

2009

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

UNLAWFUL GAMBLING BILL 2009

**EXPLANATORY STATEMENT**

Circulated by the authority of  
Katy Gallagher MLA  
Treasurer

## TABLE OF CONTENTS

INTRODUCTION .....	4
Gambling Policy Objectives .....	4
ACT Gambling Legislation.....	4
Background to the Revised Legislation - Review of the Unlawful Games Act 1984	5
Overview of the Bill.....	6
Offence Provisions.....	6
Human Rights Issues.....	7
Financial Implications.....	8
NOTES ON SPECIFIC PROVISIONS .....	9
Part 1 Preliminary.....	9
1. Name of the Act .....	9
2. Commencement .....	9
3. Dictionary .....	9
4. Notes .....	9
5. Offences against Act – application of Criminal Code etc.....	9
Part 2 Important Concepts.....	9
6. Meaning of <i>unlawful betting</i> .....	9
7. Meaning of <i>unlawful game</i> .....	10
8. Meaning of <i>unlawful gambling</i> .....	12
9. Meaning of <i>exempt game</i> .....	12
10. Meaning of <i>exempt private game</i> .....	13
Part 3 Approval to conduct game .....	14
11. Application for approval to conduct game.....	14
12. Decision on application.....	14
13. Suitability of applicant to hold approval.....	15
14. Form of approval.....	16
15. Conditions of approval.....	17
16. Term of approval.....	18
17. Application for amendment of approval .....	18
18. Decision on application for amendment of approval .....	18
19. Cancellation of approval .....	19
Part 4 Exempt two-up games.....	19
20. Meaning of <i>exempt two-up game</i> .....	19
21. Conducting exempt two-up game .....	19
22. When charge etc may be imposed .....	20
Part 5 Offences .....	21
23. Cheating .....	21
24. Arranging unlawful gambling.....	21
25. Conducting unlawful gambling.....	22
26. Owning etc place used for unlawful gambling .....	22
27. Advertising etc unlawful gambling or place where unlawful gambling conducted .....	22
28. Inviting child to bet.....	23
29. Participating in unlawful gambling.....	23
30. Receiving proceeds from unlawful gambling .....	23
31. Possessing instrument of gambling.....	24
32. Failing to comply with condition of approval to conduct game .....	24
33. Failing to comply with requirements about charge etc for exempt two-up game .....	24

34.	Criminal liability of corporation officers .....	24
Part 6	Seizure and forfeiture of instruments of gambling .....	25
35.	Seizure of instruments of gambling .....	25
36.	Receipt for seized instrument of gambling .....	25
37.	Return of seized instruments of gambling .....	25
38.	Application to order disallowing seizure .....	26
39.	Order disallowing seizure .....	26
40.	Adjournment pending hearing of other proceedings .....	26
41.	Forfeiture of seized instrument of gambling.....	26
42.	Forfeiture of instrument of gambling etc if found guilty of offence against Act.....	26
43.	Cost of disposal of things forfeited.....	27
Part 7	Notification and review of decisions .....	27
44.	Meaning of <i>reviewable decision</i> – pt 7 .....	27
45.	Reviewable decision notices .....	27
46.	Applications for review.....	27
Part 8	Miscellaneous .....	27
47.	Unlawful gambling agreements void.....	27
48.	Determination of fees.....	28
49.	Regulation-making power.....	28
50.	Legislation amended – sch 2.....	28
51.	Legislation repealed .....	28
Schedule 1	Reviewable decisions.....	28
Schedule 2	Consequential amendments .....	28
Part 2.1	Gambling and Racing Control Act 1999 .....	28
Part 2.2	Legislation Act 2001 .....	29
Part 2.3	Liquor Act 1975 .....	29
Part 2.4	Lotteries Act 1964.....	29
Part 2.5	Pool Betting Act 1964.....	29
Part 2.6	Race and Sports Bookmaking Act 2001 .....	29
Dictionary	.....	31

## INTRODUCTION

### Gambling Policy Objectives

The policy objectives of the ACT's gaming laws typically revolve around consumer protection issues, provide the relevant regulatory powers and authorities, and in some cases, provide a revenue source for Government.

In general terms, the gaming laws aim to:

- suppress illegal gambling by offering a legal equivalent;
- allay community concerns about the conduct of gambling activity by providing a regulated alternative;
- ensure, through licensing processes, the probity of the persons and the integrity of the operations involved in the provision of the gambling product; and
- provide economic benefits to the wider community through Government imposed regulatory fees and taxation.

In more recent times the need to address problem gambling concerns was identified. With the establishment of the Gambling and Racing Commission (the Commission) in December 1999, the *Gambling and Racing Control Act 1999* provided how the Commission was to perform its functions. The Commission was tasked, in a way that best promotes the public interest, to:

- promote consumer protection; and
- minimise the possibility of criminal or unethical activity; and
- reduce the risks and costs, to the community and to the individuals concerned, of problem gambling.

### ACT Gambling Legislation

Legitimate gambling, including the operation of gaming machines, a casino, TAB, race and sports bookmakers and various lottery activities, is closely regulated in the ACT under separate legislation specific to each gambling activity.

The purpose of regulatory control is to ensure that:

- gaming operations are conducted fairly, free from criminal influence; and
- the possible harmful effects of problem gambling are minimised.

In order to achieve these public policy goals, a regulatory scheme has been established that prohibits gambling activity unless it is expressly authorised through the gaming laws. To date this has principally been achieved through the *Unlawful Games Act 1984*.

## **Background to the Revised Legislation - Review of the *Unlawful Games Act 1984***

The *Gambling and Racing Control Act 1999* provides for the Commission as part of its functions to review the ACT's legislation and policies related to gaming and racing. Consistent with its function of reviewing the gaming laws the Commission commenced a review of the *Unlawful Games Act 1984* in 2007.

The *Unlawful Games Act 1984* is fundamental to the control of unlawful gambling in the ACT. The Commission identified this Act as requiring review as it has become outdated, does not address a number of current gaming issues and is unclear in some of its provisions. For example, the Act does not adequately address the change in community attitudes to issues such as private or social gambling and charitable gaming.

The review presented an opportunity to consider a number of gambling policy matters, which included the conduct of gaming tournaments (such as poker) outside of the casino, whether to allow charitable or fundraising gaming and whether to provide for private or social gaming in people's homes.

The Commission is required to conduct these reviews in an open and transparent manner including consultation with the community and stakeholders. The Commission released a Discussion Paper in February 2007 which identified the major policy issues concerning the regulation of unlawful gambling.

In addition to advertisements in the *Public Notices* section of *The Canberra Times* and *The Canberra Chronicle*, the Discussion Paper was forwarded to all relevant community organisations and interested parties in accordance with the ACT Government's Community Consultation Protocol. The Discussion Paper was also made available on the Commission's website. An invitation was made to members of the public as well as key stakeholders to provide submissions on the review. Respondents were encouraged to comment on all issues considered pertinent to the review.

Following the first stage of public consultation and taking into account the submissions received in response to the Commission's Discussion Paper, the Commission developed a draft Policy Paper. The draft Policy Paper was circulated as part of the Commission's second period of public consultation.

The submissions received in relation to the draft Policy Paper and the views expressed were taken into consideration in developing the Commission's recommendations for the final Policy Paper. The recommendations were adopted by Government and formed the basis for the drafting of the Unlawful Gambling Bill 2009.

The Commission's review focused on the ability of the legislation, in conjunction with the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*, to achieve the gambling policy objectives outlined above. In this context, the review outcomes are consistent with the ACT Government's commitments under the Council of Australian Governments to regulatory reform. These commitments recognise that effective regulation is essential to ensure markets operate efficiently and fairly and to protect consumers. However, the benefits from each regulation must

not be offset by unduly high compliance and implementation costs or restrictions on competition.

Specifically, in order to achieve the Government's general gambling policy objectives, the review considered a range of feasible policy options, including self-regulatory, co-regulatory and non-regulatory approaches in the context of their effectiveness and their relative costs and benefits.

The *Unlawful Gambling Bill 2009* (the Bill) will replace the *Unlawful Games Act 1984*, the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.

## **Overview of the Bill**

Consistent with the approach taken in the *Unlawful Games Act 1984*, the Bill makes all gambling unlawful except to the extent that is permitted under the Bill or another gaming law.

This approach prevents unwanted gambling activity from commencing while the legislature catches up and ultimately controls or prevents if considered desirable or necessary. It therefore requires a positive decision to allow a new gambling activity that does not fit into the current criteria rather than a decision to close down an undesirable or risky activity at some later date.

This approach is consistent with achieving the Government's gambling policy objectives, particularly in relation to minimising criminal or unethical behaviour and reducing the impact of problem gambling. It is also consistent with the legislative approach in other Australian jurisdictions.

In summary, the Bill brings together both unlawful betting and unlawful gaming provisions within the one Act. Of policy note the Bill:

- clarifies the concepts of unlawful gaming and unlawful betting;
- provides for the control of public gaming tournaments outside of the casino;
- allows private gaming in private homes; and
- provides for approved charitable fundraising through games under certain circumstances.

## **Offence Provisions**

The *Criminal Code 2002* applies to the offences in the Bill.

The Bill contains some offences of strict liability. A strict liability offence means that there are no fault elements for any of the physical elements of the offence. This means that conduct alone is sufficient to make the defendant culpable. A strict liability offence has a defence of mistake of fact in addition to the other defences in part 2.3 of the Criminal Code and any other defence included in the Act.

Strict liability offences generally arise in a regulatory context where, for reasons such as public safety or protection of the public revenue, it is necessary to ensure the integrity of the regulatory scheme. In these circumstances, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement in the particular industry, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate where the regulator is in a position to assess readily the truth of a matter or obtain evidence that an offence has been committed. Strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in and compliance with the regulatory scheme.

The intention in applying strict liability to some offences is to encourage gambling operators to exercise due skill, care and diligence in conducting the particular gambling activity. Committing an offence is highly likely to lead to patrons or punters being misled, exposed to unacceptable gaming integrity issues or being exposed to increased possible harm in the form of problem gambling.

Lower penalties for strict liability offences provide a safeguard for those affected. The maximum penalties for the strict liability offences in the Bill are 50 penalty units.

### **Human Rights Issues**

A strict liability offence could be argued to trespass unduly on personal rights and liberties and be a limitation on the right to be presumed innocent under section 22 of the *Human Rights Act 2004* (the HRA). However, it is considered permissible as a reasonable limitation under section 28 of the HRA which provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. In effect, section 28 requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

To facilitate consistency with the HRA, strict liability offences only impose an evidential burden on the defendant. Furthermore, as stated above, if strict liability applies, the defence of mistake of fact and other defences under the Criminal Code such as intervening conduct or event (section 39) may be available.

Another indication that the strict liability offence is a reasonable limitation under section 28 of the HRA is the low maximum penalty of \$5,000 for individuals (50 penalty units) and no imprisonment.

An effective enforcement regime is crucial for the successful control and regulation of gambling activity including the minimisation of problem gambling. A judgement must be made about the value to society of the presumption of innocence as opposed to the protection of the community from unscrupulous gambling operators and excessive gambling activity leading to an increase in problem gambling.

Strict liability offences reduce risks to the community by providing an adequate deterrent to ensure that gambling occurs in accordance with the necessary controls. It

is also crucial that the regulator has the ability to act quickly and decisively, particularly in circumstances where delay may result in economic loss or psychological damage.

The objective of the legislation can only be achieved by removing the need for intent by way of a limited number of strict liability offences because the purpose of the provisions are not to punish wrongdoing but to protect the community. It is considered that the limitation in the strict liability offences serve as a legitimate objective, is rationally connected to achieving that objective and is the least restrictive means of achieving that objective. The offence provisions are both reasonable and proportionate in terms of the HRA.

### **Financial Implications**

The Gambling and Racing Commission will absorb any costs associated with the introduction and implementation of the new legislation, for any increased regulatory costs and for providing advice to the community and affected stakeholders.



## NOTES ON SPECIFIC PROVISIONS

### Part 1 Preliminary

#### 1. Name of the Act

This clause provides that the name of the Act is the *Unlawful Gambling Act 2009*.

#### 2. Commencement

This clause provides that the Act commences on a day fixed by the Minister by written notice and may apply differently to different provisions. Some flexibility in the commencement of the Act is required to ensure that the ACT Gambling and Racing Commission (the Commission) is in a position to enforce the new law, all supporting statutory instruments are prepared and relevant stakeholders have been given a reasonable time to prepare for the commencement of the Act.

To assist stakeholders in the preparation for the introduction of this Act, a delayed commencement will allow the planned publicity and education programs to be conducted by the Commission.

#### 3. Dictionary

This clause provides that the Dictionary at the end of the Act is part of the Act.

#### 4. Notes

This clause confirms that an explanatory note in the Act does not form part of the Act.

#### 5. Offences against Act – application of Criminal Code etc

This clause provides that other legislation applies in relation to offences under the Act such as the Criminal Code and the Legislation Act.

### Part 2 Important Concepts

This Part provides some important definitions to terms and key concepts that are used throughout the Act.

#### 6. Meaning of *unlawful betting*

This clause specifies that betting includes (but is not limited to) the placing or accepting of bets. Without this clarification it could be open to interpretation whether both the person who places a bet and the person who accepts a bet are engaging in betting.

The clause indicates that unlawful betting is all betting that is not explicitly authorised under either this Act or any other gaming law. The term “gaming law” has a specific meaning and is defined in section 4 of the *Gambling and Racing Control Act 1999* (the Control Act). This section in the Control Act lists all of the laws in the ACT that control and regulate gaming and racing activity. Of particular relevance to this Act

the *Race and Sports Bookmaking Act 2001* provides a regulatory regime for the licensing and betting activities of approved bookmakers.

In relation to what is intended to be included under the term ‘betting’, it is a generally accepted interpretation that has been adopted here that where a person uses the internet or the phone to make a bet with an interstate operator, the actual betting activity is taken to have occurred in the other jurisdiction. It would therefore not be captured under this Act.

Unlike unlawful gaming (see clause 10), there is no separate or explicit provision for lawful *private* betting. This is primarily because it was not possible to define private betting without effectively allowing unlicensed bookmaking. Private betting can encompass many activities ranging from activities which may be considered relatively harmless (eg a small social bet on the outcome of an election) to significant bets between individuals on a horse winning a race. Given this range, it was not considered possible to meaningfully distinguish between the activities in such a way that some private betting could be deemed to be lawful.

The consequence of private betting not being explicitly provided for means that all forms of private betting are captured (even “harmless” betting between friends). While it is not the intention of the Government to prosecute individuals for engaging in small social bets, it is necessary to ensure that the Government can take action where individuals are effectively engaging in unlicensed bookmaking.

It should also be noted that if private betting were to be explicitly allowed, then private bets would potentially be enforceable in a court of law. This is not considered to be a desirable outcome as it could potentially result in individuals unwittingly engaging in a “harmless” bet only to find that they were required to pay up if they lost. This sort of scenario in turn could lead to vulnerable individuals, with a limited understanding of the consequences, being targeted to engage in “private” bets.

## **7. Meaning of *unlawful game***

This clause defines an unlawful game. In summary, subparagraph 7(1)(a)(i) provides a general definition of an unlawful game, subparagraph 7(1)(a)(ii) provides for the Commission to specify that a particular game is an unlawful game through a declaration via a disallowable instrument and paragraph 7(1)(b) provides that some games, notwithstanding that they may be deemed to be unlawful due to the operation of paragraph 7(1)(a), are not to be considered unlawful.

The approach of having a general definition in conjunction with modifying provisions that explicitly allow the identification, for clarity, of games that are either lawful or unlawful is common among jurisdictions. This is because it is not possible for a general or fundamental description of an unlawful game to capture all of the games that are intended without inadvertently capturing some common non-gambling games.

Subparagraph 7(1)(a)(i) provides the fundamental description of an unlawful game. It deliberately does not include games that are completely skill based but does specifically capture games that are purely of chance or combine both an element of chance and an element of skill. (Chance includes an element of randomness or

uncertainty such as the draw/dealing of cards from a deck, the roll of dice, or the allocation/draw of a number such as a ticket.)

The second key element of this definition is that money or any other valuable thing must be staked, risked or offered as a prize. The words “money or any other valuable thing” are intended to include things of value (including money) but not capture things that would generally be considered inconsequential. For example, while it is intended to include things such as a trophy, holiday, tickets or merchandise it is not intended to include recognition prizes consisting solely of a certificate or title or other intangible items.

In relation to staking, risking or offering a prize, there has been argument about whether or not people are risking anything when playing for a prize if they have not directly provided their own stake (eg by the payment of an entrance fee rather than a specific stake amount at the table). For this reason, the concept of offering a prize has been explicitly included to ensure that these gambling activities are clearly within the coverage of this Act as it is considered appropriate to include the playing of a game to win a valuable prize whether the participant directly provides a stake or not.

The staking, risking or offering of a prize may be undertaken by a participant or someone else. This is because while any prohibition of a gambling activity should in the first instance be directed to the participants of the game, it is also considered appropriate for the prohibition to extend to the activities of non-participants, for example, in side-betting on the hands of the participants of the game. In the context of including the offering of prizes, the inclusion of “someone else” ensures that if a third party for a game provides a prize (rather than the participants) then it is still covered by the general description of an unlawful game.

The final part of the description is the phrasing “an event or contingency”. This is intended to ensure that the staking, risking and/or the offering of prizes on other *elements* of the game (eg the likelihood that a specific red card is drawn) is included in addition to the normal outcomes of the game.

Subparagraph 7(1)(a)(ii) provides for the Commission to specify that a particular game is an unlawful game through a declaration. Paragraph 7(1)(b) provides that exempt games (as defined in clause 9) are not considered unlawful notwithstanding that they may be captured by the operation of paragraph 7(1)(a). Subclauses 7(2) and (3) allow the Commission to declare, by disallowable instrument, particular games as exempt games.

This provision to allow the declaration of certain games as unlawful is intended to create a mechanism for providing certainty about a particular game where there may be some doubt if it falls under the general description. It also provides a mechanism for declaring games, such as those designed specifically for betting, to be consistently unlawful where otherwise they may only have been captured by the general description in some circumstances. This provides certainty for the operators, players and regulators in relation to particular games.

The sort of games that may need to be declared as unlawful is likely to change over time as new games are invented or developed. For this reason, the Act provides for them to be declared by the Commission to ensure that the list can be amended in a

timely fashion. The form of the declaration is a disallowable instrument. This provides an opportunity for the Legislative Assembly to scrutinise and disallow the Commission's list if it does not consider it to be reasonable or appropriate.

It is considered appropriate that the decision making authority for these declarations rests with the Commission as the independent, expert body tasked with the supervision and control over gaming and racing in the Territory.

## **8. Meaning of *unlawful gambling***

Clause 8 defines unlawful gambling to be the playing or conduct of an unlawful game or unlawful betting. While the playing of a game will generally involve betting, it is clearly possible to bet without playing a game (for example betting on racing). In this regard the concept of "unlawful gambling" is required to cover both types of activities.

## **9. Meaning of *exempt game***

Clause 9 provides for certain games to be exempt games and they are consequently not unlawful games even though they may be captured by the definition at paragraph 7(1)(a).

Paragraph 9(1)(a) provides that a game which is authorised under another Territory law is an *exempt game*. This is equivalent to the provision in clause 6 regarding unlawful betting. For example, this means that games permitted under the *Casino Control Act 2006* are not unlawful as long as they are played as provided for by that Act.

Paragraph 9(1)(b) provides for exempt private games. Clause 10 of the Act defines an exempt private game and is discussed further below.

Paragraph 9(1)(c) provides that a game conducted in accordance with an approval under part 3 of the Act is an exempt game. Part 3 of the Act provides for approved charitable fundraising through games under certain circumstances.

Paragraph 9(1)(d) provides that an exempt two-up game is also an exempt game. (The meaning of an exempt two-up game is provided in part 4 of Act.).

Paragraph 9(1)(e) provides for the Commission to specify that a particular game is an exempt game. Subclauses 9(2) and (3) allow the Commission to declare, by disallowable instrument, particular games as exempt games.

This mirrors the provisions in the Act for declaring that a particular game is an unlawful game. As is the case for declarations of unlawful games, this provision is intended to provide a mechanism for providing certainty about a particular game where there may be some doubt if it falls under the general description. It also provides a mechanism for declaring common non-gambling games to be exempt where they may be inadvertently captured by the general description.

The sorts of games that may need to be declared as exempt may change over time. For this reason, the Act provides for them to be declared by the Commission to ensure

that the list can be amended in a timely fashion. The form of the declaration is a disallowable instrument. This provides an opportunity for the Legislative Assembly to scrutinise and disallow the Commission's list if it does not consider it to be reasonable or appropriate.

As with the declaration under clause 7, it is considered appropriate that the decision making authority for these declarations rests with the Commission as the independent, expert body tasked with the supervision and control over gaming and racing in the Territory.

#### **10. Meaning of *exempt private game***

This clause provides the meaning of an exempt private game. The intention of this clause is to allow for some lawful private gaming at the same time as ensuring that commercial gaming or common gaming houses are not allowed under the guise of private gaming. For this reason the clause contains a number of elements or conditions that a private game must satisfy in order to be an exempt private game.

The first, in paragraph 10(1)(a), provides that an exempt private game is defined as a game which is conducted by a person in the person's home. Subclause 10(3) defines 'home' as the place where the person usually lives. This means that it would not be lawful under the Act to hold private games in public places such as hotels, clubs, community halls, cafes or restaurants unless the person conducting the game actually resided at the place as their usual or normal residence.

Paragraph 10(1)(b) provides that an exempt private game cannot be conducted for a commercial purpose. Subclause 10(2) provides some guidance or circumstances, without limiting the general concept of a commercial purpose, which may indicate when a game is being conducted for a "commercial purpose". These are:

- if a fee is charged to participate in the game or to enter the home. There is an explicit exception for reasonable contributions to the cost of food and beverages; or
- if a commission, charge or fee is deducted from the bets. In other words, if all of the bets made are not won by a participant in the game. This prevents the person conducting the game or a third party from charging persons for participating in a private game by taking a proportion of the bets.

In order to emphasise further the non-commercial nature of exempt private gaming, paragraph 10(1)(c) provides that no participant in the game, such as the dealer, can obtain a benefit other than by winning. In other words, a person (such as the dealer) cannot receive any benefit, payment, wage or fee for conducting or participating in the game. Winnings obtained by playing the game are not covered by this prohibition.

In addition, the rules of the game being played must provide the same chance or odds of winning a bet for all participants. This means that there cannot be an advantage or bias in the way the game is conducted that gives one participant an advantage over another.

Paragraphs 10(1)(b) and (c) are important concepts to ensure that exempt private gaming remains as a private social activity and is not conducted for any commercial gain or commercial purpose. Commercial gaming operations are properly conducted

under strict licensing and regulatory schemes to ensure fairness and integrity of operations without unduly impacting on the level of problem gambling.

Paragraph 10(1)(d) provides for the Executive to prescribe by regulation further conditions on exempt private games. For example it may be necessary in the future to define the concept of exempt private gaming further in order to clarify the concept of private gaming for non-commercial purposes.

### **Part 3            Approval to conduct game**

This part deals with approving the conduct of a game by a charitable organisation as a means of fundraising for a charitable purpose. Games conducted in accordance with an approval under this part are exempt games under clause 9 of the Act.

The Government considers that some low level ‘fun’ gaming is acceptable as a fundraising activity provided that only approved charitable organisations are able to hold such events. The intention of this part is therefore to provide for charitable fundraising through gaming under certain conditions.

#### **11.    Application for approval to conduct game**

Subclause 11(1) provides that a charitable organisation may apply to the Commission in writing for approval to conduct a game.

Note 1 to this clause advises that if a form is approved for an application under clause 53D of the Control Act then that form must be used.

Note 2 to this clause advises that a fee may be determined under clause 48 of this Act for this provision.

Subclause 11(2) provides that the Commission may ask for further information or documents in relation to an application received under subclause 11(1). Any such request for further information made by the Commission must be in writing and state a reasonable period of time for the applicant to provide the Commission with this further information.

#### **12.    Decision on application**

Subclause 12(1) provides that when a charitable organisation submits an application to conduct a game under clause 11 then the Commission must approve or refuse to approve the application to conduct a game.

The decision to refuse to approve an application to conduct a game is a reviewable decision (clause 44 of this Act refers).

Subclause 12(2) provides that the Commission must refuse to approve an application to conduct a game under clause 11 unless it is satisfied that:

- (a) the charitable organisation applying for an approval is a suitable organisation to conduct the proposed game. Clause 13 provides further guidance as to what the Commission may consider with regard to suitability; and

- (b) the rules of the game proposed to be conducted are fair and reasonable. For example, a game with rules that provided an advantage or bias in the way the game is conducted that gives one participant an advantage over another are not “fair and reasonable”; and
- (c) the rules and method of conduct of the game can be easily understood by participants to ensure that a person is not at a disadvantage because they do not fully understand or appreciate the consequences of the game’s rules; and
- (d) the primary purpose of conducting the game is to raise funds for a stated entity for a charitable purpose. The funds to be raised could be for a charitable purpose other than the applicant’s own; and
- (e) the charitable organisation is responsible for conducting and promoting the game and the event at which the game is to be conducted. While third parties are permitted to assist with promoting and conducting the event the charitable organisation applying to hold an approval is required to be responsible for the conduct and promotion of the game and the event at which the game is to be conducted; and
- (f) the game is not to occur in a licensed gambling venue as defined in subclause 12(5). For example the Commission cannot approve an application if it is proposed to hold the game at the casino or at a club which is licensed to operate gaming machines. This ensures that participants in the low-risk charitable gaming event are not persuaded or tempted to venture into the higher-risk cash gaming activities of the venue; and
- (g) the approval would not result in the charitable organisation conducting more than two charitable gaming events in a 12-month period. This ensures that such gaming events do not become a frequent or habitual occurrence.

Paragraph 12(2)(h) provides for the Executive to prescribe by regulation further criteria that an application must meet. For example it may be necessary in the future for there to be additional criteria to ensure that charitable gaming does not increase the level of problem gambling in the community.

Subclause 12(3) provides that the Commission may consider and refuse an application on grounds other than those provided in subclause 2.

Subclause 12(4) provides that the Commission may impose conditions upon an approval issued under this clause. The decision to impose conditions upon an approval to conduct a game is a reviewable decision (clause 44 of this Act refers).

Subclause 12(5) defines a *gambling facility* and a *licensee* relevant to clause 12.

### **13. Suitability of applicant to hold approval**

Subclause 13(1) provides that the Commission may have regard to any relevant matter in deciding whether or not an applicant is a suitable organisation under subclause 12(2). Without limiting the matters that the Commission may consider, the Commission may have regard to the business reputation, character, financial background and current financial position of the organisation, a member of the

organisation's management committee and/or a third party the organisation proposes to engage to assist with promoting or conducting the game or the event.

Paragraph 13(1)(e) provides for the Executive to prescribe by regulation further matters that the Commission may have regard to when determining whether an applicant is a suitable organisation.

Subclause 13(2) provides that an applicant is to be considered unsuitable if:

- (a) the applicant has, at any time in the 12 months before the application is made, been refused approval or had an approval cancelled under this part; or
- (b) the applicant, or an agent or employee of the applicant, has at any time in the five years before the application is made, contravened this Act or a condition of an approval under this part (whether or not convicted or found guilty of an offence in relation to the contravention).

This subclause ensures that an applicant's relevant previous adverse history must be considered in relation to a new application as a consumer protection measure.

Subclause 13(3) provides that despite the organisation being deemed an unsuitable organisation on the grounds outlined in subclause (2), the Commission may decide that an applicant is a suitable organisation if it is satisfied that the conduct of the game would not be adversely affected if the Commission decided that the applicant was a suitable organisation and that it is otherwise in the public interest that the conduct of the game be approved. This subclause ensures that the Commission has the discretion to approve an applicant if the integrity of the proposed game is not adversely affected and it is in the public interest that the game proceeds. This provides that small or minor breaches will not necessarily result in the rejection of an application but the circumstances may be considered by the Commission.

#### **14. Form of approval**

This clause provides that an approval by the Commission must be in writing (paragraph 14(1)(a)) and must identify or describe the game approved to be conducted and the event at which it is to be conducted (paragraph 14(1)(b)). An approval must also include the following information under paragraph 14(1)(c):

- 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 clause 12 or clause 18 to which the approval is subject; and
- vi. an identifying number given by the Commission for the approval.



Paragraphs 14(b) and (c) are not exhaustive and provide only the minimum elements that must be contained in an approval from the Commission. Subclause (2) provides that an approval may include any other information the Commission considers relevant.

## **15. Conditions of approval**

This clause outlines the general obligations or conditions that are placed on all charitable organisations issued with an approval to conduct a game. Failing to comply with these conditions is a strict liability offence under the Act (see clause 32).

Paragraph 15(a) provides that the organisation must be responsible for the promotion and conduct of the game and the event at which it is to be conducted. This includes responsibility for any promotion or conduct of the game or event provided by a third party.

Paragraph 15(b) provides that the percentage disclosed under paragraph 15(c), or a greater amount, of the funds raised by the event must be given to the entity and charitable purpose stated in the application. This is to ensure that at least the stated amount of funds from the event is given to the entity for the charitable purpose.

Paragraph 15(c) provides that 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 in all promotional material, the places where tickets are sold and at the place where the game is being conducted when the event takes place. This is to ensure that there is transparency regarding the amount that is to be given for a charitable purpose and to allow patrons to make an informed decision before participating in the event.

Paragraph 15(d) requires the identifying number given by the Commission for the approval to be included in all promotional material for the game and the event (including the tickets). This is similar to existing requirements for lottery approvals under the *Lotteries Act 1964* and provides a mechanism for people to verify that the event has undergone scrutiny and is authorised by the Commission.

Paragraph 15(e) provides that the game must be conducted in a competent and fair manner. This is a consumer protection mechanism.

Paragraph 15(f) provides that the game must be conducted by a person who is 18 years old or older and paragraph 15(g) provides that each participant in the game must be 18 years old or older. This is to ensure that minors are not participating in any way in charitable gaming and is part of a harm minimisation strategy.

Paragraph 15(h) provides that the charitable organisation must keep a record of any information prescribed by regulation.

Paragraph 15(i) provides that the charitable organisation must comply with any code of practice prescribed under the Control Act that applies to the organisation. Currently there is no code of practice that applies to charitable organisations however provision has been made for this to be quickly applied in the future if required.

Paragraph 15(j) provides that the charitable organisation holding the approval must continue to be a charitable organisation.

Paragraph 15(k) provides that a charitable organisation must ensure that any conditions imposed on the approval under clause 12 or 18 are adhered to.

Paragraph 15(l) provides for the Executive to prescribe by regulation further conditions of approval on charitable organisations.

The list of conditions in section 15 are the minimum requirements that are considered should apply to all approvals for charitable gaming.

## **16. Term of approval**

Clause 16 provides that an approval to conduct a game is given for the period stated in the approval. The term of approval cannot be for longer than 12 months. The maximum period of 12 months ensures that the substance or content of the application is reviewed after a set period of time and is consistent with paragraph 12(2)(g) that ensures that a charitable organisation cannot conduct more than two events in a 12-month period.

## **17. Application for amendment of approval**

This clause applies if an approval is issued under the Act and the charitable organisation wishes to make a change to the approval.

Subclause 17(1) provides that the charitable organisation may apply for an amendment to its approval to the Commission in writing.

Note 1 to this clause advises that if a form is approved for an application under clause 53D of the Control Act then that form must be used.

Note 2 to this clause advises that a fee may be determined under clause 48 of this Act for this provision.

Subclause 17(2) provides that the Commission may ask for further information or documents in relation to an application received under subclause 17(1). Any such request for further information made by the Commission must be in writing and state a reasonable period of time for the applicant to provide the Commission with this further information.

## **18. Decision on application for amendment of approval**

Subclause 18(1) provides that when a charitable organisation submits an application to amend an approval the Commission must approve or refuse to approve to amend the approval.

Subclause 18(2) provides that when deciding whether to amend the approval the Commission must have regard to the matters mentioned in subclauses 12(2) and (3). (These are the matters the Commission must have regard to when considering an application for an initial approval.)

Subclause 18(3) provides that an amendment has effect only if the amendment is stated in the approval. This means that a decision to approve an amendment to an organisation's initial approval will result in the issuing of an amended approval by the Commission. This ensures transparency and that there is no misunderstanding as to the matters covered in the approval.

Subclause 18(4) provides that the amendment of an approval may include the imposition of a condition on the approval and/or the amendment of a condition of the original approval.

The decisions to refuse to approve an application for amendment of the approval, the imposition of a condition on the approval and the amendment of a condition of the initial approval are reviewable decisions (clause 44 of this Act refers).

### **19. Cancellation of approval**

This clause provides that the Commission may cancel an approval to conduct a game if the Commission believes on reasonable grounds that the charitable organisation issued with the approval has failed to comply with the approval or a condition of the approval. This ensures that a game that is being conducted contrary to the approval, including any associated condition, can have the approval cancelled. This is important in relation to consumer protection for a game actually being conducted or a further game that has been included in an existing approval. The decision to cancel an approval is relevant to subsequent applications in relation to subclause 13(2).

The decision to cancel an approval to conduct a game is a reviewable decision (clause 44 of this Act refers).

## **Part 4 Exempt two-up games**

This part provides for the circumstances in which playing and/or conducting two-up is exempt from the definition of an unlawful game (refer clauses 7 and 9). Playing two-up has become a traditional part of commemorating Anzac Day and is sometimes used as a means of raising funds for charitable organisations such as the Returned Services League or Legacy. This part provides for this tradition to continue while ensuring that it is not commercialised and remains a low risk gambling activity.

### **20. Meaning of *exempt two-up game***

This clause provides that in order for a game of two-up to be an exempt two-up game and therefore not an unlawful game it must be played on Anzac Day (25 April in any year). It must also be conducted in accordance with the conditions outlined in clause 21.

### **21. Conducting exempt two-up game**

This clause provides the conditions which must be met in order for a game of two-up being conducted on Anzac Day to be an exempt two-up game and consequently not an unlawful game.

Paragraph 21(a) provides that the two up is conducted with the permission of the owner or person in charge of the place where the game is to be conducted. People may object for any number of reasons to the conduct of two-up on their premises. This clause therefore requires a person to gain the consent of the owner or person responsible for the place where they intend to play two-up.

Paragraphs 21(b) and (c) provide that all of the persons involved in conducting and participating in the game must be 18 years or older. This is to ensure that minors are not participating in any way and is part of a harm minimisation strategy.

Paragraph 21(d) provides that if there is a prize pool for the game then the prize pool must comprise of all bets placed by the players without any deductions for a charge, commission or fee. This is to ensure that the two-up is not played for the profit or commercial gain of any person.

Paragraph 21(e) provides that persons may observe or participate in the two-up game for free unless a charge, commission or fee is to be imposed subject to clause 22. The intent of this subclause is similar to subclause 21(d), that is, in order for two-up to be an exempt game it should not be commercial in nature and therefore generally free to enter. However clause 22 provides an exemption to this for collecting money for charitable purposes as described below.

Paragraph 21(f) provides for the Executive to prescribe by regulation further conditions for the conduct of exempt two-up.

## **22. When charge etc may be imposed**

This clause provides when and how a charge, commission or fee may be imposed upon persons observing or participating in an exempt two-up game.

This clause provides for a person to raise money for a charitable purpose by way of an entry fee, charge or commission provided that:

- the owner or person in charge of the place where the game is being conducted has given their permission for this to occur;
- players are advised of the charge, commission or fee and the purpose for which it is provided; and
- the funds raised by way of the charge, commission or fee are given in their entirety to the nominated charitable purpose and no portion is retained by the person conducting the game.

The requirements of this clause are consumer protection measures to ensure that there is transparency and accountability with any fundraising that occurs with the conduct of exempt two-up.

Paragraph 22(d) provides for the Executive to prescribe by regulation further conditions in relation to the imposition of a charge, commission or fee.

## **Part 5            Offences**

Part 5 provides the offence provisions for a breach of the Act.

The offences in this part, particularly those related to unlawful gambling, should be viewed in the context of the Government's overall approach to gambling. This approach seeks to protect consumers and minimise the risk of criminal or unethical activity by making all gambling unlawful unless it is expressly authorised. In this context, unlawful gambling is considered to be a serious activity that poses significant risks to the community. It is therefore considered appropriate for there to be criminal penalties for conducting and participating in unlawful gambling as well as the ancillary actions that allow unlawful gambling to occur such as arranging unlawful gambling, knowingly allowing a place to be used for unlawful gambling and advertising unlawful gambling.

In relation to the strict liability offences in this part of the Act, the general comments provided in the introductory section of this Explanatory Statement are relevant and are referenced as appropriate.

### **23.     Cheating**

This clause provides that a person commits an offence if the person cheats when playing a game or placing a bet.

This clause specifically covers incidents of dishonesty that could occur in the context of gambling. While the Criminal Code provides an array of offences relating to fraudulent conduct (Part 3.3 of the Criminal Code refers), it was considered appropriate to explicitly highlight the fraudulent conduct commonly known as cheating as it specifically applies in the gambling context.

This clause provides that a person commits an offence if the person, while participating in a game or betting, dishonestly obtains for themselves or someone else or induces someone to deliver, give or credit to the person or someone else, money, benefit, advantage, valuable consideration or security and the person does so by trick, device, sleight of hand, representation, a scheme or practice, the use of gambling equipment or anything else.

Cheating can have serious economic consequences for gambling venues and both economic and social consequences for individuals who may be participating in a game where cheating is occurring. Defrauding persons by dishonest activity is considered sufficiently serious that the maximum penalty for a breach of this provision is 200 penalty units, imprisonment for 2 years or both.

### **24.     Arranging unlawful gambling**

This clause provides that a person commits an offence if the person arranges an unlawful game or unlawful betting.

Unlawful gambling is considered to be a serious offence and it is therefore considered appropriate to capture persons who may arrange but not necessarily conduct or

participate in unlawful gambling. The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

## **25. Conducting unlawful gambling**

Subclause 25(1) provides that a person commits an offence if the person conducts an unlawful game or unlawful betting. The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

Subclause 25(2) provides that a person commits an offence if the person conducts unlawful gambling and allows a minor to participate. A fundamental part of the Government's harm minimisation strategy in relation to lawful gambling is to ensure that persons under the age of 18 do not participate in gambling. It is of more significance that vulnerable persons under the age of 18 years do not participate in unlawful gambling where gambling integrity and other consumer protection measures are likely to be non-existent, or at best, unenforceable. It is therefore considered appropriate for there to be a significant penalty for the conduct of unlawful gambling involving minors.

The maximum penalty for a breach of this provision is 200 penalty units, imprisonment for 2 years or both.

## **26. Owning etc place used for unlawful gambling**

This clause provides that a person commits an offence if the person knowingly allows a place that they own or are in charge of to be used for unlawful gambling.

Actions that facilitate unlawful gambling, such as by knowingly allowing it to occur in premises that a person owns or is responsible for, are considered serious and require appropriate deterrents.

The inclusion of the requirement that the person "knows" the unlawful gambling is occurring is an important safeguard and ensures that persons are not committing an offence if they were unaware that their premises were being used for unlawful gambling.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

## **27. Advertising etc unlawful gambling or place where unlawful gambling conducted**

This clause provides that a person commits an offence if the person advertises unlawful gambling or a place being used, or to be used, for unlawful gambling. It also provides that a person commits an offence if they do anything else to promote unlawful gambling or that entices a person to participate in unlawful gambling.

This clause is intended to act as a deterrent to unlawful gambling by prohibiting the advertising, promotion or enticing of persons to participate in the illegal activity of unlawful gambling. It also deliberately places an obligation on third parties to ensure

that if they accept gambling advertising that they only advertise lawful gambling. The maximum penalty for a breach of this provision is 50 penalty units.

## **28. Inviting child to bet**

Subclause 22(1) provides that a person commits an offence if the person sends to someone that the person knows is a child a document that invites, or may reasonably be implied to invite, the child to make a bet; enter into or take a share or interest in a bet; or apply to someone or at a place to obtain information or advice in relation to a bet.

Subclause 28(2) specifies that for the purposes of this clause a bet does not include games that have been declared by the Commission to be exempt games (refer clause 9(2)) or the buying of a raffle ticket. In the context that this clause deals with the invitation (or implied invitation) of a child to make a bet, it is appropriate that any determined exempt games under clause 9(2) are excluded from the meaning of “bet” in this clause as it is anticipated that this list of exempt games would identify acceptable gaming activity that did not involve gambling. Such games could be Scrabble, Monopoly or chess and would be acceptable for a child to participate in. (It should be noted that if these identified games were conducted in a public context and offered a prize to the winner, then they would be captured by the general definition of an unlawful game. Thus it is anticipated that such games would be determined as exempt games.)

In addition, the purchase of a raffle ticket is also exempt in subclause 28(2) as this is a common fundraising activity at schools and other activities involving children where it is considered appropriate that the common practice of children’s involvement in the sale and purchase of raffle tickets should continue. The approved sale of raffle tickets by and to children is considered as a minimal risk in terms of problem gambling.

The maximum penalty for a breach of this provision is 50 penalty units.

## **29. Participating in unlawful gambling**

This clause provides that a person commits an offence if they knowingly participate in unlawful gambling.

The inclusion of the requirement that the person “knows” the gambling is unlawful is an important safeguard and ensures that persons are not committing an offence if they were unaware that the gambling they were participating in was unlawful.

The maximum penalty for a breach of this provision is 50 penalty units.

## **30. Receiving proceeds from unlawful gambling**

This clause provides that a person commits an offence if the person knowingly receives proceeds from the conduct of unlawful gambling.

Knowingly receiving the proceeds of unlawful gambling is considered serious and requires an appropriate deterrent. The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

### **31. Possessing instrument of gambling**

This clause provides that a person commits an offence if they possess an instrument of gambling for a purpose related to the conduct or proposed conduct of unlawful gambling. This clause is intended to act as a deterrent to unlawful gambling.

The maximum penalty for a breach of this provision is 100 penalty units, imprisonment for 1 year or both.

### **32. Failing to comply with condition of approval to conduct game**

This clause provides that a person commits an offence if they conduct a game (as provided for in part 3 of the Act) and they do not comply with any of the conditions of approval imposed under clause 15 of the Act. The list of conditions in clause 15 are the minimum requirements that are considered should apply to all approvals for charitable gaming to ensure that consumers are protected. The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement.

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

This clause provides that a person commits an offence if they conduct an exempt two-up game where they impose a charge, commission or fee in relation to the game and they do not comply with a condition stipulated in clause 22 of the Act.

The requirements in clause 22 are consumer protection measures to ensure that there is transparency and accountability with any fundraising that occurs with the conduct of exempt two-up. It is therefore considered appropriate for there to be a penalty for failing to comply with these measures. The maximum penalty for a breach of this provision is 50 penalty units.

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement.

### **34. Criminal liability of corporation officers**

This clause deals with criminal liability of corporation officers. The proposed officer liability provision exists in other ACT (e.g. the *Dangerous Substances Act 2004* and *Work Safety Act 2008*) and interstate legislation. It is an extension of the corporate criminal responsibility provisions in the *Criminal Code 2002* and only applies in specific circumstances, where the officer:

- a) was reckless as to whether the breach would occur;
- b) was in a position to influence the conduct of the corporation; and
- c) failed to take reasonable steps to influence the conduct of the corporation.



Subclause 34(3) provides additional requirements for the court to consider in deciding whether the officer took (or failed to take) reasonable steps to prevent the contravention. Subclause 34(4) provides that the court is not limited by the matters listed in subclause 34(3).

Subclause 34(2) provides that the clause applies regardless of whether or not the corporation itself is prosecuted for, or convicted of, the relevant offence. However subclause 34(5) provides that the clause does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Subclause 34(6) defines an officer for the purposes of this clause.

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

## **Part 6            Seizure and forfeiture of instruments of gambling**

### **35.    Seizure of instruments of gambling**

This clause provides that an authorised officer may seize an instrument of gambling if the authorised officer believes on reasonable grounds that the instrument of gambling has been, is being or is likely to be, used for a purpose related to the conduct or operation of unlawful gambling.

The note to this clause advises to refer to Division 4.2 of the Control Act regarding the powers of entry and inspection for authorised officers.

The power of seizure of an instrument of gambling prevents the use, continued use or re-use of the instrument for unlawful gambling or it being sold or hidden from authorities.

### **36.    Receipt for seized instrument of gambling**

This clause provides that an authorised officer must give a receipt for any seized items to the person from whom they were taken and the type of information that must be on the receipt. If it is not possible to physically give the person a receipt then subclause 36(2) provides how an authorised officer must leave the receipt.

This clause is necessary so that seized items can be returned to the correct person if they become available to be returned. It also ensures that persons whose property has been seized know why their property has been taken and have the necessary information to take steps to retrieve their property.

### **37.    Return of seized instruments of gambling**

This clause deals with the return of seized instruments of gambling. An instrument of gambling which has been seized must be returned to its owner or reasonable compensation paid to the owner, unless:

- (a) a prosecution for an offence in connection with the instrument of gambling is begun within 1 year and it is required as evidence; or

- (b) an application for the forfeiture of the seized thing is made to a court under the Confiscation of Criminal Assets Act 2003 or another Territory law within 1 year; 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.

Clause 37 does not apply if possession by the owner would be an offence or if the Commission believes that the only use of the instrument of gambling at the premises where it was seized would result in an offence against this legislation.

This clause ensures that a person's property is not taken and held by the Commission indefinitely or without appropriate cause.

### **38. Application to order disallowing seizure**

This clause provides that a person claiming to be entitled to an instrument of gambling that has been seized has 12 months to apply to the Magistrates Court for its return. A copy of the application must be provided to the Commission and the Commission can appear before the Magistrates Court as a respondent.

### **39. Order disallowing seizure**

This clause sets out the grounds on which the Magistrates Court must order the return of a seized instrument of gambling. Among other matters, these grounds include where the Court is not satisfied that there is an offence to which the seized item relates or the Court is satisfied that there are exceptional circumstances to justify disallowing the seizure. If the seized item cannot be returned, or if it has suffered a loss in value since it was seized, the Magistrates Court can also order the Territory to pay reasonable compensation.

### **40. Adjournment pending hearing of other proceedings**

This clause enables the Magistrates Court to adjourn an application to disallow the seizure, while other legal proceedings occur, if the seized item is evidence in those proceedings.

### **41. Forfeiture of seized instrument of gambling**

This clause deals with the forfeiture of instruments of gambling that have been seized under this part of the Act. It explains that if a seized item has not been returned, destroyed or otherwise disposed of, and no application has been made to disallow its seizure, the item is forfeited to the Territory and it may be sold, destroyed or otherwise disposed of as directed by the Commission.

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

This clause provides that if a person is convicted, or found guilty, of an offence against this Act, then any instrument of gambling or other article used by the person in the commission of the offence, or to which the offence relates is forfeited to the

Territory and may be sold, destroyed or otherwise disposed of as the Commission considers appropriate.

#### **43. Cost of disposal of things forfeited**

This clause provides that where the Territory incurs costs in disposing or storing a forfeited item and a person who was the owner of that item has been convicted or found guilty of an offence in relation to that item, the Territory can recover those costs from that person.

### **Part 7 Notification and review of decisions**

#### **44. Meaning of *reviewable decision* – pt 7**

This clause provides that the decisions listed in schedule 1 of the Act are reviewable decisions for the purposes of this part.

#### **45. Reviewable decision notices**

This clause provides that if the Commission makes a reviewable decision it must give a written notice of the decision to each person affected by the decision as listed in column 4 of the table at schedule 1 of the Act. The notes to the clause provide that the Commission must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision and that the requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

#### **46 Applications for review**

This clause provides that the people who may apply to the ACT Civil and Administrative Tribunal for a review of a reviewable decision are a person mentioned in column 4 of the table at schedule 1 and any other person whose interests are affected by the decision. Note 1 advises that if a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application then that form must be used.

### **Part 8 Miscellaneous**

#### **47. Unlawful gambling agreements void**

This clause provides that no legal action may be taken to recover money or other property in relation to the conduct of unlawful gambling. This is intended to act as deterrence to unlawful gambling. It is also not considered appropriate for an agreement to be enforceable where the integrity of the activity cannot be ascertained. Unlike lawful gambling, which is regulated to ensure integrity, there is no guarantee that unlawful gambling will have been conducted fairly.

In addition, it serves as a consumer protection measure in circumstances where a person may have unwittingly engaged in unlawful gambling. For example, if an action was taken in court to recover money, a person could argue that the gambling was not lawful and therefore the agreement was void.

#### **48. Determination of fees**

This clause provides that the Minister may determine fees for this Act by disallowable instrument. A note to this clause advises that the Legislation Act contains provisions about the making of determinations and regulations relating to fees.

#### **49. Regulation-making power**

This clause provides that the Executive may make regulations for this Act.

#### **50. Legislation amended – sch 2**

This clause indicates which statutes are amended by the consequential amendments in Schedule 2 of the Act.

#### **51. Legislation repealed**

This clause provides for the repeal of the *Games, Wagers and Betting Houses Act 1901* (A1902-18), the *Gaming and Betting Act 1906* (A1906-13), the *Unlawful Games Act 1984* (A1984-21) and the *Unlawful Games Regulation 2007* (SL2007-5).

### **Schedule 1 Reviewable decisions**

Schedule 1 lists the reviewable decisions under this Act. Each of these reviewable decisions is separately identified in the relevant clause of this Explanatory Statement where the authority to make the decision is provided.

### **Schedule 2 Consequential amendments**

This schedule provides the details of the amendments to other legislation as a result of this Act. Those Acts to be amended are identified in clause 50 of this Act.

## **Part 2.1 Gambling and Racing Control Act 1999**

### **2.1 Section 4(d) and (e)**

This clause omits legislation that is to be repealed by this Act, namely the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.

### **2.2 Section 4(l)**

This clause updates the legislative reference to the *Unlawful Games Act 1984* to the *Unlawful Gambling Act 2009*.

### **2.3 Section 37(d)**

This clause updates the list of persons authorised to receive information from a gaming officer obtained under, or in relation to, the administration of a gaming law. The updated clause includes the existing list of persons and adds relevant additional persons appropriate for this purpose.

## **2.4 Dictionary, definition of *gaming***

This clause updates the definition of gaming to make it consistent with *Unlawful Gambling Act 2009*.

### **Part 2.2                    *Legislation Act 2001***

## **2.5 Schedule 1, part 1.1, items 13 and 18**

This clause omits legislation that is to be repealed by this Act, namely the *Games, Wagers and Betting Houses Act 1901* and the *Gaming and Betting Act 1906*.

### **Part 2.3                    *Liquor Act 1975***

## **2.6 Dictionary, definition of *defined offence***

This clause updates the legislative reference to the *Unlawful Games Act 1984* to the *Unlawful Gambling Act 2009*.

### **Part 2.4                    *Lotteries Act 1964***

## **2.7 Dictionary, definition of *unlawful game***

This clause updates the legislative reference to the *Unlawful Games Act 1984* to the *Unlawful Gambling Act 2009*.

### **Part 2.5                    *Pool Betting Act 1964***

## **2.8 Dictionary, definition of *unlawful game***

This clause updates the legislative reference to the *Unlawful Games Act 1984* to the *Unlawful Gambling Act 2009*.

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

## **2.9 New section 4A (Offences against Act – application of Criminal Code etc)**

This clause provides that the Criminal Code will apply to the new offences (see below) in the *Race and Sports Bookmaking Act 2001*. This is a standard provision if some of the offences in the Act are subject to the Criminal Code. This clause also explains that the *Legislation Act 2001* deals with the meaning of penalty units.

## 2.10 New clause 72A (Betting by or on behalf of child)

This clause deals with offences related to betting by or on behalf of children. A fundamental part of the Government's harm minimisation strategy in relation to lawful gambling is to ensure that persons under the age of 18 do not participate in gambling. It is therefore considered appropriate to have offences that act as a deterrent to children contemplating underage betting and to capture those underage persons that are repeat offenders.

Regulatory experience indicates that some high profile social events which are heavily promoted by media or are traditional in the community, such as the Melbourne Cup or other large race day events, are attractive to some people under the age of 18 to dress up and attempt to participate in the adult entertainment activities on offer, such as drinking and gambling. Particularly with the potential for a child to become intoxicated, the risk of having an adverse financial experience with betting is significantly increased.

An offence provision for a child participating in underage gambling can be used as a powerful deterrent or preventative in order to control betting activity and the risks it presents to an underage person.

Subclause 72A(1) provides that a child commits an offence if they place a bet with a person knowing that they are a race or sports bookmaker. As indicated above, the intention of this subclause is to capture older children that may be engaged in betting, for example, placing bets at events like the Melbourne Cup or alternatively who may be routinely betting. The maximum penalty is only 10 penalty units which is considered appropriate for an offence by a child.

Subclause 72A(2) provides that a child commits an offence if they place a bet with a person knowing that they are a race or sports bookmaker and use either false identification or someone else's identification in order to place the bet. (Subclause 72(A)(6) explains what a document of identification is for the purposes of this clause.)

This offence is similar to other provisions in the gaming laws, for example section 81 of the *Casino Control Act 2006*, which are intended to act as a deterrent to minors using fraudulent means to engage in gambling. Consistent with subclause 72(A)(1) the maximum penalty is 10 penalty units.

Subclause 72(A)(3) provides that a race or sports bookmaker commits an offence if they accept a bet placed by a child. An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement. The maximum penalty is 50 penalty units. This subclause importantly places the obligation on the licensed bookmaker to ensure that all of their customers are over the age of 18.

Subclause 72(A)(5) provides that a person commits an offence if they place a bet on behalf of a child with a race or sports bookmaker. This is to act as a deterrent to persons facilitating betting by children. As the offence applies to adults the maximum penalty is 20 penalty units.

### **2.11 Clause 73(1)(b) (Restrictions on race bookmakers and sports bookmakers)**

This clause corrects an error in the *Race and Sports Bookmaking Act 2001*. Race bookmakers are granted approvals (not authorisations) to operate at a sports bookmaking venue and these approvals are made under subsection 49(1) not 49(7).

### **2.12 Clause 73(2)(b) (Restrictions on race bookmakers and sports bookmakers)**

As with 2.11, this clause corrects an error in the *Race and Sports Bookmaking Act 2001*. Race bookmakers are granted approvals (not authorisations) to operate at a sports bookmaking venue and these approvals are made under subsection 49(1) not 49(7).

### **2.13 New clause 73A (Bookmakers – unauthorised bookmaking)**

This clause is intended to act as a deterrent to bookmakers engaging in unauthorised bookmaking. Bookmakers are licensed to conduct particular activities in certain circumstances with restrictions that ensure the integrity of bookmaking and the protection of consumers.

This clause is consistent with the licensing regime for bookmakers. It establishes that it is unlawful for:

- sports bookmakers and their agents to accept bets anywhere other than at a sports bookmaking venue or on anything other than a sports bookmaking event; and
- race bookmakers and their agents to accept bets on anything other than races. It further establishes that it is unlawful for them to accept bets anywhere other than at a race meeting or a sports bookmaking venue (if they have an approval to operate at the venue).

An offence against this section is a strict liability offence. Justification for use of strict liability offences is included in the introductory comments in this Explanatory Statement. The maximum penalty is 50 penalty units.

## **Dictionary**

The Dictionary referred to in clause 3 of this Act includes specific definitions for this Act. It should be noted that there are common items that are defined in the *Legislation Act 2001* that are applicable to all legislation.