GAMING MACHINE AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

Short Title

Gaming Machine and Other Legislation Amendment Bill 2003

Objectives of the Legislation

The *Gaming Machine and Other Legislation Amendment Bill 2003* will amend the *Gaming Machine Act 1991* to provide the legislative backing for the implementation of the scheme for the re-allocation of gaming machines in hotels within the state-wide cap on the number of gaming machines in hotels.

The principal changes proposed in this Bill include:

- Restoring the ability for individuals and corporations to apply for a gaming machine licence for a category 1 licensed premises (primarily hotels);
- Restoring the ability for category 1 licensees to apply for an increase in the approved number of gaming machines;
- Creation of operating authorities (authorities) which gaming machine licensees will require, in order to install and operate each gaming machine;
- Provision for the initial allocation of authorities to each existing gaming machine licensee, on the basis of one (1) authority for each approved gaming machine attached to the licensee's gaming machine licence;
- Creation of three (3) geographic regions for the purpose of conducting tender sales of authorities overseen by the Government. Trading will only be permitted within each region to prevent the drift of machines from country areas to city areas;

- Restrictions on the number of authorities licensees may trade each year which will deter licensees from rapidly exiting the industry with a commission payable to the Government on sales to prevent speculative trading in authorities; and
- Transitional dispute resolution arrangements to ensure that landlords and lessees under the scheme are not worse off than at present.

Reasons for the Legislation

On 8 May 2001, the Government announced a state-wide cap on the number of gaming machines in hotels and undertook to develop a scheme for the re-allocation of machines within that state-wide cap. The state-wide cap was subsequently given effect via the *Gaming Machine Amendment Act 2001*.

The cap was a response to community concerns that the proliferation of gaming machines had led to an increase in the level of harm caused by gambling. The calls for slowing the growth of the gaming machine industry prompted the Government to cap the expansion of any further gaming machines into hotels. As the most significant recent growth in gaming machine numbers had occurred in hotels, the state-wide cap was only imposed on hotels.

In introducing the cap, the Government announced that a scheme would be developed to allow for the re-allocation of gaming machines that became available within the cap as a result of hotel closures or reductions in the number of machines in hotels.

The re-allocation of gaming machines via trading in authorities will complement the current licensing requirements for gaming machines, but the current licensing processes will not change. Potential licensees will still be required to make an application for a gaming machine licence. Similarly, existing licensees will still be required to make an application for an increase in the number of approved machines. Both types of applications will continue to require the approval of the Queensland Gaming Commission. Additionally, potential applicants will also be required to continue to meet probity and integrity requirements as well as community impact assessments.

Re-allocation will occur via a tender sale process overseen by the Government. The Government has developed the scheme to discourage the drift of machines from country areas to the South-East through the creation

of regions in which trading of authorities will be confined. In addition, the Government is determined to prevent speculative trading in authorities by placing limits on the sales process.

Estimated Cost for Government Implementation

The implementation of the scheme will result in additional costs for Government in relation to the initial allocation of the authorities, the transitional dispute resolution mechanism and the sale process. Where possible, the scheme will incorporate cost recovery mechanisms.

There will also be additional ongoing administrative costs associated with the scheme in relation to reconciling transfers of ownership of authorities, systems changes and increased audit activity. Consequently, it is proposed to deduct a small administration fee from the taxes received from hotels with gaming machines to cover the extra costs incurred on an ongoing basis by the Queensland Office of Gaming Regulation.

The Government will gain revenue through the imposition of duty on a number of transactions that involve a transfer of authorities.

Assessment of Bill's Consistency with Fundamental Legislative Principles

The Bill has been prepared taking into consideration fundamental legislative principles. The Office of the Queensland Parliamentary Counsel (OQPC) had identified two potential deviations from fundamental legislative principles in clause 21 of the Bill which, among other matters, inserts new section 109E in the *Gaming Machine Act.*

First, section 109E provides for the treatment of the commission which will be charged on the sale of authorities and OQPC recommended that the section should state at least an upper limit of the amount of commission that will be provided into the Community Investment Fund. The commission percentages will be prescribed in the associated amendment regulation and will be 33% for a partial sale of authorities where the licensee will still retain authorities and 50% for a full sale of all authorities held by a licensee. The prescribing of the percentages of commission is similar to the treatment of the sliding scale of tax charged for clubs (category 2 licensees) or the sliding scale of the major facilities levy for hotels and therefore it was not considered necessary to change the section.

Second, clause 21 inserts a new section 109G to provide that no compensation is payable to a licensee where, under particular circumstances stated in the new section 109F, an authority of the licensee becomes an authority of the State and stops being an authority of a licensee. OQPC stated that it seems reasonable to provide for no compensation in the case of an authority that is initially allocated to the licensee as it is a potential benefit gratuitously given to the licensee. However, OQPC recommended that the Department should deal with the issue of no compensation being payable if an operating authority of a licensee, that has been bought by the licensee, becomes an operating authority of the State. In this regard, it is argued that the circumstances whereby an operating authority becomes an operating authority of the State, following the commencement of the re-allocation scheme, will be rare and will occur principally as a result of cancellation, expiry or lapsing of the gaming machine licence or where an increase in the approved number of gaming machines lapses. In all possible circumstances which lead to these actions, the licensee has control of or the ability to rectify the situation to avert the action being taken and the prospect of no compensation being forthcoming will induce better compliance and business planning and management by licensees.

Consultation

Government consultation has taken place with the Department of the Premier and Cabinet; the Department of Tourism, Racing and Fair Trading; the Department of Local Government and Planning; the Department of State Development; the Department of Employment and Training; the Department of Primary Industries; the Department of Public Works; the Department of Families and the Department of Justice and Attorney-General. The Office of the Queensland Parliamentary Counsel has prepared the Bill.

During October and November 2001, the Queensland Office of Gaming Regulation (QOGR) held discussions with the Queensland Hotels Association and conducted discussion sessions with hoteliers in Cairns, Townsville, Rockhampton, Toowoomba, the Sunshine Coast, the Gold Coast and Brisbane. As a result of those sessions, a Discussion Paper titled "A Scheme for Re-allocating Gaming Machines in Hotels" was publicly released in December 2001.

The Discussion Paper was provided to all Members of Parliament, Local Councils, Directors-General and industry and community stakeholders.

The Discussion Paper was also published on the QOGR web-site and QOGR received 50 submissions in response to the Paper.

Following the release of the Discussion Paper, QOGR conducted further discussion sessions with hoteliers from 31 January to 5 February 2002 in Cairns, Townsville, Rockhampton, Ipswich, Mackay, Toowoomba, the Sunshine Coast, the Gold Coast and Brisbane.

In 2002, an Industry Consultative Committee was formed comprising representatives from the hotel industry, to discuss in detail the main issues pertaining to the re-allocation scheme.

During 2003, a Public Benefit Test (PBT) was undertaken in relation to the restrictions potentially placed on competition as a result of the scheme. As a result, a Draft PBT Report was released for comment on 5 April 2003 and comments closed on 28 April 2003. Five responses were received and a summary of the responses were included in the Report which was finalised on 6 May.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the Act on 1 July 2003.

PART 2—AMENDMENT OF GAMING MACHINE ACT 1991

Clause 3 notes that Part 2 and the schedule amend the Gaming Machine Act 1991.

Clause 4 amends section 29 to omit paragraphs (i), (j) and (k) of subsection (9) dealing with appeals to the Minister. This is necessary

because, as a result of clause 13 and clause 5, any application by a licensee, report from an inspector or request from an approved authority (Liquor Licensing Division, Queensland Fire and Rescue Service and Local Government Council) for a decrease in the number of gaming machines for a licensee's licensed premises, will be decided by the chief executive with a right of appeal to the Queensland Gaming Commission.

Clause 5 amends section 32 to renumber some of the subsections. In addition, it inserts new paragraphs (a), (b) and (c) in subsection (1A) to provide for a right of appeal to the Queensland Gaming Commission from a decision of the chief executive in relation to an application by the licensee, or a report from an inspector or request from an approved authority (Liquor Licensing Division, Queensland Fire and Rescue Service and Local Government Council), for a decrease in the approved number of gaming machines for a licensee's licensed premises. This reflects amendments in clause 15 which change the decision-maker from the Queensland Gaming Commission to the chief executive for initial decisions and consequently require a change in the appeal body.

Clause 6 inserts a new section 54A to provide that the chief executive may issue guidelines. For example, the chief executive will be able to provide guidelines about the sale of operating authorities. The chief executive will also be able to issue guidelines about matters that the chief executive may take into account in deciding applications to decrease gaming machine numbers under section 86, especially in relation to category 1 licensees. The new section is similar to the ability for the Queensland Gaming Commission to issue guidelines under the existing section 17.

Clause 7 amends section 56(1) to restore the ability for individuals and corporations to apply for a gaming machine licence for a category 1 licensed premises (primarily hotels). This ability to apply for a gaming machine licence was omitted through section 6 of the *Gaming Machine Amendment Act 2001* as a means of imposing the state-wide cap on gaming machines in hotels. In order to fully restore the ability to apply for gaming machines, the clause also amends section 56(2) and inserts a new subsection (6) thereby restoring these related provisions to their former status. The re-allocation scheme is intended to leave the existing licensing decision-making processes unaffected. Thus, the amendments in this clause do not change the role of the Queensland Gaming Commission (the Commission) in considering applications for gaming machine licences. All applications for gaming machine licences will still have to be approved by the Commission. The legislation will continue to require that an

application for a new licence must be accompanied by a community impact statement and a statement of responsible gambling initiatives and the Commission will still have regard to social impact issues in deciding applications. Furthermore, decisions by the Commission to grant a gaming machine licence will not be constrained by the cap on machine numbers for category 1 licensed premises. That is, the Commission will be able to grant approvals for more approved machines than there are available operating authorities. It is the additional requirement to purchase operating authorities that will give effect and retain the cap on machine numbers in hotels.

Clause 8 omits section 559(2A), (3A) and (5) that were included in the *Gambling Legislation Amendment Act 2002* to give effect to the cap on machine numbers in category 1 licensed premises. This provision was originally inserted to provide that, where a gaming machine application is made as a result of the transfer of a liquor licence, the Queensland Gaming Commission could not approve more gaming machines than the number for which the licensed premises was approved at the time of the application. For example, if the existing premises was approved for 30 gaming machines, the Commission could not approve 31 or more machines when granting a gaming machine licence to the new applicant. It is now necessary to remove those provisions in order to implement the re-allocation scheme.

Clause 9 renumbers the subsections and inserts a new section 68(2)(d) which details some additional matters to be included in future, on licences for category 1 licensed premises. In particular, the licence will be required to state the authority region in which the licensed premises are located, the number of operating authorities for the licence, the registration number of each of those operating authorities and the date of the most recent sale of authorities at the licensed premises. By definition, the number of operating authorities shown on a licence will be the endorsed number of operating authorities for the licensed premises. In indicating the number of authorities for the licensed premises, the licence will also clearly indicate any authorities that provisionally form part of the endorsed number of authorities pending their sale. In such circumstances, if the licensee for the licensed premises changes, the new licence will only show the lesser number of authorities that are held unconditionally. All of the new information to be shown on a licence will be necessary for the sale of authorities and will be amended under section 109I after the sale or purchase of authorities.

Clause 10 inserts three new subsections to section 78 to provide that where a gaming machine licence is issued at the same time as a liquor licence transfer, the operating authorities under the associated gaming machine licence that existed just prior to the liquor licence transfer, are transferred to the new holder of the new gaming machine licence for that licensed premises less any authorities that are pending sale. This will ensure that authorities (and hence gaming machines) can stay with the licensed premises when there is a change in licensee for the licensed premises, such as when lessees change. This will provide business certainty and will enable continuity of machine gaming in the absence of a decision to reduce gaming machine numbers at the licensed premises. Importantly, this transfer of authorities only applies to a change of licensees at the same licensed premises. It does not permit the transfer of authorities between licensed premises held by the same licensee. Moreover, the transfer will not permit an increase in authorities because the only means by which a licensee may increase authorities is via purchase at an authorised sale. The clause also clarifies that authorities which are pending sale, are not included in the transfer to the new licensee.

Clause 11 inserts new section 80B to create an offence with a maximum penalty of 200 penalty units if a category 1 licensee installs and operates more gaming machines than the endorsed number of operating authorities for the licensed premises. For example, if the endorsed number of authorities is 20, a licensee must not install and operate 21 or more machines. This ensures effect is given to the Government's state-wide cap on the number of gaming machines in hotels. It also combines with new section 109F so that the number of endorsed authorities for a licensed premises must be both greater than or equal to the number of operational machines for the premises as well as being less than or equal to the number of approved machines for the licensed premises.

Clause 12 amends section 81 by omitting 'other than category 1 licence' to restore the ability for category 1 licensed premises to apply for an increase in their approved number of gaming machines. This ability to apply for an increase in the approved number of gaming machines was omitted through section 8 of the *Gaming Machine Amendment Act 2001* and combined with amendments to section 56 to impose the cap on gaming machines in hotels, whilst the re-allocation scheme was developed. Reinstating the ability for category 1 licensees to apply for increases reinstates the requirement for decisions on those applications to be made by the Queensland Gaming Commission. In assessing applications for increased numbers of machines at category 1 licensed premises, the

Commission will balance the costs and benefits of an increase in machine numbers in relation to the community affected by the application.

Clause 13 inserts new subsection (1A) to section 86 to provide that a category 1 licensee will not be able to apply to decrease the licensee's approved number of gaming machines at a licensed premises by more than 50% of the total number of approved machines for that licensed premises. This will limit a licensee to either selling all of the authorities for a licensed premises by surrendering the licence for the licensed premises or only selling up to 50% of the authorities for the licensed premises. This section combines with the limit on the number of decrease applications per year under section 86A, plus the requirement to pay a commission on the sale of authorities to the Community Investment Fund under section 109D. The combined limitations through the three sections will provide a disincentive for market speculation in authorities. They also limit the ability for large windfall gains to be obtained and limit the incentives for rapid, large scale reductions in authorities and hence gaming machine numbers. This will assist industry stability and will help retain a suitable level of the social interaction that is associated with the whole entertainment package provided by gaming machines, especially in rural and regional Queensland. The clause also provides that a licensee must include their gaming machine licence as part of the application for a decrease in the approved number of gaming machines for their licensed premises.

Clause 14 inserts a new section 86A to provide that an application for a decrease in the approved number of gaming machines for a category 1 licensed premises may only be made 12 months after the last sale (if any) of authorities for that licensed premises. This combines with clause 13 to provide a disincentive for speculative behaviour. It also requires licensees to make decisions in relation to decreases solely on the basis of the number of machines which are suitable for the licensed premises rather than with regard to how much money may be obtained through sales of authorities. The new section 86A(2) does, however, provide the chief executive with the power to waive that restriction, if the chief executive is satisfied that the restriction would impose an unreasonable financial burden on the licensee. For example, a licensee may experience such financial difficulties that an administrator may be appointed to the licensed premises, who then requires that the number of machines be reduced immediately in order to continue to be able to trade.

Clause 15 replaces sections 87 and 88 with new sections 87, 88, 88A and 88B.

The new section 87 provides for decisions on the different types of decrease proposals available under section 86 and reflects that it is the chief executive and not the Queensland Gaming Commission who will be deciding applications for decreases in future. Section 87(2) provides that, for a category 1 licensed premises, the chief executive will not be able to approve a decrease for more than half the approved number of gaming machines that relates to the licensed premises immediately before the application for the decrease is made. This reflects the restriction on applications provided in clause 13. For example, if the approved number of gaming machines is 20 and the decrease sought is 10 machines, then the chief executive may approve a decrease of up to 10 machines, however, the chief executive must not approve a decrease of 11 or more machines. In addition, section 87(5) requires the sale of any operating authorities that become in excess of the approved number of gaming machines, as a result of approving a decrease application by a licensee. Such excess authorities must be included for sale at the next authorised sale and, once a decrease application is approved, a licensee has no discretion about the sale and therefore can not decide not to sell the authorities. That is, the selling of authorities will occur automatically, once an application for a decrease is approved. Conversely, sections 109F and 109G provide that authorities associated with decreases which arise from a report or request will be forfeited to the State without compensation. Provision is also made under section 87(6) for a category 1 licensee to request, at the time of making an application, that a decrease is made conditional on the sale of the operating authorities associated with the gaming machines. If approved under section 87(7), a licensee would then be able to continue to operate the additional gaming machines until the authorities were sold, which could occur a number of months after the decrease is approved. The authorities that are being used pending sale, will be recorded on the licence under section 68. While section 87(4) states that the chief executive must not refuse a decrease application if it would impose an unreasonable financial burden on a licensee, subsection 87(8) states that the chief executive may not approve a decrease arising from a request or report which would similarly cause financial hardship, but only constrains the chief executive in this regard in relation to category 2 licensed premises.

The new section 88 replicates the effect created by the existing section 88(5) & (6) in relation to dealing with the disposal of gaming machines where a decision is made approving a decreased number of gaming machines for a licensed premises.

The new section 88A replicates the effect created by the existing section 88(7), (8) & (9) regarding notices that must be provided in relation to decisions about decreasing the number of gaming machines for a licensed premises.

A new section 88B provides that, following receipt of a notice under section 88A about a decision approving a decrease proposal, a licensee must return the licence to the chief executive for the chief executive to record the decrease in approved numbers of machines (and associated decrease in operating authorities for category 1 licensed premises) for the licensed premises. An offence with a maximum penalty of 40 penalty units is created, if the licensee does not return the licence to the chief executive for replacement within 7 days after receiving the notice.

Clause 16 amends section 89 to remove references to the Queensland Gaming Commission given that the role of determining decrease proposals will now be undertaken by the chief executive rather than the Commission.

Clause 17 amends section 90 to remove references to the Commission given that the role of determining decrease proposals will be made by the chief executive. Furthermore, a new subsection (4) is inserted which provides that, if the decrease is approved subject to the sale of the operating authorities associated with the gaming machines, the licensee has one month after the sale of each operating authority to dispose of the associated gaming machine.

Clause 18 amends section 95 to provide in subsection (2A) that, where a category 1 licensee surrenders a gaming machine licence, all of the operating authorities for that gaming licence must be made available for sale at the next authorised sale of authorities. This is similar to the requirement that authorities associated with voluntary decreases must be sold. New subsection (2B) enables the surrender of the gaming machine licence for a category 1 licensee, to be conditional on the sale of the licensee's operating authorities, but only if notified by the licensee at the time of notifying the surrender. This will enable a licensee to continue to operate the gaming machines until the authorities for the machines are sold. Where the surrender is conditional, new subsection (2C) states when the licensee's gaming machine licence must be returned to the chief executive and an offence with a maximum penalty of 40 penalty units is created, if the licensee does not return the licence within the required time. A new subsection (8A) is also inserted which provides that, if the surrender of the licence is conditional on the sale of the operating authorities associated with the gaming machines, the licensee has one month after the sale of the

operating authorities to dispose of the gaming machines. An offence with a maximum penalty of 200 penalty units is created, if the licensee does not dispose of the gaming machines within the required time.

Clause 19 amends section 96 by inserting a new subsection (1A) to provide that, where a special facility liquor licence is surrendered to the Liquor Licensing Division and is immediately replaced with a general liquor licence, the associated gaming licence is not cancelled, as would be the case under the existing provisions of section 96.

Clause 20 amends section 97(1) to include that additional grounds for show cause action will arise if the chief executive considers a licensee has contravened three new sections inserted via this Bill. The sections are:—

- 80B - installing and operating more machines than the endorsed number of authorities for the licensed premises;
- 109C - purchasing operating authorities other than as permitted and;
- 411(1) - failing to register for an allocation of authorities within 28 days.

PART 3A—OPERATING AUTHORITIES FOR CATEGORY 1 LICENSED PREMISES

Clause 21 inserts a new Part 3A to deal with operating authorities. It inserts a number of new sections within three Divisions.

The new Division 1–Preliminary – inserts section 109A to provide that the maximum number of operating authorities for category 1 licensed premises for Queensland is the number prescribed under a regulation. The figure that will be prescribed will be set at the current amount of 18,843. This figure is the maximum amount of authorities that will be able to be used by hotels across Queensland. As the number of gaming machines able to be installed and operated may not exceed the number of authorities, this section gives effect to the state-wide cap and ensures that the number of gaming machines in category 1 licensed premises in Queensland can not be more than 18,843. The new Part relates only to category 1 licensed premises. Consequently, the limitation on the number of authorities and hence the number of machines does not apply to clubs (category 2 licensed

premises). The section also gives substance to the creation of operating authorities by declaring that they exist. This section acknowledges that Queensland's population is growing over time by providing that the Minister may recommend an increase in the maximum number of authorities, having regard to any population growth within the State. If the legislation prevented such an increase, the potential for extra demand for authorities could lead to artificially inflated prices for authorities. As any increase will have regard to population growth, it is not expected that the cap number will increase any more frequently than annually or biennially.

This clause also inserts new sections 109B, 109C, 109D and 109E within a new divisional heading "Division 2–Sale of Operating Authorities". First, section 109B provides that an operating authority may be sold only by an entity and in the way prescribed under a regulation. It is anticipated that the regulation will state that a Government agency will oversee the sale process and that the sale will take place via a tender process. This aims to prevent unlicensed third parties entering the gaming machine industry and brokering deals between purchasers and sellers of authorities and will therefore assist to maintain the integrity and probity of machine gaming in Queensland. It is further expected that the documentation associated with the tender will establish the detail of how bids are to be made and decided. In this regard, it is expected that licensees will only be able to make one price bid for the total number of authorities sought. The documentation will also state that the successful tender will be decided solely on the basis of the highest bid. Second, section 109C provides a cumulative limitation on who may purchase operating authorities. Importantly, only a category 1 licensee may purchase authorities as the only person who can hold an authority is a category 1 licensee. This will prevent trading in authorities by brokers, etc. Also, a category 1 licensee will only be able to purchase authorities if the approved number of gaming machines for the relevant licensed premises is more than the number of authorities they currently hold for that licensed premises. Further, unless the authorised sale of authorities is conducted for the whole of the State, only category 1 licensees with a licensed premises in the region for which authorities are for sale will be able to purchase those authorities. The regions will be prescribed under a regulation. There will be three regions based on the 11 Statistical Divisions defined by the Australian Bureau of Statistics for Queensland. The regions will be South-East, Coastal and Western. Thus, the regional restriction will mean that someone in the Western Region will not be able to purchase authorities from the Coastal Region. This shows the Government's commitment to maintaining Queensland's regions by preventing a large movement of authorities and hence machines from

regional Queensland to the south-east corner of the State. This section also creates an offence with a maximum penalty of 200 penalty units (currently $15,000) if a person not mentioned in subsection (1) was to purchase an operating authority. It also creates an offence with a maximum penalty of 200 penalty units, if a category 1 licensee purchases operating authorities which would result in the licensee having more authorities than the approved number of gaming machines for that licensed premises. For example, if the approved number of gaming machines for a licensed premises is 20 and the number of authorities for the licensed premises is 17, the licensee must not purchase more than 3 operating authorities. The section also clarifies that any authorities transferred under section 78 as a result of the transfer of a liquor licence for the licensed premises, are not taken to have been purchased in terms of section 109C. Third, new section 109D provides that when any operating authorities of the State are sold at an authorised sale, the proceeds from the sale must be paid into the Community Investment Fund. Sales of authorities held by the State will be rare, as the State will only obtain authorities under the new section 109F when licensees have failed to correct actions leading to forfeiture of authorities. Since 8 May 2001, when the state-wide cap was announced, the approved number of gaming machines has fallen below the total number that existed at the time of the announcement. Consequently, it is probable that the Government will conduct one sale in order to re-allocate the authorities that the State holds. In order not to unfairly restrict access to such "borderless" authorities, the State-held authorities will be available for purchase across Queensland in a fair and equitable manner for all licensees. Fourth, new section 109E provides that a commission must be paid on the sale of authorities and the commission must be paid into the Community Investment Fund with the balance of the sale price paid to the licensee. The commission percentages will be prescribed in the associated amendment regulation and will be 33% for a partial sale of authorities associated with a voluntary decrease of approved gaming machines for the licensed premises and 50% commission for a full sale of all authorities held by a licensee when the licensee surrenders the licence for the licensed premises. The section also provides that regulations will detail how the commission and the balance of sale amounts are to be distributed when there are 2 or more licensees selling authorities at the sale. In this regard, it is intended that the sale prices received for all authorities at an approved sale will be combined and averaged across the number sold, irrespective of whether the authorities sold are the result of a decrease approval or a surrender of the gaming machine licence. Licensees will then receive the average price multiplied by the number of authorities that they sold (less

the commission). The section also clarifies that a licensee includes a person who was the licensee who initiated the sale of authorities. This enables sale proceeds to be provided to a person who was a licensee even though they subsequently ceased to be a licensee because they have surrendered the gaming machine licence.

Clause 21 also inserts new sections 109F, 109G, 109H, 109I and 109J within a new divisional heading "Division 3-Other matters about operating authorities". The new section 109F provides for the various situations when operating authorities become operating authorities of the State and stop being authorities of a licensee. Section 109G then provides that compensation is not payable where such authorities become authorities of the State. Importantly, section 109F also states that any authorities which exceed the number of approved machines for a licensed premises will be forfeited to the State. This ensures that authorities can not be bought, warehoused and then sold and thus prevents authorities being bought simply to trade, rather than for the purposes of installing and operating machines. Section 109H provides that an encumbrance over an operating authority is of no effect. This ensures that only category 1 licensees can hold authorities and in holding them have an unfettered ability to deal with them. The new section 109I provides for the issuing of a replacement gaming machine licence for a fee upon the purchase or sale of an operating authority. An offence with a maximum penalty of 40 penalty units is created, if the licensee does not return the licence to the chief executive for replacement within 7 days of the purchase or sale. The section also provides for inclusion of the matters mentioned in the new section 68(2)(d) (inserted by clause 9) on the replacement licence. Finally, section 109J provides for the review of the operation of the provisions of the Act relating to operating authorities by the chief executive within 2 years of the commencement. This gives effect to the Government's commitment to trial the scheme and subsequently review it after 2 years of its operation.

Clause 22 amends section 164 by inserting a new subsection (4A) to provide that the chief executive may exclude the particular information mentioned in subsection (4) from a supplier's control system submission, if satisfied that the information is not necessary for the proper consideration of the submission. For example, if the control system submission were to require ten particular items of information and the chief executive was satisfied that items one to three were not necessary, only items four to ten would be required as part of the submission.

Clause 23 amends section 322 dealing with disposition of fees to provide that a prescribed amount per operating authority will be deducted

from the monthly gaming machine taxes paid by category 1 licensees and retained as controlled receipts of the Department. These funds will be used for the purpose of offsetting the extra costs which will be incurred by the Queensland Office of Gaming Regulation in the ongoing administration of and compliance with the scheme.

Clause 24 enables a regulation to be made in relation to defining the authority regions for the Act.

Clause 25 omits section 367, now a redundant provision which, through an oversight, was not removed through the *Gambling Legislation Amendment Act 2002.*

Clause 26 inserts a new Division 8 within Part 12 to provide for the initial allocation of operating authorities and the transitional dispute resolution mechanism for disputes arising from that initial allocation. Subdivision 1 deals with preliminary matters and inserts section 408 to provide the definitions relevant to the division. The section defines "allocation dispute" as a dispute which arises from the initial allocation of authorities and affects existing agreements or arrangements between parties. This definition confines the mechanism for hearing disputes to only the initial allocation of authorities, not the ongoing dealings with authorities. The section also defines a category 1 licensee to be the category 1 licensee who is the licensee for the licensed premises as at 1 July 2003. Consequently, the dispute resolution process exists for persons who hold category 1 licences on 1 July, not those who may have held them on or before 30 June 2003 or who may hold them on or after 2 July 2003. The section also defines who may be a party to a dispute. The definition intends to confine the resolution of disputes to matters arising between a category 1 licensee, the landlord (if any) for the category 1 licensed premises and any person prescribed who has a financial interest in the conduct of machine gaming at the licensed premises which could be adversely affected by the initial allocation of authorities. For example, a person to be prescribed could include a lessee where the category 1 licensee is a sub-lessee. However, it is unlikely that a lending institution would be prescribed as a party to the dispute. Finally, the section specifies that the Tribunal which will hear disputes is the Commercial and Consumer Tribunal.

Clause 26 also inserts new sections 409, 410, 411, 412 and 413 within subdivision 2 to provide for the initial allocation of operating authorities to existing category 1 licensees. Section 409 states that on 1 July 2003, each category 1 licensee will be allocated the number of operating authorities

for the licensed premises equal to the approved number of machines for the licensed premises. Authorities will be allocated to licensees because, in accordance with the rest of the principal Act, gaming machine licensees are the persons responsible for the conduct of gaming on licensed premises. Section 410 provides that the chief executive will, as soon as practicable after commencement of the Act, give each category 1 licensee a written notice stating that the licensee must register for the allocation of operating authorities. Section 411 then requires licensees to return the completed registration within 28 days after receiving the written notice from the chief executive. An offence with a maximum penalty of 200 penalty units is created in section 411(1) if a category 1 licensee fails to register in relation to the allocation of authorities within the 28 day period. Among other matters, the approved form for registration will require licensees to advise if they own or lease the licensed premises. If a licensee leases the licensed premises, the licensee will then be asked if the licensee has reached agreement in relation to the initial allocation of authorities and nominate who is the other party to the agreement. In this regard, the existing section 350(f) allows for a maximum penalty of 400 penalty units or 2 years imprisonment for the provision of false or misleading information. The registration must also be properly completed and an offence is created with a maximum penalty of 40 penalty units, if a licensee does not return the licensee's gaming machine licence to the chief executive with the form. The new sections 412 and 413 provide for the chief executive to issue a replacement gaming machine licence detailing the number of authorities for the licensed premises, their registration numbers and the authority region for the licensed premises. It is anticipated that the reissuing of licences will be complete within one month of commencement of this Act.

Clause 26 also inserts new sections 414, 415, 416, 417, 418, 419 and 420 within subdivision 3 which provides for dealing with allocation disputes under the *Commercial and Consumer Tribunal Act 2003* (Tribunal Act). First, the new section 414 confines the jurisdiction of the Commercial and Consumer Tribunal (the Tribunal) to only hearing and deciding disputes between parties arising from the initial allocation of authorities and matters necessary to so decide the dispute. Second, section 415 provides that the Tribunal Act applies to allocation disputes, albeit the subdivision places some limits on the Tribunal Act. The new section 416 provides that a party to the dispute may apply, within the prescribed period, for the Tribunal to hear and decide the dispute. Such an application must be accompanied by a mediation fee. The mediation fee is charged instead of the application fee imposed under the Tribunal Act. When any responding parties are served with the application, they must also pay the mediation fee. The amount of

the mediation fee will be prescribed and will be equal to the cost of 3 hours of mediation. Consequently, as both parties pay the fee, they will be paying, up front, for a combined 6 hours of mediation. As the chief executive will receive a copy of the application, the chief executive will be able to check that those parties who, stated in their registration form for authorities, that they had not reached agreement with their landlord, have subsequently made an application to the Tribunal. The new section 417 overrides the Tribunal Act to require that mediation is compulsory prior to the Tribunal hearing the dispute. This compulsory meditation aims to get the parties to the dispute to resolve the matter themselves without requiring the need to retain legal representatives. The dispute resolution process in total is designed to be a speedy, non-confrontational and relatively low cost means of resolving disagreements. Consequently, there is emphasis on the low cost mediation, rather than the higher cost Tribunal. Section 418 provides that parties who do not resolve disputes via mediation will be required to pay a prescribed proceeding fee to the Tribunal within 7 days after the end of the mediation. Both parties will be required to pay the prescribed fee and it will be considerably larger than the mediation fee in order to recover the costs of having the matter heard by the Tribunal.

Section 419 then requires the Tribunal to hear the allocation dispute. It operates with section 31 of the Tribunal Act and will ensure that anyone seeking to have an allocation dispute heard by another jurisdiction, will be referred back to the Tribunal to first have the dispute decided by the Tribunal. While section 419 states that payment of a mediation or proceeding fee is not a pre-requisite for resolution of the matter, it does specify that the State may recover such fees as a debt due to the State. Consequently, if only one party pays the required fees, the Tribunal may exercise its discretion to hear and decide the matter in the absence of the other party. As with all decisions of the Tribunal, such decisions will be enforceable through the relevant Court and will only be able to be appealed on points of law.

Finally, section 420 provides some examples of orders which the Tribunal may make in relation to an allocation dispute, but are not intended to limit the Tribunal Act. It also gives non-limiting examples of matters the Tribunal may consider in deciding a dispute and enables further matters to be prescribed or provided in a guideline issued by the chief executive.

Lastly, clause 26 inserts new sections 421, 422, 423, 424, 425, 426 and 427 within subdivision 4 which provides for a number of transitional matters. First, section 421 provides for the way in which appeals to the Minister in relation to the proposals to decrease the approved number of

gaming machines for a licensed premises, which have not been decided before the commencement of the provision, may be continued and decided. Second, section 422 provides that an application for a decrease in the approved number of machines for a licensed premises which has not been decided before the commencement of this Act, must be decided under the amended Act. Third, new section 423 provides that a licensee does not contravene section 80B in having machines installed and operational without authorities until the licensee receives a replacement licence under section 412 showing the initial allocation of operating authorities. Fourth, new section 424 provides that if a licensee or another person has applied to the Tribunal to hear an allocation dispute, the category 1 licensee who is a party to the dispute must not, without the chief executive's written approval, surrender the involved gaming machine licence until either the period for lodging an application with the Tribunal is ended or the dispute is resolved. Fifth, new section 425 provides that if, before the commencement of this Act, the Queensland Gaming Commission had approved a decrease in the approved number of gaming machines for a licensed premises and the required time for disposing of the machines has not ended, then the licensee must dispose of the gaming machines in the required time under the existing section 90(2). Sixth, new section 426 provides that, where a category 1 licensee has not paid a meditation fee or a proceeding fee to the Tribunal, the chief executive may direct the licensee in writing to pay the fee. Additionally, if the chief executive considers an allocation dispute exists from the information available, the chief executive may direct the licensee to apply to the Tribunal to have the dispute decided. For example, the chief executive may be aware that the registration form stated that a category 1 licensee had not reached an agreement with a landlord, but the licensee had not subsequently made an application to the Tribunal. Consequently, the chief executive may direct the licensee to make an application under section 416. Finally, section 427 provides that an authorised disclosure of information under section 54(5) includes the disclosure of information to assist a party to settle an allocation dispute.

Clause 27 amends the schedule (Dictionary) by inserting definitions relating to dealings associated with operating authorities. This clause also amends the definition of "approved number" due to amendments to sections 87 and 88. It also amends the definition of "category 1 licensed premises" to reflect the change in name of the Surfers Paradise Bowls Club Incorporated to its new name of Surfers Paradise Sports Club Inc.

PART 3—AMENDMENT OF COMMERCIAL AND CONSUMER TRIBUNAL ACT 2003

Clause 28 provides that Part 3 amends the *Commercial and Consumer Tribunal Act 2003*.

Clause 29 amends schedule 2 to include in the definition of "empowering Act" the *'Gaming Machine Act 1991'*.

SCHEDULE

MINOR AMENDMENTS OF GAMING MACHINE ACT 1991

The schedule provides for five minor technical amendments to the *Gaming Machine Act 1991*.