

**NORFOLK ISLAND**

Gaming Act 1998

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# gaming Act 1998

## TABLE OF PROVISIONS

Section

###### PART 1 — PRELIMINARY

 1. Short title

 2. Commencement

 3. The Crown

 4. Interpretation

 5. Close associate

###### PART 2 — LICENCES TO CONDUCT INTERACTIVE HOME GAMING

Division 1 — Prohibition on Unlicensed Interactive Home Gaming

 6. Unlicensed interactive home gaming prohibited

Division 2 — Licences

 7. Grant of licence

 7A. False representation

 8. Term and renewal of licence

 9. Conditions of licence

 10. Variation of licence

 11. Transfer of licence

 12. Surrender of licence

 13. Licences to be tabled

Division 3 — Application Processes

 14. Applications

 15. Suitability of applicant and close associates

 16. Investigation of application

 17. Costs of investigation

Division 4 — Direction of Authority by Minister

###### Part 3 — conduct of interactive home gaming AND INTERNET LOTTERIES

 19. No gaming by certain persons

 19A. Offences by players

 20. Suitability of licensee and close associates

 21. Approval of game or internet lottery packages

 22. Approval of systems

 23. Approval of equipment

 24. Directions

 25. Records

 26. Audit

 27. Evasion of duty

 28. Assessment of duty

## PART 3A – INTERNET LOTTERIES

 28A. Definition

 28B. Application for licence to conduct internet lottery

 28C. Authority may enter into agreement

 28D. Authority my grant licence

 28E. Duration of licence

 28F. Cancellation or suspension of licence

 28G. Appeal against cancellation or suspension

 28H. Conduct of internet lottery business under licence

 28J. Assignment of licence

 28K. Surrender of licence

 28L. Fees

 28M. Duties

 28N. Refund of application fee

 28P. Powers of Authority in respect of internet lottery business

 28Q. Entry of place by Director, authorised officers, etc

###### part 4 — default provisions

 29. Statutory default

 30. effect of criminal proceedings

 31. Compliance notice

 32. Expiation notice

 33. Disciplinary action

 34. Investigation of complaints

###### Part 5 — MISCELLANEOUS

 35. Interference with approved game packages, systems or equipment

 36. Mortgages, charges or encumbrances

 37. Appointment of manager if licence suspended, revoked or surrendered

 38. Powers of authorised officers

 39. Restriction on employment of persons

 40. Right to be heard

 41. Review of decision of Director

 42. Review of decision of Authority

 43. Reasons for decision

 44. Exercise of powers

 45. Information gathering for law enforcement purposes

 46. Reports

 47. Continuing offences

 48. Forfeiture

 49. Regulations



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An Act to provide for the regulation of certain gaming activities and for other purposes.

## part 1 — Preliminary

#### Short title

 **1.** This Act may be cited as the *Gaming Act 1998*.

#### Commencement

 **2. (1)** Section 1 and this section commence on the day on which notification of Assent is published in the Gazette.

 **(2)** The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

#### The Crown

 **3. (1)** This Act binds the Crown.

 **(2)** Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

#### Interpretation

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

“approved game package” means a game package approved by the Authority in respect of a licensee;

“approved lottery package” means a lottery package approved by the Authority in respect of an internet lottery licence;

“Authority” means the Norfolk Island Gaming Authority established under the *Gaming Supervision Act 1998*;

“close associate”—*see section 5*;

“compliance notice” has the meaning given to that term in section 31;

“Director” means the Director of Gaming appointed under the *Gaming Supervision Act 1998*;

“disciplinary action” means action taken by the Authority under section 33;

“duty” means duty payable by a licensee under a licence held by the licensee or an agreement with an internet lottery licensee;

“expiation notice” has the meaning given to that term in section 32;

“game” means a game of chance or a game that is partly a game of chance and partly a game requiring skill and includes any prescribed activity;

“gaming” means playing a game for money or other reward and includes making or accepting a wager;

“game package”, in respect of a game, means —

(a) the game; and

(b) any software under which a game operates and the source code for that software; and

(c) the rules of the game; and

(d) any material accompanying the game; and

(e) the manner in which the game and accompanying material interacts with, and presents to, any player;

“gaming equipment” means equipment (including software in any form) that is, or has been, used, or is intended for use, by the licensee in the licensee’s licensed operations but does not include any software approved by the Authority as part of a game package;

“interactive home gaming” means gaming (other than gaming prescribed for the purposes of this definition and internet lottery business in respect of which an agreement or licence is entered into or issued under Part 3A) conducted by means of a system for carrying communications by means of guided or unguided electromagnetic energy or both (where “communications” has the meaning given to it in the *Telecommunications Act 1992)*;

“internet lottery equipment” means equipment (including software in any form) that is, or has been, used, or is intended for use, by the licensee in the licensee’s licensed operations but does not include any software approved by the Authority as part of an internet lottery package;

“internet lottery package” in respect of an internet lottery, means —

 (a) the internet lottery; and

 (b) any software under which an internet lottery operates and the source code for that software; and

 (c) the rules of the internet lottery; and

 (d) any material accompanying the internet lottery; and

 (e) the manner in which the internet lottery and accompanying material interacts with, and presents to, any participant;

“law enforcement agency” has the same meaning as in the *Gaming Supervision Act 1998*;

“licence” means a licence granted under section 7 or under section 28D as the case may be and “licensee” means the holder of a licence;

“licensed operations” means the operations authorised by a licence held by a licensee;

 “lottery” means a scheme or device for the distribution of a prize by way of sale, gift or otherwise if -

 (a) the prize consists of a right to any real or personal benefit or real or personal thing; and

 (b) the distribution involves an element of chance for which a payment or other consideration is made or given.

 but does not include a lottery in respect of which an agreement or licence is granted in accordance with the *Lotteries and Fundraising Act 1987*.

 **(2)** To the extent that it is possible, this Act operates extraterritorially.

#### Close associate

 **5.** For the purposes of this Act, two persons are **“close associates”** if —

(a) one is a spouse, parent, brother, sister or child of the other; or

(b) they are members of the same household; or

(c) they are in partnership or are joint venturers; or

(d) one is a body corporate and the other is a director or executive officer of the body corporate; or

(e) one is a body corporate (other than a body corporate whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or

(f) one is a body corporate whose shares are listed on a stock exchange and the other is a substantial shareholder in the body corporate; or

(g) one has a right to participate (otherwise than as a shareholder in a body corporate) in the income or profits derived from a licensee’s licensed operations and the other is the licensee; or

(h) one provides —

(i) goods; or

(ii) services (whether as an employee or otherwise),

to the other in respect of licensed operations (other than goods or services prescribed for the purposes of this paragraph); or

(i) one is in a position to exercise control or significant influence over the conduct of the other; or

1. a chain of relationships can be traced between them under any one or more of the paragraphs of this section.

## part 2 — Licences to conduct interactive home gaming

### Division 1 — Prohibition on Unlicensed Interactive Home Gaming

#### Unlicensed interactive home gaming prohibited

 **6.** **(1)** A person must not conduct, operate or supervise interactive home gaming or an internet lottery except in accordance with a licence granted to the person under this Act.

Penalty: 1,000 penalty units.

 **(2)** Despite any other law in force in Norfolk Island, conduct, operation or supervision of interactive home gaming or an internet lottery in accordance with this Act does not, of itself, constitute —

(a) an unlawful act; or

(b) a public or private nuisance.

### division 2 — Licences

#### Grant of licence

 **7.** The Authority may grant a licence to conduct, operate or supervise interactive home gaming to an applicant for the licence.

#### False representation

 **7A. (1)** A person must not falsely represent that interactive home gaming or an internet lottery is authorised under this Act.

Penalty: 1,000 penalty units.

 **(2)** A court that finds a person guilty of an offence under subsection (1) may, in addition to any penalty imposed under subsection (1), order that any proceeds arising in the commission of that offence are forfeited to the Administration.

#### Term and renewal of licence

 **8.** **(1)** An interactive home gaming licence operates for the term stated in the licence.

 **(2)** A licensee may apply for renewal of an interactive home gaming licence not later than 3 months prior to its expiry, but the licensee has no entitlement to, or legitimate expectation of, renewal of the licence.

#### Conditions of licence

 **9.** An interactive home gaming licence will be subject to conditions determined by or under the licence issued by the Authority in respect of —

(a) regulation of the conduct, operation or supervision of interactive home gaming; or

(b) payment of duty; or

(ba) payment, or prepayment, of —

(i) any administration or enforcement costs of the Administration or the Authority in relation to this Act; or

(ii) any other costs of the Authority; or

(c) any other matter that the Authority thinks fit.

#### Variation of licence

 **10. (1)** The Authority may vary an interactive home gaming licence condition with the agreement of the licensee.

 **(2)** The Authority may, in any case, vary an interactive home gaming licence condition but must first —

(a) notify the licensee of the proposed variation; and

(b) allow the licensee 14 days in which to make written representations to the Authority about the proposed variation.

#### Transfer of licence

 **11. (1)** The Authority may approve the transfer of an interactive home gaming licence to a person on application by the person endorsed by the current holder of the licence.

 **(2)** The Authority may —

(a) vary the conditions of an interactive home gaming licence on its transfer; or

(b) impose conditions on the transferor of an interactive home gaming licence applying after its transfer.

 **(3)** A person must comply with a condition imposed under paragraph 11(2)(b).

Penalty (Subsection 11(3)): 250 penalty units.

#### Surrender of licence

 **12.** **(1)** The Authority may, on application by a licensee, approve the surrender of an interactive home gaming licence held by the licensee.

 **(2)** The Authority may impose conditions on the approval of a surrender of an interactive home gaming licence applying after its surrender and the former licensee must comply with those conditions.

Penalty (Subsection 12(2)): 250 penalty units.

#### Licences to be tabled

 **13.** The Authority must promptly provide the Minister with a copy of each —

(a) interactive home gaming licence, or variation of an interactive home gaming licence; or

(b) approval of a transfer or surrender of an interactive home gaming licence,

and the Minister must table that copy at the next sitting of the Legislative Assembly.

### Division 3 — Application Processes

#### Applications

 **14. (1)** An application by a person for the grant or renewal of an interactive home gaming licence, or the transfer of a licence to the person, must —

(a) be made to the Authority in a form approved by the Authority; and

(b) provide the information required by the application form and any other information requested by the Authority; and

(c) be accompanied by an application fee of 250 fee units.

 **(1A)** An application for an internet lottery licence must be made in accordance with section 28B.

 **(2)** A person must immediately give the Authority full details of any change of circumstances relating to an application in accordance with subsection (1) or (1A) that has been made by the person but not determined.

Penalty (Subsection 14(2)): 250 penalty units.

#### Suitability of applicant and close associates

 **15. (1)** The Authority must not grant, renew or transfer a licence unless satisfied that the applicant is a suitable person to conduct the operations to be authorised by the licence.

 **(2)** In assessing the suitability of an applicant, the Authority may have regard to —

(a) the character, reputation and financial background of the applicant and each of the applicant’s close associates; and

(b) in the case of an applicant that is not a natural person, the applicant’s corporate, ownership trust or other structure; and

(c) the extent of the applicant’s financial resources; and

(d) the ability or experience of the applicant, or a person engaged by the applicant, to manage the operation to be authorised by the licence; and

(e) any representation made by the Minister; and

(f) any law enforcement agency report provided under subsection 16(3); and

(g) any other matter that the Authority thinks fit.

 **(3)** The Authority must not grant a licence to a person under the age of 18 years.

 **(4)** This section applies to an interactive home gaming licence.

#### Investigation of application

 **16. (1)** The Authority must carry out the investigations, and make the inquiries, it considers to be necessary to enable it to determine an application under this Division.

 **(2)** The Authority may, for the purposes set out in subsection 16(1), require a person to have his or her photograph, finger prints and palm prints taken and the person must comply with that requirement.

Penalty (Subsection 16(2)): 100 penalty units.

 **(3)** The Authority ─

 (a) must, in respect of an interactive gaming licence; or

 (b) may, in respect of an internet lottery licence,

obtain from a law enforcement agency a report on any person whose suitability to be concerned in or associated with the management or operation of any operations authorised by such a licence is to be assessed by the Authority.

#### Costs of investigation

 **17. (1)** A person applying for the grant, renewal or transfer of a licence must, on request by the Authority, pay to the Minister —

(a) an amount of costs incurred; or

(b) an amount in advance towards costs to be incurred,

in undertaking an investigation or inquiry for the purposes of this Division.

 **(2)** The Authority may refuse to commence, or continue with, an investigation until an amount of costs requested by the Authority is paid and, if an amount of costs incurred by the Authority is still unpaid on the expiry of thirty days after the request is made, it may be recovered as a debt due to the Administration.

 **(3)** The Minister must repay to a person any amount paid by the person under paragraph 17(1)(b) that is unexpended at the end of the investigation.

 **(4)** The certificate of the Authority as to the costs of an investigation is conclusive proof of those costs.

 **(5)** This section applies to both an interactive home gaming licence and an internet lottery licence.

### Division 4 — Direction of Authority by Minister

## part 3 — CONDUCT of interactive home gaming AND INTERNET LOTTERIES

#### No gaming by certain persons

 **19.** **(1)** A licensee must not allow —

(a) a person situated on Norfolk Island; or

(b) a close associate of the licensee,

to play a game or take part in an internet lottery that the licensee is authorised to conduct, operate or supervise under a licence (except in the prescribed circumstances).

 **(2)** A licensee must not allow a person under the age of 18 years to play a game or take part in an internet lottery conducted, operated or supervised by the licensee.

#### Offences by players

 **19A. (1)** A close associate of a licensee must not play a game or take part in an internet lottery that the licensee is authorised to conduct, operate or supervise under a licence (except in the prescribed circumstances).

 **(2)** A person must not play an interactive home game or take part in an internet lottery conducted on Norfolk Island knowing that the playing of that game is not authorised under this Act.

Penalty (subsections 19A(1) and 19A(2)): 100 penalty units.

#### Suitability of licensee and close associates

 **20. (1)** A licensee must —

(a) notify the Authority of —

(i) any material change in respect of itself; or

(ii) any material change in respect of a close associate of the licensee of which it is aware or could reasonably be expected to be aware; and

1. comply with a notice issued by the Authority requiring the licensee to take, or ensure that a close associate of the licensee takes, specified action in respect of the material change within —

(ai) 7 days (for a notice requiring a licensee to take action in respect of a material change referred to in paragraph 20(3)(b) or 20(3)(e)); or

(i) 28 days (for a notice requiring action in respect of the licensee); or

(ii) 45 days (for any other notice requiring action in respect of a close associate of the licensee),

or the longer period set out in the notice.

 **(2)** If —

(a) a material change occurs in respect of a licensee; and

(b) the material change cannot be rectified,

the Authority may take action against the licensee as if a statutory default had occurred in respect of the licensee.

 **(3)** In this section —

“material change” means —

(a) a change in, or addition to, the licensee’s close associates; or

(b) a change in, or addition to, the directors or executive officers of the licensee or a close associate of the licensee; or

(c) any act or default (whether by the licensee or by another person) that might reasonably give rise to a negative implication in respect of the character, reputation or financial background of the licensee or a close associate of the licensee; or

(d) a reduction in the licensee’s financial resources; or

(e) any act or default (whether by the licensee or a person engaged by the licensee) that might reasonably give rise to a negative implication in respect of the ability of the licensee, or a person engaged by the licensee for that purpose, to manage a part of the licensee’s licensed operations.

#### Approval of game or internet lottery packages

 **21. (1)** A licensee must obtain the Authority’s approval for each game or internet lottery package used by the licensee in the licensee’s licensed operations.

 **(2)** In assessing a game or internet lottery package in respect of a game or internet lottery, the Authority may have regard to whether —

(a) each player of the game or internet lottery will have easy access to —

(i) the rules of the game or internet lottery; and

(ii) information regarding the statistical rate of return that the game or internet lottery provides to players; and

(iii) any other information necessary to enable the player to readily understand the game or internet lottery; or

(b) the game or internet lottery operates strictly in accordance with any information and rules provided to players; or

(c) any aspect of the game or internet lottery or game or internet lottery package is false or misleading,

or any other matter that the Authority thinks appropriate.

#### Approval of systems

 **22. (1)** A licensee must not conduct the licensee’s licensed operations unless the Authority has approved in writing —

(a) systems and procedures for conducting games and internet lotteries; and

(b) systems and procedures for surveillance and security; and

(c) systems and procedures for internal management and control; and

(d) systems and procedures for transferring and accounting for money; and

(e) other systems and procedures that the Authority determines to be subject to this section,

in respect of the licensed operations.

 **(2)** The licensee must conduct the licensee’s licensed operations in accordance with the systems and procedures approved by the Authority in respect of those licensed operations.

#### Approval of equipment

 **23. (1)** A licensee must obtain the Authority’s approval for each item of gaming equipment used by the licensee in the licensee’s licensed operations.

 **(2)** A licensee must not install, use, modify, decommission, remove or destroy any gaming equipment without the approval of the Authority.

 (**3)** The Authority may approve equipment, or equipment of a class, as equipment in respect of which a licensee is not required to comply with this section.

#### Directions

 **24. (1)** The Authority may, by written notice, give a direction to the licensee about the management, supervision or control of any aspect of the licensee’s licensed operations.

 **(2)** A licensee must ensure that any direction given under this section is diligently complied with.

#### Records

 **25. (1)** A licensee must, if required by the Authority, provide the Authority with —

(a) a continuous record of the licensee’s licensed operations; or

(b) any information about a player of an authorised game or a participant in an internet lottery,

in the form, and containing the information, specified by the Authority.

 **(2)** This section will not be taken to limit any other obligation imposed on the licensee in respect of provision of records by or under this Act or a licence.

#### Audit

 **26. (1)** A licensee must:

(a) comply with any request by the Authority that the licensee have its accounts audited by a registered auditor; and

(b) promptly provide the Authority with a copy of the audited accounts.

 **(2)** An auditor referred to in paragraph 26(1)(a) must —

(a) notify the Authority of any suspected irregularity in the accounts of a licensee; and

(b) provide the Authority with any information in relation to the accounts of a licensee requested by the Authority in writing in the manner and form specified in the request.

Penalty (Subsection 26(2)): 100 penalty units.

 **(3)** A communication under subsection 26(2) is absolutely privileged.

#### Evasion of duty

 **27.** A licensee must not —

(a) evade the payment of duty; or

(b) make a false or misleading statement or return relevant to the amount of duty payable knowing it to be false or misleading.

Penalty: 1,000 penalty units.

#### Assessment of duty

 **28. (1)** If the Minister is unable to adequately assess the duty payable by a licensee because the licensee —

(a) has failed to comply with section 27; or

(b) has failed to maintain accounts or other records that the licensee is required to maintain by or under this Act or a licence; or

(c) has failed to provide any information that the licensee is required to provide by or under this Act or a licence,

the Minister may, within 4 years after that failure, estimate the duty that should have been paid by the licensee and reassess duty on the basis of that estimate.

 **(2)** A licensee must pay an amount of reassessed duty to the Administration within the time specified in the reassessment.

## Part 3A – Internet LOTTERIES

#### Definition

 **28A.** In this Part, “internet lottery business” includes ⎯

 (a) conducting a lottery; and

 (b) the sale of tickets in an internet lottery or foreign internet lottery,

by means of the internet but does not include interactive home gaming or a game or lottery conducted in accordance with the *Lotteries and Fundraising Act 1987* Act by an approved association.

#### Application for licence to conduct internet lottery

 **28B. (1)** A person may apply to the Authority to be granted a licence to conduct an internet lottery business.

 **(2)** An application under this section is to be in a form or to the effect of the form approved by the Authority and is to be accompanied by the application fee of 250 fee units, and such further amount, if any, as may be determined by the Authority under section 17 to be the estimated cost of investigating and processing the application.

 **(3)** An application under this section must contain or be accompanied by any additional information that the Authority may request.

 **(4)** If a requirement made by this section is not complied with, the Authority may refuse to consider the application.

 **(5)** The Authority may refund the whole or part of the application fee.

#### Authority may enter into agreement

 **28C. (1)** Notwithstanding any other law of Norfolk Island, the Authority may enter into an agreement with a person relating to the conduct by the person of an internet lottery business in or from Norfolk Island and the manner in which the business may be conducted.

 **(2)** The Authority may cause to be carried out any investigations and inquiries that the Authority considers necessary for the purposes of determining whether to enter into an agreement under subsection (1) or to grant a licence under section 28D.

 **(3)** An investigation or inquiry under subsection (2) may include an investigation or inquiry to determine whether a person or a close associate of a person is a suitable person to be concerned in or associated with the internet lottery business proposed to be conducted.

 **(4)** In determining whether to enter into an agreement under subsection (1), the Authority is to have regard to the following:

 (a) whether the person is of good repute, having regard to character, honesty and integrity;

 (b) whether the person is of sound and stable financial background;

 (c) in respect of a corporation – it has or has arranged a satisfactory ownership, trust or corporate structure;

 (d) whether the person has or is able to obtain financial resources that are adequate to ensure the financial viability of the internet lottery business proposed to be conducted and to obtain the services of persons who have sufficient experience in the management and operation of the business;

 (e) whether the person has sufficient business ability to establish and maintain the business proposed to be conducted;

 (f) whether the person or any person to be involved in the management or operation of the internet lottery business proposed to be conducted has any association with a person, body or association who or which, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial resources;

 (g) whether each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations or business of the person is a fit and proper person to act in that capacity;

 (h) whether in respect of a corporation it is incorporated as a company under the *Companies Act 1985* or is registered as a foreign corporation under that Act.

 **(5)** The Authority must, not later than 2 sitting days of the Legislative Assembly after entering into an agreement under subsection (1), cause a copy of the agreement to be tabled in the Assembly.

#### Authority may grant licence

 **28D. (1)** Where the Authority enters into an agreement with a person under section 28C, the Authority may grant a licence under this Part to the person to conduct an internet lottery business in or from Norfolk Island and for other purposes or activities associated with that business that the Authority thinks fit and specifies in the licence.

 **(2)** Subject to this Act, a licence granted under this Part is subject to the terms and conditions that are specified in the agreement and in the licence document.

#### Duration of licence

 **28E. (1)** Subject to subsection (2), a licence granted under this Part remains in force for the period specified in the licence (not exceeding 10 years) but may be renewed.

 **(2)** A licence under this Part ceases to be in force if, before it expires, it is –

 (a) terminated in accordance with the agreement;

 (b) surrendered by the licensee; or

 (c) cancelled in accordance with this Act.

#### Cancellation or suspension of licence

 **28F. (1)** Subject to subsection (2), the Authority may –

 (a) cancel a licence granted under this Part; or

 (b) suspend a licence, or the agreement pursuant to which it was granted, for any period, not exceeding 6 months, that the Authority thinks fit.

 **(2)** The Authority must not cancel, suspend or vary a licence granted under this Part unless the Authority is satisfied that the licensee has –

 (a) failed to comply with a law of Norfolk Island in relation to the conduct of the business to which the licence relates;

 (b) failed to comply with a condition to which the licence is subject;

 (c) failed promptly to pay a fee or tax in relation to the conduct of the business payable under a law of Norfolk Island or in accordance with a condition to which the licence is subject;

 (d) failed to comply with a direction lawfully given by the Authority or the Director;

 (e) been convicted of an offence that the Authority considers, in the Authority’s absolute discretion, to be of such a nature as would bring the licence into disrepute; or

 (f) in the opinion of the Authority, acted in a manner or condoned an action that is contrary to the good repute of a licence and that has brought the conduct of the business to which it relates into disrepute.

 **(3)** Where the Authority suspends a licence under this section, the licence is of no force or effect during the period of the suspension.

 **(4)** Nothing in this section is to be construed as extending the term of a licence suspended under this section.

 **(5)** In subsection (2), a reference to a licensee includes, for the purposes of paragraphs (e) and (f), where the licensee is a corporation, a director of the corporation and the person in charge of the operations of the business to which it relates.

#### Appeal against cancellation or suspension

 **28G. (1)** A licensee may appeal to the Supreme Court against a cancellation or suspension of a licence under section 28F.

 **(2)** In deciding an appeal under this section, the Supreme Court –

 (a) has the same powers as the Authority; and

 (b) is not bound by the rules of evidence.

 **(3)** An appeal under this section is by way of a rehearing.

 **(4)** In an appeal under this section, the Supreme Court may –

 (a) confirm the decision;

 (b) set aside the decision and substitute another decision it considers appropriate; or

 (c) set aside the decision and return the matter to the Authority with the directions it considers appropriate.

 **(5)** If the Supreme Court substitutes another decision for that of the Authority, the substituted decision is, for the relevant provisions of this Part, taken to be that of the Authority.

#### Conduct of internet lottery business under licence

 **28H.** Subject to this Act, nothing in a law of Norfolk Island prevents a licensee or a person employed by a licensee from conducting the internet lottery business permitted by the licence in accordance with the terms and conditions to which the licence is subject and, to the extent that a condition would, but for this section, be in conflict with a law of Norfolk Island, the law is of no force or effect.

#### Assignment of licence

 **28J. (1)** Subject to subsection (2), a licence granted under this Part or an interest (whether beneficial or otherwise) in a licence may be assigned with the consent of the Authority.

 **(2)** The Authority may, in the Authority’s absolute discretion, consent or refuse to consent to the assignment of the licence or interest.

#### Surrender of licence

 **28K.** Subject to the licensee having paid all outstanding fees, taxes and charges payable in relation to the licensee's conduct of the business to which the licence relates and to the payment to Norfolk Island of any prizes that have been won but are unclaimed or unpaid, the licensee may, by notice in writing to the Authority, surrender a licence granted under this Part and the licence ceases to have effect on its being surrendered.

#### Fees

 **28L.** On being granted a licence under this Part, the licensee must pay to the Authority the fee, if any, for the licence specified in the agreement.

#### Duties

 **28M.** Without limiting a licensee’s liability to pay any other duty under a law of Norfolk Island, the licensee must pay to the Authority, as a duty or levy, the amounts and at the times that are specified in, or calculated in accordance with, the agreement.

#### Refund of application fee

 **28N.** The Authority, at its discretion, may refund a part not exceeding 80% of an application fee paid under section 28B(2) -

 (a) if the Authority refuses to process the application under section 28B(1); or

 (b) if the application is withdrawn by the applicant; or

 (c) for any other reason the Authority considers appropriate.

#### Powers of Authority in respect of internet lottery business

 **28P. (1)** The Authority may approve the manner and form in which the records of an internet lottery business conducted under a licence granted under this Part are to be kept.

 **(2)** For the purposes of this Act, the Authority may appoint a person to carry out the functions that the Authority may direct relating to the supervision and control of the internet lottery business conducted under a licence granted under this Part.

 **(3)** The Authority may, from time to time, direct a licensee to provide information relating to the internet lottery business conducted under the licence held by the licensee that the Authority may require.

 **(4)** The Authority may, from time to time, direct a licensee to adopt, vary, cease or refrain from a practice or proposed action in respect of the internet lottery business conducted under the licence held by the licensee.

 **(5)** A licensee must keep the records of the internet lottery business conducted under the licence held by the licensee in the manner and form approved under subsection (1).

 **(6)** A licensee must not contravene or fail to comply with a direction given under this section.

 **(7)** The Authority may approve –

 (a) the rules and procedures of a game or internet lottery conducted under a licence granted under this Part; and

 (b) the equipment that may be used in playing a game or internet lottery conducted under a licence granted under this Part.

 **(8)** The Authority may give directions and issue guidelines to a licensee relating to the operation and playing of a game or internet lottery conducted under a licence granted under this Part.

 **(9)** An approval, direction, or guideline of the Authority under this section must not be inconsistent with the conditions of an agreement or licence or of a direction of the Authority under section 24.

#### Entry of place by Director, authorised officers, etc

 **28Q. (1)** The Director, or an authorised officer may, at any time, enter and remain in a place where an internet lottery business is conducted under a licence granted under this Part or a place that is associated or used in conjunction with the business for the following purposes:

 (a) to observe the operations of the business;

 (b) to record the operations of the business;

 (c) to ascertain whether this Act and the agreement relating to the business are being complied with;

 (d) to perform any other functions of the Director or the authorised officer.

 **(2)** A person must not, without reasonable excuse, obstruct or hinder the Director or an authorised officer in the exercise of his or her powers under this Act.

## Part 4 *—* default provisions

#### statutory default

 **29.** A statutory default occurs in respect of a licensee if the licensee contravenes or fails to comply with an obligation imposed by or under —

(a) this Act, or the *Gaming Supervision Act 1998*, in respect of the licensee’s licensed operations; or

(b) the licence.

#### effect of criminal proceedings

 **30.** **(1)** Subject to subsection 30(2), the Authority may exercise its powers under this Part in relation to a statutory default whether or not criminal proceedings have been or are to be taken in relation to the statutory default and even though a penalty may have been imposed in relation to the default.

 **(2)** the Authority may in imposing a fine take into account any fine that has already been imposed in criminal proceedings.

#### Compliance notice

 **31. (1)** If a statutory default occurs in respect of a licensee, the Authority may give a written notice (a “**compliance notice”**) to the licensee specifying the default and requiring the licensee to take specified action, within a period specified in the notice, to remedy the default or to ensure against repetition of the default.

 **(2)** If the licensee fails to take the specified action within the time allowed in the notice, the licensee is guilty of an offence.

Penalty (Subsection 31(2)): 1,000 penalty units.

#### Expiation notice

 **32. (1)** If a statutory default occurs in respect of a licence, the Authority may give written notice (an **“expiation notice”**) to the licensee specifying the default and informing the licensee that disciplinary action may be avoided by payment of a specified sum not exceeding $100,000 within a period specified in the notice.

 **(2)** If the specified amount is paid within a period specified in the notice, no disciplinary action may be taken under this Act in relation to the default nor may criminal proceedings be taken in relation to the default.

#### Disciplinary action

 **33. (1)** If a statutory default occurs in respect of a licensee, the Authority may give written notice to the licensee —

(a) specifying the default; and

(b) requiring the licensee to show cause, within a period of not less than 14 days specified in the notice, why disciplinary action should not be taken against the licensee.

 **(2)** After considering any submissions made by the licensee, the Authority may, by written order —

(a) censure the licensee; or

(b) impose a fine of up to $100,000 on the licensee; or

(c) vary a condition of any licence held by the licensee; or

(d) suspend any licence in respect of which the statutory default occurred for a specified or unlimited period; or

(e) revoke any licence in respect of which the statutory default occurred.

 **(3)** Disciplinary action takes effect on the date on which the order is served on the licensee.

 **(4)** If the Authority suspends the licence, the Authority may at any time terminate that suspension.

 **(5)** A fine imposed under this section may be recovered as a debt due to the Administration.

 **(6)** If a statutory default occurs in respect of a licensee by reason of a continuing act or omission, the Authority may, in addition to any disciplinary action that it is entitled to take under this section —

(a) by written order impose a fine of up to $20,000 for each day (other than the first day) during which the act or omission continues; and

(b) if the act or omission continues after the Authority has taken disciplinary action, by written order take any action that it is entitled to take under subsection 33(2) and, in addition, impose a fine of up to $20,000 for each subsequent day (other than the first subsequent day) during which the act or omission continues.

#### Investigation of complaints

 **34.** The Authority must arrange for an authorised officer to investigate each complaint (other than a complaint that is, in the opinion of the Authority, petty, frivolous or vexatious) made to the Authority about a licensee’s licensed operations and the authorised officer must report the result of that investigation to the Authority in writing.

## part 5 — miscellaneous

#### Interference with approved game packages, systems or equipment

 **35.** **(1)** A person must not interfere with —

(a) an approved game package, system or equipment; or

(aa) an approved lottery package or internet lottery equipment; or

(b) a record maintained in respect of licensed operations,

with the intention of gaining a benefit for himself, herself or another.

Penalty: 1,000 penalty units.

 **(2)** A court that finds a person guilty of an offence under subsection 35(1) may, in addition to any penalty imposed under subsection 35(1), order that any proceeds arising to that person or another person in the commission of that offence are forfeited to the Administration.

#### Mortgages, charges or encumbrances

 **36. (1)** A licensee cannot mortgage, charge or encumber any of the following assets without the approval of the Authority —

(a) a licence;

(b) business assets associated with the licensee’s licensed operations.

 **(2)** The Authority’s approval under subsection 36(1) may be conditional on —

(a) a licensee entering into a prior mortgage, charge or encumbrance over the licence or business assets in favour of the Administration in a form approved by the Authority; or

(b) any other condition imposed by the Authority.

#### Appointment of manager if licence suspended, revoked or surrendered

 **37. (1)** The Authority may appoint an official manager of the business conducted under a licence that is suspended, revoked or surrendered.

 **(2)** The official manager —

(a) may assume control of the business conducted under the former licence; and

(b) is entitled to possession and control of the property of the former licensee used for the purposes of the business conducted under the former licence; and

(c) is, while the appointment continues in force, taken to be the holder of a licence on conditions determined by the Authority.

 **(3)** Any proceeds of the business while under official management are to be applied as follows —

(a) first, a reasonable rental for the former licensee’s property is to be paid out of the proceeds to the former licensee while the property remains in the official manager’s possession; and

(b) secondly, the proceeds are to be applied towards the costs of the official management (including the official manager’s remuneration); and

(c) thirdly, any remaining balance is to be paid into the Public Account of Norfolk Island.

 **(4)** The Regulations may confer powers and impose duties on official managers and regulate official management in other ways.

#### Powers of authorised officers

 **38.** **(1)** An authorised officer may, in the performance of the authorised officer’s functions —

(a) inspect, examine or test gaming equipment or a game package; or

(b) require a person to produce, or answer questions about, gaming equipment or a game package; or

(c) enter any premises used by the licensee in the licensee’s licensed operations and seize —

(i) any gaming equipment or a game package; or

(ii) any equipment or other item, or any books, papers or documents,

on those premises that the authorised officer considers will afford evidence of the commission of an offence; or

(d) exercise any other prescribed power.

 **(2)** An authorised officer may exercise the powers contained in this section in addition to any powers given to the authorised officer under the *Gaming Supervision Act 1998*.

#### Restriction on employment of persons

 **39.** A licensee, an applicant for a licence, or a close associate of a licensee or applicant for a licence, must not employ or otherwise engage —

(a) a member of the Authority, the Director of Gaming, the Deputy Director of Gaming, or an authorised officer; or

(b) a person who, was, within the last 2 years, a member of the Authority, the Director of Gaming, the Deputy Director of Gaming, or an authorised officer,

and a member of the Authority, the Director of Gaming, the Deputy Director of Gaming, or an authorised officer must not be so employed or engaged.

Penalty: 100 penalty units.

#### Right to be heard

 **40.** Except as expressly provided in this Act, a person has no right —

(a) to be heard in respect of the making of a decision; or

(b) to appeal against the making of a decision,

under this Act or a licence, or the *Gaming Supervision Act 1998* in respect of this Act or a licence.

#### Review of decision of Director

 **41.** An appeal lies to the Authority against any decision of the Director and the Authority may confirm, vary, revoke or reverse a decision of the Director on appeal.

#### Review of decision of Authority

 **42. (1)** An appeal lies to the Supreme Court against a decision by the Authority to take disciplinary action against a licensee.

 **(2)** An appeal lies, by leave of the Supreme Court, against a decision of the Authority on a question of law.

#### Reasons for decision

 **43. (1)** A person may require the maker of a decision that the person is entitled to appeal under this Act to provide the person with a written statement of the decision maker’s reasons for making that decision.

 **(2)** A decision maker is not otherwise required to provide reasons for the making of a decision.

#### Exercise of powers

 **44.** **(1)** The Authority may only issue, vary, or approve the transfer or suspension of, a licence in writing executed on behalf of the Authority.

 **(2)** A power to issue an approval, authorisation, direction or to make any other decision under this Act —

 (a) includes the power to vary or revoke that approval, authorisation, direction or decision; or

 (b) where the power applies in respect of a matter, includes the power to deal with certain aspects of the matter or to deal differently with different aspects of the matter.

#### Information gathering for law enforcement purposes

 **45. (1)** For the purpose of obtaining information that may be of assistance to a law enforcement agency, the Authority may direct a licensee in writing to provide the Authority with information concerning licensee’s licensed operations.

 **(2)** A direction under subsection 45(1) must specify the —

 (a) information, or class of information, that the licensee is required to provide; and

 (b) manner in which the information is to be provided.

 **(3)** A licensee must comply with a direction made under subsection 45(1).

 **(4)** The Authority may make information obtained under this section available to any law enforcement agency.

#### Reports

 **46. (1)** The Authority must, as soon as practicable after the first day of January and the first day of July in each year, provide the Minister with a report relating to its activities in the previous 6 months.

 **(2)** A report under subsection 46(1) must contain —

 (a) details of any statutory defaults occurring during the reporting period; and

 (b) details of any disciplinary action taken by the Authority,

and may contain any observations or recommendations in relation to the operation of the Act that the Authority wishes to make.

 **(3)** The Authority must provide the Minister with any information or reports requested by the Minister.

 **(4)** The Minister must table a copy of any report received under subsection 46(1) at the next sitting of the Legislative Assembly following its receipt.

#### Continuing offences

 **47.** A person who commits an offence against a provision of this Act by reason of a continuing act or omission —

 (a) is liable to the penalty otherwise applicable to the offence and, in addition, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth the maximum penalty prescribed for that offence; and

 (b) if the act or omission continues after the person is convicted of the offence, is guilty of a further offence against that provision and is liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act of omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

#### Forfeiture

 **48.** A court that finds a person guilty of an offence under this Act may order that any gaming equipment, game package or other item used, or intended to be used, by the person in the commission of the offence is forfeited to the Administration.

#### Regulations

 **49. (1)** The Administrator may make regulations, not inconsistent with this Act, 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,

including regulations —

 (c) providing for the payment of duty; or

 (d) dealing with interest and penalties to be paid for late payment or non-payment of duty; or

 (e) providing for the vetting and approval and regulation of persons, or persons of a class —

 (i) employed or engaged in licensed operations; or

 (ii) contracting with licensees for the supply of goods or services for use in licensed operations,

and for the rights of such persons to seek review of decisions made in respect of approvals; or

 (f) requiring licensees to employ, engage or contract with approved persons; or

 (g) restricting the use by licensees of information about players; or

 (h) prescribing the manner in which a licensee is required to identify a player and the player’s age and location; or

 (i) prescribing the manner and time in which appeals may be instituted and other procedures in respect of appeals; or

 (j) prescribing the means for service of notices or other communications.

 **(2)** The regulations may prescribe penalties not exceeding 50 penalty units for a contravention of the regulations.

##### NOTES

The *Gaming Act 1998* as shown in this consolidation comprises Act No. 5 of 1998 and amendments as indicated in the Tables below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Enactment** | **Number and year** | **Date of commencement** | **Application saving or transitional provision** |
| *Gaming Act 1998* | 5, 1998 | sec 1 & 2 comm 23.4.98;rem comm. 7.1.99 |  |
|  |  |  |  |
| *Gaming Amendment Act 1999* | 20, 1999 | 30.9.99 |  |
|  |  |  |  |
| *[Previously consolidated as at 10 March 2000]* |
|  |  |  |  |
| *Gaming (Lotteries Amendment) Act 2006* | 1, 2006 | 20.1.06 |  |
|  |  |  |  |
| *[Previously consolidated as at 21 January 2006]* |
|  |  |  |  |
| *Interpretation (Amendment) Act 2012**[to substitute throughout —Commonwealth Minister for Minister; and to substitute Minister for executive member]* | 14, 2012 | 28.12.12 |  |
|  |  |  |  |
| *[Previously consolidated as at 28 January 2014]* |
|  |  |  |  |

| Ordinance | FRLI registration | Commencement | Application, saving and transitional provision |
| --- | --- | --- | --- |
| Norfolk Island Continued Laws Amendment Ordinance 2015(No. 2, 2015)(now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491)) | 17 June 2015 (F2015L00835) | Sch 1 (items 99, 100, 344, 345): 18 June 2015 (s 2(1) item 1) | Sch 1 (items 344, 345) |
| as amended by |  |  |  |
| Norfolk Island Continued Laws Amendment (2015 Measures No. 1) Ordinance 2015(No. 10, 2015) | 14 Dec 2015 (F2015L01994)  | Sch 3 (item 1): 15 Dec 2015 (s 2(1) item 2) | — |

##### Table of Amendments

| ad = added or inserted | am = amended | rep = repealed | rs = repealed and substituted |
| --- | --- | --- | --- |
| **Provisions affected How affected** |
| 4 | am | 20, 1999; 1, 2006; Ord No 2, 2015 |
| 5 | am | 20, 1999 |
| 6 | am | 1, 2006 |
| 7 | am | 20, 1999 |
| 7A | ad | 20, 1999 |
|  | am | 1, 2006 |
| 8 | am | 1, 2006 |
| 9 | am | 20, 1999; 1, 2006 |
| 10 | am | 1, 2006 |
| 11 | am | 20, 1999; 1, 2006 |
| 12 | am | 1, 2006 |
| 13 | am | 1, 2006; 14, 2012 |
| 14 | am | 1, 2006 |
| 15 | am | 1, 2006; 14, 2012 |
| 16 | am | 1, 2006 |
| 17 | am | 20, 1999; 1, 2006; 14, 2012 |
| 18 | am | 20, 1999; 14, 2012; Ord No 2, 2015 |
|  | rep | Ord No 2, 2015 (as am by Ord No 10, 2015) |
| 19 | am | 20, 1999; 1, 2006 |
| 19A | ad | 20, 1999 |
|  | am | 1, 2006 |
| 20 | am | 20, 1999 |
| 21 | am | 1, 2006 |
| 22 | am | 1, 2006 |
| 23 | am | 20, 1999 |
| 25 | am | 1, 2006 |
| 28 | am | 14, 2012 |
| 28A | ad | 1, 2006 |
| 28B | ad | 1, 2006 |
| 28C | ad | 1, 2006 |
| 28D | ad | 1, 2006 |
| 28E | ad | 1, 2006 |
| 28F | ad | 1, 2006 |
| 28G | ad | 1, 2006 |
| 28H | ad | 1, 2006 |
| 28J | ad | 1, 2006 |
| 28K | ad | 1, 2006 |
| 28L | ad | 1, 2006 |
| 28M | ad | 1, 2006 |
| 28N | ad | 1, 2006 |
| 28P | ad | 1, 2006 |
| 28Q | ad | 1, 2006 |
| 33 | am | 20, 1999 |
| 35 | am | 20, 1999; 1, 2006 |
| 39 | am | 20, 1999 |
| 46 | am | 14, 2012 |
| 49 | am | 20, 1999 |