



# **National Gambling Reform Act 2012**

**No. 193, 2012**

**An Act to provide for national gambling reform in relation to gaming machines, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **National Gambling Reform Act 2012**

**No. 193, 2012**

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**An Act to provide for national gambling reform in relation to gaming machines, and for related purposes**

*[Assented to 12 December 2012]*

The Parliament of Australia enacts:

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*National Gambling Reform Act 2012 No. 193, 2012 1*

## Chapter 1—Preliminary

### Part 1—Preliminary

#### 1 Short title

This Act may be cited as the *National Gambling Reform Act 2012*.

#### 2 Commencement

This Act commences on the day this Act receives the Royal Assent.

Note: For the application of this Act, see Part 2 of this Chapter.

#### 3 Guide to this Act

This Act provides for national gambling reforms in relation to gaming machines and gaming machine premises.

The first reform requires gaming machines to have a precommitment system that complies with the requirements of this Act. A precommitment system allows a user of a gaming machine, who chooses to do so, to register and set a limit (called a loss limit) for a State or Territory on the amount that he or she is prepared to lose during a period (called a limit period) using, as a registered user, any gaming machine that is located in that State or Territory.

While gaming machines are required to have precommitment systems, users of gaming machines may choose whether to register and set a loss limit through those precommitment systems.

If a person sets a loss limit and uses a gaming machine as a registered user, then, once the person reaches his or her loss limit during a limit period, the person is prevented from using gaming machines located in the State or Territory as a registered user for the rest of the person's limit period.

Section 3

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The second reform requires warnings to be provided by gaming machines relating to the use of gaming machines.

The third reform limits the amount of cash that can be withdrawn from an automatic teller machine that is on gaming machine premises (other than a casino).

This Act provides civil penalty provisions in relation to gaming machines, and automatic teller machines that are on gaming machine premises (other than casinos), that do not comply with the requirements of this Act.

This Act ensures the privacy of users of gaming machines by including offences to protect, from unauthorised disclosure or use, any information that is obtained from precommitment systems, or otherwise obtained under this Act.

This Act also requires gaming machines that are manufactured or imported to be capable of providing for precommitment.

A supervisory levy is imposed on those who hold a licence to operate a gaming machine. The amount of the supervisory levy imposed by the *National Gambling Reform (Related Matters) Act (No. 1) 2012* is worked out in accordance with a method prescribed by regulations made under that Act.

A gaming machine regulation levy is payable if a person makes a gaming machine available for use at any time during a levy period. However, the gaming machine regulation levy is not payable in certain cases, such as cases related to constitutional corporations or if gaming machines comply with the requirements of Parts 2 and 3 of Chapter 2 (precommitment systems and dynamic warnings).

This Act deals with the liability for, and collection and recovery of, the supervisory and gaming machine regulation levies.

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This Act is enforced by the Regulator. The Regulator and authorised persons have a number of powers to investigate and monitor compliance with this Act. The Regulator also has a number of options for enforcing this Act, including applying for civil penalty orders, giving infringement and compliance notices, and seeking injunctions and enforceable undertakings. The powers under this Act may be delegated to employees of the public service of a State or Territory, or a body established for a public purpose by or under a law of a State or Territory.

**4 Object of this Act**

- (1) The object of this Act is to reduce the harm caused by gaming machines:
  - (a) to problem gamblers, and those at risk of experiencing that harm; and
  - (b) to the families and communities of problem gamblers and of those at risk of experiencing that harm.
- (2) This object is to be achieved by allowing users of gaming machines to limit that harm by:
  - (a) providing for precommitment for gaming machines by:
    - (i) allowing users of gaming machines, who choose to do so, to set limits for a State or Territory on the amount that they are prepared to lose during a period using, as registered users, gaming machines that are located in that State or Territory; and
    - (ii) preventing users from continuing to use, as registered users, gaming machines that are located in that State or Territory once those limits have been reached; and
    - (iii) allowing users to retain control over whether to impose limits on the amount that they are prepared to lose during a period using gaming machines that are located in a State or Territory; and
  - (b) ensuring that warnings are provided electronically on the potential for harm from, and the cost of, using gaming machines; and



- (c) limiting the amount of cash users of gaming machines can access from automatic teller machines on premises containing gaming machines (other than casinos); and
- (d) ensuring that the privacy of users of gaming machines is protected; and
- (e) ensuring that gaming machines that are manufactured or imported are capable of providing for precommitment.

## **5 Definitions**

In this Act:

***acquisition of property*** has the meaning given by section 137.

***amount*** includes a nil amount.

***applicant***, in relation to an application for approval of:

- (a) a precommitment system for a State or Territory; or
- (b) a variation to the approved terms and conditions for a precommitment system for a State or Territory;

has the meaning given by section 46.

***approval*** means an approval of a precommitment system for a State or Territory that is given in accordance with subsection 51(1).

***approved form*** means a form approved in writing by the Regulator.

***approved precommitment system*** for a State or Territory means a precommitment system for a State or Territory in relation to which an approval is in force.

***approved terms and conditions***, for a precommitment system for a State or Territory, means:

- (a) the terms and conditions taken to be approved under subsection 51(3) in relation to the precommitment system; or
- (b) if those terms and conditions have been varied—those terms and conditions as varied by one or more variations approved under subsection 51(4).

***Australia*** means the States, the Australian Capital Territory and the Northern Territory.

Section 5

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***Australian Institute of Family Studies*** means the Australian Institute of Family Studies established by Part XIVA of the *Family Law Act 1975*.

***authorised disclosure*** has the meaning given by subsection 67(6).

***authorised disclosure information*** has the meaning given by subsection 67(7).

***authorised disclosure or use*** has the meaning given by subsection 67(6).

***authorised person*** means:

- (a) a person appointed under section 112; or
- (b) the Regulator in his or her capacity as an authorised person under section 113.

***certified***, in relation to the translation of a document, has the meaning given by section 158.

***civil penalty order*** has the meaning given by section 161.

***civil penalty provision*** means a provision of this Act if:

- (a) either:
  - (i) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; or
  - (ii) another provision of this Act provides that the provision is a civil penalty provision; and
- (b) the provision is one of the following kinds:
  - (i) a subsection, or a section that is not divided into subsections;
  - (ii) a subregulation, or a regulation that is not divided into subregulations.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

***decides***: a person ***decides*** not to have a loss limit for a State or Territory if:

- (a) the person indicates, as part of the registration process, that the person does not choose to set a loss limit for the State or Territory; or
- (b) the person revokes the person's loss limit for the State or Territory.

***Director of the Australian Institute of Family Studies*** means the Director within the meaning of section 114A of the *Family Law Act 1975*.

***engage in conduct*** includes omit to perform an act.

***entrusted person*** has the meaning given by subsection 67(4).

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***evidential material***: any of the following is ***evidential material***:

- (a) a thing with respect to which an offence against, or a civil penalty provision under, this Act has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence or civil penalty provision;
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence or civil penalty provision.

***gaming equipment*** has the meaning given by subsection 6(3).

***gaming machine*** has the meaning given by subsections 6(1) and (2).

Note: ***Gaming machine*** has a more limited meaning in the definition of ***gaming machine premises***, paragraph 6(2)(c) and subsection 6(3).

***gaming machine premises***:

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- (a) means premises on which one or more gaming machines (within the meaning of subsection 6(1) and paragraph 6(2)(b)) are made available for use; and
- (b) for the purposes of Part 4 of Chapter 2 (ATM withdrawal limit), and any other provision of this Act to the extent that it relates to that Part—includes a place determined by the Regulator under section 41 to be, or to be part of, gaming machine premises.

***gaming machine regulation levy*** means levy imposed by section 5 of the *National Gambling Reform (Related Matters) Act (No. 2) 2012*.

***gaming machine revenue*** from a gaming machine for a levy period means:

- (a) the total amount of bets made in relation to the gaming machine during the levy period; minus
- (b) the total amount of outgoings in relation to the gaming machine for the levy period.

The ***gaming machine revenue*** may be a negative amount.

***investigation powers*** has the meaning given by sections 126, 127 and 130.

***investigation warrant*** means:

- (a) a warrant issued by an issuing officer under section 138; or
- (b) a warrant signed by an issuing officer under section 139.

***issuing officer*** means:

- (a) a magistrate; or
- (b) a Federal Magistrate; or
- (c) a Judge of the Federal Court of Australia.

Note: For conferral of powers on an issuing officer, see section 154.

***just terms*** has the meaning given by section 137.

***late payment penalty*** means penalty payable under section 97.

***levy*** means:

- (a) supervisory levy; or

(b) gaming machine regulation levy.

**levy period** means:

- (a) in relation to the supervisory levy—a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of a year; and
- (b) in relation to the gaming machine regulation levy—a calendar month.

**licensed provider of a precommitment system** means a person who is licensed under regulations made for the purposes of subsection 56(1).

**licensee** has the meaning given by section 84.

**limit period**: a person's **limit period** for a State or Territory means the period provided to the person under subsection 22(2) by a precommitment system for the State or Territory (as changed by the person from time to time, if the system allows for changes).

**limit period expenditure**, for a person's limit period for a State or Territory, means the total of the amounts of money or credit spent during the person's limit period using, as a registered user, gaming machines that are located in the State or Territory, as monitored under paragraph 30(2)(a).

**limit period winnings**, for a person's limit period for a State or Territory, means the total of the amounts of money or credit won during the person's limit period from using, as a registered user, gaming machines that are located in the State or Territory, as monitored under paragraph 30(2)(b).

**loss limit**: a person's **loss limit** for a State or Territory means the limit that is set by the person through a precommitment system for the State or Territory on the amount of the person's net losses during the person's limit period for the State or Territory.

**monitoring powers** has the meaning given by sections 118, 119 and 122.

**monitoring warrant** means a warrant issued under section 124.

Section 5

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**net losses**, at a particular time during a person's limit period for a State or Territory, means:

- (a) the person's limit period expenditure, at that time, for the limit period; minus
- (b) the person's limit period winnings, at that time, for the limit period.

The **net losses** may be a negative amount.

**not compliant**, in relation to a gaming machine, has the meaning given by sections 20 and 37.

**outgoings**, in relation to a gaming machine for a levy period, means each of the following amounts:

- (a) an amount of money (including cheques or other negotiable instruments) or credit provided as winnings during the levy period in relation to the use of the gaming machine (other than any such amount that was deducted from that or any other gaming machine as referred to in paragraph (b) of this definition during that or any other levy period in order to contribute to a prize);
- (b) if the gaming machine is lawfully linked to one or more other gaming machines for the purposes of contributing money or credit from the gaming machine to a prize—an amount of money or credit that is deducted from the gaming machine during the levy period in order to contribute to the prize;
- (c) any other amount worked out in accordance with the regulations.

**person assisting** an authorised person:

- (a) in Part 5 of Chapter 7 (monitoring powers), and any other provision of this Act to the extent that it relates to that Part—has the meaning given by section 123; and
- (b) in Part 6 of Chapter 7 (investigation powers), and any other provision of this Act to the extent that it relates to that Part—has the meaning given by section 131.

**precommitment system**:

- (a) for a State or Territory—means a system (or systems) that:

- (i) allows a user of a gaming machine to set a limit for the State or Territory on the amount that he or she is prepared to lose during a period from using, as a registered user, gaming machines that are located in that State or Territory; and
  - (ii) prevents a user from continuing to use, as a registered user, gaming machines that are located in that State or Territory once that limit has been reached; and
- (b) for a gaming machine—means the precommitment system (within the meaning of paragraph (a) of this definition) for the State or Territory in which the gaming machine is located that operates in relation to the gaming machine.

*premises* includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

Note: A reference to premises is affected by section 7.

**Productivity Minister** means the Minister administering the *Productivity Commission Act 1998*.

**protected information** has the meaning given by subsection 67(5).

**registered**: a person is **registered** for a State or Territory if the person chooses to be, and is, registered through an approved precommitment system for the State or Territory in accordance with sections 22 to 25.

**registered user**: a person uses a gaming machine that is located in a State or Territory as a **registered user** if:

- (a) the person chooses to be, and is, registered for the State or Territory; and
- (b) the person identifies himself or herself to the precommitment system for the gaming machine as registered for the State or Territory.

**regulated device** has the meaning given by section 116.

**Regulator** has the meaning given by section 104.

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**related provision:** each of the following is a **related provision**:

- (a) an offence against this Act;
- (b) a civil penalty provision under this Act;
- (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

**relevant court** means:

- (a) the Federal Court of Australia; or
- (b) the Federal Magistrates Court; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

**reviewable decision** means any of the following decisions:

- (a) a decision under section 41 to make a determination;
- (b) a decision under subsection 43(3) to refuse to grant an exemption;
- (c) a decision under subsection 43(4) to specify conditions in relation to an exemption;
- (d) a decision under subsection 43(5) to vary a condition specified in relation to an exemption;
- (e) a decision under subsection 51(1) to refuse to approve a precommitment system for a State or Territory;
- (f) a decision under subsection 51(4) to refuse to approve a variation to the approved terms and conditions for a precommitment system for a State or Territory;
- (g) a decision under subsection 54(1) to revoke an approval of a precommitment system for a State or Territory;
- (h) a decision under section 87 to make an assessment;
- (i) a decision under section 91 to amend an assessment;
- (j) a decision under subsection 97(3) not to specify a later day on which late payment penalty is due for payment;
- (k) any other decision prescribed by the regulations.

**session of use**, in relation to a person's use, as a registered user, of a gaming machine that is located in a State or Territory, means the period:



- (a) beginning when the person first identifies himself or herself to the precommitment system for the gaming machine as registered for the State or Territory; and
- (b) ending when the person stops identifying himself or herself to that precommitment system as registered for the State or Territory.

***small gaming machine premises*** has the meaning given by section 9.

***State or Territory licence*** means a licence or approval (however described) under a State or Territory law that regulates gambling.

***supervisory levy*** means levy imposed by section 5 of the *National Gambling Reform (Related Matters) Act (No. 1) 2012*.

***this Act*** includes regulations and any other legislative instrument made under a provision of this Act.

***transaction statement*** has the meaning given by section 34.

***withdraws more than the cash limit*** has the meaning given by subsection 39(2).

## **6 Meaning of *gaming machine***

- (1) A ***gaming machine*** is a device (whether wholly or partly mechanically or electronically operated) that is designed so that:
  - (a) it may be used for the purposes of playing a game of chance, or a mixed game of chance and skill; and
  - (b) it may be operated wholly or partly by:
    - (i) inserting a token, coin or banknote into the device; or
    - (ii) electronically transferring credits or tokens to the device; or
    - (iii) using credits or tokens in the device (whether those credits or tokens are held, stored or accredited by the device or elsewhere); and
  - (c) because of making a bet on the device, winnings or other rewards may become payable.
- (2) A ***gaming machine*** also includes:

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- (a) gaming equipment (see subsection (3)); and
  - (b) any device that:
    - (i) is designed so that it may be used for the purposes of playing a game of chance, or a mixed game of chance and skill; and
    - (ii) is designed so that, because of making a bet on the device, winnings or other rewards may become payable; and
    - (iii) is prescribed by the regulations for the purposes of this paragraph; and
  - (c) part of a gaming machine (within the meaning of subsection (1) and paragraphs (2)(a) and (b)).
- (3) **Gaming equipment** is any system, device, equipment, software or hardware that is used for or in connection with a gaming machine (within the meaning of subsection (1) and paragraph (2)(b)).
- (4) The regulations may prescribe a thing that is taken not to be a gaming machine for the purposes of this Act.

**7 References to premises**

- (1) A reference in this Act to premises on which one or more gaming machines are made available for use is, if a State or Territory licence applies (or is taken to apply) to such premises, a reference to the premises to which the licence applies (or is taken to apply).
- (2) Subsection (1) does not apply in relation to Part 4 of Chapter 2 (ATM withdrawal limit), or any other provision of this Act to the extent that it relates to that Part.

**8 Persons who engage in conduct alone or together with others**

A reference in this Act to a person who engages in conduct (however that conduct is described, for example, by making a gaming machine available for use, manufacturing a gaming machine or importing a gaming machine) is a reference to a person who engages in conduct, whether alone or together with any other person or persons.

## **9 Meaning of *small gaming machine premises***

- (1) Premises are *small gaming machine premises* if no more than 20 gaming machines are made available for use on the premises.
- (2) Despite subsection (1), gaming machine premises are not *small gaming machine premises* at any time after Parts 2 and 3 of Chapter 2 begin to apply, other than because of subsection 13(3), in relation to any gaming machine that is made available for use on those premises.

Note: For when Parts 2 and 3 of Chapter 2 begin to apply, see section 13.

## **10 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
  - (a) prosecuted for an offence; or
  - (b) subject to civil proceedings for a civil penalty order; or
  - (c) given an infringement notice.

## **11 Concurrent operation with State and Territory laws**

- (1) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (2) In particular, this Act is intended to set minimum requirements in relation to:
  - (a) precommitment systems for gaming machines; and
  - (b) warnings to be provided by gaming machines; and
  - (c) automatic teller machines that are on gaming machine premises (other than casinos).

This Act is not intended to limit the ability of a State or Territory to impose stricter requirements in relation to such machines.

- (3) In addition, this Act is not intended to affect the number or distribution of gaming machines in a State or Territory.

Note: The numbers and distribution of gaming machines in a State or Territory are regulated by the laws of the State or Territory.

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**12 Constitutional limitations**

*Commonwealth not to discriminate or give preference*

- (1) A power conferred by this Act must not be exercised in such a way as to:
- (a) discriminate between States or parts of States within the meaning of paragraph 51(ii) of the Constitution; or
  - (b) give preference to one State or any part of a State within the meaning of section 99 of the Constitution.

*Trade to be absolutely free*

- (2) A power conferred by this Act must not be exercised in such a way that the exercise would infringe section 92 of the Constitution.

Note: Section 92 of the Constitution requires trade among the States to be absolutely free.

## **Part 2—Application of this Act**

### **13 Application of precommitment system and dynamic warning requirements**

- (1) Parts 2 and 3 of Chapter 2 (precommitment systems and dynamic warnings), and any other provision of this Act to the extent that it relates to those Parts, apply on and after 31 December 2018 in relation to any gaming machine that is made available for use, other than a gaming machine that is made available for use on small gaming machine premises.

*Premises with 11 to 20 gaming machines*

- (2) Parts 2 and 3 of Chapter 2, and any other provision of this Act to the extent that it relates to those Parts, apply on and after 31 December 2022 in relation to any gaming machine that is made available for use on small gaming machine premises if there are:
  - (a) more than 10 gaming machines; but
  - (b) no more than 20 gaming machines;made available for use on those premises.

*Premises with no more than 10 gaming machines*

- (3) Subject to subsection (4), if there are no more than 10 gaming machines that are made available for use on small gaming machine premises, then Parts 2 and 3 of Chapter 2, and any other provision of this Act to the extent that it relates to those Parts, apply on and after 31 December 2022 in relation to any gaming machine that:
  - (a) is not made available for use on the premises at any time before 31 December 2022, but is made available for use on the premises at any time on or after that day; or
  - (b) is on the premises, and was manufactured or imported on or after 31 December 2014.

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### *Premises that gain or lose machines*

- (4) Once subsection (2) begins to apply to a gaming machine, that subsection continues to apply to the gaming machine despite subsection (3).

Example: If there are 11 gaming machines on gaming machine premises, and the premises lose 2 machines, so that there are only 9 gaming machines, the rule in subsection (2) continues to apply to the premises even though there are now fewer than 11 gaming machines.

- (5) Subsection (4) does not prevent subsection (1) from applying in relation to a gaming machine that is made available for use on gaming machine premises if the premises cease to be small gaming machine premises.

## **14 Application of automatic teller machine requirements**

Part 4 of Chapter 2 (ATM withdrawal limit), and any other provision of this Act to the extent that it relates to that Part, applies on and after 1 February 2014 in relation to any automatic teller machine that is on any gaming machine premises.

Note: Part 4 of Chapter 2 does not apply in relation to casinos (see subsection 39(3)).

## **15 Application of manufacturing and importing requirements**

Chapter 5 (requirements for manufacturing and importing gaming machines), and any other provision of this Act to the extent that it relates to that Chapter, applies in relation to:

- (a) any gaming machine that is manufactured on or after 31 December 2014 (whether the manufacture of the gaming machine begins before or after that date); and
- (b) any gaming machine that is imported on or after 31 December 2014.

## **16 Application of supervisory levy**

- (1) The following provisions apply on and after the day or days prescribed by the regulations for the purposes of this subsection:
- (a) Part 2 of Chapter 6 (supervisory levy), and any other provision of this Act to the extent that it relates to that Part;

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- (b) the *National Gambling Reform (Related Matters) Act (No. 1) 2012*.

Note: The amount of the supervisory levy is worked out in accordance with a method prescribed by regulations made under the *National Gambling Reform (Related Matters) Act (No. 1) 2012* (see section 6 of that Act).

- (2) For the purposes of subsection (1), the regulations may prescribe different days in relation to gaming machines that are made available for use on specified classes of gaming machine premises.

### **17 Application of gaming machine regulation levy**

- (1) This section sets out the application for the following provisions:
- (a) Part 3 of Chapter 6 (gaming machine regulation levy), and any other provision of this Act to the extent that it relates to that Part;
  - (b) the *National Gambling Reform (Related Matters) Act (No. 2) 2012*.
- (2) The provisions referred to in subsection (1) apply on and after 1 January 2019 in relation to any gaming machine that is made available for use, other than a gaming machine that is made available for use on small gaming machine premises.

*Premises with 11 to 20 gaming machines*

- (3) The provisions referred to in subsection (1) apply on and after 1 January 2023 in relation to any gaming machine that is made available for use on small gaming machine premises if there are:
- (a) more than 10 gaming machines; but
  - (b) no more than 20 gaming machines;
- made available for use on those premises.

*Premises with no more than 10 gaming machines*

- (4) Subject to subsection (5), if there are no more than 10 gaming machines that are made available for use on small gaming machine premises, then the provisions referred to in subsection (1) apply on and after 1 January 2023 in relation to any gaming machine that:

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- (a) is not made available for use on the premises at any time before 1 January 2023, but is made available for use on the premises at any time on or after that day; or
- (b) is on the premises, and was manufactured or imported on or after 31 December 2014.

### *Premises that gain or lose machines*

- (5) Once subsection (3) begins to apply to a gaming machine that is on gaming machine premises, that subsection continues to apply to the gaming machine despite subsection (4).

Example: If there are 11 gaming machines on gaming machine premises, and the premises lose 2 machines, so that there are only 9 gaming machines, the rule in subsection (3) continues to apply to the premises even though there are now fewer than 11 gaming machines.

- (6) Subsection (5) does not prevent subsection (2) from applying in relation to a gaming machine that is made available for use on gaming machine premises if the premises cease to be small gaming machine premises.

## **18 Performance of functions etc. after commencement**

Despite this Part, any of the following things may occur on or after the day this Act commences, but before the provisions of this Act begin to apply in accordance with this Part, if it is necessary or convenient for the thing to occur for the purpose of making this Act fully effective when, or after, the provisions of this Act begin to apply:

- (a) an application may be made under this Act;
- (b) a function or duty may be performed under this Act;
- (c) a power may be exercised under this Act.

Example: Examples of things that may occur on or after the day this Act commences, but before the provisions of this Act begin to apply, include the following:

- (a) making regulations for the purposes of section 42, 56, 79 or 80;
- (b) making and determining applications under section 43 or 46, or under regulations made under section 56;
- (c) appointing authorised persons under section 112.



## **Chapter 2—National gambling reforms**

### **Part 1—Guide to this Chapter**

#### **19 Guide to this Chapter**

This Chapter provides for 3 national gambling reforms.

Under Part 2, gaming machines must have a precommitment system that complies with the requirements of that Part. A precommitment system allows a user of a gaming machine, who chooses to do so, to register and set a limit (called a loss limit) for a State or Territory on the amount that he or she is prepared to lose during a period (called a limit period) using, as a registered user, gaming machines that are located in that State or Territory.

While gaming machines are required to have precommitment systems, users of gaming machines may choose whether to register and set a loss limit through those precommitment systems.

A person who chooses to be registered for a State or Territory must indicate, as part of the registration process, whether he or she chooses to set a loss limit for the State or Territory. If a person sets a loss limit and uses a gaming machine as a registered user, then, once the person reaches his or her loss limit during a limit period, the person is prevented from using, as a registered user, gaming machines located in the State or Territory for the rest of the person's limit period.

Under Part 3, a gaming machine must provide certain warnings relating to a specific person's use of gaming machines, or the potential for harm from, and the cost of, using gaming machines generally.

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Under Part 4, automatic teller machines that are on gaming machine premises (other than casinos) must not allow a person to withdraw more than the cash limit (which is \$250 as increased by indexation). In certain cases, the Regulator may determine what constitutes gaming machine premises.

Exemptions from Part 4 of this Chapter, and approvals and licences for precommitment systems, are provided for under Part 5.

Chapter 3 provides for civil penalty provisions in relation to certain gaming machines, and automatic teller machines on gaming machine premises (other than casinos), that do not comply with the requirements of this Chapter.

## **Part 2—Precommitment systems**

### **Division 1—Registration through precommitment system for user who chooses to register**

#### **20 When a gaming machine is not compliant**

A gaming machine is *not compliant* if:

- (a) there is no precommitment system for the gaming machine;  
or
- (b) the precommitment system for the gaming machine does not  
comply with the requirements of this Part; or
- (c) the precommitment system for the gaming machine is not an  
approved precommitment system.

Note 1: For approvals of precommitment systems, see Division 2 of Part 5.

Note 2: For a civil penalty provision in relation to certain gaming machines  
that are not compliant, see Part 2 of Chapter 3.

#### **21 Precommitment system to provide for registration and cancellation**

- (1) A precommitment system for a State or Territory must allow a  
person who chooses to do so:
  - (a) to register for the State or Territory through the system; and
  - (b) to cancel the person's registration for the State or Territory  
through the system.
- (2) The precommitment system must prevent a person who has  
cancelled his or her registration for the State or Territory from  
re-registering for the State or Territory during the period prescribed  
by the regulations.

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*No fees for registration or cancellation*

- (3) A person who registers, or cancels a registration, through a precommitment system must not be charged a fee in relation to the registration or cancellation.

**22 Registration process for user who chooses to register**

*Deciding whether to set a loss limit*

- (1) A precommitment system for a State or Territory must require a person, who chooses to register for the State or Territory through that system, as part of the registration process:
- (a) to indicate whether or not the person chooses to set a loss limit for the State or Territory; and
  - (b) if the person chooses to set such a limit—to set a loss limit for the State or Territory.

Note 1: A person may set a loss limit of \$0 (see section 24).

Note 2: For additional rules in relation to registration, see subsections 28(2) to (4).

*Limit periods*

- (2) A precommitment system for a State or Territory must, as part of the registration process, provide a person who chooses to register for the State or Territory through the system with a limit period for the State or Territory.

Note: The limit period must comply with section 25.

*Information to be provided—if loss limit set*

- (3) If a person chooses to set a loss limit for a State or Territory, the precommitment system for the State or Territory must inform the person of the following, as part of the registration process:
- (a) that the person's loss limit for the State or Territory applies for the person's limit period for the State or Territory;
  - (b) when the person's first limit period for the State or Territory starts;
  - (c) that each limit period for the State or Territory starts immediately after the previous limit period ends (unless the

system allows a person to change when a person's limit period starts).

*Information to be provided—if no loss limit set*

- (4) If a person does not choose to set a loss limit for a State or Territory, the precommitment system for the State or Territory must inform the person, as part of the registration process:
  - (a) that the person has chosen not to set a loss limit for the State or Territory; and
  - (b) that the person may change this decision at any time.

*Regulations*

- (5) The regulations may prescribe requirements relating to the form, frequency, content and position of the information provided for the purposes of subsection (3) or (4).

**23 Identification requirements during registration for user who chooses to register**

- (1) A precommitment system for a State or Territory may use a signature or photograph to identify a person who chooses to register through the precommitment system.
- (2) A precommitment system for a State or Territory must not use biometric processes to identify a person who chooses to register through the precommitment system.
- (3) The regulations may:
  - (a) prescribe a manner of identifying a person who chooses to register through a precommitment system for a State or Territory (subject to subsection (2)); and
  - (b) prohibit a manner of identifying a person who chooses to register through a precommitment system for a State or Territory.
- (4) A precommitment system for a State or Territory must comply with regulations made for the purposes of subsection (3).

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**24 Exclusion from system—setting a loss limit of \$0**

- (1) A person may, through a precommitment system for a State or Territory, set a loss limit for the State or Territory of \$0.

Note: The effect of a person setting such a loss limit is that the person may be prevented from using a gaming machine as a registered user (see section 32).

- (2) The regulations may prescribe requirements for precommitment systems in relation to persons who set loss limits of \$0.

**25 Requirements for limit periods for user who chooses to register**

- (1) A precommitment system for a State or Territory must ensure that a person's limit period for that State or Territory complies at all times with this section.

*Length of limit period*

- (2) Every limit period must be at least 24 hours (including a limit period during which a person makes a change referred to in section 27).
- (3) A precommitment system for a State or Territory may (but does not have to) allow the person to nominate the length of his or her limit period for the State or Territory (subject to subsection (2)).
- (4) If a precommitment system for a State or Territory does not allow a person to nominate the length of his or her limit period for the State or Territory, the limit period must be 24 hours.

*Starting time for limit periods*

- (5) A person's first limit period may start:
  - (a) at a time nominated by the person; or
  - (b) at a time set by the precommitment system for the State or Territory through which the person is registering.
- (6) A precommitment system for a State or Territory may allow the person to change the time at which a later limit period for the State or Territory starts.

- (7) A person's limit period for a State or Territory (other than a person's first limit period, or later limit period whose start time has been changed as referred to in subsection (6)) must start immediately after the previous limit period ends.

## **26 Changing, revoking and setting loss limits and limit periods after initial registration**

### *Loss limits*

- (1) A precommitment system for a State or Territory must allow a person who is registered for the State or Territory to do the following:
- (a) if the person has a loss limit for the State or Territory:
    - (i) to change the amount of the person's loss limit; or
    - (ii) to revoke the person's loss limit;
  - (b) if the person does not have a loss limit for the State or Territory—to set a loss limit for the State or Territory.

Note 1: The effect of revoking a loss limit for a State or Territory is that the person has no loss limit for the State or Territory.

Note 2: For when the changes may take effect, see section 27.

- (2) If a person revokes a loss limit under subparagraph (1)(a)(ii), the precommitment system must inform the person of the matters in paragraphs 22(4)(a) and (b).
- (3) If a person sets a loss limit under paragraph (1)(b) of this section, the precommitment system must inform the person of the matters in paragraphs 22(3)(a) to (c).

### *Limit periods*

- (4) A precommitment system for a State or Territory that allows a person to nominate the length of his or her limit period for the State or Territory must allow the person to change the length of that limit period (subject to subsection 25(2)).

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**27 When changes to loss limits or limit periods may take effect**

- (1) This section applies in relation to a person who is registered for a State or Territory.

*Loosening limits*

- (2) If any of the following changes are made through a precommitment system for the State or Territory during the person's limit period for the State or Territory, the precommitment system must prevent the change from taking effect until after the end of the limit period:
- (a) an increase in the person's loss limit for the State or Territory;
  - (b) a decrease in the length of the person's limit period for the State or Territory;
  - (c) the revocation of the person's loss limit for the State or Territory.

*Tightening limits*

- (3) If any of the following changes are made through a precommitment system for the State or Territory during the person's limit period for the State or Territory, the precommitment system must enable the change to take effect as soon as practicable:
- (a) a decrease in the person's loss limit for the State or Territory;
  - (b) an increase in the person's limit period for the State or Territory;
  - (c) the setting by the person of a loss limit for the State or Territory.
- (4) To avoid doubt, a change referred to in subsection (3) may (subject to subsection 25(2)) take effect before the end of a limit period.



## **Division 2—Precommitment system requirements if a person chooses to use a gaming machine as a registered user**

### **28 Registration of registered user to comply with requirements**

- (1) A precommitment system for a gaming machine that is located in a State or Territory must prevent a person from using the machine as a registered user if:
  - (a) the person is registered for the State or Territory; and
  - (b) the person's registration for the State or Territory does not comply with this section.

Note: A person is not required to be registered (see subsection 21(1)).

#### *Requirements for registration*

- (2) The precommitment system for the State or Territory through which the person registered must be an approved precommitment system.

Note: For approvals of precommitment systems, see Division 2 of Part 5.
- (3) The person must have no other registrations for the State or Territory through that or any other precommitment system for the State or Territory.
- (4) The person's registration through the precommitment system for the State or Territory must have complied with sections 22 to 25.

### **29 Identification of registered user**

- (1) A person who chooses to use, as a registered user, a gaming machine that is located in a State or Territory must identify himself or herself to the precommitment system for the gaming machine, in accordance with this section, as registered for the State or Territory.
- (2) The precommitment system must prevent the person from using the machine as a registered user unless the person has done so.

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*Requirements for identification*

- (3) A precommitment system for a State or Territory must not use biometric processes to identify whether a person is registered for the State or Territory.
- (4) The regulations may:
  - (a) prescribe a manner of identifying whether a person is registered for a State or Territory (subject to subsection (3)); and
  - (b) prohibit a manner of identifying a person as registered for a State or Territory.
- (5) A precommitment system for a State or Territory must comply with regulations made for the purposes of subsection (4).

**30 Monitoring and transmitting expenditure and winnings for registered user**

- (1) This section applies if a person uses, as a registered user, a gaming machine that is located in a State or Territory.
- (2) The precommitment system for the gaming machine must monitor the following:
  - (a) each amount of money or credit that the person spends using that machine during the person's session of use as a registered user;
  - (b) each amount of money or credit that the person wins from that machine during the person's session of use as a registered user.

Note: An amount includes a nil amount (see the definition of *amount* in section 5).

- (3) At the end of the person's session of use, as a registered user, of the gaming machine, the precommitment system for the gaming machine must transmit the totals of the amounts referred to in paragraphs (2)(a) and (b) in accordance with the regulations.
  - (4) If the person's limit period ends before his or her session of use, as a registered user, the totals transmitted under subsection (3) must be transmitted at the end of the person's session of use in relation
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to each limit period (or any part of any limit period) that occurs during the person's session of use.

### **31 Precommitment information for registered user**

- (1) A precommitment system for a gaming machine that is located in a State or Territory must provide information in accordance with this section if a person who is registered for the State or Territory uses the gaming machine as a registered user.

#### *Information if loss limit set*

- (2) If the person has a loss limit for the State or Territory, then, at the time the person begins to use the gaming machine as a registered user, the precommitment system must inform the person of the following:
  - (a) the person's loss limit for the State or Territory;
  - (b) the person's limit period for the State or Territory;
  - (c) the amount that is remaining of the person's loss limit for the current limit period;
  - (d) any other information prescribed by the regulations.
- (3) In addition to the information provided under subsection (2), the precommitment system may also inform the person under this section of the following:
  - (a) the length of time since the person last set or changed his or her loss limit for the State or Territory;
  - (b) if the system allows the person to nominate a limit period—the length of time since the person last nominated or changed his or her limit period for the State or Territory.

#### *Information if no loss limit set*

- (4) If the person does not have a loss limit for the State or Territory, then, at the time the person begins to use the gaming machine as a registered user, the precommitment system must inform the person of the following:
  - (a) the length of time since the person last decided not to have a loss limit for the State or Territory;
  - (b) any other information prescribed by the regulations.

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**Part 2** Precommitment systems

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Note: For when a person *decides* not have a loss limit for a State or Territory, see section 5.

*Information during use*

- (5) If the person uses the gaming machine as a registered user for at least the period of time prescribed by the regulations (whether or not the person has a loss limit for the State or Territory), the precommitment system must inform the person of the following:
- (a) the person's net losses for the State or Territory during his or her current limit period for the State or Territory;
  - (b) if the person has a loss limit—the amount that is remaining of the person's loss limit for the current limit period;
  - (c) in any case—any other information prescribed by the regulations.

*Regulations*

- (6) The regulations may prescribe requirements relating to information provided for the purposes of this section (including, without limitation, in relation to the form, frequency, content and position of such information).

**32 No use of gaming machine by registered user after loss limit reached**

*Preventing a registered user from continuing to use a gaming machine*

- (1) A precommitment system for a gaming machine that is located in a State or Territory must prevent a person from continuing to use the gaming machine as a registered user if:
- (a) the person has a loss limit for the State or Territory; and
  - (b) the person uses the gaming machine as a registered user; and
  - (c) during the person's limit period for the State or Territory, the person's loss limit for the State or Territory is reached (see subsection (3)).

Note: The person may use a gaming machine located in the State or Territory as a registered user once the person's current limit period for the State or Territory has ended.

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- (2) The person must be prevented from continuing to use the gaming machine as a registered user as soon as the person's loss limit for the State or Territory is first reached (see subsection (3)).
- (3) A person's loss limit for a State or Territory is *reached* if:
  - (a) the person makes a bet on a gaming machine that is located in the State or Territory; and
  - (b) after the bet is made, the person's net losses for the State or Territory during the person's limit period for the State or Territory equal or exceed the person's loss limit for the State or Territory.

*Preventing a registered user from using a gaming machine*

- (4) A precommitment system for a gaming machine that is located in a State or Territory must prevent a person from using the gaming machine as a registered user if:
  - (a) during the person's current limit period for the State or Territory, the person was, under subsection (1), prevented from continuing to use a gaming machine that is located in the State or Territory; or
  - (b) the person has a loss limit of \$0 for the State or Territory.

## Division 3—Other requirements for precommitment systems

### 33 Capability requirement for precommitment systems

- (1) As part of the requirements set out in this Part, a precommitment system for a gaming machine that is located in a State or Territory must have the capability to prevent a person who is not registered for the State or Territory from using the gaming machine.
- (2) To avoid doubt, although the precommitment system is required to have this capability, the precommitment system is not actually required to prevent a person who is not registered for the State or Territory from using the gaming machine unless amendments are made to this Act requiring this.

### 34 Transaction statement for registered user

- (1) A precommitment system for a State or Territory must, on request by a person who is registered for the State or Territory, provide the person with the person's transaction statement in accordance with this section.
- (2) A person's *transaction statement* is a written statement of the following:
  - (a) the person's loss limit (if any) for the State or Territory;
  - (b) the length of time since the person last:
    - (i) set or changed his or her loss limit; or
    - (ii) decided not to have a loss limit for the State or Territory;
  - (c) the amount of money or credit that the person has spent using, and won from, gaming machines in the State or Territory that the person has used as a registered user during:
    - (i) the previous 12 months; and
    - (ii) the person's current limit period for the State or Territory;

- (d) the number of times during the previous 12 months that the person was prevented under section 32 from using, or continuing to use, a gaming machine as a registered user.

Note 1: For when a person *decides* not to have a loss limit for a State or Territory, see section 5.

Note 2: An amount includes a nil amount (see the definition of *amount* in section 5).

*Person must not be charged a fee*

- (3) A person who is provided with a transaction statement must not be charged a fee for the transaction statement.

*Electronic transaction statements*

- (3A) A transaction statement may be provided electronically if the person who requests the transaction statement also requests that it be provided electronically.

*Regulations*

- (4) The regulations may prescribe requirements in relation to transaction statements.

### **35 Additional requirements for precommitment systems in regulations**

- (1) The regulations may prescribe additional requirements in relation to precommitment systems.
- (2) This section is not limited by any other section in this Part.

Note: However, the regulations may not prescribe requirements that are inconsistent with the scheme established by this Part, such as requiring all users of gaming machines to be registered for a State or Territory.

### **36 No national database of protected information from precommitment systems**

A national database of protected information that has been obtained from precommitment systems must not be established.

## Part 3—Dynamic warnings

### 37 When a gaming machine is not compliant

A gaming machine is *not compliant* if the gaming machine does not provide a warning in accordance with section 38.

### 38 Dynamic warnings

- (1) A gaming machine must provide warnings electronically in accordance with this section.

Note: For a civil penalty provision for certain gaming machines that are not compliant, see Part 2 of Chapter 3.

*What warnings relate to*

- (2) The warnings must relate to:
- (a) the use by a specific person of a gaming machine or gaming machines; or
  - (b) the potential for harm from, and the cost of, using gaming machines generally.

*Relationship with section 31*

- (3) This section is not limited by section 31 (precommitment information).

*Regulations*

- (4) Without limiting subsection (1), the regulations may prescribe the form, frequency, content and position of the warnings.
- (5) The regulations may prescribe any other requirements in relation to warnings provided in accordance with this section.

Note: However, the regulations may not prescribe requirements that are inconsistent with this Part.



## **Part 4—ATM withdrawal limit for gaming machine premises (other than casinos)**

### **39 ATM withdrawal limit for gaming machine premises (other than casinos)**

- (1) An automatic teller machine that is on gaming machine premises must not allow a person to withdraw more than the cash limit.

Note 1: For civil penalty provisions for automatic teller machines that do not comply with this section, see Part 3 of Chapter 3.

Note 2: This section is not intended to affect a law of a State or Territory that is capable of operating concurrently (see section 11). An example of such a law is a law that prohibits automatic teller machines from being on gaming machine premises.

#### *When a person withdraws more than the cash limit*

- (2) A person *withdraws more than the cash limit* from an automatic teller machine that is on premises if, after the person withdraws cash from the automatic teller machine, the person has withdrawn, using any one card, more than \$250 cash in total in a period of 24 hours from that or any other automatic teller machine that is on the premises.

Note: For indexation of the cash amount, see section 40.

#### *Casinos exempt*

- (3) This Part does not apply in relation to premises that are (or are part of premises that are) licensed or approved as a casino in the State or Territory where the premises are located.

Note: For other exemptions from this Part, see Division 1 of Part 5.

### **40 Indexation**

- (1) The regulations may specify:  
(a) an index for the purposes of this section; and

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- (b) the manner of working out an increase in the amount of cash mentioned in subsection 39(2) by reference to the movement of that index over the year ending each 31 December.
- (2) The amount of cash referred to in subsection 39(2), for a year in which there is an increase in the specified index, is increased in the manner prescribed by the regulations.

**41 Anti-avoidance—determination of gaming machine premises**

- (1) The Regulator may make a determination under this section if:
  - (a) at any time after this Act commences, a person provides an automatic teller machine at a place; and
  - (b) it would be concluded that the person who provided the automatic teller machine at that place did so for the sole or dominant purpose of enabling a person (the *beneficiary*) to avoid the operation of this Part or Part 3 of Chapter 3 (civil penalty provisions), having regard to the following matters:
    - (i) the place at which, and the manner in which, the automatic teller machine was provided;
    - (ii) the time when automatic teller machine began to be provided at that place.

Note 1: For review of a decision to make a determination, see sections 198 and 199.

Note 2: This section applies whether a person provides an automatic teller machine alone or together with others (see section 8).

*Determination of gaming machine premises*

- (2) For the purposes of this Part, and any other provision of this Act to the extent that it relates to this Part, the Regulator may, in writing, determine that the place is, or is part of, gaming machine premises.
- (3) A determination under subsection (2) is not a legislative instrument.
- (4) For the purposes of subsection (1), it is immaterial whether the beneficiary is the person mentioned in paragraph (1)(a).

## **Part 5—Provisions related to national gambling reforms**

### **Division 1—Exemptions from ATM withdrawal limit**

#### **42 Exemptions from ATM withdrawal limit—regulations**

- (1) The regulations may prescribe premises which are exempt from the operation of Part 4 of this Chapter (ATM withdrawal limit).

Note: For the effect of an exemption on a State or Territory law, see section 45.

- (2) The regulations may also prescribe conditions that must be complied with in order for the premises to be exempt.

#### **43 Exemptions from ATM withdrawal limit—application to Regulator**

- (1) A person who occupies gaming machine premises may apply to the Regulator for the premises to be exempt from the operation of Part 4 of this Chapter (ATM withdrawal limit).

Note: For the effect of an exemption on a State or Territory law, see section 45.

- (2) An application must be in the approved form.

- (3) The Regulator may exempt those premises, in writing, from the operation of that Part if the Regulator is satisfied that compliance with the Part will cause unreasonable inconvenience to members of the community where the premises are located.

Note: For review of a decision to refuse to grant an exemption, see sections 198 and 199.

- (4) The Regulator may specify, in the exemption, conditions that must be satisfied in order for the exemption to apply.

Note: For review of a decision to specify conditions, see sections 198 and 199.

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- (5) The Regulator may, in writing, vary or revoke a condition specified under subsection (4).

Note: For review of a decision to vary a condition, see sections 198 and 199.

- (6) An exemption is not a legislative instrument.

**44 Process for deciding exemptions**

- (1) In deciding whether to grant an exemption under section 43, the Regulator must have regard to the following matters:
- (a) the object of this Act (see section 4);
  - (b) any other facilities (whether an automatic teller machine or otherwise) members of the community have for withdrawing cash;
  - (c) any other matter the Regulator considers appropriate.
- (2) Before deciding whether to grant an exemption under section 43, the Regulator may consult with any of the following that the Regulator considers is appropriate:
- (a) a State government agency;
  - (b) a local government agency;
  - (c) a community group;
  - (d) an individual within the community;
  - (e) any other person or body.

**45 Effect of exemptions on State or Territory law**

To avoid doubt, the fact that premises are exempt under this Division is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

## **Division 2—Approvals and licences for precommitment systems**

### **Subdivision A—Approving precommitment systems**

#### **46 Applications for approvals**

A licensed provider of a precommitment system (the *applicant*) may apply to the Regulator for approval of:

- (a) the precommitment system for a State or Territory; or
- (b) a variation to the approved terms and conditions for the precommitment system for a State or Territory.

#### **47 Form of applications**

- (1) An application under this Subdivision must:
  - (a) be in the approved form; and
  - (b) be accompanied by any other documents or information prescribed by the regulations; and
  - (c) be accompanied by the fee (if any) prescribed by the regulations; and
  - (d) for an application to approve a precommitment system for a State or Territory—be accompanied by the terms and conditions on which the precommitment system would be provided; and
  - (e) for an application to approve a variation to the approved terms and conditions for a precommitment system for a State or Territory—be accompanied by the variation to the approved terms and conditions for the precommitment system.
- (2) A fee prescribed under paragraph (1)(c) must not be such as to amount to taxation.

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**48 Requiring further information**

- (1) The Regulator may, by notice given to an applicant, require the applicant to provide to the Regulator any other document, or information, that the Regulator thinks necessary in order to form an opinion whether to grant an approval under this Subdivision.
- (2) The Regulator is not required to make a decision under this Subdivision until the document or information required under subsection (1) has been provided.

**49 Amendment and withdrawal of applications**

*Amending applications*

- (1) An applicant may amend an application at any time before the Regulator makes a decision on the application.
- (2) An applicant must not be charged a fee for amending an application.

*Withdrawing applications*

- (3) An applicant may withdraw an application at any time before the Regulator makes a decision on the application.
- (4) Subsection (3) does not prevent the applicant from making a fresh application.
- (5) The Regulator must, on behalf of the Commonwealth, refund any application fee that has been paid by an applicant who withdraws an application.

**50 Testing precommitment systems**

- (1) For the purposes of determining whether a precommitment system complies with the requirements of Part 2 of this Chapter, the Regulator may require the system to be tested in accordance with a procedure prescribed by the regulations.
- (2) Without limiting subsection (1), the regulations may provide for a scheme (including any fees payable in relation to such a scheme) to

license the persons who are to test precommitment systems in accordance with a procedure prescribed by the regulations.

## **51 Approving precommitment systems and variations to approved terms and conditions**

### *Approving precommitment systems*

- (1) The Regulator may (subject to subsection (2)) approve, in writing, a precommitment system for a State or Territory if the Regulator is satisfied that:
  - (a) an application has been made to approve the precommitment system for the State or Territory, and any fee prescribed by the regulations has been paid for the application; and
  - (b) the precommitment system complies with the requirements of Part 2 of this Chapter; and
  - (c) the terms and conditions on which the precommitment system would be provided are reasonable including low cost, taking into account the matters prescribed by the regulations; and
  - (d) if the law of the State or Territory requires the precommitment system to be approved or authorised under that law—the precommitment system is approved or authorised for the State or Territory under that law.
- Note: For review of a decision to refuse to approve a precommitment system for a State or Territory, see sections 198 and 199.
- (2) The Regulator may (under subsection (1)) refuse to approve a precommitment system for a State or Territory if the Regulator is satisfied that, despite the precommitment system complying with the requirements of Part 2 of this Chapter, the precommitment system includes one or more features that are incompatible with the object of this Act (see section 4).
- (3) If the Regulator approves a precommitment system for a State or Territory under subsection (1), the Regulator is taken to have approved the terms and conditions on which the precommitment system would be provided.

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Note: For a civil penalty provision for providing a precommitment system for a State or Territory on terms and conditions other than the approved terms and conditions, see section 55.

*Approving variations of approved terms and conditions*

- (4) The Regulator may approve, in writing, a variation to the approved terms and conditions for a precommitment system for a State or Territory if the Regulator is satisfied that those terms and conditions as varied are reasonable, taking into account the matters prescribed by the regulations.

Note: For review of a decision to refuse to approve a variation to the approved terms and conditions for a precommitment system for a State or Territory, see sections 198 and 199.

**52 Notification of approvals**

*Giving copies of approvals of precommitment systems*

- (1) As soon as practicable after giving an approval for a precommitment system for a State or Territory under subsection 51(1), the Regulator must give the applicant a copy of the approval.
- (2) The approval must set out the approved terms and conditions for the precommitment system.

*Approving varied terms and conditions*

- (3) If the Regulator approves a variation to the approved terms and conditions for a precommitment system for a State or Territory, the Regulator must vary the approval of the precommitment system to include the variation to the approved terms and conditions.

*Length of approvals of precommitment system*

- (4) An approval of a precommitment system for a State or Territory has effect for 10 years (unless it is revoked earlier).



*Publishing approvals*

- (5) The Regulator must publish a copy of an approval of a precommitment system for a State or Territory (including an approval as varied under subsection (3)) by any means the Regulator considers appropriate.

### **53 Changes to precommitment requirements**

To avoid doubt, a change to regulations made for the purposes of Part 2 of this Chapter applies to any approved precommitment system.

### **54 Revocation of approvals**

- (1) The Regulator must revoke an approval of a precommitment system for a State or Territory if the Regulator is satisfied that:
  - (a) the precommitment system does not comply with the requirements of Part 2 of this Chapter; or
  - (b) despite the precommitment system complying with the requirements of Part 2 of this Chapter, the precommitment system includes one or more features that are incompatible with the object of this Act (see section 4); or
  - (c) the precommitment system is being provided on terms and conditions other than the approved terms and conditions; or
  - (d) if the law of the State or Territory requires the precommitment system to be approved or authorised under that law—the precommitment system is not approved or authorised for the State or Territory under that law.

Note: For review of a decision to revoke an approval of a precommitment system for a State or Territory, see sections 198 and 199.

- (2) The Regulator must publish a notice revoking an approval of a precommitment system for a State or Territory by any means the Regulator considers appropriate.

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**55 Civil penalty for failing to provide precommitment system in accordance with approved terms and conditions**

A licensed provider of a precommitment system, that is a constitutional corporation, must not provide an approved precommitment system on terms and conditions other than the approved terms and conditions.

Civil penalty: 200 penalty units.

**Subdivision B—Licences for providing etc. precommitment systems**

**56 Regulations may provide in relation to licensing persons who provide etc. precommitment systems**

- (1) The regulations may provide a scheme (including any fees payable in relation to such a scheme) to license persons who may provide precommitment systems for gaming machines.
- (2) The regulations may provide a scheme (including any fees payable in relation to such a scheme) to license persons who may operate, repair, maintain or install precommitment systems for gaming machines.

## **Chapter 3—Civil penalty provisions for non-compliance with national gambling reforms**

### **Part 1—Guide to this Chapter**

#### **57 Guide to this Chapter**

This Chapter contains civil penalty provisions in relation to gaming machines and automatic teller machines that do not comply with the requirements of Chapter 2.

Under Part 2 of this Chapter, a person may contravene a civil penalty provision if the person makes a non-compliant gaming machine available for use, and the gaming machine is:

- (a) made available for use by a constitutional corporation; or
- (b) owned, or on premises occupied, by a constitutional corporation (but only in certain circumstances).

Under Part 3 of this Chapter, a person may contravene a civil penalty provision for:

- (a) occupying gaming machine premises on which there is a non-compliant automatic teller machine; or
- (b) providing a non-compliant automatic teller machine on gaming machine premises.

Part 2 of Chapter 8 has general provisions relating to civil penalty provisions.

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**Part 2—Gaming machines that do not comply with precommitment and dynamic warning requirements**

**58 Making non-compliant gaming machine available for use**

- (1) A person contravenes this subsection if:
- (a) the person makes a gaming machine available for use (or continues to make a gaming machine available for use) at a particular time; and
  - (b) the gaming machine is not compliant at that time; and
  - (c) any of the following applies at that time:
    - (i) the person is a constitutional corporation;
    - (ii) the gaming machine is owned by a constitutional corporation, and the person makes the gaming machine available for use (or continues to make the gaming machine available for use) as the agent of the constitutional corporation;
    - (iii) the gaming machine is owned by a constitutional corporation, and the person makes the gaming machine available for use (or continues to make the gaming machine available for use) for the purposes of, or in the course of, conducting the constitutional corporation's business or activities;
    - (iv) the gaming machine is located on premises occupied by a constitutional corporation, and the person makes the gaming machine available for use (or continues to make the gaming machine available for use) for the purposes of, or in the course of, conducting the constitutional corporation's business or activities.

Civil penalty: 10 penalty units in relation to each day on which the gaming machine is made available for use.

Note: This subsection applies whether the person makes the gaming machine available for use alone or together with others (see section 8).

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*Exception—areas of Australia not covered by approved  
precommitment systems*

- (2) Subsection (1) does not apply at a particular time if, at that time:
- (a) either:
    - (i) a gaming machine is made available for use in Australia; or
    - (ii) a gaming machine is capable of being made available for use in Australia in accordance with the law of the State or Territory in which the gaming machine is located; and
  - (b) there is not an approved precommitment system for a State or Territory:
    - (i) that could operate in relation to that gaming machine; and
    - (ii) that is available to be purchased.

Note: For the definition of *Australia*, see section 5.

- (3) Subsection (2) applies whether or not the gaming machine referred to in that subsection is the one referred to in subsection (1), and regardless of who makes, or would make, the gaming machine available for use.
- (4) For the purposes of paragraph (2)(b), an approved precommitment system for a State or Territory could operate in relation to a gaming machine even if the precommitment system is temporarily unavailable as a result of an operational or technical issue.

Example: An example of an operational issue that causes a precommitment system to be temporarily unavailable is a power outage.

*Exception—lack of knowledge of non-compliance*

- (5) Subsection (1) does not apply at a particular time if, at that time:
- (a) the gaming machine referred to in subsection (1) is not compliant only because:
    - (i) the precommitment system for the gaming machine fails to comply with one or more requirements of Part 2 of Chapter 2; or

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- (ii) the gaming machine fails to comply with one or more requirements of Part 3 of Chapter 2; and
- (b) the person does not know, and could not reasonably be expected to know, that the precommitment system or gaming machine does not comply with those requirements.

*Exception—lack of fault in relation to non-compliance*

- (6) Subsection (1) does not apply at a particular time if, at that time:
  - (a) the gaming machine referred to in subsection (1) is not compliant only because:
    - (i) the precommitment system for the gaming machine fails to comply with one or more requirements of Part 2 of Chapter 2; or
    - (ii) the gaming machine fails to comply with one or more requirements of Part 3 of Chapter 2; and
  - (b) the failure is a result of an operational or technical issue; and
  - (c) the failure is not the fault of any person who makes the gaming machine available for use; and
  - (d) remedying the failure is not within the control of any person who makes the gaming machine available for use.

*Evidential burden*

- (7) A person who chooses to rely on subsection (2), (5) or (6) in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **Part 3—Automatic teller machines that do not comply with withdrawal limit requirements**

### **Division 1—Constitutional provisions**

#### **59 Application of this Part**

This Part applies to any automatic teller machine that dispenses currency.

#### **60 Additional operation of this Part**

- (1) Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.
- (2) This Part has, by force of this subsection, the effect it would have if references in this Part to a person who provides an automatic teller machine were, by express provision, confined to:
  - (a) a bank (other than a State bank); or
  - (b) any other institution engaged in banking;that provides an automatic teller machine in the course of banking (within the meaning of section 51(xiii) of the Constitution).
- (3) This Part has, by force of this subsection, the effect it would have if references in this Part to a person who occupies premises, or a person who provides an automatic teller machine, were, by express provision, confined to a constitutional corporation.

#### **61 Part not to apply to State banking**

This Part does not apply with respect to State banking that does not extend beyond the limits of the State concerned.

## **Division 2—Civil penalty provisions**

### **62 Occupying premises containing non-compliant automatic teller machine**

A person contravenes this section if:

- (a) the person occupies premises; and
- (b) the premises are gaming machine premises; and
- (c) the person allows another person to provide an automatic teller machine on the premises; and
- (d) the automatic teller machine would allow a person to withdraw more than the cash limit.

Civil penalty: 5 penalty units in relation to each day on which the automatic teller machine would allow a person to withdraw more than the cash limit.

Note 1: There is an exception to this section in section 65 (premises covered by exemption and casinos).

Note 2: This section applies whether the person occupies premises alone or together with others (see section 8).

### **63 Providing non-compliant automatic teller machine**

A person contravenes this section if:

- (a) the person provides an automatic teller machine on premises; and
- (b) the premises are gaming machine premises; and
- (c) the automatic teller machine would allow a person to withdraw more than the cash limit.

Civil penalty: 10 penalty units in relation to each day on which the automatic teller machine would allow a person to withdraw more than the cash limit.

Note 1: There is an exception to this section in section 65 (premises covered by exemption and casinos).

Note 2: This section applies whether the person provides an automatic teller machine alone or together with others (see section 8).



**64 Civil penalty provision contravened without a person withdrawing more than cash limit**

To avoid doubt, a person can contravene section 62 or 63 whether or not any person actually withdraws more than the cash limit.

**65 Exception for premises covered by exemption and casinos**

*Exemptions*

- (1) Sections 62 and 63 do not apply in relation to a person who occupies premises, or a person who provides an automatic teller machine on premises, if:
  - (a) an exemption under section 42 or 43 applies in relation to the premises; and
  - (b) if conditions are specified under subsection 42(2) or 43(4) in order for an exemption to apply to those premises—those conditions are complied with.

*Casinos*

- (2) Sections 62 and 63 do not apply in relation to:
  - (a) a person who occupies premises; or
  - (b) a person who provides an automatic teller machine on premises;that are licensed or approved as a casino in the State or Territory where the premises are located.

*Evidential burden*

- (3) A person who chooses to rely on subsection (1) or (2) of this section in proceedings for a civil penalty order bears an evidential burden in relation to the matters in that subsection.

## **Chapter 4—Privacy**

### **Part 1—Guide to this Chapter**

#### **66 Guide to this Chapter**

Part 2 of this Chapter creates offences to protect information that has been obtained under this Act, including information obtained from precommitment systems, from unauthorised disclosure or use.

Staff and former staff of the Regulator, and any person who obtains information from a precommitment system, and certain others, may commit an offence for disclosing or using the information if the disclosure or use is not authorised.

Disclosing information is authorised in a number of situations, including for the purposes of this Act or law enforcement, or with consent. Using information is authorised for the purposes of this Act.

## **Part 2—Privacy**

### **Division 1—Offences for unauthorised disclosure or use of protected information**

#### **67 Offences for unauthorised disclosure or use of protected information**

*Offence—entrusted persons*

- (1) A person commits an offence if:
- (a) the person is an entrusted person; and
  - (b) the person has obtained protected information in the person's capacity as such a person; and
  - (c) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information; and
  - (d) the disclosure or use is not an authorised disclosure or use.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

*Offence—information obtained from precommitment systems*

- (2) A person commits an offence if:
- (a) the person obtains protected information from a precommitment system; and
  - (b) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information; and
  - (c) the disclosure or use is not an authorised disclosure or use.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

*Offence—information obtained by authorised disclosure*

- (3) A person commits an offence if:

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- (a) the person obtains protected information by way of an authorised disclosure; and
- (b) the person discloses the information to another person; and
- (c) the disclosure is not an authorised disclosure.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

*Definition—entrusted person*

- (4) A person is an ***entrusted person*** if the person is or was:
- (a) the Regulator; or
  - (b) an authorised person; or
  - (c) a person assisting an authorised person; or
  - (d) an officer or employee made available to assist the Regulator under section 108; or
  - (e) a consultant engaged under section 109; or
  - (f) a person who is exercising powers, or performing functions, under a delegation under section 200.

*Definition—protected information*

- (5) Information is ***protected information*** if:
- (a) any of the following apply in relation to the information:
    - (i) the information is obtained by a person in the course of performing duties or functions, or exercising powers, under this Act;
    - (ii) the information is obtained by a person from a precommitment system;
    - (iii) the information was information to which subparagraph (i) or (ii) of this paragraph applied, and is obtained by a person by way of an authorised disclosure; and
  - (b) the information relates to a person other than the person who obtained it.

*Definition—authorised disclosure or use*

- (6) A disclosure or use of information is an ***authorised disclosure or use*** if the disclosure or use is authorised under this Division (and a

disclosure of information is an ***authorised disclosure*** if the disclosure is authorised under this Division).

Note: An authorisation under this Division constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

*Definition—authorised disclosure information*

- (7) Information obtained by a person is ***authorised disclosure information*** if:
- (a) the information is protected information; and
  - (b) the information is obtained by the person by way of an authorised disclosure.

**Division 2—Authorised disclosure or use by Regulator,  
other entrusted persons and others**

**Subdivision A—Authorised disclosure or use by Regulator,  
other entrusted persons and others**

**68 Authorised disclosure or use—official duties**

*Entrusted person*

- (1) An entrusted person may disclose or use protected information if:
  - (a) the disclosure or use is made for the purposes of this Act; and
  - (b) the person has not ceased to be a person of a kind referred to in any of paragraphs 67(4)(a) to (f).

*Information from precommitment systems*

- (2) A person who obtains protected information from a precommitment system may disclose or use the information if the disclosure or use is made for the purposes of this Act.

*Authorised disclosure information*

- (3) A person who obtains authorised disclosure information may disclose the information if the disclosure is made for the purposes of this Act.

**69 Who may disclose or use information in accordance with  
sections 70 to 73**

- (1) The following persons may disclose protected information in accordance with sections 70 to 73, or use protected information in accordance with section 71:
  - (a) the Regulator (including any person who is performing functions or exercising powers under any one or more of those sections under a delegation);

- (b) if the information is protected information obtained from a precommitment system—the person who obtains the protected information;
  - (c) if the information is authorised disclosure information—the person who obtains the authorised disclosure information.
- (2) However, an entrusted person is not authorised by paragraph (1)(b) or (c) to disclose protected information in accordance with sections 70 to 73, or use protected information in accordance with section 71.

### **70 Authorised disclosure—law enforcement**

- (1) A person referred to in subsection 69(1) may disclose protected information if:
- (a) the person believes on reasonable grounds that the disclosure is reasonably necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - (iii) the protection of the public revenue; and
  - (b) the information is disclosed to one of the following bodies:
    - (i) a Department, agency or authority of the Commonwealth, a State or a Territory;
    - (ii) the Australian Federal Police, or a police force or police service of a State or Territory; and
  - (c) the body's functions include that enforcement or protection.

#### *Conditions*

- (2) The Regulator may, in writing, impose conditions to be complied with in relation to particular protected information that is disclosed under subsection (1).
- (3) A person commits an offence if:
- (a) the person is subject to a condition under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the condition.

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Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An instrument under subsection (2) is not a legislative instrument.

**71 Authorised disclosure or use—consent**

A person referred to in subsection 69(1) may disclose or use protected information if the person to whom the information relates consents to the disclosure or use (as the case requires).

**72 Authorised disclosure—threat to life or health**

A person referred to in subsection 69(1) may disclose protected information if the disclosure is:

- (a) necessary to prevent or lessen a serious and imminent threat to the life or health of a person; and
- (b) for the purposes of preventing or lessening that threat.

**73 Authorised disclosure—publicly available information**

A person referred to in subsection 69(1) may disclose protected information if the information has already been lawfully made publicly available.

**Subdivision B—Authorised disclosure by Regulator**

**74 Authorised disclosure—Minister**

The Regulator may disclose protected information to the Minister.

**75 Authorised disclosure—Commonwealth, State and Territory agencies**

- (1) The Regulator may disclose protected information if:
- (a) the information consists of protected information that has been de-identified; and
  - (b) the disclosure is to a Department, agency or authority of the Commonwealth, a State or a Territory; and



- (c) the disclosure is for the purposes of enabling or assisting that Department, agency or authority to perform its functions or exercise its powers.

*Conditions*

- (2) The Regulator may, in writing, impose conditions to be complied with in relation to particular protected information that is disclosed under subsection (1).
- (3) A person commits an offence if:
  - (a) the person is subject to a condition under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the condition.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An instrument under subsection (2) is not a legislative instrument.

#### **76 Authorised disclosure—research**

The Regulator may disclose protected information if:

- (a) the information has been de-identified; and
- (b) the information is disclosed to a person or body who conducts research into gambling for the purposes of this Act.

#### **77 Authorised disclosure—summaries and statistics**

The Regulator may disclose:

- (a) summaries of protected information; or
- (b) statistics derived from protected information;

if those summaries or statistics are not likely to enable the identification of a person.

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## **Chapter 5—Requirements for manufacturing and importing gaming machines**

### **Part 1—Guide to this Chapter**

#### **78 Guide to this Chapter**

Under this Chapter, a person may contravene a civil penalty provision if:

- (a) the person is a constitutional corporation who manufactures a gaming machine; or
- (b) the person imports a gaming machine;

that is not capable of providing for precommitment.

## **Part 2—Requirements for manufacturing and importing gaming machines**

### **79 Manufacturing gaming machines**

A person contravenes this section if:

- (a) the person is a constitutional corporation; and
- (b) the person manufactures a gaming machine; and
- (c) the gaming machine does not comply with any one or more requirements prescribed by the regulations in relation to the capability of the gaming machine to provide for precommitment.

Civil penalty: 10 penalty units.

Note: This section applies whether the person manufactures the gaming machine alone or together with others (see section 8).

### **80 Importing gaming machines**

A person contravenes this section if:

- (a) the person imports a gaming machine; and
- (b) the gaming machine does not comply with any one or more requirements prescribed by the regulations in relation to the capability of the gaming machine to provide for precommitment.

Civil penalty: 10 penalty units.

Note: This section applies whether the person imports the gaming machine alone or together with others (see section 8).

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## **Chapter 6—Liability for, and collection and recovery of, supervisory and gaming machine regulation levies**

### **Part 1—Guide to this Chapter**

#### **81 Guide to this Chapter**

This Chapter deals with the supervisory levy and the gaming machine regulation levy.

The purpose of the supervisory levy is to cover the costs to the Commonwealth in relation to the administration of this Act, the *National Gambling Reform (Related Matters) Act (No. 1) 2012* and the *National Gambling Reform (Related Matters) Act (No. 2) 2012*.

The supervisory levy is payable if a person makes a gaming machine available for use at any time during a levy period. The amount of the supervisory levy imposed by the *National Gambling Reform (Related Matters) Act (No. 1) 2012* is worked out in accordance with a method prescribed by regulations made under that Act.

The gaming machine regulation levy is payable if a person makes a gaming machine available for use at any time during a levy period. However, the gaming machine regulation levy is not payable in certain cases, such as cases related to constitutional corporations or if gaming machines comply with the requirements of Parts 2 and 3 of Chapter 2 (precommitment systems and dynamic warnings).

This Chapter also has rules about collecting and recovering the levies.

## Part 2—Liability for supervisory levy

### 82 Purpose of supervisory levy

The purpose of the supervisory levy is to cover the costs to the Commonwealth in relation to the administration of this Act, the *National Gambling Reform (Related Matters) Act (No. 1) 2012* and the *National Gambling Reform (Related Matters) Act (No. 2) 2012*.

Note: However, the total amount of supervisory levy that is payable in relation to the levy periods in a calendar year must not be more than an amount determined by the Minister for that year under section 84A.

### 83 Liability for supervisory levy

- (1) An amount of supervisory levy is payable for a gaming machine for a levy period if a person makes the gaming machine available for use at any time during that period.

Note 1: An amount of supervisory levy is not payable until regulations are made under section 6 of the *National Gambling Reform (Related Matters) Act (No. 1) 2012* prescribing a method for working out the amount.

Note 2: For the collection and recovery of the supervisory levy, see Part 4.

Note 3: This section applies whether the person makes the gaming machine available for use alone or together with others (see section 8).

- (2) Despite subsection (1), an amount of supervisory levy is not payable for any gaming machine that is made available for use on gaming machine premises that are prescribed by the regulations for the purposes of this subsection.

### 84 Who is liable to pay the supervisory levy

- (1) An amount of supervisory levy is payable under section 83 for a gaming machine for a levy period by a person (the *licensee*) who holds, at any time during the levy period, an approval or licence (however described) under a law of a State or Territory to operate the gaming machine.

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- (2) If, during a levy period, there is no licensee in relation to a gaming machine, an amount of supervisory levy is payable under section 83 for the gaming machine for the levy period by the person who makes the gaming machine available for use.

Note: This subsection applies whether the person makes the gaming machine available for use alone or together with others (see section 8).

- (3) If more than one person is liable to pay an amount of levy under subsection (1) or (2) of this section, then all such persons are jointly liable to pay the amount of supervisory levy.

Note: For right of contribution if persons are jointly liable, see section 94.

- (4) An agency (however described) of the Commonwealth, a State or a Territory, or a body established for a public purpose by or under a law of the Commonwealth, a State or a Territory, is not liable to pay an amount of supervisory levy.

**84A Cap on total amount of supervisory levy payable in a calendar year**

- (1) The total amount of supervisory levy that is payable in relation to the levy periods in a calendar year must not exceed the amount determined by the Minister under subsection (2) for that calendar year.

*Determining total amount of supervisory levy that is payable*

- (2) The Minister must, in a calendar year, determine by legislative instrument the total amount of supervisory levy that is payable in relation to the levy periods in the next calendar year (the *levy year*).
- (3) In making a determination, the Minister must consult (whether directly or indirectly) with the persons who are liable to pay the supervisory levy under section 84.
- (4) The amount determined must not be more than the lesser of the following amounts:
- (a) either:
- (i) \$10 million; or

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- (ii) if a lower amount has been prescribed by the regulations for the purposes of section 84B—that amount;
  - (b) the total cost to the Commonwealth, during the last financial year ending before the levy year, in relation to the administration of this Act as referred to in paragraph 111(4)(ca).

*Indexation*

- (5) The regulations may specify:
  - (a) an index for the purposes of this section; and
  - (b) the manner of working out an increase in the amount that applies under paragraph (4)(a) of this section by reference to the movement of that index over the year ending each 31 December.
- (6) The amount that applies under paragraph (4)(a), for a year in which there is an increase in the specified index, is increased in the manner prescribed by the regulations.

*Regulations may prescribe method for dealing with excess*

- (7) The regulations may prescribe a method for distributing, to any persons who paid supervisory levy in relation to a calendar year, any excess supervisory levy that was paid in relation to the year in contravention of subsection (1).

*Validity of regulations*

- (8) To avoid doubt, the validity of regulations made under section 6 of the *National Gambling Reform (Related Matters) Act (No. 1) 2012* is not affected by a failure to comply with subsection (1) of this section.

**84B Setting an upper limit for cap on total amount of supervisory levy**

- (1) Within 12 months of the day this Act commences, the Regulator must estimate in writing the total cost to the Commonwealth, during a calendar year, in relation to the administration of this Act (assuming that all provisions of this Act are applying in relation to

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gaming machines that are made available for use on gaming machines premises with at least 11 gaming machines).

- (2) The regulations may prescribe an amount for the purposes of this section if the amount of the total cost determined under subsection (1) is less than \$10 million.

Note: The total amount of supervisory levy that is payable for the levy periods in a calendar year must not exceed the amount prescribed for the purposes of this section (see paragraph 84A(4)(a)).

- (3) An amount prescribed under subsection (2) of this section must be no more than the amount determined by the Regulator under subsection (1).

**84C Review by Minister of upper limit for cap on total amount of supervisory levy**

- (1) Within 5 years of the day this Act commences, the Minister must review the amount that applies under paragraph 84A(4)(a).
- (2) In conducting that review, the Minister must consult (whether directly or indirectly) with the persons who are liable to pay the supervisory levy under section 84.



## **Part 3—Liability for gaming machine regulation levy**

### **85 Liability for gaming machine regulation levy**

- (1) An amount of gaming machine regulation levy is payable for a gaming machine for a levy period if:
- (a) a person makes the gaming machine available for use during the levy period; and
  - (b) at any one or more times during the levy period when the gaming machine is made available for use, none of subsections (2), (3), (4), (7) or (8) applies.

Note 1: For the collection and recovery of the gaming machine regulation levy, see Part 4.

Note 2: This section applies whether the person makes the gaming machine available for use alone or together with others (see section 8).

#### *Exception—constitutional corporations*

- (2) This subsection applies at a particular time if, at that time, paragraph 58(1)(c) applies to the person, or any of the persons, who make the gaming machine available for use.

Note: Paragraph 58(1)(c) applies to a person who is, or has certain connections with, a constitutional corporation.

#### *Exception—compliance with precommitment system and dynamic warning requirements*

- (3) This subsection applies at a particular time if, at that time, the gaming machine, and any precommitment system for the gaming machine, comply with all of the requirements of Parts 2 and 3 of Chapter 2 (precommitment systems and dynamic warnings).

#### *Exception—areas of Australia not covered by approved precommitment systems*

- (4) This subsection applies at a particular time if, at that time:

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- (a) either:
  - (i) a gaming machine is made available for use in Australia; or
  - (ii) a gaming machine is capable of being made available for use in Australia in accordance with the law of the State or Territory in which the gaming machine is located; and
- (b) there is not an approved precommitment system for a State or Territory:
  - (i) that could operate in relation to that gaming machine; and
  - (ii) that is available to be purchased.

Note: For the definition of *Australia*, see section 5.

- (5) Subsection (4) applies whether or not the gaming machine referred to in that subsection is the one referred to in subsection (1), and regardless of who makes, or would make, the gaming machine available for use.
- (6) For the purposes of paragraph (4)(b), an approved precommitment system for a State or Territory could operate in relation to a gaming machine even if the precommitment system is temporarily unavailable as a result of an operational or technical issue.

Example: An example of an operational issue that causes a precommitment system to be temporarily unavailable is a power outage.

*Exception—lack of knowledge of non-compliance*

- (7) This subsection applies at a particular time if, at that time:
  - (a) either:
    - (i) the precommitment system for the gaming machine referred to in subsection (1) fails to comply with one or more requirements of Part 2 of Chapter 2; or
    - (ii) the gaming machine referred to in subsection (1) fails to comply with one or more requirements of Part 3 of Chapter 2; and
  - (b) the person who makes the gaming machine available for use does not know, and could not reasonably be expected to

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know, that the precommitment system or gaming machine does not comply with those requirements.

*Exception—lack of fault in relation to non-compliance*

- (8) This subsection applies at a particular time if, at that time:
- (a) either:
    - (i) the precommitment system for the gaming machine referred to in subsection (1) fails to comply with one or more requirements of Part 2 of Chapter 2; or
    - (ii) the gaming machine referred to in subsection (1) fails to comply with one or more requirements of Part 3 of Chapter 2; and
  - (b) the failure is a result of an operational or technical issue; and
  - (c) the failure is not the fault of any person who makes the gaming machine available for use; and
  - (d) remedying the failure is not within the control of any person who makes the gaming machine available for use.

## **86 Who is liable to pay the gaming machine regulation levy**

- (1) An amount of gaming machine regulation levy is payable under section 85 for a gaming machine for a levy period by any person who is entitled to any of the gaming machine revenue from the gaming machine for the period.
- (2) For the purposes of subsection (1) of this section, in working out the total amount of outgoings for the purposes of paragraph (b) of the definition of *gaming machine revenue*, disregard any amounts worked out under paragraph (c) of the definition of *outgoings*.
- (3) If more than one person is entitled to any of the gaming machine revenue, all such persons are jointly liable to pay the amount of gaming machine regulation levy.

Note: For right of contribution if persons are jointly liable, see section 94.

*Entitlement to gaming machine revenue*

- (4) A person is liable to pay an amount of gaming machine regulation levy under subsection (1) even if the person's entitlement to some

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or all of the gaming machine revenue is not for the person's own use or benefit.

### *Public bodies*

- (5) An agency (however described) of the Commonwealth, a State or a Territory, or a body established for a public purpose by or under a law of the Commonwealth, a State or a Territory, is not liable to pay an amount of gaming machine regulation levy.

## **Part 4—Collection and recovery of supervisory and gaming machine regulation levies**

### **Division 1—Assessment of levies**

#### **87 Regulator may make assessment of levies**

- (1) At any time, the Regulator may make an assessment of levy for a levy period.
- (2) The Regulator may make an assessment under this section even if he or she has already made an assessment for the levy period concerned.

Note: For review of a decision to make an assessment, see sections 198 and 199.

#### **88 Request for assessment**

- (1) A person may request the Regulator to make an assessment of levy for a levy period.
- (2) The request must be in an approved form.
- (3) The Regulator must comply with the request if it is made within:
  - (a) 4 years after the end of the levy period; or
  - (b) such further period as the Regulator allows.

#### **89 Levy liabilities do not depend on assessment**

A person's liability to pay a levy, and the time by which an amount of levy must be paid, do not depend on, and are not in any way affected by, the making of an assessment under this Division.

Note: However, a notice of assessment can be used as evidence of liability (see section 93).

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### **90 Regulator must give notice of the assessment**

The Regulator must give a person notice of an assessment as soon as practicable after the assessment is made. However, failing to do so does not affect the validity of the assessment.

### **91 Amendment of assessment**

The Regulator may amend an assessment at any time. An amended assessment is an assessment for all purposes of this Act.

Note: For review of a decision to amend an assessment, see sections 198 and 199.

### **92 Later assessment prevails in case of inconsistency**

If there is an inconsistency between assessments that relate to the same levy period, the later assessment prevails to the extent of the inconsistency.

### **93 Production of assessment is conclusive evidence**

The production of a notice of assessment under this Division is conclusive evidence:

- (a) that the assessment was properly made; and
- (b) except in proceedings brought in accordance with section 198 or 199 on a review relating to the assessment—that the amounts and particulars in the assessment are correct.

## **Division 2—Collection of levies**

### **94 Right of contribution if persons are jointly liable**

- (1) If 2 or more persons are jointly liable to pay an amount of levy, they are each liable for the whole of the amount.
- (2) If one of the persons has paid an amount of the liability, the person may recover in a relevant court, as a debt, from another of those persons:
  - (a) an amount equal to so much of the amount paid; and
  - (b) an amount equal to so much of the costs of recovery under this section;as the court considers just and equitable.

### **95 Returns**

- (1) A person must (subject to subsection (3)) lodge a return for a levy period if:
  - (a) the person is liable to pay an amount of levy in relation to a gaming machine for the levy period; or
  - (b) the person would have been liable to pay an amount of gaming machine regulation levy in relation to the gaming machine for the levy period but for the fact that the gaming machine revenue from the gaming machine was nil or a negative amount.

Note: A person who fails to lodge a return might commit an offence under section 101.
- (2) The return must:
  - (a) be lodged with the Regulator; and
  - (b) be lodged before the end of 21 days after the end of the levy period; and
  - (c) be in an approved form; and
  - (d) contain the information required by the form.

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- (3) A person is not required to lodge a return under subsection (1) in relation to the supervisory levy if no regulations have been made under the *National Gambling Reform (Related Matters) Act (No. 1) 2012* prescribing a method for working out the amount of supervisory levy for a gaming machine for a levy period.

**96 When levy due for payment**

Levy payable by a person is due and payable 21 days after the end of the levy period.

**97 Late payment penalty**

- (1) If any levy payable by a person remains unpaid at the start of a month after the levy became due for payment, the person is liable to pay the Commonwealth, for that month, a penalty worked out using the following formula:

$$\text{Amount of the levy remaining unpaid at the start of the month} \times \frac{0.2}{12}$$

- (2) Late payment penalty for a month is due and payable at the end of the month.

*Specifying a later day for payment of late payment penalty*

- (3) However, the Regulator may, by written notice given to the person, specify a later day as the day on which the late payment penalty is due and payable.

Note: For review of a decision not to specify a later day, see sections 198 and 199.

- (4) The Regulator may specify a later day under subsection (3) before, on or after the day on which late payment penalty would otherwise be due and payable.

- (5) A notice under subsection (3) has effect, and is taken always to have had effect, according to its terms.



### **98 Payment of levy and late payment penalty**

Levy and late payment penalty are payable to the Regulator on behalf of the Commonwealth.

### **99 Recovery of levy and late payment penalty**

- (1) The following amounts may be recovered by the Commonwealth from a person as debts due to the Commonwealth:
  - (a) levy that is due and payable by the person;
  - (b) late payment penalty that is due and payable by the person.
- (2) The Regulator may, on behalf of the Commonwealth, recover a debt of a kind mentioned in subsection (1) in a relevant court.

### **100 Refunds of overpayments of levy**

- (1) The Regulator may credit an amount of levy or late payment penalty that has been overpaid by a person against a liability of the person to pay another such amount under this Act.
- (2) The Regulator must refund the amount to the person to the extent that it is not so credited.

## **Division 3—Miscellaneous**

### **101 Offence for failure to lodge a return**

- (1) A person commits an offence if:
- (a) the person is required to lodge a return under section 95; and
  - (b) the person fails to lodge a return as required by that section.

Penalty: 50 penalty units.

Note: A person who provides false or misleading information in a return may commit an offence under section 137.2 of the *Criminal Code*.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) The offence created by subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **102 Regulations may provide in relation to assessment, collection and recovery**

The regulations may provide in relation to the assessment, collection and recovery of the supervisory levy and the gaming machine regulation levy.

## **Chapter 7—Monitoring and investigation**

### **Part 1—Guide to this Chapter**

#### **103 Guide to this Chapter**

This Chapter provides for the monitoring and investigation of compliance with this Act.

The Regulator monitors and investigates compliance. Part 2 establishes the Regulator and defines his or her functions and powers. The Regulator appoints authorised persons under Part 3, who exercise the monitoring and investigation powers in this Chapter. The persons who may be appointed as authorised persons are APS employees, or employees of agencies of a State or Territory.

Authorised persons have powers under Part 4 to enter public areas of gaming machine premises and observe practices relating to gaming machines, precommitment systems and automatic teller machines.

An authorised person may enter premises and exercise monitoring powers under Part 5, to monitor compliance with this Act. Entry must be with the occupier's consent or under a monitoring warrant.

An authorised person may enter premises and exercise investigation powers under Part 6, if the person has reasonable grounds for suspecting that there is evidential material on the premises that is connected with a contravention of this Act. Entry must be with the occupier's consent or under an investigation warrant. Evidential material may be seized under a warrant.

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Rules relevant to both monitoring and investigation, such as the obligations and other powers of authorised persons when entering premises, and the rights and responsibilities of occupiers, are in Part 7.

The Regulator can require a person to produce information or documents under Part 8. Certain persons may also be required to keep records of specified information relevant to this Act.

## **Part 2—Regulator**

### **104 The Regulator**

The *Regulator* is the Secretary of the Department.

### **105 Functions of the Regulator**

The Regulator has the following functions:

- (a) to administer this Act;
- (b) to monitor, promote, investigate and enforce compliance with this Act;
- (c) to collect, analyse, interpret and disseminate information about the operation of this Act;
- (d) to monitor and evaluate the operation of this Act;
- (e) to provide information and advice to:
  - (i) the Minister; and
  - (ii) the States and Territories; and
  - (iii) the public;about the operation of this Act;
- (f) to undertake or commission research in relation to the operation of this Act;
- (g) to cooperate with the States and Territories, and other relevant persons, in administering this Act;
- (h) such other functions as are conferred on the Regulator by this Act or any other law of the Commonwealth.

### **106 Powers of the Regulator**

The Regulator has power to do all things necessary or convenient to be done in connection with the performance of the Regulator's functions.

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**107 Regulator may charge for services**

- (1) The Regulator may, by legislative instrument, specify fees for services provided by, or on behalf of, the Regulator in the performance of his or her functions.
- (2) A fee specified under subsection (1) must not be such as to amount to taxation.

**108 Arrangements with other agencies**

The Regulator may make an arrangement with an agency of the Commonwealth, or of a State or a Territory, for the services of officers or employees of the agency to be made available to assist the Regulator in performing his or her functions or duties, or exercising his or her powers.

**109 Consultants**

The Regulator may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Regulator's functions.

**110 Minister may give directions to the Regulator**

- (1) The Minister may, by legislative instrument, give a direction to the Regulator in relation to the performance of the Regulator's functions and the exercise of the Regulator's powers.
- (2) However, the Minister must not give a direction in relation to a particular case.
- (3) The Regulator must comply with a direction given under subsection (1).

**111 Annual report**

- (1) The Regulator must prepare and give to the Minister a report on the operation of this Act during each financial year.
- (2) The Regulator must do so as soon as practicable after the end of each financial year.

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- (3) The report must be included in the Department's annual report for that financial year.
- (4) Without limiting subsection (1), a report for a financial year must include information in relation to the following:
  - (a) any offence against this Act of which a person was convicted during the year, and the penalty imposed on the person;
  - (b) any civil penalty provision in relation to which a civil penalty order was made against a person during the year, and the amount of any penalty that the person was ordered to pay to the Commonwealth;
  - (c) any action taken under Chapter 8 (enforcement) in order to enforce this Act;
  - (ca) the total cost to the Commonwealth during the year in relation to the administration of this Act;
  - (d) any other matter specified by the regulations.

Note: The total amount of supervisory levy that is payable for the levy periods in a calendar year must not exceed the costs to the Commonwealth in relation to the administration of this Act for the previous financial year (see section 84A).

## Part 3—Authorised persons

### 112 Appointment of authorised persons

- (1) The Regulator may, in writing, appoint one or more of the following persons as an authorised person for the purposes of this Act:
  - (a) an APS employee;
  - (b) an employee of an agency (however described) of a State or Territory.

Note: For the definition of *APS employee*, see section 2B of the *Acts Interpretation Act 1901*.

#### *Prerequisites to appointment*

- (2) The Regulator must not appoint a person as an authorised person unless the Regulator is satisfied that:
  - (a) the person has suitable training or experience to properly exercise the powers of an authorised person; and
  - (b) an assessment of the person's criminal history, and of other matters relating to security, has been conducted in relation to the person.
- (3) The Regulator must not appoint an officer or employee of an agency as an authorised person without the agreement of:
  - (a) if the agency is an agency of the Commonwealth—the agency; and
  - (b) if the agency is an agency of a State or Territory—the State or Territory.

#### *Period of appointment*

- (4) An authorised person holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.



*Authorised person to comply with directions*

- (5) An authorised person must, in exercising powers as such, comply with any directions of the Regulator.
- (6) If a direction is given under subsection (5) in writing, the direction is not a legislative instrument.

**113 The Regulator is an authorised person**

The Regulator is an authorised person by force of this section.

**114 Identity cards**

- (1) The Regulator must issue an identity card to an authorised person.
- (2) The Minister must issue an identity card to the Regulator.

*Form of identity card*

- (3) An identity card must:
  - (a) be in the form prescribed by the regulations; and
  - (b) contain a recent photograph of the authorised person.

*Authorised person must carry card*

- (4) An authorised person must carry his or her identity card at all times when exercising powers as an authorised person.

**115 Offence for not returning identity card**

- (1) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised person; and
  - (c) the person does not return the identity card to the person who issued the identity card within 14 days after ceasing to be an authorised person.

Penalty: 1 penalty unit.

- (2) An offence against subsection (1) is an offence of strict liability.

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence: card lost or destroyed*

- (3) Subsection (1) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## **Part 4—Inspecting public areas of gaming machine premises**

### **116 Inspection powers in public areas of gaming machine premises**

- (1) An authorised person may enter a public area of gaming machine premises when the premises are open to the public and exercise the following powers for a purpose referred to in subsection (2):
  - (a) the power to observe the operation of, and practices relating to the operation of, regulated devices;
  - (b) the power to inspect or collect written information, advertising or any other document that is available, or made available, to the public in relation to regulated devices;
  - (c) the power to discuss regulated devices with any person.
- (2) An authorised person may exercise a power under subsection (1) only for one or more of the following purposes:
  - (a) determining whether a provision of this Act has been, or is being, complied with;
  - (b) determining whether information given in compliance or purported compliance with a provision of this Act is correct;
  - (c) investigating a possible contravention of a related provision.
- (3) To avoid doubt, if a person is required to be a member, or otherwise register, to access an area of gaming machine premises, that area is not a public area of those premises.
- (4) Subsection (1) does not affect any right of the occupier of the premises to refuse to allow an authorised person to enter, or remain on, the premises.
- (5) Subsection (1) does not limit the powers of an authorised person under Part 5, 6, 7 or 8 of this Chapter or any other power of a person to enter a public area of gaming machine premises.

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*Definition*

(6) In this Act:

***regulated device*** means:

- (a) a gaming machine; or
- (b) a precommitment system; or
- (c) an automatic teller machine.

## **Part 5—Monitoring**

### **Division 1—Monitoring powers**

#### **117 Authorised person may enter premises by consent or under a warrant**

- (1) An authorised person may enter any premises and exercise the monitoring powers for either or both of the following purposes:
  - (a) determining whether a provision of this Act has been, or is being, complied with;
  - (b) determining whether information given in compliance or purported compliance with a provision of this Act is correct.

Note: The *monitoring powers* are set out in sections 118, 119 and 122.

- (2) However, an authorised person is not authorised to enter the premises unless:
  - (a) the occupier of the premises has consented to the entry and the authorised person has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a monitoring warrant.

Note 1: If entry to the premises is with the occupier's consent, the authorised person must leave the premises if the consent ceases to have effect (see section 144).

Note 2: See Part 7 for general provisions relating to monitoring, such as:

- (a) obligations of authorised persons in entering premises; and
- (b) other powers of authorised persons; and
- (c) an occupier's rights and responsibilities on entry.

#### **118 Monitoring powers of authorised persons**

The following are the *monitoring powers* that an authorised person may exercise in relation to premises under section 117:

- (a) the power to search the premises and any thing on the premises;

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- (b) the power to examine or observe any activity conducted on the premises;
- (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
- (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the authorised person requires for the purpose of exercising powers in relation to the premises;
- (h) the powers set out in subsections 119(1) and (3) and 122(2).

Note: An authorised person may also open gaming machines (including sealed components of machines) on premises (see section 149).

### 119 Operating electronic equipment

- (1) The *monitoring powers* include the power to:
  - (a) operate electronic equipment on the premises (including operating the equipment to access data not held on the premises); and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it.
- (2) The *monitoring powers* include the powers mentioned in subsection (3) if information (*relevant data*) is found in the exercise of the power under subsection (1) that is relevant to determining whether:
  - (a) a provision of this Act has been, or is being, complied with; or
  - (b) information given in compliance or purported compliance with a provision of this Act is correct.
- (3) The powers are as follows:

- (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An authorised person may operate electronic equipment as mentioned in subsection (1) or (3) only if the authorised person believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 155.

## **120 Accessing data held on certain premises—notification to occupier**

- (1) If:
- (a) an exercise of power under subsection 119(1) involves operating electronic equipment on premises to access data held on other premises; and
  - (b) it is practicable to notify the occupier of the premises on which the data is held that the data has been accessed;
- the authorised person must:
- (c) do so as soon as practicable; and
  - (d) if the authorised person has exercised, or intends to exercise, powers under subsection 119(3) to allow for continued access to that data—include that information in the notification.
- (2) A notification under subsection (1) must include sufficient information to allow the occupier of the premises on which the data is held to contact the authorised person.

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**121 Expert assistance to operate electronic equipment**

- (1) This section applies to premises to which a monitoring warrant relates.

*Securing equipment*

- (2) An authorised person may secure any electronic equipment that is on the premises if the authorised person believes on reasonable grounds that:
- (a) there is information (*relevant data*) on, or accessible from, the premises relevant to determining whether:
    - (i) a provision of this Act has been, or is being, complied with; or
    - (ii) information given in compliance or purported compliance with a provision of this Act is correct; and
  - (b) the relevant data may be accessible by operating the equipment; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) the relevant data may be destroyed, altered or otherwise interfered with, if the authorised person does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
- (a) the authorised person's intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
- (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.



Note: For compensation for damage to electronic equipment, see section 155.

*Extensions*

- (5) The authorised person may apply to an issuing officer for an extension of the 24-hour period if the authorised person believes on reasonable grounds that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24-hour period may be extended more than once.

**122 Securing evidence of the contravention of a related provision**

- (1) This section applies if an authorised person enters premises under a monitoring warrant for either or both of the following purposes:
  - (a) determining whether a provision of this Act has been, or is being, complied with;
  - (b) determining whether information given in compliance or purported compliance with a provision of this Act is correct.

*Securing evidence for a period*

- (2) The **monitoring powers** include the power to secure a thing for a period not exceeding 24 hours if:
  - (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an authorised person believes on reasonable grounds that:
    - (i) a related provision has been contravened with respect to the thing; or

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- (ii) the thing affords evidence of the contravention of a related provision; or
- (iii) the thing is intended to be used for the purpose of contravening a related provision; and
- (c) the authorised person believes on reasonable grounds that:
  - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
  - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

*Extensions*

- (3) The authorised person may apply to an issuing officer for an extension of the 24-hour period if the authorised person believes on reasonable grounds that the thing needs to be secured for longer than that period.
- (4) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (5) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (6) The 24-hour period may be extended more than once.

## **Division 2—Persons assisting authorised persons**

### **123 Persons assisting authorised persons**

*Authorised persons may be assisted by other persons*

- (1) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under this Part and Part 7, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised person.

*Powers, functions and duties of a person assisting the authorised person*

- (2) A person assisting the authorised person:
- (a) may enter the premises; and
  - (b) may exercise powers and perform functions and duties under this Part and Part 7 for the purposes of assisting the authorised person to determine whether:
    - (i) a provision of this Act has been, or is being, complied with; or
    - (ii) information given in compliance or purported compliance with a provision of this Act is correct; and
  - (c) must do so in accordance with a direction given to the person assisting by the authorised person.
- (3) A power exercised by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised person.
- (4) A function or duty performed by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised person.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

## Division 3—Monitoring warrants

### 124 Monitoring warrants

#### *Application for warrant*

- (1) An authorised person may apply to an issuing officer for a warrant under this section in relation to premises.

#### *Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised persons should have access to the premises for the purpose of determining whether:
  - (a) a provision of this Act has been, or is being, complied with; or
  - (b) information given in compliance or purported compliance with a provision of this Act is correct.
- (3) However, the issuing officer must not issue the warrant unless the authorised person or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose for which the warrant is issued; and
  - (d) authorise, on any one or more occasions while the warrant remains in force, one or more authorised persons (whether or not named in the warrant):
    - (i) to enter the premises; and

- (ii) to exercise the powers set out in this Part and Part 7 in relation to the premises; and
- (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

## Part 6—Investigation

### Division 1—Investigation powers

#### 125 Authorised person may enter premises by consent or under a warrant

- (1) If an authorised person has reasonable grounds for suspecting that there may be evidential material on any premises, the authorised person may:
- (a) enter the premises; and
  - (b) exercise the investigation powers.

Note: The *investigation powers* are set out in sections 126, 127 and 130.

- (2) However, an authorised person is not authorised to enter the premises unless:
- (a) the occupier of the premises has consented to the entry and the authorised person has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under an investigation warrant.

Note 1: If entry to the premises is with the occupier's consent, the authorised person must leave the premises if the consent ceases to have effect (see section 144).

Note 2: See Part 7 for general provisions relating to investigation, such as:

- (a) obligations of authorised persons in entering premises; and
- (b) other powers of authorised persons; and
- (c) an occupier's rights and responsibilities on entry.

#### 126 Investigation powers of authorised persons

The following are the *investigation powers* that an authorised person may exercise in relation to premises under section 125:

- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the authorised person has reasonable grounds for suspecting may be on the premises;

- (b) if entry to the premises is under an investigation warrant:
  - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
  - (ii) the power to seize evidential material of that kind if the authorised person finds it on the premises;
- (c) the power to inspect, examine, take measurements of or conduct tests on evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to take onto the premises such equipment and materials as the authorised person requires for the purpose of exercising powers in relation to the premises;
- (f) the powers set out in subsections 127(1) and (2) and section 130.

Note: An authorised person may also open gaming machines (including sealed components of machines) on premises (see section 149).

### **127 Operating electronic equipment**

- (1) The *investigation powers* include the power to:
  - (a) operate electronic equipment on the premises (including operating the equipment to access data not held on the premises); and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;if an authorised person has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is or contains evidential material.
- (2) The *investigation powers* include the following powers in relation to evidential material found in the exercise of the power under subsection (1):

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- (a) if entry to the premises is under an investigation warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (3) An authorised person may operate electronic equipment as mentioned in subsection (1) or (2) only if the authorised person believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- Note: For compensation for damage to electronic equipment, see section 155.
- (4) An authorised person may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

**128 Accessing data held on certain premises—notification to occupier**

- (1) If:
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- (a) an exercise of power under subsection 127(1) involves operating electronic equipment on premises to access data held on other premises; and
  - (b) it is practicable to notify the occupier of the premises on which the data is held that the data has been accessed;
- the authorised person must:
- (c) do so as soon as practicable; and
  - (d) if the authorised person has exercised, or intends to exercise, powers under subsection 127(2) to allow for continued access to that data—include that information in the notification.
- (2) A notification under subsection (1) must include sufficient information to allow the occupier of the premises on which the data is held to contact the authorised person.

### **129 Expert assistance to operate electronic equipment**

- (1) This section applies if an authorised person enters premises under an investigation warrant to search for evidential material.

#### *Securing equipment*

- (2) The authorised person may secure any electronic equipment that is on the premises if the authorised person believes on reasonable grounds that:
- (a) there is evidential material of the kind specified in the warrant on, or accessible from, the premises; and
  - (b) the evidential material may be accessible by operating the electronic equipment; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) the evidential material may be destroyed, altered or otherwise interfered with, if the authorised person does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:

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- (a) the authorised person's intention to secure the equipment;  
and
- (b) the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
  - (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 155.

*Extensions*

- (5) The authorised person may apply to an issuing officer for an extension of the 24-hour period, if the authorised person believes on reasonable grounds that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the authorised person's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of investigation warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24-hour period may be extended more than once.

**130 Seizing evidence of contraventions of related provisions**

- (1) This section applies if an authorised person enters premises under an investigation warrant to search for evidential material.
- (2) The *investigation powers* include seizing a thing that is not evidential material of the kind specified in the warrant if:

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- (a) in the course of searching for the kind of evidential material specified in the warrant, the authorised person finds the thing; and
- (b) the authorised person believes on reasonable grounds that:
  - (i) a related provision has been contravened with respect to the thing; or
  - (ii) the thing is evidence of the contravention of a related provision; or
  - (iii) the thing is intended to be used for the purpose of contravening a related provision; and
- (c) the authorised person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction.

## Division 2—Persons assisting authorised persons

### 131 Persons assisting authorised persons

*Authorised persons may be assisted by other persons*

- (1) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under this Part and Part 7, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised person.

*Powers, functions and duties of a person assisting the authorised person*

- (2) A person assisting the authorised person:
- (a) may enter the premises; and
  - (b) may exercise powers and perform functions and duties under this Part and Part 7 in relation to evidential material; and
  - (c) must do so in accordance with a direction given to the person assisting by the authorised person.
- (3) A power exercised by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised person.
- (4) A function or duty performed by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised person.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

## **Division 3—General provisions relating to seizure**

### **132 Copies of seized things to be provided**

- (1) This section applies if:
  - (a) an investigation warrant is being executed in relation to premises; and
  - (b) an authorised person seizes one or more of the following from the premises under this Part:
    - (i) a document, film, computer file or other thing that can be readily copied;
    - (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, may request the authorised person to give a copy of the thing or the information to the occupier or other person.
- (3) The authorised person must comply with the request as soon as practicable after the seizure.
- (4) However, the authorised person is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

### **133 Receipts for seized things**

- (1) The authorised person must provide a receipt for a thing that is seized under this Part.
- (2) One receipt may cover 2 or more things seized.

### **134 Return of seized things**

- (1) The Regulator must take reasonable steps to return a thing seized under this Part when the earliest of the following happens:

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- (a) the reason for the thing's seizure no longer exists;
- (b) it is decided that the thing is not to be used in evidence;
- (c) the period of 60 days after the thing's seizure ends.

Note: See subsections (2) and (3) for exceptions to this rule.

*Exceptions*

- (2) Subsection (1):
  - (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing:
    - (i) is forfeited or forfeitable to the Commonwealth; or
    - (ii) is the subject of a dispute as to ownership.
- (3) The Regulator is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
  - (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the thing may continue to be retained because of an order under section 135; or
  - (c) the Commonwealth or the Regulator is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

*Return of thing*

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

**135 Issuing officer may permit a seized thing to be retained**

- (1) The Regulator may apply to an issuing officer for an order permitting the retention of a thing seized under this Part for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
  - (a) 60 days after the seizure; or

- (b) a period previously specified in an order of an issuing officer under this section.
- (2) Before making the application, the Regulator must:
  - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the Regulator believes to have such an interest of the proposed application.

*Order to retain thing*

- (3) The issuing officer may order that the thing may continue to be retained for a period specified in the order if the issuing officer is satisfied that it is necessary for the thing to continue to be retained:
  - (a) for the purposes of an investigation as to whether a related provision has been contravened; or
  - (b) to enable evidence of a contravention mentioned in paragraph (a) to be secured for the purposes of a prosecution or an action to obtain a civil penalty order.
- (4) The period specified must not exceed 3 years.

**136 Disposal of seized things**

- (1) The Regulator may dispose of a thing seized under this Part if:
  - (a) the Regulator has taken reasonable steps to return the thing to a person; and
  - (b) either:
    - (i) the Regulator has been unable to locate the person; or
    - (ii) the person has refused to take possession of the thing.
- (2) The Regulator may dispose of the thing in such manner as the Regulator thinks appropriate.

**137 Compensation for acquisition of property**

- (1) If the operation of section 136 would result in an acquisition of property from a person otherwise than on just terms, the

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Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a relevant court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this Act:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.



**Division 4—Investigation warrants****138 Investigation warrants***Application for warrant*

- (1) An authorised person may apply to an issuing officer for a warrant under this section in relation to premises.

*Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the issuing officer must not issue the warrant unless the authorised person or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

*Content of warrant*

- (4) The warrant must:
  - (a) state the offence or offences, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
  - (b) describe the premises to which the warrant relates; and
  - (c) state that the warrant is issued under this Division; and
  - (d) specify the kinds of evidential material that are to be searched for under the warrant; and
  - (e) state that the evidential material specified may be seized under the warrant; and
  - (f) state that any thing found in the course of executing the warrant, that the person executing the warrant believes on reasonable grounds to be evidence of the contravention of a related provision, may be seized under the warrant; and
  - (g) name one or more authorised persons; and

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- (h) authorise the authorised persons named in the warrant:
  - (i) to enter the premises; and
  - (ii) to exercise the powers set out in this Part and Part 7 in relation to the premises; and
- (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (j) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

**139 Investigation warrants by telephone, fax etc.**

*Application for warrant*

- (1) An authorised person may apply to an issuing officer by telephone, fax or other electronic means for a warrant under section 138 in relation to premises:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the warrant, the authorised person must prepare an information of the kind mentioned in subsection 138(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the authorised person may apply for the warrant before the information is sworn or affirmed.

*Issuing officer may complete and sign warrant*

- (4) The issuing officer may complete and sign the same warrant that would have been issued under section 138 if the issuing officer is satisfied that there are reasonable grounds for doing so:
  - (a) after considering the terms of the information; and
  - (b) after receiving such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

- (5) After completing and signing the warrant, the issuing officer must inform the authorised person, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
  - (b) the day on which, and the time at which, the warrant was signed.

*Obligations on authorised person*

- (6) The authorised person must then do the following:
- (a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
  - (b) state on the form the following:
    - (i) the name of the issuing officer;
    - (ii) the day on which, and the time at which, the warrant was signed;
  - (c) send the following to the issuing officer:
    - (i) the form of warrant completed by the authorised person;
    - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (7) The authorised person must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day on which the warrant ceases to be in force;
  - (b) the day on which the warrant is executed.

*Issuing officer to attach documents together*

- (8) The issuing officer must attach the documents provided under paragraph (6)(c) to the warrant signed by the issuing officer.

## **140 Authority of warrant**

- (1) A form of warrant duly completed under subsection 139(6) is authority for the same powers as are authorised by the warrant signed by the issuing officer under subsection 139(4).

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- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 139 if:
- (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
  - (b) the warrant signed by the issuing officer authorising the exercise of the power is not produced in evidence.

**141 Offence relating to warrants by telephone, fax etc.**

An authorised person must not:

- (a) state in a document that purports to be a form of warrant under section 139 the name of an issuing officer unless that issuing officer signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the authorised person's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised person knows departs in a material particular from the terms of a warrant signed by an issuing officer under that section; or
- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the authorised person knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or
- (e) give to an issuing officer a form of warrant under that section that is not the form of warrant that the authorised person purported to execute.

Penalty: Imprisonment for 2 years.

**142 Completing execution of an investigation warrant after temporary cessation**

- (1) This section applies if an authorised person, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The authorised person, and persons assisting, may complete the execution of the warrant if:
  - (a) the warrant is still in force; and
  - (b) the authorised person and persons assisting are absent from the premises:
    - (i) for not more than 1 hour; or
    - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by an issuing officer under subsection (5); or
    - (iii) for a longer period if the occupier of the premises consents in writing.

*Application for extension in emergency situation*

- (3) An authorised person, or person assisting, may apply to an issuing officer for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
  - (a) there is an emergency situation; and
  - (b) the authorised person or person assisting believes on reasonable grounds that the authorised person and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the authorised person or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

*Extension in emergency situation*

- (5) An issuing officer may extend the period during which the authorised person and persons assisting may be away from the premises if:

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- (a) an application is made under subsection (3); and
- (b) the issuing officer is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
- (c) the extension would not result in the period ending after the warrant ceases to be in force.

**143 Completing execution of an investigation warrant stopped by court order**

An authorised person, and any persons assisting, may complete the execution of an investigation warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

## **Part 7—General provisions relating to monitoring and investigation**

### **Division 1—Obligations of authorised persons in entering premises**

#### **144 Consent**

- (1) Before obtaining the consent of an occupier to enter premises for the purposes of paragraph 117(2)(a) or 125(2)(a), an authorised person must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised person entered premises because of the consent of the occupier of the premises, the authorised person, and any person assisting the authorised person, must leave the premises if the consent ceases to have effect.

#### **145 Announcement before entry under warrant**

- (1) Before entering premises under a monitoring warrant or an investigation warrant, an authorised person must:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and

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- (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
  - (a) an authorised person does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the authorised person must show his or her identity card to the occupier or other person as soon as practicable after entering the premises.

**146 Authorised person to be in possession of warrant**

- (1) An authorised person executing a monitoring warrant must be in possession of the warrant issued by the issuing officer under section 124, or a copy of the warrant as so issued.
- (2) An authorised person executing an investigation warrant must be in possession of:
  - (a) the warrant issued by the issuing officer under section 138, or a copy of the warrant as so issued; or
  - (b) the form of warrant completed under subsection 139(6), or a copy of the form as so completed.

**147 Details of warrant etc. to be given to occupier**

- (1) An authorised person must comply with subsection (2) if:
  - (a) a monitoring warrant or an investigation warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.



- (2) The authorised person executing the warrant must, as soon as practicable:
- (a) if the warrant is a monitoring warrant issued under section 124—make a copy of the warrant available to the occupier or other person (which need not include the signature of the issuing officer who issued it); and
  - (b) if the warrant is an investigation warrant—do one of the following:
    - (i) if the warrant was issued under section 138—make a copy of the warrant available to the occupier or other person (which need not include the signature of the issuing officer who issued it);
    - (ii) if the warrant was signed under section 139—make a copy of the form of warrant completed under subsection 139(6) available to the occupier or other person; and
  - (c) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 3 of this Part.

## Division 2—Other powers of authorised persons

### Subdivision A—Asking questions and seeking production of documents

#### 148 Authorised person may ask questions and seek production of documents

*Application*

- (1) This section applies if:
  - (a) an authorised person enters premises for the purposes of determining whether:
    - (i) a provision of this Act has been, or is being, complied with; or
    - (ii) information given in compliance or purported compliance with a provision of this Act is correct; or
  - (b) an authorised person enters premises to search for evidential material.

*Entry with consent—authorised person may ask questions or request production of documents*

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised person may ask the occupier to answer any questions, and produce any document, relating to:
  - (a) the operation of the provision mentioned in subparagraph (1)(a)(i); or
  - (b) the information mentioned in subparagraph (1)(a)(ii); or
  - (c) evidential material.

*Entry under a warrant—authorised person may require answers or production of documents*

- (3) If the entry is authorised by a monitoring warrant or an investigation warrant, the authorised person may require any

person on the premises to answer any questions, and produce any document, relating to:

- (a) in the case of a monitoring warrant:
  - (i) the operation of the provision mentioned in subparagraph (1)(a)(i); or
  - (ii) the information mentioned in subparagraph (1)(a)(ii); or
- (b) in the case of an investigation warrant—evidential material of the kind specified in the warrant.

*Offence*

- (4) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

## **Subdivision B—Opening gaming machines**

### **149 Authorised person may open gaming machines**

*Application*

- (1) This section applies if an authorised person:
  - (a) enters premises and exercises monitoring powers under Part 5; or
  - (b) enters premises and exercises investigation powers under Part 6.

*Opening gaming machines*

- (2) The authorised person may, in the course of exercising monitoring powers or investigation powers, do any or all of the following in relation to a gaming machine on the premises:
  - (a) open the gaming machine;
  - (b) open, inspect, examine, take measurements of or conduct tests on any components inside the gaming machine (including a component that has been sealed);

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- (c) if the gaming machine, or a component inside the gaming machine, has been marked or sealed to preserve the integrity of the operation of the gaming machine—to remove, alter or break the mark or seal to open the machine or component;
- (d) request a person to do a thing mentioned in paragraphs (a) to (c).

Note 1: If entry to the premises is under a monitoring warrant or an investigation warrant, a failure to comply with a request under paragraph (2)(d) is an offence (see section 153).

Note 2: Subsection (2) of this section has effect despite any State or Territory law to the contrary (see section 151).

*Prerequisites when opening a gaming machine or component*

- (3) An authorised person may open a gaming machine or component as mentioned in paragraphs (2)(a) to (c) only if:
  - (a) the authorised person has appropriate training in relation to the opening of the machine or component; and
  - (b) the authorised person believes on reasonable grounds that the opening of the machine or component can be carried out without damage to the machine or component.
- (4) An authorised person may request a person to do a thing under paragraph (2)(d) in relation to a gaming machine or component only if the authorised person believes on reasonable grounds that the thing can be done without damage to the machine or component.
- (5) To avoid doubt, in subsections (3) and (4), damage to the machine or component does not include damage to a mark or seal referred to in paragraph (2)(c) in relation to the machine or component.

*Monitoring and investigation powers not limited*

- (6) The powers in subsection (2) do not limit the monitoring powers or investigation powers.

**150 Authorised person to notify about broken seals and reseal gaming machines**

- (1) This section applies if an authorised person has, under section 149:
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- (a) removed, altered or broken; or
  - (b) requested the removal, alteration or breaking of;
- a mark or seal referred to in paragraph 149(2)(c) in relation to a gaming machine located on premises in a State or Territory.
- (2) The authorised person must:
- (a) notify as soon as practicable:
    - (i) the occupier of the premises; and
    - (ii) the person or other body responsible for regulating gaming machines in the State or Territory; and
  - (b) reseal the machine or component in accordance with procedures prescribed by the regulations.

*Regulations*

- (3) The regulations may:
- (a) prescribe procedures for resealing gaming machines, or components of gaming machines, that have been opened under section 149; and
  - (b) prohibit a person from removing, altering or breaking a seal applied in accordance with procedures mentioned in paragraph (a), unless the person is permitted to do so by the regulations; and
  - (c) provide for offences in relation to a contravention of a prohibition mentioned in paragraph (b).

Note: For the limit on penalties for offences against the regulations, see section 201.

### **151 Relationship with State or Territory laws**

- (1) This Subdivision has effect despite any law of a State or Territory to the contrary.
- (2) A person does not commit an offence, and is not liable to any penalty, under the provisions of an enactment of a State or Territory, as a result of the person:
  - (a) doing a thing mentioned in subsection 149(2) in accordance with section 149 (including doing a thing mentioned in that

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subsection as a result of a request under paragraph  
149(2)(d); or

- (b) resealing a gaming machine or component in accordance with section 150.

## **Division 3—Occupier's rights and responsibilities on entry**

### **152 Occupier entitled to observe execution of warrant**

- (1) The occupier of premises to which a monitoring warrant or an investigation warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **153 Occupier to provide authorised person with facilities and assistance**

- (1) The occupier of premises to which a monitoring warrant or an investigation warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an authorised person executing the warrant; and
  - (b) any person assisting the authorised person;with all reasonable facilities and assistance for the effective exercise of their powers (including complying with a request made under paragraph 149(2)(d)).
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## **Division 4—Miscellaneous**

### **154 Powers of issuing officers**

#### *Powers conferred personally*

- (1) A power conferred on an issuing officer by this Part, Part 5 (monitoring powers) or Part 6 (investigation powers) is conferred on the issuing officer:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

#### *Powers need not be accepted*

- (2) The issuing officer need not accept the power conferred.

#### *Protection and immunity*

- (3) An issuing officer exercising a power conferred by this Part, Part 5 (monitoring powers) or Part 6 (investigation powers) has the same protection and immunity as if the issuing officer were exercising the power:
  - (a) as the court of which the issuing officer is a member; or
  - (b) as a member of the court of which the issuing officer is a member.

### **155 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in Part 5 (monitoring powers) or 6 (investigation powers):
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:



- (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
- (ii) insufficient care was exercised by the person operating the equipment.

Note: For a definition of *damage*, see section 5.

- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a relevant court for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

### **156 Compensation for damage to gaming machine**

- (1) This section applies if:
  - (a) as a result of a gaming machine, or a component of the gaming machine, being opened as mentioned in section 149, damage is caused to the machine or component; and
  - (b) the damage occurs because:
    - (i) insufficient care was exercised by an authorised person in selecting the person (other than a person requested under paragraph 149(2)(d)) who was to open the machine or component; or
    - (ii) insufficient care was exercised by an authorised person opening the machine or component.
- (2) The Commonwealth must pay the owner of the gaming machine such reasonable compensation for the damage as the Commonwealth and the owner agree on.

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- (3) However, if the owner and the Commonwealth fail to agree, the owner may institute proceedings in a relevant court for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the opening of the gaming machine or component.

## **Part 8—Requiring persons to give information, produce documents and keep records**

### **157 Power to require persons to give information, produce documents or answer questions**

- (1) The Regulator may give a notice to a person under subsection (2) if the Regulator has reason to believe that the person has information or a document that is relevant to the administration or enforcement of this Act.
- (2) The Regulator may, by written notice given to the person, require the person:
  - (a) to give any such information to a specified authorised person; or
  - (b) to produce any such document to a specified authorised person; or
  - (c) to appear before a specified authorised person to answer questions.
- (3) The notice must:
  - (a) if paragraph (2)(a) or (b) applies:
    - (i) specify the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
    - (ii) specify the manner in which the person is required to comply with the notice; and
  - (b) if paragraph (2)(c) applies—specify a time and place at which the person is to appear; and
  - (c) in any case—state the effect of:
    - (i) subsection (6) (offence for failure to comply); and
    - (ii) sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

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*Oath or affirmation*

- (4) An authorised person may require answers provided under paragraph (2)(c) to be verified by, or given on, oath or affirmation and either orally or in writing.
- (5) An authorised person to whom information or answers are verified or given may administer the oath or affirmation.

*Offence*

- (6) A person commits an offence if:
  - (a) the person is given a notice under subsection (2); and
  - (b) the person fails to comply with the notice.

Penalty for contravention of this subsection: 30 penalty units or imprisonment for 6 months, or both.

**158 Translation of documents**

- (1) If:
  - (a) a person is required by this Act to produce a document; and
  - (b) the document is not written in English;an authorised person may request the person to make available a certified English translation of the document within 28 days.

*Offence*

- (2) A person commits an offence if the person refuses or fails to comply with a request under subsection (1).

Penalty: 4 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Definition*

- (4) In this Act:

*certified*, in relation to a translation of a document, means certified by a statement in writing to be a correct translation of the document into English.

## **159 Record keeping requirements**

*Regulations may prescribe record keeping requirements*

- (1) The regulations may prescribe requirements in relation to keeping and retaining records of specified information that is relevant to this Act.
- (2) Regulations for the purposes of subsection (1) may impose such requirements on any or all of the following persons:
  - (a) a constitutional corporation that makes a gaming machine available for use;
  - (b) a person who:
    - (i) is an agent of a constitutional corporation that owns a gaming machine; and
    - (ii) makes the gaming machine available for use;
  - (c) a person who makes a gaming machine that is owned by a constitutional corporation available for use for the purposes of, or in the course of, conducting the constitutional corporation's business or activities;
  - (d) a person who makes a gaming machine available for use for the purposes of, or in the course of, the business or activities of a constitutional corporation that occupies premises on which the gaming machine is located;
  - (e) a person who occupies gaming machine premises and allows another person to provide an automatic teller machine on those premises;
  - (f) a person who provides an automatic teller machine on gaming machine premises;
  - (g) a person who is licensed under section 56;
  - (h) a person who is, or may be, liable to pay a levy.

*Offence*

- (3) A person commits an offence if:
-

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- (a) the person is subject to a requirement under regulations made under subsection (1); and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: 4 penalty units.

- (4) Strict liability applies to paragraph (3)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Chapter 8—Enforcement**

### **Part 1—Guide to this Chapter**

#### **160 Guide to this Chapter**

This Chapter provides for a range of actions to be taken to enforce this Act.

Civil penalty orders may be sought from a court under Part 2, in relation to contraventions of civil penalty provisions.

A person can be given an infringement notice under Part 3 in relation to a contravention of a civil penalty provision.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

An injunction may be sought under Part 4 to restrain a person from contravening a provision, or to compel compliance with a provision.

Under Part 5, the Regulator may accept from a person an undertaking relating to compliance with a provision. The undertaking may be enforced by court order.

A person may be given a compliance notice under Part 6, if an authorised person reasonably believes that the person has contravened a provision. The notice may require the person to take specified action to remedy the contravention. A failure to comply with a notice may be subject to a civil penalty.

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The Regulator may publicise under Part 7 details of certain enforcement action taken under this Chapter.



## **Part 2—Civil penalty provisions**

### **Division 1—Obtaining a civil penalty order**

#### **161 Civil penalty orders**

##### *Application for order*

- (1) The Regulator may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

Note: The Regulator cannot apply for an order in certain cases where an undertaking or compliance notice has been given (see subsections 187(6) and 189(5)).

- (2) The Regulator must make the application within 4 years of the alleged contravention.

##### *Court may order person to pay pecuniary penalty*

- (3) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

##### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the court may take into account all relevant matters, including:

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- (a) the nature and extent of the contravention; and
- (b) the nature and extent of any loss or damage suffered because of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court to have engaged in any similar conduct.

**162 Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

**163 Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

**164 Multiple contraventions**

- (1) A relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**165 Proceedings may be heard together**

A relevant court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**166 Civil evidence and procedure rules for civil penalty orders**

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**167 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## Division 2—Civil proceedings and other enforcement action

### 168 Civil proceedings after other enforcement action

A relevant court may not make a civil penalty order against a person for a contravention (the *gambling contravention*) of a civil penalty provision if:

- (a) the person has been convicted of an offence under a law of the Commonwealth, a State or a Territory; or
- (b) the person has been found by a court to have contravened a civil penalty provision under a law of a State or a Territory; that is constituted by conduct that is the same, or substantially the same, as the conduct constituting the gambling contravention.

### 169 Other enforcement action during civil proceedings

- (1) Proceedings (the *gambling proceedings*) for a civil penalty order against a person for a contravention (the *gambling contravention*) of a civil penalty provision are stayed if:
  - (a) either:
    - (i) criminal proceedings are commenced or have already been commenced against the person for an offence under a law of the Commonwealth, a State or a Territory; or
    - (ii) civil proceedings are commenced or have already been commenced against the person for a contravention of a civil penalty provision under a law of a State or a Territory; and
  - (b) the offence or civil penalty provision referred to in paragraph (a) is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the gambling contravention.
- (2) The gambling proceedings may be resumed if the person is not convicted of the offence, or a court does not find that the person has contravened the civil penalty provision, referred to in

paragraph (1)(a). Otherwise, the gambling proceedings are dismissed.

### **170 Other enforcement action after civil proceedings**

The following proceedings may be commenced against a person:

- (a) criminal proceedings under a law of the Commonwealth, a State or a Territory (subject to the terms of that law);
- (b) proceedings for a contravention of a civil penalty provision under a law of a State or a Territory (subject to the terms of that law);

for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision under this Act regardless of whether a civil penalty order has been made against the person in relation to the contravention.

### **171 Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings brought under a law of the Commonwealth against the individual if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings under this Act for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## **Division 3—Miscellaneous**

### **172 Ancillary contravention of civil penalty provisions**

- (1) A person must not:
  - (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 174 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to this subsection.

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

### **173 Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who chooses to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

#### **174 State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than a civil penalty provision that is taken under subsection 172(2) to be contravened), it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of section 173 (which is about mistake of fact).

#### **175 Civil penalty provisions contravened by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

## Part 3—Infringement notices

### 176 When an infringement notice may be given

- (1) If the Regulator has reasonable grounds to believe that a person has contravened a civil penalty provision in Chapter 3 (non-compliance with national gambling reforms) or 5 (requirements for manufacturing and importing gaming machines), the Regulator may give an infringement notice to the person for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision.

### 177 Matters to be included in an infringement notice

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) give brief details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for the contravention; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (e) state the amount that is payable under the notice; and
  - (f) give an explanation of how payment of the amount is to be made; and
  - (g) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) proceedings for a civil



- penalty order will not be brought in relation to the alleged contravention; and
- (h) state that payment of the amount is not an admission of liability; and
  - (i) state that the person may apply to the Regulator to have the period in which to pay the amount extended; and
  - (j) state that the person may choose not to pay the amount and, if the person does so, proceedings for a civil penalty order may be brought in relation to the alleged contravention; and
  - (k) set out how the notice can be withdrawn; and
  - (l) state that if the notice is withdrawn, proceedings for a civil penalty order may be brought in relation to the alleged contravention; and
  - (m) state that the person may make written representations to the Regulator seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(e), the following amount is to be stated in the notice:
- (a) for an alleged contravention by a person of a provision in Part 2 of Chapter 3 (gaming machines that do not comply with precommitment and dynamic warning requirements), section 63 (providing non-compliant automatic teller machine), or section 79 or 80 (manufacturing and importing gaming machines):
    - (i) if the person is a body corporate—10 penalty units; or
    - (ii) otherwise—2 penalty units;
  - (b) for an alleged contravention by a person of section 62 (occupying premises containing non-compliant automatic teller machine):
    - (i) if the person is a body corporate—5 penalty units; or
    - (ii) otherwise—1 penalty unit.

### **178 Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the Regulator for an extension of the period referred to in paragraph 177(1)(g).

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- (2) If the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.
- (3) If the Regulator extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 177(1)(g) is taken to be a reference to that period so extended.
- (4) If the Regulator does not extend that period, a reference in this Part (other than in this section), or in a notice or other instrument under this Part, to the period referred to in paragraph 177(1)(g) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 177(1)(g);
  - (b) the day that is 7 days after the day the person was given notice of the Regulator's decision not to extend.
- (5) The Regulator may extend the period more than once under subsection (2).

### 179 Withdrawal of an infringement notice

*Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the Regulator seeking the withdrawal of the notice.

*Withdrawal of notice*

- (2) The Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the Regulator:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the Regulator; and

- (b) may take into account the following:
  - (i) whether a court has previously imposed a penalty on the person for a contravention of an offence or civil penalty provision in this Act;
  - (ii) the circumstances of the alleged contravention;
  - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a civil penalty provision that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
  - (iv) any other matter the Regulator considers relevant.

*Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  - (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and
  - (e) that proceedings for a civil penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

- (5) If:
  - (a) the Regulator withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

**180 Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 177(1)(g):

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- (a) any liability of the person for the alleged contravention is discharged; and
  - (b) proceedings for a civil penalty order may not be brought in relation to the alleged contravention; and
  - (c) the person is not regarded as having admitted liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

**181 Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a civil penalty provision; or
- (b) affect the liability of a person for an alleged contravention of a civil penalty provision if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a civil penalty provision.

## **Part 4—Injunctions**

### **182 Grant of injunctions**

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of any provision of this Act, a relevant court may, on application by an authorised person, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do a thing.

#### *Performance injunctions*

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
  - (b) the refusal or failure was, is or would be a contravention of a provision of this Act;
- a relevant court may, on application by an authorised person, grant an injunction requiring the person to do that thing.

### **183 Interim injunctions**

#### *Grant of interim injunctions*

- (1) Before deciding an application for an injunction under section 182, a relevant court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do a thing.

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*No undertakings as to damages*

- (2) The court must not require an applicant for an injunction under section 182 to give an undertaking as to damages as a condition of granting an interim injunction.

**184 Discharging or varying injunctions**

A relevant court may discharge or vary an injunction granted by that court under this Part.

**185 Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of a relevant court under this Part to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of a relevant court under this Part to grant an injunction requiring a person to do a thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not the person has previously refused or failed to do that thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that thing.

**186 Other powers of a relevant court unaffected**

The powers conferred on a relevant court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Part 5—Enforceable undertakings

### 187 Acceptance of undertakings

- (1) The Regulator may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with a provision of this Act, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with a provision of this Act, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a provision of this Act, or is unlikely to contravene such a provision, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of the Regulator.
- (4) The consent of the Regulator is not a legislative instrument.
- (5) The Regulator may, by written notice given to the person, cancel the undertaking.

#### *Relationship with civil penalty provisions*

- (6) The Regulator must not apply for a civil penalty order in relation to a contravention of a civil penalty provision by a person if an undertaking given by the person (and accepted) under this section in relation to the contravention has not been withdrawn or cancelled.



*Relationship with compliance notices*

- (7) The Regulator must not accept an undertaking in relation to a contravention if the person has been given a notice in relation to the contravention under section 189.

**188 Enforcement of undertakings**

- (1) If:
- (a) a person has given an undertaking under section 187; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the Regulator considers that the person has breached the undertaking;
- the Regulator may apply to a relevant court for an order under subsection (2).
- (2) If the relevant court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

## Part 6—Compliance notices

### 189 Compliance notices

*Application of this section*

- (1) This section applies if an authorised person reasonably believes that a person has contravened any provision of this Act.

*Giving a notice*

- (2) The authorised person may, except as provided by subsection (4), give the person a notice requiring the person to do the following within such reasonable time as is specified in the notice:
- (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);
  - (b) produce reasonable evidence of the person's compliance with the notice.
- (3) The notice must also:
- (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the authorised person who gave the notice; and
  - (c) set out brief details of the contravention; and
  - (d) explain that a failure to comply with the notice may contravene a civil penalty provision; and
  - (e) explain that the person may apply to a relevant court for a review of the notice on either or both of the following grounds:
    - (i) the person has not committed a contravention set out in the notice;
    - (ii) the notice does not comply with subsection (2) or this subsection; and
  - (f) set out any other matters prescribed by the regulations.

*Relationship with enforceable undertakings*

- (4) An authorised person must not give a person a notice in relation to a contravention if:
- (a) the person has given an undertaking under section 187 in relation to the contravention; and
  - (b) the undertaking has been accepted by the Regulator; and
  - (c) the undertaking has not been withdrawn or cancelled.

*Relationship with civil penalty provisions*

- (5) The Regulator must not apply for a civil penalty order in relation to a contravention of a civil penalty provision by a person if:
- (a) an authorised person has given the person a notice in relation to the contravention; and
  - (b) either of the following subparagraphs applies:
    - (i) the notice has not been withdrawn, and the person has complied with the notice;
    - (ii) the person has made an application under section 190 in relation to the notice that has not been completely dealt with.
- (6) A person who complies with a notice in relation to a contravention of a civil penalty provision is not taken:
- (a) to have admitted to contravening the provision; or
  - (b) to have been found to have contravened the provision.

*Person must not fail to comply with notice*

- (7) A person must not fail to comply with a notice given under this section.

Civil penalty:        30 penalty units.

- (8) Subsection (7) does not apply if the person has a reasonable excuse.
- (9) A person who chooses to rely on subsection (8) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

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**190 Review of compliance notices**

- (1) A person who has been given a notice under section 189 may apply to a relevant court for a review of the notice on either or both of the following grounds:
  - (a) the person has not committed a contravention set out in the notice;
  - (b) the notice does not comply with subsection 189(2) or (3).
- (2) At any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) The court may confirm, cancel or vary the notice after reviewing it.

## **Part 7—Miscellaneous**

### **191 Regulator may publicise certain offences and contraventions**

- (1) The Regulator may publicise, in any way he or she thinks appropriate, any or all of the following:
- (a) an offence against this Act of which a person has been convicted, and the person's name;
  - (b) a contravention of a civil penalty provision in relation to which a civil penalty order has been made against a person, and the person's name;
  - (c) the acceptance of an undertaking given under section 187 by a person, the terms of the undertaking, and the person's name;
  - (d) a breach of an undertaking given under section 187 in relation to which an order has been made against a person under subsection 188(2), the terms of the order and the person's name;
  - (e) the granting or varying of an injunction under Part 4 restraining a person from engaging in conduct, or requiring a person to do a thing, the nature of the conduct or thing, and the person's name.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

- (2) This section does not:
- (a) limit the power of the Regulator or anyone else to publicise a matter or a person's name; or
  - (b) prevent anyone else from publicising a matter or a person's name; or
  - (c) affect any obligation (however imposed) on anyone to publicise a matter or a person's name.

## **Chapter 9—Research, reviews and other provisions**

### **Part 1—Guide to this Chapter**

#### **192 Guide to this Chapter**

This Chapter contains miscellaneous provisions, such as provisions that relate to research and reviews into gambling, review of decisions, and the Regulator's power to delegate.

The Commonwealth is intending to agree to the conduct of a trial to determine whether requiring all persons who use a gaming machine to be registered delivers sufficient advantages over allowing persons to choose to be registered to justify implementing that requirement in all States and Territories. Under this Chapter, the Commonwealth may only agree to a robust trial that is independently designed, managed and evaluated. The Productivity Commission is required to review the results of the trial, as well as other matters, such as the progress gaming machine premises are making towards complying with certain requirements in this Act.

In addition, the Director of the Australian Institute of Family Studies may undertake or commission research, or produce data and statistics, in relation to gambling. The Director is assisted by an Expert Advisory Group on Gambling that is established by this Chapter.

## **Part 2—Research, reviews and other provisions**

### **Division 1—Research and reviews**

#### **193 Productivity Commission review of results of trial if trial conducted**

- (1) This section applies if:
  - (a) the Commonwealth agrees that a trial is to be conducted in relation to the requirements of Part 2 of Chapter 2 (precommitment systems); and
  - (b) the trial provides for mandatory precommitment by requiring that all persons who use a gaming machine that is covered by the trial be registered.
- (2) The Commonwealth may only agree to the conduct of a trial which contains all of the following features:
  - (a) one or more independent bodies must be engaged to design, manage and evaluate the trial;
  - (b) the terms of, and methodology for, the trial must be agreed between the body that is to design the trial and the body that is to evaluate the trial;
  - (c) the design and evaluation of the trial must be subject to peer review by academics with relevant expertise;
  - (d) the methodology for evaluating the trial must include:
    - (i) data from gaming machine premises in relevant adjoining geographical areas; and
    - (ii) qualitative and quantitative approaches; and
    - (iii) consideration of any demographic differences between the gambling populations of the trial area and the wider Australian community; and
    - (iv) data on the impact of mandatory precommitment on gaming machine premises participating in the trial, on the users of gaming machines on those premises, and on the families and communities of those users;

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- (e) the trial must monitor gambling behaviour for not less than 12 months;
  - (f) an independent auditor must be appointed to ensure the integrity and transparency of any financial data;
  - (g) the results of the trial, and de-identified data from the trial, must be publicly available (subject to ownership of the results and data, privacy conditions, and release arrangements).
- (3) After the trial has been completed, the Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer to the Productivity Commission for inquiry the results of the trial as evaluated by the independent body.
- Note: For requirements in relation to the referral, and reports on the inquiry, see section 195.
- (4) As part of the inquiry, the Productivity Commission must consider whether a precommitment system that requires all persons who use a gaming machine to be registered delivers sufficient advantages to individuals and communities over a precommitment system that allows persons to choose to be registered to justify implementing that requirement in all States and Territories.

**194 Productivity Commission review of other matters**

- (1) The Productivity Minister must, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer to the Productivity Commission for inquiry the following matters:
- (a) an assessment of the progress gaming machine premises are making towards complying with the requirements of Parts 2, 3 and 4 of Chapter 2 (precommitment systems, dynamic warnings and ATM withdrawal limits) and Part 2 of Chapter 5 (requirements for manufacturing and importing gaming machines);
  - (b) whether to retain the prohibition on the use of biometric processes in subsection 29(3);
  - (c) the use of loyalty schemes in relation to gaming machine premises as part of providing precommitment systems;



- (d) whether a limit should be imposed in relation to cash withdrawn on gaming machine premises using a system of electronic funds transfer at the point of sale;
- (e) whether there are grounds for smaller gaming machine premises in regional and remote areas being exempt from the requirements for precommitment systems and dynamic warnings;
- (f) any other matter that the Minister who administers this Act considers relevant.

Note 1: For requirements in relation to the referral, and reports on the inquiry, see section 195.

Note 2: For the Australian Gambling Research Centre, see subsection 196(3).

- (2) The matters under this section must be referred no later than 30 September 2014.

### **195 Requirements for referrals to Productivity Commission and reports**

- (1) In referring, under section 193 or 194, a matter to the Productivity Commission for inquiry, the Productivity Minister must:
  - (a) under paragraph 11(1)(b) of the *Productivity Commission Act 1998*, specify 6 months as the period within which the Commission must submit its report on that inquiry to the Productivity Minister; and
  - (b) under paragraph 11(1)(d) of that Act, require the Commission to make recommendations to the Commonwealth Government.

Note: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of the Parliament.

#### *Recommendations by Productivity Commission*

- (2) As soon as practicable after receiving a report on an inquiry, the Minister who administers this Act must cause a statement to be prepared that sets out the Commonwealth Government's response to each of the recommendations.

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- (3) Within 3 months after receiving a report on an inquiry, that Minister must cause copies of the statement to be tabled in each House of the Parliament.

*Matters relating to industry, industry development and productivity*

- (4) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, the matters referred to in sections 193 and 194 are taken to be matters relating to industry, industry development and productivity.

*No limit on Productivity Minister's powers*

- (5) Sections 193, 194 and this section do not limit the Productivity Minister's powers under paragraph 6(1)(a) of the *Productivity Commission Act 1998*.

### 196 Research into gambling

- (1) In addition to the functions under subsection 114B(2) of the *Family Law Act 1975*, the functions of the Director of the Australian Institute of Family Studies include:
- (a) undertaking or commissioning research into, or producing data and statistics about, the following:
    - (i) the harm caused by gambling to problem gamblers, the families and communities of problem gamblers, and those at risk of experiencing that harm;
    - (ii) measures that may be undertaken to reduce that harm;
    - (iii) recreational gambling; and
  - (b) increasing the capability and capacity of researchers to conduct the research and produce the data and statistics referred to in paragraph (a).
- (2) The supervisory levy must not be used to cover any costs that relate to the functions of the Director referred to in subsection (1).
- (3) The Director, when performing a function under subsection (1), and the Australian Institute of Family Studies, when assisting the Director in the performance of that function, are to be known as the Australian Gambling Research Centre.

- (4) For the purposes of section 114LD (delegation) of the *Family Law Act 1975*, the functions of the Director referred to in subsection (1) of this section are taken to be functions under Part XIVA of that Act.

### **197 Expert Advisory Group on Gambling**

- (1) The Expert Advisory Group on Gambling is established by this section.

#### *Functions of Group*

- (2) The functions of the Group are to provide advice to the Director of the Australian Institute of Family Studies, in his or her capacity as the Director of the Australian Gambling Research Centre, in relation to the following:
- (a) strategic directions, and research plans and programs, for undertaking or commissioning research into, or producing data and statistics about, gambling;
  - (b) strategies for increasing the capability and capacity of researchers to conduct research into, or produce data and statistics about, gambling.

Note: For the Australian Gambling Research Centre, see subsection 196(3).

#### *Membership of Group*

- (3) The Group consists of:
- (a) the Director; and
  - (b) at least 7, but no more than 11, other members.

#### *Appointments*

- (4) A member of the Group (other than the Director) is to be appointed by the Director by written instrument.
- (5) The Director must not appoint a person as a member of the Group unless the Director is satisfied that the person has relevant expertise.
- (6) The Director may revoke a person's appointment to the Group.

**Chapter 9** Research, reviews and other provisions

**Part 2** Research, reviews and other provisions

**Division 1** Research and reviews

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- (7) The Director must determine, in writing, the terms and conditions of appointment of the members of the Group.
- (8) The office of a member of the Group is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

*Directions by Director*

- (9) The Director may give the Group written directions as to:
  - (a) the way in which the Group is to carry out its functions; and
  - (b) procedures to be followed in relation to meetings.
- (10) A direction given under subsection (9) is not a legislative instrument.

## **Division 2—Other provisions**

### **198 Internal review of reviewable decisions**

#### *Notice of reviewable decision*

- (1) As soon as practicable after a person makes a reviewable decision (other than a decision that was made by the Regulator personally), the Regulator must cause a notice in writing to be given to the person whose interests are affected by the decision containing:
  - (a) the terms of the decision; and
  - (b) the reasons for the decision; and
  - (c) a statement setting out particulars of the person's right to have the decision reviewed under this section.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

#### *Application to Regulator for review of decision*

- (3) A person whose interests are affected by a reviewable decision may apply in writing to the Regulator for review of the decision.
- (4) An application for review must be made within:
  - (a) 30 days after the day on which the decision first came to the notice of the applicant; or
  - (b) any other period the Regulator allows (whether before or after the end of that period).

#### *Regulator to review decision*

- (5) On receiving the application, the Regulator must review the decision.

#### *Decision on review*

- (6) The Regulator may:

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- (a) make a decision affirming, varying or revoking the reviewable decision; and
- (b) if the Regulator revokes the decision, make any other decision that the Regulator thinks appropriate.

**199 AAT review of decisions**

*Notice of AAT review*

- (1) If the Regulator:
  - (a) makes a decision under subsection 198(6); or
  - (b) makes a reviewable decision personally;the Regulator must cause a notice in writing to be given to the person whose interests are affected by the decision containing:
  - (c) the terms of the decision; and
  - (d) the reasons for the decision; and
  - (e) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates.
- (2) A failure to comply with the requirements of subsection (1) of this section in relation to a decision does not affect the validity of the decision.

*Application to AAT*

- (3) Applications may be made (subject to the *Administrative Appeals Tribunal Act 1975*) to the Administrative Appeals Tribunal for review of:
  - (a) decisions made under subsection 198(6); or
  - (b) reviewable decisions made by the Regulator personally.

*Meaning of decision*

- (4) In this section:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**200 Delegation**

- (1) The Regulator may, by signed writing, delegate all or any of the Regulator's powers or functions under this Act, other than under section 113 (Regulator is an authorised person), to the following persons:
  - (a) an SES employee, or an acting SES employee, in the Department;
  - (b) a person occupying, or acting in, a position that is equivalent to or higher than an SES employee in:
    - (i) the public service of a State or Territory (subject to subsection (3)); or
    - (ii) a body established for a public purpose by or under a law of a State or Territory (subject to subsection (3)).
- (2) In exercising powers or functions delegated under subsection (1), the delegate must comply with any directions of the Regulator.
- (3) The Regulator may not delegate a power or function under this Act to a person referred to in paragraph (1)(b) without the written agreement of the relevant Minister of the State or Territory.

**201 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may include offences and civil penalty provisions, and prescribe penalties for contraventions of such provisions that do not exceed:
  - (a) for an offence—50 penalty units; and
  - (b) for a civil penalty provision:
    - (i) if the person who contravenes the civil penalty provision is a body corporate—250 penalty units; or
    - (ii) otherwise—50 penalty units.

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*[Minister's second reading speech made in—  
House of Representatives on 1 November 2012  
Senate on 29 November 2012]*

(60/12)

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164      *National Gambling Reform Act 2012*      No. 193, 2012