

# Unlawful Gambling Act 1998 No 113

[1998-113]



New South Wales

## Status Information

### Currency of version

Current version for 1 July 2020 to date (accessed 21 November 2024 at 22:12)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Unlawful Gambling Amendment \(Betting on Animals\) Bill 2023](#) [Non-government Bill— the Hon Emma Hurst, MLC]
- **Editorial note**  
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Responsible Minister

- Minister for Gaming and Racing

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 22 November 2023

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# Unlawful Gambling Act 1998 No 113



New South Wales

An Act to impose prohibitions on certain gambling activities and in relation to premises used for gambling; to repeal the *Gaming and Betting Act 1912*; to amend the *Crimes Act 1900* to create an offence of conducting an unlawful gambling operation; to amend certain other Acts; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Unlawful Gambling Act 1998*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) In particular, different days may be appointed for the commencement of section 60 for the purpose of repealing different provisions of the *Gaming and Betting Act 1912*, or the regulations under that Act, on different days.

### 3 Objects of Act

The objects of this Act 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.

### 4 Definitions

In this Act—

**bookmaker** includes any person—

- (a) who carries on the business of, or who acts as, a bookmaker, bookmaker's clerk or turf commission agent, or
- (b) who gains, or endeavours to gain, a livelihood wholly or partly by betting or making

wagers.

**declared gambling premises** means any premises that are the subject of—

- (a) an interim declaration under section 20, or
- (b) a final declaration under section 24.

**exercise** a function includes perform a duty.

**function** includes a duty.

**gambling** includes gaming, betting or wagering.

**gambling premises** means any premises that are—

- (a) used for playing or taking part in an unlawful game, or
- (b) used as a common gaming house at common law, or
- (c) used for or in connection with bookmaking carried on by or on behalf of a person who is not a licensed bookmaker.

**gaming equipment** means any device or thing used, or capable of being used, for or in connection with the playing of an unlawful game.

**licensed bookmaker** and **licensed racecourse** have the same meanings as they have in the [Betting and Racing Act 1998](#).

**money** includes any valuable thing or any security for money.

**occupier** of premises includes the lessee or sublessee who is not the owner of the premises.

**owner** of premises includes any person who is—

- (a) entitled to freehold possession of the premises, or
- (b) in actual receipt of, or entitled to receive, or if the premises were let to a tenant, would be entitled to receive, the rents and profits of the premises.

**premises** includes—

- (a) a building or structure, or part of a building or structure (such as a room), or
- (b) any land (whether or not built on), or
- (c) a vehicle or a vessel (whether or not used in navigation).

**prohibited gaming device**—see section 6.

**senior police officer** means a police officer of or above the rank of senior sergeant.

**unlawful gambling aid** means any money, or any article of a kind prescribed by the regulations for the purposes of this definition, that is used—

- (a) for or in connection with any form of gambling that is prohibited by or under this Act, or
- (b) for the purposes of a transaction that is dependent on any such form of gambling, whether or not (in the case of an article) it is ordinarily used for some other purpose.

**unlawful game**—see section 5.

## 5 Definition of “unlawful game”

- (1) For the purposes of this Act, the following games are **unlawful games**—
- (a) the games called respectively fan-tan, pak-a-pu, two-up, hazard, baccarat, faro or roulette, or any similar game of chance,
  - (b) any game of chance that is played at a table or with gaming equipment,
  - (c) any game involving the use or operation of a prohibited gaming device,
  - (d) any game that involves the disposal of money by lottery or by chance,
  - (e) any game in which the chances are not alike favourable to all the players, including among the players, the banker or other person (if any) by whom the game is managed or against whom the other players play or bet,
  - (f) any game that involves playing or staking against a bank that does not pass from one participant in the game to another—
    - (i) by chance or by regular rotation among all the participants in the game, and
    - (ii) without any requirement to pay a charge or comply with any other condition,
  - (g) any game with cards or other gaming equipment from which a person receives a percentage or share of the amount wagered,
  - (h) any game of skill or chance, or of mixed skill and chance, in which any money is staked or risked by a person on an event or contingency specified by the person and in which—
    - (i) there is a dealer, croupier or banker who is not a participant in the game while acting in such a capacity, or
    - (ii) a person, other than a participant in the game, receives a payment or other benefit from the playing of the game, or

(iii) a payment or other benefit is given or sought for the right to participate in the game or for the right to enter the land or premises on which the game is played.

(2) In any proceedings in relation to a game alleged to be an unlawful game referred to in subsection (1) (h), it is to be presumed, unless the contrary is proved, that the game was an unlawful game if more than 8 persons (including participants in the game) were in the vicinity of the playing of the game.

## 6 Definition of “prohibited gaming device”

(1) In this Act, **prohibited gaming device** means a device that—

(a) is designed or adapted for the playing of a game for money or a prize (being a game that is a game of chance, or a game that is partly a game of chance and partly a game requiring skill), or

(b) is designed or used for the purposes of gambling, or

(c) is declared by the regulations to be a prohibited gaming device for the purposes of this Act, or

(d) is of a class or description of devices declared by the regulations to be prohibited gaming devices for the purposes of this Act.

(2) Without limiting subsection (1) (c) or (d), a device is a prohibited gaming device for the purposes of this Act if the device is kept, used or operated in such circumstances, or in such manner, as may be prescribed by the regulations.

(3) A prohibited gaming device does not include a device that—

(a) is designed and used solely for the purposes of amusement or entertainment, and

(b) is declared by the regulations not to be a prohibited gaming device.

(4) A device that would otherwise be a prohibited gaming device is not a prohibited gaming device if—

(a) it is kept in a State-owned museum or similar public institution, and

(b) it is not used for the purposes of gambling, and

(c) it is used only for educational or cultural purposes.

## 7 Lawful forms of gambling

This Act does not prohibit any of the following—

(a) conducting a totalizator, or conducting any betting activity, under the authority of a licence granted under the [Totalizator Act 1997](#),



- (a1) processing bets in accordance with section 9A or 9B of the *Totalizator Act 1997*,
- (b) conducting or being a participant in a gaming activity (within the meaning of the *Community Gaming Act 2018*) that is authorised under that Act,
- (c) conducting or participating in a public lottery (within the meaning of the *Public Lotteries Act 1996*) that is authorised under that Act,
- (d) conducting or participating in a game of two-up that is lawful under the *Gambling (Two-up) Act 1998*,
- (e) gambling that is declared lawful under the *Casino Control Act 1992*,
- (f) keeping or operating an approved gaming machine within the meaning of the *Gaming Machines Act 2001* in a hotel or on the premises of a registered club in accordance with that Act,
- (g) exhibiting any device for promotional purposes if the device—
  - (i) is exhibited by the holder of a dealer’s licence or seller’s licence within the meaning of the *Gaming Machines Act 2001*, and
  - (ii) is exhibited with the approval of the Independent Liquor and Gaming Authority and in compliance with any conditions to which the approval is subject, and
  - (iii) is designed to be used to play a game that could lawfully be played by means of an approved gaming machine within the meaning of the *Gaming Machines Act 2001*, and
  - (iv) is not used for the purposes of gambling,
- (h) the possession, keeping, use or operation of a gaming machine within the meaning of the *Gaming Machines Act 2001* in the circumstances referred to in section 8 of that Act.
- (i) (Repealed)

## **Part 2 Unlawful gambling activities**

### **Division 1 Unlawful betting and bookmaking**

#### **8 Offences relating to unlawful betting**

- (1) For the purposes of this section, the following forms of betting are prohibited—
  - (a) betting on any event or contingency if the person is not present at a licensed racecourse and the bet is made with a bookmaker,
  - (b) betting on any event or contingency (other than a horse race, harness race,

greyhound race or declared betting event) when the person is present at a licensed racecourse,

- (c) betting on any event or contingency when the person is present at a racecourse and a trial meeting (within the meaning of the *Betting and Racing Act 1998*) is being held at that racecourse,
- (d) betting on any event or contingency when the person is present at a racecourse and a race meeting is being held at that racecourse in contravention of the *Betting and Racing Act 1998*.

(2) A person who engages in betting that is prohibited by subsection (1) is guilty of an offence.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

(3) A person must not make a bet on any horse race, harness race or greyhound race that is to be held anywhere in Australia if—

- (a) the bet is made by telephone or electronically by means of the Internet, subscription TV or other on-line communications system, and
- (b) the bet is made with another person whom the person making the bet knows (or would be reasonably expected to know)—
  - (i) is not a legal bookmaker, or
  - (ii) is not a person who is authorised under the law of any State or Territory to conduct totalizator betting.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

(4) For the purposes of subsection (3)—

**legal bookmaker** means—

- (a) a licensed bookmaker, or
- (b) a person who is authorised under the law of any other State or Territory to carry on bookmaking activities.

(4A) Subsection (3) extends to a bet that is made by a person while in the State even though the other person with whom the bet is made is outside the State (including outside Australia).

(5) To remove any doubt, subsection (3) does not operate to impose any criminal liability on any person other than the person making the bet as referred to in that subsection.

(6) The following forms of betting are not prohibited by or under this section (except subsection (3))—

- (a) betting on a horse race, harness race or greyhound race if the betting takes place at a race meeting that is held at a licensed racecourse on any day approved by the racing controlling body responsible for the type of racing concerned,
- (b) betting on a horse race, harness race, greyhound race or declared betting event if the betting takes place in an authorised betting auditorium,
- (c) betting on a declared betting event if the betting takes place at a licensed racecourse and the betting is carried on by a licensed bookmaker in accordance with a declared betting event authority held by the bookmaker,
- (d) betting on any event or contingency if the betting is made with or accepted by a licensed bookmaker in accordance with an authority under section 16 of the *Betting and Racing Act 1998*,
- (d1) betting on any event or contingency if the betting is made by telephone or electronically with a person who is authorised under the law of any other State or Territory, or any other jurisdiction, to carry on bookmaking activities,
- (e) betting on a horse race, harness race, greyhound race or declared betting event if the betting is made with a totalizator conducted by a licensee under the *Totalizator Act 1997* or is otherwise authorised under that Act,
- (f) betting on a horse race, harness race, greyhound race or declared betting event if the betting takes place at a licensed racecourse—
  - (i) during so much of the day arranged for a race meeting at the racecourse as remains after the conclusion, postponement or abandonment of the race meeting, or
  - (ii) at any time on a day arranged for a race meeting (after the time arranged for the start of the meeting) if the race meeting was cancelled or postponed the day before.

(7) In this section, **authorised betting auditorium**, **declared betting event**, **declared betting event authority** and **racing controlling body** have the same meanings as they have in the *Betting and Racing Act 1998*.

## 9 Offence of unlawful bookmaking

(1) A person must not carry on bookmaking unless the person is a licensed bookmaker.

Maximum penalty—

- for a first offence—100 penalty units or imprisonment for 2 years (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

- (2) A person who is a licensed bookmaker must not carry on bookmaking except—
- (a) at a licensed racecourse when it is lawful for betting to take place at the racecourse, or
  - (b) as permitted under section 16 (Authority to conduct telephone or electronic betting) of the *Betting and Racing Act 1998*.

Maximum penalty—

- (a) for a first offence, 200 penalty units (in the case of an offence committed by a corporation) or 100 penalty units or imprisonment for 2 years or both (in the case of an offence committed by an individual), or
  - (b) for a second or subsequent offence, 1,000 penalty units (in the case of an offence committed by a corporation) or 500 penalty units or imprisonment for 2 years or both (in the case of an offence committed by an individual).
- (3) Subsection (2) does not apply in relation to any doubles betting, or call of the card betting, carried on by a licensed bookmaker in accordance with the approval of the Minister.
- (4) The Minister's approval under subsection (3) is subject to such conditions as the Minister thinks fit to impose.
- (5) For the purposes of this section—

**call of the card betting** means betting that is carried on in relation to a racing event on a day before the event takes place.

**doubles betting** means betting that is carried on in relation to 2 separate racing events and in respect of which a successful bet requires the selection of the winners of both events.

## **10 Betting in New South Wales with bookmakers acting illegally**

A person must not make a bet with another person if the person knows, or would reasonably be expected to know, that the other person is carrying on bookmaking in contravention of this Act.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

## **11 Offence of having financial interest in unlawful bookmaking business**

- (1) A person who has a financial interest in a bookmaking business, knowing that the business is being conducted in contravention of this Act, is guilty of an offence.

Maximum penalty—

- for a first offence—100 penalty units or imprisonment for 2 years (or both),

- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

(2) A person is not guilty of an offence under this section if the person proves that he or she—

(a) at the time of acquiring the financial interest in the bookmaking business, did not know, and had no reasonable cause to suspect, that the business was being or would be conducted in contravention of this Act, and

(b) as soon as practicable after becoming aware that the bookmaking business was being conducted in contravention of this Act, took all reasonable steps to divest himself or herself of the financial interest.

(3) In this section—

**financial interest** in a bookmaking business means an entitlement to receive any of the income from the business.

#### **11A Offence of providing remote access betting facilities**

(1) A person must not make a remote access betting facility available in a public place for use by persons frequenting that place.

Maximum penalty—

(a) for a first offence, 200 penalty units (in the case of an offence committed by a corporation) or 100 penalty units or imprisonment for 2 years or both (in the case of an offence committed by an individual), or

(b) for a second or subsequent offence, 1,000 penalty units (in the case of an offence committed by a corporation) or 500 penalty units or imprisonment for 2 years or both (in the case of an offence committed by an individual).

(2) This section does not apply to a remote access betting facility used for betting or facilitating betting on a totalizator or betting activity conducted under the authority of a licence or approval under the [Totalizator Act 1997](#).

(3) In this section—

**public place** means a place that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise) and, without limitation, includes the premises of a registered club under the [Registered Clubs Act 1976](#) and licensed premises under the [Liquor Act 2007](#).

**remote access betting facility** means any device (such as a computer terminal or telephone) that is for use primarily or exclusively for betting on any event or contingency or for facilitating betting on any event or contingency.

## **Division 2 Unlawful gaming**

### **12 Organising unlawful game**

(1) A person must not—

- (a) organise or conduct, or assist in organising or conducting, an unlawful game, or
- (b) receive a percentage or share from any amount wagered on an unlawful game.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—100 penalty units or imprisonment for 2 years (or both).

(2) A person who acts as a look-out, door attendant or guard in respect of any premises 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, or could not reasonably be expected to have known, that the unlawful game was being organised or conducted.

### **13 Selling ticket in unlawful game**

(1) A person must not sell, or give away, a ticket or chance, or share in a ticket or chance, in an unlawful game.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

(2) In this section—

**chance** means any thing that provides an opportunity to participate in an unlawful game.

### **14 Participating in unlawful game**

A person must not participate in, or bet on, an unlawful game.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

### **15 Possession and use of prohibited gaming device**

(1) A person must not—

- (a) possess a prohibited gaming device, or
- (b) permit the use or operation of a prohibited gaming device.

Maximum penalty—

- in the case of a corporation—500 penalty units,

- in any other case—50 penalty units or imprisonment for 12 months (or both) for a first offence, and 500 penalty units or imprisonment for 2 years (or both) for a second or subsequent offence.

(2) In determining the amount of any penalty for an offence under this section, the court is to take into account the number of prohibited gaming devices involved in the commission of the offence.

## Division 3 Miscellaneous gambling offences

### 16 Gambling with minors

(1) A person who is of or above the age of 18 years must not—

- (a) engage in any form of gambling with a minor, or
- (b) engage in any form of gambling with another person on behalf of a minor, or
- (c) for fee or reward, send (or cause to be sent) to a minor any inducement to gamble.

Maximum penalty—50 penalty units.

(2) A person who engages in any form of gambling with a minor, or with another person on behalf of a minor, is taken to have known that the minor was under the age of 18 years unless the person proves that the person had reasonable grounds for believing the minor to be of or above the age of 18 years.

(3) If an inducement to gamble refers to a person to whom any payment may be made, or from whom information may be obtained, in relation to any gambling activities, the person so referred to is taken to have sent the inducement (or caused it to be sent) unless the person proves that the person—

- (a) had not consented to being referred to, and
- (b) was not in any way a party to, and was wholly ignorant of, the sending of the inducement.

(4) If an inducement to gamble is sent to a person at any school or other place of education, and that person (***the receiver***) is a minor—

- (a) the person sending or causing the inducement to be sent (***the sender***) is taken to have known that the receiver is a minor, unless the sender proves that the sender had reasonable grounds for believing the receiver to be of or above the age of 18 years, and
- (b) the sender is taken to have sent the inducement for fee or reward unless the contrary can be proved.

(5) In this section—

***inducement to gamble*** means any advertisement, message or document that invites, or may reasonably be implied to invite, the person receiving it—

- (a) to engage in any form of gambling, or
- (b) to apply to any person, or at any place, with a view to obtaining information or advice for the purpose of any bet or for information as to any event or contingency on which betting is generally carried on.

***send*** includes send by electronic means.

### **17 Gambling by minors**

(1) A minor must not participate in any form of gambling.

Maximum penalty—20 penalty units.

(2) A minor may not be imprisoned, or detained in a detention centre, as a consequence of a failure to pay a penalty that is imposed in respect of an offence under this section.

### **18 Cheating**

(1) A person who is engaged in any form of gambling (other than a form of gambling that is prohibited by or under this Act) must not—

- (a) by a fraudulent trick, device, sleight of hand or representation, or
- (b) by a fraudulent scheme or practice, or
- (c) by the fraudulent use of gaming equipment or any other thing, or
- (d) by the fraudulent use of an instrument or article of a type normally used in connection with gambling (or appearing to be of a type normally used in connection with gambling),

obtain, or attempt to obtain, any money or advantage for himself or herself or any other person.

Maximum penalty—100 penalty units or imprisonment for 2 years (or both).

(2) This section does not limit the operation of any offence relating to cheating under any other Act.

### **19 Possession of unlawful gambling aids and documents connected with unlawful gambling**

(1) A person who is in possession of an article or money that may reasonably be suspected of being an unlawful gambling aid is guilty of an offence.



Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

(2) A person is not guilty of an offence under subsection (1) if the person proves that he or she did not know, or could not reasonably be expected to know, that the article or money concerned was an unlawful gambling aid.

(3) A person who is in possession of any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any form of gambling prohibited by or under this Act is guilty of an offence.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

## **Part 3 Unlawful gambling premises**

### **Division 1 Declared gambling premises**

#### **20 Interim declaration of premises as gambling premises**

(1) A senior police officer may file with the Local Court an affidavit—

- (a) stating that the officer believes that certain premises are gambling premises, and
- (b) setting out the grounds for that belief.

(2) Within 5 days after the affidavit is filed, the Local Court must—

- (a) make an interim declaration that the premises are reasonably suspected of being gambling premises, or
- (b) determine not to make such an interim declaration.

(3) In determining whether or not to make an interim declaration, the Local Court may have regard to—

- (a) any external or internal observations of the premises, and
- (b) the external or internal construction of the premises, and
- (c) the alleged reputation of persons observed entering, leaving or within the premises or in the near vicinity of the premises, and
- (d) the existence of any of the matters referred to in section 48 (1), and
- (e) any money observed or found on the premises, and

(f) any other matters the court considers relevant.

- (4) If the Local Court makes an interim declaration, it must fix a date (being at least one month after the date on which the interim declaration is made) for the hearing of any application for the revocation of the interim declaration.

## **21 Notice of making of interim declaration**

- (1) A senior police officer must cause notice of the making of an interim declaration, and the date fixed for hearing any application for its revocation, to be served on the owner or occupier of the premises the subject of the interim declaration.
- (2) The notice must be served—
- (a) personally, or
- (b) if personal service cannot be effected promptly, by causing a copy of the notice to be fixed to or near the entrance to the premises.
- (3) A person must not deface, destroy, cover or remove a copy of a notice fixed under this section.

Maximum penalty—20 penalty units or imprisonment for 6 months (or both).

- (4) A senior police officer must also cause notice of the making of an interim declaration, and the date fixed for the hearing of any application for its revocation, to be published—
- (a) on 2 different days in a newspaper circulating in the area of the premises the subject of the interim declaration, and
- (b) in the Gazette.

## **22 Application for revocation of interim declaration**

- (1) The owner or occupier of premises that are the subject of an interim declaration may, not less than 14 days before the date fixed under section 20 (4) in respect of the declaration, make an application for the revocation of the interim declaration.
- (2) The application is to be made to the Local Court.
- (3) The person making the application must give notice of the application to a senior police officer not less than 7 days before the date fixed under section 20 (4).

## **23 Revocation of interim declaration**

- (1) The Local Court may revoke an interim declaration made by the court if—
- (a) an application for the revocation of the interim declaration is made to the court, and

(b) the applicant is able to satisfy the court that the premises the subject of the interim declaration were not gambling premises at the date of filing the affidavit that led to the making of the interim declaration.

- (2) The revocation of an interim declaration may be subject to such conditions as the Local Court thinks fit, including conditions relating to the giving of undertakings to ensure that the premises will not be used as gambling premises.
- (3) The revocation of an interim declaration has effect from the date of the court's decision to revoke the interim declaration, or such other date as the court may specify.

#### **24 Final declaration of premises as gambling premises**

- (1) The Local Court may make a final declaration that the premises the subject of an interim declaration are gambling premises if—
  - (a) an application for the revocation of the interim declaration is not made, or
  - (b) an application is made but the applicant is unable to satisfy the court that the interim declaration should be revoked.
- (2) A final declaration that premises are gambling premises remains in force until it is revoked under section 28 by the Local Court.

#### **25 Submissions as to use of declared gambling premises**

- (1) Any person who, in the opinion of the Local Court, has a sufficient interest in any declared gambling premises is entitled to make submissions to the court on the question of whether the use of the premises for the purposes of any business activity should be prohibited.
- (2) Those submissions may be made—
  - (a) at the time the Local Court is considering whether to make a final declaration that the premises concerned are gambling premises, or
  - (b) on application by the person after any such final declaration is made.

#### **26 Restriction on use of declared gambling premises**

- (1) The use of the premises that are the subject of a final declaration under section 24 for the purposes of any business activity is prohibited unless, or except to the extent that, the Local Court, when making the final declaration or on a subsequent application, orders that it would be unjust or unreasonable for the prohibition to apply.
- (2) A person who contravenes a prohibition under this section is guilty of an offence.  
Maximum penalty—20 penalty units for each day on which the offence is committed, or imprisonment for 12 months, or both.

## **27 Notice of making of final declaration or revocation of interim declaration**

- (1) If the owner or occupier of gambling premises the subject of a final declaration did not appear, or was not represented, before the Local Court on the making of the final declaration, a senior police officer must cause notice of the making of the declaration to be served on the owner or occupier—
  - (a) personally, or
  - (b) if personal service cannot be effected promptly, by causing a copy of the notice to be fixed to or near the entrance to the declared gambling premises.
- (2) A person must not deface, destroy, cover or remove a copy of a notice fixed under this section.

Maximum penalty—20 penalty units or imprisonment for 6 months (or both).
- (3) A senior police officer must cause notice of the making of a final declaration, or the revocation of an interim declaration, to be published—
  - (a) on 2 different days in a newspaper circulating in the area of the premises the subject of the declaration, and
  - (b) in the Gazette.

## **28 Revocation of final declaration**

- (1) A senior police officer, or the owner or occupier of premises that are the subject of a final declaration, may apply for the revocation of the declaration.
- (2) The application is to be made to the Local Court.
- (3) An owner or occupier who makes an application must give notice of the application to a senior police officer not less than 7 days before the application is heard.
- (4) The Local Court may revoke the final declaration if the court is satisfied—
  - (a) that the premises are no longer gambling premises, and
  - (b) in the case of an application by the owner or occupier—that the premises are, or are intended to be, used for a lawful purpose.
- (5) The revocation of a final declaration may be subject to such conditions as the Local Court thinks fit, including the giving of undertakings to ensure that the premises will not again be used as gambling premises.
- (6) The revocation of a final declaration has effect from the date of the Local Court's decision or such other date as the Local Court may specify.
- (7) A senior police officer must cause notice of the revocation of a final declaration to be

published—

- (a) on 2 different days in a newspaper circulating in the area of the premises the subject of the declaration, and
- (b) in the Gazette.

## **29 Notice to Registrar-General concerning declared gambling premises**

- (1) The relevant registrar of the Local Court must notify the Registrar-General of—
  - (a) the making of an interim declaration under section 20, and
  - (b) the making of a final declaration under section 24, and
  - (c) the revocation of an interim declaration or a final declaration.
- (2) If the notice to the Registrar-General—
  - (a) describes the land which is or was affected by the declaration concerned in a manner enabling the land to be identified, and
  - (b) in the case of land under the *Real Property Act 1900*—specifies the reference to the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land,the Registrar-General is, on being notified—
  - (c) in the case of land under the *Real Property Act 1900*—to make such recordings in the Register in respect of the making (or revocation) of the interim declaration or final declaration as the Registrar-General considers appropriate, or
  - (d) in any other case—to cause the notice to be registered in the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*.
- (3) For the purposes of Division 1 of Part 23 of the *Conveyancing Act 1919*, a notice registered under subsection (2) (d) is taken to be a registration copy of an instrument duly registered under that Division.

## **Division 2 Offences relating to gambling premises**

### **30 Application of Division**

An offence under this Division applies in relation to declared gambling premises only if the offence is expressed to apply in relation to such premises.

### **31 Using premises as gambling premises—offence by owner or occupier**

A person who is the owner or occupier of any premises must not knowingly allow the premises to be used as gambling premises.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

### **32 Using premises as gambling premises—offence by operator**

- (1) The operator of any premises must not knowingly allow the premises to be used as gambling premises.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

- (2) For the purposes of this section, a person is the **operator** of premises if the person—

- (a) is employed by, or is acting for or on behalf of, the owner or occupier of the premises, or
- (b) has the care or management of the premises, or
- (c) is, in any manner, conducting a business on the premises.

### **33 Offence of organising gambling premises**

- (1) A person must not organise or conduct, or assist in organising or conducting, any gambling premises.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

- (2) A person who acts as a look-out, door attendant or guard in respect of any premises that are organised or conducted as gambling premises is taken to have assisted in organising or conducting the gambling premises unless the person proves that he or she did not know, and could not reasonably be expected to have known, that the premises were being organised or conducted as gambling premises.

### **34 Offence of being on gambling premises**

- (1) A person who is found on, or who is found entering or leaving, gambling premises is guilty of an offence.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—100 penalty units or imprisonment for 2 years (or both).

(2) A person is not guilty of an offence under this section if the person proves that he or she was on, or was entering, the gambling premises for a lawful purpose or excuse.

### **35 Declared gambling premises—offence by owner**

(1) The owner of declared gambling premises is guilty of an offence if the premises are used as gambling premises while the declaration is in force.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

(2) A person is not guilty of an offence under this section if the person proves that—

- (a) he or she has taken all reasonable steps to prevent the premises from being used as gambling premises, or
- (b) the person did not know (or could not reasonably be expected to have known) that the premises were declared gambling premises.

### **36 Declared gambling premises—offence by occupier**

(1) The occupier of declared gambling premises is guilty of an offence if the premises are used as gambling premises while the declaration is in force.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

(2) A person is not guilty of an offence under this section if the person did not know (or could not reasonably be expected to have known) that the premises were declared gambling premises.

### **37 Declared gambling premises—offence of being on premises without lawful excuse**

(1) A person who is found on, or who is found entering or leaving, declared gambling premises—

- (a) after the publishing of a notice of the making of—
- (i) an interim declaration in accordance with section 21 (4), or
  - (ii) a final declaration in accordance with section 27 (3), and
- (b) while the declaration concerned is in force,
- is guilty of an offence.

Maximum penalty—

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—100 penalty units or imprisonment for 2 years (or both).

- (2) A person is not guilty of an offence under this section if the person proves that he or she was on, or was entering, the declared gambling premises for a lawful purpose or excuse.

## **Part 4 Enforcement**

### **38 Removal of persons engaged in unlawful betting**

- (1) A person—
- (a) who engages in any betting that is prohibited by section 8, and
  - (b) who continues to carry on the activity after being warned to cease carrying on the activity by—
    - (i) a police officer, or
    - (ii) an officer or employee of the person or body having control of the racecourse or other premises concerned,

may be immediately removed from the racecourse or other premises by the police officer or by any such officer or employee.

- (2) If a person is removed from a racecourse or other premises under subsection (1), the person must not re-enter or attempt to re-enter the racecourse or other premises on the same day the person is removed.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

### **39 Obstructing police officer**

If a police officer is authorised under this Act to enter any premises, a person must not—

- (a) wilfully prevent the officer from entering or re-entering those premises or any part of



those premises, or

- (b) wilfully obstruct or delay the officer from entering or re-entering those premises or any part of those premises, or
- (c) give an alarm or cause an alarm to be given for the purpose of—
  - (i) notifying another person of the presence of the officer, or
  - (ii) obstructing or delaying the officer from entering or re-entering those premises or any part of those premises.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

#### **40 Search warrant—suspected gambling premises**

- (1) A police officer may apply to an authorised officer for a search warrant if the officer has reasonable grounds for believing that any premises—
  - (a) are being kept or used as gambling premises, or
  - (b) will, within 72 hours of making the application, be used as gambling premises.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer—
  - (a) to enter and search the premises, and
  - (b) to search any person on the premises, and
  - (c) to arrest any person on the premises, and
  - (d) to seize—
    - (i) any gaming equipment and money found on the premises, and
    - (ii) any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any gambling activity prohibited by or under this Act, and
  - (e) to require any person on the premises to state his or her full name and address.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **41 Declared gambling premises—powers of entry**

- (1) A police officer may at any time, and without any warrant—
  - (a) enter any declared gambling premises, and
  - (b) pass through, from, over, or along any other land or building for the purpose of entering any declared gambling premises, and
  - (c) for any of the purposes of this section, break open doors, windows or partitions and do such other acts as may be necessary, and
  - (d) seize any gaming equipment and money found in any declared gambling premises, and
  - (e) seize any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any gambling activity prohibited by or under this Act.
- (2) Any gaming equipment, money or other thing seized under this section is forfeited to the Crown.
- (3) The Commissioner of Police may direct that any gaming equipment or other thing (except money) seized under this section be destroyed.

#### **42 Eviction of occupier of gambling premises**

- (1) If the owner of any premises has reasonable grounds to suspect that the premises are gambling premises, the owner may serve a notice to quit on the occupier.
- (2) A notice to quit is to be served—
  - (a) on the occupier personally, or
  - (b) if the occupier cannot be found, by posting a copy of the notice on some conspicuous part of the premises.
- (3) Once the notice to quit is served, the owner may take legal proceedings to evict the occupier and cancel the tenancy.
- (4) The occupier may apply to the Local Court to cancel the notice to quit.
- (5) The occupier must serve a copy of the application on the owner at least 2 days before the application is heard by the Local Court.
- (6) Service of the application on the owner operates to stay any proceedings commenced by the owner under subsection (3) until such time as the Local Court determines the application.
- (7) The Local Court may cancel the notice to quit if satisfied that the occupier has not

knowingly allowed the premises to be used as gambling premises. The court may make such other orders in relation to the application as it thinks fit.

(8) This section does not apply to premises that are declared gambling premises.

#### **43 Powers of search in relation to unlawful gambling aids and documents connected with unlawful gambling**

(1) A police officer may stop, search and detain—

(a) a person whom the officer reasonably suspects of having or conveying—

(i) an unlawful gambling aid, or

(ii) any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any gambling activity prohibited by or under this Act, or

(b) a vehicle or vessel that the officer reasonably suspects is being used to convey or store—

(i) an unlawful gambling aid, or

(ii) any such documents or other records.

(2) In exercising any power conferred under subsection (1) or under section 40 (2) (d) or 41 (1) (e), a police officer may direct a relevant person to provide such assistance as may be reasonably required by the police officer to enable the officer to access any information contained in the matter or thing that has been seized, searched or detained. A **relevant person** is any person whom the police officer believes on reasonable grounds to be in charge of (or otherwise responsible for) the matter or thing that has been seized, searched or detained.

(3) A person to whom any such direction is given must comply with the direction.

Maximum penalty—50 penalty units or imprisonment for 12 months (or both).

(4) A police officer may give a direction under subsection (2) only if the police officer has reasonable grounds to believe that information relating to any gambling activity prohibited by or under this Act is contained as encrypted data in the matter or thing that has been seized, searched or detained.

(5) A person is not guilty of an offence under this section if the person proves—

(a) that the person had a lawful excuse for not complying with the direction, or

(b) that the person was not otherwise capable of providing the kind of assistance required by the direction.

#### **44 Forfeiture to Crown**

- (1) If a person is convicted of an offence under this Act—
  - (a) any money or gaming equipment seized in relation to the offence, or
  - (b) any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any gambling activity prohibited by or under this Act and that are seized in relation to the offence,are forfeited to the Crown.
- (2) If a person is convicted of an offence under this Act, the court may order the forfeiture to the Crown of any unlawful gambling aid, and any such documents or other records in the person's possession at the time of the offence if the court is satisfied that—
  - (a) the unlawful gambling aid, or such documents or records, were used by the person for or in connection with the commission of the offence, and
  - (b) the person was, at the time of the offence, carrying on bookmaking or any other activities associated with a bookmaking business.
- (3) A police officer may seize and carry away any thing that may reasonably be suspected to be liable to forfeiture under this section.

#### **45 Recovery of certain money involving minors**

If—

- (a) any money is stolen or misappropriated by a minor, and
- (b) money is subsequently spent by the minor for the purposes of gambling,

the person from whom the money was stolen or misappropriated may, in any court of competent jurisdiction, recover the amount of the money so spent from the person to whom it was paid.

### **Part 5 Evidence and procedure**

#### **46 Evidence of publication of notices**

- (1) In any proceedings under this Act, the production of a copy of a newspaper containing a notice—
  - (a) under section 21 of the making of an interim declaration, or
  - (b) under section 27 of the making of a final declaration or the revocation of an interim declaration, or

(c) under section 28 of the revocation of a final declaration,

is evidence that the notice was duly published in the newspaper on the date appearing on the newspaper.

(2) In any proceedings under this Act, the production of a copy of the Gazette containing a notice referred to in subsection (1) is evidence that the interim declaration, final declaration or revocation was duly made.

#### **47 Participating in unlawful game**

In any proceedings under this Act against a person who has participated in an unlawful game, it is not necessary to prove that the person was playing the unlawful game for any money, wager or stake.

#### **48 Evidence of premises used as gambling premises**

(1) This section applies to and in respect of any premises that a police officer is authorised to enter under this Act if—

- (a) a police officer is wilfully prevented from, or is obstructed or delayed in, entering or re-entering those premises or any part of those premises, or
- (b) an external or internal door of, or means of access to, those premises is found to be fitted with a bolt, bar, chain, or any means or device for the purpose of preventing, delaying or obstructing the entry or re-entry into those premises of a police officer, or for giving an alarm in case of such entry or re-entry, or
- (c) a person at or near those premises has a device that is capable of being used to give an alarm to another person on the premises, or
- (d) those premises are found to be fitted or provided with any means of or device for playing at, or betting on, an unlawful game or with any means of or device for concealing, removing or destroying any gaming equipment, or
- (e) there is found on those premises, or in the possession of a person on those premises, any gaming equipment, or
- (f) there is found on those premises any documents or other records, including any computer records, devices or programs, that are kept or used in connection with, or that relate to, any gambling activity prohibited by or under this Act, or
- (g) there is found on those premises any person who has been convicted of an offence relating to any gambling activity that is prohibited under this Act.

(2) Evidence that, at or about a specified time on a specified day, this section applied to or in respect of specified premises is, until the contrary is proven, evidence for the purposes of an offence under this Act—

- (a) that the specified premises were, at or about the specified time of the specified day, kept or used as gambling premises, and
- (b) that persons found on the specified premises, at or about the specified time of the specified day, were playing an unlawful game (whether or not any play took place in the presence of a police officer authorised to enter the premises), and
- (c) that a person on the specified premises, at or about the specified time of the specified day, was on the specified premises without lawful excuse.

#### **49 Evidentiary provisions relating to betting**

In any proceedings for an offence under this Act, any allegation in the information in respect of the offence that a bookmaker accepted bets on an event on a date specified in the information and that the event was not an event declared by the Minister to be a declared betting event under section 18 of the *Betting and Racing Act 1998* is evidence of the truth of the allegation concerned unless the contrary is proved.

#### **50 Certain witnesses exempt from liability**

A person who is examined as a witness before a court in any proceedings for an offence under this Act is exempt from any criminal or civil liability in relation to that offence if the person receives from the court a certificate in writing to the effect that the person has made true and faithful disclosure to the best of the person's knowledge of all things as to which the person has been examined.

#### **51 Proceedings for offences**

- (1) Except as provided by subsection (2), proceedings for an offence under this Act are to be dealt with summarily before the Local Court.
- (2) A second or subsequent offence under section 9, 11, 15, 19 (1), 31, 32, 33, 35 or 36 is to be prosecuted on indictment. However, Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of any such second or subsequent offence.
- (3) If proceedings for an offence under this Act are dealt with summarily before the Local Court, the maximum penalty that may be imposed is 100 penalty units or imprisonment for 2 years (or both), or the maximum penalty provided for the offence, whichever is the lesser.
- (4) Proceedings for an offence under this Act may be commenced—
  - (a) in the case of an offence referred to in subsection (2)—at any time within 2 years after the date on which the offence is alleged to have been committed, or
  - (b) in the case of any other offence—within 6 months after the date on which the

offence is alleged to have been committed.

## 52 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

### Note—

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section—

**authorised officer** means, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

## 53 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if—
  - (a) a corporation commits a corporate offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person—
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or

- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **53A Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the ***state of mind*** of a person includes—
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **54 Order for payment of certain expenses**

- (1) If a person is convicted of an offence under section 15 in relation to a prohibited gaming device, or of any other offence under this Act involving the use or operation of a prohibited gaming device, the court may order the person to pay to the Commissioner of Police an amount specified in the order for reasonable expenses incurred by the NSW Police Force in taking possession of, transporting and storing the device.
- (2) The Commissioner of Police may recover from a person as a debt in a court of competent jurisdiction any amount that the person is ordered to pay under this



section.

### **55 Recognition of interstate gambling offences**

For the purposes of determining whether a person is liable to the penalty specified for a second or subsequent offence under a provision of this Act (the **relevant provision**), the second or subsequent offence referred to in the relevant provision is taken to include any offence that has been committed by the person under the law of any other State or Territory, but only if that offence would have been an offence under the relevant provision had it been committed in this State.

## **Part 6 Miscellaneous**

### **56 Agreements relating to unlawful gambling unenforceable**

- (1) Any agreement, whether oral or in writing, that relates to any form of gambling that is prohibited under this Act has no effect, and no action may be brought or maintained in any court to recover any money alleged to have been won from, or any money paid in connection with, any such form of gambling.
- (2) Nothing in subsection (1) applies to or in respect of any form of gambling that is otherwise lawful.

### **57 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **58 Savings and transitional provisions**

Schedule 1 has effect.

### **59 (Repealed)**

### **60 Repeal of [Gaming and Betting Act 1912](#) and regulations under that Act**

- (1) The [Gaming and Betting Act 1912](#) is repealed.
- (2) The following regulations are repealed—
  - (a) [Gaming and Betting \(General\) Regulation 1991](#),
  - (b) [Gaming and Betting \(Racecourse Licensing\) Regulation 1996](#).

### **61 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings and transitional provisions**

(Section 58)

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Existing declarations of premises as gaming-houses**

Any premises the subject of a declaration under section 28 or 32 of the *Gaming and Betting Act 1912*, being a declaration in force immediately before the repeal of the provision concerned by this Act, are taken to be declared gambling premises for the purposes of this Act.

### **Part 3 Provision consequent on enactment of *Wagering Legislation Amendment Act 2010***

#### **3 Evidentiary provisions relating to declared betting events**

In relation to proceedings for an offence that is alleged to have been committed before the substitution of section 49 by the *Wagering Legislation Amendment Act 2010*, that section continues to apply as if it had not been substituted.

## **Schedule 2 (Repealed)**