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LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY

CASINO AND OTHER GAMING LEGISLATION AMENDMENT BILL 2018

EXPLANATORY STATEMENT

Presented by
Gordon Ramsay MLA
Attorney-General

CASINO AND OTHER GAMING LEGISLATION AMENDMENT BILL 2018

INTRODUCTION

This explanatory statement relates to the Casino and Other Gaming Legislation Amendment Bill 2018 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The Bill provides for additional probity measures for certain Ministerial decisions made under the *Casino Control Act 2006* and the *Casino (Electronic Gaming) Act 2017*; provides for a new *Casino (Electronic Gaming) Regulation 2018* and makes other amendments to support the commencement of the Casino (Electronic Gaming) Act; provides for harm minimisation requirements to apply to gaming machines operated in close proximity to the casino, where the licensee is related to the casino; and delays the commencement of Schedule 1 of the *Gaming Machine (Reform) Amendment Act 2015* so that phase 2 of the gaming machine trading scheme does not commence as scheduled on 31 August 2018.

BACKGROUND

The *Casino Control Act 2006* provides for the licensing and regulation of the casino. Under this Act, only one casino licence can be issued in the ACT. Decisions about the casino's ownership, leasing of the casino, and the grant or transfer of the casino licence rest with the Minister under this Act. On 13 April 2018, the Government announced that an independent panel would be established to make a recommendation to the Minister about these decisions as an additional probity measure.

The *Casino (Electronic Gaming) Act 2017* regulates electronic gaming at the casino, including the operation of casino gaming machines and Fully Automated Table Game (FATG) terminals, in the context of a redevelopment of the casino and its precinct. The Act provides for strict harm minimisation requirements for casino gaming machines, including $2 maximum bet limits, mandatory pre-commitment and connection to a central monitoring system. The Government's announcement on 13 April 2018 also indicated that an independent panel will make a recommendation to the Minister about the conversion of restricted authorisations to casino gaming machine authorisations and casino FATG terminal authorisations, to allow electronic gaming operations to commence once the casino has completed the required stage of redevelopment as set by regulation. The Act is scheduled to commence no later than 13 May 2018, its default commencement date.

The *Gambling and Racing Control Act 1999* provides the overarching legislative framework for gambling in the Territory. The Act establishes the ACT Gambling and Racing Commission

(the Commission) with a governing board. The Commission has responsibility for administration of gaming laws and control, supervision and regulation of gaming in the Territory. Through amendments introduced by the Casino (Electronic Gaming) Act, the Gambling and Racing Control Act will provide for the maximum number of authorisations for electronic gaming (including gaming machines in clubs, hotels and the casino) in the ACT.

The *Gaming Machine Act 2004* regulates the licensing of class C (club) and class B (hotel) gaming machine operators, venues and gaming machines.

The *Gaming Machine (Reform) Amendment Act 2015* (the Reform Act) introduced the trading scheme for gaming machine authorisations. This included the introduction of a two phased reduction of gaming machine authorisations across the Territory, with a ratio of 15 gaming machine authorisations per 1,000 adults to commence no later than 31 August 2018, along with associated compulsory surrender requirements to ensure the number of authorisations held by licensees did not exceed this ratio. In place of the ratio, the *Parliamentary Agreement for the 9th Legislative Assembly for the Australian Capital Territory* (the Parliamentary Agreement) includes a commitment to reduce the number of gaming machine 'licences' ('authorisations' in the Gaming Machine Act and the Casino (Electronic Gaming) Act) to 4,000 by 1 July 2020 and work is currently underway on the pathway to achieve this reduction.

OVERVIEW OF THE BILL

The Bill provides for:

- the establishment of a Casino Advisory Panel, when required, to make a recommendation to the Minister (currently the Attorney-General) in relation to a decision under the Casino Control Act and the Casino (Electronic Gaming) Act about the:
    - ownership or leasing of the casino, including amendment of a casino lease
    - grant or transfer of the casino licence
    - conversion of restricted authorisations to allow the operation of casino gaming machines or casino FATG terminals
- a new Casino (Electronic Gaming) Regulation 2018 that sets out requirements for social impact assessments and clarifies the definition of a casino gaming machine
- moving the register of licences, authorisation certificates and authorisations from the Gaming Machine Act to the Gambling and Racing Control Act to support the commencement of the Casino (Electronic Gaming) Act
- a new gaming machine licence condition under the Gaming Machine Act to ensure that harm minimisation measures applicable to casino gaming machines cannot be circumvented
- a delay to the commencement of Schedule 1 of the Gaming Machine (Reform) Amendment Act so that phase 2 of the gaming machine trading scheme (which

introduces a ratio of 15 gaming machine authorisations per 1,000 adults) does not commence on 31 August 2018, to allow time for the pathway to achieve the Government's commitment to reduce gaming machine authorisations to 4,000 by 2020 to be developed and implemented.

The amendments in the Bill will commence on the day after its notification.

The Bill amends the:

- *Casino Control Act 2006*
- *Casino (Electronic Gaming) Act 2017*
- *Gambling and Racing Control Act 1999*
- *Gaming Machine Act 2004*
- *Gaming Machine (Reform) Amendment Act 2015.*

HUMAN RIGHTS IMPLICATIONS

During the Bill's development due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA). Measures introduced in the Bill support the Government's commitment to reduce gambling harm.

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 Bill will provide a measure of protection of the family and children, through taking steps to ensure the integrity of casino operations within the Territory, that the operation of electronic gaming at the casino is associated with the redevelopment of the casino and its precinct, and that the strong harm minimisation measures introduced by the Casino (Electronic Gaming) Act are not circumvented.

New sections 136E and 136G within clause 9 of the Bill, which restrict eligibility for appointment to a Casino Advisory Panel and require the disclosure of Panel members' interests, engage the right to privacy and reputation (section 12 HRA).

The inclusion of the additional licence condition in division 3.3 of the Gaming Machine Act, through clause 29 of the Bill, may be seen as engaging the presumption of innocence until proven guilty (rights in criminal proceedings, section 22(1) HRA), as it is a strict liability offence if a licensee fails to comply with a licence condition.

An assessment of the Bill against section 28 of the HRA is provided below.

A Compatibility Statement under the HRA has been issued for the Bill by the Attorney-General.

Section 28 Human Rights Act Assessment

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

(a) the nature of the right affected;
(b) the importance of the purpose 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.

Right to privacy and reputation, section 12 – Panel members' eligibility for appointment and disclosure of interests

The nature of the right affected

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.

Clause 9 of the Bill will insert new part 8A in the Casino Control Act, which provides for the establishment of Casino Advisory Panels. A Panel's function is to make a recommendation to the Minister about certain Ministerial decisions under the Casino Control Act and the Casino (Electronic Gaming) Act, being decisions related to the ownership or leasing of the casino, the grant or transfer of the casino licence, and the conversion of restricted authorisations to allow the operation of casino gaming machines or casino FATG terminals.

New section 136E(3) inserted by clause 9 of the Bill provides that the Minister must not appoint a person to be a member of a Casino Advisory Panel where the Minister is satisfied on reasonable grounds that:

(a) the person or the person's domestic partner has an interest in a business subject to a gaming law; or
(b) the person is unlikely to be able to properly exercise the functions of a member because of the person's business association, financial association or close personal association with someone else; or
(c) the person has been convicted or found guilty of an offence against a gaming law or a corresponding law; or
(d) within 5 years before the proposed appointment, the person has been convicted, or found guilty, of an offence in Australia punishable by imprisonment for at least 1 year; or
(e) within 5 years before the proposed appointment, the person has been convicted, or found guilty, of an offence outside Australia that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year.

Clause 9, new section 136G provides for the disclosure of interests by Panel members, including in relation to financial and personal interests.

In order for a person to be a Panel member, they may need to disclose information about their current interests and associations, their partner's business interests and their criminal history. These requirements engage the right to privacy and reputation.

The importance of the purpose of the limitation
Personal, financial and criminal history information is necessary to ensure that the Minister can identify persons that are unsuitable for appointment to the Panel as they should not be associated with licensed gambling activities in the Territory.

There is a real risk of criminal or unethical activity in connection with the operation of a casino. While a Casino Advisory Panel's power is restricted to making a recommendation to the Minister about the relevant Ministerial decision, it is important that such a recommendation be as independent and impartial as possible, and that the community can be confident that it has not been improperly influenced.

The provision of Panel members' personal information, including criminal history, is considered necessary and reasonable to ensure the integrity of the gambling industry in the Territory is maintained, and to minimise the risk of criminal and unethical behaviour influencing key decisions about the casino. Eligibility provisions are a common feature of gaming and racing legislation and have previously been assessed as compatible with human rights.

The nature and extent of the limitation
The disclosure of a Casino Advisory Panel members' interests is limited to those matters in relation to a Ministerial decision about which the advisory panel is to make a recommendation, and where the interest could conflict with the proper exercise of the Panel's functions in relation to making the recommendation. As a result, it is only information relevant to appointment as a Casino Advisory Panel member that is captured by the requirement.

Strong safeguards are in place for the handling, confidentiality, and permitted disclosures of information acquired by a person under a gaming law under Division 4.4 (Secrecy) of the Gambling and Racing Control Act. Unauthorised disclosure is an offence, with a maximum penalty of 50 penalty units, imprisonment for 6 months or both. In addition, a Casino Advisory Panel will need to comply with the Territory Privacy Principles under the *Information Privacy Act 2014* in relation to any personal information obtained.

The relationship between the limitation and its purpose
The provision of personal and financial information and the disclosure of interests is an essential part of determining whether a person is suitable for appointment to, or ongoing involvement in, a Casino Advisory Panel. Due consideration was given to the appropriateness of restrictions on Panel membership, however, in the interest of integrity, it is considered that the provision of this information is necessary to assist the Minister in appointing a Panel that can provide an independent, impartial recommendation on the relevant Ministerial decision.

Less restrictive means reasonably available to achieve the purpose
In developing the legislation an assessment was made as to whether any less restrictive means were available to achieve the purpose of the provisions. There is no less restrictive means reasonably available as the provision of Panel members' information is an important part of determining the suitability of persons for appointment to, and ongoing involvement in, the Casino Advisory Panel. The provisions mirror the requirements for membership of the Gambling and Racing Commission Governing Board.

It is important to note also that there is no compulsion on a person to seek or accept appointment to Panel membership where they do not wish to disclose such information.

To the extent that the requirement to disclose information in connection with Panel membership engages a person's right to privacy and reputation, it is likely to be reasonable and demonstrably justified in a free and democratic society. It is important that the Minister is aware of Panel members' interests, associations and criminal history to uphold the integrity of decisions associated with the casino. Existing restrictions on the use and disclosure of information obtained under a gaming law operate to mitigate the human rights impacts.

Right to privacy and reputation, section 12 – Sharing information with the Casino Advisory Panel
The nature of the right affected
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.

As noted above, clause 9 of the Bill will insert new part 8A in the Casino Control Act, which provides for the establishment of Casino Advisory Panels. A Panel's function is to make a recommendation to the Minister about certain Ministerial decisions under the Casino Control Act and the Casino (Electronic Gaming) Act, being decisions related to the ownership or leasing of the casino, the grant or transfer of the casino licence and the conversion of restricted authorisations to allow the operation of casino gaming machines or casino FATG terminals.

New section 136B(2)(b) provides that a Casino Advisory Panel can ask any of the following for information to assist the Panel to make a recommendation to the Minister about a Ministerial decision listed in section 136A:

(a) the Commission
(b) the Planning and Land Authority
(c) the Chief Police Officer
(d) a Commonwealth, State or Territory authority
(e) anyone else prescribed by regulation.

New section 136C(1) provides for the sharing of information held by the following 'information holders':

(a) the Commission
(b) the Planning and Land Authority
(c) a Territory authority
(d) anyone else prescribed by regulation.

Under new section 136C(2), an information holder must comply with the request as far as is practicable.

New section 136C(3) provides that an information holder that gives a Panel information under section 136C does not contravene any duty of confidentiality the information holder has under a Territory law or agreement, despite anything to the contrary in the law or agreement.

These sections are intended to ensure that the Panel is able to access information held by the Commission, the Planning and Land Authority, any other Territory authorities or other entities that is relevant to the recommendation that the Panel has been appointed to make to the Minister about the relevant Ministerial decision. The sections are not intended to confer a broad power on the Panel, rather section 136B(2) provides that the Panel's ability to ask for information is limited to circumstances where it assists the Panel in making a recommendation. Similarly, section 136C(1) applies to limit the section to requests where the information will assist the Panel to make a recommendation.

Some of the information likely to be sought by a Casino Advisory Panel to assist it in making a recommendation will relate to the casino licensee or a proposed casino licensee. Under sections 21 and 30 of the Casino Control Act, the casino licensee must be a corporation. In sharing relevant information about a corporation, it is noted that the right to privacy and reputation is not engaged.

However, under section 8 of the Casino Control Act, a corporation is an eligible person where each executive officer and influential person of the corporation is an eligible person.

Section 9 of the Casino Control Act provides the definition of influential person, which includes executive officers (including of a related corporation), influential owner/s and those who can exercise influence over the conduct of the corporation.

As a result, in considering casino ownership and leasing decisions, and whether a corporation is eligible to be granted or transferred a casino licence, the individuals associated with the licensee or proposed licensee must also be considered eligible persons. The eligibility of individuals is set out in section 7 of the Casino Control Act, and includes consideration of a range of disqualifying grounds, including where the person has committed certain offences and has been bankrupt or insolvent, or involved in the management of a corporation that has been subject to a winding-up order.

It may therefore be necessary for the Panel to have access to certain personal and financial information about potential casino owners, lessees and licensees in order to enable the Panel to make a recommendation to the Minister. This information is most likely held by the Gambling and Racing Commission and other Territory authorities.

The information to be requested from the Planning and Land Authority would relate to the decision about conversion of restricted authorisations under section 22(1) of the Casino (Electronic Gaming) Act. Given the nature of that decision, it involves the casino licensee only (a corporation) and would be limited to information about a development application and progress of the redevelopment of the casino and its precinct.

The importance of the purpose of the limitation
The provision of personal and financial information of an individual, including relevant criminal history, engages the right to privacy and reputation. 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. Casino operations carry a real risk of criminal or unethical activity. The ability for the Panel to receive information about the individuals potentially involved in owning or leasing the casino, or holding the casino licence, is critical to the Panel's ability to perform its function of making a recommendation to the Minister.

The nature and extent of the limitation
New section 136B provides that a Casino Advisory Panel can only request information from an information holder to assist it to make a recommendation to the Minister about the specified decisions outlined in section 136A. The Panel does not have a general power to seek information and, in fact, since a Panel will only be appointed when the Minister is making one of the Ministerial decisions listed in section 136A, the Panel's ability to request

information will be limited to information relevant to the specific decision about which the Panel is making a recommendation to the Minister.

As set out in the note under new section 136B(2), a member of a Casino Advisory Panel who acquires confidential documents or information under the Casino Control Act is a gaming officer for the purposes of the Gambling and Racing Control Act, division 4.4 (Secrecy). Under this division, unauthorised disclosure of confidential information is an offence, with a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

This provision is not intended to displace the Territory Privacy Principles set out in Schedule 1 of the Information Privacy Act, and a Casino Advisory Panel will need to consider compliance with the Principles in establishing its procedures.

While section 136I(1) requires a Panel's report to be tabled, section 136I(2) provides that the Minister must divide the report into two documents – a protected section and a disclosable section – where the report includes information that is 'contrary to the public interest information' under the *Freedom of Information Act 2016*. As a result, any sensitive personal information obtained by a Panel will be protected from disclosure. The Panel may also decide that it is necessary to withhold other personal information from the report where disclosure would prejudice a person's right to privacy, in accordance with schedule 2.2(a)(ii) of the Freedom of Information Act.

The relationship between the limitation and its purpose
Careful consideration was given to the nature and function of a Casino Advisory Panel and the powers that would be appropriate to an advisory panel. The intent of a Panel is to provide an independent recommendation to the Minister about a specific decision for which the Panel has been appointed. The provision of information to the Panel is essential to the Panel being able to perform its statutory function.

Less restrictive means reasonably available to achieve the purpose
In developing the Bill an assessment was made as to whether any less restrictive means were available to achieve the purpose of the information sharing provisions. There is no less restrictive means reasonably available as access to information about the existing or proposed casino owner, proposed casino lessee, or existing or proposed casino licensee is an important element in forming a recommendation to the Minister. For these purposes, the eligibility provisions are restricted to those persons at the highest level of the organisation, those that can exert control and influence over the casino's operations.

As a Ministerial advisory panel, the Panel will not have its own investigative powers such as the power to require the provision of documents or the giving of evidence, or entry, search and seizure powers. These powers will remain with the Gambling and Racing Commission (see Division 4.2 of the Gambling and Racing Control Act). Similarly, the Planning and Land

Authority retains sole power over the ability to certify that the stage of development prescribed by regulation has been completed as part of the decision on whether to convert restricted authorisations to allow electronic gaming at the casino to commence.

It will not be possible for the Panel to properly carry out its appointed statutory function of making a recommendation to the Minister about the relevant Ministerial decision without access to relevant information. When provided with information under section 136C, Panel members are bound by existing restrictions on the use and disclosure of information obtained under a gaming law, including the secrecy provisions under the Gambling and Racing Control Act and the Territory Privacy Principles.

To the extent that the requirement to share information with a Casino Advisory Panel relevant to a Ministerial decision about the ownership or leasing of the casino or the grant or transfer of the casino licence engages a person's right to privacy and reputation, it is likely to be reasonable and demonstrably justified in a free and democratic society.

Rights in criminal proceedings - presumption of innocence until proven guilty, subsection 22(1)

The nature of the right affected

The imposition of a licence condition in relation to gaming machines operated near the casino under new section 52A of the Gaming Machine Act, through clause 29 of the Bill, engages the existing strict liability offence in section 39 of the Gaming Machine Act where a licensee fails to comply with a licence condition. As a result, clause 29 of the Bill may be seen as engaging the presumption of innocence until proven guilty (rights in criminal proceedings, section 22(1) HRA).

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 *Criminal Code 2002*, chapter 2 applies to strict liability offences in the Gaming Machine Act (see Code, part 2.1). Chapter 2 sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (e.g. 'conduct', 'intention', 'recklessness' and 'strict liability').

It is relevant to note that the licence condition introduced by clause 29 applies only to club licensees (class C licensees under the Gaming Machine Act). All class C gaming machine licensees operate within a corporate or incorporated association structure.

In addition, section 39(4) of the Gaming Machine Act provides a 'reasonable steps' defence to the strict liability offence.

The importance of the purpose of the limitation
The rationale for the application of the existing strict liability offence to the new licence condition is to ensure that any gaming machines operated in the casino or its precinct are operated in accordance with the harm minimisation measures introduced in the *Casino (Electronic Gaming) Act 2017*.

The potential risks of ineffective regulation of access to, and the operation of, gaming machines and FATG terminals include unregulated gambling in an environment where gambling harm minimisation and other consumer protection measures are not in place, as well as loss of revenue to the ACT Government and community.

The ACT, like other jurisdictions, has in place comprehensive regulatory requirements for the operation of gaming venues and gaming equipment. These are important controls, not only for the protection of consumers of gaming products, but also to reduce other risks and criminal behaviour associated with illegal or underground gambling.

Reducing gambling harm has benefits for the person, the person's family and the broader community. It is important that licensees comply with the harm minimisation measures established through the Bill's provisions in order for these benefits to be realised.

The existing strict liability offences under section 39 of the Gaming Machine Act carry a maximum penalty of 100 penalty units. This level of penalty is commensurate with the strong compliance regime provided under gaming legislation and, in particular, it aligns with the offences in section 26 and part 7 of the Casino (Electronic Gaming) Act which require casino gaming machines to comply with stringent harm minimisation measures including a maximum bet limit of $2 and mandatory pre-commitment. At the time these penalties were set, due regard was given to the guidance provided in the *Guide for Framing Offences* that the maximum penalty is usually limited to 50 penalty units, however, for reasons of consumer protection, harm minimisation and maintaining the integrity of the industry (and noting the significant potential revenue of gaming machines), it was considered necessary and appropriate to provide a higher penalty as a strong deterrent to non-compliance.

The nature and extent of the limitation
The impact on human rights is reduced through the fact that the strict liability offence in section 39 of the Gaming Machine Act, as it relates to new section 52A, would apply only to club licensees – not to individual staff members at authorised premises. A licensee, as the person who has ultimate responsibility for the management of authorised premises, is responsible for the provision and operation of gaming machines.

The offence provision in section 39 of the Gaming Machine Act does apply to class B licensees (hotels and taverns), which in very limited circumstances can be an individual operating as a sole trader - but there are currently no class B licensees that are individuals, as they are all operating through a corporate structure. However, new section 52A introduced through clause 29 of the Bill has been developed so that it applies only to club licensees. As indicated above, all club licensees operate within a corporate or incorporated association structure. As a result, new section 52A does not impose on individuals any new requirements that are subject to a strict liability offence.

Section 39(4) of the Gaming Machine Act also provides that the offence does not apply where a licensee can show they took all reasonable steps to comply with a requirement of the condition.

The relationship between the limitation and its purpose
The operation of gaming machines is a highly regulated activity in the interests of consumer protection, industry integrity and harm minimisation. The overriding rationale for the strict liability offence in section 39 of the Gaming Machine Act is to ensure that gaming machine licensees comply with any conditions imposed on their licence, whether imposed by the Gambling and Racing Commission or through gaming legislation.

Strict liability offences are an important element in ensuring the policy intent of the requirements relating to the operation of gaming machines in the casino and its precinct are realised. The potential effect on the Government's harm minimisation strategies and, as a consequence, the potential effect on club patrons, gaming machine players and gambling harm of a failure by a gaming machine licensee to comply with the restrictions on the operation of gaming machines near the casino are the justification for new section 52A (introduced by clause 29 of the Bill) being a licence condition that is subject to the strict liability offence in section 39 of the Gaming Machine Act.

Less restrictive means reasonably available to achieve the purpose
In developing the Bill an assessment was made as to whether any less restrictive means were available to achieve the purpose of new section 52A (clause 29 of the Bill). There is no less restrictive means available to ensure that the harm minimisation measures provided for under the Casino (Electronic Gaming) Act are not undermined.

While making new section 52A a licence condition does engage the strict liability offence in section 39 of the Gaming Machine Act, a number of defences remain open to an accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* specifically provides that the defence of mistake of fact under section 36 of the Code is available to strict liability offences, noting also section 53 of the Code. Subsection 23(3) of the Criminal Code provides that other defences may also apply to strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the

Criminal Code (noting section 54). In addition, as noted above, section 39(4) provides a specific 'reasonable steps' defence.

Any limitation that the introduction of new section 52A creates through engaging the existing strict liability offence in section 39 of the Gaming Machine Act is considered reasonable and proportionate, noting the public interest benefits in ensuring compliance of gaming machine licensees with provisions that support gambling harm reduction.

As indicated above, it is also significant to note that section 52A will apply only to club licensees (class C licensees), which are not individuals. Under section 15 of the Gaming Machine Act, only clubs can apply to be a class C gaming machine licensee, and the definition of a club in that Act is 'a corporation or incorporated association established for the benefit of members to achieve eligible objects'.

It is reasonable to expect that licensees know, or ought to know, their legal obligations. The operation of gaming machines is clearly a regulated activity within the scope of the decision in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154.

Any penalty resulting from a breach of section 39 as a result of a failure to comply with the licence condition introduced by new section 52A (clause 29 of the Bill) will apply only to a corporation or incorporated association, not an individual. As a result, it is considered that the introduction of the new licence condition does not trespass on any individual's fundamental human right as set out in subsection 22(1) of the HRA.

Revenue/Cost Implications

Other than costs associated with the Casino Advisory Panels, there are no other direct revenue or cost implications arising from the Bill.

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 *Casino and Other Gaming Legislation Amendment Act 2018* (the Act).

Clause 2 Commencement

This clause provides that the Act will commence on the day after it is notified on the Legislation Register.

Clause 3 Legislation amended

This clause identifies that the following legislation will be amended by the Act:

- *Casino Control Act 2006*
- *Casino (Electronic Gaming) Act 2017*
- *Gambling and Racing Control Act 1999*
- *Gaming Machine Act 2004*
- *Gaming Machine (Reform) Amendment Act 2015.*

Part 2 – Casino Control Act 2006

Clause 4 Approval of proposed owner Section 13 (2)

Division 2.2 of the Casino Control Act regulates ownership of the casino. In accordance with section 11, an owner of the casino must an eligible person and able to carry out their obligations as an owner of the casino.

Under section 12 of the Casino Control Act, an owner of the casino may apply in writing to the Minister for approval to sell or otherwise dispose of the owner's interest in the lease of the casino, or part of the interest, to someone else. Section 13(1) provides that the Minister must approve, or refuse to approve, the sale or other disposal of an owner's interest in the lease of the casino, or part of the interest, to the proposed owner.

Clause 4 replaces the existing section 13(2) of the Casino Control Act to provide that in deciding whether to approve the sale or other disposal of the casino, the Minister must consider any recommendation made by the Gambling and Racing Commission about the sale or disposal; and any recommendation made by a Casino Advisory Panel about the sale or disposal, including whether it is in the public interest.

While the Minister is required to take into account a recommendation made by the Gambling and Racing Commission or a Casino Advisory Panel under this provision, the amendments to section 141 under **clauses 10, 11 and 12** of the Bill provide that the Minister can accept a recommendation, reject a recommendation or refer the matter back to the Commission or the Panel for further investigation or consideration.

Section 13(3) continues to provide that the Minister must not approve the sale or disposal unless satisfied that the proposed owner is an eligible person and that the proposed owner will become a party to a control agreement where that is required under section 19.

Section 19 of the Casino Control Act provides that a control agreement, approved by the Minister, must be in force between the owner of the casino lessee (if any) and the casino licensee if they are not all the same person (noting that *person* includes a corporation under section 160 of the *Legislation Act 2001*).

A decision under section 13(1) to refuse to approve the change of ownership is a reviewable decision (see section 137 and schedule 1 of the Casino Control Act).

Clause 5 Approval of proposed casino lease
Section 16 (2)

Division 2.3 of the Casino Control Act regulates leasing of the casino.

Under section 15 of the Casino Control Act, the owner of the casino may apply to the Minister for approval to enter into a lease of the casino with someone else. Section 15(2) requires that the application must be made in writing and be accompanied by the proposed lease, the name and contact details of the proposed lessee, and particulars of the financial standing, relevant managerial experience and business reputation of the proposed lessee.

Section 16(1) provides that the Minister must approve, or refuse to approve, the owner of the casino entering into the proposed lease of the casino with the proposed lessee.

Clause 5 replaces the existing section 16(2) of the Casino Control Act to provide that in deciding whether to approve owner entering into the proposed lease with the proposed lessee, the Minister must consider any recommendation made by the Gambling and Racing Commission about the proposed lease with the proposed lessee; and any recommendation made by a Casino Advisory Panel about the proposed lease with the proposed lessee, including whether it is in the public interest.

While the Minister is required to take into account a recommendation made by the Gambling and Racing Commission or a Casino Advisory Panel under this provision, the amendments to section 141 under **clauses 10, 11 and 12** of the Bill provide that the Minister

can accept a recommendation, reject a recommendation or refer the matter back to the Commission or the Panel for further investigation or consideration.

Section 16(3) continues to provide that the Minister must not approve the proposed lease with the proposed lessee unless satisfied that the proposed lessee is a corporation, an eligible person, can carry out its obligations as the casino lessee and that the conditions of the proposed lease are satisfactory in relation to the control and operation of the casino.

A decision under section 16(1) of the Casino Control Act to refuse to approve the proposed lease of the casino with the proposed lessee is a reviewable decision (see section 137 and schedule 1 of the Act).

Clause 6 Approval of amendment of casino lease
Section 18 (2)

Under section 17 of the Casino Control Act, the parties to a casino lease may apply to the Minister for approval to amend the lease. Section 17(2) requires that the application must be in writing signed by the parties to the lease and be accompanied by the proposed amendment of the lease.

Section 18(1) provides that the Minister must approve, or refuse to approve, the amendment of the casino lease.

Clause 6 replaces the existing section 18(2) of the Casino Control Act to provide that in deciding whether to approve a proposed amendment of the casino lease, the Minister must consider any recommendation made by the Gambling and Racing Commission about the amendment; any recommendation made by a Casino Advisory Panel about the amendment, including whether it is in the public interest; and the likely effect of the amendment on the control and operation of the casino.

While the Minister is required to take into account a recommendation made by the Gambling and Racing Commission or a Casino Advisory Panel under this provision, the amendments to section 141 under **clauses 10, 11 and 12** of the Bill provide that the Minister can accept a recommendation, reject a recommendation or refer the matter back to the Commission or the Panel for further investigation or consideration.

A decision under section 18(1) of the Casino Control Act to refuse to approve the amendment of the casino lease is a reviewable decision (see section 137 and schedule 1 of the Act).

Clause 7 Grant of casino licence
Section 21 (4)

Division 3.1 of the Casino Control Act provides for the grant of the casino licence. Section 20 of the Act provides that only one casino licence can be in force at any time, and that the licence applies to one casino only.

Under section 21(1) of the Casino Control Act, the Minister may invite applications for a casino licence, and under section 21(2), the Minister may grant or refuse to grant a casino licence to an applicant.

Section 21(3) provides that the Minister must not grant a casino licence to a person unless the person is a corporation, is an eligible person and is either:

- the casino lessee (where there is a casino lease approved under section 16) or corporation nominated by the casino lessee; or
- the owner of the casino or a corporation nominated by the owner of the casino.

Clause 7 replaces the existing section 21(4) of the Casino Control Act to provide that in deciding whether to grant a casino licence, the Minister must consider any recommendation made by the Gambling and Racing Commission about the eligibility of a corporation nominated as the proposed casino licensee; and any recommendation made by a Casino Advisory Panel about the eligibility of a corporation nominated as the proposed casino licensee, including whether granting a casino licence to the proposed casino licensee is in the public interest. New section 21(4)(c) retains the requirement in existing section 21(4)(b) that the Minister must also comply with any criteria prescribed by regulation in relation to the grant of the casino licence.

While the Minister is required to take into account a recommendation made by the Gambling and Racing Commission or a Casino Advisory Panel under this provision, the amendments to section 141 under **clauses 10, 11 and 12** of the Bill provide that the Minister can accept a recommendation, reject a recommendation or refer the matter back to the Commission or the Panel for further investigation or consideration.

A decision under section 21(2) of the Casino Control Act to refuse to grant a casino licence is a reviewable decision (see section 137 and schedule 1 of the Act).

Clause 8 Transfer of casino licence
Section 30 (4) (c)

Division 3.3 of the Casino Control Act provides for the transfer and surrender of the casino licence.

Under section 29 of the Casino Control Act, the casino licensee may apply to the Minister to transfer the casino licence to another corporation. Section 29(2) requires that the

application must be in writing signed by the casino licensee and be accompanied by a signed consent to transfer by the person (if any) who nominated the licensee under section 21(3)(b) – that is, the consent of the casino lessee where there is a casino lease, or the casino owner in any other case.

Under section 30(1), the Minister must transfer the casino licence, refuse to transfer the licence or ask for further information about the proposed transfer.

In accordance with sections 30(2) and (3), a request for further information must be in writing and state a reasonable time within which the further information must be given. Where further information has been requested, the Minister must not approve or refuse to approve the transfer of the licence until either the information has been received or the time for giving the information has passed.

Sections 30(4)(a) and (b) provide that the Minister may approve the transfer of the casino licence if the licence is not suspended and there are no outstanding disciplinary notices relating to the casino licence.

Section 30(4)(c) provides that the Minister may approve the transfer of the casino licence if the prospective licensee would be granted the casino licence under section 21. To assist the reader, **clause 8** adds a note below existing section 30(4) of the Casino Control Act that outlines the requirements for a proposed licensee under section 21 of the Act. Through section 30(4)(c), the Minister must consider, among other matters, any recommendation by the Gambling and Racing Commission and a Casino Advisory Panel in relation to the proposed licensee's eligibility, including any recommendation made by a Panel about whether the transfer is in the public interest.

While the Minister is required to take into account a recommendation made by the Gambling and Racing Commission or a Casino Advisory Panel under this provision, the amendments to section 141 under **clauses 10, 11 and 12** of the Bill provide that the Minister can accept a recommendation, reject a recommendation or refer the matter back to the Commission or the Panel for further investigation or consideration.

A decision under section 30(1) of the Casino Control Act to refuse to transfer the casino licence is a reviewable decision (see section 137 and schedule 1 of the Act).

Clause 9 New part 8A

Clause 9 inserts new part 8A of the Casino Control Act, which provides for Casino Advisory Panels. New part 8A inserts new sections 136A to 136J into the Casino Control Act.

New section 136A establishes the meaning of 'Ministerial decision' for part 8A of the Casino Control Act, being decisions relating to the:

- ownership of the casino under section 13 of the Casino Control Act 2006
- a proposed lease of the casino under section 16 of the Casino Control Act
- amendment of a casino lease under section 18 of the Casino Control Act
- grant of a casino licence under section 21 of the Casino Control Act
- transfer of the casino licence under section 30 of the Casino Control Act
- conversion of restricted authorisations under section 22(1) of the Casino (Electronic Gaming) Act.

New section 136B provides for the establishment and functions of a Casino Advisory Panel. Under new section 136B(1), before making a Ministerial decision, the Minister must establish a Casino Advisory Panel to make a recommendation about the decision.

New section 136B(2)(a) provides that a Casino Advisory Panel may engage a person who has qualifications or experience relevant to the decision to assist the Panel to make a recommendation.

New section 136B(2)(b) provides that a Casino Advisory Panel may ask the Gambling and Racing Commission; the Planning and Land Authority; the Chief Police Officer; a Commonwealth, State or Territory authority; or anyone else prescribed by regulation for information to assist the Panel to make a recommendation to the Minister about one of the Ministerial decisions set out in section 136A.

Under new section 136B(3) 'information' is defined to mean information, whether true or not, in any form and includes an opinion or advice. However, this provision does not extend to the sharing of legal advice which remains subject to client legal privilege.

The Panel's power to ask for information is not a general power, it is limited to matters relevant to the recommendation it has been established to make. As outlined in the *Human Rights Implications* above, a Panel will require information to enable it to carry out its function, but this information must be connected to the relevant Ministerial decision.

New section 136C provides for the sharing of information with a Casino Advisory Panel. Under new section 136C, the section applies to certain 'information holders', being the Gambling and Racing Commission, the Planning and Land Authority, a Territory authority or anyone else prescribed by regulation.

While new section 136C(1)(d) provides for a Panel to request information from anyone else by regulation, the power in section 136C is also limited to requesting information from information holders that will assist the Panel to make a recommendation to the Minister

about the relevant Ministerial decision under consideration – it is not a general power to request any information from anyone.

In addition, for the purpose of section 136C(1)(d), the Executive must make a regulation where information may be requested from someone else. As such, the regulation will be tabled and should the Legislative Assembly consider that it would be unreasonable for a Casino Advisory Panel to ask for information from the person set out in the regulation, the regulation could be disallowed.

In accordance with new section 136C(2), where the Panel makes a request for information to assist the Panel to make a recommendation, the information holder must, as far as practicable, comply with the request.

New section 136C(3) provides that where an information holder gives a Casino Advisory Panel information under this section, it does not contravene any duty of confidentiality the information holder has under a Territory law or agreement , despite anything to the contrary in the law or agreement. It is relevant to note that Panel members and anyone assisting the Panel who acquires confidential documents or information under this provision is a gaming officer for the purposes of the Gambling and Racing Control Act, division 4.4 (Secrecy). Under this division, unauthorised disclosure of confidential information is an offence, with a maximum penalty of 50 penalty units, imprisonment for 6 months or both. In addition, a Panel must comply with the Territory Privacy Principles.

Under new section 136D(1) the Minister must appoint members of a Casino Advisory Panel. New section 136D(2) provides that members are appointed on a part-time basis.

New section 136D(3) provides that the conditions of appointment for Panel members are the conditions stated in the appointment, subject to any determination made under the *Remuneration Tribunal Act 1995*.

Under new section 136E(1) a Casino Advisory Panel must have three members.

New section 136E(2) sets out that Panel members must have knowledge of and experience in at least one of the disciplines and areas of expertise outlined in that section, including:

- law and governance;
- integrity and probity assessments in relation to significant changes in highly regulated industries;
- finance, actuarial science or auditing;
- risk advisory services;
- urban design and planning;
- civil engineering and civil works;

- property development;
- building work assessments;
- construction;
- building surveying;
- strategies or services that reduce gambling harm;
- anything else prescribed by regulation.

New section 136E(3) provides for circumstances in which a person would be ineligible for appointment to be a member of a Panel, including where a person or their domestic partner has an interest in a business subject to a gaming law; where the person is unlikely to be able to properly exercise a Panel member's functions because of a business, financial or close personal association; or where the person has been convicted or found guilty of certain offences. These circumstances mirror the existing eligibility requirements for members of the Gambling and Racing Commission Governing Board, set out in section 12(2) of the Gambling and Racing Control Act. See also the analysis in the *Human Rights Implications* section above.

While new section 136E(3)(b) refers to business, financial and close personal associations of a potential appointee to a Casino Advisory Panel, there is no intention to unduly restrict freedom of association under section 15 of the *Human Rights Act 2004*. The provision is aimed at ensuring that persons appointed to a Casino Advisory Panel can provide an impartial recommendation to the Minister about the relevant decision under consideration, and is restricted to where the person is unlikely to be able to properly exercise the functions of a Panel member because of a business, financial or close personal association with someone else.

New section 136F provides that the Minister must appoint a member of the Casino Advisory Panel as its Chair.

Section 136G provides for the disclosure of interests of Casino Advisory Panel members and persons assisting a Panel. Under section 136G(1), the section applies where a Panel member or person assisting has a direct or indirect financial interest or personal interest in a matter in relation to a Ministerial decision about which the Panel is to make a recommendation, and the interest could conflict with the proper exercise of the Panel's functions in relation to making a recommendation.

New section 136G(2) requires that as soon as practicable after becoming aware of the relevant facts, the Panel member, person assisting the Panel or the Panel must disclose the nature of the interest to the Minister. Under new section 136G(3), the Panel member or person assisting the Panel must not participate, or further participate, in making the recommendation to the Minister, unless the Minister directs otherwise.

The disclosure requirement under this section is limited to those matters relevant to the decision about which the Panel has been established to make a recommendation. See also the analysis in the *Human Rights Implications* section above.

New section 136H requires a Casino Advisory Panel to prepare for the Minister a report of its recommendation in relation to a Ministerial decision.

Procedural fairness is provided to the applicant for the Ministerial decision under new section 136H(2). Before giving its report to the Minister, the Panel must give the applicant for the decision a copy of the report and written notice stating that the applicant may give the Panel written comments about the draft report, or request that an inaccuracy be corrected, within the time stated in the notice.

New section 136I provides for the tabling of a Casino Advisory Panel's report in the Legislative Assembly within six sitting days after the day the Minister tells the applicant for a Ministerial decision about the decision.

If the Panel's report includes information that is 'contrary to the public interest information' as defined in section 16 of the *Freedom of Information Act 2016*, new section 136I(2) requires the Minister to divide the report into two documents:

- the 'protected section' – containing the contrary to the public interest information
- the 'disclosable section' – containing the rest of the report.

Under new section 136I(3) if the Minister divides a report, the disclosable section must include a statement that there is a protected section containing contrary to the public interest information and a general description of the contents of the protected section.

New section 136I(4) provides the signpost definition to the term 'contrary to the public interest information'.

New section 136J provides that a member of the Casino Advisory Panel, and a person assisting a Panel, is protected from civil liability for conduct engaged in honestly and without recklessness in the exercise of a function under Part 8A of the Casino Control Act, or in the reasonable belief that the conduct was in the exercise of a function under that Part.

Under section 136J(2) any civil liability that would otherwise attach to the Panel member, or person assisting the Panel, attaches instead to the Territory.

Clause 10 Section 141 heading

As noted in clause 11 below, section 141 of the Casino Control Act currently provides that the Executive or the Minister may accept or reject the Gambling and Racing Commission's

recommendation in relation to a matter, or refer a matter back to the Commission for further investigation or consideration.

Clause 10 substitutes the heading of section 141 of the Casino Control Act to align with the amendment made in clause 11 to provide that the section applies to recommendations made by a Casino Advisory Panel as well as recommendations made by the Gambling and Racing Commission.

Clauses 11 and 12 Section 141 and Section 141(c)

Section 141 currently provides that if the Executive or the Minister is required to consider any recommendations made by the Gambling and Racing Commission about a matter, the Executive or the Minister may accept the recommendation, reject the recommendation or refer the matter back to the Gambling and Racing Commission for further investigation or consideration.

Clauses 11 and 12 amend the existing section 141 of the Casino Control Act to provide that the section applies to recommendations made by the Gambling and Racing Commission or a Casino Advisory Panel.

Under amendments introduced through **clause 9** of the Bill, a Casino Advisory Panel must be appointed by the Minister in relation to the following Ministerial decisions:

- ownership of the casino under section 13 of the Casino Control Act 2006
- a proposed lease of the casino under section 16 of the Casino Control Act
- amendment of a casino lease under section 18 of the Casino Control Act
- grant of a casino licence under section 21 of the Casino Control Act
- transfer of the casino licence under section 30 of the Casino Control Act
- conversion of restricted authorisations under section 22(1) of the Casino (Electronic Gaming) Act.

Clause 13 Regulation-making power
New section 144 (2) (d)

Clause 13 inserts a new paragraph (d) into the existing regulation-making power in section 144(2) of the Casino Control Act. New section 144(2)(d) establishes that a regulation made by the Executive may make provision in relation to Casino Advisory Panels, including in relation to their procedures and reports. This amendment is in line with **clause 9** of the Bill, which inserts new part 8A into the Casino Control Act to provide for Casino Advisory Panels.

Clause 14 Dictionary, note 2

Clause 14 is a technical amendment that adds the terms 'chief police officer', 'Commonwealth', 'domestic partner (see s 169(1)', 'planning and land authority' and 'State'

to note 2 of the Dictionary. These terms have the same meaning as they have in the *Legislation Act 2001*.

Clause 15 Dictionary, new definitions

Clause 15 inserts new definitions of 'casino advisory panel' and 'Ministerial decision' into the Dictionary of the Casino Control Act.

'Casino Advisory Panel' is defined in section 136B, and 'Ministerial decision' is defined, for part 8A of the Casino Control Act only, in section 136A.

This amendment is consequential to the insertion of new part 8A into the Casino Control Act by **clause 9** of the Bill, which provides for a Casino Advisory Panel to be established when the Minister is considering decisions relating to the:

- ownership of the casino under section 13 of the Casino Control Act 2006
- proposed lease of the casino under section 16 of the Casino Control Act
- amendment of a casino lease under section 18 of the Casino Control Act
- grant of a casino licence under section 21 of the Casino Control Act
- transfer of the casino licence under section 30 of the Casino Control Act
- conversion of restricted authorisations under section 22(1) of the Casino (Electronic Gaming) Act.

Part 3 – Casino (Electronic Gaming) Act 2017

Clause 16 Restricted status of acquired authorisations
Section 20, note 2

Section 20 of the Casino (Electronic Gaming) Act provides than an authorisation acquired by the casino licensee from a class B or class C gaming machine licensee becomes a restricted authorisation when it is acquired.

A restricted authorisation cannot be used to operate electronic gaming products at the casino – the casino licensee must have either a casino gaming machine authorisation or a casino FATG terminal authorisation respectively. Part 5 of the Casino (Electronic Gaming) Act sets out the conversion process for a restricted authorisation to become either a casino gaming machine authorisation or a casino FATG terminal authorisation.

Clause 16 is consequential to the amendment in **clause 17** of the Bill and amends note 2 below section 20 of the Casino (Electronic Gaming) Act so that it reflects that the casino licensee may apply to the Minister, not the Gambling and Racing Commission, under section 21 for the conversion of restricted authorisations.

Clause 17 Conversion of restricted authorisations—application Section 21 (1)

Section 20 of the Casino (Electronic Gaming) Act provides than an authorisation acquired by the casino licensee from a class B or class C gaming machine licensee becomes a restricted authorisation when it is acquired. A restricted authorisation cannot be used to operate electronic gaming products at the casino – the casino licensee must have either a casino gaming machine authorisation or a casino FATG terminal authorisation respectively.

Section 21 outlines the process for the casino licensee to apply for the conversion of a restricted authorisation to a casino gaming machine authorisation or a casino FATG terminal authorisation.

Clause 17 amends section 21(1) to provide that the casino licensee may apply to the Minister for approval to have a restricted authorisation converted, rather than the Gambling and Racing Commission. This amendment is in line with amendments introduced by **clause 9** of the Bill, which provide for Casino Advisory Panels. Under new section 136A of the Casino Control Act, the conversion of a restricted authorisation is a 'Ministerial decision' for which a Casino Advisory Panel must be established under new section 136B.

Under section 21(2) the application must be in writing, state the number of restricted authorisations to be converted and the kind of authorisation to which the restricted authorisations are to be converted, and be accompanied by the required documents for the application.

Section 21(3) sets out the required documents for the conversion application, including evidence from the Planning and Land Authority that a development application has been approved in relation to the redevelopment of the casino and the casino precinct, and that the Authority has certified that the casino licensee has completed the stage of development prescribed by regulation for the maximum number of restricted authorisations to be converted. Other required documents align with existing documents that a gaming machine licensee must provide in relation to an authorisation certificate application, including a plan of the proposed gaming area, the gaming rules and the control procedures the casino licensee has adopted for the operation of casino gaming machines or casino FATG terminals. For the casino licensee, these documents are not requested until the restricted authorisations are converted to casino gaming machine authorisations and casino FATG terminal authorisations.

Clause 18 Section 21 (4) and (5)

The amendments in **clause 18** of the Bill are consequential to the amendment in **clause 17**. Each instance of the word 'commission' is replaced by 'Minister' in sections 21(4) and (5) of the Casino (Electronic Gaming) Act.

Following the amendments in **clause 18**, the Minister may require in writing additional information from a casino licensee about a conversion application, and where the casino licensee does not comply with a requirement within the time stated by the Minister, the Minister may refuse to consider the application (amended section 21(5)(a)). Under amended section 21(5)(b), if the Minister refuses to consider the application, it lapses.

Clause 19 Section 22

Section 22 of the Casino (Electronic Gaming) Act provides for a decision about the conversion of restricted authorisations.

Clause 19 of the Bill replaces existing section 22 in line with amendments introduced by **clause 9** of the Bill, which provide for Casino Advisory Panels. Under new section 136A of the Casino Control Act, the conversion of a restricted authorisation is a 'Ministerial decision' for which a Casino Advisory Panel must be established under new section 136B. Revised section 22 also reflects the amendment in **clause 17** above, as it is the Minister, not the Gambling and Racing Commission, that will now make the conversion decision.

Through **clause 19**, section 22 has been amended and restructured to take into account that the Minister must now consider any recommendation made by a Casino Advisory Panel in relation to the conversion of a restricted authorisation, including in relation to the casino licensee's compliance with any agreement with the Territory in relation to the redevelopment of the casino and the casino precinct. Otherwise, the existing requirements of section 22 are retained.

Clause 20 Section 46

Section 45 and schedule 1 of the Casino (Electronic Gaming) Act provide for reviewable decisions under the Act.

Section 46 currently provides that if the Gambling and Racing Commission makes a reviewable decision, the Commission must give a reviewable decision notice to the casino licensee.

Clause 20 replaces existing section 46 in line with the amendment to section 22 introduced by **clause 19** of the Bill, to provide that the decision-maker must give a reviewable decision notice to the casino licensee.

New section 46(2) provides that the decision-maker for a reviewable decision includes the Gambling and Racing Commission or the Minister.

Under amendments introduced by **clauses 18, 19 and 22** of the Bill, the Minister is now the decision-maker for the following reviewable decisions:

- refuse to consider application for conversion of restricted authorisations if additional information not given within stated time (section 21(5))
- refuse to approve the conversion of restricted authorisation to casino gaming machine authorisation or casino FATG terminal authorisation (section 22(1))
- approve the conversion of a lower number of restricted authorisations than the number applied for (section 22(5)).

Clause 21 New section 54A

Clause 21 inserts new section 54A to the Casino (Electronic Gaming) Act, and is a standard provision for the making of a Regulation as part of a Bill. This clause should be read in conjunction with **clause 23**.

Under new section 54A(1) the provisions set out in Schedule 5 of the Casino (Electronic Gaming) Act are taken, on the commencement of section 54A, to be a regulation made under section 54 of the Casino (Electronic Gaming) Act.

New section 54A(2) provides that to remove any doubt, and without limiting section 54A(1), the provisions set out in Schedule 5 may be amended or repealed as if they had been made as a regulation by the Executive under section 54.

New section 54A(3) is also a provision to remove any doubt that the regulation is taken to have been notified on the Legislation Register on the day the *Casino and Other Gaming Legislation Amendment Act 2018* (i.e. this Bill) is notified, to have commenced on the commencement of new section 54A, and is not required to be presented to the Legislative Assembly under section 64(1) of the *Legislation Act 2001*.

In accordance with section 54A(4), subsections (1) to (3) of new section 54A are laws to which section 88 of the Legislation Act applies. This means that the operation of these subsections continues after they are repealed. Under new section 54A(5), section 54A and Schedule 5 expire on the day they commence as the Regulation has been made, taken to have been notified and commenced.

Clause 22 Reviewable decisions
Schedule 1, items 6 and 7

Schedule 1 of the Casino (Electronic Gaming) Act lists the reviewable decisions for the Act, in accordance with section 45 of the Act.

Clause 22 replaces items 6 and 7 of schedule 1 to reflect the amendments made to section 22 of the Act by **clause 19**.

Clause 23 New schedule 5

Clause 23 inserts new Schedule 5 into the Casino (Electronic Gaming) Act. Schedule 5 provides for the new Casino (Electronic Gaming) Regulation 2018. This clause should be read in conjunction with **clause 21**.

Part 1 of the new Regulation provides for preliminary matters including the name of the Regulation, the Dictionary and the status of Notes included in the Regulation.

Part 2 of the new Regulation relates to Social Impact Assessments (SIAs) for a relevant casino electronic gaming application – being a casino gaming machine authorisation certificate application under section 10 of the Casino (Electronic Gaming) Act or a casino FATG authorisation certificate application under section 13 of that Act.

Section 4, new Schedule 5, sets out definitions that apply to Part 2 of the Regulation – including the terms 'casino electronic gaming proposal', 'local community' and 'relevant casino electronic gaming application'.

Section 8(2) of the Casino (Electronic Gaming) Act provides that a regulation may make provision in relation to social impact assessments, including: (a) the requirements that must be satisfied by a social impact assessment; (b) the matters to be addressed by a social impact assessment; (c) the information to be given in a social impact assessment.

Section 5, new Schedule 5 sets out requirements for SIAs in accordance with section 8(2)(a) of the Casino (Electronic Gaming) Act. These requirements reflect the existing requirements for SIAs for gaming machine licensees under the *Gaming Machine Regulation 2004*, and include that the analysis must identify the impact on the broader Canberra community as well as the local community within three kilometres of the casino.

Section 6, new Schedule 5 sets out matters to be addressed by the SIA in accordance with section 8(2)(b) of the Casino (Electronic Gaming) Act. The matters to be addressed reflect the existing requirements for SIAs for gaming machine licensees, with the addition that the existing level of gaming activity, the population profile, and the projected population and growth rate must be addressed for the broader Canberra community as well as the local community within three kilometres of the casino.

Section 7, new Schedule 5 establishes the information to be given in an SIA in accordance with section 8(2)(c) of the Casino (Electronic Gaming) Act. The information to be given in an SIA reflects the existing requirements for SIAs for gaming machine licensees, with the addition of specific information relevant to a decision relating to the casino. The information to be provided includes the number and location of existing gambling outlets, and population and average income details, for the broader Canberra community as well as the local community within three kilometres of the casino; expected casino electronic gaming

revenue; expected table gaming revenue; expected community benefit; expected contributions to assist in gambling harm prevention; and details of the proposed redevelopment of the casino and the casino precinct.

Part 3 of the new Regulation relates to miscellaneous matters.

The Dictionary definition of 'casino gaming machine' in the Casino (Electronic Gaming) Act provides that a casino gaming machine does not include a device prescribed by regulation.

Section 8, new Schedule 5 provides that the listed devices are not a casino gaming machine. These devices include a device for playing a game of skill; an amusement device that usually involves an element of skill and is played for entertainment only; and a device that is ordinarily found at fairs, fetes or shows, usually involves an element of skill and is played mainly for entertainment, whether or not a prize is offered or given. The provision mirrors existing section 77 of the Gaming Machine Regulation.

Schedule 5 also provides for the Regulation to include a Dictionary. The Dictionary provides signpost definitions for terms used in the Regulation. Certain terms relevant to the Regulation are defined in the *Legislation Act 2001* and these are outlined at the start of the Dictionary. Terms used in the Casino (Electronic Gaming) Act, which have the same meaning in the Regulation, are also outlined at the start of the Dictionary.

Part 4 Gambling and Racing Control Act 1999

Clause 24 New part 6B

Clause 24 inserts new Part 6B 'Licences, authorisation certificates and authorisations – register and replacement copies' into the Gambling and Racing Control Act. This clause is related to **clause 26** that omits Division 2B.7 from the Gaming Machine Act. Division 2B.7 of the Gaming Machine Act currently provides for the register of licences, authorisation certificates and authorisations under section 37H of that Act, and for replacement copies of licences, authorisation certificates and authorisation schedules under section 37I.

New section 51 outlines numerous definitions for new part 6B of the Gambling and Racing Control Act. These definitions reflect that licences, authorisation certificates and authorisations will be provided for under both the Gaming Machine Act and the Casino (Electronic Gaming) Act.

New section 52 of the Gambling and Racing Control Act requires the Gambling and Racing Commission to keep a register of licences, authorisation certificates and authorisations. The section mirrors existing section 37H of the Gaming Machine Act, except section 52(2)(c) which is amended to reflect that the register will now include details of authorisation

certificates issued under both the Gaming Machine Act and the Casino (Electronic Gaming) Act.

New section 53 of the Gambling and Racing Control Act provides for replacement copies of licences, authorisation certificates and authorisation. The section mirrors existing section 37I of the Gaming Machine Act.

Amendments made by the Casino (Electronic Gaming) Act provide for the maximum number of electronic gaming authorisations allowed in the ACT to be established under the Gambling and Racing Control Act. The maximum number includes any gaming machine authorisations or fully automated table game terminal authorisations held by the casino as well as authorisations for gaming machines in clubs and hotels. Moving the register and replacement copy provisions from the Gaming Machine Act to the Control Act is in line with these amendments.

Clause 25 Dictionary, new definitions

Clause 25 inserts numerous new definitions to the Dictionary of the Gambling and Racing Control Act. The insertion of these definitions is consequential to the amendment made by **clause 24**, which relocates Division 2B.7 – 'Licences, authorisation certificates and authorisations – register and replacement copies' of the Gaming Machine Act to the Gambling and Racing Control Act, in line with amendments introduced by the Casino (Electronic Gaming) Act that provide for the Gambling and Racing Control Act to include provisions relating to the maximum number of electronic gaming authorisations in the Territory.

Part 5 – Gaming Machine Act 2004

Clause 26 Licences, authorisation certificates and authorisations—register and replacement copies
Division 2B.7

Division 2B.7 of the Gaming Machine Act currently provides for the register of licences, authorisation certificates and authorisations under section 37H, and for replacement copies of licences, authorisation certificates and authorisation schedules under section 37I.

Clause 26 omits Division 2B.7 from the Gaming Machine Act and is related to **clause 24** that inserts new Part 6B into the Gambling and Racing Control Act.

Amendments made by the Casino (Electronic Gaming) Act provide for the maximum number of electronic gaming authorisations allowed in the ACT to be established under the Gambling and Racing Control Act. The maximum number includes any gaming machine authorisations or fully automated table game terminal authorisations held by the casino as well as authorisations for gaming machines in clubs and hotels. Moving the register and

replacement copy provisions from the Gaming Machine Act to the Control Act is in line with these amendments.

The Gaming Machine Act continues as the primary Act regulating gaming machines in clubs and hotels.

Clause 27 Licence and authorisation certificate to be kept at premises Section 41 (2) (b)

Section 41(1) of the Gaming Machine Act provides that it is a condition of a gaming machine licence that the licensee keeps a copy of the licence and authorisation certificate (including the authorisation schedule) at the authorised premises to which the certificate relates.

However, under section 41(2) the condition does not apply if the licensee has given the Gambling and Racing Commission a statement that the licence, authorisation certificate or authorisation schedule has been lost, stolen or destroyed and the Commission has not given the licensee a replacement.

Currently, the statement that the licence, authorisation certificate or authorisation schedule has been lost, stolen or destroyed is given under section 37I of the Gaming Machine Act.

In line with the amendments introduced by **clauses 24 and 26** that relocate Division 2B.7 from the Gaming Machine Act to the Gambling and Racing Control Act, **clause 27** amends section 41(2)(b) so that the licence condition does not apply where the licensee has given the Gambling and Racing Commission a statement under the Gambling and Racing Control Act, section 53(2) 'Licences, authorisation certificates and authorisation schedules—replacement copies'.

Clause 28 Licence and authorisation certificate to be available on request Section 42 (3) (b)

Section 42(1) of the Gaming Machine Act provides that it is a condition of a gaming machine licence that the licensee must allow a person to view the licence and authorisation certificate if so requested.

However, section 42(3) provides that the condition does not apply if the licensee has given the Gambling and Racing Commission a statement that the licence or authorisation certificate has been lost, stolen or destroyed and the Commission has not given the licensee a replacement.

Currently, the statement that the licence or authorisation certificate has been lost, stolen or destroyed is given under section 37I of the Gaming Machine Act.

In line with the amendments introduced by **clauses 24 and 26** that relocate Division 2B.7 from the Gaming Machine Act to the Gambling and Racing Control Act, **clause 28** amends section 42(3)(b) so that the licence condition does not apply where the licensee has given the Gambling and Racing Commission a statement under the Gambling and Racing Control Act, section 53(2) 'Licences, authorisation certificates and authorisation schedules—replacement copies'.

Under section 42(2), a licensee may restrict viewing of an authorisation schedule to authorised officers exercising a function under the Control Act and this provision remains unamended.

Clause 29 New section 52A

Division 3.3 of the Gaming Machine Act provides for club licence conditions.

New section 52A is inserted by **clause 29** of the Bill, and provides for a new club licence condition about the operation of gaming machines near the casino. Under new section 52A(1) it is a condition of a club licence that if the licensee is related to the casino licensee and operates a gaming machine within 200 metres of the boundary of the casino, the gaming machine must be operated in accordance with section 26 and Part 7 of the Casino (Electronic Gaming) Act.

Section 26 of the Casino (Electronic Gaming) Act provides that casino gaming machines are restricted to a maximum bet limit of $2, must be able to be connected to a central monitoring system, and satisfy any other harm minimisation requirements prescribed by regulation. Part 7 of the Casino (Electronic Gaming) Act establishes requirements for mandatory pre-commitment to a net loss limit set by the gaming machine player, and provides for voluntary pre-commitment to a maximum period of play set by the player.

New section 52A(2) provides that for section 52A(1), terms used in section 26 and Part 7 of the Casino (Electronic Gaming) Act apply to the operation of a gaming machine as if a reference to a casino gaming machine included a reference to a gaming machine, a casino gaming machine authorisation included a reference to an authorisation and a casino licensee included a reference to a class C (i.e. club) licensee.

New section 52A(3) sets out the circumstances in which a gaming machine licensee is 'related' to the casino licensee for this section. This subsection mirrors the existing provisions in section 157B of the Gaming Machine Act that define a club group for the purposes of the gaming machine tax rebate.

In accordance with section 39 of the Gaming Machine Act, a gaming machine licensee commits an offence if the licence is subject to a condition and the licensee fails to comply with a requirement of the condition, with a maximum penalty of 100 penalty units. Under

section 39(3) the offence is a strict liability offence. Section 39(4) provides that the offence does not apply where a licensee took all reasonable steps to comply with a requirement of a condition.

Club licence conditions set out in Division 3.3 of the Gaming Machine Act apply only to club licensees, and as defined in the Dictionary of that Act, all 'club' licensees are either a corporation or an incorporated association established for the benefit of members to achieve eligible objects. See also the analysis in the *Human Rights Implications* section above.

Clause 30 Acquisition of gaming machines—amendment of authorisation schedule etc Section 100 (3), notes

Section 100 of the Gaming Machine Act provides for the Gambling and Racing Commission to amend the licensee's authorisation schedule for the authorised premises where a gaming machine licensee notifies the Commission about the acquisition of a gaming machine.

Under section 37H(2)(d) of the Gaming Machine Act, the register of licences, authorisation certificates and authorisations includes details about any storage permits held by the licensee.

The Notes below section 100(3) currently indicate that the Gambling and Racing Commission must also amend the register of licenses and authorisations to include details about the maximum number of authorisations to be held by the licensee after acquiring the gaming machines mentioned in the notice, with a cross-reference to section 37H(2)(d) of the Gaming Machine Act. A signpost definition to the term 'maximum number' is also included.

In line with the amendments introduced by **clauses 24 and 26** that relocate Division 2B.7 from the Gaming Machine Act to the Gambling and Racing Control Act, **clause 30** replaces the existing notes below section 100(3) with a new note that refers instead to section 52(2) of the Gambling and Racing Control Act, which is where provision for the register of licences, authorisation certificates and authorisations will now be located, and amended to better reflect the amendments made by the Gaming Machine (Reform) Amendment Act.

Clause 31 Storage permit—decision on application Section 127P (2) (d), note 1

Section 127P of the Gaming Machine Act provides for storage permits for gaming machines, and sets out a range of matters about which the Gambling and Racing Commission must be satisfied before issuing a storage permit. These matters include the suitability of the proposed premises for the storage of gaming machines and processes where two or more licensees are storing gaming machines at the same premises.

Under section 37H(2)(d) of the Gaming Machine Act, the register of licences, authorisation certificates and authorisations includes details about any storage permits held by the licensee.

Note 1 below section 127P(2)(d) currently indicates that the Gambling and Racing Commission must include in the register the serial number of, and authorisation number for, a gaming machine stored under a storage permit for a general purpose, with a cross-reference to section 37H(2)(d) of the Gaming Machine Act.

In line with the amendments introduced by **clauses 24 and 26** that relocate Division 2B.7 from the Gaming Machine Act to the Gambling and Racing Control Act, **clause 31** amends Note 1 below section 127P(2)(d) to refer instead to section 52(2)(d) of the Gambling and Racing Control Act, which is where provision for the register of licences, authorisation certificates and authorisations will now be located.

Clause 32 Quarantine permits—notification and issue
Section 127Q (3), note

Section 127Q of the Gaming Machine Act provides for a gaming machine licensee to notify the Gambling and Racing Commission that they need a quarantine permit for a gaming machine and its associated authorisation, and provides for the issuing of the quarantine permit by the Commission for an agreed period between one and three years.

Under section 37H(2)(d) of the Gaming Machine Act, the register of licences, authorisation certificates and authorisations includes details about any quarantine permits held by the licensee.

The note below section 127Q(3) currently indicates that the Gambling and Racing Commission must include in the register the serial number of, and authorisation number for, a gaming machine stored under a quarantine permit, with a cross-reference to section 37H(2)(d) of the Gaming Machine Act.

In line with the amendments introduced by **clauses 24 and 26** that relocate Division 2B.7 from the Gaming Machine Act to the Gambling and Racing Control Act, **clause 32** amends the note below section 127Q(3) to refer instead to section 52(2)(d) of the Gambling and Racing Control Act, which is where provision for the register of licences, authorisation certificates and authorisations will now be located.

Part 6 – Gaming Machine (Reform) Amendment Act 2015

Clause 33 Commencement
Section 2 (4)

Phase 1 of the gaming machine trading scheme introduced by the Gaming Machine (Reform) Amendment Act was due to operate for a maximum of three years and commenced on 31 August 2015. This phase provided for a reduction in the number of gaming machine authorisations in the ACT through forfeiture requirements when gaming machine licensees traded authorisations, and introduced provisions to quarantine and store gaming machines that reduced the number of gaming machines in operation.

Phase 2 of the trading scheme is scheduled to commence no later than 31 August 2018 and provides for the maximum number of gaming machine authorisations to be limited to 15 authorisations per 1,000 adults in the Territory. To achieve this ratio, licensees with 20 or more authorisations would be required to surrender their authorisations on a pro-rata basis to meet the ratio. The Phase 2 provisions are contained in the uncommenced Schedule 1 of the Gaming Machine (Reform) Amendment Act.

The Government has since committed in the Parliamentary Agreement to reduce the number of gaming machine authorisations to 4,000 by 1 July 2020, as part of a range of measures intended to reduce gambling harm.

On 3 April 2018, the Attorney-General announced the appointment of Mr Neville Stevens AO to undertake the Club Industry Diversification Support Analysis, to be completed by 31 May 2018. This Analysis will inform Government decision-making about the pathway to reach 4,000 gaming machine authorisations.

Clause 33 of the Bill amends section 2(4) of the Gaming Machine (Reform) Amendment Act to delay the default commencement of Phase 2 of the gaming machine trading scheme for a further 12 months (until 31 August 2019) to allow time for a revised approach that aligns with current Government policy to be finalised and considered by the Legislative Assembly.