

GAMING AND BETTING (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to establish a Gaming Tribunal, the principal function of which is to determine whether or not places are used as gaming-houses and to make declarations accordingly;
- (b) to enact further restrictions on the playing of unlawful games and the use of places as gaming-houses; and
- (c) to increase penalties for offences relating to the playing of unlawful games and the use of places as gaming-houses.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day.

Clause 3 is a formal provision giving effect to the Schedules of amendments.

Clause 4 is a formal provision giving effect to the Schedule of savings and transitional provisions.

SCHEDULE 1—AMENDMENTS RELATING TO GAMING-HOUSES

Schedule 1 (1) (a) is a consequential amendment to the definition of “Declared gaming-house” to recognise the effect of proposed sections 28 and 32.

Schedule 1 (1) (b) extends the definition of “Gaming-house” to include places which give access to the gaming area of a gaming-house and places used for concealing, removing or destroying instruments of gaming.

Schedule 1 (1) (c) inserts a definition of “Instruments of gaming” for the purposes of the Principal Act. (The definition is currently found in section 21A and repeated in sections 28A, 35 and 37 of the Principal Act.)

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Schedule 1 (1) (d) inserts a definition of “Senior police officer” for the purposes of the Principal Act, meaning a member of the police force of or above the rank of Inspector.

Schedule 1 (2) omits sections 21–35 of the Principal Act and inserts a proposed Division 2—Gaming-houses and a proposed Division 3—Declared gaming-houses into Part IIA of the Principal Act.

Proposed Division 2—Gaming-houses contains the following provisions:

Proposed section 21 makes it an offence for the owner or occupier of a place to knowingly allow the place to be used as a gaming-house. Knowledge of the unlawful use is attributed to a person who has been served with a notice by a senior police officer that the place is so used. Directors of corporations which contravene the proposed section are deemed to have contravened it also unless they can prove their ignorance of, or lack of control over, the commission of the offence.

Proposed section 21A makes it an offence for the keeper or manager of a place to knowingly allow the place to be used as a gaming-house.

Proposed section 22 enables the issuing of a search warrant (in accordance with Part III of the Search Warrants Act 1985) in respect of a place which is reasonably believed to be kept or used as a gaming-house.

Proposed section 23 makes it an offence for a person to organise or conduct or to assist in organising or conducting a gaming-house. A look-out, doorman or guard for a gaming-house is taken to have assisted in organising or conducting a gaming-house unless the person proves that he or she did not know and could not reasonably be expected to have known that the gaming-house was organised or conducted.

Proposed section 24 makes it an offence for a person to be in a gaming-house without lawful excuse, the onus of proving which lies on the defendant.

Proposed section 25 enables the forfeiture to the Crown of money and securities and of instruments of gaming seized in relation to an offence under Part IIA of the Principal Act.

Proposed section 26 enables an owner of a place to evict the occupier of the place if the owner has reasonable grounds to suspect that the place is used as a gaming-house.

Proposed section 27 enables the Supreme Court to cancel a notice to quit served under proposed section 26 on proof by the occupier that the place has not knowingly been allowed to be used as a gaming-house. Knowledge of the unlawful use is attributed to a person who has been served with a notice by a senior police officer that the place is so used.

Proposed Division 3—Declared gaming-houses contains the following provisions:

Proposed section 28 enables the Gaming Tribunal, on affidavit evidence from a senior police officer, to make an interim declaration that a place is reasonably suspected of being a gaming-house. On making an interim declaration, the Gaming Tribunal is required to fix a date for the purpose of hearing any application for rescission of the interim declaration.

Proposed section 28A requires a senior police officer to give notice of the making of an interim declaration to the owner or occupier of a declared gaming-house the subject of the interim declaration. Notice of the making of the interim declaration is also to be published twice in a newspaper circulating in the locality and once in the Gazette.

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- Proposed section 29 requires the Gaming Tribunal to cause notice of the making or rescission of an interim declaration under proposed section 28 and of the making or rescission of a declaration under proposed section 32 to be given to the Registrar-General for the purpose of enabling the Registrar-General to take appropriate action to record the making or rescission of the interim declaration or declaration in relation to the land affected.
- Proposed section 29A enables a member of the police force to arrest, without warrant, a person in a declared gaming-house the subject of an interim declaration. The proposed section also makes it an offence for a person to be in a declared gaming-house without lawful excuse, the onus of proving which lies on the defendant.
- Proposed section 30 makes an owner of a declared gaming-house the subject of an interim declaration guilty of an offence if the place is used by an occupier as a gaming-house unless the owner proves that he or she took all reasonable steps to evict the occupier.
- Proposed section 30A makes it an offence for the occupier of a declared gaming-house the subject of an interim declaration to use the place as a gaming-house.
- Proposed section 31 enables a member of the police force, without warrant, to have access to a declared gaming-house the subject of an interim declaration and to seize instruments of gaming, money and securities found in the declared gaming-house.
- Proposed section 31A enables application to be made to the Gaming Tribunal for rescission of an interim declaration.
- Proposed section 32 enables the Gaming Tribunal to make a declaration that a place the subject of an interim declaration is a gaming-house if no application for rescission of the interim declaration is made by the date fixed under proposed section 28 (4) or if such an application is made but is unsuccessful. The proposed section also enables the Gaming Tribunal to rescind an interim declaration subject to such conditions, including the giving of security and undertakings to ensure that the place will not be used as a gaming-house, as the Gaming Tribunal thinks fit.
- Proposed section 32A entitles a person having, in the opinion of the Gaming Tribunal, a sufficient interest in a place the subject of an interim declaration to make submissions on the question of whether the use of the place for the purposes of any business should be prohibited.
- Proposed section 33 provides that if a place the subject of an interim declaration is declared to be a gaming-house, use of the place for the purposes of any business is prohibited, except to the extent that the Gaming Tribunal otherwise determines. The proposed section makes it an offence to contravene the prohibition.
- Proposed section 33A requires a senior police officer to give notice of the making of a declaration to the owner or occupier of a declared gaming-house the subject of the declaration if the owner or occupier was not present before the Gaming Tribunal when the declaration was made. Notice of the making of the declaration or of the rescission of an interim declaration is also to be published twice in a newspaper circulating in the locality and once in the Gazette.
- Proposed section 34 applies the provisions of proposed sections 29A, 30, 30A and 31 to gaming-houses the subject of a declaration in the same way as those provisions apply to gaming-houses the subject of an interim declaration.
- Proposed section 34A specifies the circumstances in which the Gaming Tribunal may rescind a declaration that a place is a gaming-house. A rescission may be subject to such conditions, including the giving of security and undertakings to ensure that the place will not again be used as a gaming-house, as the Gaming Tribunal thinks fit.

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Proposed section 35 requires a senior police officer to cause notice of the rescission of a declaration to be published twice in a newspaper circulating in the locality and once in the Gazette.

Proposed section 35A is an evidentiary provision which facilitates proof of the publication of notices under the proposed Division.

Schedule 1 (3) (a) provides that evidence that a person at or near a place which a member of the police force is authorised to enter under Part IIA of the Principal Act has a device which is capable of being used to give an alarm to a person within the place is evidence of the use of the place as a gaming-house.

Schedule 1 (3) (b) makes an amendment consequential on the amendment made by Schedule 1 (1) (c).

Schedule 1 (4) makes it an offence for a person to give an alarm as to the presence of police in relation to a place which a member of the police force is authorised to enter under Part IIA of the Principal Act.

Schedule 1 (5) makes a consequential amendment to provide for the application of the gaming-house provisions to betting-houses.

Schedule 1 (6) extends the list of second or subsequent offences which may only be prosecuted on indictment.

**SCHEDULE 2—AMENDMENTS RELATING TO THE CONSTITUTION AND
PROCEDURE OF THE GAMING TRIBUNAL**

Schedule 2 (1) (a) inserts a definition of “Gaming Tribunal” into section 3 of the Principal Act.

Schedule 2 (1) (b) inserts an interpretation provision concerning the exercise of functions into section 3 of the Principal Act.

Schedule 2 (2) inserts proposed Part IIB—The Gaming Tribunal into the Principal Act. The proposed Part contains the following provisions:

Proposed section 38A provides for the constitution of the Gaming Tribunal as a court of record.

Proposed section 38B specifies the jurisdiction of the Gaming Tribunal.

Proposed section 38C provides for the Chief Judge of the District Court to be the President of the Gaming Tribunal and enables the Governor-in-Council to appoint a District Court Judge as Deputy President.

Proposed section 38D appoints each District Court Judge to be a member of the Gaming Tribunal.

Proposed section 38E enables the appointment under the Public Service Act 1979 of persons to staff the Gaming Tribunal.

Proposed section 38F provides that, except where the Gaming Tribunal is hearing an application to rescind a declaration that a place is a gaming-house, it is to be constituted by a single member. Otherwise, it is to be constituted by the President and 2 other members.

Proposed section 38G enables persons entitled to make an application or submission to the Gaming Tribunal to be represented. Hearings of the Gaming Tribunal are, unless it otherwise orders, to be held in public.

Proposed section 38H provides for the production of evidence before the Gaming Tribunal.

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Proposed section 38i enables the Gaming Tribunal to adjourn its proceedings.

Proposed section 38j empowers the President to arrange the sittings of the Gaming Tribunal and the allocation of its work.

Proposed section 38k gives the Gaming Tribunal, subject to the Principal Act and the regulations, control over its own proceedings.

Proposed section 38l empowers the making of regulations as to the functioning of the Gaming Tribunal.

SCHEDULE 3—MISCELLANEOUS AMENDMENTS

Schedule 3 (1) (a) converts, by way of statute law revision, a dollar amount of a penalty to penalty units.

Schedule 3 (1) (b) requires a court, in determining the amount of any penalty for an offence under section 17A of the Principal Act relating to the possession, use or operation of prohibited amusement devices, to take into account the number of prohibited amusement devices involved in the commission of the offence.

Schedule 3 (2) and (3) require the Licensing Court (instead of allowing the Court a discretion) to order a device which it is satisfied is a prohibited amusement device, or which it is satisfied has been used in contravention of the Principal Act, together with any money in the device, to be forfeited to the Crown.

Schedule 3 (4) provides that a look-out, doorman or guard for a place at which an unlawful game is organised or conducted is taken to have assisted in organising or conducting the game unless the person proves that he or she did not know and could not reasonably be expected to have known that the game was organised or conducted.

Schedule 3 (5) increases the penalty for playing at or betting on an unlawful game from \$500 to 10 penalty units (the value of a penalty unit currently being \$100).

Schedule 3 (6) requires a court, in determining the amount of any penalty for an offence under section 20A of the Principal Act relating to the offering or provision of prizes for playing an amusement device, to take into account the number of amusement devices involved in the commission of the offence. Provision is also made to enable a court to order the forfeiture to the Crown of the amusement devices and any money in them.

Schedule 3 (7) amends the Principal Act by way of statute law revision to arrange the provisions of the Parts of the Principal Act into Divisions.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 4 contains savings and transitional provisions consequent on the enactment of the proposed Act.
