to a licensee such as Housie, are also covered by the meaning of *staff member*.

This amendment also provides for the omission of existing of clause 4(4) as it is unnecessary and subclause 4(5) that relates to the restrictions on staff taking part in gambling only applying while on duty. This restriction now applies to staff members all of the time as it is inappropriate that staff gamble where they work based on conflict of interest (or perceived conflict of interest) as well as research and counselling evidence that indicates that the incident of gambling problems is significantly higher amongst gambling staff compared to the general community.

Regulation 22 Schedule 1, clause 9

This regulation provides for the substitution of new clause 9 relating to Gambling Contact Officers.

The new clause provides that:

- (1) a licensee of a gambling facility must not conduct gambling at the facility unless at least 1 gambling contact officer has been appointed for the facility;
- (2) a gambling contact officer for the facility may be the licensee or a person appointed by the licensee;
- (3) a person is eligible to be appointed as a gambling contact officer only if –
 - (a) the person has successfully completed an approved training program within the previous 5 years; or
 - (b) the Commission exempts the person, in writing, from the need to comply with paragraph (a).
- (4) an exemption may be given subject to conditions stated in the exemption.

This amendment includes relocated subregulations 11 (2) and (3) – amending regulation 11 refers – and provides that a person is eligible to be appointed as a gambling contact officer only if the person has successfully completed an approved training program within the previous 5 years. This ensures that all gambling contact officers have current knowledge based on up-to-date standards to ensure that they are effective in undertaking their role as a contact officer.

Regulation 23 Schedule 1, clause 13

This regulation provides for the substitution of new clause 13 relating to Deeds of Exclusion.

The new clause provides that:

- (1) a person claiming to have a gambling problem (the *gambler*) may sign a deed (a *deed of exclusion*) under which the person can be excluded from the gambling facility or facilities stated in the deed. The approved deed of exclusion form must be used.
- (2) the deed must state:
 - (a) the name and address of each gambling facility (the *nominated facility*) from which the gambler wishes to be excluded; and
 - (b) the period (reasonable in the circumstances) for which the gambler is to be excluded from the nominated facility or facilities; and
 - (c) that the licensee of a nominated facility may remove the person from, or prevent the gambler from entering, the facility.
- (3) if there is only 1 nominated facility, the gambler may give the signed deed to the licensee of the facility.
- (4) the licensee of the facility must immediately sign the deed, or if the deed is incomplete, ask the gambler within 1 day after the day the licensee receives the deed, to do whatever is necessary to complete the deed. Once the deed is complete, the licensee must immediately sign the deed.
- (5) if there is more than 1 nominated facility, the gambler may give the signed deed to the licensee of any of the nominated facilities (the *receiving licensee*).
- (6) the receiving licensee must immediately sign the deed, or if the deed is incomplete, ask the gambler within 1 day after the day the licensee receives the deed, to do whatever is necessary to complete the deed. Once the deed is complete, the licensee must immediately sign the deed.
- (7) within 1 day after the day the receiving licensee receives the signed deed, the receiving licensee must send a copy of the deed to each other nominated licensee, whether or not the deed is complete.

- (8) the nominated licensee who receives a copy of the deed from the receiving licensee must immediately sign the deed, or if the deed is incomplete, ask the gambler within 1 day after the day the licensee receives the deed, to do whatever is necessary to complete the deed. Once the deed is complete, the licensee must immediately sign the deed.
- (9) if a licensee signs the deed, the licensee must immediately give a copy of the signed deed to the gambler.
- (10) *incomplete* in this clause means that the deed has not been fully completed by the gambler.

This amendment provides that a licensee must sign a completed deed with a person immediately and that the licensee cannot delay or put off the signing to some other time or day. This is to avoid a licensee from requiring a person who wishes to enter into a deed from having to return on another day or at another time. It is critical for the protection of the person seeking exclusion that it occur immediately when the person has made that initiative.

This amendment also establishes a system for persons with a gambling problem to exclude themselves from more than one gambling facility at the one time. The Commission's experience has indicated that this is a highly desirable option for such people and ensures that minimum harm results from their gambling problem in these circumstances.

The timely exchange of documents is a feature of these subclauses to ensure that the person is excluded as soon as possible after their request is made. A receiving licensee has 1 day to forward the deed copies to other nominated licensees and those licensees have 1 day in which to action the deed by signing it or seeking further information as required. A copy of the originally signed deed is sufficient for a nominated licensee to act on the document as though they had received an original deed.

This clause also specifies that a copy of the deed must be immediately provided to the gambler. This may be achieved by immediately giving a copy to the gambler in person or by placing a copy of the deed immediately in the mail addressed to the gambler.

A deed may be incomplete if the gambler has not included his or her address on the deed or has not included the required photographs with the deed. If possible, the licensee should assist the gambler in completing the deed or by taking the necessary photographs.

Regulation 24 Schedule 1, clause 15(1)

This regulation clarifies existing clause 15 by substituting new clause 15(1) that provides that a decision by a licensee to exclude a person under clause 14(1)(a) must be reasonable in the circumstances.

The amendment changes the reference from clause 14 to clause 14(1)(a) which more accurately reflects the intent of the reference.

Regulation 25 Schedule 1, clause 20

This regulation amends existing clause 20 by substituting a new subclause 20(1) that clarifies the intent by providing some examples of promotional material. Promotional material now only includes information directly forwarded to the recipient ie. personally addressed mail or email and direct delivery.

New subclause 20(2) clarifies further by providing that information or promotional material is not given directly to a person only because it is broadcast or made available to the public generally. Examples of material that is not included as promotional material are television or radio broadcasts, websites accessible to anyone and letterbox drops that are not personally addressed.

These amendments clarify the intent of this clause and ensure that licensees do not inadvertently breach this clause by excluded persons receiving generally available information about gambling at the facility.

Regulation 26 Schedule 1, clause 22

This regulation provides for the substitution of new clause 22 relating to cash payments for casino licensees.

The new clause provides:

- (1) a casino licensee must not pay to a gambling patron winnings in cash of more than \$20 000 in any gaming day. *Gaming day* is defined in subclause (4). An example of a payment over different gaming days is given.
- (2) to remove any doubt, subclause (1) does not prevent the payment of winnings, in excess of \$20 000, in any other way.
- (3) subclause (1) does not apply to the payment of winnings to a person participating in a commission-based player scheme.
- (4) *gaming day* and *commission-based player scheme* are defined.

Gaming day generally means the period from when the casino opens to the public on a day until it next closes (usually in the early hours of the next morning). The definition makes allowance for the casino to trade for a 24-hour period. *Gaming day* is used for the reference for a casino licensee in relation to the payment of winnings by cash rather than the previous 12-hour period. Given that a gaming day generally has a distinct closing period it is much easier for a licensee to ensure that the maximum cash payout restrictions are adhered to in comparison to keeping records of payment times to calculate a 12-hour period.

New subclause 22(4) also provides that *commission-based player scheme* has the same meaning as in section 3 of the *Casino Control Act 1988*.

This amendment provides that commission-based players (“high rollers” or professional gamblers) are not subject to the cash payout restrictions as they are usually professional gamblers that bet large amounts and frequently travel quickly

between casinos both in Australia and overseas. The restrictions would be an unreasonable restriction on their activities and an unfair burden on the ability of a Canberra casino to compete with other casinos that do not have these restrictions for such players.

Regulation 27 Schedule 1, clause 23

This regulation provides for the substitution of a new clause 23.

The new clause provides:

- (1) a licensee must not, for a particular event or contingency on which a gambling patron has staked or risked money, pay the patron winnings in cash that are more than the amount worked out under table 1.23.

Table 1.23

column 1	column 2	column 3
item	type of licensee	maximum cash payable
1	bookmaker	\$20 000
2	ACTTAB	\$20 000
3	lotteries	\$4 000
4	gaming machine	\$1 200
5	housie and keno	\$1 000

- (2) to remove any doubt, subclause (1) does not prevent the payment of winnings, in excess of the maximum amount payable in cash, in any other way.
- (3) *winnings* from a gaming machine, in this clause, includes all accumulated credits on the machine (whether the credits were added by machine play or by a person adding credits to the machine).

This amendment provides the naming of the table (as table 1.23) and adjusts the maximum payout for gaming machines from \$1 000 to \$1 200. This adjustment takes into account the new definition of winnings. Credits added by the player are now included as winnings as it overcomes the practical problem of licensees having to differentiate between credits won by a player and credits added directly to the machine by the player.

Regulation 28 Schedule 1, new clause 23A

This regulation provides for the insertion of new clause 23A *Non-cash payment of winnings*. It provides that winnings to be paid other than in cash must be paid by the licensee as soon as practical but within 3 days after the day of the winning event.

Subclause (2) provides that this provision does not apply to a licensee mentioned in clause 1, definition of *licensee*, paragraph (f). The exclusion of lottery providers from this clause is made on the basis that large national lottery providers require more than 3 days to verify winners and arrange payments.

Regulation 29 **Schedule 1, clause 28(1)(b)**

This regulation provides for the omission of “18” and the substitution of “25” in clause 28(1)(b) in relation to the age at which a person can be shown in an advertisement for gambling.

This amendment provides a greater margin in ensuring that young looking persons are not used in advertisements depicting gambling. This is a harm minimisation strategy to avoid young persons being “lured” into gambling activity by pervasive advertisements.

Regulation 30 **Schedule 1, clause 28(1)(g)**

This regulation provides for the omission of existing clause 28(1)(g) and the substitution of new clause 28(1)(g) that provides that an advertisement cannot show or promote the consumption of alcohol while gambling.

This amendment clarifies the existing wording by adding “shows” to avoid any doubt about the meaning or coverage of the term “promote”.

Regulation 31 **Schedule 1, clause 30(1)(a) and (b)**

This regulation provides for the omission from existing subclauses 30(1)(a) and (b) “that encourages” and the substitution of “that requires or encourages”.

This amendment clarifies the existing wording of 30(1)(a) and (b) by adding “requires” to avoid any doubt about the meaning of “encourage”.

Regulation 32 **Schedule 1, clause 30(1)(c)**

This regulation provides for the substitution of existing subclause 30(1)(c) with a new subclause:

- (c) conduct a promotion for or including gambling at the facility that includes an offer of free or discounted alcohol.

Clause 30(1)(c) is amended to clarify that any promotion that includes the offer of free or discounted alcohol cannot include gambling.

Regulation 33 **New clause 30(2)(c)**

This regulation provides for the substitution of clause 30(2)(c) with a new subclause (2)(c) and the insertion of two new subclauses.

The new subclauses are:

- (c) the holder of a sports bookmaking licence under the *Race and Sports Bookmaking Act 2001*; or
- (d) someone mentioned in clause 1, definition of licensee, paragraph (f); or

- (e) a promotion that requires or encourages the single lowest available bet on a gambling activity unless the single bet is combined with, or required to be made in addition to, any other bet.

Subclause 30(2)(c), relating to promotions not being able to require or encourage the gambling of minimum amounts to qualify, does not apply to the holder of a sports bookmaking licence under the *Race and Sports Bookmaking Act 2001*.

This amendment recognises the national and international markets that sports bookmakers operate in and this restriction on the conduct of their promotions would provide an unreasonable constraint on their operations.

New subclause 30(2)(d) provides that someone mentioned in clause 1, definition of *licensee*, paragraph (f) does not need to comply with 30(1)(b). This is the same as previous subclause 30(2)(c).

New subclause 30(2)(e) provides that a promotion that requires or encourages people to make a bet to enter into a promotion (such as for a prize draw) is permissible as long as the required bet is a single bet equal to the minimum or lowest bet available. Higher bets may be acceptable (depending on the terms and conditions of the promotion) but a bet higher than the minimum cannot be a requirement for entry.

The subclause also clarifies that it is not permissible for a licensee to require multiple or combined single bets as an entry requirement into a promotion.

Several examples are used to illustrate subclause 30(2)(e).

Regulation 34 Schedule 1, clause 30(4)(b)(ii)

This regulation provides for the substitution of clause 30(4)(b)(ii) so that a gaming machine licensee cannot offer cash, or free or discounted gambling credits, unless the offer of cash or credits is made to all patrons of the facility all of the time as part of the facility's usual or regular prize schedule.

This amendment clarifies the intent of the clause that any discounts on gambling must be available to all patrons all of the time. Offering discounts on a regular basis, but not all of the time (such as between 5:00pm and 7:00pm every Monday), is not permitted.

This provision removes the targeting of certain persons or certain times of the day to encourage gambling.

Regulation 35 Dictionary, new note 3

A new *Note 3* has been added to the Dictionary that provides definitions covered by the *Gambling and Racing Control Act 1999*.

Regulation 36 Dictionary, new definition of *exempt lottery*

A definition of *exempt lottery* has been added to the Dictionary – amending regulations 7 and 16 refer.

Regulation 37 Dictionary, definition of *private lottery*

The previous definition of *private lottery* has been deleted from the Dictionary as it is no longer required.

