

South Australia

# Gaming Machines (Miscellaneous) Amendment Act 2004

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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**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 2004*.

**2—Commencement**

- (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Part 2 and section 47 come into force on the date of assent.
- (3) A special commencement date is to be fixed for sections 9 and 19 of this Act (and that date must fall at least 4 months after the commencement of Division 3A of Part 3 of the *Gaming Machines Act 1992*).

**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* (extension of gaming machines moratorium)**

**4—Amendment of section 14A—Freeze on gaming machines**

Section 14A(6)—delete subsection (6)

**Part 3—Amendment of *Gaming Machines Act 1992* (gaming machine entitlements)**

**5—Amendment of section 3—Interpretation**

- (1) Section 3(1)—after the definition of *club licence* insert:

*Club One* means the body holding the special club licence (see section 24A);
- (2) Section 3(1)—after the definition of *gaming machine* insert:

*gaming machine entitlement* means an entitlement to operate 1 gaming machine under a gaming machine licence;

- (3) Section 3(1)—after the definition of *liquor licence* insert:

*non-profit association* means incorporated association or some other kind of body corporate as to which the Commissioner is satisfied that profits cannot be returned to members or shareholders;

## **6—Amendment of section 14—Licence classes**

- (1) Section 14(1)—after paragraph (a) insert:

(ab) special club licence: subject to the Act and the conditions of the licence, the special club licence authorises the licensee to possess approved gaming machines and to operate them on premises in respect of which someone else holds a gaming machine licence as agent of the holder of the gaming machine licence;

- (2) Section 14(2)—delete subsection (2) and substitute:

- (2) There will be only—
- (a) 1 special club licence; and
  - (b) 1 gaming machine supplier's licence; and
  - (c) 1 gaming machine monitor licence; and
  - (d) 1 gaming machine service licence.

## **7—Repeal of section 14A**

Section 14A—delete the section

## **8—Amendment of section 15—Eligibility criteria**

- (1) Section 15—After subsection (1) insert:

(1a) Club One is eligible to hold a gaming machine licence for particular premises if it holds a licence under the *Liquor Licensing Act 1997* in respect of the premises as required by subsection (1).

- (2) Section 15(5)—delete subsection (5) and substitute:

- (5) In determining an application for a gaming machine licence, the Commissioner must—
- (a) have regard to the likely social effect of the grant of the licence on the local community and, in particular, the likely effect on problem gambling within the local community; and
  - (b) in that regard, take into consideration any guidelines issued by the Authority,

but must not have regard to the economic effect that the granting of the 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).

## 9—Substitution of section 16

Section 16—delete the section and substitute:

### 16—Number of gaming machines to be operated under licence

- (1) A gaming machine licence authorises the licensee to possess and operate in the licensed premises a number of gaming machines equivalent to the number of gaming machine entitlements held in respect of the licensed premises (or a lesser number).
- (2) The number of gaming machine entitlements held in respect of particular licensed premises cannot exceed the maximum number approved by the Commissioner for operation under the gaming machine licence for the premises.
- (3) The Commissioner cannot approve more than 40 gaming machines for operation under a gaming machine licence.
- (4) If 2 or more gaming machine licences are in force in relation to the same licensed premises, the aggregate number of gaming machines approved for operation under the licences cannot exceed 40.
- (5) The Commissioner may grant to the holder or former holder of a gaming machine licence a temporary authorisation to possess (but not to operate) gaming machines if the authorisation is necessary or desirable to enable the orderly disposal of gaming machines the holder or former holder is no longer authorised to operate.

## 10—Amendment of section 24—Discretion to refuse application

Section 24(1)—delete "grant or"

## 11—Insertion of section 24A

After section 24 insert:

### 24A—Special club licence

- (1) The special club licence is to be granted to a body (referred to in this Act as *Club One*) that, on making due application for the licence, satisfies the Commissioner—
  - (a) that it is representative of a substantial number of clubs in the State; and
  - (b) that it has available to it the appropriate skills and expertise to operate gaming machines, and conduct gaming machine business.
- (2) The directors, or members of the board of management, of Club One must include the following:
  - (a) at least 1 person who is a lawyer of at least 3 years standing with experience in the club and gaming industry;
  - (b) at least 1 person who is a qualified accountant of at least 3 years standing with experience in the club and gaming industry;

- (c) at least 1 person with experience in dealing with the issues of problem gambling and gambling addiction.
- (3) When Club One, in the exercise of its powers as the holder of the special club licence, has or operates gaming machines on the premises of some other person holding a gaming machine licence—
  - (a) Club One is to be regarded as an agent of the holder of the gaming machine licence; and
  - (b) Club One and the holder of the gaming machine licence are jointly and severally responsible to ensure compliance with the conditions of the gaming machine licence; and
  - (c) breach of a condition of the gaming machine licence is to be regarded as a breach by each licensee of a condition of their respective licences; and
  - (d) Club One and the holder of the gaming machine licence are jointly and severally responsible to ensure compliance with—
    - (i) the provisions of this Act regarding payment of gaming tax; and
    - (ii) the keeping of accounts and the furnishing of monthly returns.
- (4) A special club licence is subject to the following further conditions:
  - (a) a condition requiring the holder of the licence to submit for the Commissioner's approval contracts or arrangements under which management services are to be provided, officers or employees engaged in senior management positions are to be remunerated or profits are to be shared with other licensees;
  - (b) a condition requiring the holder of the licence to provide a report to the Minister, no later than 30 September in each year, on the conduct of its financial affairs during the financial year ending on the previous 30 June, including reference to distribution of funds among community, sporting and recreational groups;
  - (c) other conditions determined by the Commissioner and specified in the licence.
- (5) The Minister must, within 12 sitting days of receiving the report referred to above, cause a copy of the report to be laid before each House of Parliament.

## 12—Insertion of Division 3A

After section 27 insert:

### **Division 3A—Gaming machine entitlements**

#### **27A—Gaming machine entitlements**

- (1) On the commencement of this Division, the Commissioner is to assign to each licensee who holds a gaming machine licence gaming machine entitlements as follows:
  - (a) if—
    - (i) the Commissioner has approved the operation of 20 gaming machines or less under the licence; or
    - (ii) the Commissioner has approved the operation of more than 20 gaming machines under the licence and the licensee is a non-profit association,  
the Commissioner is to issue to the licensee a number of gaming machine entitlements equivalent to the number approved by the Commissioner; and
  - (b) if—
    - (i) the Commissioner has approved the operation of more than 20 but not more than 28 gaming machines under the licence; and
    - (ii) the licensee is not a non-profit association,  
the Commissioner is to issue 20 gaming machine entitlements to the licensee; and
  - (c) if—
    - (i) the Commissioner has approved the operation of more than 28 gaming machines under the licence; and
    - (ii) the licensee is not a non-profit association,  
the Commissioner is to issue to the licensee a number of gaming machine entitlements calculated by subtracting 8 from the approved number.
- (2) A gaming machine entitlement may be held only by—
  - (a) a licensee holding a gaming machine licence who has an approval from the Commissioner to operate on the licensed premises a number of gaming machines equal to or exceeding the number of gaming machine entitlements held by the licensee; or
  - (b) Club One.

## **27B—Transferability of gaming machine entitlements**

- (1) A gaming machine entitlement is transferable as follows:
  - (a) if a gaming machine licence is transferred, the transferor may transfer together with the licence all gaming machine entitlements held by the transferor immediately before the transfer;
  - (b) a non-profit association that holds a gaming machine licence may transfer a gaming machine entitlement to Club One under an arrangement approved by the Commissioner;
  - (c) a non-profit association that holds a gaming machine licence may transfer a gaming machine entitlement to another licensed non-profit association, under an arrangement approved by the Commissioner, for the purpose of facilitating merger or amalgamation of gaming machine operations for the benefit of both non-profit associations;
  - (d) if a person is authorised by or under Part 3 Division 4A to carry on the business of a licensee, the licensee's gaming machine entitlements vest in the authorised person for the duration of the authorisation (and are not otherwise transferable during that period) but then revert to the person in whom they would (apart from this paragraph) have been vested;
  - (e) if a person holds a temporary licence under Part 3 Division 4A, the former licensee's gaming machine entitlements vest in the licensee for the duration of the temporary licence (and are not otherwise transferable during that period) but then—
    - (i) if the temporary licence is converted into an ordinary licence—vest on the conversion in the holder of the licence; or
    - (ii) if the temporary licence is not converted into an ordinary licence—revert to the person in whom they would (apart from this paragraph) have been vested;
  - (f) the holder of gaming machine entitlements may (subject to this section) sell 1 or more of the entitlements under the approved trading system.
- (2) The approved trading system is a system established by the regulations under which—
  - (a) the holder of gaming machine entitlements may offer 1 or more of them for sale at a fixed price of \$50 000 for each entitlement; and
  - (b) intending purchasers may submit offers to purchase at that price.



- (3) The regulations establishing the approved trading system may include the following:
- (a) provisions dealing with the eligibility of intending sellers and purchasers to participate in the system;
  - (b) conditions and restrictions on the sale of gaming machine entitlements (such as, for example, a condition providing that a gaming machine entitlement formerly held by the holder of a particular type of liquor licence may only be purchased by the holder of a liquor licence of a similar type);
  - (c) provisions for allocating gaming machine entitlements that are available for purchase under the approved trading system between intending purchasers;
  - (d) a provision requiring the purchaser of a gaming machine entitlement to acquire and operate a gaming machine under the entitlement within a specified period and providing that, if the purchaser fails to do so, the entitlement is to lapse;
  - (e) a provision requiring an intending seller of gaming machine entitlements to surrender a proportion of its entitlements to the Crown and prescribing how the Crown is to deal with entitlements so surrendered;
  - (f) a provision for the payment of a commission (not exceeding one-third of the purchase price) to the Crown on sale of a gaming machine entitlement under the approved trading system;
  - (g) a provision for the payment of fees by participants in the approved trading system;
  - (h) provisions dealing with any other aspect of the approved trading system.
- (4) Any commission on the sale of a gaming machine entitlement is to be paid into the Gamblers Rehabilitation Fund.
- (5) If a gaming machine entitlement relates to premises that are (or were) held by the licensee under a lease, the right to sell the entitlement under the approved trading system is qualified as follows:
- (a) if the lease is entered into after the commencement of this section, the lease may exclude or limit the right of sale;
  - (b) if the lease was entered into before the commencement of this section, the right may only be exercised if—
    - (i) all parties to the lease agree; or
    - (ii) the District Court, on application by the holder of the entitlement, determines that it is fair and equitable to authorise its sale and gives its authorisation accordingly.

- (6) If the District Court gives an authorisation under subsection (5)(b), it may exercise either or both of the following powers:
  - (a) it may impose conditions, such as a condition that the proceeds of the sale be shared between the parties on a fair and equitable basis;
  - (b) it may make a consequential alteration to the terms of the lease.
- (7) If the holder of a gaming machine entitlement makes an application for an authorisation under subsection (5)(b) and, before the proceedings are determined—
  - (a) the applicant is required under the terms of a lease to transfer the entitlement to someone else; or
  - (b) the entitlement vests in someone else on conversion of a temporary licence into an ordinary licence under Part 3 Division 4A,

the District Court may order the sale of the entitlement under the approved trading system and the payment of the net proceeds of sale to the applicant or the division of the net proceeds of the sale between the applicant and another or others in proportions the District Court considers fair and equitable.

### **27C—Premises to which gaming machine entitlements relate**

- (1) A gaming machine entitlement is to be issued for the licensed premises in respect of which the licensee to whom it is issued holds a gaming machine licence.
- (2) The following provisions apply on the transfer of a gaming machine entitlement:
  - (a) if the entitlement is transferred together with a gaming machine licence, it will upon transfer relate to the same licensed premises;
  - (b) if the entitlement is transferred by a non-profit association under an arrangement approved by the Commissioner, it will upon transfer relate to premises nominated in the arrangement;
  - (c) if the entitlement is sold under the approved trading system, it will relate to premises nominated by the purchaser and approved by the Commissioner as part of the trading process.
- (3) However, the Commissioner may approve the acquisition of gaming machine entitlements by Club One on the basis that the entitlements will be subsequently allocated to licensed premises with the Commissioner's approval.

- (4) The Commissioner may approve the re-allocation by Club One of gaming machine entitlements from 1 set of licensed premises to another (but gaming machine entitlements allocated to premises in respect of which Club One itself holds a gaming machine licence cannot be re-allocated under this subsection).
- (5) The Commissioner may approve the re-allocation by a licensee of gaming machine entitlements from 1 set of licensed premises (*premises A*) to another (*premises B*) if—
  - (a) the licensee has surrendered the gaming machine licence held in respect of premises A; and
  - (b) the licensee's liquor licence has been removed from premises A to premises B; and
  - (c) premises A and premises B are in the same locality (but this requirement does not apply where the licensee is a non-profit association).

**27D—Effect of this Division on obligations under a lease or mortgage**

If—

- (a) a lease, mortgage or related agreement was entered into before the commencement of this Division; and
- (b) the licensee is required by the lease, mortgage or related agreement to maintain a certain number of gaming machines in operation on the licensed premises; and
- (c) the number exceeds the number of gaming machine entitlements assigned to the licensee on the commencement of this Division,

the lease, mortgage or related agreement will be construed as if it required the licensee to maintain a number of gaming machines in operation on the licensed premises equivalent to the number of gaming machine entitlements assigned to the licensee on the commencement of this Division.

**27E—Statement of Parliamentary intention with regard to gaming machine numbers**

It is Parliament's intention to make no further reduction in gaming machine numbers (beyond the reduction resulting from the implementation of this Division) before 30 June 2014.

**13—Amendment of section 37—Commissioner may approve managers and employees**

Section 37(1)—after "the holder of a gaming machine licence" insert:  
or the special club licence

#### **14—Amendment of section 68—Certain profit sharing etc is prohibited**

Section 68(2) to (5)—delete subsections (2) to (5) and substitute:

- (2) Subsection (1) does not apply to—
  - (a) an agreement or arrangement providing for the disbursement of proceeds or profits to a person in a position of authority in a trust or corporate entity that holds the gaming machine licence; or
  - (b) an agreement or arrangement on terms approved by the Commissioner.

#### **15—Amendment of section 70—Operation of decisions pending appeal**

Section 70(2)—delete subsection (2) and substitute:

- (2) The Commissioner or the appropriate appellate authority may—
  - (a) suspend the operation of a decision, order or direction against which an appeal has been commenced or is proposed; or
  - (b) make any other order or direction that may be appropriate in the circumstances.
- (3) In subsection (2)—

*appropriate appellate authority* means—

  - (a) if the appeal lies to the Court—the Court;
  - (b) if the appeal lies to the Authority—the Authority.

#### **16—Insertion of section 71A**

After the heading to Part 8 and before section 72 insert:

##### **71A—Moratorium on increases in rates of gaming tax**

It is the intention of Parliament that the rates of gaming tax, as in force at the time of the enactment of this section, should not be increased before 30 June 2014.

#### **17—Insertion of section 86A**

After section 86 insert:

##### **86A—Guidelines**

- (1) If a provision of this Act contemplates that guidelines may be issued on a particular subject or for a particular purpose, the Authority may issue guidelines accordingly.
- (2) Any such guidelines are to be regarded as a form of subordinate legislation that is required to be laid before Parliament and is subject to disallowance under the *Subordinate Legislation Act 1978*.

- (3) Any guidelines issued by the Authority before the commencement of this section are to be laid before Parliament and are subject to disallowance under the *Subordinate Legislation Act 1978* as if they had been made on the commencement of this section.

## **18—Insertion of sections 88 and 89**

After section 87 insert:

### **88—Exclusion of compensation**

- (1) No right to compensation arises—
- (a) as a result of the expropriation or diminution of rights of a licensee by the 2004 amendments; or
  - (b) as a result of the cancellation or lapse of a gaming machine entitlement under this Act.

- (2) In this section—

**2004 amendments** means the amendments to this Act made by the *Gaming Machines (Miscellaneous) Amendment Act 2004*.

### **89—Minister to obtain reports**

- (1) The Minister must obtain the following reports from the Authority—
- (a) a report on the introduction of gaming machine entitlements, the operation of the trading system for gaming machine entitlements, and the effects on the gambling industry;
  - (b) a report on the effects of the 2004 amendments on gambling in the State and in particular, on whether those amendments have been effective in reducing the incidence of problem gambling and the extent of any such reduction.
- (2) The reports must be delivered to the Minister—
- (a) in the case of the report under subsection (1)(a)—before 31 December 2005;
  - (b) in the case of the report under subsection (1)(b)—as soon as practicable after the second anniversary of the commencement of the 2004 amendments.
- (3) The Minister must—
- (a) if Parliament is sitting—have copies of a report received under this section laid before both Houses of Parliament within 6 sitting days; or
  - (b) if Parliament is not sitting—give copies of the report to the Speaker of the House of Assembly and the President of the Legislative Council so that they may lay copies of the report before their respective Houses on resumption of sittings and, in the meantime, distribute copies of the report among Members of their respective Houses.

- (4) In this section—

**2004 amendments** means the amendments to this Act made by the *Gaming Machines (Miscellaneous) Amendment Act 2004*.

### **90—Minister to obtain report on Smartcard technology**

- (1) Within 6 months after the Governor assents to the *Gaming Machines (Miscellaneous) Amendment Act 2004*, the Minister must obtain a report from the Authority on how Smartcard technology might be implemented with a view to significantly reducing problem gambling.
- (2) The Minister must, within 6 sitting days after receiving the report, have copies of the report laid before both Houses of Parliament.

### **91—Minister to obtain report on gambling rehabilitation programs**

- (1) Within 6 months after the Governor assents to the *Gaming Machines (Miscellaneous) Amendment Act 2004*, the Minister must obtain a report from the Authority on the effectiveness of each gambling rehabilitation program conducted or funded (wholly or partly) by the State Government.
- (2) The Minister must, within 6 sitting days after receiving the report, have copies of the report laid before both Houses of Parliament.

### **19—Amendment of Schedule 1—Gaming machine licence conditions**

Schedule 1—after paragraph (c) insert:

- (ca) that the licensee will not have in the licensee's possession more gaming machines than the number of gaming machine entitlements held in respect of the licensed premises; and

## **Part 4—Amendment of *Gaming Machines Act 1992* (miscellaneous amendments)**

### **20—Amendment of section 3—Interpretation**

Section 3(1), definition of *approved gaming machine manager*, (b)—delete paragraph (b) and substitute:

- (b) a natural person who is a licensee, or a director or member of the governing body of a licensee, in respect of the premises;

### **21—Insertion of section 7A**

After section 7 insert:

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

- (1) The Commissioner may—
  - (a) grant an application on an interim basis;

- (b) specify that a condition of a licence or approval is to be effective for a specified period,
- and, in consequence, may give any necessary procedural directions in the matter.
- (2) If the Commissioner considers that an applicant should satisfy the Commissioner as to a certain matter for the purposes of determining the application, the Commissioner may, if he or she thinks fit, nevertheless grant the application on the condition that the applicant satisfies the Commissioner as to the matter within a period determined by the Commissioner.
- (3) If a licence or approval is granted on a condition under subsection (2), the Commissioner may, on failure by the applicant to comply with the condition, revoke the licence or approval, or suspend the licence or approval until further order.
- (4) The Commissioner may in proceedings accept an undertaking from a party in relation to the conduct of the proceedings and, on failure by the party to fulfil the undertaking, refuse to hear the party further in the proceedings subject to any further order of the Commissioner.

## **22—Amendment of section 14—Licence classes**

- (1) Section 14(1)(c)—after "gaming machine licences" insert:  
or gaming machine service licences
- (2) Section 14(1)(e)—after "equipment" insert:  
in the course of a business carried on by the licensee
- (3) Section 14(2)—delete subsection (2) and substitute:  
(2) There will be only—  
(a) 1 special club licence; and  
(b) 1 gaming machine supplier's licence; and  
(c) 1 gaming machine monitor licence

## **23—Amendment of section 15—Eligibility criteria**

Section 15(1)(d)—delete paragraph (d)

## **24—Amendment of section 26—State Supply Board to hold supplier's licence**

- (1) Section 26(1)—delete subsection (1) and substitute:  
(1) The Board will be granted the gaming machine supplier's licence.
- (2) Section 26(2)—delete "a licence" and substitute:  
the licence

## **25—Insertion of Part 3 Division 4A**

After section 28A insert:

### **Division 4A—Devolution of licensee's rights**

#### **28B—Devolution of licensee's rights**

- (1) If a licensee or 1 of 2 or more joint licensees dies—
  - (a) the executor of the will or the administrator of the estate; or
  - (b) a relative of the deceased acting with the permission of the Commissioner,may, for 1 month after the date of death or a longer period approved by the Commissioner, carry on business as the licensee or 1 of the licensees (as the case requires) under the licence.
- (2) If a licensee or 1 of 2 or more joint licensees becomes physically or mentally incapable of carrying on business under the licence—
  - (a) a person authorised or appointed by law to administer the licensee's affairs; or
  - (b) a relative of the licensee acting with the permission of the Commissioner,may, for 1 month after the commencement of the incapacity or a longer period approved by the Commissioner, carry on business as the licensee or 1 of the licensees (as the case requires) under the licence.
- (3) If a licensee ceases to occupy the licensed premises to which the licence relates, a landlord, mortgagee or other person acting with the permission of the Commissioner may, for a period of 1 month or a longer period approved by the Commissioner, carry on business as the licensee under the licence.
- (4) If a licence is surrendered or revoked, the Commissioner may, on application by a landlord, mortgagee or other person who satisfies the Commissioner that it stands to suffer loss in consequence of the surrender or revocation, grant a temporary licence—
  - (a) of the same class, and subject to the same conditions, as the licence that was surrendered or revoked; but
  - (b) subject to a condition that the licence will expire at the end of a term fixed by the Commissioner not exceeding 6 months.
- (5) An approval, permission or temporary licence may be granted under this section by the Commissioner—
  - (a) on the application of the person seeking it without hearing or inviting representations from any other person; and
  - (b) on conditions the Commissioner thinks fit.



- (6) A temporary licence under this section may be converted into an ordinary licence by revocation of the condition referred to in subsection (4)(b), but an application for revocation of such a condition must not be granted unless the Commissioner is satisfied—
- (a) that the person who is to hold the licence on revocation of the condition is a fit and proper person to hold a licence of the relevant class; and
  - (b) if that person is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of that class.

### **28C—Bankruptcy or winding up of licensee**

- (1) If a licensee becomes bankrupt or insolvent, the official receiver may carry on business as the licensee under the licence.
- (2) If a corporate licensee is being wound up or is under administration, receivership or official management, a person vested by law with power to administer the affairs of the body corporate may carry on business as the licensee under the licence.

### **28D—Notice to be given of exercise of powers under Division**

A person who exercises rights under this Division (except by prior permission of the Commissioner) must, within 7 days after starting to do so, give notice in writing of that fact to the Commissioner.

### **26—Amendment of section 30—Objections**

- (1) Section 30—after subsection (2) insert:
  - (2a) However, the Commissioner may (in the Commissioner's absolute discretion) accept an objection even though it is lodged, or served on the applicant, out of time.
- (2) Section 30—after subsection (6) insert:
  - (7) An objector to an application is a party to proceedings on the application.

### **27—Insertion of section 35A**

Before section 36 insert:

#### **35A—Interpretation**

In this Division—

*licensee* includes former licensee.

### **28—Amendment of section 36—Cause for disciplinary action against licensees**

- (1) Section 36(1)—delete "The Commissioner may—" and paragraphs (a), (b), (c) and (d) and substitute:

There is proper cause for disciplinary action against a licensee

- (2) Section 36(2), (3) and (4)—delete subsections (2), (3) and (4)

## **29—Insertion of sections 36A and 36B**

After section 36 insert:

### **36A—Inquiry**

- (1) The Commissioner may, of his or her own motion or on the complaint of the Commissioner of Police, hold an inquiry to determine whether there is proper cause for disciplinary action against a licensee.
- (2) The Commissioner must give the licensee and the Commissioner of Police at least 21 days' written notice of an inquiry under this section, and afford the licensee and the Commissioner of Police a reasonable opportunity to call and give evidence, to examine and cross-examine witnesses, and to make submissions to the Commissioner.
- (3) If a party does not attend at the time and place fixed by the Commissioner for the commencement or resumption of proceedings under this section, the Commissioner may proceed to hear and determine the matter in the absence of the party.
- (4) On giving notice to a licensee under this section, the Commissioner may, in the same or a subsequent notice, suspend the licence pending determination of the disciplinary proceedings.

### **36B—Taking of disciplinary action against licensees**

- (1) If, on an inquiry, the Commissioner is satisfied there is proper cause for disciplinary action against a licensee, the Commissioner may take disciplinary action against the licensee by doing 1 or more of the following:
  - (a) administering a reprimand;
  - (b) adding to, or altering, the conditions of the licence;
  - (c) cancelling 1 or more gaming machine entitlements;
  - (d) suspending or revoking the licence;
  - (e) imposing a fine not exceeding \$15 000;
  - (f) if a licence is revoked—disqualifying the former licensee from being licensed or approved under this Act.
- (2) When the Commissioner revokes a licence, the Commissioner must determine whether all or any of the gaming machine entitlements held by the former licensee should be cancelled and, if so, cancel them accordingly.
- (3) The Commissioner may—
  - (a) direct that a disqualification is to apply permanently;
  - (b) direct that a suspension or disqualification is to apply—
    - (i) for a specified period; or

- (ii) until the fulfilment of stipulated conditions; or
    - (iii) until further order;
  - (c) direct that disciplinary action is to have effect at a specified future time or is to have effect at a specified future time unless stipulated conditions are fulfilled.
- (4) If—
- (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the grounds for disciplinary action,
- the person is not liable to a fine under this section for conduct giving rise to the offence.
- (5) A fine imposed under this section may be recovered summarily.
- (6) When the Commissioner cancels gaming machine entitlements under this section, an equivalent number of entitlements may be offered for sale by the Crown under the approved trading system.
- (7) However, the Crown may only exercise its power of sale if the total number of gaming machine entitlements in force under this Act is less than a number calculated by subtracting 3 000 from the number of gaming machines approved for operation under this Act immediately before the commencement of section 27A.

### **30—Insertion of section 38B**

After section 38A insert:

#### **38B—Commissioner may approve gaming machine technicians**

The Commissioner may, on application by the holder of a gaming machine service licence, approve a natural person as a gaming machine technician for the holder of the licence.

### **31—Amendment of section 42—Discretion to grant or refuse approval**

- (1) Section 42—after subsection (3) insert:
- (3a) The Commissioner cannot approve a person as a gaming machine technician unless satisfied, by such evidence as he or she may require, that the person is a fit and proper person to personally perform the work of installing, servicing and repairing gaming machines.
- (2) Section 42(6)—after "subsection (2), (3)," insert:
- (3a),

### **32—Insertion of section 42A**

After section 42 insert:

#### **42A—Advertisement of certain applications and objections**

- (1) An application for approval must, if the Commissioner so directs, be advertised by publication by the applicant of notice, in a form approved by the Commissioner, in a newspaper circulating generally throughout the State and in the Gazette at least 28 days before the date fixed for the hearing of the application.
- (2) If an application has been advertised under this section, any person may, by notice in the prescribed form lodged with the Commissioner at least 7 days before the day appointed for the hearing of the application, object to the application.
- (3) 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.
- (4) However, the Commissioner may (in the Commissioner's absolute discretion) accept an objection even though it is lodged, or served on the applicant, out of time.
- (5) An objection may be made on behalf of an unincorporated association under this section by an agent duly appointed for the purpose.
- (6) An objection may be made on the ground that the grant of the application would be contrary to this Act.
- (7) The Commissioner may allow a person who has made an objection to vary the objection at any time before the determination of the proceedings.
- (8) If the Commissioner allows an objection to be varied pursuant to subsection (7), 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.
- (9) An objector to an application is a party to proceedings on the application.

### **33—Amendment of section 43—Intervention by Commissioner of Police**

Section 43(1)—delete subsection (1) and substitute:

- (1) The Commissioner must furnish the Commissioner of Police with a copy of all applications for approval made under this Part other than under section 40 or 41 and the Commissioner of Police may intervene in proceedings before the Commissioner on such an application.

### **34—Substitution of sections 48, 49 and 50**

Sections 48, 49 and 50—delete the sections and substitute:

#### **48—Offences relating to management of business or positions of authority**

- (1) If the gaming operations conducted on any premises pursuant to a gaming machine licence are supervised or managed by a person who is not an approved gaming machine manager in respect of those gaming operations, the licensee and the person are each guilty of an offence.

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

- (2) If a person assumes a position of authority in a trust or corporate entity that holds a licence without the approval of the Commissioner, the licensee and the person are each guilty of an offence.

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

#### **49—Offence related to employment in gaming areas**

If prescribed duties are carried out in connection with the gaming operations conducted on licensed premises by a person who is not—

- (a) an approved gaming machine manager in respect of those premises; or
- (b) an approved gaming machine employee in respect of those premises,

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

Maximum penalty: \$10 000 or imprisonment for 6 months.

#### **50—Offence related to personal performance of work on gaming machines**

If the work of installing, servicing or repairing a gaming machine is personally performed on licensed premises by a person who is not—

- (a) the holder of a gaming machine service licence; or
- (b) approved as a gaming machine technician for the holder of a gaming machine service licence,

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

Maximum penalty: \$10 000 or imprisonment for 6 months.

#### **50A—Approved gaming machine managers and employees must carry identification**

If an approved gaming machine manager or approved gaming machine employee does not, 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,

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

Maximum penalty: \$2 500.

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

Section 51—after subsection (4) insert:

- (4a) The holder of a gaming machine service licence or a person in a position of authority in a trust or corporate entity that holds such a licence, or an approved gaming machine technician for the holder of such a licence, must not, except as is necessary for the purpose of carrying out his or her duties, operate a gaming machine on any licensed premises.

Maximum penalty: \$10 000 or imprisonment for 6 months.

### **36—Amendment of section 52—Prohibition of lending or extension of credit**

- (1) Section 52—delete ", a gaming machine manager or a gaming machine employee"  
(2) Section 52—delete ", manager or employee" wherever occurring  
(3) Section 52—after its present contents as amended (now to be designated as subsection (1)) insert:

- (2) If an approved gaming machine manager or an approved gaming machine employee—
- (a) lends or offers to lend money to a person who is in or who is about to enter the licensed premises; or
  - (b) allows a person to use a credit card or charge card for the purpose of paying for playing the gaming machines on the licensed premises or in circumstances where the manager or employee could reasonably be expected to know that the use of the card is for that purpose; or
  - (c) otherwise 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 or in circumstances where the manager or employee could reasonably be expected to know that the credit is to be used for that purpose,

the licensee and the manager or employee are each guilty of an offence.

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

### 37—Insertion of section 53B

After section 53A insert:

#### **53B—Commissioner's directions to ensure security of gaming machines**

- (1) If—
  - (a) gaming machines are left on licensed premises after the premises have been vacated by the licensee; or
  - (b) the Commissioner has any reason to believe that gaming machines on licensed premises are not adequately secured against unauthorised use or interference,

the Commissioner may give any directions, in writing, that the Commissioner considers are reasonably required to secure the machines against unauthorised use or interference.

- (2) The Commissioner may, for example, do either or both of the following:
  - (a) direct the licensee to remove the machines to a secure storage location;
  - (b) direct the holder of the gaming machine monitor licence to electronically disable the machines (and maintain its monitoring of the machines).
- (3) A person given a direction by the Commissioner under this section must not fail to comply with the direction.

Maximum penalty: \$35 000.

### 38—Amendment of section 59—Licensee may bar excessive gamblers

- (1) Section 59(4)—delete ", an approved gaming machine manager or an approved gaming machine employee"
- (2) Section 59—after subsection (4) insert:
  - (5) If an approved gaming machine manager or an approved gaming machine employee suffers or permits a person to enter or remain in a gaming area from which the person has been barred, the licensee and the manager or employee are each guilty of an offence.

Maximum penalty: \$10 000.

### 39—Amendment of section 69—Right of appeal

Section 69(1)—delete subsection (1) and substitute:

- (1) A party to proceedings before the Commissioner who is dissatisfied with a decision or order made or given in the proceedings may appeal to the Court against the decision or order.

#### **40—Amendment of section 72A—Gaming tax**

- (1) Section 72A(4)—after paragraph (b) insert:
  - (ba) as to \$3.845 million—into the *Gamblers Rehabilitation Fund* established under this Part;
- (2) Section 72A(5)—After "(b)" insert:
  - , (ba)

#### **41—Amendment of section 72B—Recovery of tax**

- (1) Section 72B—after subsection (2) insert:
  - (2a) If default is made by a licensee for more than 10 days in paying an amount due and payable under this Part, the Commissioner may, by written notice to the licensee, suspend the licence (and the licence will remain suspended until the amount, and any fine, is paid or the Commissioner terminates the suspension of the licence).
- (2) Section 72B(5)—delete subsection (5)

#### **42—Insertion of section 73BA**

After section 73B insert:

##### **73BA—Gamblers Rehabilitation Fund**

- (1) The *Gamblers Rehabilitation Fund* is established.
- (2) The Fund will be kept at the Treasury.
- (3) The Minister for Families and Communities will invite contributions to the Fund from stakeholders in the gambling industry.
- (4) The money paid into the Fund under this Part will from time to time be applied by the Minister for Families and Communities towards programs for or related to minimising problem gambling or rehabilitating problem gamblers.

#### **43—Amendment of section 74—Annual reports**

Section 74(3)—delete "licences it holds under this Act" and substitute:

gaming machine supplier's licence

#### **44—Amendment of section 82—Service**

- (1) Section 82—after subsection (1) insert:
  - (1a) A notice or other document may be served on any other person—
    - (a) personally; or
    - (b) if the person has nominated an address for service—by leaving it at or posting it to that address in an envelope addressed to the person; or
    - (c) by posting it to the person's usual place of business or residence in an envelope addressed to the person; or



- (d) by leaving it at or posting it to the address of the person's solicitor in an envelope addressed to the solicitor.
- (2) Section 82 (2)—delete "licensee under subsection (1c) will be conclusively presumed to have served on the licensee" and substitute:
  - person under this section will be conclusively presumed to have served on the person

#### **45—Amendment of section 85—Vicarious liability**

Section 85—after subsection (2) insert:

- (3) If there is proper cause for disciplinary action against a trust or corporate entity under Part 3, there is proper cause for disciplinary action under that Part against each person occupying a position of authority in the entity unless it is proved that the person could not, by the exercise of reasonable care, have prevented the misconduct.

#### **46—Amendment of Schedule 1**

- (1) Schedule 1(h) and (i)—delete paragraphs (h) and (i)
- (2) Schedule 1(j)—delete "the gaming machine service licence" and substitute:
  - a gaming machine service licence
- (3) Schedule 1, (nb)(i)—after subparagraph (A) insert:
  - (AB) a program for early intervention in problem gambling designed to promote—
    - (a) early identification of persons engaging in problem gambling, including through active observation of the attendance patterns, behaviour and statements of gamblers; and
    - (b) the provision of information relating to responsible gambling and the availability of services to address problems associated with gambling to persons so identified; and
    - (c) the use of the barring procedures under this Act in relation to persons so identified; and
    - (d) the referral of persons so identified to the Department within the meaning of the *Problem Gambling Family Protection Orders Act 2004*; and
- (4) Schedule 1, (nb)(i)(B)—after "relating to" insert:
  - the early intervention program and generally to

## **47—Amendment of Schedule 3**

Schedule 3, clause 1—delete clause 1 and insert:

### **1—Gaming machine licence purportedly granted to Roosters Club Incorporated**

- (1) Despite section 15A, the gaming machine licence purportedly granted by the Commissioner to The Roosters Club Incorporated in respect of premises at 255 Main North Road, Sefton Park, is to be taken to have been validly granted.
- (2) The licence will, if still in force on the relevant date, be taken to be suspended as from that date (but may be surrendered for the purposes of this Act by the licensee after that date despite its suspension).
- (3) The *relevant date* is the date on which section 16 of this Act, as enacted by the *Gaming Machines (Miscellaneous) Amendment Act 2004*, comes into operation.

## **48—Insertion of Schedule 4**

After Schedule 3 insert:

### **Schedule 4—Transitional provision**

#### **1—Gaming machine entitlements**

If—

- (a) an application for a gaming machine licence was made before 7 December 2000; and
- (b) the application is granted after the commencement of this Schedule,

the Commissioner may issue up to 32 new gaming machine entitlements to the licensee.

## **Schedule 1—Related amendment of *Independent Gambling Authority Act 1995***

### **1—Amendment of section 11—Functions and powers of Authority**

Section 11(2a)(b)—delete paragraph (b) and substitute:

- (b) the maintenance of an economically viable and socially responsible gambling industry (including an economically viable and socially responsible club and hotel gaming machine industry) in this State.

### **2—Amendment of section 17—Confidentiality**

Section 17(3)—delete subsection (3)