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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

TOTALISATOR BILL 2013

REVISED EXPLANATORY STATEMENT

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TOTALISATOR BILL 2013

INTRODUCTION

Totalisators are operated by Totalisator Agency Boards (TAB) and do not offer fixed odd bets. All bets are placed in a pool, with the payout corresponding to the final dividend delivered from the pool (minus a commission taken by the operator which is a percentage of total bets taken). The final dividend is continuously updated prior to the race as betting takes place and is not finalised until betting closes.

Totalisator operations in the Territory are currently operated by ACTTAB Limited, a Territory owned corporation under the Territory-owned Corporations Act 1990. ACTTAB is regulated by the *Betting (ACTTAB Limited) Act 1964* and the *Gambling and Racing Control Act 1999*. ACTTAB holds an exclusive licence to operate in the Territory until 2016.

The Totalisator Bill 2013 (the Bill) is part of the Territory's suite of racing and gaming legislation and needs to be applied in the context of the overarching *Gambling and Racing Control Act 1999*.

A totalisator licensee is analogous to the Casino licensee and similar strict regulatory safeguards must be in place. The licensee is an entity and not an individual and the human rights considerations need to viewed in that context. A key purpose of the regulation of totalisators is to ensure that the general public is protected from any issues arising with the integrity of the totalisator, to minimise harm from problem gambling and to prevent infiltration of the industry by criminal elements.

OVERVIEW OF THE BILL

The Bill creates the framework for the conduct of totalisators and the regulation of totalisator betting. The Bill will repeal the *Betting (ACTTAB Limited) Act 1964*.

The Bill introduces a modern regulatory framework that is consistent with other ACT gambling regulation laws. The Bill is based on best practice regulation and includes the following key elements:

- clear licensing arrangements with strong probity and integrity requirements for operators and key personnel involved in the operation of totalisator activity;
- licensing terms and exclusive arrangements;
- enforcement mechanisms, including a disciplinary scheme and offence provisions;
- harm minimisation measures, including requirements for adherence with the Gambling and Racing Control Code of Practice;
- consumer protection initiatives in relation to the monies held in client betting accounts;
- arrangements for financial and taxing mechanisms;

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- approvals for the totalisator system and equipment;
- provisions for review of decisions by the ACT Civil and Administrative Tribunal;
- administrative processes for the approval of totalisator rules, how betting accounts are managed and regulation-making powers; and
- provisions that are sufficiently flexible to transition the existing ACTTAB totalisator to the new Act.

The Bill provides that totalisator operations and the regulatory provisions are, where possible, consistent with other gambling and wagering laws in the Territory and in step with other Australian jurisdictions, particularly New South Wales and Victoria.
The following laws will be amended by this Bill:

- *Gambling and Racing Control Act 1999;*
- *Gambling and Racing Control (Code of Practice) Regulation 2002;* and
- *Race and Sports Bookmaking Act 2001*.

Part 1 Preliminary

This Part (clauses 1-6) contains standard preliminary matters, such as providing for the commencement of the legislation and a definition of what a totalisator, totalisator equipment and totalisator system are. The commencement clause should be read in conjunction with Part 20 – Transitional.

Part 2 Licence to conduct totalisator

This Part (clauses 7-26) contains the principal requirements associated with the licensing of totalisator activities in the Territory, including that only one licence may be issued in the Territory and the requirements for the persons and organisations that may be eligible to be licensed.

Part 3 Commission's powers in relation to executive officers

This Part (clauses 27-29) contains the mechanisms to support the eligibility requirements in Part 2 of the Bill and grants the ACT Gambling and Racing Commission (the Commission) powers to acquire the necessary information to assess whether an organisation or corporation meet the eligibility requirements and therefore can be issued with a licence.

Part 4 Finance

This Part (clauses 30-36) provides the arrangements associated with taxing mechanisms and unclaimed dividends and monies. These provisions should be read in conjunction with Part 20 – Transitional.

Part 5 Totalisator approval

This Part (clauses 37-40) contains the mechanisms and requirements for approval of totalisator systems and equipment that may be used in totalisator operations. A framework

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is established for the suspension of the approval for equipment where it no longer operates as approved and for the costs associated with testing the equipment.

Part 6 Enforcement

This Part (clauses 41 - 63) provides the regulatory framework to monitor and enforce totalisator activities in the Territory. It contains general requirements for disciplinary grounds and notice requirements (such as when they must be issued) and a range of disciplinary actions from a reprimand to the cancellation of a licence. Offence provisions for the licensee and other persons involved in totalisator activities and betting are also contained in this Part.

Part 7 Notification and review of decisions

This Part (clauses 64-66) provides for the review of certain decisions made under the Bill and specifies who is entitled to seek a review under the Bill. These provisions should be read in conjunction with Schedule 1 – Reviewable decisions, to establish what decisions may be reviewed under the Bill.

Part 8 Administration

This Part (clauses 67-75) contains the provisions for retention of records and the mechanisms to approve and change totalisator rules. This Part also provides for the making of specific rules for the handling of client betting accounts. The Minister is prohibited from delegating his or her powers to another person under the Act. The ability to charge fees for different administrative functions can be determined under this Part. The Minister also has a regulation-making power.

Part 9 Repeals and consequential amendments

This Part (clause 76 and 77) repeals the *Betting (ACTTAB Limited) Act 1964* and provides the Schedule for consequential amendments to necessary gambling legislation.

Part 20 Transitional

This Part (clauses 200-205) provides transitional arrangements to facilitate implementation of the Bill in the Territory.

Schedules

Schedules to the Bill provide for:

- decisions that may be reviewed under the Act;
- consequential amendments to the *Gambling and Racing Control Act 1999, Gambling and Racing Control (Code of Practice) Regulation 2002* and *Race and Sports Bookmaking Act 2001*; and
- the Dictionary.

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HUMAN RIGHTS IMPLICATIONS

The Bill as a law of the Territory may be seen as engaging a number of rights in the *Human Rights Act 2004*. These are:

- privacy and reputation, s 12 (applications, fingerprints, criminal offences, executive officers, giving of information);
- rights in criminal proceedings (presumption of innocence until proven guilty), s 22 (1); and
- rights in criminal proceedings (privilege against self-incrimination), s 22 (2) (i).

A Compatibility Statement under the *Human Rights Act 2004* has been issued by the Attorney General.

Privacy and reputation

Section 12 (Privacy and reputation) of the *Human Rights Act 2004* provides that everyone has the right not to have his or her privacy, family, or home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked.

Requirements about the provision of information

The proposed Bill includes a number of requirements for the provision of information including personal information and details and the ability of the Commission to obtain such information. These requirements may be viewed as engaging the right to privacy. Principal among the provisions which establish these requirements are those in clauses 7, 8, 9, 24, 25, 27, 28 and 41. The provisions of these clauses may require a person to disclose personal details, including a person's criminal history. Provisions of this nature are not uncommon in licensing legislation where, for the purposes of protecting the public, the integrity of applicants and licensees must be rigorously assessed.

Personal information is necessary to ensure the effectiveness of regulation and enforcement of the gambling industry. Under subsection 7(b) of the *Gambling and Racing Control Act 1999*, the Commission must exercise its functions in the way that best promotes the public interest, and in particular, as far as practicable minimises the possibility of criminal or unethical activity. These provisions are essential so that the Commission can identify persons that may exert influence with the management of the licensee and who should not be involved in licensed gambling activities within the Territory. This approach in assessing an individual's eligibility is considered necessary and reasonable to fulfil the objectives of the Commission without unduly compromising the public interests, consumer protection and criminal and unethical behaviour.

The Bill's approach is proportionate as natural justice is afforded by providing an applicant for a totalisator licence with review and appeal rights on the basis of assessment of the person's eligibility, including having regard to personal information. A decision by the

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Commission to find a person ineligible to be licensed is subject to internal review mechanisms. The decision can also be appealed and heard by a tribunal, on the basis of the Minister refusing to issue the licence.

Subclause 28(1) permits the collection of a person's fingerprints and palm prints which may engage the right to privacy and reputation. The collection of this information is critical to the positive identification of the person and whether they have a criminal history. Community confidence and integrity of the gambling industry in the Territory is liable to be compromised if the Commission is unable to positively identify individuals involved in gambling operations. This requirement is limited to executive officers of the licensee. This human rights impact of gathering prints is mitigated as prints are subsequently destroyed by the Chief Police Officer, see clause 29.

The Commission and its staff are bound by the requirements under the *Privacy Act 1988* (Cwlth). Further strong safeguards are in place for the handling, confidentiality, and permitted disclosures of information that the Commission acquires, as a result of exercising functions under or in relation to a gambling law, under Division 4.4 (Secrecy) of the *Gambling and Racing Control Act 1999*. Offence provisions apply for a person making a record of confidential information other than in accordance with their duties and unauthorised disclosure. The maximum penalty that can be applied is 50 penalty units, imprisonment for 6 months or both.

The collection and consideration of such information, including criminal history, by the Commission engages an individual's right to privacy and reputation under the *Human Rights Act 2004*. These provisions were designed to ensure that the integrity of the gambling industry in the Territory is maintained. Similar provisions in the *Racing Act 1999*, were previously assessed to be compatible with human rights.

Section 11(1) of the *Human Rights Act 2004* provides that the family is the natural and basic group unit of society and is entitled to be protected by society. The proposed Bill will provide a measure of protection of the family, through taking steps to ensure the integrity of the totalisator industry within the Territory.

In developing the legislation an assessment was made as to whether any less restrictive means were available to verify the identity of a person to be involved with the operation of a totalisator. Furthermore consideration was given to the need for personal information. It was determined that there was no other means available to sufficiently ensure that the person was an eligible person to be involved in the operation of a totalisator. However, the eligibility testing is restricted to people at the highest level of the organisation, namely executive officers. The Commission's powers in this regard must only be exercised to fulfil the function of establishing a person's eligibility to be involved with a totalisator.

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The gambling industry is highly regulated and unforeseen issues can arise which can affect the public interest, consumer protection and infiltration of the industry by criminal aspects of society. Due to the diverse nature of the gaming industry and its globalisation the decision makers must have the ability to assess matters that may affect whether a person should be involved in licensed gaming.

The identity and behaviour of a person is fundamental to protecting the public and minimising criminal activities. It is therefore considered that while this provision will engage section 12 (Privacy and reputation) of the *Human Rights Act 2004*, due to the nature of the industry there is no other alternative means to achieve the required safeguards.

Rights in criminal proceedings - Strict liability

The Bill has one strict liability offence under subclause 55(1). This offence, incorporating strict liability elements, has been carefully considered during the Bill's development. Strict liability offences arise in a regulatory context where for reasons such as consumer protection and public safety, 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, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The rationale is that people who provide gambling services and are licensed to conduct such functions can be expected to be aware of their duties and obligations to the wider public. This is especially relevant to the protection of minors from gambling and the overall requirement for harm minimisation strategies. Licensees need to consider steps that must be taken to prevent children gambling. The harm associated with gambling problems and the need to minimise such activities for minors cannot be underestimated.

Where reasonable steps have not been taken to prevent children from gambling, it is considered inappropriate for a licensee to rely on a no fault criminal excuse, if they are not actively taking steps to ensure that their actions do not cause or contribute to children gambling. The penalty for a person that accepts a bet from a child is set at a maximum of 50 penalty units. This reflects the seriousness of the conduct and the need for a strong deterrent in the interest of public safety and the ultimate protection of minors.

In recognition of the impact on human rights and in the interests of not unduly penalising a licensee, employee or agent, the Bill inserts a reasonable defence provision. Where a child is at least 16 years and has produced suitable identification, the strict liability offence does not apply. Furthermore the Criminal Code defences are available to a person charged under this offence provision, particularly the mistake of fact defence (Code section 36) and the defence of intervening act (Code section 39).

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Privilege against self-incrimination

Section 22 (Rights in criminal proceedings), subsection (2)(i) of the *Human Rights Act 2004* provides that anyone charged with a criminal offence is entitled to the minimum guarantee, equal with everyone else, not to be compelled to testify against himself or herself or to confess to guilt.

Under subclause 28(2), a person cannot rely on the common law privileges against self incrimination and exposure to the imposition of a civil penalty to refuse to comply. This provision engages a person's right to be free from the compulsion to provide information that may incriminate him or herself.

The Bill includes protections for a person compelled through the exercise of this power through subclause 28(3). Evidence of, or derived from, information which may incriminate the individual or expose him or her to a penalty is not admissible in court proceedings unless the proceedings relate to an offence against the Act or Part 3.4 of the Criminal Code (False or misleading statements, information and documents).

Furthermore although the Bill establishes powers for the Commission to require information from executive officers, executive officers may choose not to comply with the request thereby avoiding the impact on their human rights. Where this choice is exercised not to comply the person has voluntarily elected not to participate in a regulated industry. Under these circumstances the person will no longer be an eligible person.

Scrutiny of Legislation Committees have previously conceded that voluntary participation in a regulatory scheme may imply a waiver of the benefit of the self-incrimination privilege. The Queensland Law Reform Commission's 2004 Report Number 59 referred to in the FLP Notebook (*The Abrogation of the Privilege against Self Incrimination*) discusses this further at paragraph 6.54:

> *The basis of the argument is that participation in the scheme is a matter of choice and, if undertaken, necessarily involves acceptance of submission to the requirements of the scheme, including compulsion to provide information. In other words, in some situations, participation in a regulated activity may be considered to amount to a waiver of privilege. This may be particularly so in the context of records that are required to be kept as part of a mechanism for ensuring compliance within a regulatory framework.*

Relevantly, the Queensland Law Reform Commission found at paragraph 6.73 that the prior existence of a document at the time it was required to be produced weighs in favour of abrogating privilege.

> *… [S]ince the document already exists, the individual is not compelled to communicate the information for the purpose of the investigation or inquiry. Although the individual may be forced to produce the document, there may be less cause in such a situation for the application of the rationales for either*

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> *of the privileges. … This may be particularly so if the document is one that is required to be kept in compliance with a legislative regulatory scheme.*[1]

The limit on the privilege against self-incrimination is considered reasonable as part of a robust compliance, enforcement and prosecution framework in relation to gambling. This approach supports subsection 7(b) of the *Gambling and Racing Control Act 1999*, requiring the Commission to exercise its functions in the way that best promotes the public interest, and as far as practicable minimises the possibility of criminal activity.

Consideration was given to whether less restrictive means, such as a reasonable excuse for not providing the requested information, could be adopted. The regulatory framework for the gambling industry must be robust and able to minimise circumstances that may affect consumer protection and unethical and criminal activity. The Commission's requirements in how it exercises its functions for these matters are mandated under section 7 of the *Gambling and Racing Control Act 1999*. The risks of allowing a person to be involved in the industry where they have not disclosed requested information is high and should not be under estimated.

It was further considered whether an offence provision could be inserted for the failure to produce information. However, an offence provision in this regard would not achieve the necessary requirement for information being provided to the Commission. Accordingly, non-participation in totalisator activities is a necessary result of a failure not to provide requested information. There is no less restrictive means available due to the nature of the industry and the fundamental requirement to ensure the industry's integrity and the Commission's legislated obligations.

[1] Queensland Law Reform Commission, *The abrogation of the privilege against self-incrimination*, Report No.59, December 2004.

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CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Totalisator Act 2013*.

Clause 2 Commencement

The Act will commence on the day after its notification day. This clause should be read in conjunction with Part 20.

Clause 3 Dictionary

This clause clarifies that the dictionary is located at the end of the Act and is to be included as part of the Act.

Clause 4 Notes

This clause is a formal provision providing that a note included in the Act is intended as explanatory information only and is not part of the Act.

Clause 5 Offences against Act – application of Criminal Code etc

This clause clarifies that other legislation applies in relation to offences against the Act. As set out in Note 1 to this provision, Chapter 2 of the Criminal Code applies to all offences against this Bill. Note 2 of this provision provides that the meaning of penalty units for offence penalties is contained under section 133 of the *Legislation Act 2001*.

Clause 6 Meaning of totalisator, totalisator equipment and totalisator system

To provide clarity this clause defines what comprises a totalisator, totalisator equipment and totalisator system.

A totalisator includes an on-course totalisator and an off-course totalisator. An on-course totalisator is defined in the dictionary as:

> a totalisator that enables a person to place a bet only if:
>
> (a) the bet is in relation to a race;
> (b) the race is held on a racecourse; and
> (c) the person is at the racecourse.

Totalisator equipment includes:

(a) an instrument;
(b) computer hardware or software;
(c) communication equipment;
(d) any other equipment used in connection with the totalisator.

A totalisator system relates to the system of betting that is used.

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PART 2 LICENCE TO CONDUCT TOTALISATOR

Division 2.1 Application for licence

Clause 7 Licence – application

This clause introduces a new mechanism to provide that a person may apply to the Minister for a licence to conduct a totalisator in the Territory and is consistent with other gambling laws in the Territory. An application provision was not previously contained in the *Betting (ACTTAB Limited) Act 1964*.

A reference to a person includes a reference to a corporation as well as an individual (subsection 160, *Legislation Act 2001*). The totalisator may include betting on a race, a computer simulated racing event and a sports bookmaking event, whether or not the event occurs inside or outside of the Territory.

'Race' is defined in the dictionary to mean, a thoroughbred race, harness race, or a race of a kind prescribed by regulation. A 'computer simulated racing event' means a computer simulated horse race, harness race or greyhound race. A 'sports bookmaking event' is a sporting or other event determined under section 20 of the *Race and Sports Bookmaking Act 2001.*

Under section 53D of the *Gambling and Racing Control Act 1999*, the Commission may approve an application form. If such a form is approved the applicant must use the form when making an application to the Minister. Information supplied under this clause becomes bound by the secrecy provisions contained in Division 4.4 of the *Gambling and Racing Control Act 1999* and as such will be protected by the confidentiality obligations.

The Minister may also determine a fee under clause 74.

This clause should be read in conjunction with clause 24 and clause 25 which provide the considerations that the Minister and Commission must take into account in relation to a person applying for a licence to conduct a totalisator. An application under this provision will engage section 12 (Privacy and reputation) of the *Human Rights Act 2004* (also discussed above in *Human Rights Implications – Right to Privacy and Reputation*).

In developing the legislation an assessment was made as to whether any less restrictive means were available to enable the identity of a person to be involved with the operation of a totalisator. Furthermore consideration was given to the need for personal information. It was determined that there was no other means available to sufficiently ensure that the person was an eligible person to be involved in the operation of a totalisator. However, the eligibility testing is restricted to people at the highest level of the organisation, namely executive officers. The Commission's powers in this regard must only be exercised to fulfil

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the function of establishing a person's eligibility to be involved in the operation, administration and management of a totalisator (note proposed Government amendments in the Supplementary Explanatory Statement).

Clause 8 Additional information to be included in application

Subclause 8(1) allows the Minister to require additional information or documents from an applicant if such information or document would assist the Minister in making a decision whether to grant a licence. This clause makes it clear that the Minister may only require such information or documents by written notice when such information is reasonable. Information supplied under this clause becomes bound by the secrecy provisions contained in Division 4.4 of the *Gambling and Racing Control Act 1999* and as such will be protected by the confidentiality obligations.

Subclause 8(1) may also engage section 12 of the *Human Rights Act* 2004 - the right to privacy and reputation, discussed above in the section titled, *Human Rights Implications – Right to Privacy and Reputation*. Any limitation on the right to privacy and reputation is considered reasonable and proportionate given the purpose of ensuring the integrity of the gambling industry.

In developing the legislation there was no less restrictive means available to the Minister to assist in establishing whether a person was eligible to be involved in operating a totalisator. The ability to request further information to be included is dependent on the issues for eligibility that the Minister may be considering. The gambling industry is highly regulated and unforeseen issues can arise which can impact on consumer protection and may expose the industry to infiltration by criminal aspects of society. Due to the diverse nature of the gaming industry and its globalisation the Minister must have the ability to consider new and emerging matters that may affect whether a person should be involved in licensed gaming.

The provision also should not be viewed just in the negative sense but it can provide the Minister with the ability to approve a person's eligibility. For example by providing additional information the Commission can clarify matters that may otherwise result in the person being assessed as unsuitable to participate in the industry.

Subclause 8(2) places a positive obligation on an applicant to provide further information or documents requested by the Minster. If an applicant does not comply with the request the Minister may refuse to further consider the application for a licence.

Clause 9 Change of information to be provided

Clause 9 provides a positive obligation on an applicant to advise the Minister in writing if changes in particulars in an application occur between the time of lodgement of the application and a decision being made on whether a licence will be granted.

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Whether or not a person remains eligible to be involved in licensed gaming activities in the Territory is fundamental to the integrity of the gaming industry. The requirements to notify the Minister of changed circumstances are considered necessary due to the robust enforcement requirements for regulating the industry. While it is acknowledged that this provision is broad as the required circumstances are not included in the legislation, there appears to be no practical alternative, or less restrictive means, for dealing with changed circumstances. However, there is a limitation on the information that must be provided as it must be information that relates specifically to information provided in the application to be licensed to conduct a totalisator.

Clause 10 Advice about application

Subclause 10(1) provides that the Minister may refer an application to the Commission for advice on anything in relation to the application. If the Minister has requested advice from the Commission, the Minister must consider this advice before making a decision on whether to issue a licence.

This clause should be considered in conjunction with clause 24 – eligibility of corporations and clause 25 – eligibility of individuals. Under these provisions the Commission must consider and come to an opinion on whether:

- the corporation:
    - has, or has arranged, a satisfactory ownership or corporate structure;
    - has a reputation of sound business conduct; and
    - has a satisfactory financial position and financial background.
- the individual:
    - has a reputation for sound business and character; and
    - has a satisfactory financial position and financial background.

Accordingly, as the Minister may only issue a licence under clause 11 if the corporation is an eligible person, the Minister will be required in every instance to seek advice from the Commission for the determination of an applicant's eligibility under clauses 24 and 25.

Division 2.2 Licence

Clause 11 Licence - issue

Subclause 11(1) provides that the Minister must either issue or refuse a licence if a person has made an application under clause 7. The Note to this subclause makes it clear that a fee may be prescribed for a licence that is issued under this clause. A grant of a licence was previously contained in section 4 of the *Betting (ACTTAB Limited) Act 1964*.

Subclause 11 (2) makes it clear that the Minister may only issue a licence under subclause 11(1) if the person is a corporation and is an eligible person. An eligible person is a person

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that has been assessed as eligible under clauses 24 and 25. A decision to refuse to issue a licence is a reviewable decision under Schedule 1 to the Bill.

Clause 12 Licence to be exclusive

This clause continues the requirements contained under section 6 of the *Betting (ACTTAB Limited) Act 1964,* by providing that only one licence may be issued at any given time.

Clause 13 Licence term

Unlike section 5 of the *Betting (ACTTAB Limited) Act 1964,* this clause does not specify a maximum period for which a licence may be issued. Clause 13 makes it clear that the licence is issued for the period stipulated in the licence, thereby giving the Minister and any licensee, the ability to consider the operational needs of the corporation.

Clause 14 Licensee may engage agent

This clause provides that a licensee may engage an agent to either conduct the totalisator or carry out the licensee's functions under the licence. This provision affords flexibility to a licensee in how they operate their totalisator activities.

Clause 15 Licensee does not include proprietary right

This clause provides that a licence does not include a proprietary right, cannot be assigned and cannot be mortgaged, charged or otherwise encumbered. However, an activity authorised by the licence may be conducted in a joint venture – for example a licensee may join other pooling arrangements with other licensed totalisators.

Clause 16 Licence conditions

Clause 16 provides that the Minister may make a licence subject to a condition either at the time of issuing the licence or by written notice to the licensee at any other time. This provision is consistent with gambling laws in the Territory, is in step with the provisions in other jurisdictions and is commonplace in most regulatory licensing regimes. Conditions may be used by the Minister to deal with specific concerns about an applicant, where refusal of the application would be too severe. Conditions may also be used to remedy conduct of a licensee; however, any such imposition of a condition would be the result of disciplinary action being taken under Part 6 of the Act. Note this provision is subject to proposed Government amendments – see Supplementary Explanatory Statement.

Clause 17 Consultation on certain amendments

Clause 17 deals with the circumstances where the Minister proposes to amend a licensee's licence and the amendment will have a material monetary impact on the licensee. Under subclause 17(2) the amendment can only become operative if written notice has been given by the Minister to the licensee (paragraph 17(2)(a)). Paragraphs 17(2)(b) and 17(2)(c) are cumulative in that the Minister must consult with the licensee inviting comments on the proposed amendment and the Minister must take into consideration any comments

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provided by the licensee. The Minister must ensure that at least 180 days are given to the licensee to make comments.

This clause means something out of the ordinary that would significantly affect the licensee's ability to remain financially viable or would require the licensee to substantially alter their financial arrangements. It is not intended that the term 'material monetary impact' include normal fees and charges applied by the Territory. Nor does it include an impact that results from the normal business operations needed to comply with this regulatory framework. It also does not include a financial penalty that may be applied as a result of disciplinary action or a penalty under an offence provision of the Act.

Paragraph 17(3)(a) makes it clear that this provision does not apply if the licensee applied for, or agreed in writing to the amendment. Paragraph 17(3)(b) makes it clear that division 6.3 of the Bill does not have application to this provision. A decision to amend a licence is a reviewable decision under Schedule 1 to the Bill.

Note this provision is subject to proposed Government amendments – see Supplementary Explanatory Statement.

Clause 18 Amendment of licence on application

Subclause 18(1) provides a mechanism where the licensee may apply to the Minister to amend their licence. The amendment may include removing or amending an existing condition imposed on the licence. A fee may be determined for an application under this provision.

Subclause 18(2) establishes the Minister may only require such further information or documents by written notice when such information is reasonable to make a decision on the application. Information supplied under this clause becomes bound by the secrecy provisions contained in Division 4.4 of the *Gambling and Racing Control Act 1999* and as such will be protected by the confidentiality obligations. Subclause 18(3) places a positive obligation on an applicant to provide further information or documents requested by the Minster. If an applicant does not comply with the request the Minister may refuse to further consider the application.

Subclause 18(4) provides that the Minister may refer an application to the Commission for advice. If the Minister has requested advice from the Commission, the Minister must consider this advice before making a decision on whether to amend the licence.

Subclause 18(5) requires the Minister to:

(a) amend the licence in the way applied for;
(b) amend the licence in another way the Minister considers appropriate; or
(c) refuse to amend the licence.

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Decisions under paragraphs 18(5)(b) and 18(5)(c) are reviewable decisions under Schedule 1 to the Bill.

Note this provision is subject to proposed Government amendments – see Supplementary Explanatory Statement.

Clause 19 Compliance with code of practice

Clause 19 provides that a licensee must comply with any code of practice prescribed under the *Gambling and Racing Control Act 1999*. This provision is consistent with all Territory gambling laws and is closely linked to the Commissions requirements under the *Gambling and Racing Control Act 1999* to reduce the risks and costs, to the community and to the individuals concerned, of problem gambling. A licensee who fails to comply with the code of practice can be subject to disciplinary action under clause 45(1)(c).

Clause 20 Transfer of licence

This clause continues the requirements contained under section 7 of the *Betting (ACTTAB Limited) Act 1964,* by providing that a licence is not transferable.

Clause 21 Surrender of licence

This clause is a standard clause in regulatory licensing frameworks. Subclause 21(1) provides that licensee is only able to surrender a licence if the licensee does not owe the Territory an amount under the Act. The licensee may only surrender the licence under subclause 21(2) by giving written notice of the surrender to the Minister. Under subclause 21(3) the surrender takes effect four weeks after the day the Minister receives the written surrender notice or at a later date stipulated in the notice.

Clause 22 Conducting totalisator without licence

This clause creates an offence if a person conducts a totalisator and that person is not licensed to conduct the totalisator. Offences committed under clause 22 go to the fundamental foundation of the Totalisator Bill, which is premised on current regulatory best practice principles that uphold the public interest, provide consumer protection and in particular, as far as practicable minimise the possibility of criminal or unethical activity. Therefore the highest monetary penalty under the Totalisator Bill is imposed consisting of 100 penalty units, imprisonment for 12 months or both.

Clause 23 Operating totalisator without licence

This clause compliments clause 22 and provides that a person that operates totalisator equipment in the Territory in relation to a totalisator and is not licensed to do so is guilty of an offence. Totalisator equipment is defined under clause 6 to include:

(a) an instrument;
(b) computer hardware or software;
(c) communication equipment;

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(d) any other equipment used in connection with the totalisator.

This offence provision makes it clear that even if a person is licensed in another jurisdiction to conduct totalisator activities, equipment placed within the Territory to facilitate a betting transaction with the totalisator is not permitted. This provision supports clause 12 and the Government's intent that only one totalisator is to be licensed to operate retail services in the Territory at any one time.

It is not the intent of this offence provision to capture situations where a person uses their own property, such as a computer or mobile phone, to place their own bet with an interstate licensed totalisator.

Offences committed under clause 23 go the fundamental foundation of the Totalisator Bill. Clause 38 specifically provides that the Commission must approve all totalisator equipment as this process best promotes consumer protection initiatives and minimises the damage that may occur to the integrity of the gambling industry in the Territory. Therefore the highest monetary penalty under the Totalisator Bill is imposed consisting of 100 penalty units, imprisonment for 12 months or both.

Division 2.3 Eligibility of licensee

Clause 24 Eligibility of corporations

Paragraph 24(1)(a) provides that for a corporation each influential person must be assessed to determine whether the corporation is a eligible to be issued a licence. An influential person would be assessed against the criteria specified in clause 24. An influential person is defined under paragraph 24(3)(a) as any of the following:

(i) an executive officer of the corporation;
(ii) a related corporation;
(iii) an executive officer of a related corporation;
(iv) an influential owner of the corporation; and

(b) includes a person who, though not mentioned in paragraph (a), can exercise as much influence over the conduct of the corporation as someone mentioned in that paragraph.

An executive officer is defined as a person, by whatever name called and whether or not the person is a director of the licensee, who is concerned with, or takes part in, the licensee's management.

The meaning of an influential owner of a corporation is provided for under subclause 24(3) and means a person who, whether directly or through intermediary ownership or nominees:

(a) can control at least 5% of the votes at an annual general meeting of the corporation; or

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(b) can control the appointment of a director of a corporation.

This clause and the definitions will enable the corporate veil to be lifted so that the decision maker can ascertain who is actually behind the corporation. This provision minimises the occurrence where a person or other corporate entity can use an organisation as a 'front' because they would otherwise be ineligible to be issued a licence.

Paragraphs 24(1)(b) and 24(1)(c) go to the heart of the corporation's financial viability, and provide that to be eligible the corporation must not have been subject to a winding up order or a controller or administrator must not have been appointed within the last three years.

Paragraph 24(1)(d) requires the Commission to make a decision on whether the corporation has a satisfactory ownership or corporate structure in place; a reputation for sound business conduct; and a satisfactory financial position and financial background. These provisions provide consumer protection to those persons who hold betting accounts with the licensee by minimising the risk of criminal or unethical behaviour. These provisions are necessary as the gambling industry is highly regulated and there is a need to protect the public interest and minimise infiltration of the industry by criminal aspects of society. Note that this provision is subject to Government amendments – see Supplementary Explanatory Statement.

Subclause 24(2) provides that the Minister or Commission must put their mind to whether or not a corporation is an eligible person. If the Minister or Commission is reasonably satisfied that the operation of a totalisator would not be adversely affected, or it is in the public interest, the Minister or Commission, regardless of whether the corporation has been involved in circumstances stated in subclause 24(1), may treat the corporation as an eligible person. This provision provides the Minister and the Commission with the discretion to consider all the circumstances and what is reasonable, in light of the public interest, on whether a corporation is an eligible person.

A decision to deem a corporation as not being an eligible person, which subsequently results in the Minister refusing to issue the licence, is a reviewable decision under Schedule 1 to the Bill.

Subclause 24(3) provides the definitions of what constitutes an eligible person for the purposes of a corporation and provides that the *Corporations Act 2001* applies to a meaning of a related corporation.

Clause 25 Eligibility of individuals

Clause 25 should be read in conjunction with clause 24 and clause 27 as these provisions provide the framework for the eligibility criteria that must be satisfied by an applicant or a licensee to be issued with a licence or to maintain the licence.

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Paragraph 25(1)(a) provides that to be an eligible person that the individual must be an adult. An adult is defined in the *Legislation Act 2001* as an individual who is at least 18 years old.

Further paragraph 25(1)(b) provides the following criteria that in the Commission's opinion an individual must meet to be considered an eligible person:

(i) a reputation for sound business conduct;
(ii) a reputation for sound character; and
(iii) a satisfactory financial position and financial background.

This provision is consistent with the eligibility requirements under the *Race and Sports Bookmaking Act 2001* and provides the Commission with the necessary regulatory tools to assist in establishing whether an individual may be involved with criminal activity. Note this provision is subject to proposed Government amendments – see Supplementary Explanatory Statement.

Subparagraph 25(1)(b)(iii) specifically provides the Commission with alternative assessment criteria where an individual may have 'skated' around bankruptcy and insolvency considerations specified under paragraph 25(1)(f), but has not availed themselves of those actions.

Paragraph 25(1)(c) allows consideration to be given where a person has been convicted, or found guilty, for fraud and dishonesty, or an offence against a gambling law. Consideration of the offence for whether the person is an eligible person may only occur if the conviction or finding of guilt occurred within five years. The types of offences in this regard have been included due to the inherent connectivity between the licence and the integrity of the gambling industry. This provision is consistent with gambling laws in the Territory.

Paragraphs 25(1)(d) and 25(1)(e) deal with matters where a conviction or finding of guilt for an offence is punishable by imprisonment for one year or more, or where if the offence had been committed in the Territory would have been punishable by imprisonment for this time. Any limitation on the right to privacy and reputation is reasonable and proportionate given the purpose of ensuring the integrity of the gambling industry. The possession of a criminal history under these provisions does not necessarily make the person an ineligible person. Consideration by the decision maker of the actual offences is only relevant to the extent where there is a connection between the criminal history of the person and the regulation of the gambling industry. Disclosure and consideration of a person's criminal history is subject to the *Spent Convictions Act 2000*. These provisions are consistent with gambling laws in the Territory.

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Paragraph 25(1)(f) provides that the person is an eligible person if they have not been bankrupt or personally insolvent in the last five years. Under the *Legislation Act 2001* an individual is bankrupt or personally insolvent if the individual:

(a) under the *Bankruptcy Act 1966* (Cwlth)—
  (i) is bankrupt; or
  (ii) is a party to a debt agreement as a debtor; or
  (iii) is a party to a personal insolvency agreement as a debtor and the obligations created by the agreement remain undischarged; or
  (iv) authorises a controlling trustee to control the individual's property, whether or not the individual has entered into a personal insolvency agreement as a debtor; or

(b) has a status under a law of a foreign country substantially similar to an individual mentioned in paragraph (a); or

(c) otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors.

Paragraph 25(1)(g) provides for consideration of a person's involvement with a corporation that was subject of a winding-up order or where a controller or administrator was appointed.

Subclause 25(2) establishes that the Minister or Commission must put their mind to whether or not a person is an eligible person. If the Minister or Commission is satisfied that the operation of a totalisator would not be adversely affected or it is in the public interest, the Minister or Commission, regardless of whether the person has been involved in circumstances stated in subclause 25(1), may treat the person as an eligible person. This provision provides the Minister and the Commission with the discretion to consider all the circumstances and what is reasonable, in light of the public interest, in deciding whether a corporation is an eligible person. A decision to deem an individual as not being an eligible person, which subsequently results in the Minister refusing to issue the licence, is a reviewable decision under Schedule 1 to the Bill.

In developing the legislation consideration was given to whether there was less restrictive means available to assist in establishing whether a person was eligible to be involved in operating a totalisator. The gambling industry is highly regulated and unforeseen issues can arise which can affect the public interest, consumer protection and infiltration of the industry by criminal aspects of society. Due to the diverse nature of the gaming industry and its globalisation the decision makers must have the ability to assess matters that may affect whether a person should be involved in licensed gaming. The identity and behaviour of a person is fundamental to protecting the public and minimising criminal activities. Even though this provision will engage section 12 (Privacy and reputation) of the *Human Rights Act 2004* (also discussed above in *Human Rights Implications – Right to Privacy and*

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Reputation), due to the nature of the industry there is no other alternative means to achieve the required safeguards.

Division 2.4 Totalisator Betting

Clause 26 Conduct of totalisator betting activities

Subclause 26(1) provides that a licensee may only accept a totalisator bet if the bet is made in accordance with the totalisator rules and the Act. A licensee may make or change totalisator rules under clauses 71 and 72 of the Bill. If a person places a bet with a licensee or with an agent or employee of the licensee, then the person is entitled to believe that the bet complies with those rules under subclause 26(2).

Subclause 26(3) prescribes a maximum penalty of 50 penalty units, imprisonment for six months or both, if a licensee, employees or agents accept bets, regardless of whether the bet occurs by telephone or internet, at a place other than the licensee's office or agencies. This subclause makes it clear that the licensee may only operate from the licensee's offices and agencies, within the Territory, and could not set up a booth at a fete or festival to receive bets.

Subclause 26(4) makes it clear that a licensee may only accept a bet from a person using the internet or telephone if the payment from the betting account held by the licensee was an established account, and that account has sufficient monies to honour the amount of the bet. The account must be established prior to the event that is being bet on occurs. The requirement to ensure there are sufficient funds within the betting account to meet the bet is a harm minimisation measure to minimise circumstances that enable a person to bet on a credit basis. Credit betting is a specifically prohibited activity in certain circumstances under clause 53.

Subclause 26(5) provides that for all purposes of a person betting with a totalisator licensed in the Territory the contract is deemed to be entered into in the Territory. This is regardless of whether the person who places the bet is located within the ACT or not.

PART 3 COMMISSION'S POWERS IN RELATION TO EXECUTIVE OFFICERS

Clause 27 Commission may request information about executive officers

This clause provides that the Commission may give written notice to a licensee requiring the licensee to provide information about executive officers. An executive officer of a corporation (including of a licensee) means:

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'a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management'.

The Commission may require all the names of the licensee's executive offices, the position held by, and duties of the executive officers or any other information about executive offices that the Commission considers relevant. As an executive officer is an eligible person for the purposes of the Act, this clause should be read in conjunction with clause 24 and clause 25 of the Bill.

Note: proposed Government amendments to this provision are discussed in the Supplementary Explanatory Statement.

This provision has been limited so that the information sought is only in relation to executive officers involved in the corporation. In developing the legislation the context of the licence (regulation of gambling activities) needed to be balanced with the individual's right to privacy and reputation. While there are some risks involved in not establishing the bona fides of all persons involved in totalisator activities, including employees, it was considered appropriate to limit the application of the strict eligibility requirements to executive officers due to their ability to fundamentally influence the operation, administration and management functions of a totalisator.

The Commission's powers to request other information may only be exercised for those matters that are relevant to establishing a person's eligibility to be involved in totalisator activities. Consideration was given to specifying the matters that the Commission could require under subclause 27(c). The gambling industry is highly regulated and unforeseen issues can arise which can impact on consumer protection and may expose the industry to infiltration by criminal aspects of society. Due to the diverse nature of the gaming industry and its globalisation the Commission must have the ability to consider new and emerging matters that may affect whether a person should be involved in licensed gaming and react to those risks quickly. Accordingly, it was considered reasonable and proportionate that the exercise of this power not be further constrained.

Clause 28 Commission may require executive offices to give information

Subclause 28(1) provides that the Commission may by written notice require an executive officer to:

(a) consent to fingerprints and palm prints being taken by a police officer in accordance with the directions in the notice;

(b) to provide, in accordance with the notice, the officer's photograph;

(c) verify the information provided in accordance with the directions of the notice by statutory declaration;

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(d) produce documents in relation to the officer, in accordance with the directions specified in the notice, and permit the examination, copying of, and taking of extracts from, the documents;
(e) consent to a police officer-
  (i) checking the officer's criminal record using the fingerprints; and
  (ii) reporting the results of the check to the Commission;
(f) provide necessary authorities and consents for the Commission to obtain further information from other people.

This clause provides the fundamental regulatory framework to enable the Commission to verify the identity and criminal history of executive officers that may be involved with an applicant for a totalisator licence or a licensee. The information sought by the Commission under notice must be exercised reasonably and must be relevant to the Commission assessing a person's eligibility to be involved with a totalisator licence.

Note that these provisions are subject to proposed Government amendments – see Supplementary Explanatory Statement.

The provision also enables the Commission to seek information to assist the Commission to establish whether the person is an eligible person for the purpose of the Bill. Gambling activities and licensing of those people involved in the industry is highly regulated to maximise consumer protection, criminal activity and unethical behaviour. Accordingly, subclause 28(1) is considered reasonable and proportionate to addressing those risks. A person is not obligated to comply with a written notice, as no offence provision is prescribed, however if the person fails to comply with the requirements the person is no longer considered an eligible person (see 25(1)(h)) and therefore may not participate in the industry.

Subclause 28(1) may also limit section 12 of the *Human Rights Act 2004* - the right to privacy and reputation. Any limitation on this right is minimal as fingerprints are not retained, see clause 29, and may only be used for the purpose of identification to determine the criminal history of the person, discussed in the section titled, *Human Rights Implications – Right to Privacy and Reputation*. Any limitation on the right to privacy and reputation is considered reasonable and proportionate given the purpose of ensuring the integrity of the gambling industry.

Subclause 28(2) provides that a person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to comply with subclause 28(1). Subclause 28(3) provides that information provided in accordance with subclause 28(1) is unable to be used in a civil or criminal proceeding, other than a proceeding for an offence against the Act, or the Criminal Code, part 3.4 (False or misleading statements, information and documents). These provisions engage a person's right to be

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free from the compulsion to provide information that may incriminate him or herself under section 22 of the *Human Rights Act 2004*, and are discussed above in the section titled, *Human Rights Implications - Privilege against self-incrimination*.

Consideration was given to whether less restrictive means, such as a reasonable excuse for not providing the requested information, could be adopted. The regulatory framework for the gambling industry must be robust and able to minimise circumstances that may affect consumer protection and unethical and criminal activity. The Commission's requirements in how it must exercise its functions for these matters are mandated under section 7 of the *Gambling and Racing Control Act 1999*. Due to the inherent nature of the gambling industry there is an increased risk that persons seeking to participate may be involved with criminal activities. Therefore it is imperative that the integrity of the industry be maintained through eligibility criteria and assessments.

It was further considered whether an offence provision could be inserted for the failure to produce information. However, an offence provision in this regard would not achieve the necessary requirement for information being provided to the Commission. Accordingly, non-participation in totalisator activities is a necessary result of a failure not to provide requested information. There is no less restrictive means available due to the nature of the industry and the fundamental requirement to ensure the industry's integrity and the Commission's legislated obligations.

Clause 29 Destruction of fingerprints

This clause provides for the requirement that if a police officer has taken fingerprints the Chief Police Officer must ensure a copy of the prints are given to the person, that any prints or copies not given to the person are destroyed and inform the person in writing of the destruction. The provision limits the impact of section 12 of the *Human Rights Act 2004*.

PART 4 FINANCE

Clause 30 Consultation on proposed determinations

Clause 30 provides the requirement for consultation with a licensee prior to a determination being made under clauses 31 and 32. A written notice must be provided to the licensee providing the licensee with an opportunity to make written comments on a proposed determination. The licensee must be given at least 180 days to respond to a proposal and the Minister must consider any written comments provided by the licensee during this time. Under the transitional provisions of Part 20, this requirement to given notice will not apply to the first determination if the Minister approves a transfer of the licence held by ACTTAB.

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Clause 31 Commission on totalisator betting

Subclause 31(1) provides that the licensee may deduct a commission from the total amount bet placed on each totalisator, provided the amount does not exceed the amount determined by the Minister. Subclause 31(2) provides guidance on constructing the determined amount which must be expressed as a percentage of the total amount and not exceed 25 per cent of the total amount bet on the totalisator. Subclause 31(3) provides that if the Minster determines the amount of commission for totalisator betting that the determination will be a disallowable instrument. To provide for a consistency in operations and a seamless transition for ACTTAB from the *Betting (ACTTAB Limited) Act 1964* this provision will not apply to ACTTAB for five years from commencement of the Act.

Clause 32 Tax on totalisator operations

Clause 32 was previously contained in section 32 of the *Betting (ACTTAB Limited) Act 1964* and has been amended to provide greater transparency in the determinations that can be made by the Minister. Subclause 32(1) provides that a licensee must pay tax to the Territory on the operations of the totalisator. Subclause 32(2) provides that the Minister may determine the rate of tax payable for a period, how the tax is calculated and when it is payable. Subclause 32(3) provides that if the Minster determines the amount of tax for totalisator operations that the determination must be a disallowable instrument. To provide for a consistency in operations and a seamless transition for ACTTAB from the *Betting (ACTTAB Limited) Act 1964* this provision will not apply to ACTTAB for five years from commencement of the Act.

Clause 33 Monthly tax returns

Clause 33 is an operative provision that requires a written tax return to be submitted to the Commission on the total amounts bet on a licensee's totalisators and the profit derived from such operations. The return must be submitted to the Commission with ten days of the beginning of each month. If the Commission has approved a tax return form for the purposes of this clause the licensee must use the form. To provide for a consistency in operations and a seamless transition for ACTTAB from the *Betting (ACTTAB Limited) Act 1964* this provision will not apply to ACTTAB for five years from commencement of the Act.

Clause 34 Liability for tax not affected by finding of guilt in tax offence

Clause 34 provides that regardless of a licensee being found guilty of an offence in relation to payment of tax under the Act the licensee still retains a liability to pay the tax.

Clause 35 Unclaimed dividends, refunds and roundings

Clause 35 establishes that a licensee is entitled to any declared dividend, or other amount payable to a person in relation to an event or contingency, if that dividend or amount payable has not been claimed by a person that is entitled to the amount. A person that is entitled to the dividend or other amount may within 1 year of the event of contingency claim the amount from the licensee.

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Under paragraph 35(1)(a) the licensee is permitted to roundings. Subclause 35(3) defines rounding as meaning an amount that would ordinarily form part of a dividend but is retained by a licensee because the amount worked out as the dividend is rounded down.

Clause 36 Other unclaimed money

Clause 36 provides that money other that monies specified under clause 35 that have not been claimed by a person must be paid to the Territory.

PART 5 TOTALISATOR APPROVAL

Clause 37 Approval of totalisator system

Clause 37 ensures that any totalisator system, or change to a system must be approved by the Commission. Offence provisions apply where an unapproved system, or system with unapproved changes, is used.

This provision is directed at the consumer protection and minimisation of criminal elements infiltrating the industry. Consideration was given to specifying the matters on which the Commission could make such an approval or the conditions that should be imposed. However, given this provision is specifically related to the formulas used for the totalisator and due to the diverse nature of the gaming industry and its globalisation the Commission must have the ability to consider new and emerging matters that may impact on whether consumer protection is compromised or if infiltration of unethical and criminal elements is occurring and respond to those risks quickly. Accordingly, it was considered that the exercise of this power could not be further constrained without significantly compromising the Commission's obligations under section 7 of the *Gambling and Racing Control Act 1999*.

To maximise transparency for consumers and the licensee an approval is a notifiable instrument.

Clause 38 Approval of totalisator equipment

Clause 38 ensures that any totalisator equipment, or change to equipment must be approved by the Commission. Offence provisions apply where an unapproved system, or system with unapproved changes, is used.

This provision is also aimed at consumer protection and minimisation of criminal elements infiltrating the industry. Consideration was given to specifying the matters on which the Commission could make such an approval or conditions that should be imposed. However, given this provision is specifically related to the equipment being used for the totalisator, evolving technology, and due to the diverse nature of the gaming industry and its globalisation, the Commission must have the ability to consider new and emerging matters that may impact on whether consumer protection is compromised or if infiltration of

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unethical and criminal elements is occurring and respond to those risks quickly. Accordingly, it was considered that the exercise of this power could not be further constrained without significantly compromising the Commission's obligations under section 7 of the *Gambling and Racing Control Act 1999*.

To ensure transparency for consumers and the licensee an approval is a notifiable instrument.

Clause 39 Suspension of totalisator equipment approval
Clause 39 provides that the Commission may suspend an approval of totalisator equipment where the equipment is not operating as designed or intended. Where issued, a suspension applies to all equipment of that kind, even if a particular piece of equipment is operating as designed or intended. A suspension is a notifiable instrument.

Clause 40 Cost of testing totalisator system and totalisator equipment
Clause 40 provides that the costs of testing a totalisator system or totalisator equipment are payable by the licensee (not by the Territory).

PART 6 ENFORCEMENT

Division 6.1 Notice of changed circumstances

Clause 41 Licensees to tell commission of changed circumstances
Clause 41 establishes that there is a positive obligation on a licensee to advise the Commission of a change in circumstances within 14 days of the change occurring. Examples of the type of changes in circumstance that are provided in this clause include:

(a) information that was required to be submitted as part of an application to become a licensee. For example, a licensee may change their place of business;

(b) information required that was provided to the Minister or the Commission to ascertain whether a person or corporation was an eligible person. For example, since a licensee was issued a licence an executive officer may have been found guilty of an offence of fraud or dishonesty;

(c) any other change determined by the Commission.

The provisions are considered reasonable and proportionate to the risks that have to be managed in the gambling industry generally and no less restrictive means could be identified. It is noted that this provision will engage section 12 (Privacy and reputation) of the *Human Rights Act 2004* (also discussed above in *Human Rights Implications – Right to*

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Privacy and Reputation), however due to the nature of the industry there is no other alternative means to achieve the necessary safeguards.

There is a need to ensure that the licensees remain eligible to hold a licence at all times. This is to minimise the circumstances where eligible persons are appointed to a corporation purely to satisfy the probity standards of the Act, then once the licence is issued the management and control of the corporation reverts to other persons who would not have satisfied the eligibility requirements due to possible criminal or unethical business practices. This would be an unacceptable risk to the community.

Paragraph 41(1)(c) provides that the Commission may, by notifiable instrument, be able to specify additional matters where a licensee is required to advise of a change in circumstances. While it is acknowledged that this portion of the provision is a Henry VIII clause, there appears to be no practical alternative for dealing with changed circumstances.

The matters prescribed in the Bill in clause 41 are, at this stage, considered to be all encompassing and do not require further specifications by a determination. However, as the gambling industry is highly regulated and unforseen issues can arise which can affect the public interest, consumer protection and infiltration of the industry by criminal aspects of society; it is considered reasonable and proportionate that the Commission would be able to respond immediately to those risks. The provision is not modifying the primary legislation in this regard, but allowing for the principles of the provision to be enhanced where a change in circumstances should be notified, and therefore narrowly confined to this purpose only. To enable appropriate transparency the determination is a notifiable instrument which will be made public. The practical result of information that is required to be supplied to the Commission due to a change in circumstances has the necessary safeguards for a licensee, given that action that may result in suspension or cancellation of a licence, are reviewable decisions.

The Commission's powers to determine what changes need to be notified by a licensee may only be exercised for those matters that are relevant to establishing a person's continuing eligibility to be involved in totalisator activities. Consideration was given to specifying the matters that the Commission could require under this provision. However, due to the diverse nature of the gaming industry and its globalisation the Commission must have the ability to consider new and emerging matters that may impact on whether a person should be involved in licensed gaming and react to those risks quickly. Accordingly, it was considered reasonable and proportionate that the exercise of this power could not be further constrained.

Note that this provision is subject to proposed Government amendments – see Supplementary Explanatory Statement.

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Division 6.2 Directions by Minister

Clause 42 Directions by Minister-integrity of totalisator compromised

Clause 42 goes to the fundamental purposes for licensing totalisator operations within the Territory. Gambling operations are licensed within the Territory, Australia and overseas to maximise, as far as possible, consumer protection by having an industry that is well regulated and free from unethical behaviour and criminal influence. Subclause 42(1) provides that the Commission may advise the Minister that the integrity of a totalisator conducted by a licensee is seriously compromised. The integrity may be compromised either through the conduct or alleged conduct of the licensee or an incident affecting the licensee's eligibility to hold the licence.

Under paragraph 42(1)(c) the Commission may also consider anything else reported to the Commission when determining if the integrity of the totalisator is likely to be seriously compromised. In this regard the Commission has a range of enforcement powers under the *Gambling and Racing Control Act 1999* to be able to satisfy itself whether the information reported supports the contention of compromising the integrity of the totalisator.

Subclause 42(2) provides that the Minister may issue a written direction to a licensee requiring the licensee to cease doing certain things or to do certain things. The Minister may give the notice to the licensee or anyone else engaged in any capacity in any part of the operations of totalisator. It is the intention of this provision to capture an agent of the licensee.

Note that this provision is subject to Government amendments – see Supplementary Explanatory Statement.

Clause 43 Immediate suspension of licence

Clause 43 provides that if the Minister has given a direction to a licensee under clause 42 the Minister may by written notice immediately suspend the licensee if the Minister considers it necessary to do so.

This provision for immediate suspension of a licence is one of 'last resort'. This is the most serious action that can be taken against a licensee as the process for an immediate suspension of a licence circumvents the normal disciplinary provisions. Provisions of immediate suspension are a regulatory best practice mechanism for matters where public safety are at a high risk or the public interest is so vastly compromised that the disadvantages to the licensee are outweighed by the greater needs of the community.

A decision to exercise the power to immediately suspend a licence must be appropriately based on evidence justifying such extreme action and as such the decision to immediately suspend a licence is a reviewable decision under item 5 of Schedule 1 to the Bill. This would

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allow a licensee to apply, if so desirous, for a stay order through the ACT Civil and Administrative Tribunal.

Subclause 43(3) provides that the suspension will take effect on the day the Minister gives the notice to the licensee.

Subclause 43(4) deals with the period that the suspension will remain in force. Under paragraph 43(4)(a) a licence may be suspended until a date or event stated in the notice. This would capture such situations where the Minister has decided that the matter is so serious that disciplinary action to cancel the licence should occur. The licensee therefore would be unable to operate during the period between the immediate suspension and the disciplinary process for cancelling the licence. The Minister may also specify under subparagraph 43(4)(b)(i) that the immediate suspension will be lifted if the Minister is satisfied that the licensee has done or refrained from doing the things stated in the direction notice. A suspension may also be revoked under subparagraph 43(4)(b)(ii) by a written notice from the Minister.

Division 6.3 Disciplinary action against licensee

Clause 44 Definitions – div 6.3

Clause 44 provides for specific definitions in relation to the disciplinary provisions under Division 6.3.

Clause 45 Grounds for disciplinary action against licensee

Clause 45 prescribes the types of grounds that can result in disciplinary action being taken against a licensee. This provision only applies to behaviour in relation to a totalisator licence. If the licensee holds other gambling licences within the Territory, and the conduct or action would impact on their ability to hold a licence in addition to the totalisator licence, then any additional disciplinary action would need to be taken under those gambling laws; for example the *Race and Sports Bookmaking Act 2001*.

Paragraph45 (1)(a) makes it clear that if the licensee's licence was obtained, or information has been given to the Commission or Minister, that was false or misleading, then disciplinary action can be taken. The seriousness of the false or misleading information, for example a licensee would not otherwise have been granted a licence, will have an influence on the severity of the disciplinary action taken. This provision provides, as no offence provision has been applied, that if the action should result in the licence being cancelled, this action can occur without other prosecutorial action having to occur before disciplinary action can be taken.

Paragraph 45(1)(b) provides that it is a disciplinary ground if a licensee has failed to give information that has been requested under the Act or *Gambling and Racing Control*

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Act 1999. This provision would cater for those extreme circumstances where there may have been a change in an executive officer and there has been a refusal to provide information that the Commission requires to establish whether the person is an eligible person under the Act.

Paragraph 45(1)(c) provides that if a licensee, agent or employee of the licensee, has contravened the Act then disciplinary action may occur. Contravene is defined under the *Legislation Act 2001* as "includes fail to comply with".

Paragraph 45 (1)(d) provides that if a licensee has contravened a condition of the licensee's licence disciplinary action may be taken. Contravene is defined under the *Legislation Act 2001* as "includes fail to comply with".

Paragraph 45(1)(e) adopts the continuing eligibility regime for a licensee. This provision makes it clear that if a licensee is no longer eligible for a licence then disciplinary action can be taken.

Paragraph 45(1)(f) makes it clear that if the licensee loses control of the totalisator, the corporation is taken over by another corporation, or is under the influence of someone else, then disciplinary action can be taken. This provision supports the arrangements in place for ensuring that persons operating the totalisator are eligible persons under the Act at all times. The provision also closes the door on unauthorised transfers of the licence, which is prohibited under clause 20, which may be used to circumvent being assessed under the eligibility requirements.

Paragraph 45(1)(g) provides that disciplinary action may be taken against a licensee where the licensee has been given a direction or has failed to comply with a direction under clause 42. This provision establishes that even if a licensee has not been given an opportunity to comply with the direction disciplinary action may still be taken. As the matters in clause 42 specifically deal with the integrity of totalisator operations, it is reasonable that in some extreme circumstances that the Minister may decide that it is appropriate due to the circumstances to cancel the licensee's licence.

Paragraph 45(1)(h) provides that if a proceeding has started to wind up the licensee disciplinary action may occur. In these circumstances the action that may be relevant would be to either suspend or cancel the licensee's licence. Consumer protection initiatives are paramount under these circumstances due to the licensee holding monies in betting accounts belonging to individuals.

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Clause 46 Disciplinary action against licensee

Clause 46 provides for the range of disciplinary actions that may be imposed on a licensee. Subclause 46(1) establishes a hierarchy of actions commencing with giving a reprimand to the most extreme action of cancelling a licence. As outlined below, the most extreme actions (suspension and cancellation) are exercisable only by the Minister, on recommendation of the Commission, as it is the Minister who issues the licence.

Paragraph 46(1)(a) provides that the Commission may reprimand a licensee and this action could occur where the behaviour of the licensee is considered minor or may be the first time that a licensee has come to adverse notice. A reprimand may include a direction by the Commission, by virtue of subclause 46(2) that the licensee within a stated time period stop contravening the Act, or correct something that contributes to the ground for disciplinary action.

Paragraph 46(1)(b) allows the Commission to put conditions on, or amend conditions, of a licensee's licence. The conditions placed on a licensee under the disciplinary provisions do not come under the provisions of clause 16 or clause 17 of the Bill which provide for licence conditions.

Paragraph 46(1)(c) provides that the licensee may be required as part of the disciplinary action to pay a penalty to the Territory of an amount not more than $1,000,000. The range of the penalty will be dependent on the severity of the circumstances warranting disciplinary action. The monetary amount takes into account the regulation of the specific industry, the nature of the industry sector being regulated and the relative size of the operation and ability to pay. Accordingly, in the context of the licence that is being issued the amount is disciplinary in nature and not criminal. As a licensee is analogous to the Casino licensee an identical monetary amount has been applied as legislated in the *Casino Control Act 2006*. Clause 17 has no application to this disciplinary action. A financial penalty imposed is a debt that is recoverable to the Territory under subclause 46(3).

Paragraph 46(1)(d) provides the Minister with the ability to suspend a licence for a stated period, or until a stated thing occurs on the recommendation of the Commission. As this is a disciplinary action that has a major impact on a licensee, the action may only be taken by the Minister – see subclause 49(6).

Paragraph 46(1)(e) is the most severe disciplinary action that can be taken against a licensee's licence and accordingly, may only be taken by the Minister (subclause 49(6)). The Commission may recommend to the Minister that a licensee's licence be cancelled under this provision.

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Clause 47 Criteria for disciplinary action against licensee

Subclause 47(1) provides the Commission with the minimum guiding principles that must be considered before the Commission decides to take disciplinary action and what action should be taken against a licensee's licence. This mandatory provision has been included to provide, as far as possible, a consistent approach regarding the assessment of disciplinary action that may be taken against a licensee. The matters that the Commission must take into consideration are:

(a) whether disciplinary action has previously been taken against the licensee;

(b) whether the ground for which the disciplinary action is to be taken endangered the public or the public interest;

(c) the seriousness of the ground for disciplinary action;

(d) the likelihood of further disciplinary action needing to be taken against the licensee.

Subclause 47(2) provides that the Commission may also consider any other relevant matter. Accordingly, the Commission may only consider and take into account relevant matters when making a decision to take disciplinary action and the type of disciplinary action that may be imposed.

Clause 48 When disciplinary notice must be given to licensee

This clause provides the mandatory operational requirements for the Commission to provide the licensee with a disciplinary notice and must be read in conjunction with clause 45. This clause provides that the Commission must give procedural fairness to the licensee.

Subclause 48(1) provides that if the Commission is satisfied that a ground for disciplinary action may exist, or does exist, a written notice must be given to the licensee. This clause is limited to those grounds specified under clause 45. Subclause 48(2) provides that the notice must include the proposed action that the Commission is intending to take and provide the licensee with a three week period to give a written response to the Commission about the proposed disciplinary action. The period of time given to a licensee must be calculated from the day that the licensee would actually receive the notice (for example allowing for postage) to ensure that a minimum of 21 days is provided. Paragraph 49(1)(b) establishes an obligation on the Commission to consider any response provided by the licensee before deciding that the Commission is satisfied that disciplinary action is still warranted.

Clause 49 Taking disciplinary action against licensee

Clause 49 applies where a licensee has been given a disciplinary notice under clause 48, and the Commission is satisfied that a ground for disciplinary action exists (under clause 45) after considering any response to the disciplinary notice from the licensee, the Commission may take disciplinary action under subclause 49(3). It should be noted that this provision

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only applies to the entity and not to an individual. The Commission may consider taking a less severe disciplinary action based on the response provided by the licensee, without having to prepare a new disciplinary notice.

Subclause 49(2) makes it clear that if a licensee has contravened a direction included in a reprimand under clause 46(2) that disciplinary action can proceed under clause 49. The decision under this provision will be factual in that the licensee either complied with the provision or did not comply.

Subclause 49(4) provides that the Commission may take one or more of the types disciplinary action specified in paragraphs 46(1)(a), (b) or (c).

Subclause 49(6) provides that if the Commission considers that disciplinary action for suspension or cancellation of the licensee's licence is appropriate, the Commission must make a recommendation to the Minister and provide reasons for the recommendation. This subclause supports the requirements that only the Minister may suspend or cancel a licensee's licence due to the severity of the action.

A decision to exercise the power under clause 49 must be appropriately based on evidence justifying such action, as a decision under this provision is a reviewable decision under item 6 of Schedule 1 to the Bill.

Clause 50 Suspension or cancellation of licence

This clause provides the Minister with the ability to suspend or cancel a licensee's licence where certain circumstances have been met. Subclause 50(1) provides that the Minister may suspend or cancel a licence if a notice from the Commission recommending the action has been received or if the Minister considers it to be in the public interest to take such action.

Subclause 50(2) provides a positive obligation on the Minister to consider the recommendations made by the Commission, under subclause 50(1)(a) when deciding to suspend or cancel the licence. If the Minister rejects those recommendations the Minister may refer the matter back to the Commission for reconsideration under subclause 50(3).

Subclause 50(4) provides the procedural fairness requirements that the Minister must observe if proposing to suspend or cancel a licensee's licence. The Minister must provide the licensee with a written notice stating why the Minister proposes to take such action, and provide the licensee with a three week period to give a written response to the Minister about the proposed suspension or cancellation action. The period of time given to a licensee must be calculated from the day that the licensee would actually receive the notice (for example allowing for postage) to ensure that a minimum of 21 days was provided.

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Subclause 50(5) provides an obligation on the Minister to consider any response provided by the licensee before deciding that the suspension or cancelation action is still warranted.

Subclause 50(6) makes it clear that the Minister may suspend the licence for a period of time or until a stated thing happens. The time of the applicable suspension will be subject to the severity of the behaviour warranting the suspension being taken. It is the intention of this provision that where a licensee's licence is suspended, the licensee must not operate a totalisator within the Territory.

A decision to exercise the power to suspend or cancel a licence must be appropriately based on evidence and reasonably based justifying such extreme action as a decision under this provision is a reviewable decision under item 7 of Schedule 1 to the Bill.

Clause 51 Rectification direction as alternative to disciplinary action

This clause provides the Commission with alternative action to disciplinary action, where the Commission considers that the behaviour or conduct of the licensee can be rectified without taking disciplinary action in the first instance. However, the provision is limited as the Commission may only exercise this provision if the matter requiring rectification would be a ground for disciplinary action under clause 45. Under subclause 51(1) the Commission must give a written direction to the licensee stating what action needs to be rectified and the period of time that the licensee must comply. Subclause 51(2) provides that if the licensee fails to comply with the direction the Commission must give the licensee a disciplinary notice under clause 48.

Division 6.4 Issue of temporary licence

Clause 52 Temporary licence - issue

This clause provides that the Minister may issue a temporary licence to a person to conduct a totalisator if the licence to conduct a totalisator has been suspended, cancelled or surrendered and the Minister is satisfied that it is in the public interest to issue a temporary licence. A temporary licensee is for all purposes a licensee, as a licensee is defined to include a temporary licensee. Therefore, all the requirements of the Act, including disciplinary and offence provisions, also apply to a temporary licensee.

Under subclause 52(2) the Minister may only issue a temporary licence if the person is a corporation and is an eligible person. Clauses 24, 25 and Part 3 of the Bill provide the eligibility requirements for corporations and eligible persons. Commentary noted in those clauses explains the human rights issues in relation to the rights to privacy and reputation.

Subclause 52(3) provides that the Minister may issue a temporary licence on conditions considered appropriate. Any condition imposed on the licence would need to be reasonable and associated with the operation, administration or management of totalisator activities.

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Note a Government amendment is proposed for this provision (see Supplementary Explanatory Statement).

A temporary licence will be taken to expire when the circumstances in subclause 52(4) are satisfied.

Division 6.5 Offences relating to totalisator

Clause 53 Credit betting

This clause provides that it is an offence for a person to accept a bet on a totalisator if the bet when being made is unable to be paid for by cash, betting account or by debit of monies from an account using a credit betting facility made available by the person accepting the bet. A credit betting facility is defined under subclause 53(3). An electronic transfer of funds is deemed to be a cash payment under subclause 53(2).

Subclause 53(1) is a harm minimisation measure to, where possible, reduce the risk to problem gamblers wagering money that they do not readily possess. Credit betting is a prohibited activity unless it occurs in accordance with the approval of the Commission and relevant rules because of the dangers associated to the public generally. A maximum penalty of 70 penalty units, imprisonment of six months or both has been prescribed.

Clause 54 Totalisator advertising

This clause provides an offence provision where a person publishes, or causes to be published advertisements about the totalisator and the advertisement contravenes the code of practice. Advertising requirements are established in the code of practice under the *Gambling and Racing Control (Code of Practice) Regulation 2002*. It also deliberately places an obligation on third parties to ensure that if they accept gambling advertising that they only advertise gambling that is consistent with the code of practice.

A maximum penalty of 50 penalty units has been applied to this offence provision. Publish is to be taken to have a broad meaning and subclause 54(2) provides that publish includes – disseminate by oral, visual, written, electronic or other way.

Clause 55 Betting on behalf of child

This clause provides specific offence provisions if betting occurs on behalf of a child.

Subclause 55(1) provides that a person that holds a licence to conduct a totalisator who accepts a bet placed by a child is guilty of an offence. The maximum penalty prescribed is 50 penalty units. Subclause 55(1) is prescribed as a strict liability offence and this is discussed further above in the section *Human Rights Implications – Right to Privacy and Reputation*. The person who has been charged with an offence under this provision bears an evidential burden in relation to the matters if they wish to deny criminal responsibility

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under section 58 of the *Criminal Code 2002*. This offence does not apply where the young person was at least 16 years of age or older and had shown the defendant, an employee or agent of a licensee identification (subclause 55(4)). This defence is included to ensure that licensees, employees and agents who comply with the law are not punished unjustly, given the difficulty most people have accurately estimating someone else's age. As this provision is a harm minimisation measure due to the dangers of children being involved in gambling, a licensee wishing to avail themselves of the protection, and to afford the same protection to an employee or agent, will need to take positive steps to have processes in place requiring the production of identification.

Subclause 55(3) prescribes an offence provision if a person places a bet on a totalisator and the bet is placed on behalf of a child. The defence provision also applies under subclause 54(4) where the young person was at least 16 years of age or older and had shown the person documentation which led the person to believe that the child was an adult. A maximum penalty of 20 penalty units applies to this offence.

Subclause 55(5) sets out what is considered to be satisfactory documentation to determine whether a child is an adult. The documentation must be either a driver's licence, proof of age card or passport that contains a photograph of the person and states the person's date of birth.

The Criminal Code defences are available to a person charged under this offence provision, particularly the mistake of fact defence (Code section 36) and the defence of intervening act (Code section 39).

Clause 56 Using premises in contravention of Act

This clause provides that if a person manages or controls premises used in connection with the conduct of a totalisator, and the person authorises or permits the premises to be used in contravention of the Act, or authorises or permits an act to be done in relation to the premises in contravention of the Act; the person commits an offence. A maximum of 50 penalty units has been set for this offence provision.

Clause 57 Accepting bet in contravention of rules or Act

This clause provides an offence provision if the person is a licensee, employee or agent of a licensee and the person accepts a bet that is in contravention of the totalisator rules or Act. This provision is a consumer protection initiative and creates a positive obligation on licensees, employees and agent to adhere to established and approved practices when accepting bets. A maximum of 50 penalty units has been set for this offence provision.

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Clause 58 Selling etc ticket in relation to bet

A person commits an offence if a person, sells, or offers to sell a ticket or receipt purporting to be issued by a licensee and the person is not authorised by the licensee to sell, or offer to sell, the ticket or receipt. This offence provision goes to the foundation of the Bill, which is premised on a framework that best promotes the public interest, provides for consumer protection and, in particular, as far as practicable minimises the possibility of criminal or unethical activity. Therefore the highest monetary penalty under the Bill is imposed consisting of 100 penalty units, imprisonment for 12 months or both.

Clause 59 Buying ticket from unauthorised person

The offence provision in this clause is consequential to the offence prescribed in clause 58 – Selling etc ticket in relation to bet. A person who buys a ticket or receipt from someone else purporting to be issued by a licensee and the seller is not authorised by a licensee to sell the ticket or receipt, is guilty of an offence. A maximum penalty of 20 penalty units has been prescribed. A defence of reasonable excuse is established in subclause 59(2) to avoid a person being punished unjustly in connection with this offence.

Clause 60 Accepting bet after closing time

This clause provides that a person commits an offence if they accept a bet on a totalisator in relation to an event or contingency and the bet is accepted after the closing time for acceptance of the bet. A maximum penalty of 50 penalty units has been set for this offence. This provision protects the integrity of the gambling industry in the Territory.

Subclause 60(2) provides that if a person is convicted or found guilty of an offence, the court may order the person to pay to the Territory an amount equal to the amount (if any) derived from the bet. This provision applies regardless of whether or not a penalty is imposed by a court for the offence.

Clause 61 Agent failing to account to licensee

This clause provides that if an agent of the licensee who is required to account to the licensee fails to do so as required then the agent commits an offence. A maximum penalty of 50 penalty units applies to this offence. This clause is intended to maximise the licensee's ability to comply with the Act.

Clause 62 Misrepresenting authority as agent

This clause provides that a person commits an offence where the person represents to someone else that they are willing to take bets with a licensee and account to the other person for any proceeds from the bets and the person is not authorised by the licensee to take the bets with the licensee. The maximum penalty that applies to this offence is 50 penalty units. A person who misrepresents their authority as an agent may also be liable for the offence provision in clause 58 – selling etc ticket in relation to bet where a maximum penalty of 100 penalty units, imprisonment for 12 months or both is prescribed.

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Clause 63 Unauthorised use of telephone and internet betting credit accounts

This clause is a consumer protection initiative and provides that a person commits an offence if the person charges, or attempts to charge, a bet against another person's telephone or internet betting credit account with a licensee and the person is not authorised by the owner to use those accounts. A maximum penalty of 50 penalty units has been applied to this offence.

PART 7 NOTIFICATION AND REVIEW OF DECISIONS

Clause 64 Meaning of reviewable decision – pt 7

Clause 64 provides that reviewable decisions for the purposes of the Bill are those listed in Schedule 1. The listed decisions are subject to review by the ACT Civil and Administrative Tribunal.

Clause 65 Reviewable decision notices

Clause 65 provides that where a decision which is listed in Schedule 1 is made, the decision maker must notify the entity listed in column 4 of Schedule 1. For example, where the Minister for Racing and Gaming refuses to issue a licence under subclause 11(1)(b), the Minister must notify the applicant of their right for review.

Clause 66 Applications for review

Clause 66 provides that the entities listed in column 4 of Schedule 1, or any other affected person, may apply to the ACT Civil and Administrative Tribunal for a review of the decisions listed in Schedule 1.

PART 8 ADMINISTRATION

Clause 67 Licensee's records

Clause 67 establishes a requirement that the licensee keep records relating to the conduct of a totalisator at their principal place of business or another approved place, and that such records must be kept for at least 7 years.

Subclauses 67(2) and (3) provide that an exemption to the record-keeping requirement may be granted by the Commission, and that an exemption may be granted on conditions.

Clause 68 No right to compensation for cancellation etc of licence

Clause 68 provides that a licensee has no right to compensation from the Territory where the Minister cancels, suspends or changes a licence condition.

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Clause 69 Totalisator rules

Clause 69 provides for the licensee to make rules for the conduct of a totalisator that are consistent with the Bill. The matters which may be included in the rules are established by subclause 69(2) and include that the rules may make provisions for the liability of the licensee, agent or other authorised person in relation to making bets; printing and issuing tickets; determining entitlement to a dividend; and paying dividends or refunding money.

In accordance with subclause 69(3) the licensee must submit the rules to the Commission for approval. Under subclause 69(4) the Commission must approve the rules, refuse to approve the rules or direct the licensee to change the rules. A decision under this subclause is reviewable. The rules are a notifiable instrument under subclause 69(5).

Clause 70 Changing totalisator rules

Clause 70 sets out the process for the licensee to follow in order to make a change to the totalisator rules. The licensee must give the Commission written notice of a proposed change, which must be given at least one week before the proposed commencement of the change. Under subclause 70(3) the Commission has discretion to accept a notice given with less than one week's notice.

On receipt of a notice regarding a proposed change, the Commission may undertake a range of actions. These include approving or refusing the change; directing the licensee to include another change, change the rules in another way or change the commencement date for the change; asking for more information or clarification; or advising that further time for consideration of the change is needed.

In accordance with subclause 70(5), where additional information or clarification has been requested, the Commission must not make a decision until that information has been provided or the time or giving the information has elapsed.

Subclause 70(6) gives the Commission the power to direct the licensee to change the rules. This is a consumer protection provision. Consideration was given to specifying the matters on which the Commission could make such a direction. However, due to the diverse nature of the gaming industry and its globalisation, the Commission must have the ability to consider new and emerging matters that may impact on whether consumer protection is compromised or if infiltration of unethical and criminal elements is occurring and respond to those risks quickly. Accordingly, it was considered that the exercise of this power could not be further constrained without significantly compromising the Commission's obligations under section 7 of the *Gambling and Racing Control Act 1999*. An exercise of this power is reviewable in accordance with item 12 of Schedule 1 to the Bill.

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Subclause 70(7) provides that the totalisator rules with approved changes are a notifiable instrument thereby ensuring appropriate transparency to the public and the licensee for any changes.

Clause 71 Display etc of totalisator rules

A licensee or agent is required to make available for inspection at no cost a copy of the totalisator rules, the rules of sports betting and the Bill and a licensee or agent must display a notice that these documents are available. A complete copy of these documents must be provided on request, and a reasonable charge may be imposed for providing a copy. Clause 71 includes offence provisions relating to these requirements, with the maximum penalty being 5 penalty units.

Clause 72 Betting accounts

Clause 72 provides for consumer protection measures in relation to betting accounts held by the licensee under the Bill. Under subclause 72(2), the Commission may determine rules for betting accounts, including the kind of account; whether an account may be assigned or encumbered; use of the money or credit in the account; and the use of any interest payable on the account. A determination is a notifiable instrument.

Clause 73 No delegation by Minister

Clause 73 provides that the Minister must not delegate the Minister's functions under the Bill. Certain provisions under the Act are exercisable by either the Minister or the Commission. Where the Bill does not expressly provide for a person other than the Minister to exercise functions the Minister is not able to delegate those powers under the Bill in accordance with this clause. The key matters which the Minister is not able to delegate are those matters fundamental to the regulatory framework, for example, suspending or cancelling a licence due to the impact that this action can have on a licensee.

Clause 74 Determination of fees etc

Clause 74 is a standard inclusion in legislation. It provides the power for the Minister to determine fees for the Act. A determination is a disallowable instrument.

Clause 75 Regulation-making power

Clause 75 is a standard inclusion in legislation. It provides the power for the Executive to make regulations for the Act. The matters which may be provided by regulation are set out in subclause 75(2), being the standard of conduct; prohibition or restriction on the offer of inducements; display of notices about available counselling; and inclusion of warnings and counselling services information on betting tickets.

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PART 9 REPEALS AND CONSEQUENTIAL AMENDMENTS

Clause 76 Legislation repealed

Clause 76 provides that the *Betting (ACTTAB Limited) Act 1964* is repealed. *The Betting (ACTTAB Limited) Act 1964* is no longer required as a result of the introduction of the regulatory framework established under the Bill.

Clause 77 Legislation amended – sch 2

Clause 77 provides that the legislation listed in Schedule 2 is amended by the *Totalisator Act 2013*. The legislation includes the *Gambling and Racing Control Act 1999*, the *Gambling and Racing Control (Code of Practice) Regulation 2002* and the *Race and Sports Bookmaking Act 2001*.

PART 20 TRANSITIONAL

This Part has section numbers beginning at section 200. This is standard drafting practice when creating a new Act as it leaves room for the Act to grow and maintains the legislation history endnotes.

(Note: In accordance with clause 205, this Part expires 5 years after commencement)

Clause 200 Definitions – pt 20

Clause 200 provides definitions of commencement day and repealed Act (the *Betting (ACTTAB Limited) Act 1964*) for the purposes of Part 20.

Clause 201 ACTTAB Licence

Clause 201 provides for the transition of the licence currently held by ACTTAB Limited under the *Betting (ACTTAB Limited) Act 1964*. The licence granted to ACTTAB Limited under that Act will be taken to be a licence issued under the Bill. The clause further provides a transfer mechanism for the licence issued to ACTTAB Limited. Any transfer would be subject to a decision on eligibility and Ministerial approval would be required. This is a one-off transfer provision for the licence issued to ACTTAB Limited as part of transitional arrangements. In accordance with clause 20, a licence issued under the Bill is not transferable. In order to give effect to a transfer in accordance with this clause, provisions relating to consultation on proposed determinations (clause 30) is not applicable.

Clause 202 Totalisator

Clause 202 is a saving provision to ensure that the existing totalisator system and equipment used by ACTTAB Limited is taken to be approved by the Commission. In accordance with subclause 202(2), any change to the totalisator system or equipment must be approved by the Commission under the Bill.

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Clause 203 Finance

Clause 203 provides that Part 4 (Finance) of the Bill does not apply to ACTTAB Limited. This provision preserves the current financial arrangements applicable to ACTTAB Limited to ensure a seamless transition to the regulatory framework established under the Bill.

Clause 204 Transitional regulations

Clause 204 provides that transitional regulations may be developed to ensure that any other matters arising from the enactment of the Bill may be addressed. Subclause 204(2) specifically provides that Part 20 of the Act may be modified by regulation for transitional matters that have not been adequately or appropriately dealt with.

The capacity to modify an Act through subordinate legislation is generally referred to as a 'Henry VIII' clause. It is acknowledged that these clauses are generally not preferable. However, it is considered that this provision is necessary in this Bill as there is no practical alternative available to ensure that any unforeseen matters which might arise during the introduction of the new regulatory framework can be addressed expediently.

In developing the Bill, every attempt has been made to foresee issues arising in the transition to the new regulatory framework. However, given that there is an existing operator, ACTTAB Limited, and that the *Betting (ACTTAB Limited) Act 1964* is to be abolished, there may be some additional matters that arise during the transition which will need to be addressed without delay.

As a further limitation on this power to make transitional regulations, clause 204 (along with all of Part 20 of the Bill), expires upon the transfer of the licence held by ACTTAB Limited or five years after commencement of the part, whichever is the earlier.

Clause 205 Expiry – pt 20

Clause 205 provides that Part 20 expires five years after it commences. This will allow sufficient time for any transitional matters in the implementation of the regulatory framework established under the Bill to be addressed.

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SCHEDULE 1 REVIEWABLE DECISIONS

Schedule 1 lists the decisions that are reviewable in accordance with Part 7 of the Bill. Each reviewable decision is noted with its relevant clause above.

Note a Government amendment is proposed for this provision (see Supplementary Explanatory Statement).

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS

Part 2.1 *Gambling and Racing Control Act 1999*

Clause 2.1 Section 4(b)

Clause 2.1 deletes subsection 4(b) of the *Gambling and Racing Control Act 1999* which lists the *Betting (ACTTAB Limited) Act 1964* as a gambling law for the purposes of that Act. This clause operates in conjunction with clause 2.2 below and is necessary as the Bill will repeal the *Betting (ACTTAB Limited) Act 1964.*

Clause 2.2 New section 4(ia)

Clause 2.2 adds subsection 4(ia) to the *Gambling and Racing Control Act 1999* to include the *Totalisator Act 2013* as a gambling law for the purposes of that Act. This clause operates in conjunction with clause 2.1 above.

Part 2.2 *Gambling and Racing Control (Code of Practice) Regulation 2002*

Clause 2.3 Section 5(e)

Clause 2.3 amends subsection 5(e) of the *Gambling and Racing Control (Code of Practice) Regulation 2002* to remove the specific reference to ACTTAB Limited as a licensee for the purposes of that Regulation and include a more general reference to the licensee of a totalisator under the Bill.

Clause 2.4 Section 7(aa)

Clause 2.4 adds subsection 7(aa) to the *Gambling and Racing Control (Code of Practice) Regulation 2002* to include the licensee of a totalisator under the Bill as a person that may be prosecuted for an offence under the Regulation. Subsection 7(a) which refers to ACTTAB Limited is retained in this instance as prosecutions may relate to earlier conduct.

Clause 2.5 Schedule 1, section 1.1, definition of licensee, paragraph (e)

Clause 2.5 amends paragraph (e) of Schedule 1 to the *Gambling and Racing Control (Code of Practice) Regulation 2002* to remove the specific reference to ACTTAB Limited as a licensee for the purposes of the code of practice and include a more general reference to the licensee of a totalisator under the Bill.

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Clause 2.6 Schedule 1, section 1.4(2)

Clause 2.6 amends subsection 1.4(2) of Schedule 1 to the *Gambling and Racing Control (Code of Practice) Regulation 2002* to remove the specific reference to ACTTAB Limited as a licensee for the purposes of the code of practice and include a more general reference to the licensee of a totalisator under the Bill.

Clause 2.7 Schedule 1, table 1.23, item 2

Clause 2.7 amends item 2, table 1.23 of Schedule 1 to the *Gambling and Racing Control (Code of Practice) Regulation 2002* to remove the specific reference to ACTTAB Limited as a licensee for the purposes of cash payment limits under the code of practice and include a more general reference to the licensee of a totalisator under the Bill.

Part 2.3 *Race and Sports Bookmaking Act 2001*

Clause 2.8 Dictionary, definition of race bookmaking

Clause 2.8 amends the definition of *race bookmaking* in the Dictionary of the *Race and Sports Bookmaking Act 2001* to clarify that race bookmaking under that Act may not be carried out as a totalisator; it is limited to fixed odds betting.

Clause 2.9 Dictionary, definition of sports bookmaking

Clause 2.9 amends the definition of *sports bookmaking* in the Dictionary of the *Race and Sports Bookmaking Act 2001* to clarify that sports bookmaking under that Act may not be carried out as a totalisator; it is limited to fixed odds betting.

DICTIONARY

The Dictionary provides definitions of key words and phrases used throughout the Bill. Certain terms relevant to the Bill are defined in the *Legislation Act 2001* and these are outlined at the start of the Dictionary. Note also that definitions relevant only to specific provisions may be included within individual clauses.

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