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

LOTTERIES (APPROVALS) AMENDMENT BILL 2015

REVISED EXPLANATORY STATEMENT

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

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

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 under section 12 and freedom of expression under section 16.

Subsection 28(1) of the HRA provides that human rights are subject only to reasonable limits set 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.

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. The parameters for subsection 28(2) of the HRA are discussed below.

The nature of the right affected

New paragraph 6A(1)(b) of the Amendment 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 Amendment 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 Amendment 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 Amendment 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 Amendment 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 Amendment 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.

Freedom of expression, section 16

Section 16 of the HRA provides individuals with the right to freedom of expression and any limitation on this right must be considered to be reasonable and proportionate. The parameters for subsection 28(2) of the HRA are discussed below.

The nature of the right affected

New paragraph 6A(1)(e) of the Amendment Bill provides that a person conducting an exempt lottery must not conduct or advertise the lottery in a way that, having regard to the lottery participants, could be considered inappropriate or offensive. This does not automatically mean that a lottery is unable to be advertised if it is considered inappropriate or offensive. Nonetheless, the right to freedom of expression protects information or ideas that 'offend, shock or disturb'¹ and the provision may be viewed as engaging the right to freedom of expression under section 16 of the HRA.

The importance of the purpose of the limitation

The conduct of lotteries in the Territory is a highly regulated activity and the Act is part of the suite of racing and gaming legislation. The Act prohibits the conducting and advertising of lotteries within the Territory unless the lottery is approved by the Commission or is an exempt lottery.

Exempt lotteries may be held without requiring approval and the provisions broaden the range of lottery products that may be subject to this exemption to include low risk and low value lotteries. However, deregulation of the approval processes does not negate the need for appropriate safeguards to minimise the possible impact on the community. Whereas the Commission would normally be able to ascertain how a lottery would be conducted and advertised as part of an approval process, and apply any necessary conditions at the approval stage, there is no such process for exempt lotteries.

New paragraph 6A(1)(e) must be considered in the context of the Act as a whole, and more broadly, within the framework of the Commission meeting its statutory obligation to perform its functions in a way that best promotes the public interest, including promoting consumer protection.² It puts the person conducting an exempt lottery on notice that consideration must be given to whether the lottery could be considered inappropriate or offensive, given who will be participating in the lottery, and determine whether to amend the lottery or not conduct the lottery.

The provision is important in limiting the conduct and advertising of lotteries that may relate to a legal activity or a legal product, but are not appropriate under the circumstances. For

¹ *Handyside v United Kingdom* (1976) 1 EHRR 737.

² Subsection 7(a) of the *Control Act* requires that the Commission must exercise its functions in the way that best promotes the public interest, and in particular, as far as practicable promotes consumer protection.

example, it would not be in the public interest for a school raffle with prizes consisting of alcohol or adult products to be held at a school fete, where children may participate. Section 11(1) of the HRA provides that the family is the natural and basic group unit of society and is entitled to be protected by society. The proposed paragraph 6A(1)(e) will provide a measure of protection of the family, through taking steps to provide that exempt lotteries are appropriate and not offensive with regard to the participation of children.

The nature and extent of the limitation

The limitation introduced by new paragraph 6A(1)(e) is not extensive. The Amendment Bill does not limit a person's ability to comment, review, question how lotteries are conducted or discuss the 'good versus evil' of the lottery industry. The provision therefore does not limit to the right of community generally in relation to the publication of ideas, opinions or information about lotteries.³

The extent of the limitation is constrained to the following circumstances:

- (a) an individual seeking to conduct a lottery;
- (b) the lottery must fit within the definition of an exempt lottery in the terms of section 6 of the Lotteries Act including, where relevant, having a total prize value under the relevant thresholds determined by the Commission; and
- (c) the person conducting the lottery must do so in a way that is not considered offensive or inappropriate, having regard to the lottery participants.

The provision does require that a person conducting a lottery must consider whether the lottery could be considered inappropriate or offensive. However, this is only to be applicable in the context of 'having regard to the lottery participants'. This narrows the application of the limitation on the freedom of expression to matters that are relevant, such as the type of lottery and prizes for a particular audience.

In developing the Amendment Bill an analysis was conducted to determine the likely impact new paragraph 6A(1)(e) would have on individuals, noting that the HRA does not protect the rights of corporations. Of 1,190 lottery approvals granted over a three month period, only three approvals, or 0.24 per cent of all lottery approvals, were granted to individuals.⁴

The relationship between the limitation and its purpose

The Amendment Bill seeks to balance the need for deregulation of low-risk and low-value lotteries with the Commission's statutory obligations under section 7 of the Control Act. The limitation therefore contributes to a number of social goals in its application.⁵

³ *Lingers v Austria* ECtHR 8 July 1986 HRLJ 307.

⁴ This analysis is the total number of all approvals over the period and does not distinguish between the value of prizes to be awarded.

⁵ *Monis v The Queen and Anor* [2013] HCA 4, 39; Hayne J on the question is the object or end legitimate "...it was not shown to be directed to achieving any further social good other than penalising, and so protecting

Purchasing raffle tickets by a minor is not prohibited in the Territory and therefore it is necessary to consider circumstances where the rights of children must be protected, and the community expectations about the accessibility of certain products for children. For example, where alcohol (while illegal to purchase or supply to a minor) may be obtained as part of a raffle prize.

Likewise, there is considerable community expectation⁶ not to encourage or actively support a child to participate in cosmetic or plastic surgery procedures. Children should not receive cosmetic or surgical procedures of any kind unless there are compelling medical or psychological reasons to do so.⁷ A lottery for a cosmetic procedure marketed at teenagers would be an example where the provision may be relevant.

As the Commission will no longer have regulatory oversight of approvals for exempt lotteries, the examples provided above are indicative of the types of activity that new paragraph 6A(1)(e) is aimed at preventing.

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

It is acknowledged that the freedom of expression stated in the International Covenant on Civil and Political Rights (ICCPR) was significantly influential in the drafting of the HRA.⁸ However, the right to freedom of expression is not an absolute right and it is accepted that the right may be legitimately subject to reasonable limits. The exercise of the rights carries with it special duties and responsibilities.⁹ The Government can lawfully restrict this right if the restriction is necessary to protect the rights of others or to protect public order, public health, public morality or national security.¹⁰

In developing new paragraph 6A(1)(e), an assessment was made as to whether any less restrictive means were available, including whether there was in fact a need for a condition relating inappropriate or offensive conduct or advertising of an exempt lottery. The Government carefully considered the need to balance regulatory reform for low-risk and low-value lotteries against the Commission's statutory obligations under section 7 of the

against, conduct that is offensive."

⁶ New South Wales, South Australia and Queensland have provisions in their lotteries legislation prohibiting cosmetic surgical and medical procedures.

⁷ Quoting Dr Gabrielle Caswell, President Cosmetic Physicians Society of Australasia; Dr Porter, Media Release Cosmetic Physicians Society of Australasia, "Teens To Cool-Off and Face to Face Consultations Mandatory", 19 March 2015, noting "...there are compelling medical or psychological reason for treatment before agreeing to administer treatment to a minor".

⁸ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 38*, 20 October 2015, Note 15, 11.

⁹ International Covenant on Civil and Political Rights, Article 19.

¹⁰ ACT Human Rights Commission, *Human Rights Commissioner Factsheet – Right to Freedom of Expression (s.16)*, Human right and <http://hrc.act.gov.au/wp-content/uploads/2015/03/Section-16-Right-to-Freedom-of-Expression.pdf>.

Control Act in relation to consumer protection. These considerations also needed to take into account the diverse range of lottery products that are available, the locations in which such lotteries might be held and the types of prizes that might be offered. Measures that may suit one lottery market would not be appropriate, or may even be offensive, to another.

The provision was developed with flexibility to respond to those circumstances. To limit the possible impact the right to the freedom of expression new paragraph 6A(1)(e) includes the requirement that the conduct or advertisement of the lottery must be assessed having regard to the participants. A lottery and possible prizes that may be conducted in a hotel would not be considered by community standards to be offensive but the same prizes at a school fete may be. Accordingly, whether or not a lottery is considered to be inappropriate or offensive is only relevant to that particular lottery which will ultimately depend on the standards of the community at the time.¹¹

Consideration was also given to listing the types of lotteries that could be deemed to be inappropriate or offensive. On balance, it was considered that prescribing which lotteries may be considered offensive or inappropriate would not provide flexibility to respond to emerging market issues, and ultimately compromise the Commission's obligations under section 7 of the Control Act.

As exempt lotteries will be deregulated in relation to approval processes a level of responsibility for consumer protection needs to be placed on the person that wishes to conduct a lottery. New paragraph 6(1)(e) requires the person conducting the lottery to consider whether the particular lottery is offensive or inappropriate and if so, not conduct or advertise such a lottery, or modify the lottery or advertisement. The provision is therefore constrained to the person conducting the lottery and whether the relevant lottery is inappropriate or offensive. As noted above, new paragraph 6(1)(e) of the Amendment Bill, does not intend to limit a person's freedom of expression to comment, review, question how lotteries are conducted or discuss the 'good versus evil' of the lottery industry.

Due to the diverse nature of lotteries, the low-risks and value of the prizes; deregulation of the Commission's oversight for approval processes for exempt lotteries; the Commission's statutory obligations; the restricted circumstances in which the limitation will apply; and the identifiable need to protect the community, it is considered that any limitation of the freedom of expression which arises through new paragraph 6A(1)(e) is reasonable and proportionate.

¹¹ *Crowe v Graham* (1968) 121 CLR 375; *Harkin v R* (1989) 38 A Crim R 296; *Drago v R* (1992) 63 A Crim R 59; *The Director of Public Prosecutions and AW* [2013] ACTCA 35 – assessed by whether it offends against community standards of decency and morality in the community.

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. This provision is discussed in detail in the Human Rights Implications – Freedom of Expression to this Explanatory Statement.

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.