

[STATE ARMS]

New South Wales

Unlawful Gambling Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

Racing Administration Bill 1998

Gambling (Two-up) Bill 1998

Overview of Bill

The objects of this Bill are as follows:

- (a) to prohibit, in the public interest, certain forms of gambling,
- (b) to prevent the loss of public revenue that is derived from lawful forms of gambling,
- (c) to deter criminal influence and exploitation in connection with gambling activities.

This Bill is part of a legislative package which involves rewriting the *Gaming and Betting Act 1912* in a more modern form.

In updating the provisions of the *Gaming and Betting Act 1912*, this Bill:

- (a) removes a number of obsolete concepts and provisions (such as the offence relating to reputed cheats) while strengthening existing prohibitions that are still relevant in the public interest, and
- (b) rationalises and identifies more clearly the forms of gambling that are lawful and those that are unlawful, and
- (c) continues existing prohibitions such as carrying on unlicensed bookmaking activities, conducting or playing unlawful games (eg games of chance that are associated with casino gaming) and operating premises that are used for gambling.

This Bill also amends the *Crimes Act 1900* to create an indictable offence of conducting an unlawful gambling operation (ie an organised operation that involves certain elements such as running at least 2

premises used for gambling).

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 specifies the objects of the proposed Act as described in the above overview.

Clause 4 defines certain words and expressions used in the proposed Act. The term ***gambling*** is used in the proposed Act as a collective term that includes gaming, betting or wagering.

Clause 5 defines the term ***unlawful game*** in much the same way as it is presently defined under section 17 of the *Gaming and Betting Act 1912*. The term generally covers those types of games that are associated with casino gaming.

Clause 6 defines the term ***prohibited gaming device***. The term generally covers devices that are designed or used for the purposes of gambling.

Clause 7 specifies the forms of gambling that are lawful under other Acts (and will therefore not be prohibited by the proposed Act). These lawful forms of gambling include totalizator betting conducted in accordance with the *Totalizator Act 1997*, gambling at the licensed casino and conducting or participating in authorised public lotteries.

Part 2 Unlawful gambling activities

Division 1 Unlawful betting and bookmaking

Clause 8 makes it unlawful to engage in certain betting activities, including betting with unlicensed bookmakers via the Internet or other on-line telecommunications system.

Clause 9 prohibits bookmaking by unlicensed bookmakers. A licensed bookmaker cannot carry on bookmaking unless the bookmaker is at a licensed racecourse, however this restriction does not apply in relation to approved call of the card betting or doubles betting.

Clause 10 prohibits persons betting with unlicensed bookmakers.

Clause 11 prohibits persons having a financial interest in an unlawful bookmaking business.

Division 2 Unlawful gaming

Clause 12 prohibits the organising or conducting of an unlawful game.

Clause 13 prohibits the selling of tickets (or any thing that provides an opportunity to participate) in an unlawful game.

Clause 14 prohibits persons from participating in an unlawful game.

Clause 15 prohibits the possession of prohibited gaming devices and permitting the use or operation of such devices.

Division 3 Miscellaneous gambling offences

Clause 16 prohibits gambling with persons who are under the age of 18. This offence includes inducing minors to gamble.

Clause 17 prohibits gambling by persons who are under the age of 18.

Clause 18 prohibits cheating by persons who are engaged in lawful forms of gambling.

Clause 19 prohibits the possession of an unlawful gambling aid (ie any article or money used for unlawful gambling) and any documents, records, devices or programs that are used in connection with unlawful gambling.

Part 3 Unlawful gambling premises

Division 1 Declared gambling premises

Clause 20 provides that a Local Court may make an interim declaration that premises are gambling premises (ie premises that are used for playing unlawful games or for unlawful bookmaking activities).

Clause 21 requires notice of an interim declaration to be provided to the owner or occupier of the premises.

Clause 22 provides that the owner or occupier of the premises that are the subject of an interim declaration may apply for the revocation of the declaration.

Clause 23 provides for the revocation of an interim declaration by the Local Court.

Clause 24 provides that the Local Court may make a final declaration that premises are gambling premises.

Clause 25 allows submissions to be made as to whether the use of any declared gambling premises for the purposes of any business activity should be prohibited by the Local Court.

Clause 26 prohibits the use of any declared gambling premises for the purposes of any business activity.

Clause 27 requires notice of a final declaration, or of the revocation of an interim declaration, to be provided to the owner or occupier of the premises concerned.

Clause 28 provides for the revocation of a final declaration by the Local Court.

Clause 29 requires the Registrar-General to be notified of the making or revocation of an interim or final declaration.

Division 2 Offences relating to gambling premises

Clause 30 provides for the application of offences under the proposed Division to declared gambling premises.

Clause 31 prohibits the owner or occupier of premises from allowing the premises to be used as gambling premises.

Clause 32 prohibits the occupier of premises from allowing the premises to be used as gambling premises.

Clause 33 prohibits the organising or conducting of gambling premises.

Clause 34 creates the offence of being found on gambling premises otherwise than for a lawful purpose.

Clause 35 provides that the owner of declared gambling premises commits an offence if the premises are used as gambling premises while the declaration is in force.

Clause 36 provides that the occupier of declared gambling premises commits an offence if the premises are used as gambling premises while the declaration is in force.

Clause 37 creates the offence of being found on declared gambling premises otherwise than for a lawful purpose.

Part 4 Enforcement

Clause 38 provides for the removal of persons from racecourses or other premises if they are carrying on unlawful betting activities.

Clause 39 prohibits the obstruction of police officers in connection with their authority to enter premises under the proposed Act.

Clause 40 provides for search warrants in relation to premises that are suspected of being gambling premises.

Clause 41 authorises police officers to enter declared gambling premises.

Clause 42 provides for the eviction of the occupier of gambling premises by the owner of the premises.

Clause 43 authorises police officers to search for unlawful gambling aids or any other material connected with unlawful gambling.

Clause 44 provides for certain money, equipment and other material to be forfeited to the Crown.

Clause 45 provides for the recovery of certain money that is used by persons under the age of 18 for the purposes of gambling.

Part 5 Evidence and procedure

Clause 46 relates to evidence of publication of notices under the proposed Act concerning the declaration of premises as gambling premises.

Clause 47 provides that a person may be found to be a participant in an unlawful game even though the person was not playing the game for any money.

Clause 48 specifies certain circumstances in which premises will be regarded as being gambling premises for the purposes of an offence under the proposed Act.

Clause 49 relates to evidence of certain matters concerning unlawful betting.

Clause 50 provides that witnesses may be exempted from liability for offences under the proposed Act in certain circumstances.

Clause 51 provides for offences under the proposed Act to be dealt with by Local Courts, although some offences which attract a high penalty (ie 500 penalty units) are to be prosecuted on indictment.

Clause 52 provides for certain offences under the proposed Act to be dealt with by way of penalty notices.

Clause 53 deals with offences under the proposed Act that are committed by corporations.

Clause 54 provides for the recovery of expenses incurred by the police in connection with offences involving prohibited gaming devices.

Clause 55 allows a person's interstate gambling conviction to be counted in determining whether the person has committed a second or subsequent offence under the proposed Act.

Part 6 Miscellaneous

Clause 56 provides that agreements relating to unlawful gambling are unenforceable, and legal action cannot be taken to recover any money or thing alleged to have been won from unlawful gambling.

Clause 57 is a general regulation-making power.

Clause 58 gives effect to the Schedule of savings and transitional provisions.

Clause 59 gives effect to the Schedule containing amendments to other Acts.

Clause 60 repeals the *Gaming and Betting Act 1912* and the regulations made under that Act.

Clause 61 provides for a review of the proposed Act after 5 years.

Schedule 1 contains savings and transitional provisions, including a power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 contains consequential amendments to other Acts. The *Crimes Act 1900* is amended to create an offence of conducting an unlawful gambling operation (maximum penalty will be 1,000 penalty units or imprisonment for 7 years, or both). An unlawful gambling operation involves certain elements, such as the keeping of at least 2 premises for the purposes of unlawful gambling and substantial planning and organisation in matters connected with unlawful gambling.