



GAMING MACHINES (PROHIBITION OF CROSS HOLDINGS, PROFIT SHARING, ETC.) AMENDMENT ACT 1994

No. 58 of 1994

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 58 of 1994

An Act to amend the Gaming Machines Act 1992.

[Assented to 27 October 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Gaming Machines (Prohibition of Cross Holdings, Profit Sharing, etc.) Amendment Act 1994*.

(2) The *Gaming Machines Act 1992* is referred to in this Act as "the principal Act".

Commencement

2. (1) This Act (except for section 3) will be taken to have come into operation on 1 July 1993 (the day on which the principal Act came into operation).

(2) Section 3 will be taken to have come into operation on 1 August 1994.

Amendment of s. 15—Eligibility criteria

3. Section 15 of the principal Act is amended by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

- (c) the holder of a general facility licence (whether temporary or otherwise) if—
- (i) —
- the general facility licence was granted on the surrender of a hotel licence or a club licence; and
 - the nature of the undertaking carried out under the licence is substantially similar to that of a licensed hotel or club; or
- (ii) the premises to which the general facility licence relates constitute—
- a major sporting venue; or
 - the headquarters in this State for any particular sporting code,

and the nature of the undertaking carried out under the licence is substantially similar to that of a licensed club;

Amendment of s. 37—Commissioner may approve managers and employees

4. Section 37 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) The Commissioner—

- (a) cannot approve a person as a gaming machine manager or a gaming machine employee if the person is an employee of the holder of a gaming machine dealer's licence; and
- (b) may, if he or she thinks it appropriate to do so, refuse to grant such an approval in respect of a person who provides services under contract to the holder of a gaming machine dealer's licence.

Insertion of Part 4A

5. The following Part is inserted in the principal Act after Part 4:

**PART 4A
SPECIAL PROVISIONS RELATING TO LICENSED DEALERS**

Prohibition of links between dealers and other licensees

44A. (1) A person must not, at the one time—

- (a) be the holder of both a gaming machine dealer's licence and a licence of some other class under this Act; or
- (b) be the holder of a gaming machine dealer's licence and be associated with a licensee of some other class under this Act; or
- (c) be the holder of a licence (other than a gaming machine dealer's licence) and be associated with the holder of a gaming machine dealer's licence; or
- (d) be associated with both a licensed gaming machine dealer and a licensee of some other class under this Act.

(2) The Commissioner must refuse an application for a licence or for any approval under this Act if the grant of the application would result in a contravention of subsection (1).

(3) It is a ground for the Commissioner to exercise his or her powers under this Act to revoke or suspend any relevant licence or approval if a contravention of subsection (1) has occurred or is about to occur.

(4) For the purposes of this section, a person is associated with a licensee—

- (a) in the case of a licensee that is a body corporate, if—
 - (i) the person is a related body corporate (as defined in the *Corporations Law*); or

- (ii) the person occupies a position of authority in the body corporate;
- (b) in the case of a licensee that is not a body corporate, if—
 - (i) the person manages, or is to manage, the undertaking to be carried out under the licence; or
 - (ii) the person is the spouse of the licensee; or
- (c) in any case, if—
 - (i) the person is the partner or agent of the licensee; or
 - (ii) the person and the licensee have an agreement, arrangement or understanding under which one acts in accordance with the directions or wishes of the other, or they act in accordance with a pre-arranged pattern; or
 - (iii) the person and the licensee have common employees or the employees of one provide services for the other; or
 - (iv) the person and the licensee are trustees or beneficiaries of the same trust or one is a trustee and the other is a beneficiary of the same trust (a "trust" in this subparagraph being a trust that relates to the undertaking under a licence); or
 - (v) there is some other relationship or connection between the person and the licensee or any other person that could, in the opinion of the Commissioner, prejudice the proper operation of this Act or of the licensee's undertaking under the licence.

Amendment of s. 68—Certain profit sharing, etc., is prohibited

6. Section 68 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) The profit or loss arising from carrying out on licensed premises the undertaking under a gaming machine licence must not be distributed separately or differentially from the profit or loss arising out of the undertaking under the liquor licence held in respect of the premises.

(4) A person who—

- (a) distributes profit or loss in contravention of subsection (3); or
- (b) accepts a distribution of profit knowing it to be in contravention of subsection (3); or
- (c) becomes a party to an agreement or arrangement (whether under the memorandum or articles of association of a body corporate or otherwise) under which profit or loss is to be so distributed,

is guilty of an offence.

Penalty: Division 4 fine or division 6 imprisonment.

(5) An agreement or arrangement under which profit or loss is to be distributed in contravention of subsection (3) is, to that extent, null and void (whether it was made before or after the commencement of this Act).

Statute law revision amendments

7. The principal Act is further amended by the schedule.

Transitional provisions

8. (1) Sections 4 and 5 of this Act do not affect a decision made by the Commissioner in relation to an application for a licence or an approval under the principal Act if the decision was made before 19 April 1994.

(2) Section 5 of this Act does not prevent the Commissioner from granting an application for approval to a person to assume a position of authority in a body corporate that is the holder of a gaming machine licence if—

- (a) the person was, before 19 April 1994, approved under the *Liquor Licensing Act 1985* to hold a position of authority in a body corporate that held a licence under that Act; and
- (b) the body corporate held the gaming machine licence at the time that approval was granted; and
- (c) the Commissioner is satisfied that the applicant or some other person incurred significant irrecoverable costs or expenses on the assumption that, because approval was granted under the *Liquor Licensing Act*, the application under the principal Act would be granted.

SCHEDULE*Statute Law Revision Amendments*

Provision Amended	How Amended
Section 20	Strike out this section.
Section 51(3)	Strike out "or gaming machine technician's licence".
Section 64	Strike out "or the holder of a gaming machine technician's licence".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor