

Gaming Bill 2011

EXPLANATORY MEMORANDUM

The *Gaming Bill 2011* is a Bill for an Act to regulate gaming, and for related purposes.

Explanation of clauses

PART 1 – PRELIMINARY MATTERS

Clauses 1 and 2 provide for the short title and commencement of the Act.

Clauses 3 defines terms used in the Act. The key definition is '*unlawful game*', which is a game of chance, or of mixed chance and skill, in which money or any other valuable thing is offered as a prize or is staked or risked (by a participant or someone else) on an event or contingency and that is not an exempt game. An '*exempt game*' is a game that is licensed under the Act, authorised under another written law (for example, if legislation provides for the regulation of a particular game), an exempt private game or a raffle or game of karti for which the total value of prizes offered is below an amount prescribed by regulation. An '*exempt private game*' is a game that is conducted otherwise than for a commercial purpose. The exemption for raffles or games of karti for which the total value of prizes offered is below a prescribed amount allows for the conduct of games for which revenue will be minimal due to the prizes on offer.

PART 2 – GAMING LICENCES

Clause 5 allows a person to apply to the Secretary for a licence to conduct one of a list of games. A licence cannot be granted to conduct a game that is not listed. The application must be in the form prescribed by the regulations, and must be accompanied by evidence of payment of the prescribed licence fee, or by an application for waiver of the fee under clause 14 (clause 14 allows a person to apply, in limited circumstances, for such a waiver).

Clause 6 allows the Secretary to grant a licence only if satisfied that the applicant is a suitable person to hold the licence (determined in accordance with clause 7), that the rules of the game are fair and reasonable and that participants can easily understand the rules. In addition, if Cabinet prescribes (by regulation) any other criteria for grant of a licence, the Secretary must be satisfied that the prescribed criteria have been met. For a licence to operate betting on sports or other events, the Secretary must also be satisfied that the conduct of the sport or event is not unlawful in the place in which it is conducted. For example, cock-fighting would be an offence in Nauru under section 17 of the *Animals Act 1982* (causing unnecessary suffering to an animal) so could not be licensed.

Clause 7 allows the Secretary to consider any relevant matter in deciding whether to grant a licence, which includes the character and financial position applicant and any other matter prescribed by Cabinet by regulation. However, the applicant is taken not to be a suitable person if they have been refused a licence, or had a licence cancelled, in the previous 12 months, or if they (or a person acting in their capacity as an employee or agent of the applicant) have been convicted of an offence against

the Act (such as failure to comply with a licence condition) in the 5 year period immediately before the application is made.

Clause 8 provides for licences to be granted for a single event (such as a raffle) or a period (for example, a licence to operate a betting shop might be granted for a year). However, a licence to conduct bingo can only be granted for a single event. This maintains the status quo – under the *Bingo Licensing Act 2008*, bingo licences are issued for a single event.

Clause 9 provides for the matters that must be stated in a gaming licence, such as the place at which a game may be conducted under the licence and the conditions of the licence.

Clause 10 specifies the conditions of a licence. A licence is subject to the conditions specified in clause 10 and any other conditions that the Secretary specifies in the licence itself, or that Cabinet prescribes by regulation. This enables the Secretary to use his or her discretion to apply specific conditions to a specific licence, and enables Cabinet to prescribe additional conditions for licences all or a specified class of licence. Any conditions specified in the licence or prescribed by regulation must be consistent with the Act, so cannot conflict with or displace any of the conditions specified in the Act.

Clause 11 provides for the renewal of a licence that has been issued for a period of time. The requirements for an application for renewal are the same as the requirements for a fresh application, but if the licensee makes the application at least 1 month before the licence expires, the licence continues in force until a decision is made on the application, even if that occurs after the expiry date.

Clause 12 allows the Secretary to vary the conditions of a licence on the application of the licensee or on the Secretary's own initiative. Before deciding to vary the conditions on the Secretary's own initiative, the Secretary must give the licensee notice of the proposed variation and allow the licensee to make submissions to the Secretary in response. If licence conditions are varied for any reason, a new copy of the licence must be issued showing the new conditions, as clause 9 requires the conditions of a licence to be stated in it.

Clause 13 allows the Secretary to suspend a licence if the Secretary has a reasonable suspicion that the licensee has breached a condition of the licence or is no longer a suitable person to hold the licence and that the suspension is necessary while the Secretary determines whether the licence should be cancelled. The purpose of suspension is not punishment – it is to prevent continuing breach of conditions or continuing conduct of a game by a person who is not suitable to do so while a decision is made about whether the licence should be cancelled. The Secretary is required to cancel a licence if the licensee is convicted of failing to comply with a licence condition, or if the Secretary has a reasonable belief that the licensee is no longer a suitable person to hold the licence. Also, the Secretary may exercise discretion to cancel a licence if the Secretary has a reasonable belief that the licensee has failed to comply with a licence condition, whether or not they have been charge with or convicted of the relevant offence. There is no requirement that the Secretary first suspend a licence before cancelling it. However, the Secretary must give the licensee notice of the proposed cancellation and allow the licensee to make submissions to the Secretary in response before cancelling the licence. If the Secretary considers that it is necessary to suspend the licence

while waiting for submissions from the licensee, the Secretary may do so as long as the requirements of subclause (1) are complied with (reasonable suspicion etc.)

Clause 14 allows the Secretary, on application by an applicant for a licence, to waive the fee for a licence to conduct a single event of raffle or karti if the primary purpose of the game is charitable. If the fee is waived, the charitable purpose, including the amount of funds raised from the game that will be used for the charitable purpose, must be publicised, and the amount publicised must actually be used for the charitable purpose. The charitable purpose advertised and for which the funds are used must be the same as the charitable purpose specified in the application for the waiver.

Clause 15 requires the Secretary to refund a licence fee paid by an applicant for a licence if the licence is refused. This is necessary because the licence fee is required to be paid in advance of a decision on the application being made.

Clause 16 requires the Secretary to refund a licence fee paid by a licensee who does not conduct a game under the licence because of reasons beyond the licensee's control (for example, adverse weather requiring the cancellation of an outdoor game) or because the licence is subject to conditions the licensee is not willing to accept. The fee will only be refunded if the licence is returned to the Secretary within 14 days after it is granted and if no activity has been carried out under the licence that might constitute starting or conducting the game (such as selling tickets or accepting bets).

PART 3 – OFFENCES

Clause 17 makes it an offence to arrange an unlawful game or unlawful betting. The penalty for the offence is \$50,000 and 2 years imprisonment.

Clause 18 makes it an offence to conduct an unlawful game or unlawful betting. The penalty for the offence is \$50,000 and 2 years imprisonment.

Clause 19 provides that a person who is in charge of a place that is used for unlawful betting or unlawful gaming commits an offence if the person knows the place is being used for that purpose. The penalty for the offence is \$10,000 and 6 months imprisonment.

Clause 20 makes it an offence to advertise an unlawful game or unlawful betting. The penalty for the offence is \$10,000 and 6 months imprisonment.

Clause 21 makes it an offence to participate in an unlawful game or unlawful betting. The penalty for the offence is \$10,000 and 6 months imprisonment.

Clause 22 makes it an offence for a licensee to fail to comply with a licence condition. The penalty for the offence is \$20,000 and 12 months imprisonment.

PART 4 – REVIEWABLE DECISIONS

Clause 23 gives a person who has received an information notice for a decision made by the Secretary an entitlement to apply to the Minister for review of the decision. A person who is refused a licence, whose licence conditions are varied on the Secretary's initiative or whose licence is cancelled is entitled to be given an information notice. The person may apply for the review within

28 days after receiving the information notice. However, if the person does not receive the notice (for example, because the Secretary failed to give it to the person) the person is not prevented from applying for the review and may do so within 28 days after becoming aware of the decision. The Minister may affirm or vary the decision or set it aside and substitute a new decision.

PART 5 – ENFORCEMENT

Clause 24 allows the Secretary to appoint an authorised officer.

Clause 25 requires the Secretary to issue identity cards to authorised officers, and makes it an offence for an authorised officer to fail to return their identity card when they cease to be an authorised officer.

Clause 26 provides for the general powers and functions of authorised officers – to ensure the Act is being complied with and any other powers or functions specified in the Act or another written law. Authorised officers are subject to the directions of the Secretary.

Clause 27 gives authorised officers the power to enter private commercial premises, including private areas of the premises (other than residential areas) to discharge the functions of authorised officers. Authorised officers are also given extensive powers of search, seizure and investigation.

Clause 28 allows police officers to enter any place, including residential premises, without a warrant, and to do anything an authorised officer is empowered to do under clause 27, if the officer reasonably believes doing so may disclose evidence of, or otherwise relates to, an offence against the Act.

Clause 29 creates an offence for obstructing an authorised officer acting in an official capacity.

Clause 30 provides a mechanism for complaints to be made to the Secretary about a licensee (for example, if the licensee is not conducting a game in a fair manner).

PART 6 – ADMINISTRATIVE MATTERS

Clause 31 gives Cabinet power to make regulations under the Act.

PART 7 – REPEALS AND TRANSITIONAL MATTERS

Division 1 – Repeals

Clause 32 repeals the 3 Acts that currently regulate gaming in Nauru – the *Sports Betting Act 1970*, the *Sporting Pools Act 1968*, and the *Bingo Licensing Act 2008*.

Division 2 – Transitional matters

Clause 33 defines terms used in the Part.

Clause 34 continues in force a licence issued under one of the repealed Acts until the date it would have expired under the repealed Act. This means that licences in force do not cease on the date the new Act commences. However, the Secretary may use his or her powers under the new Act to cancel the licence.

Clause 35 requires applications made under a repealed Act but not decided before the commencement of the new Act to be decided under the new Act (this might mean, for example, that the applicant will have to satisfy criteria that did not previously exist).

Clause 36 allows regulations of a transitional nature to be made for the first 12 months of operation of the new Act.

PART 8 – CONSEQUENTIAL AMENDMENTS

Clause 37 enables Schedule 2, which makes consequential amendments to the *Criminal Code 1899*.

Clause 38 expires Part 8 the day after it commences, as it will be spent having made the necessary consequential amendments.

SCHEDULES

Schedule 1 lists table games for the definition of **‘table games’** in section 3. A game listed, or a variation of the game, is a table game (for example, only poker is listed but variations such as Texas hold’em are also table games).

Schedule 2 amends the *Criminal Code 1899* to repeal the offences related to gaming, which are provided for under the *Gaming Bill 2011*.