

South Australia

# **Gaming Machines (Miscellaneous) Amendment Bill 2008**

A BILL FOR

An Act to amend the *Gaming Machines Act 1992*; and to make a related amendment to the *Independent Gambling Authority Act 1995*.

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### **Part 2—Amendment of *Gaming Machines Act 1992***

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 4—Application of this Act
- 6 Amendment of section 7—Conduct of proceedings
- 7 Amendment of section 7A—Powers to make interim or conditional decisions and accept undertakings from parties
- 8 Insertion of section 8A
  - 8A Power of Commissioner to refer questions to Court
- 9 Amendment of section 9—Power to disclose information to certain authorities
- 10 Insertion of sections 10A and 10B
  - 10A Principles, codes of practice, etc
  - 10B Recognitions
- 11 Amendment of section 12—Criminal intelligence
- 12 Amendment of section 14—Licence classes
- 13 Amendment of section 15—Eligibility criteria
- 14 Insertion of sections 17A and 17B
  - 17A Proposed premises certificate
  - 17B Social effect certificate
- 15 Substitution of heading to Part 3 Division 3
- 16 Amendment of section 18—Form of application
- 17 Insertion of section 23A
  - 23A Discretion to treat application for gaming machine licence as application for proposed premises certificate
- 18 Insertion of heading in Part 3
- 19 Repeal of section 26
- 20 Amendment of section 27—Conditions
- 21 Amendment of section 27A—Gaming machine entitlements
- 22 Amendment of section 27B—Transferability of gaming machine entitlements
- 23 Amendment of section 29—Certain applications require advertisement

## Gaming Machines (Miscellaneous) Amendment Bill 2008

## Contents

- 
- 24 Amendment of heading to Part 3 Division 6
- 25 Insertion of section 33A  
33A Surrender or revocation of social effect certificate
- 26 Insertion of Part 3 Division 6A  
Division 6A—Civil penalties
- 35A Interpretation
- 35B Contravention notice
- 35C Contravention reminder notice
- 35D Acceptance of contravention notice
- 35E Request for withdrawal of contravention notice
- 35F Withdrawal of contravention notice
- 35G Effect of election to be prosecuted
- 35H Civil penalty
- 35I Civil penalty notice
- 35J Protection against prosecution
- 27 Redesignation of section 35A
- 28 Amendment of section 36A—Inquiry
- 29 Amendment of section 36B—Taking of disciplinary action against licensees
- 30 Substitution of section 39  
39 Approval of form of supply contract
- 31 Amendment of section 40—Approval of gaming machines and games
- 32 Amendment of section 41A—Applications to be given to Commissioner of Police
- 33 Amendment of section 42—Discretion to grant or refuse approval
- 34 Amendment of section 43—Intervention by Commissioner of Police
- 35 Amendment of section 44A—Prohibition of links between dealers and other licensees
- 36 Amendment of section 45—Offence of being unlicensed
- 37 Substitution of section 47  
47 Offence of selling or supplying gaming machines, components or equipment without approved contract or with inducement
- 38 Amendment of section 51—Persons who may not operate gaming machines
- 39 Amendment of section 58—Powers in relation to minors in gaming areas
- 40 Substitution of section 64  
64 Sealing of gaming equipment and gaming machines
- 41 Amendment of section 71—Powers of authorised officers
- 42 Amendment of section 73A—Sport and Recreation Fund
- 43 Amendment of section 73B—Charitable and Social Welfare Fund
- 44 Amendment of section 73BA—Gamblers Rehabilitation Fund
- 45 Amendment of section 74—Annual reports
- 46 Repeal of sections 74A and 74B
- 47 Insertion of section 76A  
76A Financing of licensee's business
- 48 Amendment of section 77—Certain agreements and arrangements are unlawful
- 49 Repeal of section 83
- 50 Repeal of section 86A
- 51 Amendment of section 87—Regulations
- 52 Amendment of Schedule 1—Gaming machine licence conditions

## Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Independent Gambling Authority Act 1995*

- 1 Amendment of section 15B—Voluntary barring of excessive gamblers

## Part 2—Transitional provisions

- 2 Principles and codes of practice

- 3 Application for gaming machine licence  
4 Exemptions
- 

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Gaming Machines (Miscellaneous) Amendment Act 2008*.

#### 2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Gaming Machines Act 1992*

#### 10 4—Amendment of section 3—Interpretation

- (1) Section 3(1)—before the definition of *approved* insert:

*advanced problem gambling intervention training* means a course of training recognised under section 10B(1)(b) as advanced problem gambling intervention training;

- 15 *advertising code of practice*—see section 10A(1)(d);

- (2) Section 3(1)—after the definition of *approved gaming machine manager* insert:

*approved gaming machine technician* means a person approved under Part 4 as a gaming machine technician for the holder of a gaming machine service licence;

- 20 (3) Section 3(1), definition of *Board*—delete the definition

- (4) Section 3(1)—after the definition of *cash facility* insert:

*certificate* means a proposed premises certificate or a social effect certificate;

- (5) Section 3(1), definition of *gaming equipment*—after "means" insert:

any of the following for use in connection with a gaming machine

- 25 (6) Section 3(1)—after the definition of *prescribed gaming machine component* insert:

*proposed premises certificate*—see section 17A;

*responsible gambling agency* means a person recognised under section 10B(1)(a) as a responsible gambling agency;

*responsible gambling code of practice*—see section 10A(1)(e);

(7) Section 3(1)—after the definition of *responsible person* insert:

*social effect certificate*—see section 17B;

### 5—Amendment of section 4—Application of this Act

Section 4—after subsection (1) insert:

- 5 (1a) The Governor may, by regulation, apply provisions of this Act, with or without modification, to a person who is not required to hold a gaming machine licence because of a Commonwealth law as if the person holds a gaming machine licence.

### 6—Amendment of section 7—Conduct of proceedings

10 Section 7—after subsection (2) insert:

- (3) The Commissioner must, subject to subsection (4), make a reasonable attempt to achieve, by conciliation, agreement between an applicant under this Act and any objectors in relation to the application and, if agreement is achieved between the parties, have regard to the agreement in determining the matter.
- 15 (4) The requirement to conciliate does not arise—
- (a) in relation to the Commissioner of Police if the Commissioner of Police lodges an objection; or
- (b) in other circumstances that the Commissioner considers makes conciliation inappropriate.
- 20

### 7—Amendment of section 7A—Powers to make interim or conditional decisions and accept undertakings from parties

(1) Section 7A(1)(b)—after "licence" insert:

, certificate

25 (2) Section 7A(3)—after "licence" wherever occurring insert:

, certificate

### 8—Insertion of section 8A

After section 8 insert:

#### 8A—Power of Commissioner to refer questions to Court

30 The Commissioner may refer for hearing and determination by the Court—

- (a) proceedings that involve questions of substantial public importance; or
- (b) a question of law that arises in proceedings before the Commissioner; or
- 35 (c) any other matter that should, in the public interest or in the interests of a party to the proceedings, be heard and determined by the Court.

**9—Amendment of section 9—Power to disclose information to certain authorities**

Section 9—after paragraph (b) insert:

- 5 (c) if the information is disclosed in a form that does not identify the person to whom it relates—any other person, or in any other way, the Commissioner (in the exercise of an unqualified discretion) considers appropriate in the public interest.

**10—Insertion of sections 10A and 10B**

Before section 11 insert:

10 **10A—Principles, codes of practice, etc**

- (1) For the purposes of this Act, the Authority may, by notice in the Gazette, prescribe—
- 15 (a) an inquiry process that must precede an application for a social effect certificate; and
  - (b) principles for assessing the social effect of the grant of a gaming machine licence; and
  - (c) principles for assessing whether a game is likely to lead to an exacerbation of problem gambling; and
  - (d) an advertising code of practice; and
  - 20 (e) a responsible gambling code of practice; and
  - (f) the form of a responsible gambling agreement.
- (2) Without limiting the generality of subsection (1)(e), the responsible gambling code of practice may—
- 25 (a) require the display of signs, and the provision of information at licensed premises relating to responsible gambling and the availability of services to address problems associated with gambling; and
  - (b) require gaming machine licensees to have a program for early intervention in problem gambling designed to promote—
- 30 (i) early identification of persons engaging in problem gambling, including through observation of the attendance patterns, behaviour and statements of gamblers; and
  - 35 (ii) the provision of information relating to responsible gambling and the availability of services to address problems associated with gambling to persons so identified; and
  - 40 (iii) the use of the barring procedures under this Act in relation to persons so identified; and

(iv) the referral of persons so identified to the Department within the meaning of the *Problem Gambling Family Protection Orders Act 2004*; and

(c) deal with the provision of training to staff relating to the early intervention program and generally to responsible gambling on gaming machines and the services available to address problems associated with gambling; and

(d) include other matters designed to reduce the incidence of problem gambling.

(3) The Authority may, by subsequent notice in the Gazette, vary or revoke a notice under this section.

(4) Before the Authority publishes a notice in the Gazette under this section, the Authority must—

(a) give notice in writing of the proposed notice to a body representative of licensees; and

(b) consider any representations made by the body about the proposed notice within 28 days after the notice is given or a longer period allowed in the notice.

(5) A notice published in the Gazette under this section may come into operation on the day on which it is published or on a later day or days specified in the notice.

(6) Sections 10 and 10A of the *Subordinate Legislation Act 1978* apply to a notice published in the Gazette under this section as if it were a regulation within the meaning of that Act.

(7) The Authority must review the process, principles, codes and form prescribed under this section at least every 5 years.

(8) The Authority must seek and consider written submissions from a body representative of gaming machine licensees and the public when conducting a review.

### **10B—Recognitions**

(1) For the purposes of this Act, the Authority may, by notice in the Gazette, recognise—

(a) a person as a responsible gambling agency; and

(b) a course of training as advanced problem gambling intervention training.

(2) The Authority may, by subsequent notice in the Gazette, withdraw a recognition under this section.

(3) Before the Authority publishes a notice in the Gazette under this section, the Authority must—

(a) give notice in writing of the proposed notice to a body representative of licensees; and

- (b) consider any representations made by the body about the proposed notice within 28 days after the notice is given or a longer period allowed in the notice.

(4) If the Authority—

- (a) refuses to recognise a person or a course under this section; or
- (b) withdraws a recognition of a person or a course under this section,

the person or the provider of the course may apply to the Minister for a review of that decision.

- (5) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the recognition (as appropriate).

### 11—Amendment of section 12—Criminal intelligence

Section 12(2)(a)—after "licence" insert:

, certificate

### 12—Amendment of section 14—Licence classes

- (1) Section 14(1)(b)—delete "to sell or supply to the Board" and substitute:

, under a contract in a form approved by the Commissioner, to sell or supply to the holder of a gaming machine licence or a gaming machine service licence

- (2) Section 14(1)(c)—delete paragraph (c)

- (3) Section 14(2)(b)—delete paragraph (b)

### 13—Amendment of section 15—Eligibility criteria

Section 15(4) and (5)—delete subsections (4) and (5) and substitute:

- (4) A gaming machine licence will not be granted unless the applicant for the licence held a social effect certificate for the site of the premises in respect of which the licence is sought at the time of making the application for the licence.

- (5) A gaming machine licence will not be granted unless—

- (a) the applicant for the licence satisfies the Commissioner, by such evidence as the Commissioner may require—

- (i) that the proposed gaming area, or gaming areas, within the premises in respect of which the licence is sought is or are suitable for the purpose; and
- (ii) that the proposed layout of gaming machines in a gaming area is suitable for the proper conduct of gaming operations within the area; and

- (iii) that the arrangements proposed for the security of the premises, each gaming area and the gaming machines, and of the gaming operations generally, are adequate; and
- (iv) that the conduct of the proposed gaming operations on the premises would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the premises; and
- (v) that the size of the proposed gaming operations on the premises would not be such that they would predominate over the undertaking ordinarily carried out on the premises; and
- (vi) that the conduct of the proposed gaming operations on the premises would not detract unduly from the character of the premises, the nature of the undertaking carried out on the premises or the enjoyment of persons ordinarily using the premises (apart for the purpose of gaming); and
- (vii) that no proposed gaming area is so designed or situated that it would be likely to be a special attraction to minors; and
- (viii) that the proposed gaming area is within a place or area that is enclosed as defined by the *Tobacco Products Regulation Act 1997*; or
- (b) the applicant holds a proposed premises certificate for the premises and satisfies the Commissioner, by such evidence as the Commissioner may require—
- (i) that the conditions (if any) on which the certificate was granted have been complied with; and
- (ii) that the premises have been completed in accordance with the plans approved in the certificate or a variation of those plans later approved by the Commissioner.

#### 14—Insertion of sections 17A and 17B

After section 17 insert:

##### 17A—Proposed premises certificate

- (1) A proposed premises certificate approving plans submitted by the applicant for the certificate will not be granted unless—
- (a) the applicant holds a social effect certificate for the site of the proposed premises; and
- (b) the applicant satisfies the Commissioner, by such evidence as the Commissioner may require—



- 5
- (i) that the requirements of section 15(4)(a) will be met in relation to the proposed premises if completed in accordance with the plans; and
- (ii) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the proposed premises for the conduct of gaming operations have been obtained.
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- (2) A proposed premises certificate must state the maximum number of gaming machines to be operated under the licence and may state conditions to which the licence should be subject.
- (3) A certificate granted under this section may, on notification to the Commissioner, be transferred to another person.
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- (4) The Commissioner may, on application by the holder of a proposed premises certificate, approve a variation of the plans approved in the certificate.

### **17B—Social effect certificate**

- (1) A social effect certificate—
- 20
- (a) may only be granted in relation to a specific site in which the applicant has a proprietary interest; and
- (b) may not be granted if an application for a gaming machine licence in respect of licensed premises at the site could not be granted under section 15A; and
- (c) ceases to be in force 18 months after the date on which it is granted.
- 25
- (2) A social effect certificate may not be renewed or extended but the holder of a social effect certificate may, on the expiration of the certificate, apply for the grant of a new social effect certificate.
- 30
- (3) A social effect certificate will only be granted if the applicant satisfies the Commissioner, by such evidence as the Commissioner may require, that the grant of a gaming machine licence in respect of premises on the site would not be contrary to the public interest on the ground of the likely social effect on the local community and, in particular, the likely effect on problem gambling within the local community.
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- (4) In assessing the social effect of the grant of a gaming machine licence, the Commissioner—
- (a) must apply the principles approved by the Authority for assessing the social effect of the grant of a gaming machine licence (see section 10A); and

- 5
- (b) must not have regard to the economic effect that the granting of a gaming machine licence might have on the business of other licensed premises in the relevant locality (except insofar as that economic effect may be relevant to an assessment of the likely social effect of the grant of the licence on the local community); and
- (c) must take each site in respect of which a social effect certificate is then in force into account as if a gaming machine licence were held for licensed premises on the site.
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- (5) A certificate granted under this section may, on notification to the Commissioner, be transferred to another person with a proprietary interest in the site to which the certificate relates.
- (6) The Commissioner must—
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- (a) keep a register of social effect certificates; and
- (b) cause the register to be published on a website to which the public has access free of charge.
- (7) The Commissioner must—
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- (a) record on the register for each social effect certificate—
- (i) the name of the holder of the certificate; and
- (ii) the date on which it was granted; and
- (iii) the site to which it relates; and
- (b) remove from the register any social effect certificate that has ceased to be in force.

### 15—Substitution of heading to Part 3 Division 3

25 Heading to Part 3 Division 3—delete the heading to Division 3 and substitute:

#### **Division 3—Applications for licences and certificates**

### 16—Amendment of section 18—Form of application

- (1) Section 18(1)—after "licence" insert:
- or a certificate
- 30
- (2) Section 18(1)(a)—after "form" insert:
- (which may include requirements relating to consultation and reports)
- (3) Section 18(1)—after paragraph (b) insert:
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- (ba) may, in the case of an application for a social effect certificate, be made only if the inquiry process prescribed by the Authority has been completed (see section 10A);
- (4) Section 18(1)—after paragraph (c) insert:
- (d) may, in the case of an application for a proposed premises certificate or a social effect certificate, be made by a person who does not yet hold the requisite liquor licence.

- (5) Section 18(4)—after "gaming machine licence" insert:  
or a proposed premises certificate

**17—Insertion of section 23A**

After section 23 insert:

**23A—Discretion to treat application for gaming machine licence as application for proposed premises certificate**

The Commissioner may treat an application for a gaming machine licence for proposed premises as if it were an application for a proposed premises certificate having regard to the extent to which the proposed premises are uncompleted.

**18—Insertion of heading in Part 3**

After section 24 insert:

**Division 3AA—Other provisions relating to licences**

**19—Repeal of section 26**

Section 26—delete the section

**20—Amendment of section 27—Conditions**

Section 27(7)(b)(ii)—delete subparagraph (ii) and substitute:

(ii) that at other times—

- (A) if the licensee has entered into a responsible gambling agreement with a responsible gambling agency in the form prescribed by the Authority (see section 10A) and has provided a copy of the agreement to the Commissioner—there are at least 6 hours in each 24 hour period (which may be a continuous period of 6 hours, or 2 separate periods of 3 hours or 3 separate periods of 2 hours) during which gaming operations cannot be conducted on the premises; and
- (B) in any other case—gaming operations cannot be conducted on the premises before 10am on Monday to Friday and between 2am and 10am on Saturday and Sunday.

**21—Amendment of section 27A—Gaming machine entitlements**

Section 27A—after subsection (2) insert:

(3) The Commissioner must—

- (a) keep a register of licensees holding gaming machine entitlements; and
- (b) cause the register to be published on a website to which the public has access free of charge.

- (4) The Commissioner must record on the register—
- (a) the number of gaming machine entitlements held by each licensee; and
  - (b) the premises to which the gaming machine entitlements relate.

## **22—Amendment of section 27B—Transferability of gaming machine entitlements**

- (1) Section 27B(1)(b)—after " may transfer" insert:  
    , absolutely or for a limited period,
- (2) Section 27B(1)(c)—after " may transfer" insert:  
    , absolutely or for a limited period,
- (3) Section 27B(2)—delete subsection (2) and substitute:
- (2) The approved trading system is a system established by the regulations.
- (4) Section 27B—after subsection (7) insert:
- (8) No liability to stamp duty arises in relation to a transfer of gaming machine entitlements under subsection (1)(b), (c) or (f) executed after the commencement of this subsection.

## **23—Amendment of section 29—Certain applications require advertisement**

- (1) Section 29(1)—after paragraph (a) insert:
- (ab) an application for the grant of a proposed premises certificate;
  - (ac) an application for the grant of a social effect certificate;
- (2) Section 29(2)(a)(ii)—after "licence" insert:  
    , a proposed premises certificate or a social effect certificate
- (3) Section 29(2)(b)—after "licence" insert:  
    , a proposed premises certificate or a social effect certificate

## **24—Amendment of heading to Part 3 Division 6**

Heading to Part 3 Division 6—after "licences" insert:  
    and certificates

## **25—Insertion of section 33A**

After section 33 insert:

### **33A—Surrender or revocation of social effect certificate**

- (1) The holder of a social effect certificate may, by notice in writing to the Commissioner, surrender the social effect certificate and the certificate will cease to be in force on acceptance by the Commissioner of the surrender.

- (2) The Commissioner cannot accept a surrender of a social effect certificate while there is an application before the Commissioner for a gaming machine licence in respect of premises on the site to which the certificate relates.
- 5 (3) The Commissioner may, by notice in writing to the holder of a social effect certificate, revoke the certificate if satisfied that the holder has ceased to have a proprietary interest in the site to which the certificate relates.
- (4) The Commissioner must, before revoking a social effect certificate—
- 10 (a) give notice in writing to the holder of the certificate of the proposed revocation; and
- (b) allow the holder a period of 21 days (or such longer period as the Commissioner may in any particular case allow) to show cause why the certificate should not be revoked.

## 15 26—Insertion of Part 3 Division 6A

After Part 3 Division 6 insert:

### Division 6A—Civil penalties

#### 35A—Interpretation

20 An alleged offence will, for the purposes of this Division, be regarded as *trifling* if, and only if—

- (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the offence; or
- (b) the alleged offender could not, in all the circumstances, reasonably have averted committing the offence; or
- 25 (c) the conduct allegedly constituting the offence was merely a technical, trivial or petty instance of the offence.

#### 35B—Contravention notice

- (1) If an authorised officer is satisfied that the holder of a gaming machine licence is guilty of a prescribed offence, the authorised officer may issue a contravention notice to the licensee.
- 30 (2) A contravention notice must—
- (a) contain an allegation that the licensee committed an offence and specify—
- 35 (i) the name of the licensee or other information identifying the licensee; and
- (ii) the general nature of the alleged offence; and
- (iii) the time and date of the alleged offence; and
- (iv) the place at which the offence is alleged to have been committed; and

- (b) state that the licensee must, within 28 days from (and including) the date of the notice, elect—
- (i) to accept the contravention notice; or
  - (ii) to request the withdrawal of the contravention notice on the ground that the licensee did not commit the offence or that the offence is trifling; or
  - (iii) to be prosecuted for the offence; and
- (c) be accompanied by a form by which the licensee may make the election; and
- (d) set out how the form may be returned to the Commissioner; and
- (e) include a statement of the outcome if the licensee fails to make the required election.

(3) A contravention notice cannot be issued to a licensee for an alleged offence—

- (a) if a prosecution has been commenced against the licensee for the offence; or
- (b) if the time for prosecuting the offence has expired; or
- (c) in circumstances prescribed by the regulations.

(4) If a contravention notice is left at licensed premises with a person apparently employed or engaged in the business conducted under a gaming machine licence, the person must, as soon as is reasonably practicable after receiving the notice, give the notice to a responsible person for the licensed premises.

Maximum penalty: \$2 500.

### **35C—Contravention reminder notice**

(1) If a licensee to whom a contravention notice has been issued has not made an election as required by the notice within 28 days from (and including) the date of the notice, the Commissioner must send a contravention reminder notice to the licensee.

(2) A contravention reminder notice must—

- (a) identify the contravention notice to which it relates; and
- (b) contain an allegation that the licensee committed an offence and specify—

- (i) the name of the licensee or other information identifying the licensee; and
- (ii) the general nature of the alleged offence; and
- (iii) the time and date of the alleged offence; and
- (iv) the place at which the offence is alleged to have been committed; and

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- (c) state that the licensee must within 14 days from (and including) the date of the contravention reminder notice, elect—
- (i) to accept the contravention notice; or
  - (ii) to request the withdrawal of the contravention notice on the ground that the licensee did not commit the offence or that the offence is trifling; or
  - (iii) to be prosecuted for the offence; and
- (d) be accompanied by a form by which the licensee may make the election; and
- (e) set out how the form may be returned to the Commissioner; and
- (f) include a statement of the outcome if the licensee fails to make the required election; and
- (g) set out the reminder notice fee payable by the licensee and how it may be paid.
- (3) If a contravention reminder notice is sent to a licensee, the licensee must pay the Commissioner the prescribed reminder notice fee.

### 35D—Acceptance of contravention notice

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- The acceptance of a contravention notice for an alleged offence—
- (a) does not constitute an admission of guilt or of any civil liability (apart from a liability under this Division); and
  - (b) will not be regarded as evidence tending to establish guilt or any civil liability (apart from a liability under this Division); and
  - (c) cannot be referred to in any report provided to a court for the purposes of determining sentence for any offence.

### 35E—Request for withdrawal of contravention notice

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- (1) If a licensee elects to request the withdrawal of a contravention notice, the Commissioner is not obliged to conduct an inquiry but may require the licensee to provide further information.
  - (2) The Commissioner may require information contained in, or supporting, a request for withdrawal to be verified by statutory declaration.
  - (3) A decision on a request for withdrawal is final and not subject to any form of review.
  - (4) If the Commissioner decides not to withdraw the contravention notice, the Commissioner must send a withdrawal refusal notice to the licensee.
  - (5) A withdrawal refusal notice must—
    - (a) identify the contravention notice to which it relates; and

- (b) contain an allegation that the licensee committed an offence and specify—
- (i) the name of the licensee or other information identifying the licensee; and
  - (ii) the general nature of the alleged offence; and
  - (iii) the time and date of the alleged offence; and
  - (iv) the place at which the offence is alleged to have been committed; and
- (c) state that the licensee must within 14 days from (and including) the date of the withdrawal refusal notice elect—
- (i) to accept the contravention notice; or
  - (ii) to be prosecuted for the offence; and
- (d) be accompanied by a form by which the licensee may make the election; and
- (e) set out how the form may be returned to the Commissioner; and
- (f) include a statement of the outcome if the licensee fails to make the required election; and
- (g) set out the withdrawal request fee payable by the licensee and how it may be paid.
- (6) If a withdrawal refusal notice is sent to a licensee, the licensee must pay the Commissioner the prescribed withdrawal request fee.

### **35F—Withdrawal of contravention notice**

- (1) The Commissioner may withdraw a contravention notice for an alleged offence if satisfied that—
- (a) the licensee did not commit the offence or the offence is trifling; or
  - (b) the licensee should be prosecuted for the offence; or
  - (c) the notice is defective; or
  - (d) the licensee did not receive the notice until after 28 days from (and including) the date of the notice, or has never received it, as a result of administrative error or failure of the postal system (and the licensee has not accepted the notice).
- (2) The withdrawal of a contravention notice is effected by giving written notice of the withdrawal to the licensee.
- (3) The notice of withdrawal must specify the reason for withdrawal.
- (4) A contravention notice may be withdrawn under subsection (1)(b) or (c) despite acceptance by the licensee of the notice.



(5) If a contravention notice for an alleged offence is withdrawn despite acceptance by the licensee of the notice, the fact that the licensee accepted the notice is not admissible in any prosecution for the offence as evidence against the licensee.

5 (6) If a contravention notice for an alleged offence is withdrawn and the notice of withdrawal does not specify that the notice is withdrawn for the purposes of prosecuting the licensee, the licensee cannot be prosecuted for the offence unless the licensee has been given a fresh contravention notice and allowed the opportunity to elect to accept the notice, to request withdrawal of the notice or to be prosecuted for the offence.

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### 35G—Effect of election to be prosecuted

If a licensee elects in accordance with this Division to be prosecuted for an offence alleged in a contravention notice, the contravention notice will be taken to have been withdrawn in respect of the offence.

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### 35H—Civil penalty

- (1) A licensee to whom a contravention notice has been issued for an alleged offence is liable to a civil penalty for the alleged offence if—
- 20 (a) the licensee accepts the notice; or
- (b) the licensee's request for withdrawal of the notice is refused and the licensee does not elect to be prosecuted for the offence within 14 days from (and including) the date of a withdrawal refusal notice sent to the licensee; or
- 25 (c) the licensee does not make the required election within 14 days from (and including) the date of a contravention reminder notice sent to the licensee in respect of the contravention notice.
- (2) However, if the contravention notice is withdrawn, the licensee ceases to be liable to the civil penalty for the alleged offence.
- 30

### 35I—Civil penalty notice

- (1) The Commissioner must issue civil penalty notices as follows:
- 35 (a) within 3 months after the end of each financial year, the Commissioner must give each licensee who is liable to a civil penalty for alleged offences committed during that year a civil penalty notice;
- (b) before accepting the surrender of a licence from a licensee who is liable to a civil penalty, the Commissioner must give the licensee a civil penalty notice.
- (2) The amount of the civil penalty payable by a licensee is to be calculated in accordance with the regulations.
- 40

- 5
- (3) The amount payable as a civil penalty for an alleged offence—
- (a) may vary according to the nature of the offence, the nature and number of offences previously committed or allegedly committed or any other factor specified in the regulations; and
  - (b) must not exceed \$15 000 or half the maximum fine for the offence, whichever is the lesser.
- 10
- (4) The amount of any contravention reminder notice fee or withdrawal request fee payable by the licensee that is outstanding at the date of a civil penalty notice issued to the licensee is to be added to the civil penalty and, for the purposes of this Act, forms part of the civil penalty to which the notice relates.
- 15
- (5) A civil penalty notice must—
- (a) specify the amount of the civil penalty for which the licensee is liable; and
  - (b) set out how that amount has been calculated; and
  - (c) specify the details of each alleged offence resulting in the liability; and
  - (d) state that the civil penalty must be paid within 28 days from (and including) the date of the notice; and
  - (e) set out how the civil penalty may be paid.
- 20
- (6) A licensee may enter into an arrangement with the Commissioner for the payment of a civil penalty in instalments or for an extension of the due date for payment of a civil penalty.
- 25
- (7) A civil penalty (or instalment of a civil penalty) is recoverable under Part 8 as if it were an amount due and payable under that Part.

### **35J—Protection against prosecution**

30 A licensee who has been given a civil penalty notice for an alleged offence and has paid the civil penalty is not liable to be prosecuted for the offence.

### **27—Redesignation of section 35A**

Section 35A—redesignate the section as section 35K

### **28—Amendment of section 36A—Inquiry**

Section 36A—after subsection (1) insert:

- 35
- (1a) Without limiting when the Commissioner may determine to hold an inquiry, the Commissioner must hold an inquiry to determine whether there is proper cause for disciplinary action against the holder of a gaming machine licence if the licensee becomes liable under Division 6 to a civil penalty that is greater than an amount
- 40
- prescribed by the regulations.

**29—Amendment of section 36B—Taking of disciplinary action against licensees**

- (1) Section 36B(4)(a)—after "offence" insert:  
or is liable to a civil penalty for an alleged offence
- 5 (2) Section 36B(4)—after "offence" insert:  
or alleged offence
- (3) Section 36B(4)—after "giving rise to the offence" insert:  
or alleged offence

**30—Substitution of section 39**

10 Section 39—delete the section and substitute:

**39—Approval of form of supply contract**

- (1) The Commissioner may, on application by the holder of a gaming machine dealer's licence, approve the form of a contract to be entered into by the holder of the licence and—
- 15 (a) the holder of a gaming machine licence; or  
(b) the holder of a gaming machine service licence; or  
(c) the holder of another gaming machine dealer's licence,  
for the sale or supply of approved gaming machines, prescribed gaming machine components or gaming equipment.
- 20 (2) The Commissioner has an unqualified discretion to approve or refuse to approve the form of a contract except that the Commissioner must refuse to approve a form if, in the Commissioner's opinion, it would result in a contract that—
- (a) is harsh and unconscionable; or
- 25 (b) provides for a payment by reference to the proceeds or profits of the business of a licensee; or  
(c) provides for an inducement to enter the contract other than a discount based on the number of machines, components or items of equipment to be supplied; or
- 30 (d) may otherwise jeopardise the proper conduct of gaming operations.

**31—Amendment of section 40—Approval of gaming machines and games**

- (1) Section 40(2)—delete subsection (2)
- (2) Section 40—after subsection (3) insert:
- 35 (4) In determining whether a game is likely to lead to an exacerbation of problem gambling, the Commissioner must apply the principles prescribed by the Authority (see section 10A).

**32—Amendment of section 41A—Applications to be given to Commissioner of Police**

Section 41A(1)—after "section" insert:

39,

5 **33—Amendment of section 42—Discretion to grant or refuse approval**

(1) Section 42(5)—delete subsection (5)

(2) Section 42(6)—delete ", (4) or (5)" and substitute:

or (4)

**34—Amendment of section 43—Intervention by Commissioner of Police**

10 Section 43(1)—after "section" insert:

39,

**35—Amendment of section 44A—Prohibition of links between dealers and other licensees**

Section 44A(4)(c)—after subparagraph (iv) insert:

15 (iva) the person and the licensee are parties to an agreement or arrangement under which one participates in, or is remunerated or paid for something by reference to, the proceeds or profits of the business of the other; or

**36—Amendment of section 45—Offence of being unlicensed**

20 Section 45(c)—delete "to the holder of the gaming machine supplier's licence or the holder of a gaming machine dealer's licence"

**37—Substitution of section 47**

Section 47—delete the section and substitute:

25 **47—Offence of selling or supplying gaming machines, components or equipment without approved contract or with inducement**

30 (1) The holder of a gaming machine dealer's licence must not enter into a contract to sell or supply a gaming machine, a prescribed gaming machine component or gaming equipment unless the contract is in a form that has been approved by the Commissioner under section 39.  
Maximum penalty: \$35 000 or imprisonment for 2 years.

(2) The holder of a gaming machine dealer's licence must not provide or offer to provide any form of inducement to a person to enter into a contract for the sale or supply of a gaming machine, a prescribed gaming machine component or gaming equipment other than a discount that is calculated on a basis that has been fully disclosed in the contract and depends on the number of machines, components or items of equipment to be supplied under the contract.

35 Maximum penalty: \$35 000 or imprisonment for 2 years.

**38—Amendment of section 51—Persons who may not operate gaming machines**

Section 51(5)(c)—delete paragraph (c)

**39—Amendment of section 58—Powers in relation to minors in gaming areas**

- 5 (1) Section 58(5)—delete "section 116(3a) of"
- (2) Section 58(5)—after "licensed premises" insert:  
or a part of licensed premises

**40—Substitution of section 64**

Section 64—delete the section and substitute:

10 **64—Sealing of gaming equipment and gaming machines**

- (1) A person other than an authorised officer must not seal any gaming equipment or break or in any way interfere with any such seal.  
Maximum penalty: \$5 000 or imprisonment for 3 months.
- 15 (2) A person other than an authorised officer or an approved gaming machine technician must not seal any part of a gaming machine or break or in any way interfere with any such seal.  
Maximum penalty: \$5 000 or imprisonment for 3 months.

**41—Amendment of section 71—Powers of authorised officers**

Section 71—after subsection (6) insert:

- 20 (6a) An authorised officer may—
- (a) require a person who has custody or control of books, papers or documents relevant to a business conducted under a licence to produce them at a specified place for inspection at any reasonable time; and
- 25 (b) inspect books, papers or documents so produced and retain them for as long as is reasonably necessary for the purposes of copying or taking extracts from any of them.

**42—Amendment of section 73A—Sport and Recreation Fund**

- 30 (1) Section 73A—delete "Minister for Industry and Trade" wherever occurring and substitute in each case:  
prescribed Minister
- (2) Section 73A(5)—delete "Department of Industry and Trade" and substitute:  
administrative unit of the Public Service responsible to the prescribed Minister
- 35 (3) Section 73—after subsection (6) insert:
- (7) In this section—  
*prescribed Minister* means the Minister responsible for the administration of the *Recreational Greenways Act 2000*.

**43—Amendment of section 73B—Charitable and Social Welfare Fund**

Section 73B—delete "Minister for Human Services" wherever occurring and substitute in each case:

Minister responsible for the administration of the *Family and Community Services Act 1972*

**44—Amendment of section 73BA—Gamblers Rehabilitation Fund**

Section 73BA—delete "Minister for Families and Communities" wherever occurring and substitute in each case:

Minister responsible for the administration of the *Family and Community Services Act 1972*

**45—Amendment of section 74—Annual reports**

Section 74(3)—delete subsection (3)

**46—Repeal of sections 74A and 74B**

Sections 74A and 74B—delete the sections

**47—Insertion of section 76A**

After section 76 insert:

**76A—Financing of licensee's business**

- (1) The Minister may, by notice in the Gazette, grant an exemption from such provisions of this Act as may be necessary for the purpose of enabling—
  - (a) the holder of a gaming machine licence or a gaming machine dealer's licence and a credit provider to enter into any arrangements (including leasing arrangements) for the financing of the licensee's acquisition of gaming machines or gaming machine entitlements or otherwise financing the business conducted on the licensed premises; and
  - (b) a credit provider to exercise rights of repossession and sale over gaming machines, and gaming machine entitlements, subject to any credit arrangement.
- (2) An exemption is subject to any conditions specified in the notice.
- (3) The Minister may, by subsequent notice in the Gazette, vary an exemption.
- (4) If a credit provider repossesses or acquires a gaming machine or gaming machine entitlement under an arrangement to which an exemption relates, the credit provider—
  - (a) must, within 7 days after the repossession or acquisition, give written notice to the Commissioner of the repossession or acquisition; and
  - (b) must ensure the gaming machine is not operated; and

(c) must ensure the gaming machine is, while in the ownership of the credit provider, stored by the holder of a gaming machine dealer's licence or gaming machine service licence in a secure storage location; and

5 (d) must not sell the gaming machine except to the holder of a gaming machine dealer's licence; and

(e) must, with 7 days after selling or otherwise disposing of the gaming machine or gaming machine entitlement, give written notice to the Commissioner of the details of the sale or other disposition.

10 Maximum penalty: \$35 000.

**48—Amendment of section 77—Certain agreements and arrangements are unlawful**

(1) Section 77(1)—delete "the gaming machine supplier's licence" and substitute:

15 a gaming machine dealer's licence

(2) Section 77(2)—delete subsection (2)

(3) Section 77(3)—delete ", an inspector or an approved agent or a member of the holder of the gaming machine supplier's licence" and substitute:

or an inspector

20 **49—Repeal of section 83**

Section 83—delete the section

**50—Repeal of section 86A**

Section 86A—delete the section

**51—Amendment of section 87—Regulations**

25 Section 87(2)(b)—after "fees" insert:

in respect of any matter under this Act

**52—Amendment of Schedule 1—Gaming machine licence conditions**

(1) Schedule 1, (k)(ii)—delete "inspector" and substitute:

authorised officer or approved gaming machine technician

30 (2) Schedule 1, (k)(iii)—delete "inspector" and substitute:

authorised officer

(3) Schedule 1, (na), (nb) and (nc)—delete paragraphs (na), (nb) and (nc) and substitute:

(na) that the licensee must ensure that advertising by the licensee conforms with the advertising code of practice; and

35 (nb) that the licensee must ensure that operations under the gaming machine licence conform with the responsible gambling code of practice; and

- (nc) that the licensee will not conduct the gaming operations on the licensed premises between the hours of 2am and 8am unless—
- (i) a gaming machine manager or gaming machine employee who has completed advanced problem gambling intervention training is present in the gaming area at all times; and
  - (ii) arrangements are in place under which the gaming machine manager or gaming machine employee may immediately refer a person identified as engaging in problem gambling to a service to address the problem; and
  - (iii) no machine designed to change a monetary note into coins is located on the licensed premises; and

## Schedule 1—Related amendments and transitional provisions

### Part 1—Amendment of *Independent Gambling Authority Act 1995*

#### 1—Amendment of section 15B—Voluntary barring of excessive gamblers

Section 15B(1)—after paragraph (b) insert:

- (c) an area within which gaming machines may be operated under a Commonwealth law.

### Part 2—Transitional provisions

#### 2—Principles and codes of practice

- (1) Section 10A(4) and (6) of the *Gaming Machines Act 1992* as inserted by this Act do not apply to the first notices published in the Gazette under that section prescribing—

- (a) the principles for assessing whether a game is likely to lead to an exacerbation of problem gambling; and
- (b) the advertising code of practice; and
- (c) the responsible gambling code of practice,

(and, consequently, consultation is not required and the notices need not be laid before both Houses of Parliament and are not subject to disallowance).

- (2) The Authority must ensure that—

- (a) the principles for assessing whether a game is likely to lead to an exacerbation of problem gambling first prescribed by the Authority are substantially in the form of the guidelines in force for the purposes of section 40 of the *Gaming Machines Act 1992* immediately before the commencement of this paragraph; and



(b) the advertising code of practice first prescribed by the Authority is substantially in the form of the codes of practice approved by the Authority under paragraph (na) of Schedule 1 of the *Gaming Machines Act 1992* immediately before the commencement of this paragraph; and

5 (c) the responsible gambling code of practice first prescribed by the Authority is substantially in the form of the codes of practice approved by the Authority under paragraph (nb) of Schedule 1 of the *Gaming Machines Act 1992* immediately before the commencement of this paragraph.

10 (3) Failure to comply with subclause (2) does not affect the validity of the principles or a code of practice.

### 3—Application for gaming machine licence

If an application for a gaming machine licence has been made but not determined before the commencement of section 13 of this Act—

15 (a) section 15(4) of the *Gaming Machines Act 1992* as inserted by section 13 of this Act does not apply to the application; and

(b) section 15(5) of the *Gaming Machines Act 1992* as in force immediately before its deletion by section 13 of this Act continues to apply to the application as if it had not been so deleted and had been redesignated as section 15(4).

### 20 4—Exemptions

25 An exemption granted by notice in the Gazette under regulation 10(2) of the *Gaming Machines Regulations 1993* and in force immediately before the commencement of section 76A of the *Gaming Machines Act 1992* as inserted by section 47 of this Act continues in force as if it had been granted under section 76A of the *Gaming Machines Act 1992*.