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at 5 May 1997

WESTERN AUSTRALIA

GAMING COMMISSION ACT 1987

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WESTERN AUSTRALIA

GAMING COMMISSION ACT 1987

AN ACT to constitute the Gaming Commission of Western Australia, to consolidate and amend the law relating to gaming and betting, and for related purposes.

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Gaming Commission Act 1987*¹.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

Interpretation

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

“approved” means approved by the Commission;

“approved premises” means premises approved under section 55;

“authorized officer” means a person appointed under section 21 (1), but to the extent to which a duty is delegated to that person, includes a person to whom section 21 (2) applies who is not a person appointed under section 21 (1);

“bet” includes wager;

“betting” includes the staking or hazarding of money or other value —

- (a) on some question to be decided;
- (b) in support of an assertion or on the issue of a forecast; or
- (c) on the outcome of an uncertain happening, or the event of a doubtful issue,

and the collection or payment of winnings on a bet, but, except in relation to section 44, does not include betting under and in accordance with the *Betting Control Act 1954*;

“books” includes any register or other record of information and accounts or accounting records, however compiled, recorded or stored, and also any document;

“casino” means a building or room in which games are conducted and played, or in which money counting, surveillance, storage and other activities related to the conduct and playing of games are carried on, pursuant to a casino gaming licence granted under section 21 of the *Casino Control Act 1984*;

“casino complex agreement” means agreement entered into by the Minister with a public company under section 19 (1) of the *Casino Control Act 1984*;

“certificate” means a certificate issued under Part V Division 5;

“condition” includes a term, requirement, limitation or restriction;

“conduct” includes promote, organize, manage or operate;

“credit card” includes any card or other article intended for use by a person in obtaining cash, goods or services on credit;

“debit card” means a card or other article intended for use by a person in obtaining access to an account held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services;

“game of chance” does not include any athletic game or sport but, with that exception, includes a pretended game of chance and a game or pretended game which includes a degree of chance, whether or not combined with a skill or degree of skill;

“gaming”, subject to section 39 (2) (d) and (e), means the playing of a game of chance for winnings in money or money’s worth, whether any person playing the game is at risk of losing any money or money’s worth or not;

“gaming equipment” includes any machine used in the course of, or in relation to, gaming;

“house”, in relation to the interpretation of the term “common gaming house”, includes any premises;

“imposed”, in relation to a condition, includes implied by or prescribed under this Act;

“instruments of gaming” includes any cards, dice, board, kip, tables, tokens or other thing used in the course and for the purposes of gaming;

“lottery” includes —

- (a) any scheme or device for the sale, gift, disposal, or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or the drawing of tickets, cards, lots, numbers or figures, or by means of a wheel, or otherwise howsoever;
- (b) a scheme or device for the disposition of property of the kind commonly known as an art union, raffles, guessing competitions, and the like; and
- (c) any disposition of property under any other scheme or competition which the public or any specified section of the public may be or is invited to enter, the nature or conduct of which (though skill on the part of the entrants or competitors purports to be required) is such as in the circumstances of the case to preclude the fair consideration of the answers of the entrants or competitors;

“machine” includes any apparatus or device;

“minor fund raising activity” means an activity to which section 108 applies;

“money” includes any bank note, postal note, cheque, credit card, debit card, security or authority for money or the payment of money;

“multiple bingo” means bingo of the kind referred to in section 96 (4);

“occupier”, used in relation to any premises, includes a person by whom or on whose behalf, and a company or other body of persons, corporate or unincorporate, by or on behalf of which, the premises are actually occupied, or who or which is the lessee or sub-lessee, not being the owner, and an attorney, agent, or manager, who has the control, supervision, or management of the premises on behalf of the person, company or body;

“owner”, in relation to premises, includes a person who, or company or other body of persons, corporate or unincorporate, which, is, whether at law or in equity, entitled to the premises and also includes the attorney, agent or manager having control, supervision or management of the premises for that person, company, or body or who, on his or its behalf, receives the rent or is authorized to issue receipts for the rent;

“permit” or **“gaming permit”** means a permit issued under this Act;

“permit holder” means a person to whom or which a permit is issued;

“permitted amusement with prizes” means an amusement —

- (a) which is provided under, and in all respects in accordance with, a permit; or

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(b) to which section 107 or 108 applies;

“permitted bingo” means bingo conducted under, and which does not contravene, Part V Division 6;

“permitted gaming” means gaming or betting which is conducted under, and in all respects in accordance with, a permit or which constitutes social gambling;

“permitted lottery” means a lottery conducted under and which does not contravene Part V Division 7;

“permitted “two-up” ” means “two-up” gaming conducted under, and which does not contravene, Part V Division 4;

“player”, in relation to a game of chance, includes any person taking part in the game —

(a) against whom other persons taking part in the game play or bet; or

(b) who plays or bets against the house;

“playing” includes operating —

(a) any electrical, electronic or mechanical gaming equipment or other contrivance that is constructed or adapted for use in the game or pretended game; or

(b) any other instrument of gaming;

“possession” includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and notwithstanding that another person has the actual possession or custody of the thing in question;

“premises” means any place, whether or not enclosed or otherwise defined by boundaries, and includes any land, building, structure, vehicle, railway vehicle, vessel, or aircraft, or any part thereof;

“public place” includes the doorways or entrances abutting upon, or any ground adjoining and open to, such a place;

“race” means a race of any kind by horses, whether ridden or driven, or by greyhounds;

“race club” means a body which conducts race meetings;

“race meeting” means a meeting at which races are held;

“related furnishings” means any furniture or furnishings or equipment used in, or ancillary to, the conduct of a common gaming house;

“simultaneous bingo” means bingo played in the circumstances referred to in section 97 (1);

“social gambling” means gaming or betting of a kind which by the operation of Part V Division 2 is to be taken to constitute social gambling;

“the Commission” means the Gaming Commission of Western Australia established pursuant to section 4;

“token” means a gaming chip or other substitute for money which —

- (a) is approved for the purpose by the person conducting the gaming in relation to which it is used; and
- (b) can be exchanged for money or money’s worth or used for playing a game by means of a machine;

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“trade promotion lottery” means a lottery conducted to promote the sale of goods or the use of services, in which every participant takes part —

- (a) without cost to him; or
- (b) by reason of the purchase of goods or the use of services, the cost of which is no more than that cost would be without the opportunity to take part in the lottery;

“unlawful game” means a game to which section 42 (2) applies;

“vessel” includes every description of craft used in navigation;

“vehicle” includes every description of vehicle, whether stationary or in motion;

“winnings” includes any prizes or other winnings of any kind.

(2) A reference to the power to amend, in relation to a permit, an approval or a certificate, or to a licence under the *Casino Control Act 1984*, includes a reference to the power to —

- (a) suspend the operation, for a time specified in the notice of amendment or until the happening of an event so specified, of the permit, approval, certificate or licence or of a condition imposed in respect to the permit, approval, certificate, or licence; or
- (b) impose conditions or further conditions.

[Section 3 amended by No. 16 of 1990 s.33; No. 14 of 1996 s.4.]

PART II — THE COMMISSION

Division 1 — Administration

The Gaming Commission

4. (1) There shall be a body, to be known as the Gaming Commission of Western Australia, established in accordance with this Act.

(2) The Commission —

(a) is a corporate body which under its corporate name —

(i) has perpetual succession; and

(ii) is capable, subject to this Act, of doing and suffering all that bodies corporate may lawfully do or suffer;

(b) may have a common seal, which shall —

(i) be kept in such custody as the Commission directs; and

(ii) be used only as authorized by the Commission;

and

(c) shall be constituted in accordance with section 12.

Commission symbol

5. The Commission may use, and operate under, a trading name or symbol approved by the Minister, of which approval notice is published in the *Gazette*, but the use of such a trading name or symbol does not prevent or affect any proceedings being taken by or against the Commission in its corporate name.

The relationship between the Minister and the Commission

6. (1) Subject to the Minister, it shall be the function of the Commission to carry out the administration of this Act.

(2) The Minister may give to the Commission directions of a general character as to the exercise of its function, and the Commission shall give effect to such a direction, but where such a direction does not accord with recommendations of the Commission the Commission may make its advice to the Minister known to the public.

(3) Where the Minister has referred a question or matter to the Commission for advice, the Minister may act notwithstanding that the advice has not been received, and where advice is received from the Commission the Minister is not bound to act on or give effect to it.

(4) The Commission shall, in so far as that is not inconsistent with this Act, carry out such duties as —

- (a) may be required of it by the Minister under or in furtherance of the provisions of this Act or any other Act in relation to gaming or betting; and
- (b) are not inconsistent with the *Betting Control Act 1954*, the *Totalisator Agency Board Betting Act 1960*, the *Lotteries Commission Act 1990* or the *Casino Control Act 1984*.

[Section 6 amended by No. 16 of 1990 s.33.]

Division 2 — Duties and powers

Duties

7. (1) It shall be the duty of the Commission —

- (a) to administer the law relating to —
 - (i) gaming; and

- (ii) subject to the *Betting Control Act 1954* and the *Totalisator Agency Board Betting Act 1960*, betting;
- (b) to keep under review the conduct, extent and character of that gaming and betting and the provision, use and location of gaming or betting facilities, and to formulate and implement policies for the scrutiny, control and regulation of gaming and, in conjunction with the Betting Control Board and the Totalisator Agency Board, betting, taking into account the requirements and interest of the community as a whole;
- (c) to grant, or to withhold or revoke, approval in respect of, and where appropriate to inspect, examine or investigate premises, gaming equipment, operations and persons concerned with gaming or betting in relation to which a permit or certificate is sought;
- (d) to administer all matters relating to any casino complex, licensed casino, casino key employee, casino employee or gaming in a casino, pursuant to the *Casino Control Act 1984* and any casino complex agreement;
- (e) to cause permits and certificates relating to gaming and betting, and licences in relation to casinos, and to be issued, as appropriate;
- (f) to advise the Minister, either of its own motion or upon the request of the Minister, as to any matter relating to gaming or to betting;
- (g) to make recommendations to the Minister in relation to the control or supervision of particular kinds of gaming or betting, or gaming or betting in particular circumstances, and as to the making of regulations relating to gaming or to betting and the fees and charges to be prescribed;

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- (h) to enforce, and to prosecute persons contravening, the laws relating to gaming and to betting; and
- (j) to perform such other functions as are prescribed.

(2) In carrying out its duties the Commission shall, in so far as is practicable, ensure that the revenue derived pursuant to this Act, and under any other written law relevant to the duties of the Commission, is sufficient to provide for the operating, administrative and other costs of the Commission.

Powers of the Commission

8. (1) Subject to this Act, the Commission has all such powers as are necessary to carry out its duties.

(2) Without derogating from the generality of subsection (1), the Commission may —

- (a) formulate and implement policies for the administration and control of the conduct of gaming and betting in the State;
- (b) approve, or withhold approval from, persons, premises, gaming equipment, games and gaming operations, for the purposes of this Act or any other written law in relation to betting or gaming;
- (c) formulate and impose prohibitions or conditions to be applicable to, or in relation to, the conduct of gaming or betting, the games which may or may not be played and the rules under which games are to be played;
- (d) grant or issue and amend or revoke approvals, permits and certificates relating to gaming and betting and the use of premises for such a purpose, and, subject to the *Casino Control Act 1984*, licences relating to casinos and the employment of persons in casinos;

- (e) seek, receive, disseminate or publish information relevant to gaming or betting and the incidence of gaming and of betting and its effect in the community; and
- (f) make prescribed charges and impose prescribed duties and fees.

(3) For the purpose of administering and enforcing the law relating to gaming or betting, and whenever under any written law the Commission is required or authorized to give or withhold approval or to make recommendations on any matter, or anything shall or may be done with or subject to the approval or recommendation of the Commission, the Commission may require such reports to be furnished, and institute and carry out such investigations and inquiries, as the Commission considers to be necessary or expedient.

Division 3 — Finance

Funds of Commission

9. (1) The funds available to the Commission consist of —
- (a) moneys from time to time appropriated by Parliament for that purpose; and
 - (b) interest accrued under subsection (6) or moneys otherwise lawfully received by, made available to or payable to the Commission.
- (2) The moneys received by the Commission shall be —
- (a) in so far as they are received pursuant to the *Casino Control Act 1984*, paid into and placed to the credit of an account at a bank within the State approved by the Treasurer to be known as the Casino Control Account, to which are to be credited also the moneys in the account formerly known as the Casino Control Committee Account and formerly maintained under section 14 of the *Casino Control Act 1984*; and

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- (b) in any other case —
 - (i) credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (ii) paid into and placed to the credit of an account at a bank approved by the Treasurer, as the Treasurer may in writing require or approve and subject to such terms and conditions as the Treasurer may approve, to be known by such name or names as the Commission may think fit having regard to the source of the moneys received,

and such moneys shall together comprise an account to be known as the Gaming Commission Account.

(3) The Gaming Commission Account shall —

- (a) be controlled by the Commission;
- (b) be operated in such manner as the Treasurer approves from time to time; and
- (c) subject to subsection (4) (c), be applied only for the purposes of the *Casino Control Act 1984* and this Act,

and all expenditure incurred by the Commission shall be drawn from that Account.

(4) There shall be paid from the moneys from time to time placed to the credit of the Account —

- (a) the cost of administering this Act, and any other written law relating to gaming or betting in so far as it is administered by the Commission;

- (b) any other expenditure lawfully incurred for a purpose determined by the Commission and approved by the Minister; and
- (c) any surplus moneys required by the Treasurer with the agreement of the Minister to be credited to the Consolidated Fund.

(5) The Commission shall pay to the Treasurer such amounts, if any, as are fixed by the Treasurer —

- (a) as the interest and sinking fund contributions for each financial year in respect of such proportion of the Consolidated Fund as is, or has been, applied for any purpose to which the function of the Commission relates; and
- (b) for the use by the Commission of government buildings or other government property, or for services rendered or facilities provided by any officer of the Public Service, the Police Force, or an instrumentality or agency of the Government,

and such amounts shall be taken to be costs incurred in the administration of this Act.

(6) The Commission may, subject to the approval of the Treasurer, temporarily invest moneys standing to the credit of the Account until those moneys are required for the purposes of the Commission.

*[Section 9 amended by No. 6 of 1993 ss.11 and 15;
No. 49 of 1996 ss.55 and 64.]*

Application of *Financial Administration and Audit Act 1985*

10. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

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Dealings by Commission subject to approval of the Treasurer

11. (1) Subject to the approval of the Treasurer, the Commission may acquire, hold and dispose of real and personal property, borrow moneys, and give security for financial accommodation.

(2) The Treasurer may delegate his power of approval under subsection (1) to the Under Treasurer of the State or to any other officer of the Treasury, and that approval may then be given by the delegate in general terms as regards particular types of transaction authorized by the instrument of delegation.

***Division 4 — Membership, co-option,
consultation and committees***

Membership of the Commission

12. (1) The membership of the Commission shall comprise —

- (a) the respective persons holding or acting in the office of —
 - (i) Executive Director of the Office of Racing and Gaming, who shall be Chairman of the Commission; and
 - (ii) the chairperson of the Lotteries Commission continued under the *Lotteries Commission Act 1990* or a member or officer of the Lotteries Commission nominated by the chairperson of the Lotteries Commission and appointed by the Minister,

each of whom shall hold office *ex officio*; and

- (b) 2 members, nominated by the Minister as being persons of repute, experience and integrity, and appointed by the Governor,

and the Minister shall cause notice of the respective appointments to be published in the *Gazette*.

(2) On the occasion of the first appointments made to the Commission, one of the members to be nominated by the Minister shall be a person who immediately prior to the coming into operation of section 4 held office as a member of the Casino Control Committee.

(3) A quorum of the Commission shall be constituted by 3 members, unless in relation to any particular matter the Minister directs that all the members are required to be present at the meeting concerned.

(4) Where the Minister appoints —

- (a) a person having appropriate duties in the Office of Racing and Gaming to be the deputy of the Chairman, that person shall in the absence or incapacity of the Chairman act as Chairman of the Commission;
- (b) a person, being a person nominated as an officer acting pursuant to his directions by the member holding office under subsection (1) (a) (ii), that person shall be the deputy of that member; or
- (c) persons of repute, experience and integrity to be the respective deputies of members holding office under subsection (1) (b), those persons shall be such deputies,

and, on the Minister causing notice of the respective appointments to be published in the *Gazette*, the person appointed under this subsection is entitled to attend any meeting of the Commission at which the member to whom that person is the deputy is not present and, when so attending, has all the powers and duties of that member.

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(5) In the absence or incapacity of the Chairman, and of any deputy of the Chairman, the members of the Commission present at a meeting shall select one of their number to preside, and the person so selected has and may exercise all the powers of the Chairman whilst so presiding.

(6) Subject to this Act, a member other than an *ex officio* member shall hold office for such period not exceeding 3 years as is specified in the instrument of appointment, but is eligible for re-appointment.

(7) If at any time an appointed member ceases to hold office, a person who is at that time the deputy of that member shall until —

- (a) the vacancy in the office of that member is filled by the appointment of another member; or
- (b) where the vacancy is not filled, the expiration of the period of the appointment of that member or of 3 months from the date of that member so ceasing to hold office, whichever is the lesser time,

be entitled to attend any meeting of the Commission and, when so attending, has all the powers and duties of a member.

(8) Where —

- (a) both a member and the deputy of that member are absent or temporarily incapable of fulfilling the duties of a member; or
- (b) the office of a member is vacant and is not filled in accordance with this Act, and no deputy is acting for that member pursuant to subsection (7),

the Minister may appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires, and any person so appointed has, while that appointment subsists, all the functions, powers and duties of a member.

(9) Unless the context otherwise requires, any reference in this Act to a member shall be construed as including a reference to —

- (a) a deputy acting in the office of that member;
- (b) a person appointed by the Minister pursuant to subsection (8) to act in the place of that member while the appointment subsists.

(10) If at any time in respect of an office referred to in subsection (1) there is not an office of that name the Governor may by notice in the *Gazette* designate an office as the office to be substituted for the former office referred to in that subsection and specified in that notice, and the person holding or acting in the substituted office for the time being shall thereby be constituted a member of the Commission.

(11) If a member of the Commission —

- (a) is an incapable person within the meaning of section 5 of the *Mental Health Act 1962*;
- (b) is a person who is an insolvent under administration within the meaning of the *Companies (Western Australia) Code*⁴;
- (c) is absent, without the permission of the Commission, from 3 consecutive meetings of the Commission of which he has been given notice; or
- (d) being an appointed member, is removed from office by the Governor for disability, inefficiency or misconduct,

the office of that person becomes vacant and the person shall not thereafter be eligible for re-appointment.

(12) An appointed member may resign office by a written notice given under the hand of that person and addressed to, and received by, the Minister, but a member whose term of office expires or who resigns from office is eligible for re-appointment.

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(13) A person who is or has been a member is not personally liable for any act done or omitted to be done in good faith by the Commission or by that person in acting as a member.

[Section 12 amended by No. 16 of 1990 s.33.]

Remuneration, and service with the Commission

13. (1) A member of the Commission, a person appointed a member of a committee of the Commission, or a person co-opted to the Commission may be paid such remuneration and allowances as the Minister, on the recommendation of the Public Service Board⁵, determines.

(2) If a person who would be eligible to receive remuneration or allowances under this Act is or becomes a member of, or a candidate for election to, the Parliament of the State or of another State or of a Territory or of the Commonwealth, the person shall not be paid remuneration or allowances under this section but shall, subject to the approval of the Minister, be reimbursed such expenses as the person reasonably incurs by reason of attendance at meetings or of undertaking, with the approval of the Commission, business on behalf of the Commission.

(3) Acceptance of or acting in the office of member of the Commission by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to that person of those provisions if they applied to the person at the time of the acceptance of or acting in that office.

(4) Where the services of any person are for the time being utilized by the Commission under the provisions of this Act, that utilization does not prejudice the existing or accruing rights of that person under the *Public Service Act 1978*⁶, or under any other Act, and service rendered on behalf of the Commission

pursuant to this Act shall be regarded as not constituting a break in the service in which the person would otherwise have been employed.

[Section 13 amended by No. 32 of 1994 s.19.]

Co-option and consultation

14. (1) Subject to the Minister, the Commission may for the purpose of any meeting or matter co-opt any person having specialized knowledge or experience relevant to the purposes of this Act, but a person so co-opted is not entitled to a vote.

(2) The Commission has power to invite or engage any body or person to act in an advisory capacity to the Commission in relation to any or all aspects of the functions of the Commission.

(3) The Commission may, on matters relevant to the purposes of this Act, consult and collaborate with any government department, authority, instrumentality or agency in the State or elsewhere or with any other body which has interests relevant to those of the Commission.

Committees

15. (1) The Commission may, from time to time, appoint a committee or committees to investigate and advise the Commission on any aspect of its functions or, subject to section 16, to carry out such of the duties or exercise such of the powers of the Commission as the Commission may determine.

(2) The carrying out of any duty or the exercise of any power by a committee of the Commission does not relieve the Commission of the responsibility for the decisions of that committee.

(3) A committee may consist of such persons as the Commission determines, whether members of the Commission or

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persons who are not such members, but so that in every case not less than one member of the Commission shall be a member of the committee.

(4) Each committee appointed by the Commission shall report to the Commission on its activities at such times as the Commission directs.

Delegation

16. (1) Where the Commission considers that any power of the Commission should be exercised on its behalf by a person or body other than the Commission, the Commission may, by resolution, delegate all or any of its powers or duties, except this power of delegation, to —

- (a) a member or a committee of the Commission;
- (b) the Chief Casino Officer, or a casino inspector; or
- (c) in accordance with section 59 (1) (d) of the *Interpretation Act 1984*, as may be specified in the instrument of delegation,

either generally or as otherwise provided by the instrument of delegation.

(2) A power delegated by the Commission shall be exercised by the delegate in accordance with the instrument of delegation, and when so exercised shall, for the purposes of this Act, be deemed to have been exercised by the Commission and shall be presumed, unless the contrary is established, to have been exercised by a person duly authorized by a delegation under this section.

(3) A document purporting to be signed by a person as a delegate of the Commission shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the exercise of a power duly delegated to the person by the Commission.

Division 5 — Proceedings

Proceedings

17. (1) Subject to this Act the proceedings of the Commission may be regulated in such manner as the members think fit.

(2) A meeting of the Commission may be convened by the Minister or by the Chairman, and where 2 or more members give notice in writing to the Chairman requiring him to convene a meeting in relation to any matter the Chairman shall at their request convene a meeting of the Commission to be held within 21 days thereafter to deal with that matter.

(3) The Minister shall convene the first meeting of the Commission as soon as practicable after the coming into operation of this section, and thereafter the Commission shall hold meetings at such times and places as the Commission determines.

(4) Unless in relation to any particular matter the Minister directs that a unanimous resolution is required, a question arising at a meeting of the Commission shall be decided by a majority of the votes of the members present and voting, but if the votes cast on a question are equally divided the member presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(5) A member who has a direct or indirect pecuniary interest in a matter referred to the Commission —

(a) shall, as soon as is practicable after becoming aware of the existence or relevance of the interest, disclose the fact that he has the interest to the person presiding at the next meeting of the Commission; and

(b) may participate in the discussions of the Commission in relation to the matter but shall not vote thereon, unless the interest that the person has is, or in the

context of the vote is, determined by the person presiding at the meeting where the vote is to be taken to be an interest that could not reasonably be regarded as likely to have an influence on the exercise of the vote and the person so presiding indicates that such a vote may be exercised,

and particulars of any such determination shall be recorded in the record of the proceedings.

(6) In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of a pecuniary interest of a member, the decision of the member presiding is final.

(7) A record of the proceedings of every meeting shall be kept in such manner as the Commission may determine, and shall be corrected as necessary and certified by the member presiding at that or the next succeeding meeting.

Division 6 — Staff, etc.

Staff, etc.

18. (1) Subject to the Minister, the Commission may request the Permanent Head of the Department of the Public Service of the State known as the Office of Racing and Gaming to make available the services of any officer of, or facilities provided by, that Department to undertake such administrative matters, research, studies, inquiries, investigations, or prosecutions, and to make such reports, as the Commission considers to be necessary or expedient for the purposes of this Act.

(2) The Commission, with the consent of the Minister of the Crown having responsibility for the administration of the Act relating to a Department of the Public Service of the State (other

than the Office of Racing and Gaming) or for the administration of an instrumentality or agency of the Government, may —

- (a) make use for the purposes of this Act of the services of any officer of that Department, instrumentality or agency, or request the secondment of any such person; or
- (b) utilize any facilities of such a Department, instrumentality or agency,

upon such terms as may be agreed between that Minister and the Commission.

(3) The Commission may engage, under contract for services, such consultants as may be necessary to enable the Commission to carry out effectively its function under this Act, and may enter into arrangements with statutory authorities, educational establishments, or other bodies or persons, whether in the State or elsewhere, with respect to the conduct of any research, study, inquiry or investigation or to any professional, technical or other assistance that may be necessary or expedient for the purposes of this Act.

(4) On the request of the Commission the Commissioner of Police may cause inquiry or investigations to be made as to —

- (a) any testimonial, books or other information supplied by or on behalf of a person who is the holder of, or an applicant for, any permit, approval or certificate under this Act or any licence or other authorization conferred pursuant to a written law that relates to gaming or betting;
- (b) the character or reputation of any such person, including as to whether or not, and the extent to which, that person acts or is reputed to be accustomed to act in accordance with the directions or interests of any other person;

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- (c) the suitability of such a person to conduct or be concerned in the conduct of permitted gaming, and where the case requires as to the suitability of any individual appointed as a nominee on behalf of such a person, or of a person for whom another acts as nominee;
- (d) any premises, facilities, gaming equipment, instruments of gaming, machine, accounting procedures, advertising or inducements, used or suspected of being used in connection with gaming or betting or suspected gaming or betting, or intended to be so used;
- (e) any matter concerning a licensed casino;
- (f) the conduct or suspected conduct of any gaming or betting, or suspected gaming or betting; and
- (g) allegations, representations or objections made in respect of any such matters,

and shall report thereon to the Commission, and if the Commission so requests to a court.

[Section 18 amended by No. 32 of 1994 s.19.]

Co-operation by statutory bodies

19. (1) All Departments of the Public Service of the State and all instrumentalities or agencies of the Government established or administered pursuant to any Act (including any local government) shall, and are hereby authorized to, give to the Commission such assistance in the carrying out of its functions as is reasonably practical, and shall comply with all reasonable requests for information made by the Commission, but this provision shall not be taken as exempting the Commission from any requirement as to the payment of fees or charges.

(2) The Minister of the Crown having responsibility for any such Department, instrumentality or agency may, on the request of the Commission, direct that body to provide assistance to the Commission, and any such direction may require that the services (whether administrative, technical or otherwise) of any person employed or engaged by that Department, instrumentality or agency, or any facilities, shall be made available for the purposes of this Act.

[Section 19 amended by No. 32 of 1994 s.19; No. 14 of 1996 s.4.]

Reports, secrecy, etc.

20. (1) Where any report is required pursuant to this Act that report shall be given due consideration, but the Commission, or any magistrate, shall not be bound to give effect to any recommendation therein contained.

(2) The contents of any report made to the Commission by a committee of the Commission, an authorized officer, a member of the Police Force or any other person required under this Act to furnish such a report are absolutely privileged —

- (a) from production; and
- (b) in relation to any proceedings for defamation in any court of law,

unless the Commission or a Judge otherwise directs.

(3) A person shall not, either directly or indirectly, except in the performance of a function or duty under or in connection with this Act —

- (a) make a record of, or divulge or communicate to any other person, any information concerning the affairs of another person acquired by him by reason of his office, employment or engagement under or for the purposes

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of this Act or any other written law relating to gaming or betting; or

- (b) produce to any person any report, books or other thing relating to the affairs of another person furnished for the purposes of this Act or any other written law relating to gaming or betting.

Penalty: \$2 500, or imprisonment for 6 months, or both.

PART III — ENFORCEMENT

Authorized officers

21. (1) The Commission shall appoint, from amongst persons to whom section 18 applies, such persons as may be necessary to carry out the duties of an authorized officer and shall furnish any such officer with a certificate evidencing the appointment.

(2) The Commission may, by arrangement with a local government, delegate to any duly appointed employee of that local government such of the duties imposed and powers of examination and report conferred on an authorized officer by this section as the Commission may determine.

(3) It is the duty of an authorized officer to examine and report on any matter that, in his opinion, affects the administration of this Act or upon which the Commission may require him to report and, in particular —

- (a) to report to the Commission on the conduct, nature, extent and standard of any gaming, and as to the facilities provided, at approved premises and elsewhere;
- (b) to report to the Commission on the nature and extent of any premises in respect of which approval is sought, or the change in use of any part or parts of any existing approved premises;
- (c) to examine and report on any permitted gaming or proposed permitted gaming as he thinks fit or as may be required by the Commission; and
- (d) otherwise, to assist and advise the Commission whenever so required by the Commission.

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(4) Where an authorized officer makes a report with respect to any particular premises, but not in so far as the report relates to the nature, extent or standard of gaming conducted, the Commission —

- (a) shall, where the Commission is not satisfied as to any matter in respect of the premises, on request cause a copy to be sent to the owner of the premises or his agent (if known) or, where the owner is not the permit holder or proposed permit holder, to the permit holder or proposed permit holder or his agent, as the case may require; and
- (b) shall make such part of the report as the Commission thinks appropriate available for inspection, on request, by the local government or by a person who has made submissions to the Commission or the Minister in respect of those premises or a permit relating to those premises.

[Section 21 amended by No. 14 of 1996 s.4.]

Supervision of permitted gaming

22. (1) An authorized officer or a member of the Police Force is entitled —

- (a) to demand entrance to, and enter, inspect and remain on, any premises when permitted gaming is, or purports to be, being conducted at those premises under this Act; and
- (b) to examine at such time and from time to time all gaming equipment, instruments of gaming, books, and things relating, or suspected by him of relating, thereto and to scrutinize and inquire into the conduct of the gaming and betting.

(2) An authorized officer may, on production of the certificate furnished to him under section 21 (1), at any reasonable time demand entrance to, enter and inspect —

- (a) approved premises; or
- (b) subject to the consent of the occupier, any premises in relation to which the approval of the Commission is sought.

(3) A person carrying out an inspection, scrutiny or inquiry under this section may take with him a surveyor, auditor or other competent person to assist him.

(4) Where admittance to any premises the power to enter which is conferred by this section is refused or delayed for such time as reasonably to lead to the inference that wilful delay was intended, the person refusing admittance or occasioning the delay shall be deemed to have attempted to prevent entry.

(5) Every person who prevents or attempts to prevent an authorized officer or member of the Police Force, or a person to whom subsection (3) applies, from entering and scrutinizing or inquiring into the conduct of any gaming or betting or in examining the premises, or obstructs them or any of them in the discharge of his duties, commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

Police powers not affected

23. Nothing in this Act shall be read or construed as limiting any power or authority conferred on a member of the Police Force by any other Act or law.

Duties of police

24. The Commissioner of Police shall issue all such orders, and give all such directions, to members of the Police Force as may, in his opinion, be necessary or expedient to —

- (a) prevent gaming or betting contravening the provisions of this Act or any other Act or law;
- (b) ensure the proper and lawful exercise of any permit issued under this Act or any licence issued by the Commission under any other Act;
- (c) secure the lawful and orderly conduct of approved premises and permitted gaming and ensure the good behaviour of persons present on those premises or participating in or present at permitted gaming; and
- (d) whether in accordance with any request made under section 18 (4) or otherwise, provide for the making of such reports to, and the bringing of such applications, complaints and objections before, the Commission as may be necessary or expedient for the proper administration of this Act.

Entry, search and seizure, by warrant

25. (1) Where a justice is satisfied, upon complaint, that there is reason to suspect that —

- (a) any premises are, have been or are about to be opened, kept or used as a common gaming house;
- (b) unlawful gaming is, has been or is about to be conducted at any premises; or
- (c) an offence is, or is likely to be, committed under this Act at any premises in relation to any gaming or betting conducted or purported to be conducted under the authority of a permit,

he may, by warrant in the prescribed form stating the proposed purpose, empower any authorized officer or member of the Police Force to enter, with such other persons as may be necessary to assist, upon those premises using such force as may be necessary and any such warrant continues to have effect until the purpose for which it was granted is satisfied.

(2) A warrant under subsection (1) authorizes the holder and such other persons as are necessary to assist —

- (a) to arrest any person found on the premises to which the warrant relates;
- (b) to seize all gaming equipment, instruments of gaming and related furnishings and any books, money or other thing which there are reasonable grounds for believing may be required as evidence for the purposes of proceedings in respect of the premises or of any gaming or betting or of the playing of an unlawful game; and
- (c) to search —
 - (i) the premises; and
 - (ii) all persons found at or in the immediate vicinity of the premises and suspected of being concerned in an offence under this Act.

Power to obtain evidence, etc.

26. (1) The Commission, an authorized officer or a member of the Police Force may for the purposes of this Act —

- (a) seize and detain, or make extracts from or copies of, any books or other material evidence found during the course of the exercise of a power conferred by this Act; and

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- (b) require a person found in any premises entered, or in the immediate vicinity of those premises and suspected of having at a material time been in the premises, to —
 - (i) answer any question put to him or to give or cause to be given any information, in so far as he appears to be in a position to provide material information; or
 - (ii) to produce or cause to be produced, for inspection, any books or other material evidence in his possession or apparent control,

to the extent that the person is capable of complying with the requirement.

(2) In subsection (1), “**material evidence**” means evidence which in the opinion of the person exercising the power is likely to be relevant to the investigation of a suspected offence under this Act or to the function of the Commission.

Power of Commission to require information and accounts, and production of books, etc.

27. (1) Where the Commission believes that a person is capable of giving information or producing books or other evidence material to a matter that is in the opinion of the Commission likely to be relevant to the investigation of any suspected offence under this Act or any other written law relating to gaming or betting, or otherwise to the functions of the Commission or the Minister, the Commission, by notice in writing served on that person, may require that person —

- (a) to give the information or produce the books or other evidence to the Commission, or to a person specified in the notice acting on behalf of the Commission, within the time and in the manner specified in the notice; or

(b) to cause the same to be so given or produced.

(2) Without limiting the generality of subsection (1), the power of the Commission under that subsection includes the power —

- (a) to require any corporation within the meaning of the *Companies (Western Australia) Code*⁴, or any other body of persons, corporate or unincorporate, to give particulars of the names and addresses of persons who are the holders of shares or other interests in that corporation or other body;
- (b) to require a person who is registered or otherwise recorded as the holder of shares or other interests in that corporation or other body to give to the Commission all relevant information, or such information as the Commission may specify, in the possession or control of the person in relation to the beneficial ownership of those shares or that interest, or any right attaching to those shares or that interest, or in relation to any trust, agreement, arrangement, understanding or practice, affecting those shares or that interest or any right attaching to those shares or that interest;
- (c) to require that the information be verified by statutory declaration signed by a person or the holder of an office specified by the Commission, or by a competent officer of the corporation or other body; and
- (d) to require a person from whom the Commission may seek information to afford to the Commission such facilities in matters relating to that information as may be necessary to enable the information to be interpreted or collated or as the Commission may from time to time specify.

(3) In connection with any pending application for a permit the Commission may at any time require accounts to be furnished by —

- (a) the organizer or manager of any permitted gaming; or
- (b) any promoter, secretary, treasurer, or any one of the committee of any body of persons by or on whose behalf any gaming or betting was or is to be conducted,

in relation to the gaming or betting generally conducted by or on behalf of that person previously, or such aspects as the Commission may specify, and may in connection with the accounts require the production to the Commission of all books and things relating to the gaming or betting, where no report pursuant to section 57 was required to be furnished.

Recovery of moneys

28. (1) An amount that is payable by a person to the Commission under this Act but is not paid may be recovered from that person as a debt due to the Commission in any court of competent jurisdiction.

(2) Where an amount is payable to the Commission by any person, but by reason of his failure to keep or to produce or furnish to the Commission or other proper person the report, return, records or other books or things required under this Act, or to take or permit to be taken any other step which he is so required to take or permit to be taken, or by reason of the report, return, records or other books or things kept, produced or furnished being materially incomplete or inaccurate, the Commission is unable to ascertain the amount properly payable by him, the Commission may estimate the amount payable and (without prejudice to the recovery of the full amount payable or to the making of a further estimate under this subsection) the amount estimated shall be recoverable as an amount properly payable and not paid unless in any action relating thereto the

person liable proves the amount properly payable and that amount is less than the amount estimated.

(3) For the purpose of any action in a court of competent jurisdiction to recover an amount payable to the Commission under this Act as a debt due to the Crown a certificate signed by a member of the Commission stating the circumstances and provision under which the amount became payable and certifying the amount alleged or, where subsection (2) applies, estimated to be payable by a person and that the amount has not been paid is evidence that the amount so specified is payable to the Commission in accordance with this Act and has not been paid.

Offences relating to obstruction, failure to answer, etc., and misleading information

29. (1) A person —

(a) who without lawful excuse —

- (i) hinders the Commission, an authorized officer or other officer of the Commission acting in the course of the duties of that officer, a member of the Police Force, or an auditor appointed under this Act in relation to any gaming or betting, in the exercise or purported exercise of a power conferred by this Act or any other written law relating to gaming or betting; or
- (ii) refuses or fails to comply with a requirement of the Commission, such an authorized officer or other officer of the Commission, or a member of the Police Force, or such an auditor, lawfully made under this Act or such a written law;

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- (b) who knowingly or recklessly —
- (i) for the purpose of obtaining a benefit for himself or any other person, in or in relation to any application made in respect of an approval, permit or certificate under this Act or in respect of any licence or other matter under any other written law relating to gaming or betting, or its renewal or re-instatement;
 - (ii) in relation to any report, books or other thing furnished or required to be furnished; or
 - (iii) in purported compliance with a requirement made under this Act or such a written law,

makes any statement, that is false or misleading or which makes any material omission, or furnishes or causes to be furnished any report, book or other thing that is false or is misleading in a material particular, or which makes any material omission,

commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

(2) Where in relation to any gaming or betting an independent auditor is appointed by the Commission or an authorized officer or member of the Police Force is assisted by an auditor under section 22, a person who —

- (a) being a person conducting or associated in any manner with the gaming or betting, fails to answer truthfully to the best of his knowledge, information and belief, any question asked of him by the auditor, or fails to disclose to the auditor all books and things which may be in his possession or control relating to the gaming or betting; or

- (b) being such an auditor, is guilty of any neglect or breach of duty under this Act,

commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

Incriminating evidence

30. A person is not excused from giving information or producing books or any other thing when required to do so under this Act or under any other written law relating to gaming or betting on the ground that the information, books or other thing might tend to incriminate him, but his answer to any question asked, his giving of any other information, the production by him of any books or other thing or his compliance with the requirement in any other respect is not admissible in evidence against him in any criminal proceedings, other than proceedings under this Act or that other written law.

Seizure, without warrant

31. Any authorized officer or member of the Police Force may seize and take before a justice any gaming equipment, instrument of gaming, books, money or other thing which he has reasonable cause to believe may be required as evidence for the purpose of proceedings in respect of an offence under this Act or any other written law relating to gaming or betting or which appears to him to contravene a condition of any approval, permit or certificate under this Act.

Forfeiture, and embargo notices

32. (1) Where any thing is, or is liable to be, seized or forfeited to the Crown under this Act the provisions of sections 90B and 90C of the *Police Act 1892* shall apply to and in relation to that thing as if it had been, or had been liable to be,

seized or forfeited under Part VI of that Act and as if the proceedings to which the things relate were proceedings for the purposes of that Act.

(2) Where any thing is seized under this Act or the *Police Act 1892* in relation to an offence of a kind that is prescribed for the purposes of this subsection, the court by or before which a person is convicted of an offence to which that thing relates may order any such thing to be forfeited to the Crown and either destroyed or dealt with in such manner as the court, then or subsequently, may approve.

Prosecution of offenders

33. (1) An offence under this Act or any other written law relating to gaming or betting may be prosecuted by the Commission at any time.

(2) The conviction or acquittal of a person on a complaint of an offence under this Act or any other written law relating to gaming or betting shall not prevent a further prosecution and conviction in respect of a continuation of that offence after the date on which he was convicted or acquitted.

(3) Proceedings for an offence under this Act or any other written law relating to gaming shall not be instituted without the consent of the Commission.

Complaints to be heard by magistrate

34. All proceedings upon a complaint or arrest under this Act shall be heard and determined by a stipendiary magistrate.

General penalty

35. The penalty for an offence under this Act for which a penalty is not expressly provided by this Act, other than by this section, is —

- (a) in the case of a person other than a body corporate, a fine of \$1 000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate, a fine of \$2 000.

[Section 35 amended by No. 78 of 1995 s.147.]

Infringement notices

36. (1) Regulations made under this Act may prescribe a modified penalty not exceeding \$250 for any offence, or class of offence, if dealt with by way of an infringement notice.

(2) Where an authorized officer or member of the Police Force has reason to believe that a person has committed an offence to which regulations made under subsection (1) apply and, having regard to —

- (a) the place where the offence occurs;
- (b) the circumstances in which the offence occurs; and
- (c) the likelihood of the person involved complying with the requirements of such a notice,

believes that proceedings under this section are adequate he may serve, by personal delivery to the person or by posting to him at his address ascertained from him at or about the time that the offence is believed to have been committed, an infringement notice in the prescribed form informing the person that if he does not wish to have a complaint of that offence heard and determined by a court he may pay to a designated office, within a

period of 21 days after the service of that notice, the amount of the modified penalty.

(3) The Commission may, by notice published in the *Gazette*, designate an office or class of office to receive payment of the amounts of modified penalties.

(4) An infringement notice shall inform the alleged offender in general terms of the nature, date and place of the alleged offence and that he has the right to decline to pay the modified penalty and to allow the matter to be determined in a court hearing —

- (a) if he desires to contest the question whether the offence alleged was in fact committed; or
- (b) if he wishes to submit to the court matters in extenuation of penalty; or
- (c) for any other reason,

in which event he need not reply or take further action in respect of the notice, but that in such case a complaint of the alleged offence may be made against him in due course and he may be liable to costs and to the penalty provided for the offence.

(5) Where a person on whom an infringement notice is served pays the modified penalty within the period of 21 days after the service of that notice and the notice is not withdrawn under subsection (7) a proceeding against him by way of prosecution for the offence alleged in the notice shall not be brought but otherwise such a proceeding may be commenced as if the notice had not been given.

(6) A person on whom an infringement notice is served who fails to pay the modified penalty within the period of 21 days after the service of that notice is deemed to have declined to pay.

(7) The Commission may, whether or not the modified penalty concerned has been paid, withdraw an infringement notice at any time within a period of 28 days after it is served by sending to the alleged offender a notice in the prescribed form advising the alleged offender that the infringement notice has been withdrawn.

(8) The amount of any modified penalty paid pursuant to an infringement notice which has been withdrawn under subsection (7) shall be refunded.

Liability of directors, etc.

37. (1) Where a corporation within the meaning of the *Companies (Western Australia) Code*⁴ or any other body of persons, corporate or unincorporate, is convicted of an offence under this Act or any other written law relating to gaming or betting, each person who, at the time of the commission of that offence, was a director of the corporation or was the manager, secretary or other similar officer of that body, or who purported to act in any such capacity, is liable to be convicted of the offence and is punishable as well as that body unless he proves that that offence was committed without his knowledge or that he took reasonable steps to prevent the commission of that offence.

(2) Where the affairs of a body of persons are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were the manager of that body.

Service of notices

38. For the purposes of this Act or any other written law relating to betting or gaming a notice or other document may be given to, or served on —

- (a) a corporation within the meaning of the *Companies (Western Australia) Code*⁴, or a shareholder in such a corporation, by sending the document to the corporation or that shareholder in a manner

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authorized by and for the purposes of that Code for the service of documents; or

- (b) a body of persons incorporated under the *Associations Incorporation Act 1895*², by service in a manner authorized for the service of a notice under that Act,

or in any manner authorized by the *Interpretation Act 1984*.

Evidence generally

39. (1) In any proceedings under this Act or for an offence under *The Criminal Code* —

- (a) it shall not be necessary to prove the appointment of the Minister or a member of the Commission, and all courts and persons acting judicially shall take judicial notice of a signature attached or appended to a document purporting to be issued under this Act if the signature purports to be that of a person who at the relevant time is or was the holder of such an office, unless the contrary is proved;
- (b) a document signed by a member of the Commission stating that at the time or during the period stated in the document —
 - (i) a person named in the document was an authorized officer or an inspector of soccer football pools for the purposes of this Act generally or for such of those purposes as are specified in the document; or
 - (ii) an approval was granted, a permit or certificate was issued, a requirement was made, or a direction or notice was given, or was in force or had effect, or had been amended, or was not in force or was of no effect, in relation to the circumstances specified in the document, or had been served on any person, under this Act,

shall be evidence of the facts stated and, in the absence of evidence to the contrary, conclusive evidence;

- (c) a document or writing purporting to be a copy of any approval granted or permit or certificate issued, or of any requirement made or direction or notice given, under this Act shall be evidence of the approval, permit, certificate, requirement, direction or notice of which it purports to be a copy and, in the absence of evidence to the contrary, conclusive evidence;
- (d) an averment that —
 - (i) a person is of a specified age or is under or over a specified age;
 - (ii) that any premises at which an offence was committed was a place to which an approval, permit or certificate applies or did not apply;
 - (iii) a specified game is of a kind essentially similar to a game of another specified kind;
 - (iv) in proceedings against a person in his capacity as the holder of a permit or certificate, that the person is the holder of a specified permit or certificate; or
 - (v) that a person is a person to whom a permit or certificate was not issued,

shall be evidence of the facts stated and, in the absence of evidence to the contrary, conclusive evidence;

- (e) where an authorized officer, a member of the Police Force, or a person acting at the request of an authorized officer or member of the Police Force, enters into any gaming or bet and a complaint arising out of the gaming or bet is made against another

person, on the hearing of the complaint the authorized officer, member of the Police Force or person acting on request —

- (i) is deemed not to be an accomplice of the person charged and not to be guilty of an offence; and
- (ii) may give evidence,

and his evidence shall be deemed not to be the evidence of an accomplice;

- (f) a person may be convicted on the uncorroborated evidence of an accomplice, and shall not be acquitted by reason only that the only evidence is the uncorroborated evidence of an accomplice unless the truth of that evidence is suspect;
- (g) an act, admission or statement of an employee or agent of the person against whom the complaint is made is admissible as evidence, whether it is done, made or given in the presence of that person or not;
- (h) where an element of an offence is an act or omission on the part of the permit holder the complaint may be made for such an offence against an individual approved and appointed as the nominee permit holder on behalf of a body of persons; and
- (j) the authority of a person to accept service of documents under this Act on behalf of another shall be presumed in the absence of evidence to the contrary.

(2) For the purposes of this Act —

- (a) in determining whether a game, which is played otherwise than against one or more other players, is a game of chance the possibility that superlative skill can overcome the element of chance shall be disregarded, except for the purposes of section 42 (3) (a);

- (b) it is immaterial whether a charge or levy is compulsory, customary or voluntary, and any reference to making a charge or charging a levy shall be construed accordingly;
- (c) the public shall be deemed to have or be permitted to have access to a place where that place is for the time being open to the public whether or not a charge or levy is made or payment for admittance is required;
- (d) the playing of a game of chance or participation in any activity which —
 - (i) is an authorized game as defined by the *Casino Control Act 1984* played in accordance with rules approved under that Act in a licensed casino as so defined;
 - (ii) is a game of a kind the playing of which is authorized by regulations made pursuant to section 42 (3) (c), when played in such circumstances and in accordance with such conditions as are thereby prescribed;
 - (iii) is conducted under the *Lotteries Commission Act 1990*; or
 - (iv) is a trade promotion lottery,

does not constitute gaming or betting contrary to the provisions of this Act, except in so far as section 44 or 45 applies; and
- (e) a machine shall be taken not to be used for gaming if it is constructed or adapted or used in such a way that —
 - (i) a person playing it once and successfully receives nothing except an opportunity, afforded by the automatic action of the machine, to play again (once or more often) without paying; or

- (ii) where a person plays it once and successfully, that which he receives is determined by the automatic action of the machine and is either a money prize not greater than the amount payable to play the machine once or a token which is, or tokens which in the aggregate are, exchangeable only for such a money prize.

(3) Where on the hearing of a complaint —

- (a) for an offence requiring proof that any premises were kept or used or resorted to for playing any unlawful game or any game of chance, and a person is found to have been so playing; or
- (b) relating to —
 - (i) gaming or betting in;
 - (ii) opening, keeping or using; or
 - (iii) being concerned in the conduct of,

premises being a common gaming house, and a person is found to have been gaming or betting there,

it shall be presumed, unless the contrary is proved, that games played at those premises were games played for money.

(4) Where a person is found to have been present at any unlawful game or game of chance it shall be presumed that he was present for the purpose of taking part in the game, unless he proves that he was present neither for that purpose nor for the purpose of —

- (a) taking part in the conduct of the game;
- (b) operating or using any gaming equipment, instrument of gaming, related furnishings, or any other thing whatsoever used in connection with the game or any bet; or

- (c) making or receiving bets, with respect to the game or otherwise.

(5) Gaming or betting pursuant to a permit shall not be taken to be conducted for the purposes of private gain by reason only that a person concerned in the conduct of the gaming or betting receives reasonable remuneration in respect of his services in that capacity.

[Section 39 amended by No. 16 of 1990 s.33.]

Evidence relating to common gaming houses

40. (1) Where a person is charged with an offence in relation to any premises alleged to be a common gaming house —

- (a) it shall be presumed that an element of gain or reward was involved, unless the contrary is proved, if it is shown that paragraph (b), or any one or more of the circumstances referred to in paragraph (c), applied;
- (b) it shall not be necessary to prove that a number of persons habitually congregated at the premises, if at the time of the alleged offence 8 or more persons were present at those premises;
- (c) it shall be sufficient evidence to support the allegation that any premises were, or were opened, kept or used as, a common gaming house if it is proved in relation to any game there played that —
 - (i) the game is an unlawful game;
 - (ii) the game involves playing, staking or betting against a bank, whether the bank is held by one of the players or not;

- (iii) the nature of the game is such that the chances in the game are not equally favourable to all players;
- (iv) the nature of the game is such that the chances in it lie between the player and some other person, or (if there are 2 or more players) lie wholly or partly between the players and some other person, and those chances are not as favourable to the player or players as they are to that other person;
- (v) the gaming was so conducted that the chances therein were not equally favourable to all the players; or
- (vi) a charge, in money or money's worth (apart from any stakes hazarded or bets placed) was made in respect of the gaming or betting, or a levy was charged on any of the stakes or bets or on the winnings of any of the players, whether by way of direct payment, by deduction, or by any other means.

(2) Where a person is convicted of an offence in relation to any premises found to be a common gaming house, any gaming equipment or instruments of gaming and any books, furniture or furnishings found at the premises shall, until the contrary is proved, be deemed to have been used in, or ancillary to, the conduct of the premises as a common gaming house.

(3) Notwithstanding any rule of law, premises shall not be taken to be a common gaming house by reason only of the carrying on there of gaming, and it shall be a defence for a person charged with an offence under section 41 in relation to gaming at any premises to show that the gaming was permitted gaming.

(4) Where —

- (a) any gaming equipment is, or instruments of gaming are, found at any premises authorized to be entered or about the person of any of those found there;

- (b) any door to, or access or passage to or in, any premises so authorized to be entered is found to be fitted or provided with any means or contrivance intended or adapted or used so as to prevent, obstruct, delay or hinder entry by any such authorized person, or for giving information, as to, or an alarm in case of, any such entry;
- (c) any premises are found to be fitted or provided with any means or contrivance related to the conduct of unlawful gaming or for removing or concealing any gaming equipment or instruments of gaming; or
- (d) any authorized officer or member of the Police Force empowered under this Act to enter any premises is knowingly prevented from, or is wilfully assaulted, resisted, obstructed, delayed or hindered in, entering any premises,

it is admissible as evidence that the premises are used as a common gaming house and any persons found there may, unless the contrary is proved, be presumed to have been present for the purpose of gaming.

**PART IV — COMMON GAMING HOUSES, UNLAWFUL
GAMING, CHEATING ETC.**

Common gaming houses

41. (1) Premises shall be deemed to be a common gaming house if persons habitually congregate there for the purpose of gaming or betting, or section 40 (1) (b) applies, and a person —

- (a) for gain or reward provides facilities there for others;
or
- (b) permits or suffers others,

to use the premises as a place for gaming or betting, other than permitted gaming, either with himself or between themselves.

(2) For the purposes of this section, the playing of a game of a kind which is prohibited by section 42 (1) shall be deemed to be gaming.

(3) Where any premises are opened, kept or used as a common gaming house —

- (a) a person concerned in the conduct of the gaming or betting;
- (b) the owner of the premises, unless he proves that he did not know and could not reasonably be expected to have known that gaming or betting would take place at the premises; and
- (c) a person other than the owner of the premises who, knowing or having reasonable cause to suspect that gaming or betting, other than permitted gaming, would take place at the premises —
 - (i) allowed the premises to be used for such a purpose; or

- (ii) let the premises, or otherwise made the premises available, to any person by whom an offence in connection with the premises or any gaming or betting there has been committed,

commits an offence.

Penalty: \$10 000, or imprisonment for 2 years, or both.

- (4) For the purposes of subsection (3), any person who —
 - (a) causes, procures or attempts to procure any other person to commit an offence of a kind referred to in that subsection;
 - (b) knowingly takes part in procuring the assembly of the players; or
 - (c) assists in the provision of facilities by —
 - (i) providing, servicing, operating or using any gaming equipment or instrument of gaming;
 - (ii) issuing, receiving or recording money, tokens or other consideration used in the gaming or betting or cheques or value given or credit provided in respect of any such money, tokens or consideration in respect of winnings or losses; or
 - (iii) supervising, controlling or accounting for any gaming or betting,

shall be deemed to have been concerned in the conduct of the gaming or betting.

(5) Subject to sections 90B and 90C of the *Police Act 1892*, the court by or before which a person is convicted of an offence under subsection (3) may order any gaming equipment, instruments of gaming or related furnishings, and any money or other thing which is brought before the court or is the subject of

an embargo notice under section 90B of the *Police Act 1892* and which the court is satisfied was found to be on the premises at the time of the offence, not being money or a thing shown to the satisfaction of the court not to relate to the offence, to be forfeited to the Crown and either destroyed or dealt with in such other manner as the court may, then or subsequently, approve.

(6) A person who is present at a common gaming house when any gaming or betting is conducted for the purpose of taking part in that gaming or betting or in other gaming or betting conducted there commits an offence.

Penalty: \$500.

(7) In so far as they are inconsistent with this Act, the rules of law relating to common gaming houses are abolished.

Unlawful games

42. (1) Subject to subsection (3), the conduct of gaming by means of or the playing of —

- (a) thimblorig;
- (b) two-up, other than permitted two-up;
- (c) a game of a kind to which section 46 (2) (a) refers or the playing of which would contravene the prohibitions referred to in section 46 (2) (b), other than at Burswood Casino;
- (d) gaming equipment to which section 85 applies; or
- (e) unless the play constitutes permitted gaming —
 - (i) any game the conduct or playing of which is declared to be unlawful, or to be unlawful in prescribed circumstances, pursuant to this Act;

- (ii) any game that is a variant of, or of a similar nature to, a game of a kind referred to in paragraph (a), (b) or (c) where the chances therein are not equally favourable to all the players; or
- (iii) except where subsection (3) (b) applies, any game of chance at any public place to which the public have or are permitted to have access,

is prohibited.

(2) Any game —

- (a) of a kind the conduct or playing of which is, subject to subsection (3), prohibited by subsection (1); or
- (b) of any kind when played at a common gaming house,

is for the purposes of this Act or any other law deemed to be an unlawful game.

(3) The prohibition declared in subsection (1) shall not have effect in relation to the playing of —

- (a) games with prizes being games of chance and skill combined in which skill is the predominant factor where —
 - (i) the games are played at an agricultural show, a pleasure fair, a fete, or another like event; and
 - (ii) the opportunity to win prizes at those games is not the only, or the only substantial, inducement to attend the show, fair, fete, or other event;
- (b) games of chance not played for winnings in money or money's worth, played at a public place to which the public have or are permitted to have access;

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- (c) any other game, otherwise than in a common gaming house, if the game —
 - (i) is of a kind specified;
 - (ii) is played in the circumstances specified; and
 - (iii) is so played as to comply with such conditions (if any) as may be prescribed,by regulations made for the purposes of this subsection.

(4) Any person who is knowingly concerned in the conduct of an unlawful game commits an offence.

Penalty: \$2 500, or imprisonment for 6 months, or both.

(5) A person who plays, or bets at or in relation to, an unlawful game commits an offence.

Penalty: \$500.

Defence of restricted access not available

43. It shall not be a defence to any complaint for an offence under section 41 or 42 to show that access to the premises where the gaming or play took place was in any way or for any reason restricted.

Cheating

44. (1) Any person who by deceit or any fraudulent means in or in relation to a game, lottery, sport, race, exercise or other contest or pastime —

- (a) obtains any prize, or any money, property or benefit;

- (b) gains a benefit, pecuniary or otherwise, for any person;
- (c) causes a detriment, pecuniary or otherwise, to any person; or
- (d) induces another —
 - (i) to deliver property to any person;
 - (ii) to do any act which he is lawfully entitled to abstain from doing; or
 - (iii) to omit to do any act which he is lawfully entitled to do,

commits an offence.

Penalty: \$10 000, or imprisonment for 2 years, or both.

(2) A person shall be taken to have employed fraudulent means if he cheats or otherwise employs any wrongful practice, trick, scheme or device —

- (a) as to the manner of play or the rules applicable;
- (b) in regard to any player, or any gaming equipment, instrument of gaming, entrant or participant;
- (c) in bearing a part in the stakes, bets or a venture; or
- (d) in, or in respect of, betting on the event, or on the sides, or on the chances, of entrants or participants,

in, in relation to, or of the contest or pastime.

Offences relating to permitted gaming

45. (1) A person who, with intent to defraud —

- (a) alters or falsifies any ticket, coupon, token or books;

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- (b) makes or concurs in making any false or fraudulent entry in any books; or
- (c) omits or concurs in omitting any material particular from any books,

relating to permitted gaming, commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

(2) A person who, with intent to defraud, conducts any permitted bingo, permitted two-up, permitted lottery or permitted amusement with prizes in such a way that each participant has not an equal chance of winning, commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

(3) A person who, without the written authorization of the Commission, wilfully diverts the funds raised by gaming purporting to be conducted under the authority of a permit for a purpose other than the object for which a permit was issued, commits an offence.

Penalty: \$2 500, or imprisonment for 6 months, or both.

(4) A person who conducts gaming or betting purporting to be conducted under the authority of a permit otherwise than in accordance with —

- (a) a permit which authorizes the gaming or betting; or
- (b) any condition imposed in respect of the permit,

commits an offence.

Penalty: \$2 500, or imprisonment for 6 months, or both.

[Section 45 amended by No. 16 of 1990 s.33.]

PART V — PERMITTED GAMING

Division 1 — Gambling generally

Permitted gaming

46. (1) Gaming or betting may be lawfully conducted, and lawfully participated in, where —

- (a) it occurs on a day and at a time authorized by a relevant gaming permit;
- (b) it takes place at premises authorized by the permit to be used for permitted gaming of that kind;
- (c) it is of a kind authorized by the permit;
- (d) it is conducted by the permit holder or a person acting on behalf of and subject to the direction of the permit holder; and
- (e) it does not contravene any condition imposed in respect of the permit.

(2) Except in so far as regulations made under this Act may otherwise provide or a permit specifically states, a permit does not authorize the playing of any kind of game —

- (a) which is a game authorized under section 22 of the *Casino Control Act 1984* to be played in the Burswood Casino or which is commonly played in casinos (whether in Australia or elsewhere); or
- (b) which in that particular part of the State, or in those circumstances, would be subject to the prohibitions contained in clause 22 of the Agreement referred to in section 3 of the *Casino (Burswood Island) Agreement Act 1985*,

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not being a game of a kind referred to in clause 22 (5) of that Agreement, and every permit shall be deemed to be subject to an implied condition to that effect which shall not be required to be noted on the permit or in the register.

(3) For the purposes of any proceedings relating to a breach of the implied condition referred to in subsection (2), or of construing any permit or written law relating to gaming or betting, a reference to a particular kind of game shall be taken to include a reference to any game (whether or not alleged to be a variation or derivative of the first-mentioned game and by whatever name called) which is of a kind essentially similar to that game.

(4) A permit does not authorize the conduct of, or participation in, gaming or betting on Christmas Day, or Good Friday or, except in the case of permitted two-up, on the morning of Anzac Day.

Gaming permits

47. (1) A gaming permit may be —
- (a) a function permit, having effect —
 - (i) for the period, not being a period in excess of 7 days; or
 - (ii) during the function; and
 - (iii) in respect of the premises,
therein specified, subject to any conditions imposed;
 - (b) a permit of a continuing nature, having effect —
 - (i) for the period, being a period not exceeding 12 months, therein specified;

- (ii) subject to the approval of the Commission to the premises therein specified remaining in force, in respect of those premises; and
- (iii) subject to the conditions from time to time imposed;

or

- (c) a Ministerial permit, issued under section 48 and having effect according to its tenor,

and shall be issued on an application being made and granted in accordance with this Act and on, or subject to, payment of the prescribed fee but may be revoked or deemed to be revoked, amended or renewed subject to this Act.

(2) A gaming permit —

- (a) unless it is issued under section 48, shall be in the prescribed form; and
- (b) subject to section 46 (4), authorizes the permit holder to conduct, or cause to be conducted, and persons to participate in, gaming or betting, in accordance with its tenor and subject to the conditions therein specified or otherwise imposed, but in no other manner.

Issue of permit on direction by the Minister

48. (1) Where, by reason of a major sporting event, a special occasion or other exceptional circumstances, the Minister so determines, and notwithstanding that the manner of the application or the matter to which it relates is not otherwise provided for by this Act or does not comply with the requirements of or prescribed under this Act, the Minister, after consultation in so far as the Minister thinks fit with the Commission, may direct the Commission —

- (a) to issue a permit to a specified person in relation to a specified kind of gaming or betting on specified premises, whether or not approved premises, on such conditions as are specified;

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- (b) as to the period for and manner in which the permit should be issued; and
- (c) as to any charge, duty or fee that is to be payable in relation to the permit,

and effect shall be given to that direction and to any permit complying with that direction, subject to section 46 (2) and (4).

(2) In subsection (1), “**specified**” means specified in the direction given by the Minister to the Commission.

[Section 48 amended by No. 16 of 1990 s.33.]

Matters to be taken into account in determining applications for the issue or renewal of a permit

49. (1) In determining any application for the issue or renewal of a gaming permit regard may be had to —

- (a) whether or not the applicant is a fit and proper person to hold a permit, likely to be capable of and diligent in, securing that this Act will not be contravened and that any permitted gaming will be conducted fairly and properly;
- (b) any arrangement or circumstances whereby the benefit arising from the holding of the permit may accrue to any other person;
- (c) the need for persons having relevant experience to be in attendance at, and where appropriate to conduct, the gaming or betting;
- (d) the gaming equipment or other apparatus that may be required to conduct the gaming or betting, and any need for the approval of the Commission to be obtained to the supply or use of that apparatus;

- (e) the facilities available for the occasion, and the state of the premises where gaming or betting is to occur or which may reasonably be required to be used by participants in or persons present at the gaming or betting; and
- (f) the circumstances existing in the immediate vicinity of the premises and any other relevant factor whereby persons may reasonably be disturbed or offended by the proposed use of the premises, taking into consideration the needs of the public.

(2) In determining any application for the renewal of a permit regard may be had to —

- (a) any matters to which subsection (1) refers;
- (b) the manner in which —
 - (i) gaming or betting has been conducted;
 - (ii) the premises have been maintained;
 - (iii) the use of the premises for gaming or betting has affected the circumstances existing in the immediate vicinity of the premises, other permitted gaming or betting operations, and the needs of the public; and
 - (iv) persons participating in or present at the gaming or betting have made use of the premises and facilities provided;
- (c) any circumstances warranting a change in the manner in which any fee or charge is assessed or is paid, and generally as to the nature and amount of the fees and charges payable;
- (d) the eligibility and suitability of the applicant in the light of experience; and

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- (e) any further or other considerations or circumstances that may be relevant.
- (3) For the purposes of this section —
- (a) the way in which permitted gaming is conducted by the applicant or by persons employed by him or acting on his behalf, or who are in the opinion of the Commission associated with him, shall be material; and
 - (b) a permit shall not be issued if in the opinion of the Commission the gaming or betting thereby to be authorized would be likely to be conducted for the benefit of a person who would himself be refused a permit as not being a fit and proper person to hold a permit.

The Register

50. (1) The Commission shall maintain a register showing, in accordance with such manner as may be prescribed, particulars of —

- (a) persons approved as eligible to hold a permit, and any approved nominee, specifying the body on behalf of which that person or nominee acts and the kind of gaming to which the approval relates;
- (b) premises approved —
 - (i) generally, in relation to function permits;
 - (ii) as a venue where permitted gaming may take place under permits of a continuing nature; or
 - (iii) for other prescribed purposes,specifying the kind of permitted gaming to which the approval relates;

- (c) holders for the time being of permits of a continuing nature;

[(d) *deleted*]

- (e) holders of certificates issued under Part V Division 5,

and short particulars of any condition imposed.

(2) Where a person ceases to be the holder of a permit or certificate or to be approved for any purpose, or any premises cease to be approved premises, the name and any other particulars entered in the register in relation to that person or those premises shall be removed from that part of the register which is current.

(3) A person may inspect and make copies of, or take extracts from, the current register on payment of the prescribed fee.

[Section 50 amended by No. 16 of 1990 s.33.]

Persons eligible to hold permits

51. (1) Subject to this Act, any person may apply to the Commission for his or its approval by the Commission as a person eligible to be the holder of a gaming permit.

(2) The Commission shall not approve a person as eligible to hold a permit unless —

- (a) where the applicant comprises a body of persons, corporate or unincorporate, an individual approved by the Commission is appointed by and on behalf of that body to be responsible for the conduct of the gaming or betting as nominee permit holder; and

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- (b) the Commission is satisfied —
 - (i) that the applicant is, or is concerned in the administration of and makes the application on behalf of, a club, society, institution, organization, association or other body of persons being a body which, subject to section 81 (2), section 95 (2) and section 104, has as the principal object of the proposed gaming the raising of moneys in good faith for the active promotion, support or conduct of any sporting, social, political, literary, artistic, scientific, benevolent, charitable or other like activity detailed in the application;
 - (ii) that the gaming or betting is not to be promoted or otherwise conducted for the purposes of private gain; and
 - (iii) the proceeds of the gaming or betting, after deduction of proper expenses and of prizes, are to be used for the benefit of the activities detailed in the application.

(3) Where an individual is, from time to time, appointed as the nominee permit holder on behalf of a body of persons for the purposes of this section —

- (a) that individual shall be primarily responsible for the conduct of the gaming or betting to which the permit relates and where an element of an offence under this Act is an act or omission on the part of that body of persons the complaint may be made against the nominee; and
- (b) that individual is entitled to be indemnified by the body of persons by which he was appointed as nominee in respect of any penalty imposed under this Act,

(4) Where a person is approved as eligible to hold a permit —

- (a) a permit may be issued to that person, but shall where the applicant comprises a body of persons be issued to a person who is an approved nominee; and
- (b) the Commission, or in a case to which section 52 (a) refers the magistrate, shall cause to be specified on the permit —
 - (i) the name of that person and of any body for which he is the nominee permit holder;
 - (ii) the date of the issue, and the duration, of the permit and where it is a function permit, the nature of the function;
 - (iii) particulars of the premises where the gaming or betting is to be conducted; and
 - (iv) the kind of gaming or betting authorized by the permit,

and

- (c) where the application relates to a permit of a continuing nature, such other particulars as may be prescribed or as the Commission thinks fit, shall be endorsed on the permit,

and particulars of any conditions imposed, other than implied or prescribed conditions, shall be endorsed on or annexed to the permit and the Commission or that magistrate shall cause the relevant particulars to be noted in the register.

Applications for a permit

52. An application for the issue of a permit —

- (a) in the case of a function permit, may be made to the Commission and, if the Commission agrees,

informally, but otherwise in the prescribed manner save that an application for a function permit may, instead of being made to the Commission, be made to a stipendiary magistrate who may on behalf of the Commission issue the function permit where —

- (i) the applicant is a person entered in the register as eligible to hold a permit of that kind;
- (ii) the premises on which the permitted gaming is to occur are premises entered in the register as approved for gaming or betting of that kind or are the subject of an application to that magistrate under section 55 (1) (a) (ii); and
- (iii) any conditions applicable are not contravened or likely to be contravened,

and the magistrate shall cause the Commission to be notified accordingly; but

- (b) in the case of a permit of a continuing nature, shall be made to the Commission in writing in the prescribed manner,

and any such application shall, unless the Commission or magistrate dispenses with the requirement, contain or be accompanied by such information as is prescribed and be supported by such further information as the Commission or magistrate may require.

Fees and charges payable to the Commission

53. (1) A gaming permit shall not be issued otherwise than upon payment of an application fee and such other fees or charges as may be prescribed.

(2) The fees or charges payable in relation to the approval of premises by or on behalf of the Commission shall be such as may be prescribed.

(3) Regulations imposing fees or charges payable in relation to the issue of a permit or in relation to the approval of premises to be used under such a permit may provide —

- (a) for an application fee to be payable on the issue of the permit or grant of the approval;
- (b) for periodic, percentage or other payments to be made related to the volume or value of the gaming or betting conducted or to be conducted or to its frequency;
- (c) for the giving of security, by means of a deposit or otherwise, for payments due or to become due;
- (d) for such payments to be made through the permit holder providing, at the place where gaming or betting occurs, facilities for persons participating in or present at the gaming or betting to make payments in respect of the fees payable; and
- (e) for the permit holder to perform specified functions in connection with the payment of or accounting for moneys paid by such persons, including refusing to permit access to the place where the gaming or betting occurs unless the payments required by the regulations are made,

having regard to the need for the continued supervision of the premises and to the nature of the gaming or betting.

(4) The fees payable in relation to the issue of a certificate under section 88 or 92, and in relation to the renewal of any such certificate, shall respectively be such as may be prescribed, and may be prescribed by reference to the operation to be performed or to the circumstances or period for which the certificate is to have effect.

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Charges payable by persons for taking part in permitted gaming

54. (1) Except where —

- (a) a regulation made under this Act, pursuant to subsection (4) or otherwise; or
- (b) a condition imposed in respect of a permit,

otherwise provides, no gaming or betting shall be conducted in circumstances where (apart from any stakes hazarded or bets placed) a charge, in money or money's worth, is made in respect of that gaming or betting.

(2) Subject to subsections (3), (4) and (5), any admission charge shall, unless the contrary is proved, be taken to be a charge made in respect of the gaming or betting.

(3) Where it is shown that a club, society, institution, organization, association or other body of persons is so constituted and conducted, in respect of membership and otherwise, as not to be of a temporary character, a payment which constitutes payment of, or of a quarterly or half-yearly instalment of, an annual subscription to that body, or of an entrance subscription not made in respect of temporary membership, shall not be taken to be a charge made in respect of the gaming or betting, notwithstanding that it operates as an admission charge.

(4) Regulations made under this Act may impose an implied condition providing that a charge may be made in respect of any person for the right to take part in the permitted gaming, or permitted gaming of a prescribed kind or in prescribed circumstances, where the charge, or if more than one the aggregate amount of the charges, made on any one day or in respect of any one prescribed period does not exceed such sum as is prescribed.

(5) Where permitted gaming takes place on approved premises, charges may be made in respect of the gaming or betting in such circumstances as a condition imposed in relation to a permit in respect of that gaming or betting, or to permitted gaming of that kind, may provide, and any such condition —

- (a) may enable different charges to be made in respect of different facilities (whether provided in different parts of the same premises or by way of different games or of the same game played at different tables or otherwise) or in respect of permitted gaming facilities provided at the premises during different sessions of play; and
- (b) may provide that a levy, of such amount or calculated in such a manner as is therein specified, may in circumstances therein specified be charged on the stakes or on the winnings of the players.

(6) A charge shall not be made in relation to permitted gaming unless particulars of the charges and of the circumstances in which they are chargeable —

- (a) are displayed at the premises; and
- (b) where the regulations or a condition so provide —
 - (i) the charges are approved by the Commission; and
 - (ii) the particulars comprise such matters as the Commission requires, and are displayed in such a manner and positions as the Commission requires.

Approved premises

55. (1) An application for the grant by the Commission of approval to the use of premises for gaming or betting —

- (a) in the case of premises to be used for the purposes of a specific function permit, may —
 - (i) if the Commission agrees, be made to the Commission informally; or

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- (ii) be made to the magistrate hearing the application for the function permit on behalf of the Commission, in which case the magistrate may grant the approval and shall cause the Commission to be notified of his decision;

but

- (b) in any other case, shall be made to the Commission in the prescribed manner,

and shall, unless the Commission or the magistrate dispenses with the requirement, contained or be accompanied by such information as is prescribed and be supported by such further information as the Commission or magistrate may require.

(2) Premises may be approved by or on behalf of the Commission —

- (a) specifically, to be used for the purposes of a specific function permit;
- (b) generally, to be used for the purposes of function permits from time to time; or
- (c) in relation to a permit, or permits, of a continuing nature,

subject to such conditions as are specified in the instrument of approval (which may be the specific function permit), and may be approved for the purposes only of specified kinds of permitted gaming, and particulars of the approval (other than in relation to a specific function permit) shall be noted in the register together with particulars of the person who is for the time being the holder of that approval.

(3) The Commission may in relation to any premises require an applicant for the grant of approval or the holder of the approval to produce to the Commission —

- (a) a report from the local government of the district in which the premises are situated, certifying that those

premises conform, or if not conforming in what respect they do not conform, to the *Health Act 1911*, to the relevant Act relating to sewerage and drainage and to any subsidiary legislation made under those Acts or the *Local Government Act 1995*;

- (b) a report from the authority responsible for town planning matters affecting the premises certifying —
 - (i) that the proposed or actual use does not contravene any written law relating to town planning; or
 - (ii) where a proposed use will not contravene such a written law only if a specified consent be given, whether or not that consent will be given and as to any conditions relating to that consent;
- (c) a report from the Commissioner of Police, or of an officer appointed by him with the approval of the Commission for that purpose, certifying that the premises are not in his opinion unsuitable for use as premises where permitted gaming of the kind proposed or to which the approval for the time being refers may occur; and
- (d) evidence satisfactory to the Commission as to the charges proposed or made for the use of the premises for permitted gaming.

(4) Where the owner or occupier of any approved premises objects or changes, or for any other reason the Commission is satisfied that the circumstances so require, the Commission may in its discretion revoke its approval of the premises, or amend the conditions imposed in relation to any approval.

(5) The revocation, or amendment of the conditions imposed, shall take effect —

- (a) on the day on which written notice of the decision of the Commission is given to the registered holder of the approval; or

(b) on such later day as is specified in that notice,
subject to subsection (6).

(6) Where for any reason notice of a decision of the Commission cannot in the opinion of the Commission be conveniently given to the registered holder of the approval in relation to any premises, that notice may in default be given to any person appearing to be an occupier of the premises and be posted in a conspicuous position on the premises, and effect shall thereupon be given to the revocation or amendment in accordance with the tenor of that notice.

(7) An approval of premises granted by the Commission subsists in favour of the holder to whom or which the approval was first granted, or an assignee acceptable to the Commission entered in the register as the registered holder of that approval, and until —

- (a) the term for which it was granted expires;
- (b) its operation is suspended pursuant to an amendment;
or
- (c) it is revoked under subsection (4),

whichever is the sooner.

(8) Where the Commission proposes to revoke the approval granted in relation to any premises, or to amend the conditions imposed, the Commission shall take such steps as it considers reasonable in the circumstances to afford the registered holder of the approval and, where practicable, the owner and any other occupier who in the opinion of the Commission may be thereby prejudicially affected an opportunity to make submissions to the Commission in relation to the matter.

(9) Any assignment of the grant of approval by the registered holder proposed by him to the Commission shall not unreasonably be refused.

(10) Any assignment which is acceptable, and any revocation or amendment under this section shall be noted in the register.

[Section 55 amended by No. 14 of 1996 s.4.]

Renewals of approvals, permits and certificates

56. (1) An application for the renewal, or where its operation is suspended the re-instatement, of an approval, a permit of a continuing nature or a certificate shall be made in writing as prescribed but need not, unless the Commission by notice in writing to the applicant so directs, contain or be accompanied by the information furnished at the time of the original application by that person in so far as that is stated to remain unaltered, but shall be supported by such further or other information as the Commission may require.

(2) Subject to section 49 (2), the application for the renewal or reinstatement of an approval, permit or certificate shall be dealt with at the discretion of the Commission as though it were an application for the grant of a new approval or for the issue of a new permit or certificate and, except where subsection (3) applies, the holding of an approval, permit or certificate does not confer any right of renewal.

(3) Where an application for renewal is duly made to the Commission and the Commission considers that the application can not be disposed of prior to the date on which the then current approval, permit or certificate will lapse, the Commission —

- (a) may extend the operation of the then current approval, permit or certificate for such period as may be necessary for the application to be disposed of finally; and
- (b) shall notify the applicant and amend the register accordingly.

Reports to be made by permit holders

57. (1) Where the Commission by notice in writing or a condition imposed in relation to a permit so requires, the permit holder shall, not later than the day required by the Commission, furnish to the Commission a report verified in such manner as the Commission may require by the permit holder, and in the case of a body of persons, corporate or unincorporate, also by 2 officers of that body other than the permit holder, being persons appointed by that body with the approval of the Commission for the purposes of this section, showing —

- (a) the particular purpose or purposes to which proceeds of any gaming or betting were applied, and the amount applied for that purpose, or for each of those purposes, as may be required;
- (b) each date and place at which gaming or betting to which the permit purported to apply occurred;
- (c) the total amount of the proceeds of the permitted gaming; and
- (d) the sums appropriated out of those proceeds on account of expenses, and on account of prizes, respectively,

and shall at that time, or subsequently, as the Commission requires, furnish such other information as to the permitted gaming or its conduct or as to moneys related thereto as the Commission may require, verified in such manner as the Commission may require.

(2) The Commission may require that any report under this section be verified by an independent auditor acceptable to, or appointed by, the Commission at the expense of the permit holder, but any such expense may be deducted as a proper expense in relation to the permitted gaming only where the auditor so certifies and the Commission consents.

(3) A person who or which fails to furnish a report or information required in accordance with subsection (1), or who or which furnishes in or in relation to any such report information which is false or misleading in a material particular, or who verifies any such report knowing it to contain such information, commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

Condition may relate to objects of the gaming

58. (1) A condition imposed in relation to a permit may require the permit holder —

- (a) to give such publicity to the object of the permitted gaming as will be likely to bring it to the attention of persons participating in, or proposing to participate in, the permitted gaming; and
- (b) subject to this section, to apply money accruing from or in relation to the permitted gaming, or a specified part of that money, only to the object of the permitted gaming.

(2) In this section “**object**” means the particular intention, or the activity, detailed in the application for the permit as that for which the proceeds of the permitted gaming are to be applied.

(3) Where a permit holder desires to apply moneys accruing from permitted gaming to which a condition of the kind referred to in subsection (1) applies for a purpose suggested by the permit holder other than the object detailed in the application, the Commission may at the request of the permit holder authorize the application of the money for that other purpose if the Commission is satisfied —

- (a) that the object, in whole or in part —
 - (i) has been as far as may be fulfilled; or

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- (ii) cannot be carried out;
- (b) that the object provides a use for part only of the money accruing from the permitted gaming;
- (c) that the money so accruing and other money applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably be made applicable to common purposes;
- (d) that the object was specified by reference to an activity which was, when the object was specified, but has since ceased to be, an activity having some particular purpose, or by reference to a class of persons or to an object which has for any reason since ceased to be suitable; or
- (e) that the object, in whole or in part, has since it was specified —
 - (i) been adequately provide for by other means; or
 - (ii) ceased in any other way to provide a suitable and effective method of using money accruing from the permitted gaming.

(4) Where the Commission authorizes the application of money accruing from permitted gaming for a purpose other than the object of the permitted gaming the permit holder shall apply the money in the manner so authorized and not otherwise.

Penalty: \$2 500, or imprisonment for 6 months, or both.

Conditions as to the giving of security

- 59.** (1) A condition imposed in relation to —
- (a) the eligibility of any person to hold a permit;

- (b) the approval of a person as a nominee permit holder;
- (c) the approval of premises; or
- (d) the issue of a permit or certificate,

may require that a person lodge with the Commission, within such time as the Commission may specify in the instrument imposing the condition or otherwise allow, security by way of a bond, in a form acceptable to the Commission and executed by an insurer acceptable to the Commission, conditioned upon the holder of the approval, permit or certificate paying, applying and accounting for, duly and according to law, moneys coming into his hands by the operation of this Act and punctually complying with all duties and obligations imposed on him by law in relation to those moneys or any approved premises.

(1a) A bond referred to in subsection (1) shall provide that it enures during the term of the approval, permit or certificate for which it is originally given and may also provide that it enures during the term of any renewal granted to the same person.

(2) Any bond lodged with the Commission in relation to any approval, permit or certificate shall be applied by the Commission in such circumstances, for such purposes and in such manner as the Minister may direct, and may be discharged by the Commission as to the whole or any part.

(3) A Judge may, on the application of the Commission and on being satisfied that any condition of the bond has been broken, assign the bond to the Commission or to any other person and the Commission or other person to whom the bond has been assigned is or the executors or administrators of the estate of that other person are, upon the assignment, entitled to sue upon the bond in his or their own name or names, as if the bond had, in the first instance, been given to him or them and also to receive, in trust for all persons interested, the full amount recoverable in respect of the breach of a condition of the bond.

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(4) Where a bond enures in respect of the renewal or further renewal of an approval, a permit or a certificate, the insurer may by notice in writing given to the Commission determine its liability under the bond in respect of any act or default that may be done or made after the current approval or permit expires.

(5) If, by reason of non-payment of any premium, or any other act or omission of the holder of the approval, permit or certificate, a bond lodged with the Commission ceases to be in force during the term of the relevant approval, permit or certificate the approval, permit or certificate is deemed to have been revoked until another bond acceptable to the Commission is lodged.

(6) Where for any reason related to the insurer a bond lodged with the Commission ceases to be acceptable to the Commission, the approval, permit or certificate to which the bond relates may be amended by the Commission so that its operation is suspended until another bond acceptable to the Commission is lodged.

[Section 59 amended by No. 16 of 1990 s.33.]

Revocation or amendment of permits and certain approvals

60. (1) Where the Commission is satisfied that the circumstances so require, the Commission, subject to section 61 and section 62, may in its discretion —

- (a) revoke its approval as to the eligibility of any person to hold a permit;
- (b) revoke its approval of a person as a nominee permit holder;
- (c) where a permit holder is a corporation and —
 - (i) a dealing with shares or any other interest in the corporation takes place; or

(ii) the corporation or its directors enter into a transaction or arrangement,

and in the opinion of the Commission the dealing, transaction or arrangement substantially affects the control of the corporation, revoke the permit;

(d) revoke a permit; or

(e) amend any such approval or permit.

(2) The revocation or amendment of an approval or a permit pursuant to subsection (1) takes effect —

(a) on the day on which a notice of the revocation or amendment is given by the Commission to the holder of that approval or permit; or

(b) on such later day as is specified in the notice of revocation or amendment,

and the register shall be noted accordingly.

(3) Where notice is to be given pursuant to subsection (2) and service can not be effected within 7 days, a notice published for information in the *Gazette* setting out the relevant particulars of the notice to be given and of the day on which it was dated shall be taken to be sufficient service of a notice pursuant to subsection (2) for the purpose of any revocation or amendment of an approval or a permit to which this section applies.

(4) The revocation or amendment of an approval or a permit to which this section applies shall not be effected unless the Commission has taken reasonable steps to afford the holder of that approval or permit, and any other person or body likely to be affected, an opportunity to make submissions to the Commission in relation to the matter, unless the ground of revocation or amendment is a suspected offence under this Act.

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(5) The Commission may by notice in writing require the holder of an approval or a permit to which this section applies to return it to the Commission for the purpose of amendment.

(6) Where the Commission by notice requires that an approval or a permit be returned to the Commission under subsection (5) and the approval or permit is not so returned within the time limited by the Commission in the notice, that approval or permit shall be deemed to have been revoked with effect from the day on which the notice was dated.

[Section 60 amended by No. 16 of 1990 s.33.]

[61. Repealed by No. 16 of 1990 s.33.]

Reports as to the revocation or amendment of current approvals, permits or certificates, and appeals to the Minister

62. (1) Where the Commission revokes or amends an approval, permit or certificate before the conclusion of the period for which it would otherwise have effect, the Commission, after having given an opportunity to the holder of the approval, permit or certificate to make submissions in relation to the matter and considered any submissions so made, shall make a report and recommendations to the Minister.

(2) A person aggrieved by a determination of the Commission —

- (a) revoking;
- (b) refusing to renew; or
- (c) amending,

an approval, permit or certificate may appeal by making a submission in writing in the prescribed manner to the Minister.

(3) The Minister may determine the matter on the substantial merits without regard to legal forms or technicalities and is not required to determine whether the information before him is in accordance with the law of evidence or not.

(4) The decision of the Minister shall be final and conclusive, is not subject to any further or other appeal, and shall not be questioned in any judicial proceedings.

(5) Where the holder of an approval, permit or certificate appeals to the Minister the approval, permit or certificate shall, subject to the payment of any fees then due and payable and subject to subsection (6), remain in force until the determination of the appeal.

(6) Subsection (5) does not apply in the case of an appeal against a determination of the Commission stated to have been made by reason of the conviction of the holder of the permit, approval or certificate for an offence against this Act or any other written law relating to gaming or betting.

Prohibition of credit for permitted gaming

63. (1) Subject to subsection (2), where permitted gaming takes place, neither the permit holder nor any person acting on his behalf or under any arrangement with him shall make any loan or otherwise provide or allow to any person any credit, or release, or discharge on another person's behalf, the whole or part of any debt —

- (a) for enabling any person to take part in permitted gaming; or
- (b) in respect of any losses incurred by any person in permitted gaming.

(2) Neither the permit holder nor any person acting on his behalf or under any arrangement with him shall accept a cheque and give in exchange for it cash or tokens for enabling any

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person to take part in permitted gaming unless the following conditions are fulfilled, that is to say —

- (a) the cheque is not a post-dated cheque; and
- (b) it is exchanged for cash to an amount equal to the amount for which it is drawn, or is exchanged for tokens at the same rate as would apply if cash, to the amount for which the cheque is drawn, were given in exchange for them,

but, where those conditions are fulfilled, the giving of cash or tokens in exchange for a cheque shall not be taken to contravene subsection (1).

(3) Where the permit holder, or a person acting on behalf of or under any arrangement with him, accepts a cheque in exchange for cash or tokens to be used by a player in permitted gaming, he shall not more than 2 banking days later cause the cheque to be delivered to a bank for payment or collection.

(4) In this section “**banking day**” means a day other than a bank holiday.

Division 2 — Social gambling

Social gambling, generally

64. (1) This section does not, subject to subsection (3), apply to or in relation to —

- (a) betting to which the *Betting Control Act 1954* applies; or
- (b) any other gaming or betting on the result of a race of any kind by horses, whether ridden or driven, or by greyhounds.

- (2) Subject to subsection (1), gaming or betting which —
- (a) is spontaneous, notwithstanding that it may occur regularly, habitually or by arrangement between the persons involved;
 - (b) is not promoted or conducted by or for the private gain of any person not participating in the gaming or betting;
 - (c) is so conducted that —
 - (i) no person is defrauded or cheated;
 - (ii) no charge in money or money's worth (apart from any stakes hazarded or bets placed) is made in respect of the gaming or betting, and that no levy is charged on any of the stakes or bets or on the winnings of any of the players, whether by way of direct payment, by deduction, or by any other means; and
 - (iii) no money or money's worth which any of the players puts down as stakes, or pays by way of losses, or exchanges for tokens used in playing the game or betting, is disposed of otherwise than by payment to a person participating in the gaming or betting as winnings;
 - (d) is not conducted in circumstances that indicate that the mental, physical or moral welfare of any child under the age of 16 years is likely to be in jeopardy;
 - (e) does not contravene the requirements of the person responsible for the premises where it occurs;
 - (f) is not —
 - (i) two-up;

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- (ii) a game of a kind which by the operation of section 46 (2) is not capable of being authorized by way of permitted gaming; or
- (iii) prescribed as a game in respect to which social gambling is prohibited;

and

- (g) being gaming, by the nature of the game is such that the chances in the game —
 - (i) are equally favourable to all the players; or
 - (ii) lie between the player and some other person, or (if there are 2 or more players) lie wholly or partly between the players and some other person, and those chances are as favourable to the player or players as they are to that other person,

shall be taken to constitute social gambling and is not unlawful.

(3) The making of a bet within the meaning of the *Betting Control Act 1954* by a person with another person, neither being a person who —

- (a) holds a current licence as a bookmaker under that Act;
- (b) by way of business in any manner holds himself out, or permits himself to be held out, as a person who receives or negotiates bets or who, whether occasionally or regularly, carries on the business of receiving or negotiating bets; or
- (c) is employed by or acts on behalf of a person of the kind referred to in paragraph (a) or paragraph (b),

shall be taken to constitute social gambling and is not unlawful.

(4) The conduct of, or participation in, a lottery on the result of a race of any kind by a person or persons, not being a person or persons of a kind referred to in subsection (3) (a), (b) or (c), on or in the week preceding the day on which that race occurs, not being a lottery conducted for the purposes of private gain or any commercial undertaking, shall be taken to constitute social gambling and is not unlawful.

(5) For the purposes of this section —

- (a) any purpose for which a body of persons is established and conducted which is calculated to benefit the body as a whole shall not be held to be a purpose of private gain by reason only that action in the fulfilment would result in benefit to any person as an individual;
- (b) any club, society, institution, organization or association of persons, by whatever name called, and any separate branch or section of such a club, society, institution, organization or association, shall be taken to constitute a separate body of persons; and
- (c) a payment which constitutes payment of, or of a periodic instalment of, an annual membership subscription to a body of persons, or which constitutes payment of an entrance subscription for membership of such body, shall not be taken to be a charge made in respect of gaming or betting occurring at premises conducted by that body so long as that gaming or betting is not conducted by or on behalf of that body.

(6) Where in any other written law a reference to gaming or wagering, or to betting, is construed as a reference to gaming, wagering or betting that is unlawful that reference shall be taken not to refer to social gambling.

[Division 3 (sections 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79). Repealed by No. 16 of 1990 s.31.]

Division 4 — Permitted Two-up

Two-up at country race meetings

80. (1) Where persons play or bet at the game known as “two-up”, and that game and the betting associated with that game —

(a) takes place —

- (i) at or in the vicinity of a racecourse or track under the control of a country race club; and
- (ii) during the course of the day on which a race meeting is held on that racecourse or track under the management of that club;

(b) is conducted —

- (i) by or on behalf of the country race club, by a person authorized in writing by the committee of that club for the purpose;
- (ii) otherwise than during the racing for that day;
- (iii) in the manner in which the game “two-up” is customarily conducted in that locality of the State, whether with coins or dice; and
- (iv) pursuant to, and in all respects in accordance with, a permit issued under section 51 to an approved nominee permit holder on behalf of that country race club pursuant to an application made by the club specifically seeking a permit to conduct gaming to which this section applies;

and

- (c) does not contravene any condition —
 - (i) specifically imposed in respect of that permit; or
 - (ii) implied by section 82 or otherwise prescribed under this Act,

it shall be taken to constitute permitted two-up and is not unlawful.

(2) A reference in this section to a country race club is a reference to a club which —

- (a) is registered under and in accordance with the Australian Rules of Racing and the Local Rules administered by the body known as The Western Australian Turf Club but is not a Principal Club or a Provincial Club, within the meaning of those Rules; or
- (b) is a “**country club**” within the meaning of the *Western Australian Trotting Association Act 1946*,

and is not a club situate inside a radius in any direction of 200 kilometres of the Burswood Casino as referred to in the *Casino (Burswood Island) Agreement Act 1985*.

Permitted “two-up”, other than at country race meetings

81. (1) Where persons play or bet at the game known as “two-up”, and that game and the betting associated with that game —

- (a) takes place at approved premises, not being a place situate inside a radius in any direction of 200 kilometres of the Burswood Casino as referred to in the *Casino (Burswood Island) Agreement Act 1985*;

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- (b) is conducted —
 - (i) in the manner in which the game “two-up” is customarily conducted in that locality of the State, whether with coins or dice; and
 - (ii) pursuant to, and in all respects in accordance with, a permit issued under section 51 to, or to a nominee permit holder on behalf of, a person who has made an application specifically seeking a permit to conduct gaming to which this section applies;and
- (c) does not contravene any condition —
 - (i) specifically imposed in respect of that permit; or
 - (ii) implied by section 82 or otherwise prescribed under this Act,

it shall be taken to constitute permitted “two-up” and is not unlawful.

(2) For the purposes of section 51 (2) (b) the Commission may have regard to the recreational and social aspects of any proposed gaming to which this section applies and —

- (a) is not required to be satisfied that the principal object of the proposed gaming is the raising of moneys for any activity or, except where the gaming purports to be conducted for the benefit of any activity or any charitable or other particular object, as to the use to which any proceeds are to be put; and
- (b) the gaming or betting shall not be taken to be conducted for the purposes of private gain by reason only that the ringkeeper on behalf of the operator

takes a customary commission, not exceeding 10%,
of —

- (i) all winnings from the spinner, after the spinner has withdrawn; and
- (ii) the winnings of side bettors who have placed their bets through the ringkeeper and who win on heads (or the equivalent where dice are used),

unless the taking of a commission is prohibited or restricted by a condition imposed in respect of the permit.

(3) The playing of the game of “two-up” and the betting associated with that game conducted in all respects in accordance with the *Police (Kalgoorlie Two-up Gaming) Regulations 1983* as in force immediately prior to the coming into operation of this section shall be taken to constitute permitted “two-up” and is not unlawful.

Conditions deemed to be imposed

82. The following implied conditions shall be deemed to have been imposed in respect of every permit to which this Division applies —

- (a) access to any land or premises used for the purposes of the gaming or betting associated with the gaming shall at all times be permitted to any member of the Police Force;
- (b) a person who is —
 - (i) under the age of 18 years; or
 - (ii) under the apparent influence of alcohol or drugs, or alcohol and drugs,

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shall not be, or be permitted to be, in any area designated in the permit as to be prohibited to such persons; and

- (c) a report containing a financial statement and such particulars of the operations of the gaming to which the permit applies, and of betting associated with that gaming, as the Commission may require shall be furnished to the Commission, and to such other person as the Commission may specify, by the permit holder at such times as the Commission may require,

and such a condition is not required to be noted on the permit or in the register.

Regulations for the purposes of this Division

83. Regulations made for the purposes of this Division may make provision —

- (a) in respect of fees or charges in relation to the application for, operation of, or renewal of any permit to which this Division applies;
- (b) as to conditions to be imposed in respect of such a permit, the manner of making the application to the Commission or in the case of a function permit to a magistrate, the period and the hours during which the permit is to have effect, and the conduct and supervision of the gaming and betting;
- (c) for the immediate suspension of the operation of a permit in prescribed circumstances;
- (d) requiring the furnishing of information as to the operation of any gaming or betting conducted pursuant to a permit to which this Division applies; and

- (e) for the creation of offences and prescribed penalties, in relation to the operation of any such permit or the conduct of gaming or betting thereby authorized; and
- (f) generally, in relation to the conduct of the game of two-up.

Division 5 — Gaming machines and other gaming equipment and its operation

Interpretation

84. (1) In this Division —

“gaming machine” means a machine which —

- (a) is constructed, adapted or used for playing a game of chance by means of that gaming machine;
 - (b) a player pays (except where he has an opportunity to play without payment as the result of having previously played successfully) to play —
 - (i) by inserting money, or money’s worth in the form of a token; or
 - (ii) in some other way;
- and
- (c) by the chances inherent in the action of the machine, determines the outcome of the game,

whether or not provision is made for the manipulation of the machine by a player;

“prescribed gaming equipment” means —

- (a) gaming machines or slot machines; and
- (b) any other machine used in the course of, or in relation to, gaming or betting,

of a kind named or described in regulations made for the purposes of section 88;

“slot machine” means a machine that is constructed or adapted and used —

- (a) for the playing of music or of games designed primarily for amusement, relaxation or education;
- (b) for the playing of games of skill;
- (c) so that although a game of chance may be played, section 39 (2) (e) applies;
- (d) to yield with certainty previously ascertained goods of which the sale, or exposure for sale, is not prohibited by any written law; or
- (e) to dispense tickets, having a previously ascertained face value, in a lottery conducted under and in accordance with the requirements of a written law,

without affording any other consideration, advantage or reward and not for the purposes of betting;

“unlawful gaming machine” means a machine of a kind referred to in section 85 (1) (a) or (b); and

“unlawful gaming equipment” means gaming equipment of a kind the use or possession of which contravenes, or in the circumstances in which it is found

contravenes, a prohibition proclaimed under section 85 (2), or an unlawful gaming machine.

Unlawful gaming machines and equipment

85. (1) The conduct of gaming by means of, or the playing of games using or the making of bets by reference to —

(a) any machine (not being a video machine authorized for use in the Burswood Casino pursuant to the *Casino Control Act 1984*) of the kind generally known or described as a poker machine, fruit machine or roulette machine or any machine in the nature of or similar to a machine of that kind;

(b) any other gaming machine, not being a machine used —

(i) as a slot machine; or

(ii) in accordance with a permit or written law;

or

(c) gaming equipment of a kind which contravenes, or in the circumstances in which it is found contravenes, a prohibition proclaimed under subsection (2),

is prohibited and constitutes unlawful gaming, and a game played with that gaming equipment or in relation to which it is used shall for the purposes of section 42 (2) be deemed to be an unlawful game.

(2) On the recommendation of the Commission, where the Governor is satisfied that the use of any kind of gaming equipment may be undesirable, in the public interest or otherwise, he may by proclamation prohibit the use of gaming equipment of that kind in relation to gaming or betting generally

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or in accordance with the tenor of the proclamation and may prohibit possession of any such gaming equipment.

(3) An authorized officer or member of the Police Force finding anything that he has reasonable grounds to suspect may be an unlawful gaming machine, or be a kind of gaming equipment the use or possession of which may contravene, or in the circumstances in which it is found may contravene, a prohibition proclaimed under subsection (2), may —

- (a) require the person having the machine or other gaming equipment in his possession to permit it to be examined on behalf of the Commission, and may require that person to take all such steps as may be reasonably necessary to facilitate that examination; and
- (b) where he is satisfied that the thing is unlawful gaming equipment, or if the person fails to comply with a requirement made of him under paragraph (a), seize and take away that gaming equipment and cause or permit it to be examined, using such force as may be necessary, on behalf of the Commission, and sections 31 and 32 shall have effect in relation to the thing so seized and any money or tokens found therein.

(4) A person having in his possession —

- (a) an unlawful gaming machine; or
- (b) any other gaming equipment that contravenes, or in circumstances that contravene, a prohibition proclaimed under subsection (2),

commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

Use of unlawful cash or tokens in a gaming machine

86. A person who inserts, or attempts to insert, in any gaming machine or slot machine of which the use or possession is lawful anything other than —

- (a) money issued under the authority of a law of the Commonwealth; or
- (b) a token provided by the operator of the machine for use in a machine of that kind,

commits an offence.

Penalty: \$100.

Records relating to gaming equipment

87. (1) Regulations made under this Act or a permit authorizing the conduct of gaming by means of gaming equipment, whether or not prescribed gaming equipment, may impose conditions requiring a person to make, and to retain during a specified period, such records and accounts as may be specified, and to furnish the Commission with such report or information as is specified, in relation to —

- (a) any payments made in respect of the equipment, whether by way of rent, maintenance charges or otherwise;
- (b) any money or tokens inserted into a gaming machine or otherwise hazarded in relation to gaming to which the equipment relates; and
- (c) any money or tokens removed from a gaming machine, or otherwise received in relation to gaming to which the equipment relates, other than money or tokens delivered as prizes.

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(2) In this section, “**specified**” means specified in the regulations or the relevant permit.

Prescribed gaming equipment

88. (1) Regulations made under this Act may prohibit, or impose conditions in relation to —

- (a) the sale, supply, maintenance or repair of prescribed gaming equipment;
- (b) the use or possession of prescribed gaming equipment; and
- (c) the sale or supply of tokens for use in prescribed gaming equipment.

(2) The regulations, or a permit authorizing the conduct of gaming by means of gaming equipment, may impose conditions in relation to the operation of the prescribed gaming equipment, including conditions —

- (a) that a gaming machine shall not be a machine which, in accordance with the way in which the machine is constructed, adapted or for the time being regulated, is designed to pay out less than a prescribed percentage of the aggregate value of the money or money’s worth paid by or on behalf of a player in order to play one or more games by means of the machine;
- (b) that play shall not take place using the gaming equipment unless the equipment is operated by a person approved by the Commission;
- (c) that a statement as to the value or nature of the prizes that can be won be displayed in a prescribed manner; and

- (d) that no person who is not approved by the Commission for the purpose shall remove from any gaming machine any money, other than any money delivered by the machine as, or as part of, a prize in respect of a game played by means of the machine.

(3) A person shall not —

- (a) as principal, or as a servant or agent, sell or supply any gaming equipment otherwise than in circumstances to which subsection (4) applies; or
- (b) as principal undertake for valuable consideration, or cause or permit another person to enter into such an undertaking on his behalf, to maintain the mechanism of any gaming equipment,

being prescribed gaming equipment to which this subsection is by the regulations applied, unless the person so acting —

- (c) being a principal is the holder of a relevant and current certificate issued under this section by the Commission; or
- (d) being a servant or agent of another person, sells or supplies the gaming equipment on behalf of a person who is the holder of such a certificate.

Penalty: \$2 000.

(4) Subsection (3) (a) does not apply —

- (a) to the sale of gaming equipment of any particular class or kind to a person who carries on a business which consists of or includes selling or supplying gaming equipment of that class or kind;
- (b) to the sale or supply of gaming equipment to a person who at no time has possession of the equipment and becomes the owner of it only for the purpose of

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arranging financial accommodation for another person to permit that other person to purchase or be supplied with the equipment;

- (c) to the sale or supply of inoperable gaming equipment as scrap; or
- (d) to any transaction whereby approved premises in which the gaming equipment is installed are sold or let and the equipment is sold or supplied to a purchaser or tenant, who is an assignee acceptable to the Commission in relation to the approval of those premises, as part of the fixtures and fittings of those premises.

(5) A certificate for the purposes of this section may be issued by the Commission on payment of the prescribed fee to any person who satisfies the Commission that he is competent and a fit and proper person to perform the operation to which the certificate relates, and shall have effect —

- (a) in relation to the gaming equipment or gaming equipment of the kind therein specified in the circumstances so specified; or
- (b) in relation to —
 - (i) the gaming equipment, or gaming equipment of the kind;
 - (ii) the period, not being a period in excess of 5 years; and
 - (iii) the operations as to sale or supply, or as to maintenance of the mechanism of the respective kinds of gaming equipment,therein specified,

and is renewable, but may be revoked at the discretion of the Commission pursuant to subsection (6).

(6) A certificate may be revoked by the Commission by notice in writing given to the holder at the address specified in the certificate, as from the end of a period (of not less than 7 days from the date of service of the notice) as specified in that notice, and the revocation takes effect at the end of that period.

(7) In determining whether a person is competent and a fit and proper person to perform relevant operations regard shall be had in particular to the way in which business is conducted by him and by persons employed by him or acting on his behalf.

(8) A person shall not be taken to be a fit and proper person to perform relevant operations if those operations are, or if the certificate in question were issued or renewed would be, performed by him as servant or agent of, or otherwise for the benefit of, a person who would himself be refused a certificate as not being a fit and proper person to perform those operations.

Conditions as to the sale or supply of prescribed gaming equipment

89. (1) Regulations made under this Act may impose conditions with respect to the terms on which prescribed gaming equipment may be sold, supplied or maintained.

(2) A person who sells or supplies, or undertakes to maintain, prescribed gaming equipment on terms which —

(a) are in any way dependent upon; or

(b) provide for any calculation by reference to,

the extent to which, or manner in which, that equipment, or any other gaming equipment whether or not prescribed gaming equipment, is used commits an offence.

Penalty: \$5 000.

(3) In this section “**terms**” includes any condition as to price, rent or any other payment.

Application of sections 88 and 89 to concessionaires

90. For the purposes of sections 88 and 89 a person who, in pursuance of any concession, licence or other right granted to him, places gaming equipment, or causes gaming equipment to be placed, on premises which are not in his occupation shall be treated as supplying the gaming equipment at the time when it is placed on those premises.

Approval by Commission of certain persons connected with permitted gaming

91. (1) Where this Act, regulations made under this Act or the conditions of a permit specify that this subsection shall apply in relation to any permitted gaming a person shall not, pursuant to any service agreement, perform an operation of a kind referred to in subsection (2) unless there is in force a relevant certificate issued by the Commission under section 92 for the purposes of this subsection certifying that he has satisfied the Commission as to his competence and fitness to perform that operation, or that operation in the circumstances or on the premises, as the certificate may specify.

Penalty: \$2 000.

(2) Subsection (1) applies to any operation which is performed in relation to the permitted gaming and consists of —

- (a) taking part in the gaming or betting as a participant;
- (b) assisting the conduct of permitted gaming by operating or handling any gaming equipment or instruments of gaming or, in the case of bingo, by calling the card or otherwise;

- (c) issuing, receiving or recording cash or tokens used in the gaming or betting, or cheques given in respect of any such cash or tokens or in respect of sums won or lost in the gaming or betting; or
- (d) watching, otherwise than as manager, organizer or supervisor —
 - (i) the gaming; or
 - (ii) the performance by any person in pursuance of a service agreement of any operation of a kind referred to in this subsection.

(3) In relation to any approved premises or permit of a continuing nature, the Commission may serve a notice on any person conducting permitted gaming at those premises or to which the permit relates, or who appears to the Commission to be concerned in the conduct of such permitted gaming or to perform, pursuant to a service agreement, an operation of a kind referred to in subsection (2) in relation to that permitted gaming, requiring the person on whom the notice is served, before the end of the period (of not less than 21 days from the date of service of the notice) as specified in that notice, to obtain the approval of the Commission to his acting or continuing to act in relation to such permitted gaming in that capacity.

(4) After the end of the period specified in a notice served under subsection (3), the person on whom the notice is served shall not act in relation to permitted gaming to which the notice refers in a capacity to which the notice refers unless there is in force relevant certificate issued by the Commission for the purposes of this subsection certifying that he has been approved by the Commission for acting in that capacity in relation to that permitted gaming.

Penalty: \$2 000.

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(5) In this section “**service agreement**” means any contract of service or for training, or any other contract, employment or arrangement for the rendering of services of a kind to which subsection (2) refers for hire or reward.

(6) This Act, regulations made under this Act, or a condition imposed respect of any permitted gaming may provide that the gaming or betting shall be deemed not to be lawfully conducted unless the person performing an operation specified in relation to that permitted gaming is a person who is the holder of a relevant and current certificate issued under section 92 for the purposes of this subsection.

(7) In determining whether to issue a certificate for the purposes of subsection (6) the Commission shall have regard only to the question whether, in their opinion, the applicant is a fit and proper person and likely to be capable of, and diligent in, securing that this Act will not be contravened and that any gaming or betting conducted by him will be conducted fairly and properly.

(8) In subsection (6), “**specified**” means specified in the provision of this Act or of the regulations, or in the condition, by which the gaming or betting is deemed not be lawfully conducted unless that operation is performed by the holder of such a certificate.

Approved operators’ certificate

92. (1) A certificate for any of the purposes of section 91 may be issued by the Commission on payment of the prescribed fee and, subject to subsection (3), is revocable at the discretion of the Commission.

(2) A certificate for any of the purposes of section 91 may be issued so as to have effect —

- (a) in relation to the permitted gaming, the capacity, and the premises therein specified for the duration of the function permit therein specified; or

- (b) in relation to the kind of gaming or betting, or gaming equipment, operation or capacity, or premises or circumstances specified in the certificate until the expiry of the period therein specified or the certificate is revoked by the Commission.

(3) A certificate may be revoked by the Commission by notice in writing given to the holder at the address specified in the certificate —

- (a) unless paragraph (b) applies, as from the end of a period (of not less than 21 days from the date of service of the notice) as specified in that notice, the revocation taking effect at the end of that period; or
- (b) where the determination of the Commission is stated in the notice to have been made by reason of the conviction of the holder of the certificate for an offence against this Act or any other written law relating to gaming or betting, with effect from the day on which the notice was dated.

Offences in relation to approved operators' certificates

93. Where section 91, or any regulation made under this Act in respect to the conduct of gaming or betting in relation to which that section applies, is contravened in relation to any permitted gaming —

- (a) the holder of the permit relating to that gaming or betting;
- (b) the registered holder of any approval in relation to premises at which the contravention occurred; and
- (c) any other person knowingly concerned in the contravention,

commits an offence.

Penalty: \$1 000.

Division 6 — Permitted Bingo

Interpretation of this Division

94. (1) In this Division, unless the contrary intention appears —

“bingo” means the game commonly known as bingo, housie-housie or tombola and includes any version of that game by whatever name called;

“charitable organization” means an organization which in the opinion of the Commission has for an object or one of its principal objects the raising of money for charitable purposes, or for the promotion and advancement of social welfare, including public recreation or sport;

“club” includes any society, institution, organization, association or other body of persons, by whatever name called, and any separate branch or section of such society, institution, organization, association or body but a branch or section shall not be treated as a separate branch or section unless it occupies separate premises;

“money” includes any token, voucher or other thing given by a player in exchange for cards and recognized for the purposes of the exchange to represent a particular sum of money, or money’s worth;

“multiple bingo” means bingo to which section 96 refers;

“prize” means anything won or to be won at bingo, whether money or something else having a value, and **“value”** and **“paid”** in relation to prizes shall be construed accordingly;

“simultaneous bingo” means bingo to which section 97 refers;

“the organizer”, in relation to a game of bingo, means the person having the management of the game on behalf of the permit holder in respect of the premises on which the game is played, and in respect of multiple or simultaneous bingo, the person having the central management of the game; and

“the promoter”, in relation to bingo, means the person to whom the players look for the payment of prizes.

(2) For the purposes of this Division, a player’s **“cards”** are the sets of numbers or symbols (in whatever form or lay-out) with which he plays bingo, matching them against calls made by the house; and a player pays for a card when he gives money in exchange for, or for the use of, a particular card, whether it is appropriated to a particular game or can be appropriated by the player to a game of his choice.

Who may participate in permitted bingo

95. (1) A permit authorizing the conduct of bingo may be issued —

- (a) to have effect for a period of 6 months from the date of issue, without specifying the dates on which play may take place, where the bingo is conducted by or on behalf of an approved bingo club;
- (b) as a permit of a continuing nature, subject to the condition that play takes place on the days and at the times authorized by that permit and not otherwise; or
- (c) as a function permit.

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(2) A permit to which subsection (1) (a) applies shall not be issued unless the Commission is satisfied that —

- (a) the club seeking the issue of the permit is comprised wholly or mainly of persons who are senior citizens or pensioners, and guests participating in the play will be persons of a like kind; or
- (b) the club constitutes, or will conduct the bingo on behalf of, a charitable organization.

(3) A permit under this Division issued to an approved nominee on behalf of a club shall, unless the Commission otherwise specifies, be issued subject to the implied condition (which need not be specified in the permit or entered in the register) that no person shall participate in the gaming unless either —

- (a) he is a member of the club and there has been an interval of at least 48 hours between the time when he applied or was nominated for membership of the club and the time when he begins to take part in the gaming; or
- (b) he is a *bona fide* guest of a person who is a member of the club,

and for the purposes of paragraph (b) a person shall be taken not to be a *bona fide* guest if he himself makes any payment required for enabling him to obtain access to the premises, or to a part of them which is a part in which the gaming takes place, or if (apart from any stakes hazarded and the payment of any losses incurred by him in the gaming) he makes any payment in money or money's worth in respect of the gaming.

(4) A person shall not participate in the gaming under this Division —

- (a) if, unless section 96 (1) or 97 (1) applies or a permit otherwise provides, he is not present on the premises at the time when the gaming takes place there; or

- (b) on behalf of another person who is not present on the premises at that time.

Penalty: \$100.

Multiple bingo

96. (1) For the purposes of the game of multiple bingo, a person may be regarded as present on the premises where, the game is being played and at the time when it is being played there if he is present at any one of the premises on which it is being played at the time when it is being played on those premises.

- (2) Where multiple bingo is played —
 - (a) the aggregate amount paid to players as prizes in respect of the game shall not exceed 60%, or such other proportion as may be prescribed, of the aggregate amount of the stakes hazarded by the players in playing that game;
 - (b) the amount of any such prize shall not exceed the prescribed amount or such other sum as may be specified in a condition imposed in respect of the permit authorizing the gaming; and
 - (c) unless the organizer is a person who is the holder of a certificate issued by the Commission for the purpose of the operations performed by him, section 91 (6) applies.
- (3) A person who —
 - (a) performs any operations as an organizer of a game purporting to be multiple bingo, not being the holder of a certificate issued to him for the purposes of section 91 (6) in respect of that operation; or

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- (b) conducts a game purporting to be multiple bingo otherwise than in accordance with subsections (2) and (4),

commits an offence.

Penalty: \$1 000.

- (4) In this section —

“multiple bingo” means a game of bingo played jointly on different bingo club premises in circumstances where —

- (a) the draw is determined before the beginning of the game by the organizer of the game and announced on each of those premises while the game is being played there;
- (b) the game is played on each of those premises within a specified period which begins and ends at the same time for all of them; and
- (c) each player competes for a prize calculated by reference to the stakes hazarded at all those premises and also for either or both of the following —
 - (i) a prize calculated by reference to the stakes hazarded at a group of those premises which includes the premises on which he is taking part in the game; and
 - (ii) a prize calculated by reference to the stakes hazarded at the last-mentioned premises.

Simultaneous bingo, other than multiple bingo

97. (1) Where a game of bingo is played simultaneously on different premises in circumstances where —

- (a) all the players take part in the same game at the same time and all are present at that time on one or other of those premises;
- (b) the draw takes place on one or other of those premises while the game is being played; and
- (c) any claim of one of the players to have won is indicated to all the other players before the next number is called,

then, for the purposes of section 95 (4), those different premises shall be deemed to have been the same premises.

(2) Where games of bingo are played simultaneously —

- (a) the aggregate amount paid to players as winnings in respect of that game shall not exceed 60%, or such other proportion as may be prescribed, of the aggregate amount of the stakes hazarded by the players in playing that game;
- (b) the amount of any prize paid shall not exceed the prescribed amount or such other sum as may be specified in a condition imposed in respect of the permit authorizing the gaming; and
- (c) unless the organizer is a person who is the holder of a certificate issued by the Commission for the purpose of the operations performed by him, section 91 (6) applies.

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(3) A person who —

- (a) performs any operation as an organizer of a game purporting to be simultaneous bingo, not being the holder of a certificate issued for the purposes of section 91 (6) in respect of that operation; or
- (b) conducts a game purporting to be simultaneous bingo otherwise than in accordance with subsections (1) and (2),

commits an offence.

Penalty: \$1 000.

The conduct of bingo

98. A person shall not —

- (a) conduct multiple bingo or simultaneous bingo, otherwise than in accordance with a permit specifically authorizing the playing of that version of bingo;
- (b) as promoter, offer any jackpot prize in relation to bingo, except in so far as may be authorized specifically by a permit relating to multiple bingo or simultaneous bingo; or
- (c) for hire or reward, by way of calling or spotting on behalf of the house or otherwise, assist in the conduct of bingo, unless that person is the holder of a certificate issued by the Commission pursuant to section 91 (1) in respect of that operation.

Penalty: \$2 000.

Moneys payable to the Commission in relation to bingo

99. Where any moneys are payable to the Commission in relation to a permit authorizing the playing of a game of bingo, those moneys shall be recoverable jointly and severally from all or any of the following persons —

- (a) the permit holder;
- (b) the promoter, and any person who took money as payment by players for cards or paid prizes to players;
- (c) the organizer, and any person who was responsible for the management of the premises on which the gaming took place; and
- (d) where a body of persons would be liable, any person who pursuant to section 37 would be liable in relation to a conviction of that body for an offence of failing to pay those moneys on demand.

Regulations as to bingo

100. Regulations may be made under this Act with respect to the conduct of games of bingo and in particular with respect to the following matters —

- (a) the number of games that may be played on any premises in any period of 24 hours;
- (b) the period for the playing of a game;
- (c) the hours during which gaming is permitted to take place;
- (d) the amount of the stakes;
- (e) the method of calculating the value or amount of the prizes;

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- (f) the functions of the organizer of the game and of the persons conducting the game, including a requirement that any such person be the holder of a relevant certificate issued under section 92;
- (g) requiring the display, in such manner and in such positions on the premises as may be prescribed, of the rules in accordance with which any game is to be played on the premises, either generally or in any particular circumstances;
- (h) requiring a promoter to ensure that, before the beginning of any game of bingo promoted by him, the value of any prize to be won in the game is made known to the players in accordance with such requirements as may be prescribed;
- (j) the keeping and retention of accounting records, and as to the production, verification and examination of books relating to the gaming or to the prizes and money involved;
- (k) requiring the provision of security, by way of deposit or otherwise, for any moneys due to the Commission for which a person is, or may become, liable;
- (l) authorizing the Commission —
 - (i) to waive, in a particular case or class of cases, moneys that would otherwise be payable to the Commission; or
 - (ii) to refund in whole or in part, in a particular case or class of cases, moneys paid to the Commission,under this Division;
- (m) requiring that in relation to gaming conducted under the authority of a permit in circumstances to which

section 95 (2) refers, at least 2 persons appointed by the club and acceptable to the Commission are present during the gaming to ensure that it is fairly and properly conducted;

- (n) the printing, sale, use and call back of cards;
- (p) the provision and award of prizes; and
- (q) as to the fees or other moneys payable to the Commission in respect of the gaming, and for the administration of the assessment and enforcement of the payment of such moneys.

Division 7 — Lotteries, and amusements with prizes etc.

Interpretation

101. (1) In this Division —

“closing date”, in relation to a standard lottery, means the last date on which tickets may be sold or subscriptions received from entrants to the standard lottery;

“conducting”, in relation to an unlawful lottery, includes any matter referred to in section 106 (2);

“continuing lottery” means a continuing lottery within the meaning of subsection (2);

“date of drawing”, in relation to a standard lottery, means the date fixed for the drawing of, or deciding the result of the standard lottery;

“drawing”, in relation to a standard lottery, means the determination of the event or events which, according to the conditions of the standard lottery, decide the result;

“foreign lottery” means a lottery which is conducted, drawn or decided wholly or partly outside the State, notwithstanding that the same may be legal according to the law of the place where it is conducted, drawn, or decided;

“opening date”, in relation to a standard lottery, means the first day on which tickets in the standard lottery may be sold or on which subscriptions in the standard lottery may be received;

“standard lottery” means a lottery other than a continuing lottery;

“ticket”, in relation to a standard lottery, includes any document evidencing the claim of a person to participate in the chances of the lottery;

“unlawful lottery” means a lottery declared by section 102 to be unlawful, and includes a foreign lottery conducted in the State.

(2) A continuing lottery is a lottery in which the holders of tickets expose certain amounts or pictures or figures, letters, or other symbols that were printed on the tickets and were concealed at the time when the holders obtained the tickets in order to ascertain whether or not the presentation by them of the tickets to the person conducting the lottery will entitle them, subject to this Act and the terms and conditions, if any, subject to which the permit for the lottery is granted, to receive prizes.

(3) Subject to section 102, this Division does not apply to, or in relation to, any lottery conducted under the *Lotteries Commission Act 1990*.

[Section 101 amended by No. 16 of 1990 s.33.]

Certain lotteries unlawful

102. The conduct of a lottery, whether or not it constitutes gaming, is unlawful unless it is —

- (a) a lottery, game of lotto or soccer football pool conducted under the *Lotteries Commission Act 1990*, an authorized game as defined by the *Casino Control Act 1984* played in accordance with rules approved under that Act in a licensed casino as so defined; or
- (b) a trade promotion lottery,

or is, or is deemed to be, a permitted lottery, permitted gaming, or a permitted amusement with prizes.

[Section 102 amended by No. 16 of 1990 s.33.]

Small private lotteries

103. (1) A lottery in which —

- (a) tickets or chances are sold to or subscriptions received from —
 - (i) persons all of whom work or reside on the same premises; or
 - (ii) persons all of whom are members of, or are the *bona fide* guests of, a body of persons established and conducted for purposes not connected with gaming, betting or lotteries,

and not otherwise;

- (b) the price of every ticket, chance or subscription is the same;

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- (c) the winning of, or the purchase of a chance to win, a prize does not entitle any person (whether subject to a further payment or not) to any further opportunity to win money or money's worth by taking part in any gaming or in any lottery;
- (d) no prize, in money or money's worth exceeding the prescribed amount, is distributed or offered; and
- (e) the sale of tickets or chances, and the receipt of subscriptions, and the declaration of the result take place within 8 days,

shall, subject to subsection (3), be deemed to be a permitted lottery.

(2) A lottery in which —

- (a) the tickets are alphabetically and numerically distinct but the same price;
- (b) the declaration of the result takes place on the same day and on the premises on which the tickets are sold; and
- (c) the aggregate of the value of the prizes offered or distributed does not exceed the prescribed amount,

shall, subject to subsection (3), be deemed to be a permitted lottery.

(3) In relation to a lottery to which this section applies the following conditions are implied —

- (a) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes in the lottery or to purposes which are purposes common to the persons participating;

- (b) no advertisement of the lottery shall be exhibited, published or distributed, other than a notice on the premises of the persons for whom it is conducted or such as may be contained in the tickets or approved by the Commission; and
- (c) no prize won shall be paid or delivered to a person other than a person eligible to participate to whom the winning ticket or chance was sold.

Other permitted lotteries

104. (1) A permit may be issued —

- (a) for a standard lottery, where the Commission is satisfied that it is to be conducted neither for the purposes of private gain nor of any commercial undertaking; or
- (b) for a continuing lottery, in support of religious or charitable purposes or the promotion or advancement of social welfare including athletic sports or games and cultural or public recreational activities, for a period not exceeding 12 months,

but a permit for a continuing lottery shall not be issued to a person who is a licensed supplier within the meaning of section 108 of the *Stamp Act 1921*.

(2) A person applying for a permit authorizing a standard lottery shall furnish to the Commission evidence satisfactory to the Commission as to —

- (a) the proposed opening date and closing date and date of drawing;

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- (b) the locality in which tickets or chances are to be offered for sale or in which subscriptions may be received;
 - (c) the purpose for which the standard lottery is to be conducted;
 - (d) the total number of tickets or chances to be offered for sale, or the total number of subscriptions proposed to be called for;
 - (e) the price of each ticket, chance or subscription;
 - (f) the total amount of the prize money or other prizes proposed to be distributed or offered in the standard lottery; and
 - (g) such other matters as may be prescribed or as are required by the Commission.
- (3) With respect to a standard lottery —
- (a) the permit holder shall keep in such form as may be prescribed a book regularly and promptly posted up, showing a true and accurate account of the receipt and disposal of all property received and disposed of in connection with the standard lottery;
 - (b) all accounts and other books, tickets, butts of tickets, vouchers and things relating to the standard lottery shall at all times be kept readily accessible by the permit holder for inspection or audit as provided by this Act;
 - (c) the permit holder shall within 30 days after the date of drawing of the standard lottery furnish to the Commission a true and accurate account of the receipt and disposal of all property in the conduct of the standard lottery;

- (d) notwithstanding that on the closing date the standard lottery is not filled or fully subscribed, the standard lottery shall be closed on that date and thereafter shall be drawn, but may be drawn on a *pro rata* basis;
- (e) the Commission may at any time and from time to time permit the permit holder to postpone the closing date of the standard lottery for such period as the Commission may determine and the permit holder shall postpone the date of drawing in accordance with the determination;
- (f) unless paragraph (e) applies, the closing date shall be not more than 3 months from the opening date;
- (g) every ticket and every notice or advertisement of the lottery shall specify the name of the permit holder, the body on behalf of which or the purposes for which it is conducted (as the Commission may require), and the closing date;
- (h) the price of every ticket, chance or subscription shall be the same, and shall be stated on the ticket;
- (j) no person shall be permitted to participate except after payment of the whole price of the ticket, chance or subscription; and
- (k) no money received for or on account of a ticket, chance or subscription shall in any circumstances be returned.

Certain ticket vending machines prohibited

105. (1) Subject to subsection (2), a permit authorizing the conduct of a continuing lottery is deemed to be subject to an implied condition, which shall not be required to be noted on the permit or in the register, prohibiting the sale of tickets or chances, or their offer for sale, by means of a vending machine.

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- (2) Subsection (1) does not apply in relation to a lottery if —
- (a) all of the tickets or chances in the lottery are sold or offered for sale by means of a vending machine located on premises, or 2 or more vending machines located on the same premises, where those premises are of a prescribed kind or class; and
 - (b) there is not, and is not to be, distributed in the lottery any money or any other prize except in the form of goods or services of a prescribed kind or class.

Certain offences in relation to lotteries

106. (1) A person who —

- (a) with intent to defraud, takes or converts to his own use or to that of any other person, any prize in or money raised by a lottery; or
- (b) conducts an unlawful lottery, whether or not constituting unlawful gaming,

commits an offence.

Penalty: \$5 000, or imprisonment for 1 year, or both.

(2) In relation to an unlawful lottery, a person who —

- (a) prints any tickets for use in the lottery;
- (b) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, any tickets or chances in the lottery;

- (c) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution —
 - (i) any advertisement of the lottery;
 - (ii) any list, whether complete or not, of prize winners or winning tickets in the lottery; or
 - (iii) any such matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery, as is calculated to act as an inducement to persons to participate in that lottery or in other unlawful lotteries;
- (d) brings, or invites any person to send, into the State for the purpose of sale or distribution any ticket in, or advertisement of, the lottery;
- (e) sends or attempts to send out of the State any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution, or the identity of the holder, of any ticket or chance in the lottery;
- (f) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the conduct of the lottery; or
- (g) receives money, any valuable thing, or any goods for the purposes of the lottery,

commits an offence.

Penalty: \$2 000.

(3) In proceedings for an offence under subsection (2) it shall be a defence to prove that at the date of the alleged offence the person charged believed, and had reasonable grounds for believing, that the lottery was being conducted under and in accordance with the requirements of this Act.

Provision of amusements with prizes

107. (1) Where any amusement with prizes which constitutes gaming or a lottery or both is provided in relation to or in connection with any entertainment or sporting event or for any charitable or social cause, and it —

- (a) is not conducted for the purposes of private gain or of a commercial undertaking; and
- (b) does not contravene subsection (2),

the conduct of that gaming or lottery is not unlawful and the provision of the amusement with prizes shall, subject to subsection (2), be deemed to be permitted.

(2) Where an amusement with prizes is provided at any premises in circumstances to which subsection (1) applies —

- (a) the whole proceeds of the amusement, after deducting expenses, shall be applied for purposes other than of private gain or of a commercial undertaking; and
- (b) the facilities for winning prizes at the amusement provided, or those facilities together with any other facilities for participating in permitted gaming, shall not be the only, or the only substantial, inducement to persons to attend the premises.

(3) For the purposes of subsection (2) (a), where any payment is made in respect of the hiring, maintenance or use of gaming equipment and the amount payable is determined wholly or partly by reference to the extent to which that equipment or some other machine or equipment is used for the purposes of gaming or betting, that payment shall be taken to be an application of the proceeds for the purposes of private gain and shall not constitute a deductible expense.

(4) Where amusements with prizes (which may include games to which section 42 (3) (a) refers) are provided at an agricultural show, a pleasure fair, a fete, or another like event and consist wholly or mainly of amusements provided by travelling showmen, the respective amusements shall each be deemed to be a permitted amusement with prizes if —

- (a) the opportunity to win prizes at the amusements is not the only, or the only substantial, inducement to persons to attend the event;
- (b) in relation to any amusement which is a lottery, the sale of chances and the declaration of the result take place on the same day and on the premises on which, and during the time when, the amusement is provided;
- (c) the amount paid by any person for any chance to win a prize does not exceed the prescribed amount; and
- (d) no money prize is distributed or offered which exceeds the prescribed amount,

notwithstanding that the amusement would otherwise constitute gaming, betting or a lottery.

Minor fund raising activities

108. (1) The conduct of —

- (a) a guessing competition or any other competition in which success does not depend to a substantial degree on the exercise of skill;
- (b) a number game based on sporting achievements of a public nature; or
- (c) a raffle, chocolate wheel, art union or other scheme or device for the disposition of property; or

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(d) any other minor fund raising activity,

which would otherwise be taken to constitute gaming, betting, or a lottery, when conducted as a means of raising money for the benefit of community, cultural, ethnic or charitable purposes shall, subject to subsection (2) and unless subsection (3) applies, not be taken to be unlawful and shall be deemed to be conducting a permitted amusement with prizes.

(2) The aggregate value of the prizes offered or distributed in relation to an activity to which this section relates shall not exceed the prescribed amount.

(3) The Commission may, by notice in writing to the person proposing to conduct or conducting gaming or betting of a kind to which subsection (1) refers, prohibit the conduct of that gaming or betting, or gaming or betting of that kind in the circumstances specified in the notice.

(4) A person who contravenes a prohibition imposed pursuant to subsection (3) commits an offence.

Penalty: \$2 000.

Regulations for the purposes of this Division

109. Regulations made for the purposes of this Division may make provision —

- (a) as to the requirements for the keeping of accounts and the furnishings of reports by persons conducting lotteries;
- (b) requiring security to be furnished by persons having the receipt, control or handling of any money or valuable thing received in connection with a lottery;

- (c) prescribing the terms and conditions under which standard lotteries may be conducted, including the maximum value, or the maximum aggregate value, of any prize money or other prize that may be offered;
- (d) as to the relation between the time of opening, closing, and drawing of a standard lottery;
- (e) as to the conduct of continuing lotteries;
- (f) as to the use of vending machines in relation to lotteries;
- (g) as to the manner in which a lottery may be advertised, and providing for the advertisement of winning numbers and the notification to the winner of any prize;
- (h) as to the printing of tickets and the security of printing arrangements or of tickets, and as to the information which must, or must not, appear on a ticket;
- (j) as to the matters in respect of which expenses may be incurred, or if incurred shall be taken not to be deductible for the purposes of this Division;
- (k) prescribing the conditions governing the employment of agents;
- (l) the use of postal services in connection with activities to which this Division applies; and
- (m) generally as to the conduct of lotteries, amusements with prizes, minor fund raising activities, and matters to which this Division applies.

PART VI — ANCILLARY

Gaming on premises licensed for the retail sale of liquor

110. (1) A person shall not take part in gaming or betting, other than social gambling, on any premises which are licensed premises for the purposes of the *Liquor Act 1970*³ unless —

- (a) not being a lottery, the gaming or betting constitutes permitted gaming, or is betting conducted in accordance with the *Totalisator Agency Board Betting Act 1960*, which is authorized to take place on that part of the premises;
- (b) being a lottery, it is conducted in a manner which does not contravene this Act or the *Lotteries Commission Act 1990*; or
- (c) the premises are situated in a casino within the meaning of the *Casino Control Act 1984* and the gaming or betting takes place by way of participation in, or as incidental to, an authorized game within the meaning of that Act conducted in accordance with that Act.

(2) In relation to permitted gaming which takes place on premises which are licensed premises for the purposes of the *Liquor Act 1970*³ in a part of the premises to which the public have access, the Commission shall ensure that such conditions are imposed as are necessary to secure that any such gaming in that part of the premises does not take place —

- (a) for high stakes; or
- (b) in such circumstances as to constitute an inducement to persons to resort to the premises primarily for the purpose of taking part in any such gaming.

[Section 110 amended by No. 125 of 1987 s.33; No. 16 of 1990 s.33.]

Questions as to the Burswood Casino Agreement

111. In relation to the Agreement to which the *Casino (Burswood Island) Agreement Act 1985* refers, any question arising from the operation of clause 22 of that Agreement or as to any condition relating to the playing of bingo to which paragraph (a) (iii) of Schedule A to that Agreement refers may be determined by the Commission with the consent of —

- (a) the Trustee referred to in that Agreement; or
- (b) where the Commission alleges that the proviso referred to in clause 35 (1) of that Agreement has been contravened, a Judge in chambers.

Transitional provisions as to the *Casino Control Act 1984*

112. (1) On and after the coming into operation of section 4 the body corporate hitherto constituted under the *Casino Control Act 1984* and known as the Casino Control Committee is preserved as a body corporate continuing in existence under and subject to this Act but the corporate identity of that body shall be taken to have been merged with that of the Commission, the powers, duties, rights and obligations of the Casino Control Committee being thereafter, without further assurance than this Act, vested in or imposed on the Commission.

- (2) A reference to the Casino Control Committee —
 - (a) in any written law passed or made;
 - (b) in any Agreement entered into, or other document made; or
 - (c) made in any other manner,

before the coming into operation of section 4 shall, unless the context is such that it would be inappropriate so to do, be read and construed as a reference to the Commission.

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(3) On the coming into operation of section 4 the persons who immediately prior thereto held office as members of the Casino Control Committee shall cease to hold that office, subject to subsection (4).

(4) Subject to any direction which may be given by the Minister or unless the Minister otherwise directs, the persons who were members of the Casino Control Committee as constituted immediately prior to the coming into operation of section 4 shall —

- (a) continue to carry out any function that was at that time vested in that committee and is thereafter vested in the Commission; and
- (b) be deemed to be a committee of the Commission to which that function has been delegated,

until but not on or after the appointed day.

(5) In subsection (4) “**the appointed day**” means the day fixed by the Minister by notice published in the *Gazette* to be the appointed day for the purposes of that subsection, being a day not earlier than 28 days after the coming into operation of section 4.

[113. *Repealed by No. 16 of 1990 s.33.*]

Transitional provisions as to the *Lotteries (Control) Act 1954*

114. A permit granted under the *Lotteries (Control) Act 1954* in relation to —

- (a) a standard lottery;
- (b) a continuing lottery; or

- (c) the game of bingo,

shall be given effect to as though it were a permit of a like tenor issued under this Act pursuant to section 48.

Review of the Act

115. (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from the coming into operation of section 4, and in the course of that review the Minister shall consider and have regard to —

- (a) the effectiveness of the operations of the Commission;
- (b) the need for the continuation of the functions of the Commission; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

Commission subject to *Parliamentary Commissioner Act 1971*

116. The Schedule to the *Parliamentary Commissioner Act 1971* is amended by inserting, after the item relating to the Insurance Brokers Licensing Board, the following —

- “ Gaming Commission of Western Australia established by the *Gaming Commission Act 1987*. ”.

Regulations

117. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular —

- (a) for securing that gaming and betting in respect of which a permit is for the time being in force is fairly and properly conducted;
- (b) for the prevention of fraud, cheating or corruption;
- (c) for preventing the use of any indirect means for doing anything which, if done directly, would be a contravention of this Act; and
- (d) for the protection of the revenue of the Commission.



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NOTES

^{1.} This reprint is a compilation as at 5 May 1997 of the *Gaming Commission Act 1987* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Gaming Commission Act 1987</i>	50 of 1987	8 October 1987	Part I, Part II, Division 2 of Part V and sections 111, 112, 115, 116 and 117; 4 March 1988; (see <i>Gazette</i> 4 March 1988 p.665); balance: 2 May 1988 (see <i>Gazette</i> 29 April 1988 p.1291)	
<i>Acts Amendment (Totalisator Agency Board Betting) Act 1987, section 33</i>	125 of 1987	31 December 1987	25 March 1988; (see <i>Gazette</i> 25 March 1988 p.933)	
<i>Lotteries Commission Act 1990, sections 31 (3) and 33</i>	16 of 1990	31 July 1990	1 January 1991 (see <i>Gazette</i> 28 December 1990 p.6369)	Schedule 2, item 5: transitional

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Sentencing (Consequential Provisions) Act 1995, section 147</i>	78 of 1995	16 January 1996	4 November 1996 (see <i>Gazette</i> 25 October 1996 p.5632)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Financial Legislation Amendment Act 1996, sections 55 and 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2 (1))	

Affecting Act — *Unclaimed Money Act 1990* (Act No. 31 of 1990) section 9.

² Now see *Associations Incorporation Act 1987*.

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- ³ Now see *Liquor Licensing Act 1988*.
- ⁴ In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.
- ⁵ Under section 112 (2) of the *Public Sector Management Act 1994* this is to be read as a reference to the Minister for Public Sector Management.
- ⁶ Under section 112 (1) of the *Public Sector Management Act 1994* this is to be read as a reference to the *Public Sector Management Act 1994*.

