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

LOTTERIES (APPROVALS) AMENDMENT BILL 2015

EXPLANATORY STATEMENT

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INTRODUCTION

The *Lotteries Act 1964* (the Act) regulates all ACT lotteries including common forms of gaming such as raffles, Housie, bingo and trade promotions, as well as commercial interstate public lotteries and instant scratch lotteries. It is administered by the ACT Gambling and Racing Commission (the Commission). The Commission also administers the *Gambling and Racing Control (Code of Practice) Regulation 2002* (the Code of Practice).

The Lotteries (Approvals) Amendment Bill 2015 (the Bill) is part of the Territory's suite of racing and gaming legislation and is applied in the context of the Territory's overarching *Gambling and Racing Control Act 1999* (the Control Act). Under section 7 of the Control Act the Commission must exercise its functions in a way that best promotes the public interest, and in particular, as far as practicable:

- (a) promotes consumer protection;
- (b) minimises the possibility of criminal or unethical activity; and
- (c) reduces the risks and costs, to the community and to the individuals concerned, of problem gambling.

OVERVIEW OF THE AMENDMENT BILL

The Bill amends the Act and the Code of Practice. No other legislation will be amended by this Bill.

The Bill seeks to reduce regulatory burden by allowing low-risk lotteries to be conducted without requiring approval from the Commission. The Bill will extend the categories of exempt lotteries without compromising the integrity of the gaming industry and consumer protection. Specifically, the Bill will provide the following amendments:

- (a) modified powers for the Commission to determine exemption thresholds for different lottery products;
- (b) removal of the requirement for low-risk lotteries to apply to the Commission for approval to conduct the lottery;
- (c) provisions that specify the conditions under which exempt lotteries are to be conducted; and
- (d) transitional arrangements.

By moving to a risk-based approach with certain lottery activities considered low-risk for gambling harm, consumer protection and criminal activity, the Bill's amendments provide flexibility in the way the Act regulates lottery activities. The amendments will allow for differentiation between large value, high-risk activities and low-risk activities (such as infrequent, small bingo (Housie) sessions and raffles) and accordingly allows the Commission

to respond appropriately to changes in the market without compromising the integrity of the gaming industry.

Exempt lotteries will continue to be subject to the offence provisions that currently apply in sections 15, 16 and 18 of the Act, as these relate to consumer protection.

HUMAN RIGHTS IMPLICATIONS

The Amendment Bill, as a law of the Territory, may be seen as engaging rights in the *Human Rights Act 2004* (HRA), namely the right to privacy and reputation.

Privacy and reputation, section 12

Section 12 of the HRA provides individuals with the right to the privacy and the right to not have their reputation unlawfully attacked. Any limitation on these rights must be considered to be reasonable and proportionate. Accordingly, section 28 of the HRA provides that human rights are subject only to reasonable limits in law that can be demonstrably justified in a free and democratic society. Subsection 28(2) of the HRA provides that, in deciding whether a limit on a human right is reasonable, the following factors must be considered:

- (a) the nature of the right affected;
- (b) the importance of the purposed of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The nature of the right affected

New paragraph 6A(1)(b) of the Bill provides that the identity of a winning ticket or entry holder, if known, must be recorded by the lottery conductor. While a lottery conductor must make the lottery's results known to other subscribers, it does not automatically mean that personal information will be released. Nonetheless, collection of personal information, and providing the results of a lottery to subscribers, may be viewed as engaging the right to privacy under section 12 of the HRA.

The importance of the purpose of the limitation

Awarding prizes is the primary objective of a lottery. Subscribers should be able to receive a prize that has been won; this is fundamental to a subscriber's consumer rights. However, not all circumstances are suited to, or warrant, lottery tickets being printed which can easily identify a winner anonymously.

As the Bill's objective is to provide a flexible framework that allows regulation to be based on the risks involved, imposition of an unnecessary regulatory burden requiring all exempt lottery subscribers to be identified is not proposed. Accordingly, the limitation's purpose is to record the identity of lottery winners, where known, to allow receipt of a prize.

The nature and extent of the limitation

The limitation is not extensive. New paragraph 6A(1)(b) provides that the identity of the person is recorded only where a subscriber holds a winning ticket or entry, and the person conducting the exempt lottery knows the subscriber's identity. It is not a requirement that all persons need to be identified and recorded. New subparagraph 6A(1)(c)(i) also provides that the results of the lottery must be made available to subscribers, however there is no requirement to release the identity of an individual during this process, although it is recognised that this may be a necessary outcome for some lotteries.

The Bill does not mandate disclosure of a person's identity as a prerequisite for participation in a lottery. It is noted that participation in lotteries is a voluntary leisure activity and an individual with particular privacy concerns may choose not to participate in those lotteries requiring disclosure of a person's identity.

New section 18AA in the Bill has been inserted to provide for the protection of personal information of a subscriber. The requirements of section 18AA apply to any person conducting a lottery, which also includes exempt lotteries. Conducting a lottery may include processes for drawing or announcing a winner. This section further narrows the application of the limitation on the right to privacy that may be imposed under paragraph 6A(1)(b) and subparagraph 6A(1)(c)(i); it also strengthens existing requirements for approved lotteries under section 7 of the Act.

New subsection 18AA(1) provides that the collection of personal information about a subscriber is limited to the information that is necessary only for the conduct of the lottery. Personal information is given a broad meaning under section 18AA. Information that is collected must only be used in accordance with the Act, for the conduct of a lottery. Persons conducting a lottery must also store and dispose of personal information securely. It is considered that the extent of the limitation is narrowed by insertion of these safeguards.

The relationship between the limitation and its purpose

While minimising the burden of unnecessary regulatory practices, the provisions seek to support the conduct of fair and honest exempt lotteries without compromising consumer protections. This is important given that exempt lotteries are often conducted by not-for-profit organisations or for charitable purposes.

As noted above, not all lotteries are suited to being conducted in a way that allows winners to remain anonymous. It is therefore important and appropriate that, if personal information is recorded for the purposes of a lottery, it is stored securely. From a human rights perspective, it is important to note that section 6A further limits the collection of personal information as it only extends to personal information in relation to a winning subscriber. However, it is recognised that collection of personal information may occur in for

all subscribers of a lottery as part of the nature of the lottery and not just for the winners (note below discussion in relation to clause 9 – new section 18AA of the Bill).

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

In developing the provision, an assessment was made as to whether any less restrictive means were available, whether there was a need for personal information to be recorded, and if the results of a lottery needed to be made available to subscribers.

During policy development it was recognised that, in some circumstances, exempt lotteries would know the personal information of a winner and that information would be recorded, as there was no other means available to sufficiently identify a person who was the winner of a prize.

The information collected is limited to lower spectrum of personal information. Such information is necessary to award prizes and provides the necessary safeguards for consumer protection.

While there were no less restrictive means available, new section 18AA of the Bill has been inserted to provide necessary safeguards for personal information. If persons conducting lotteries do not adhere to the requirements of new section 18AA, the Commission may determine specific conditions for the new exempt lotteries; this may include conditions relating to the personal information. These arrangements support the risk-based approach to be taken for low prize value lotteries; however, the provisions will allow the Commission to put into place parameters to safeguard consumers if there becomes an identifiable need.

Strong safeguards are also 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 Control Act. 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.

Due to the type of information held; the low-risks and value of the prizes; the insertion of explicit statutory provisions to protect privacy; and the Commission's ability to apply conditions if there is an identifiable need to further protect consumers, it is considered that the provisions are reasonable and proportionate.

CLAUSE NOTES

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Lotteries (Approvals) Amendment Act 2015*.

Clause 2 Commencement

Clause 2 provides that the Act will commence on the day after the notification day, which is the day after the Act is notified on the ACT Legislation Register.

Clause 3 Legislation amended

This clause identifies that the *Lotteries Act 1964* and the *Gambling and Racing Control (Code of Practice) Regulation 2002* will be amended.

Clause 4 Exempt lotteries - Section 6(1) and (2)

Clause 4 replaces subsection 6(1) and subsection 6(2) of the existing Act. Paragraph 6(1)(a) expands the definition of what is an exempt lottery to include lotteries other than those for charitable purposes.

Paragraph 6(1)(b) retains the existing provision that an exempt lottery does not include a lottery in which the prizes are gained through playing an unlawful game under the *Unlawful Gambling Act 2009*.

New subsection 6(1A) provides the process and mechanism for how the Commission may determine a monetary amount for those lotteries that may be exempt. The power conferred on the Commission is limited to the matters stated in subsection 6(1A) and that power will also be subject only to the scope and objects of the Amendment Bill. Consideration was given to confining this power to the Minister, however that would be inconsistent with the powers granted for operational matters under the suite of gaming legislation under the Control Act if not retained by the Commission. Subsection 6(2) of the Amendment Bill also provides that a determination is a disallowable instrument and therefore will have Legislative Assembly oversight and may be disallowed by the Assembly.

Clause 5 Section 6(3)

This clause brings the introduction of subsection 6(3) of the Act in line with current drafting practice.

Clause 6 New section 6A

This clause inserts new section 6A that provides the conditions for exempt lotteries. These conditions include consumer protection measures so exempt lotteries are conducted in an open and fair manner. This is achieved by providing explicit conditions for conducting exempt lotteries in subsection 6A(1) of the Amendment Bill. These explicit conditions will provide added transparency to persons conducting lotteries and subscribers.

Paragraph 6A(1)(a) provides the foundation of fairness requiring that each ticket or entry in the lottery must have an equal chance of winning. A person who wins a prize must also not be charged a fee when they receive the prize under paragraph 6A(1)(d).

Paragraph 6A(1)(b) should be read in conjunction with subparagraph 6A(1)(c)(ii) and subsection 6A(2) requiring the recording of the identity of winning subscribers, if known; the requirement to advise winners if their identity is known; and the requirement to take reasonable steps to identify a person who holds the winning ticket. The requirement for a person conducting a lottery to protect personal information is provided at new section 18AA and must be applied when complying with these provisions (note human rights discussion above).

Subparagraph 6A(1)(c)(i) provides that the person conducting the lottery must make the results of the lottery available to subscribers. This means that the results are only required to be given to subscribers for that particular lottery. The provision should not be taken to require that an identity of a person that holds the winning ticket must automatically be released. For example, the lottery may be held using unique numbers on tickets and there would be no requirement to identify an individual.

A person conducting a lottery must not conduct the lottery or advertise it in an inappropriate or offensive manner under paragraph 6A(1)(e). For example, a raffle targeting children and young people that offers a cosmetic surgery procedure as the prize.

Paragraph 6A(1)(f) requires that the major prize for the lottery must be drawn first unless a winner is eligible to win another prize. This would take into account those circumstances where a person who holds a winning ticket is able to choose from a number of prizes.

Paragraph 6A(1)(g) provides that the person conducting the lottery must do everything reasonably necessary to ensure that a prize winner receives the prize. This paragraph has been inserted to minimise the risk of inappropriate conduct by the person conducting the lottery. For example, only attempting to contact a winner once by telephone; or claiming that the prize is too large to be carried by Australia Post when it would be reasonable for the prize to be transported by a courier at a similar cost.

If a reasonable period has elapsed and the prize is not claimed, the person conducting the lottery must draw another winning ticket or entry in accordance with the requirements under paragraph 6A(1)(h). However, a reasonable period of time can be assessed by taking into account the type of prize to be awarded, for example perishable food or an upcoming concert.

A further consumer protection measure has been inserted at subsection 6A(2), which complements paragraph 6A(1)(b) and subparagraph 6A(1)(c)(ii), by requiring that the person conducting the lottery must take reasonable steps to identify a person who holds a winning ticket or entry.

New subsection 6A(3) of the Amendment Bill provides that the Commission may determine conditions in relation to a lottery that is exempt under subparagraph 6(1)(a)(ii). While every attempt has been made to identify required conditions at subsection 6A(1), due to the nature of the gaming industry there needs to be an ability to respond to unforeseen circumstances quickly to enable the Commission to meet its statutory obligations under section 7 of the Control Act.

Consideration was also given to confining the power granted to the Commission under subsection 6A(3) to the Minister, however this would be inconsistent with the suite of ACT gaming legislation dealing with operational matters such as these. The power conferred on the Commission is limited to placing conditions on exempt lotteries under new paragraph 6(1)(a)(ii) and the discretion will be subject to only the scope and objects of the Act. In addition, any determination will have Legislative Assembly oversight as a disallowable instrument under subsection 6A(4) of the Amendment Bill. Furthermore, as the disallowable instrument is required to have an explanatory statement attached, it is expected that any reasoning for the condition would be detailed in the statement.

Clause 7 Approval of lotteries - Section 7(1) and (2)

This clause substitutes existing subsection 7(1) to clarify that a person may apply, in writing, to the Commission for approval to conduct a lottery. Subsection 7(2) of the Act is retained, and has been modernised in line with current drafting practice.

Notes 1 and 2 at subsection 7(1) provide that an application fee may be determined under section 18A (Determination of fees) of the Act; and if a form is approved under the Control Act, the form must be used.

Clause 7 inserts a new subsection 7(1A) and clarifies the Commission's approval of lotteries does not apply to an exempt lottery or a lottery in which the prizes are, or are capable of being, gained through playing an unlawful game.

Clause 8 Unclaimed prizes – Section 17

Clause 8 repeals section 17 as the provisions for unclaimed prizes for exempt lotteries are now provided at paragraph 6A(1)(h) and unclaimed prizes for approved lotteries will be dealt with through their approved terms and conditions.

Clause 9 New section 18AA

New subsection 18AA(1) has been inserted to provide that all persons conducting a lottery or exempt lottery need to have mechanisms in place to protect; and appropriately store and dispose of personal information of subscribers. The provision should be read in conjunction with section 6A and section 7 of the Act.

Paragraph 18AA(1)(a) provides that the collection of personal information about a subscriber is limited to the information that is necessary only for the conduct of the lottery. Paragraph 18AA(1)(b) provides that any information that is collected must only be used in accordance with the Act and that persons conducting a lottery must also store and dispose of personal information securely.

Personal information is given a broad meaning under subsection 18AA(2) to capture information, or an opinion, whether true or not, about the identity of an individual; or identity that can reasonably be ascertained from the information. Personal information also includes an individual's name.

Clause 10 Determination of fees – Section 18A

This clause omits the word 'in writing' to align with current drafting practices. The determination of a fee remains a disallowable instrument and must be in writing in accordance with the *Legislation Act 2001*.

Clause 11 New section 100

Subsection 100(1) provides the transitional arrangements for the continuation of existing approved lotteries and conditions.

Subsection 100(2) provides that an application that has not been dealt with at the commencement of the Act is to be taken to be an application under the new provisions unless the lottery would be an exempt lottery. If the lottery would now be an exempt lottery subsection 100(3) provides an explicit power for the Commission to refund the application fee to the applicant.

Subsection 100(4) provides the definitions for commencement day, old approval and old approval application.

The transitional provisions expire 1 year after the commencement of the amendments under subsection 100(5).

Clause 12 Dictionary, note 2

Clause 12 substitute section references in explanatory note 2 after disallowable instrument (see section 9) and penalty unit (see section 133) respectively to clarify the relevant sections of the *Legislation Act 2001* that apply.

Clause 13 Dictionary, new definition of *subscriber*

Clause 14 inserts a new definition of subscriber in the dictionary at the end of the Act. A subscriber to a lottery means a person with a ticket or entry in the lottery.

Schedule 1 Gambling and Racing Control (Code of Practice) Regulation 2002 – Consequential amendments

Clause 1.1 Section 5, definition of licensee, paragraph (f)(v)

Clause 1.1 removes Housie as a defined licensee under section 5 of the Code of Practice.

Clause 1.2 New section 5(2)

Clause 1.2 inserts a new subsection 5(2) to clarify that an exempt lottery does not include Housie, unless Housie is exempt under the *Lotteries Act 1964*, subparagraph 6(1)(a)(ii). This will have the operational effect that Housie activities below the threshold determined by the Commission under the *Lotteries Act 1964* will be an exempt lottery.

An explanatory note is provided after subsection 5(2) to clarify that under the *Lotteries Act 1964*, a lottery is an exempt lottery if the total value of prizes does not exceed an amount as determined by the Commission under subparagraph 6(1)(a)(ii) or if the lottery is a private lottery under subparagraph 6(1)(a)(iii).

Clause 1.3 Schedule 1, part 1.1, section 1.1, definition of licensee, paragraph (f)(v)

Clause 1.3 omits reference to 'other than housie' to exclude those Housie activities which fall under the Commission's determined threshold amount.

Clause 1.4 Schedule 1, part 1.1, section 1.1, note

Clause 1.4 provides that subsection 5(2) is the relevant reference for exempt lottery at Schedule 1, part 1.1, section 1.1, note.