

GAMING CONTROL AMENDMENT (BILL NO. 2) 2009

NOTES ON CLAUSES

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| Clause 1 | Short Title. |
| Clause 2 | Provides for the Bill to commence on Royal Assent excepting Part 3 which will be on a day to be proclaimed. Part 3 deals with changes to the exclusions scheme and this will require system changes before it can commence. |
| Clause 3 | Provides that the <i>Gaming Control Act 1993</i> is the Principal Act. |
| Clause 4 | <p>Replaces the current “good repute” test with a ‘fit and proper’ test consistent with provisions in the <i>Liquor Licensing Act 1990</i>.</p> <p>Currently gaming business operators, as well as their associates are not qualified to hold a licence unless they are assessed by the Commission to be of ‘good repute’.</p> <p>A similar test existed in relation to liquor licensing. However, this was proven in a court of law to be a lesser test than the ‘fit and proper’ test. Advice from the Solicitor-General has also confirmed this to be the case. It is therefore considered to be a weakness in the Act to rely on ‘good repute’ rather than ‘fit and proper’ in assessing the suitability to hold a licence or to be an associate.</p> |
| Clause 5 | Clarifies in section 29, a reference to relevant provisions in section 13 in the granting of casino licence and gaming operator's licence. |
| Clauses 6,7,8 | See notes on Clause 4. |
| Clause 9 | Repeals the formula for calculating a pro rata refund of a gaming licence, or an endorsement to a gaming licence, to be prescribed in regulations. The formula for calculating the refund will be based on days rather than months, as is currently the case, to enable a refund to be more accurately and fairly determined. |
| Clause 10 & 11 | <p>Provides for the account of a registered player (an internet or telephone account customer of a Tasmanian gaming licence holder) to be immediately frozen on receipt of a self or third party exclusion.</p> <p>While it is important that an excluded person’s account be frozen to prevent further wagering, there are instances where it is not appropriate to immediately remit funds to the excluded person. For example, where there are</p> |

outstanding wagers to be determined, or where there are legal constraints such as a fraud investigation, or where the identity of the player has not met the Commonwealth anti-money laundering and counter terrorism requirements.

The amendments provide for the Gaming Commission to give instructions to the licensed provider once the account is frozen, and this would include enabling the licensed provider to continue to freeze funds in certain circumstances.

Clause 12 Enables the Commission to provide an exemption to a licensed provider from the prohibition of wagering with itself in certain circumstances and subject to any conditions determined by the Commission.

Section 76ZW prohibits a licensed provider from wagering with itself in a gaming activity in respect of the provider's gaming business. However, a small number of exceptions to this requirement are necessary, such as when an error has occurred in the processing of a wager and in cases of fraud. These are special circumstances requiring notification to the Commission and involving accounts approved by the Commission.

Clause 13 Repeals section 76ZZE which is redundant because of amendments to section 112P (see notes on clause 27).

Clause 14 Provides for the Commission to grant an emergency procedure to modify the gaming control system or gaming equipment (which includes software) of a Tasmanian gaming licence holder in emergency circumstances.

The Act provides the Commission with the power to approve the control system or gaming equipment of a licence holder but does not accommodate business requirements in emergency circumstances where an urgent change is required to the control system or gaming equipment such as to prevent a fraud occurring or a wagering system failure.

Clause 15 Provides for minor gaming permit fees for a class or classes of authorised activities to be prescribed by the Regulations. Currently fees are determined by the Commission.

Clause 16 Enables the Commission to issue a minor gaming permit for a period not exceeding five years. Under the Act, a minor gaming permit is for a period of 12 months but there have been many applications for extensions beyond the 12 month period.

Clause 17 Clarifies that contracts approved by the Commission apply to gaming activities (activities of a Tasmanian gaming licence holder) in addition to gaming.

- Clause 18 Expands the Commission's rule making powers in relation to access to cash. This will enable the Commission to include in its rules the implementation of new measures announced by the Government in response to the Social and Economic Impact Study into Gambling in Tasmania.
- Clause 19 Clarifies that Part 5, Division 3 deals with exclusions from gaming or wagering in premises.
- Clause 20 Repeals a redundant provision as betting exchange exclusions from a registered player (internet and telephone account based player exclusions) are dealt with separately in Division 7 subdivision 2 of Part 4A.
- Clause 21 Clarifies that a Commissioner of Police exclusion order includes "gaming activities" as defined in the Act.
- Clause 22 & 23 Enables a totalizator operator and its employees; a gaming operator (Network Gaming) and its employees; or a police officer to be in receipt of the list of excluded persons under section 112I. This is the list of excluded persons from gaming and wagering premises.
- Section 112IA provides that the Commission disseminate the list, or relevant parts of the list, to specified licence holders (Casino licence holder, licensed premises gaming licence holder (a hotel or club), and a Tasmanian gaming licence holder).
- Section 112IB provides that the licence holder must not directly promote gambling to an excluded person of the list. New penalties apply for a breach of this section (a fine up to 1000 penalty units - \$120 000).
- Clause 24,25 Clarifies that the prohibition on excluded persons wagering includes "gaming activities".
- Clause 26 This Division establishes a new requirement for the Gaming Commission to introduce one or more responsible gambling codes of practice for a class or classes of prescribed licence holders. Prescribed licence holders include any gambling licence or permit holder.
- The code is to be developed by the Commission. The Commission is to notify the affected licensees of the establishment or amendment of a code and the licensee must ensure the code is available to be inspected by the public.
- The code may provide for a range of matters such as advertising and inducements, access to cash, provision of food and alcohol in gaming areas, clocks, lighting, warning signs, player information, staff training or any other matter approved by the Minister.

Note: under clause 28 section 112S is amended to include a breach of a code of practice as grounds for disciplinary action covered under section 112T.

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| Clause 27 | <p>The Tasmanian Gaming Commission requires the power to be able to issue Accredited Testing Facilities with directions in line with the conditions that are placed on their accreditation.</p> <p>By referring to “prescribed licence holders”, directions will include a listing on the Roll of Manufacturers, Suppliers and Testers of Gaming Equipment.</p> |
| Clause 28 | <p>Includes failure to comply with Commission directions or a code of practice as grounds for disciplinary action.</p> |
| Clause 29 | <p>Under the current disciplinary provisions of section 112T, the maximum penalty for a licensee of a hotel or club gaming premise (licensed premise gaming licence) is the same as for a special employee at 50 penalty units (\$6 000). A special employee has less responsibility from that of the licensee of gaming premises in ensuring an appropriate awareness of, and control over, the operation of a gaming venue.</p> <p>The amendment increases the fine in respect of a licensee to not exceeding 500 penalty units (\$60 000).</p> |
| Clause 30 | <p>In some circumstances the Commission can become aware that breaches of the Act have occurred. However, at the time of investigating the matter, the person no longer holds a prescribed licence. Advice from the Solicitor-General indicates that the definition of a prescribed licence holder only covers a person who is a current licence holder, not a person who once held such a licence.</p> <p>The amendment enables the Commission to take disciplinary action under section 112T against a person where it can be established that there was a breach in the act while in possession of the licence.</p> |
| Clause 31 | <p>Increases the penalty for venue operators in relation to access to gambling by minors to be consistent with penalties applying to a licensee in respect of a breach of the Liquor Licensing Act. Current penalties of up to 20 penalty units (\$2 400) applying to a licence holder (venue operator) are increased to 100 penalty units (\$12 000).</p> |
| Clause 32 | <p>Expands the current offence of a venue operator allowing a minor to enter and remain in a gaming area to include a special employee allowing a minor to enter or remain in the gaming area.</p> |

- Clause 33 Increases the current penalties of up to 20 penalty units (\$2 400) applying to an employee of a licence holder (venue operator), or an adult facilitating gaming by a minor, to 50 penalty units (\$6 000) to be consistent with penalties applying in respect of a similar breach of the Liquor Licensing Act.
- Clause 34 Increases the penalty for failure by venue operators to erect appropriate warning notices and signs at entry points of gaming areas and on gaming machines.
- Current penalties of up to 40 penalty units (\$4 800) are increased to 100 penalty units (\$12 000).
- Clause 35 Makes it clear in the Act that a function of the Tasmanian Gaming Commission is to foster responsible gambling and to minimise harm from problem gambling.
- Clause 36 Amends the formula for calculating a pro rata refund of a licensed premise gaming licence to be based on days rather than months to enable a refund to be accurately and fairly determined.
- Clause 37 Provides for an annual listing fee be prescribed in regulations to recoup the administrative costs associated with maintaining the Roll of Manufacturers, Suppliers and Testers of Gaming Equipment and provides for a proportional refund if ceases from the Roll.
- Under the current provisions of section 70, the Commission is required to maintain the Roll and section 71 requires a person who manufacturers or supplies gaming equipment or provides testing services to apply to the Commission to be listed on the Roll. However the initial one-off application fee does not cover the ongoing costs of administering the Roll.
- Clause 38 Provides for minor gaming permit fees for a class or classes of authorised activities to be prescribed by the Regulations.
- Currently under the Act, a minor gaming operator must pay the Commission a permit fee determined by the Commission as directed by the Commission.
- A review of minor gaming activities indicated that the current permit fee structure does not adequately recover costs and that it is inequitable that the same fee applies to a minor gaming operator. For example, whether it conducts a single small raffle or several larger raffles.
- Clause 39 Repeals a redundant subsection 150B(6) of the Act.
- Clause 40 Expands the definition of “gaming regulation agency” under the secrecy provisions (Section 157) in the Act by

removing the reference to states and territories in which personal information may be disclosed, thereby enabling information to be provided to any gambling regulation authority.

Currently as drafted, the State cannot share information with regulators from other countries.

Clause 41 Provides for the issuance of infringement notices as an alternative to pursuing a matter through the court, which can be costly and administratively cumbersome for minor breaches. This approach has been introduced in the Liquor Licensing Act.

Clause 42 Repeals clauses under further transitional and savings provisions that are no longer relevant.

Clause 43 Provides that the *Gaming Control Act 1993* is the Principal Act for the purpose of Part 3 of the Bill.

Clause 44 Enhances the compliance of the exclusions scheme by simplifying the type of exclusion to just two:

(a) an exclusion from the whole premises; or

(b) an exclusion from gaming or wagering in the premises. (i.e allows the person to enter the premises to have a meal or drink but not to gamble).

A penalty applies where a person excluded from gambling in the premises enters the gaming area.

The amendments also provide for minimum period of 6 months before a self-exclusion can be revoked.

The amendments provide that an exclusion can be amended with the approval of the Gaming Commission. Currently this can only be achieved by the person revoking their exclusion and seeking a new one. There is a risk the person may only revoke or delay seeking replacement of the exclusion, and this could lead to a relapse in problem gambling.

Clause 45 Applies the same enhancements to self exclusions in clause 44, to exclusions initiated at the request of an interested person.

Enables the Commission to amend a third party exclusion order. A person who is the subject to an amendment may apply for a review of the Commission's decision before the Magistrates Court.

Clause 46 Currently there is no maximum period for an exclusion. This creates problems because the details of the excluded

person can become out of date (such as photographs) or the person is no longer living in the State. The amendments therefore provide for a maximum period of three years.

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| Clause 47 | Applies the same two types of exclusions referred to in clause 44 and 45 to an exclusion order initiated by a specified licence holder. |
| Clause 48 | Amends this provision in relation to the duration of exclusion order by specified licence holder to make it subject to the three year expiry of exclusion notices and orders under new section 112DA. |
| Clause 49 | Repeals redundant legislation set out in Schedule 1. |