

SOUTH AUSTRALIA

GAMING MACHINES ACT 1992

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 27 October 1994.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Gaming Machines Act 1992 No. 49 of 1992
[Assented to 17 September 1992]¹

as amended by

Gaming Machines (Prohibition of Cross Holdings, Profit Sharing, etc.) Amendment Act 1994 No. 58 of 1994 [Assented to 27 October 1994]²

¹ Came into operation 1 July 1993: *Gaz.* 24 June 1993, p. 2046.

² Came into operation (except s. 3) 1 July 1993: s. 2(1); s. 3 came into operation 1 August 1994: s. 2(2).

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

**An Act to provide for and regulate the supply and operation of gaming machines;
and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Gaming Machines Act 1992*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) In making a proclamation for the purposes of this section, the Governor cannot fix different days for different provisions to come into operation or suspend any provision.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**approved**" means approved by the Commissioner under this Act;

"**approved gaming machine**" means a gaming machine of a class approved by the Commissioner for the purposes of this Act;

"**the Authority**" means the Casino Supervisory Authority;

"**authorised officer**" means—

- (a) the Commissioner; or
- (b) an inspector; or
- (c) a member of the police force;

"**authorised person**", in relation to premises to which a gaming machine licence relates, means—

- (a) the licensee; or
- (b) an employee of the licensee; or
- (c) an inspector; or
- (d) a member of the police force;

"**the Board**" means the State Supply Board;

"**club licence**" means a club licence under the *Liquor Licensing Act 1985*;

"**the Commissioner**" means the Liquor Licensing Commissioner;

"**gaming area**" means that part of licensed premises that is delineated under a gaming machine licence as the area within which gaming machines may be operated pursuant to the licence;

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"gaming equipment" means—

- (a) electronic monitoring equipment; and
- (b) prescribed security devices; and
- (c) any other prescribed equipment;

"gaming machine" means a device—

- (a) that is designed or has been adapted for the purpose of gambling by playing a game of chance or a game combined of chance and skill; and
- (b) and that is capable of being operated by the insertion of a coin or other token (whether in that device or another device to which it is linked) or by the electronic transfer of credits accrued on some other gaming machine;

"general facility licence" means a general facility licence under the *Liquor Licensing Act 1985*;

"hotel licence" means a hotel licence under the *Liquor Licensing Act 1985*;

"inspector" means a person appointed as an inspector for the purposes of this Act;

"licence" means a licence under this Act, and **"licensed"** and **"licensee"** have correlative meanings;

"linked jackpot equipment" means any fitting or device to be used for, or in connection with, the linking of two or more gaming machines for the purpose only of recording all or part of the winnings from each of those machines;

"liquor licence" means a hotel licence, club licence or general facility licence;

"prescribed gaming machine component" means a component of a gaming machine of a class prescribed by the regulations for the purposes of this definition.

(2) For the purposes of this Act, a person occupies a position of authority in a body corporate if—

- (a) he or she is a director or a member of the governing body of the body corporate;
- (b) he or she exercises or exerts, or is in a position to exercise or exert, control or substantial influence over the body corporate in the conduct of its affairs;
- (c) he or she manages, or is to manage, the undertaking to be carried out in pursuance of a licence;
- (d) where the body corporate is a proprietary company—he or she is a shareholder in the body corporate.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Application of this Act

4. (1) This Act does not apply to or in relation to a gaming machine operated in the licensed casino under the *Casino Act 1983*.

(2) Notwithstanding any other Act or law to the contrary, gaming and the possession, sale, supply or operation of a gaming machine, as authorised by this Act or a licence under this Act, are lawful.

(3) Subject to any other provision of this Act to the contrary, this Act binds the Crown.

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**PART 2
ADMINISTRATION**

DIVISION 1—THE COMMISSIONER

The Commissioner

5. The Commissioner is responsible to the Minister for the administration of this Act.

Procedural powers of the Commissioner

6. (1) The Commissioner may, for the purposes of proceedings before the Commissioner—

- (a) by summons, require the attendance of a person before the Commissioner at a time and place specified in the summons; or
- (b) by summons, require the production of any relevant equipment or other item, or any relevant books, papers or documents; or
- (c) inspect any equipment, item, books, papers or documents so produced, retain them for such reasonable period as the Commissioner thinks fit and, in the case of books, papers or documents, make copies of any of them or of any of their contents; or
- (d) require any person appearing before the Commissioner to make an oath or affirmation to answer truthfully all questions put by the Commissioner; or
- (e) require any person appearing before the Commissioner to answer any question put by the Commissioner or by a person appearing before the Commissioner.

(2) Subject to this section, a person who—

- (a) having been served with a summons to appear before the Commissioner, fails, without reasonable excuse, to attend in obedience to the summons; or
- (b) having been served with a summons to produce equipment or other items, or books, papers or documents, fails, without reasonable excuse, to comply with the summons; or
- (c) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Commissioner,

is guilty of an offence.

Penalty: Division 5 fine or division 7 imprisonment.

(3) A person who appears as a witness before the Commissioner has the same protection as a witness in proceedings before the Supreme Court.

Conduct of proceedings

7. (1) In proceedings under this Act, the Commissioner—

- (a) must act without undue formality; and
- (b) is not bound by the rules of evidence but may inform himself or herself on any question that arises for decision in such manner as he or she thinks fit.

(2) Subject to subsection (3), hearings before the Commissioner are open hearings.

(3) If the Commissioner of Police so requests, on the ground that information to be given in proceedings should remain confidential, the Commissioner will direct that no person other than—

- (a) the parties to those proceedings and their counsel or representatives; and
- (b) witnesses, while giving evidence; and
- (c) officers assisting the Commissioner,

be present in the room while the proceedings are being heard.

Representation

8. (1) A party to proceedings before the Commissioner may appear in those proceedings—

- (a) personally;
- (b) by counsel;
- (c) if the party is a body corporate—by an officer or employee of the body corporate who has obtained leave of the Commissioner to appear on its behalf;
- (d) if the party is a member of a genuine association formed to promote or protect the interests of a section of the liquor industry or the gaming machine industry or of employees in those industries—by an officer or employee of that association.

(2) The Commissioner of Police may be represented in proceedings before the Commissioner—

- (a) by a member of the police force; or
- (b) by counsel.

Power to disclose information to certain authorities

9. The Commissioner may disclose information gained in the course of the administration of this Act to—

- (a) authorities vested with the administration of gaming machine laws in any other State or a Territory of the Commonwealth; and
- (b) any other authorities that may require the information for the purpose of discharging duties of a public nature.

DIVISION 2—INSPECTORS

Appointment of inspectors

10. (1) There will be such number of inspectors as are necessary for the proper administration of this Act.

(2) An inspector is a Public Service employee.

(3) The Commissioner must provide each inspector with a certificate of identity and an inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce that certificate.

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DIVISION 3—THE AUTHORITY

Authority may conduct inquiries

11. (1) The Authority may, of its own motion and must, at the request of the Minister, inquire into—

- (a) any aspect of the gaming machine industry; or
- (b) any matter relating to the conduct of gaming operations pursuant to this Act; or
- (c) any aspect of the administration of this Act.

(2) Upon completing an inquiry under this section, the Authority must submit to the Minister a report of the inquiry and the findings of the Authority on the inquiry, and any such report may include recommendations for legislative change or other action to be taken.

(3) Unless the Authority recommends that the report should remain confidential, the Minister must, within six sitting days of receiving a report under subsection (2), cause a copy of the report to be laid before each House of Parliament.

Powers and procedures of the Authority upon an inquiry or appeal

12. (1) For the purposes of an inquiry under this Act or any proceedings before the Authority under this Act, the Authority may—

- (a) by summons signed on behalf of the Authority by the secretary of the Authority, require the attendance before the Authority of any person; or
- (b) by summons signed on behalf of the Authority by the secretary of the Authority, require the production of any equipment or other item, or any books, papers or documents; or
- (c) inspect any equipment or other item, or any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit, and, in the case of books, papers or documents, make copies of any of them, or of any of their contents; or
- (d) require any person to make oath or affirmation that he or she will truly answer all questions put to him or her by the Authority relating to any matter being inquired into or that is before the Authority; or
- (e) require any person appearing before the Authority to answer any relevant questions put to him or her by any member of the Authority or by any person appearing before the Authority.

(2) If a person—

- (a) who has been served with a summons to appear before the Authority, fails without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons; or
- (b) who has been served with a summons to produce equipment or any other items, or books, papers or documents, fails without reasonable excuse (proof of which lies upon the person) to comply with the summons; or
- (c) misbehaves before the Authority, wilfully insults the Authority or any member of the Authority or interrupts the proceedings of the Authority; or

- (d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Authority,

the person is guilty of an offence.

Penalty: Division 5 fine or division 7 imprisonment.

(3) A person is not excused from answering a question or from producing books, papers or documents under this section—

- (a) on the ground that the answer to the question or the contents of the books, papers or documents would tend to incriminate the person; or
- (b) on the ground of legal professional privilege,

but if the person objects to answering a question on the ground that the answer would tend to incriminate him or her, the answer will not be admissible against him or her in criminal proceedings (except in proceedings for perjury) or, if the person objects to answering a question on the ground of legal professional privilege, the answer will not be admissible in civil or criminal proceedings against the person who would, but for this subsection, have the benefit of the legal professional privilege.

(4) The Authority may, if requested to do so by a person who has been required to answer a question by the Authority or who has produced books, papers or documents to the Authority, by order prohibit the publication in any newspaper or by radio or television of the name of the person, any answer given by him or her in proceedings before the Authority or the contents of any book, paper or document produced by him or her to the Authority.

- (5) A person who contravenes an order under subsection (4) is guilty of an offence.

Penalty: Division 5 fine.

(6) The Authority may sit at any time and in any place (including a place outside this State) and may adjourn its sittings from time to time and from place to place.

- (7) In the course of any proceedings, the Authority may—

- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact from the transcript that it thinks proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court or tribunal that may be relevant to the matter before the Authority.

Representation before the Authority

13. (1) A person appearing before the Authority in the course of an inquiry or any other proceedings may appear—

- (a) personally;
- (b) by counsel;
- (c) if a body corporate—by an officer or employee of the body corporate who has obtained leave of the Authority to appear on behalf of the body corporate;

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- (d) if the party is a member of a genuine association formed to promote or protect the interests of a section of the liquor industry or the gaming machine industry or of employees in those industries—by an officer or employee of that association.

- (2) The Commissioner of Police may be represented in proceedings before the Authority—
 - (a) by a member of the police force; or
 - (b) by counsel.

**PART 3
LICENCES**

DIVISION 1—CLASSES OF LICENCE

Licence classes

14. (1) Licences under this Act are of the following classes:

- (a) gaming machine licence: subject to this Act and the conditions of the licence, a gaming machine licence authorises the licensee to possess approved gaming machines on premises designated in the licence and to conduct gaming on those machines;
- (b) gaming machine dealer's licence: subject to this Act and the conditions of the licence, a gaming machine dealer's licence authorises the licensee to manufacture gaming machines and prescribed gaming machine components and to sell or supply to the Board, or to another holder of a gaming machine dealer's licence, approved gaming machines, prescribed gaming machine components and gaming equipment;
- (c) gaming machine supplier's licence: subject to this Act and the conditions of the licence, a gaming machine supplier's licence authorises the licensee, acting through an approved agent, to purchase from a licensed gaming machine dealer, and to sell or supply to the holders of gaming machines licences, approved gaming machines, prescribed gaming machine components and gaming equipment;
- (d) gaming machine monitor licence: subject to this Act and the conditions of the licence, a gaming machine monitor licence authorises the licensee to provide and operate an approved computer system for monitoring the operation of all gaming machines operated pursuant to gaming machine licences under this Act;
- (e) gaming machine service licence: subject to this Act and the conditions of the licence, a gaming machine service licence authorises the licensee to install, service and repair approved gaming machines, prescribed gaming machine components and gaming equipment.

(2) There will be only one gaming machine supplier's licence, one gaming machine monitor licence and one gaming machine service licence.

**DIVISION 2—SPECIAL PROVISIONS RELATING TO GAMING MACHINE
LICENCES**

Eligibility criteria

15. (1) The following persons only are eligible to hold a gaming machine licence:

- (a) the holder of a hotel licence (whether temporary or otherwise);
- (b) the holder of a club licence (whether restricted or unrestricted);
- (c) the holder of a general facility licence (whether temporary or otherwise) if—
 - (i) —
 - the general facility licence was granted on the surrender of a hotel licence or a club licence; and
 - the nature of the undertaking carried out under the licence is substantially similar to that of a licensed hotel or club; or

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- (ii) the premises to which the general facility licence relates constitute—
- a major sporting venue; or
 - the headquarters in this State for any particular sporting code,
- and the nature of the undertaking carried out under the licence is substantially similar to that of a licensed club;
- (d) a person entitled to carry on business under such a licence pursuant to section 80 or 81 of the *Liquor Licensing Act 1985*.
- (2) The premises to which a liquor licence referred to in subsection (1) relates will be the licensed premises in respect of the gaming machine licence.
- (3) A person referred to in subsection (1) can hold only one gaming machine licence in respect of the premises to which the liquor licence relates.
- (4) A gaming machine licence will not be granted unless the applicant for the licence satisfies the Commissioner, by such evidence as the Commissioner may require—
- (a) 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
 - (b) that the proposed layout of gaming machines in a gaming area is suitable for the proper conduct of gaming operations within the area; and
 - (c) 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
 - (d) 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
 - (e) 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
 - (f) 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
 - (g) that no proposed gaming area is so designed or situated that it would be likely to be a special attraction to minors.
- (5) In determining an application for a gaming machine licence the Commissioner will not have regard—
- (a) to the proximity of the premises the subject of the application to any other premises in respect of which a gaming machine licence is held; or
 - (b) to the number of such licensed premises in the locality in which the premises the subject of the application is situated.

Maximum number of gaming machines per licence

16. (1) Subject to subsection (2), a gaming machine licence cannot authorise possession of more than 40 gaming machines.

(2) Where, pursuant to section 17(2), more than one gaming machine licence is held, or is to be held, in respect of the same premises—

- (a) the total number of gaming machines authorised by those licences cannot exceed 40; and
- (b) the number of machines authorised by each such licence cannot exceed the number obtained by dividing 40 by the total number of gaming machine licences held, or to be held, in respect of the premises.

Plurality of licences

17. (1) More than one gaming machine licence may be held in respect of separate parts of the same premises where those parts are each subject to a separate liquor licence.

(2) More than one gaming machine licence may be held by separate persons in respect of the same premises if—

- (a) more than one restricted club licence is held in respect of the premises; and
- (b) the Commissioner is satisfied that each licensee will have sole control over the gaming machines owned by the club in respect of which he or she holds a club licence.

DIVISION 3—APPLICATIONS FOR LICENCES

Form of application

18. (1) An application for a licence—

- (a) must be made in the prescribed manner and form;
- (b) must be accompanied by the prescribed fee;
- (c) may, in the case of an application for a gaming machine licence, be made by a person who does not yet hold the requisite liquor licence but is an applicant for such a licence.

(2) The Commissioner may allow an applicant to vary the application at any time before the determination of the application.

(3) If the Commissioner allows an application to be varied pursuant to subsection (2), the Commissioner must cause the other parties to the application to be given notice of the variation a reasonable time before the hearing of the application.

(4) An application for a gaming machine licence must be accompanied by a plan of the proposed licensed premises that delineates the gaming area or gaming areas within which the gaming machines are to be installed and the layout of the machines within each gaming area.

(5) An applicant for the gaming machine monitor licence must submit with the application the specifications for the proposed monitoring system.

(6) The Commissioner may require an applicant to produce to the Commissioner specified documents that are, in the Commissioner's opinion, relevant to the application.

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(7) The Commissioner may, on such conditions (if any) as he or she thinks fit, waive compliance with formal requirements relating to an application.

Certain criteria must be satisfied by all applicants

19. (1) An applicant for a licence must satisfy the Commissioner by such evidence as the Commissioner may require—

- (a) that the applicant is a fit and proper person to hold the licence; and
- (b) where the applicant is a body corporate—that each person who occupies a position of authority in the body corporate is a fit and proper person to occupy such a position in a body corporate holding a licence of the class sought in the application.

(2) For the purpose of determining whether a person is a fit and proper person to hold a licence or to occupy a position of authority in a body corporate that holds a licence—

- (a) the Commissioner may cause the person's photograph and fingerprints to be taken; and
- (b) the creditworthiness of the person is a matter to which consideration must be given; and
- (c) the honesty and integrity of the person's known associates (including persons who are relatives) must also be considered.

* * * * *

Special criteria for gaming machine monitor licence

21. An applicant for the gaming machine monitor licence must satisfy the Commissioner by such evidence as the Commissioner may require that the applicant has appropriate management and technical expertise.

Holder of monitor licence cannot hold other licences

22. The holder of the gaming machine monitor licence cannot hold any other licence under this Act.

Minors not to hold licence, etc.

23. (1) Subject to subsection (2), a minor cannot—

- (a) hold a licence; or
- (b) occupy a position of authority in a body corporate that holds a licence.

(2) This section does not prevent a minor from being a shareholder in a proprietary company that holds a licence.

Discretion to grant or refuse application

24. (1) Subject to this Act, the Commissioner has an unqualified discretion to grant or refuse an application for a licence on any ground, or for any reason, that the Commissioner thinks fit.

(2) The Commissioner should not grant an application as a matter of course without a proper inquiry into its merits (whether or not the Commissioner of Police has intervened in the proceedings or there are any objections to the application).

Independent Gaming Corporation

25. (1) The body corporate known as the *Independent Gaming Corporation* will, on due application being made and the Commissioner being satisfied as to the matters specified in sections 19 and 21, be granted the gaming machine monitor licence issued under this Act.

(2) Nothing in this section will be taken to prevent the grant of the gaming machine monitor licence to some other person or authority in the event of the Independent Gaming Corporation not being granted the licence or, if it is granted the licence, in the event of the licence being surrendered or revoked pursuant to this Act.

The State Supply Board to hold certain licences

26. (1) The Board will be granted—

- (a) the gaming machine supplier's licence; and
- (b) the gaming machine service licence.

(2) Sections 18 and 19 do not apply to or in relation to the grant of a licence to the Board.

(3) The Board cannot appoint a person to act as its agent in the performance of its functions as a licensee unless that person has been approved by the Commissioner to act as such an agent.

(4) The Board cannot act under the gaming machine supplier's licence except through an approved agent.

Conditions

27. (1) The conditions to which a gaming machine licence will be subject are set out in schedule 1.

(2) The conditions to which the gaming machine monitor licence will be subject are set out in schedule 2.

(3) The Commissioner may grant any other licence under this Act subject to such conditions as he or she thinks fit and specifies in the licence.

(4) Subject to this section, the Commissioner may, by notice in writing addressed to the licensee, vary or revoke any condition of a licence or impose further conditions on the licence.

(5) The Commissioner may exercise his or her powers under subsection (4) on his or her own initiative or on application by the licensee or the Commissioner of Police.

(6) The Commissioner cannot revoke the statutory conditions of a licence and cannot vary them except in relation to those matters that are determinable by the Commissioner for the purposes of those conditions.

(7) The Commissioner cannot fix hours during which gaming operations may be conducted pursuant to a gaming machine licence that are outside the hours during which the premises are authorised to be open for the sale of liquor.

DIVISION 4—TRANSFER OF LICENCES

Certain gaming machine licences only are transferable

28. (1) Where a hotel licence or general facility licence is transferred, any gaming machine licence held by the transferor may, with the consent of the Commissioner, be transferred to the transferee of the hotel or general facility licence, but a gaming machine licence is not otherwise transferable.

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- (2) No other licence under this Act is transferable.
- (3) The Commissioner cannot consent to the transfer of a gaming machine licence unless—
- (a) application for consent is made in the prescribed manner and form; and
 - (b) the application is accompanied by the prescribed fee; and
 - (c) the applicant satisfies the Commissioner, by such evidence as the Commissioner may require—
 - (i) that the applicant is a fit and proper person to hold the licence; and
 - (ii) where the applicant is a body corporate, that each person who occupies a position of authority in the body corporate is a fit and proper person to occupy such a position in a body corporate holding such a licence.
- (4) In making a determination for the purposes of subsection (3)(c), the Commissioner may exercise the same powers and must consider the same matters as he or she may exercise, or is required to consider, in respect of an application for the grant of a licence.
- (5) An application may be made by a person who is not yet the holder of a hotel licence or general facility licence but who is an applicant for the transfer of such a licence.
- (6) The Commissioner may require an applicant for transfer to produce to the Commissioner specified documents that are, in the Commissioner's opinion, relevant to the application.
- (7) A licensee cannot sell or assign the rights to carry on business in pursuance of a gaming machine licence to which subsection (1) refers unless the Commissioner has consented to the transfer of the licence to the purchaser or assignee in accordance with this section.
- (8) Subsection (7) does not prevent a licensee from entering into a contract for the sale or assignment of those rights if the contract is subject to a condition precedent that the sale or assignment will not take effect unless and until the Commissioner has consented to the transfer of the licence to the purchaser or assignee in accordance with this section.
- (9) Subject to subsection (10), where a gaming machine licence is transferred pursuant to this section, the transferee succeeds to the liabilities of the transferor under this Act.
- (10) A transferee of a gaming machine licence is jointly and severally liable with the transferor for any gaming tax outstanding at the date of transfer, except for any such tax arising out of an intentional understatement of gross gaming turnover by the transferor.

DIVISION 5—OBJECTIONS AND INTERVENTION

Certain applications require advertisement

29. (1) The following applications must be advertised in accordance with this section:

- (a) an application for the grant of a gaming machine licence;
- (b) an application for the transfer of a gaming machine licence;
- (c) an application for the grant of a gaming machine dealer's licence;
- (d) an application of any other class if the Commissioner so directs.

(2) Where an application is required to be advertised, notice of the application, in the prescribed form, must be published by the applicant—

- (a) in two newspapers circulating generally throughout the State; and
- (b) in the *Gazette*,

at least 28 days before the date fixed for the hearing of the application.

(3) The Commissioner may, in an appropriate case, dispense with or modify a requirement of subsection (2).

Objections

30. (1) Where an application has been advertised under this Part, any person may, by notice in the prescribed form lodged with the Commissioner at least seven days before the day appointed for the hearing of the application, object to the application.

(2) A copy of the notice of objection must be served by the objector on the applicant at least 7 days before the day appointed for the hearing of the application.

(3) An objection may be made on behalf of an unincorporated association under this section by an agent duly appointed for the purpose.

(4) An objection may be made on the ground that the grant of the application would be contrary to this Act, in that any one or more of the matters as to which the Commissioner is required by this Act to be satisfied before granting the application would not, in the opinion of the objector, be satisfied.

(5) The Commissioner may allow a person who has made an objection to vary the objection at any time before the determination of the proceedings.

(6) If the Commissioner allows an objection to be varied pursuant to subsection (5), the Commissioner must cause the parties to the proceedings to be given notice of the variation a reasonable time before the hearing of the proceedings.

Intervention by Commissioner of Police

31. (1) The Commissioner must furnish the Commissioner of Police with a copy of all applications under this Part and the Commissioner of Police may intervene in any proceedings before the Commissioner on such an application on the question of—

- (a) whether a person is a fit and proper person; or
- (b) whether, if the application were to be granted, public disorder or disturbance would be likely to result.

(2) The Commissioner of Police is a party to any proceedings in which he or she has intervened.

DIVISION 6—SUSPENSION, REVOCATION AND SURRENDER OF LICENCES

Voluntary suspension

32. The Commissioner may, on the application of a licensee, suspend the licence held by the licensee for such period as the Commissioner thinks fit.

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Surrender

33. (1) A licensee may, by notice in writing addressed to the Commissioner, surrender his or her licence and the licence will cease to operate on acceptance by the Commissioner, by endorsement on the licence, of the surrender.

(2) The surrender of a licence does not affect liabilities incurred by the licensee under this Act up to the date on which the licensee ceases to operate.

(3) The Commissioner cannot accept a surrender of a gaming machine licence unless he or she is satisfied that all gaming machines have been removed from the premises to which the licence related.

Effect of surrender, suspension or revocation of liquor licence

34. If a liquor licence held by a licensee under the *Liquor Licensing Act 1985* in respect of any premises is surrendered, revoked or suspended, any gaming machine licence held by that licensee in respect of those premises will be taken to have been surrendered or revoked, or suspended until the liquor licence comes back into operation, as the case may require.

Cessation of gaming machine monitor licence

35. In the event of—

- (a) the gaming machine monitor licence being revoked, suspended or surrendered; or
- (b) the holder of that licence ceasing for any reason to carry on the undertaking authorised by the licence,

the Commissioner or a person authorised by the Commissioner for the purpose may—

- (c) enter the premises in which the monitor system is situated; and
- (d) take possession and assume control of the system; and
- (e) operate the system until such time as the suspension terminates, or a further licence is granted to some other person or authority, as the case may be.

DIVISION 7—DISCIPLINARY ACTION AGAINST LICENSEES

Revocation or suspension of licences, etc.

36. (1) The Commissioner may—

- (a) reprimand a licensee; or
- (b) exercise his or her power to add to, or vary, the conditions of the licence; or
- (c) suspend a licence for a specified period or until further order; or
- (d) revoke a licence,

if the Commissioner is satisfied that—

- (e) the licence was improperly obtained; or
- (f) the licensee is not a fit and proper person to hold the licence; or

- (g) in the case of a licensee that is a body corporate—a person who occupies a position of authority in the body corporate is not a fit and proper person to occupy such a position in a body corporate that holds a licence; or
 - (h) the licensee has contravened or failed to comply with a provision of this Act or a condition of the licence; or
 - (i) the licensee has been convicted of an offence against this Act; or
 - (j) the licensee has been convicted of an offence punishable by imprisonment; or
 - (k) the licensee has ceased to operate gaming machines on the premises the subject of a gaming machine licence.
- (2) The Commissioner must, before exercising any powers under subsection (1)—
- (a) give written notice to the licensee of the proposed disciplinary action, including a statement of the grounds and reasons that the Commissioner considers justify the disciplinary action; and
 - (b) allow the licensee a period of 21 days (or such longer period as the Commissioner may in any particular case allow) to show cause why the disciplinary action should not be taken.
- (3) The Commissioner must notify the Commissioner of Police of any proceedings under this section and give him or her reasonable opportunity to make submissions on the matter.
- (4) On giving notice to a licensee pursuant to subsection (2), the Commissioner may, in the same or a subsequent notice, suspend the licence pending determination of the disciplinary proceedings.

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**PART 4
APPROVALS**

Commissioner may approve managers and employees

37. (1) The Commissioner may, on application by the holder of a gaming machine licence, approve a natural person as a gaming machine manager or a gaming machine employee for the purposes of the gaming operations conducted pursuant to that licence.

(2) The Commissioner cannot approve a person as a gaming machine manager if the person is already an approved gaming machine manager in respect of some other gaming machine licence.

(3) The Commissioner—

- (a) cannot approve a person as a gaming machine manager or a gaming machine employee if the person is an employee of the holder of a gaming machine dealer's licence; and
- (b) may, if he or she thinks it appropriate to do so, refuse to grant such an approval in respect of a person who provides services under contract to the holder of a gaming machine dealer's licence.

Commissioner may approve persons in authority

38. The Commissioner may, on the application of a person who seeks to assume a position of authority in a body corporate that holds a licence, approve the assumption by that person of that position in the body corporate.

Commissioner may approve agents of the Board

39. (1) The Commissioner may, on application by the Board approve a person to act as an agent of the Board.

(2) The Commissioner cannot approve a person to act as an agent of the Board if the person—

- (a) is the holder of a gaming machine licence or a gaming machine dealer's licence; or
- (b) is associated with the holder of a gaming machine licence or a gaming machine dealer's licence.

(3) A person is associated with the holder of a gaming machine licence or a gaming machine dealer's licence if that person is—

- (a) a body corporate of which the licensee is a director or a member of the governing body; or
- (b) a proprietary company in which the licensee is a shareholder; or
- (c) a beneficiary under a trust or an object of a discretionary trust of which the licensee is a trustee; or
- (d) a partner of the licensee; or
- (e) an employer or an employee of the licensee; or
- (f) the spouse, parent or child of the licensee.

Commissioner may approve gaming machines and games

40. The Commissioner may, on application by a person, approve particular gaming machines, or particular games, to be of a class that is approved for the purposes of this Act.

Commissioner may approve gaming tokens and gaming token manufacturers

41. (1) The Commissioner may, on application by a manufacturer of gaming tokens, approve the manufacturer for the purposes of this Act.

(2) The Commissioner may, on application by a person, approve particular gaming tokens to be of a class that is approved for the purposes of this Act.

Discretion to grant or refuse approval

42. (1) Subject to this Act, the Commissioner has an unqualified discretion to grant or refuse an application for approval on any ground, or for any reason, that the Commissioner thinks fit.

(2) The Commissioner cannot approve a person as a gaming machine manager unless satisfied, by such evidence as he or she may require, that the person is a fit and proper person to carry out the duties of gaming machine manager.

(3) The Commissioner cannot approve a person as a gaming machine employee unless satisfied, by such evidence as he or she may require, that the person is a fit and proper person to carry out prescribed duties.

(4) The Commissioner cannot approve the assumption by a person of a position of authority in a body corporate that holds a licence unless satisfied, by such evidence as he or she may require, that the person is a fit and proper person to assume such a position.

(5) The Commissioner cannot approve a person to act as an agent of the Board unless satisfied, by such evidence as he or she may require, that the person is a fit and proper person to act as such an agent.

(6) In making a determination for the purposes of subsection (2), (3), (4) or (5), the Commissioner may cause the person's photograph and fingerprints to be taken and must give consideration to—

- (a) the creditworthiness of the person; and
- (b) the honesty and integrity of the person's known associates (including persons who are relatives).

Intervention by Commissioner of Police

43. (1) The Commissioner must furnish the Commissioner of Police with a copy of all applications for approval made under sections 37 and 38 and the Commissioner of Police may intervene in proceedings before the Commissioner on such an application on the question of whether the person to whom the application relates is a fit and proper person.

(2) The Commissioner of Police is a party to any proceedings in which he or she has intervened.

Revocation of approval

44. (1) The Commissioner has an unqualified discretion to revoke an approval given under this Part on such ground or for such reason as he or she thinks fit.

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(2) The Commissioner must, before exercising powers under subsection (1) in relation to a person—

- (a) give written notice to the person of the proposed revocation, including a statement of the reasons that the Commissioner considers justify the revocation; and
- (b) allow the person a period of 21 days (or such longer period as the Commissioner may in any particular case allow) to show cause why the approval should not be revoked.

(3) The Commissioner may suspend an approval pending final determination of the question as to whether the approval should be revoked.

(4) On revoking an approval, the Commissioner must cause notice of the revocation to be given, personally or by post, to all persons affected by the revocation.

PART 4A
SPECIAL PROVISIONS RELATING TO LICENSED DEALERS

Prohibition of links between dealers and other licensees

44A. (1) A person must not, at the one time—

- (a) be the holder of both a gaming machine dealer's licence and a licence of some other class under this Act; or
- (b) be the holder of a gaming machine dealer's licence and be associated with a licensee of some other class under this Act; or
- (c) be the holder of a licence (other than a gaming machine dealer's licence) and be associated with the holder of a gaming machine dealer's licence; or
- (d) be associated with both a licensed gaming machine dealer and a licensee of some other class under this Act.

(2) The Commissioner must refuse an application for a licence or for any approval under this Act if the grant of the application would result in a contravention of subsection (1).

(3) It is a ground for the Commissioner to exercise his or her powers under this Act to revoke or suspend any relevant licence or approval if a contravention of subsection (1) has occurred or is about to occur.

(4) For the purposes of this section, a person is associated with a licensee—

- (a) in the case of a licensee that is a body corporate, if—
 - (i) the person is a related body corporate (as defined in the *Corporations Law*); or
 - (ii) the person occupies a position of authority in the body corporate;
- (b) in the case of a licensee that is not a body corporate, if—
 - (i) the person manages, or is to manage, the undertaking to be carried out under the licence; or
 - (ii) the person is the spouse of the licensee; or
- (c) in any case, if—
 - (i) the person is the partner or agent of the licensee; or
 - (ii) the person and the licensee have an agreement, arrangement or understanding under which one acts in accordance with the directions or wishes of the other, or they act in accordance with a pre-arranged pattern; or
 - (iii) the person and the licensee have common employees or the employees of one provide services for the other; or
 - (iv) the person and the licensee are trustees or beneficiaries of the same trust or one is a trustee and the other is a beneficiary of the same trust (a "trust" in this subparagraph being a trust that relates to the undertaking under a licence); or

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- (v) there is some other relationship or connection between the person and the licensee or any other person that could, in the opinion of the Commissioner, prejudice the proper operation of this Act or of the licensee's undertaking under the licence.

**PART 5
OFFENCES**

DIVISION 1—OFFENCES RELATING TO LICENCES AND APPROVALS

Offence of being unlicensed

45. A person must not—

- (a) have possession of a gaming machine on any premises; or
- (b) manufacture, sell or supply a gaming machine or a prescribed gaming machine component; or
- (c) sell or supply gaming equipment to the holder of the gaming machine supplier's licence or the holder of a gaming machine dealer's licence; or
- (d) install, service or repair a gaming machine, gaming equipment or a prescribed gaming machine component; or
- (e) provide a computer-based system for monitoring the operation of gaming machines,

without being licensed to do so.

Penalty: Division 3 fine or division 5 imprisonment.

Offence of breach of licence conditions

46. A licensee must not contravene or fail to comply with a condition of his or her licence.

Penalty: In the case of an offence committed by the holder of the gaming machine monitor licence—Division 2 fine or division 4 imprisonment.

In any other case—Division 3 fine or division 5 imprisonment.

Offence of breach of agency conditions

47. An approved agent of the Board must not contravene or fail to comply with a condition on which he or she was appointed.

Penalty: Division 3 fine or division 5 imprisonment.

Offences relating to management and control

48. (1) A person must not supervise or manage the gaming operations conducted on any premises pursuant to a gaming machine licence unless—

- (a) he or she is the holder of the gaming machine licence; or
- (b) he or she is an approved gaming machine manager in respect of those gaming operations.

Penalty: Division 3 fine or division 5 imprisonment.

(2) A person must not assume a position of authority in a body corporate that holds a licence without the approval of the Commissioner.

Penalty: Division 3 fine or division 5 imprisonment.

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Offence related to employment in gaming areas

49. A person employed by the holder of a gaming machine licence must not carry out prescribed duties in connection with the gaming operations conducted on licensed premises pursuant to the licence unless—

- (a) he or she is an approved gaming machine manager in respect of those premises; or
- (b) he or she is an approved gaming machine employee in respect of those premises.

Penalty: Division 5 fine or division 7 imprisonment.

Approved gaming machine managers and employees must carry identification

50. An approved gaming machine manager and an approved gaming machine employee must, while carrying out his or her duties on the licensed premises, wear an identification card—

- (a) that is in the form approved by the Commissioner; and
- (b) that is clearly visible to other persons.

Penalty: Division 7 fine.

Persons who may not operate gaming machines

51. (1) The holder of a gaming machine licence or a person who occupies a position of authority in a body corporate that holds such a licence, or an approved gaming machine manager or approved gaming machine employee for any particular licensed premises, must not, except as is necessary for the purpose of carrying out his or her duties, operate a gaming machine on the licensed premises.

Penalty: Division 5 fine or division 7 imprisonment.

(2) A person must not, within 28 days of ceasing to be the holder of a gaming machine licence or a person who occupies a position of authority in a body corporate that holds such a licence, or to be an approved gaming machine manager or approved gaming machine employee in any particular licensed premises, operate a gaming machine on the licensed premises.

Penalty: Division 5 fine or division 7 imprisonment.

(3) The holder of a gaming machine dealer's licence, or a person in a position of authority in a body corporate that holds such a licence, must not, except as is necessary for the purpose of carrying out duties pursuant to the licence, operate a gaming machine on any licensed premises.

Penalty: Division 5 fine or division 7 imprisonment.

(4) The holder of the gaming machine monitor licence, an employee of such a licensee or a person in a position of authority in a body corporate that holds such a licence must not operate a gaming machine on any licensed premises.

Penalty: Division 5 fine or division 7 imprisonment.

(5) The following persons must not, except as is necessary for the purposes of the administration of this Act, operate a gaming machine on any licensed premises:

- (a) the Commissioner;
- (b) an inspector;

- (c) a member of the Board.

Penalty: Division 5 fine or division 7 imprisonment.

DIVISION 2—OFFENCES RELATING TO CONDUCT OF GAMING OPERATIONS

Prohibition of lending or extension of credit

52. The holder of a gaming machine licence, a gaming machine manager or a gaming machine employee—

- (a) who lends or offers to lend money to a person who is in or who is about to enter the gaming area on the licensed premises; or
- (b) who extends or offers to extend credit to any person for the purpose of enabling the person to play the gaming machines on the licensed premises,

is guilty of an offence.

Penalty: Division 3 fine or division 5 imprisonment.

Prohibition of linked jackpots

53. The holder of a gaming machine licence must not cause, suffer or permit any gaming machine on the licensed premises—

- (a) to be fitted with linked jackpot equipment; or
- (b) to be linked in any manner that allows the winnings, or part of the winnings, from the machine to accumulate with the winnings, or part of the winnings, from any other gaming machine.

Penalty: Division 3 fine or division 5 imprisonment.

Licences to be displayed

54. The holder of a gaming machine licence must display a copy of the gaming machine licence in a prominent position at the entrance to each gaming area on the licensed premises or, if there is more than one entrance, at the principal entrance.

Penalty: Division 7 fine.

DIVISION 3—OFFENCES RELATING TO MINORS

Minors must not be employed in gaming operations

55. If a minor is employed in any capacity in connection with the conduct of gaming operations on licensed premises, the licensee is guilty of an offence.

Penalty: Division 5 fine or division 7 imprisonment.

Minors not permitted in gaming areas

56. (1) A minor must not enter or remain in a gaming area or operate a gaming machine on licensed premises.

Penalty: Division 7 fine.

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(2) Where a minor enters or remains in a gaming area or operates a gaming machine on licensed premises, the licensee and the approved gaming machine manager on duty at the time are each guilty of an offence.

Penalty: Division 5 fine.

(3) It is a defence to a charge of an offence against subsection (2) for the defendant to prove that he or she took reasonable steps to prevent the entry of the minor to, or to remove the minor from, the gaming area or to prevent him or her from operating the gaming machine.

(4) A holder of a gaming machine licence or an approved gaming machine manager who permits a minor to enter or remain in a gaming area on the licensed premises, or to operate a gaming machine on the premises, is guilty of an offence.

Penalty: Division 4 fine.

(5) A minor who operates a gaming machine in contravention of this section is not entitled to any winnings he or she may have made on the machine and those winnings are forfeited to the Crown.

Licensee must erect warning notices

57. (1) The holder of a gaming machine licence must cause a notice, in the prescribed form, to be erected in a prominent position at each entrance to each gaming area on the licensed premises and to be displayed prominently on each gaming machine.

(2) The notice must state—

- (a) the minimum age at which a person may enter and remain in the gaming area and operate a gaming machine; and
- (b) that a person suspected of being under the minimum age may be required to provide evidence of age; and
- (c) that a person under the minimum age is not entitled to any winnings from the operation of a gaming machine on the premises; and
- (d) the maximum penalties for entering or remaining in the gaming area or for operating a gaming machine; and
- (e) any other information required by the regulations or the gaming machine licence conditions.

(3) A licensee who fails to comply with subsection (1) is guilty of an offence.

Penalty: Division 6 fine.

Powers in relation to minors in gaming areas

58. (1) Where an authorised person suspects on reasonable grounds that a person in a gaming area may be a minor, he or she may require the person to produce evidence to the authorised person's satisfaction as to the person's age.

(2) A person who—

- (a) fails, without reasonable excuse, to comply with a requirement under this section; or

(b) makes a false statement, or produces false evidence, in response to such a requirement, is guilty of an offence.

Penalty: Division 7 fine.

(3) Where an authorised person suspects on reasonable grounds that a person who is in a gaming area or who is about to enter a gaming area is a minor, the authorised person may require the person to leave the gaming area.

(4) If a person refuses or fails to comply with a requirement under subsection (3), the authorised person may remove him or her from the licensed premises, using only such force as is reasonably necessary for the purpose.

DIVISION 4—PERSONS BARRED FROM GAMING AREAS

Licensee may bar excessive gamblers

59. (1) A person who enters or remains in a gaming area from which he or she has been barred pursuant to this section is guilty of an offence.

Penalty: Division 7 fine.

(2) If the holder of a gaming machine licence is satisfied that the welfare of a person, or the welfare of a person's dependants, is seriously at risk as a result of the excessive playing of gaming machines by the person, he or she may, by order, bar the person from entering or remaining in the gaming area, or areas, of the premises to which the licence relates.

(3) The holder of a gaming machine licence may revoke an order made by him or her under this section.

(4) The holder of a gaming machine licence, an approved gaming machine manager or an approved gaming machine employee who suffers or permits a person to enter or remain in a gaming area from which the person has been barred is guilty of an offence.

Penalty: Division 5 fine.

Power to remove persons who have been barred

60. (1) Where an authorised person suspects on reasonable grounds that a person who is in, or who is entering or about to enter, a gaming area is barred from that gaming area pursuant to this Division, the authorised person may require the person to leave the gaming area.

(2) If a person refuses or fails to comply with a requirement under subsection (1), the authorised person may remove him or her from the licensed premises, using only such force as is reasonably necessary for the purpose.

Commissioner may review decision of licensee

61. (1) The Commissioner may, on application by a person who is aggrieved by a decision of a licensee to bar a person from a gaming area, review that decision.

(2) The Commissioner may confirm or revoke the decision and his or her decision on the matter is not appealable.

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DIVISION 5—OFFENCES RELATING TO CHEATING, ETC.

Interference with machines, equipment or games

62. A person who interferes in any way with the proper operation of an approved gaming machine or gaming equipment, or the proper operation of an approved game in a gaming machine, with the intent of gaining any benefit or advantage for himself or herself or any other person, is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

Interference devices

63. A person who manufactures, sells, supplies or has in his or her possession a device designed, adapted or intended to be used for the purpose of interfering with the proper operation of an approved gaming machine or gaming equipment or the proper operation of an approved game in a gaming machine is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

Sealing of gaming machines

64. A person other than an authorised officer must not seal any gaming equipment or the computer cabinet or any other part of a gaming machine or break or in any way interfere with any such seal.

Penalty: Division 6 fine or division 8 imprisonment.

Removal of gaming tokens

65. A person other than a person acting in the course of his or her duties must not remove any cash or gaming tokens from a gaming machine.

Penalty: Division 6 fine or division 8 imprisonment.

Machines not to be operated in certain circumstances

66. (1) If, at any time when a gaming area on licensed premises is open for business, the licensee or an approved gaming machine manager suffers or permits a gaming machine to be operated—

- (a) while the gaming machine or any game in the machine is not operating in such a manner that the rules of the game are being complied with, while the sequence or incidence of winnings has in any way been altered or while the machine is in any other way operating defectively; or
- (b) while the gaming machine is not connected to the computer monitoring system or the connection is in anyway defective; or
- (c) while the door of its computer cabinet is not sealed in the manner approved by the Commissioner,

the licensee or manager is guilty of an offence.

Penalty: Division 4 fine or division 6 imprisonment.

Power to remove offenders

67. (1) The holder of a gaming machine licence or an approved gaming machine manager for the licensed premises, if satisfied that a person who is in a gaming area on the premises—

- (a) has damaged or physically abused any gaming machine; or
- (b) has committed, is committing or is about to commit an offence; or
- (c) is behaving in an offensive, abusive or disorderly manner,

may remove the person from the licensed premises, using only such force as is reasonably necessary for the purpose.

(2) A person removed from licensed premises under subsection (1) who enters or attempts to enter the premises within 24 hours of being so removed from them is guilty of an offence.

Penalty: Division 7 fine.

(3) The holder of a gaming machine licence or an approved gaming machine manager for the licensed premises may refuse entry to, or prevent from entering, the gaming area, or areas, on the premises any person who is behaving in an offensive, abusive or disorderly manner.

- (4) A person—
 - (a) who is refused entry to, or prevented from entering, a gaming area under subsection (3); and
 - (b) who enters or attempts to enter any of the gaming areas on the premises within 24 hours after entry is so refused or prevented,

is guilty of an offence.

Penalty: Division 7 fine.

(5) The powers exercisable under this section are in addition to any other powers that are exercisable at law.

DIVISION 6—OFFENCES RELATING TO PROFIT SHARING, ETC.

Certain profit sharing, etc., is prohibited

68. (1) If the holder of a gaming machine licence—

- (a) enters into partnership with an unlicensed person (that is to say, a person who is not one of the holders of the gaming machine licence) in relation to the business conducted pursuant to the licence; or
- (b) enters into any agreement or arrangement under which an unlicensed person in any way participates in the proceeds or profits of the business carried on pursuant to the licence; or
- (c) remunerates an unlicensed person (other than the holder of the gaming machine monitor licence) by reference to the proceeds or profits of, or the amount staked in the course of, the business carried on pursuant to the licence; or

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(d) permits an unlicensed person (not being a person who is an approved gaming machine manager in respect of the business) to conduct, superintend or manage the business carried on pursuant to the licence; or

(e) permits an unlicensed person to hold himself or herself out to the public as the licensee,

the licensee and the unlicensed person are each guilty of an offence.

Penalty: Division 4 fine or division 6 imprisonment.

(2) Subsection (1) does not apply in relation to an agreement or arrangement providing for the disbursement of proceeds or profits to a person in a position of authority in a body corporate that holds the gaming machine licence or to any other person approved by the Commissioner.

(3) The profit or loss arising from carrying out on licensed premises the undertaking under a gaming machine licence must not be distributed separately or differentially from the profit or loss arising out of the undertaking under the liquor licence held in respect of the premises.

(4) A person who—

(a) distributes profit or loss in contravention of subsection (3); or

(b) accepts a distribution of profit knowing it to be in contravention of subsection (3); or

(c) becomes a party to an agreement or arrangement (whether under the memorandum or articles of association of a body corporate or otherwise) under which profit or loss is to be so distributed,

is guilty of an offence.

Penalty: Division 4 fine or division 6 imprisonment.

(5) An agreement or arrangement under which profit or loss is to be distributed in contravention of subsection (3) is, to that extent, null and void (whether it was made before or after the commencement of this Act).

**PART 6
APPEALS**

Right of appeal

69. (1) Subject to this Act, a person who is dissatisfied with or aggrieved by a decision or order made or a direction given by the Commissioner under this Act may appeal to the Authority against that decision.

(2) An appeal does not lie against a direction given by the Commissioner when acting as an authorised officer.

(3) An appeal under this section must be instituted within one month of the decision, or order or direction being made or given or such longer period as the Authority may allow.

(4) An appeal under this section is in the nature of a rehearing.

(5) The Authority may, on an appeal under this section, do such of the following as the Authority thinks appropriate:

- (a) affirm, vary or quash the decision, order or direction subject to the appeal;
- (b) substitute, or make in addition, any decision, order or direction that the Commissioner could make;
- (c) remit the matter to the Commissioner for further consideration;
- (d) make any incidental or ancillary order.

(6) For the purposes of this section, the transferor of a gaming machine licence is a party to any proceedings relating to the transfer of the licence.

(7) No right of appeal lies against a decision or order of the Authority on an appeal under this section.

Operation of decisions pending appeal

70. (1) Subject to subsection (2), a decision, order or direction against which a right of appeal lies continues to operate notwithstanding that right of appeal or the institution of appeal proceedings.

(2) The operation of a decision, order or direction against which an appeal has been instituted may, on application by the appellant, be suspended by the Commissioner or the Authority pending determination of the appeal.

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**PART 7
POWERS OF INSPECTION, ETC.**

Power to enter and inspect

71. (1) An authorised officer—

- (a) may, for the purposes of ascertaining whether the provisions of this Act or a licence under this Act are being complied with, at any time while premises on which the holder of a licence conducts any business pursuant to the licence are open for business or at any other reasonable time; or
- (b) may, where the officer suspects on reasonable grounds that an offence has been, is being or is about to be committed on any premises or that evidence of an offence is likely to be found on any premises, at any time,

exercise all or any of the following powers:

- (c) enter or, where necessary, break into the premises, using only such force as is reasonably necessary for the purpose;
- (d) inspect or search the premises or anything on the premises;
- (e) require any person on the premises to—
 - (i) produce any equipment or other items, or any books, papers or documents, that are in the person's custody or control;
 - (ii) answer any questions put by the authorised officer;
 - (iii) open any gaming machine on the premises or any part of such a machine;
- (f) inspect any books, papers or documents produced to him or her and retain them for so long as is reasonably necessary for the purpose of copying or taking extracts from any of them;
- (g) if the authorised officer suspects on reasonable grounds that an offence has been committed, seize and retain anything that he or she believes affords evidence of the offence;
- (h) give such directions as are reasonably necessary for, or as are incidental to, the effective exercise of the officer's powers under this section.

(2) An authorised officer cannot exercise powers under subsection (1)(c) in relation to premises that are not used in the course of a business carried on pursuant to a licence under this Act except on the authority of a warrant issued by a justice.

(3) A justice cannot issue a warrant under subsection (2) unless satisfied, on information given on oath—

- (a) that there are reasonable grounds for suspecting that an offence has been, is being or is about to be committed; and
- (b) that the warrant is reasonably required in the circumstances.

(4) An authorised officer may, in exercising powers under this section, be accompanied by such assistants as are reasonably necessary for the purpose.

(5) Where an authorised officer suspects on reasonable grounds that—

- (a) a gaming machine, an approved game or any gaming equipment is defective or is not operating correctly; or
- (b) that the computer system by which the operation of gaming machines is monitored is defective or is not operating correctly,

the authorised officer may give such directions to any licensee or employee of a licensee as the officer thinks fit for the purpose of ensuring compliance with this Act or the proper conduct of gaming operations.

(6) If a person refuses or fails to comply with a direction given under subsection (5), the authorised officer may himself or herself do such things as are reasonably necessary to ensure compliance with the direction, including, if the officer believes it to be the only effective way of ensuring compliance, the seizure of any gaming machine, gaming machine component or gaming equipment.

(7) Subject to subsection (8), a person who—

- (a) without reasonable excuse, hinders or obstructs an authorised officer in the exercise of powers under this section; or
- (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
- (c) fails to comply with any other lawful requirement or direction of an authorised officer; or
- (d) uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or
- (e) falsely represents, by word or conduct, that he or she is an authorised officer,

is guilty of an offence.

Penalty: Division 4 fine.

(8) A person is not required to answer a question, or to produce books, papers or documents, under this section if—

- (a) the answer to the question or the contents of the books, papers or documents would tend to incriminate the person of an offence; or
- (b) by answering the question or producing the books, papers or documents the person would commit a breach of legal professional privilege.

(9) In this section—

"**offence**" means an offence against this Act or any other offence arising out of or committed in connection with the conduct of gaming operations pursuant to this Act.

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**PART 8
GAMING TAX**

Payment of prescribed percentage of gross gaming turnover to Treasurer

72. (1) The holder of a gaming machine licence must, within seven days of the end of each calendar month, pay to the Treasurer an amount equal to the prescribed percentage of the gross gaming turnover for that month in respect of the business carried out pursuant to the licence.

(2) If default is made by a licensee for more than seven days in paying an amount due and payable under subsection (1), a fine of 10 per cent of the amount outstanding is added to that amount.

(3) The Commissioner may, if he or she thinks good reason exists for doing so, waive payment of the whole or part of a fine incurred under subsection (2).

(4) The money received by the Treasurer pursuant to this section will be paid into the Consolidated Account.

(5) An amount due and payable under this section is recoverable by the Treasurer as a debt due to the Crown.

(6) If an amount is due and payable under this section by a licensee that is a body corporate and—

(a) the body corporate is dissolved; or

(b) the amount is not satisfied in full within 14 days of written demand being made by the Commissioner,

the amount outstanding may be recovered from—

(c) a person who was a director or a member of the governing body of the body corporate or former body corporate at the time when the amount became due and payable by the licensee; or

(d) a body corporate that was a related body corporate (as defined in the *Corporations Law*) at that time or a person who was a director of such a related body corporate at that time.

(7) If an amount due and payable by a licensee under this section is not satisfied in full within 14 days of written demand being made by the Commissioner, the licensee will be taken to have contravened a condition of the licence.

(8) For the purposes of this section—

"gross gaming turnover", in relation to the business carried on during any particular month pursuant to a gaming machine licence, means the total amount of all bets made on the gaming machines on the licensed premises during that month;

"the prescribed percentage" means the percentage fixed from time to time by the Minister, by notice in the *Gazette*, for the purposes of this section.

Accounts and monthly returns

73. (1) The holder of a gaming machine licence must cause proper accounts to be kept, in accordance with this section, of the gross gaming turnover for each month in respect of the business carried out pursuant to the licence and such other accounts in relation to that business as the Commissioner may require.

(2) The accounts must—

(a) be kept in a form determined by the Commissioner; and

(b) be kept on the licensed premises; and

(c) be preserved on those premises or, if the business to which they relate no longer exists, at some other place within the State, for a period of six years from the date on which they are compiled.

(3) The holder of a gaming machine licence must furnish the Commissioner, within seven days of the end of each month in respect of which a payment is made pursuant to this Part, with a return in a form determined by the Commissioner giving particulars of the licensee's gross gaming turnover for that month and such other information as the Commissioner may require.

(4) A licensee who, in a return furnished under this section, knowingly makes any false statement or knowingly gives any false information or particulars is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

(5) A court, on convicting a person of an offence against subsection (4), may, if satisfied that the false statement, information or particulars resulted in a reduced amount of gaming tax being payable, impose (in addition to any other penalty imposed) a fine of an amount equal to twice the amount by which the tax was so reduced.

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**PART 9
MISCELLANEOUS**

Annual reports

74. (1) The Authority must, no later than 30 September in each year, submit to the Minister a report on the performance of its functions under this Act during the financial year ending on the previous 30 June.

(2) The Commissioner must, no later than 30 September in each year, submit to the Minister a report on the administration of this Act during the financial year ending on the previous 30 June.

(3) The Board must, no later than 30 September in each year, submit to the Minister a report on the activities carried out by the Board pursuant to the licences it holds under this Act during the financial year ending on the previous 30 June.

(4) The Minister must, within 12 sitting days of receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.

Audit requirements for gaming machine monitor licence

75. The accounts of the undertaking carried out pursuant to the gaming machine monitor licence, and the undertaking carried out by the holder of that licence pursuant to any other licence under this Act, may at any time, and must at least once in each year of operation, be audited by the Auditor-General.

Power to refuse to pay winnings

76. (1) If the holder of a gaming machine licence or an approved gaming machine manager for the licensed premises is satisfied that a gaming machine on the premises, or a game being played on such a machine, is not operating properly and that it would not be just and equitable to allow a particular player to redeem his or her winnings on the machine, the licensee or manager may withhold those winnings from that player and, in that event, must obtain the player's name and address and inform him or her of the right to have the decision reviewed.

(2) A player who is aggrieved by a decision to have his or her winnings withheld may apply to the Commissioner for a review of the decision.

(3) The Commissioner may confirm or revoke the decision and his or her decision on the matter is not appealable.

Certain agreements and arrangements are unlawful

77. (1) If any agreement or arrangement is entered into by the holder of a gaming machine licence and any person other than the holder of the gaming machine supplier's licence for, or in connection with, the supply or acquisition of gaming machines, games or prescribed gaming machine components—

- (a) the agreement or arrangement is null and void; and
- (b) the parties to the agreement or arrangement are each guilty of an offence.

Penalty: Division 5 fine.

(2) An agreement entered into by an approved agent of the Board for the sale or supply of an approved gaming machine, prescribed gaming machine component or gaming equipment to the holder of a gaming machine licence—

- (a) has no legal effect until it is approved by the Board; and

- (b) if any money is paid, possession is taken of any machine, component or equipment, or any other action is purported to be taken in execution of the terms of the agreement prior to the Board's approval being given, the parties to the agreement are each guilty of an offence.

Penalty: Division 5 fine.

(3) If the Commissioner, an inspector or an approved agent or a member of the holder of the gaming machine supplier's licence enters into any agreement or arrangement of a financial or business nature with a licensee, a person who is an applicant for a licence or approval under this Act or an approved gaming machine manager or gaming machine employee without the prior approval of the Minister—

- (a) the agreement or arrangement is null and void; and
(b) the parties to the agreement or arrangement are each guilty of an offence.

Penalty: Division 4 fine.

False or misleading statements

78. A person who knowingly makes a false or misleading statement in an application, a return or any other document furnished by him or her under this Act is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

Bribery

79. (1) A person who offers, promises or gives a bribe to a licensee or an approved gaming machine manager or gaming machine employee with the intent of gaining for himself or herself or some other person an improper benefit in the course of gaming conducted pursuant to this Act is guilty of an indictable offence.

Penalty: Division 4 fine or division 4 imprisonment.

(2) A licensee or an approved gaming machine manager or gaming machine employee who solicits, accepts or agrees to accept such a bribe (whether for himself or herself or some other person) is guilty of an indictable offence.

Penalty: Division 4 fine or division 4 imprisonment.

- (3) In this section—

"bribe" includes any form of inducement.

Licensees to disclose gifts, etc.

80. A licensee must, within one month of receiving, accepting or taking advantage of any gift, favour or benefit given or offered to him or her in connection with carrying out the undertaking authorised by the licence, furnish the Commissioner with a written report of the particulars of the gift, favour or benefit, including the name and address of the person who gave or offered it.

Penalty: Division 7 fine.

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Liability of licensed dealer for acts of agent

81. If a person, in the course of acting as the agent of the holder of a gaming machine dealer's licence, commits an offence against this Act or commits any other offence in the course of dealing with a licensee under this Act in relation to the undertaking authorised by the licence held by the licensee, the holder of the gaming machine dealer's licence is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Service

82. (1) A notice or other document may be served on a licensee—

- (a) personally; or
- (b) by leaving it at the licensed premises, in an envelope addressed to the licensee, with a person apparently employed or engaged in the business conducted in pursuance of the licence; or
- (c) by sending it by post to the licensee addressed to him or her at the licensed premises.

(2) A notice or other document sent by post to a licensee under subsection (1)(c) will be conclusively presumed to have been served on the licensee at the time when it would, in the ordinary course of post, reach the address to which it was posted.

Immunity from liability

83. (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Prosecution of offences

84. A prosecution for an offence against this Act must be commenced within five years after the date on which the offence is alleged to have been committed.

Offences by body corporate

85. Where a body corporate is guilty of an offence against this Act—

- (a) each person who was a director or a member of the governing body of the body corporate at the time the offence was committed; and
- (b) in the case of a body corporate that holds a gaming machine licence, each person who was an approved gaming machine manager for the licensed premises at the time the offence was committed,

is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Evidentiary provision

86. (1) In proceedings for an offence against this Act or in disciplinary proceedings against a licensee, an allegation in the complaint—

- (a) that a person named in the complaint is or is not, or was or was not on a specified date, the holder of a specified licence;
- (b) that premises referred to in the complaint are, or were on a specified date, licensed premises;

- (c) that an area referred to in the complaint was or was not, on a specified date, a gaming area;
- (d) that a person named in the complaint is, or was on a specified date, a minor;
- (e) that a licence referred to in the complaint is, or was on a specified date, subject to specified conditions;
- (f) that a person named in the complaint is or is not, or was or was not on a specified date, an approved gaming machine manager or approved gaming machine employee;
- (g) that a machine referred to in the complaint was or was not on a specified date an approved gaming machine;
- (h) that an item referred to in the complaint was or was not on a specified date an approved gaming token or an approved game;
- (i) that a person named in the complaint is not, or was not on a specified date, an approved manufacturer of gaming tokens;
- (j) that a person named in the complaint is, or was on a specified day, occupying a position of authority in a body corporate that holds a licence under this Act;
- (k) that a person named in the complaint is or is not, or was or was not on a specified date, an inspector,

will be accepted as proved in the absence of proof to the contrary.

(2) In any legal proceedings, a document apparently certified by the Commissioner to be a licence, approval or other document issued under this Act, or to be a copy of such a licence, approval or other document, will be accepted as such in the absence of proof to the contrary.

Regulations

87. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or desirable for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) regulate any matter relating to the conduct, management or procedures of a business carried on pursuant to a licence;
 - (b) fix fees and provide for their payment, recovery or waiver;
 - (c) provide for the exemption, subject to prescribed conditions, of any person who, immediately before the commencement of this Act, had possession of a gaming machine in his or her home;
 - (d) provide for the granting by the Minister of other conditional or unconditional exemptions from this Act, or from any provision of this Act;
 - (e) fix penalties not exceeding a division 7 fine for breaches of the regulations.

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(3) A regulation under this Act may be of general, limited or varied application according to—

- (a) the classes of person, gaming machines or gaming operations; or
- (b) the circumstances; or
- (c) any other specified factor,

to which the regulation is expressed to apply.

SCHEDULE 1

The conditions to which a gaming machine licence will be subject are as follows:

- (a) that the licensee will use only approved gaming machines, approved games and prescribed gaming machine components in the gaming operations conducted pursuant to the licence; and
- (b) that the licensee will not sell or otherwise dispose of a gaming machine or prescribed gaming machine component except with the approval of the Commissioner; and
- (c) that the licensee will conduct the gaming operations only within the area, or areas, designated in the licence as the gaming area, or areas, for the premises; and
- (d) that the licensee will not have in any gaming area on the licensed premises a greater number of gaming machines than the number fixed by the Commissioner as the maximum for that area; and
- (e) that the licensee will not conduct the gaming operations within a gaming area unless the layout of the gaming machines within the area is in accordance with the layout approved by the Commissioner; and
- (f) that the licensee will not make any structural or other alterations within a gaming area on the licensed premises except with the approval of the Commissioner; and
- (g) that the licensee will not conduct the gaming operations outside the hours specified in the licence; and
- (h) that the licensee will not permit any other person to supervise or manage the gaming operations unless that other person is an approved gaming machine manager for those gaming operations; and
- (i) that the licensee will not permit any person to carry out prescribed duties in connection with the gaming operations other than a person who is an approved gaming manager or an approved gaming employee for those gaming operations; and
- (j) that the licensee will not engage any person other than the holder of the gaming machine service licence to install, service or repair a gaming machine, gaming machine component or gaming equipment; and
- (k) that the licensee will not commence to conduct gaming operations pursuant to the licence until—
 - (i) he or she has entered into an arrangement, the terms of which have been approved by the Commissioner, for the monitoring by computer of the operation of all gaming machines on the licensed premises and that arrangement has been implemented; and
 - (ii) each gaming machine has been inspected and sealed by an inspector; and
 - (iii) such of the gaming equipment on the premises as the Commissioner may direct has been inspected and sealed by an inspector; and
- (l) that the licensee will not purchase for use, or use, in gaming machines any tokens other than approved gaming tokens that bear unique identification approved by the Commissioner; and
- (m) that the licensee will not purchase gaming tokens from a person other than an approved manufacturer of gaming tokens; and
- (n) that the licensee will not permit a gaming machine to be operated unless that machine, or the approved game played on the machine, returns winnings to players at a rate that is not less than 85 per cent of the total amount of all bets made on the machine; and
- (o) such other conditions (if any) as the Commissioner thinks fit and specifies in the licence.

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SCHEDULE 2

The conditions to which the gaming machine monitor licence will be subject are as follows:

- (a) a condition that the licensee will not charge any fee for any service provided by the licensee in the course of carrying out the undertaking authorised by the licence unless the fee is in accordance with a scale of fees approved by the Minister for the purpose;
- (b) a condition that the licensee will comply with such directions as the Minister or Commissioner may give in relation to—
 - (i) the keeping of books, accounts, financial statements and other records, and the manner in which they are to be kept and preserved, by the licensee in relation to the undertaking authorised by the licence; and
 - (ii) the furnishing of reports to the Minister or Commissioner on the financial affairs of the licensee in respect of that undertaking;
- (c) a condition that the licensee will not employ any person to carry out duties in connection with the undertaking authorised by the licence unless that person has first been approved by the Commissioner;
- (d) a condition that the licensee will not modify in any way the monitoring system operated pursuant to the licence without the prior approval of the Commissioner;
- (e) a condition that the licensee will not, in the course of carrying out the undertaking authorised by the licence, do any other specified thing without the prior approval of the Commissioner;
- (f) a condition that the licensee must modify or upgrade the monitoring system operated pursuant to the licence as the Commissioner may from time to time reasonably require;
- (g) a condition that the licensee will comply with such other directions as the Commissioner may, in the interests of ensuring the efficient and effective monitoring of all gaming operations conducted pursuant to this Act, give to the licensee in relation to carrying out the undertaking authorised by the licence;
- (h) such other conditions (if any) as the Commissioner thinks fit and specifies in the licence.

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provisions from *Gaming Machines (Prohibition of Cross Holdings, Profit Sharing, etc.) Amendment Act 1994*, s. 8)

8. (1) Sections 4 and 5 of this Act do not affect a decision made by the Commissioner in relation to an application for a licence or an approval under the principal Act if the decision was made before 19 April 1994.

(2) Section 5 of this Act does not prevent the Commissioner from granting an application for approval to a person to assume a position of authority in a body corporate that is the holder of a gaming machine licence if—

- (a) the person was, before 19 April 1994, approved under the *Liquor Licensing Act 1985* to hold a position of authority in a body corporate that held a licence under that Act; and
- (b) the body corporate held the gaming machine licence at the time that approval was granted; and
- (c) the Commissioner is satisfied that the applicant or some other person incurred significant irrecoverable costs or expenses on the assumption that, because approval was granted under the *Liquor Licensing Act*, the application under the principal Act would be granted.

Legislative History

Section 15(1): amended by 58, 1994, s. 3
Section 20: repealed by 58, 1994, s. 7 (Sched.)
Section 37(3): inserted by 58, 1994, s. 4

Part 4A comprising s. 44A and heading inserted by 58, 1994, s. 5

Section 51(3): amended by 58, 1994, s. 7 (Sched.)
Section 64: amended by 58, 1994, s. 7 (Sched.)
Section 68(3) - (5): inserted by 58, 1994, s. 6

Gaming Machines Act 1992**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.