

**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

No. M117 of 2012

BETWEEN

HARRY KAKAVAS
Appellant

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and

CROWN MELBOURNE LIMITED
(ACN 006 973 262)
First Respondent

JOHN WILLIAMS
Second Respondent

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ROWEN CRAIGIE
Third Respondent

APPELLANT'S SUBMISSIONS

PART I: PUBLICATION

1. The Appellant certifies that these submissions are in a form suitable for publication on the internet.

PART II: ISSUES ON THE APPEAL

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2. The following issues arise in this appeal:
 - (a) whether the Appellant's pathological gambling condition amounted to a special disadvantage for the purposes of his unconscionable dealing claim;
 - (b) whether the interstate exclusion order to which the Appellant was subject amounted to a special disadvantage for the purposes of his unconscionable dealing claim;
 - (c) whether the First Respondent knew or ought to have known of one or both of these disabilities;

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- (d) whether the First Respondent can escape liability for unconscionable conduct on the ground that its gambling transactions with the Appellant were “*standard*” in nature;
- (e) whether, being subject to an interstate exclusion order, the Appellant suffered any loss by reason of gambling at the First Respondent’s casino.

PART III: NOTICE TO THE ATTORNEYS GENERAL

- 3. The Appellant considers that no notice should be given under section 78B of the *Judiciary Act* 1903 (Cth).

PART IV: REPORTS

- 10 4. The reasons of the primary judge, Harper J, were delivered on 8 December 2009 (J). They have not been reported. The internet citation is *Kakavas v Crown Melbourne Limited & Ors* [2009] VSC 559. The reasons of the Court of Appeal, consisting of Mandie and Bongiorno JJA and Almond AJA, were delivered on 21 May 2012 (CA). They have not been reported. The internet citation is *Kakavas v Crown Melbourne Limited & Ors* [2012] VSCA 95.

PART V: FACTS

- 5. Between June 2005 and August 2006 the Appellant lost \$20.5 million gambling at the Melbourne casino (**the casino**) conducted by the First Respondent (**Crown**) (J[33]). During that period the Appellant was suffering from a psychiatric condition known as pathological gambling characterised by a failure to control the urge to gamble (J[1],[444]). At all material times, the Appellant was also subject to an interstate exclusion order (**the IEO**) within the meaning of s. 77 of the *Casino Control Act 1991* (Vic) (**Casino Control Act**) (J[22]). Under ss. 77 and 78B of the *Casino Control Act*, as a result of the IEO, the Appellant was prohibited from entering the casino and all winnings paid or “*payable*” to the Appellant from gambling were forfeited to the State of Victoria (J[23],[558]).
- 20 6. The circumstances in which the Appellant came to gamble at the casino were:
 - 30 (a) In 1994, the Appellant, then aged 27, first gambled at the casino (J[1]). His gambling got him into real trouble, a matter which was known to Crown (J[1],[25],[463]). In that year he gambled and lost \$110,000 of his father’s money (J[82]), defrauded Esanda Finance Corporation Ltd of \$286,000 to support his gambling (J[1],[82],[463]) and, by November 1994, was indebted to Crown for \$47,500 (J[1]).
 - (b) In 1995, the Appellant applied for and was granted a self-exclusion order by Crown which prevented him gambling at the casino (J[2]). In 1995, the Appellant was referred by Crown to Dr Jack Darmody, who ran a program for problem gamblers, the Crown Assistance Program (J[94], [467]). The Appellant, to Crown’s knowledge, was treated by Dr Darmody for ongoing gambling issues (J[467]).

- (c) In 1996, Dr Darmody referred the Appellant to Mr Bernard Healey, a clinical psychologist who specialized in gambling related diseases (J[103]). Mr Healey, to Crown's knowledge, treated the Appellant for gambling problems (J[110]) [J[503]]. Mr Healey, diagnosed the Appellant as a "*classic pathological gambler*" (J[103] & [104]).
- (d) In mid 1998, following a period of imprisonment for the Esanda fraud, the Appellant applied to have his self exclusion order with Crown revoked (J[4]). His application was accompanied by a psychologist's report from Mr Tim Watson-Munro which noted that the Appellant no longer felt the pathological compulsion to gamble (J[5],[114]). The self exclusion order was revoked by Crown [J[5],[122]]. Crown's concerns about the Appellant's difficulty in controlling his gambling were not entirely satisfied when it acceded to his application to revoke his self exclusion order (J[477]). At the same time Crown withdrew the Appellant's licence to enter the casino complex (WOL) (J[5],[122]).
- (e) On 28 September 2000, the NSW Chief Commissioner of Police directed that the Appellant be excluded from Star City Casino in Sydney (J[138]).
- (f) Two officers of Crown, Mr Horman (J[36]) and the Third Respondent (**Mr Craigie**) (J[32]), were aware of the IEO in early November 2000 (J[143], [144],[145],[146] & [559]). Their knowledge was Crown's knowledge (J[86]). The IEO was recorded in several Crown documents (J [144], [150],[166] & [559]).
- (g) Between mid 1998 and 2001, the Appellant applied repeatedly to resume his patronage at the casino but his requests were denied (J[8] & [157]). After 2001, the Appellant made no serious attempt to return to the casino and had little contact with Crown (J [157], [165] & [172]).¹
- (h) From about the year 2000, the Appellant held himself out to the world as a very successful Gold Coast businessman who had managed seamlessly to combine the roles of real estate salesman and recreational gambler (J[7]).
- (i) In 2000, the Appellant self excluded from Jupiters Casino on the Gold Coast (J[137]). Crown, through Mr Horman, became aware of this self exclusion and Mr Horman was told by the Appellant that it was still in place as at July 2002 (J[478]). In April 2001, the Appellant self-excluded from Burswood Casino (J[159]). Crown, through Messrs Horman and Fleming (J[193]), knew of this self exclusion (J[479]).
- (j) The *Gaming Legislation (Amendment) Act 2002 (Vic)* amended the *Casino Control Act*. As a result, any person subject to an "*interstate exclusion order*" (as defined in s. 3 of the *Casino Control Act*) became excluded from all casinos in Victoria. Further, the amendment imposed a duty upon Crown to include the name of any person the subject of an interstate exclusion order of which it is or was aware in a daily list of excluded persons to be provided to regulatory personnel (CA[185]). This change took effect on 19 June 2002 (CA[185]).

¹ See Mr Horman's evidence at T.1456.29-1457.1 & T 15991-21.

- (k) In January 2003, Mr Horman referred to the Appellant's IEO in an email to Mr Fleming for the purposes of passing information onto the Burswood Casino (J[166]).
- (l) The *Gambling Regulation Act* 2003 (Vic) was assented to on 16 December 2003. Section 12.1.2 of that Act inserted s. 78B into the *Casino Control Act*. The new section headed "*Forfeiture of Winnings*" took effect on 1 July 2004. It provided that all winnings paid or payable to a person the subject of an interstate exclusion order are forfeited to the State of Victoria (CA[186]).
- 10 (m) By October 2004, Crown's senior executives including the Second Respondent (**Mr Williams**) (J[32]) and Mr Craigie learned that the Appellant was travelling well financially, and that he was losing money gambling in Las Vegas (J[178],[181],[182] & [186]). They considered his return to Crown should be encouraged (J[5]). Between May and October 2004, Crown's senior executives including Mr Williams, Mr Craigie and Mr Horman, were arranging for the Appellant's return to the casino (J[177]-[191]).
- 20 (n) On 29 October 2004, a "*Persons of Interest Committee*" (**POI Committee**) met and concluded that the Appellant be permitted to return (J[195],[200],[488]). A "*Withdrawal of Licence Committee*" also met and agreed to revoke the Appellant's WOL. That Committee was aware of the Appellant's past gambling problems (J[198],[199] & [228]). The decision to permit the Appellant to return was approved by Mr Craigie (J[198]).
- (o) The IEO resonated in Mr Horman's mind in late 2004 (J[166] & [197]).
- (p) On or about 12 November 2004, Crown initiated contact with the Appellant (J[204],[205],[212],[214]). At that time, Crown's officers had a residual concern about his standing as a "*some time*" problem gambler (J[25], [493]). Crown subsequently informed the Appellant that his WOL would be revoked upon the Appellant making a written application accompanied by an opinion from a psychiatrist or psychologist stating that he no longer had any gambling problems (J[219], [220], [224]).
- 30 (q) On or about 8 or 9 December 2004 Mr Doggett, a senior Crown officer (J[182]), had a telephone conversation with the Appellant. Mr Doggett explained that Crown was "*being very pedantic with your application...because you've been excluded from other casinos and you were excluded by the Chief Commissioner of Police in New South Wales...*" (J[222], [583] & [584]). On 9 or 10 December 2004, Mr Doggett flew to the Gold Coast to have the Appellant sign an application prepared by Crown to revoke his WOL. The Appellant had not then been assessed and no opinion from a psychiatrist or psychologist had been obtained (J[222], [223]).
- 40 (r) In December 2004, Mr Healey declined to provide the Appellant with a report clearing him of gambling problems. The Appellant informed Mr Doggett that Mr Healey had declined to provide a report and Mr Doggett urged the Appellant to "*try any psychologist*" (J[213],[494],[583],[584]).
- (s) On 23 December 2004, the Appellant obtained a letter from Ms Brooks, a psychologist on the Gold Coast, which he sent to Crown, and in which she

wrote that she was unable to assess his suitability for re-admission to Crown (J [10],[224]-[226]).

- 10 (t) The Appellant was invited by Crown to the Australian Men's Open tennis final at the end of January 2005 (J[232]).
- (u) Between June 2005 and 17 August 2006, the Appellant visited the casino on numerous occasions. He entered into premium player agreements (J[226], [270]). He was provided with inducements which influenced him to gamble at the casino (J[592]) including the use of a private jet (J[302],[311],[405]), lucky money (J[263],[297],[298],[405],[599],[606]), special rebates and commissions (J[643]-[646]), cheque cashing facilities (J[404],[406],[613]), and free food, beverage and accommodation (J[253]).
- (v) Between June 2005 and mid-August 2006, the Appellant "*never suggested to Crown that he was other than financially capable of maintaining his high roller status and, keen to do so*". Nor did he attempt to employ the self exclusion mechanism (J[18]).
- (w) Had the Appellant known that he could not have retained his winnings, he would have declined to have anything to do with the casino (J[26]).
7. On 6 March 2007, the Appellant issued proceedings claiming that Crown engaged in unconscionable conduct contrary to s. 51AA of the *Trade Practices Act 1974* (Cth) (TPA) and that the Second and Third Respondents were involved in that contravention. He claimed further or alternatively that Crown engaged in unconscionable conduct under the general law. The Appellant also claimed Crown engaged in misleading and deceptive conduct contrary to s. 52 of the TPA.
- 20 8. On 13 December 2007, the primary judge struck out the s.52 claim. On 8 December 2009, the primary judge dismissed the Appellant's claims and gave judgment for Crown on its counterclaim for \$1 million. On 21 May 2012, the Court of Appeal dismissed the Appellant's appeal.

PART VI: ARGUMENT

- 30 9. Section 51AA of the TPA includes that species of unconscionable conduct identified in *Blomley v Ryan* (1954) 99 CLR 362 (**Blomley**) and *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447 (**Amadio**).² The law, as established by those cases, is that a party suffering a special disadvantage is entitled to relief if, with knowledge or notice of the special disadvantage, the stronger party obtains a benefit from the impugned dealing, whether by inducing or procuring the dealing, or by passively accepting the dealing by assenting to it.³

Pathological Gambling

10. The Appellant claimed Crown acted unconscionably in inviting, inducing or allowing him to gamble when it knew or ought to have known that he was suffering from a

² *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* (2003) 214 CLR 51 at [5]-[8] per Gleeson CJ and at [40] & [46] per Gummow and Hayne JJ (**Berbatis**)

³ *Blomley* at 415 per Kitto J; *Amadio* at 462 per Mason J and at 474 per Deane J

special disadvantage by reason of his pathological gambling condition. The primary judge dismissed that claim on the basis that despite the Appellant's pathological gambling condition, he did not suffer from a special disadvantage (J[439]) and, further, because Crown did not have notice of the disability and did not seek to exploit it (J[21]). The Court of Appeal agreed with the primary judge's conclusion and reasoning.

Special Disadvantage

11. The primary judge dealt with the question of special disadvantage at J[426]-[439]. His Honour accepted the evidence of the four expert medical witnesses (J[444]) and found that, at material times, the Appellant suffered from a psychiatric condition known as pathological gambling (J[1],[444]), which was characterised by a failure to control "the urge to gamble" (J[443]). The primary judge found that the Appellant's primary choice to gamble had been influenced by his "addiction" to the gaming tables (J[427]), that his "judgment" was "overly influenced" by a desire to gamble (J[440]), that the extent of his urge to gamble "influenced his thinking and actions" and "far exceeded" its influence on other members of the community (J[440]) and that in certain circumstances a casino might act unconscientiously in its dealings with "such a person" (J[441]). The primary judge concluded that, if asked, Crown ought to have acknowledged that the Appellant's "disability" was one "which on the balance of probabilities would be to its advantage were the [Appellant] to remain as a patron over the medium to long term" (J[661]).
12. Notwithstanding these findings, the primary judge concluded that the Appellant did not suffer from a special disadvantage vis-à-vis Crown (J[439]). His Honour reached that conclusion by rejecting established law.
13. A person is at a special disadvantage if there exist circumstances which affect his ability to conserve his own interests,⁴ or seriously affect his ability to make a judgment in his own best interests.⁵ The categories of circumstance which may place a party at a special disadvantage are not closed.⁶ The test requires consideration of the particular and idiosyncratic circumstances of the disadvantaged person.
14. The primary judge rejected these principles. He said (J[432]): "*I respectfully doubt whether an examination of disadvantage is best approached by seeking to ascertain whether there exists in the vulnerable party a diminished ability to make a judgment about his or her own best interests, or about how to best conserve them.*"
15. The primary judge considered that the principles propounded by Mason J in *Amadio* and Kitto J in *Blomley*, would require the other party and the court to make a judgment as to whether the impugned transaction was in the claimant's best interests and the law should not shift such responsibility to an external party (J[432]-[434], [437],[438] & [661]). The established principles impose no such responsibility. The focus of the equitable doctrine is upon the claimant's condition and the other party's

⁴ *Blomley* at 415 per Kitto J.

⁵ *Amadio* at 462 per Mason J.

⁶ *Blomley* at 405 per Fullagar J; *Amadio* at 462 per Mason J; *Louth v Diprose* (1992) 175 CLR 621 at 637 per Deane J (**Louth**). Pathological gambling may qualify as a relevant circumstance: see *Paradise Enterprises Inc v Kakavas* [2010] VSC 25 at [12] & [16]

state of knowledge as to that condition, actual or constructive, not upon the merits of the claimant's decisions as weighed up by a third party.

16. The primary judge applied a new test in determining whether the Appellant suffered a special disadvantage, “*namely, whether Mr Kakavas and Crown met on equal bargaining terms*” (J[439]), something which he considered was to be assessed objectively (J[434]), and was possible even if the Appellant was under a disability (J[440]). The primary judge found that such equality existed in this case because “[both] parties had a credible bargaining tool. Crown had the facilities, in the form of the Casino. Mr Kakavas had his valuable custom...Crown could always prevent Mr Kakavas’ return; while Mr Kakavas could always withdraw his patronage” (J[441]). The Court of Appeal upheld the approach of the primary judge (CA[32] & [199]-[201]).
17. A test based upon an “*objective*” assessment of “*equality of bargaining*” position is not supported by principle or authority. It subverts the essence of the equitable jurisdiction which protects those with a “*diminished*” ability to conserve their own interests because of some idiosyncratic vulnerability, the categories of which are not closed.⁷ Thus, the underlying premise in the primary judge’s reasoning (that the Appellant could always withdraw his custom) ignores the Appellant’s underlying disability when he is gambling. It might equally have been said of Mr Ryan that he could always have refrained from intoxicating himself and thus was (objectively speaking) in an equal bargaining position when transacting with Mr Blomley. Further, as Kitto J pointed out “[T]he fact the defendant’s condition was the result of his own self indulgence could make no difference...”.⁸
18. The primary judge erroneously drew upon the judgment of Deane J in *Amadio*, in support of his approach: (J[428],[434],[435] & [439]). The judgment of Deane J accords with the principles stated by Mason J, which the primary judge rejected. Deane J explained (at 474), that the essence of the equitable jurisdiction is that the claimant is under a “*special disability*” which is “*sufficiently evident*” to the other party. The “*consequence*” of one party to a transaction being under a special disability vis-à-vis the other is that “*there [is] an absence of any reasonable degree of equality between them*”. In this case, the Appellant suffered a special disadvantage vis-à-vis Crown with the consequence that there was no equality between them. In determining whether to enter into a betting transaction with Crown (including how much to bet) the Appellant’s pathological gambling condition affected his ability to conserve his own interests or to make a judgment as to his own best interest. In contrast, Crown’s capacity to make a judgment as to its best interests was unimpaired.
19. The primary judge’s approach to the issue of special disadvantage led to a number of errors.
20. First, the primary judge mistakenly dismissed as “*not particularly relevant*” the evidence, including the evidence of the experts, about the Appellant’s condition as a pathological gambler (J[442]). That condition constituted a circumstance which “*affected*” the Appellant’s ability to conserve his own interests, or “*seriously affected*”

⁷ *Berbatis* at [12]-[14], [55] & [184]

⁸ *Blomley* at 429 per Kitto J. See also at 405 per Fullagar J. And see also *Bridgewater v Leahy* (1998) 194 CLR 457 at [118] per Gaudron, Gummow and Kirby JJ (**Bridgewater**).

his ability to make a judgment in his own best interests when entering into each gambling transaction.

21. All four experts who gave evidence concluded that between 2004 and 2006, while gambling at the casino, the Appellant suffered from a psychiatric pathological gambling condition,⁹ a condition which was characterised by a failure to control the urge to gamble (at[444]). Professor Blaszczynski (with whose report the respondents' experts agreed) observed that an essential feature of the condition is "[t]he failure to resist an impulse, urge, drive or temptation to perform an act that is harmful to self or others."¹⁰ Professor Blaszczynski opined that the Appellant's capacity to control his gambling during 2004-2006, including the frequency with which he gambled and the amount of money wagered, was severely impaired¹¹ and that the condition "*influenced his capacity to make rational decisions*"¹² regarding the frequency and intensity of his gambling. Mr Healey's evidence was to the same effect. He opined that the Appellant was at the uppermost point of pathological gambling and that inducements to gamble, of the type offered by Crown, had the effect of fuelling his condition.¹³ Dr Coman (the respondents' expert) agreed that the Appellant's ability to exercise control over his gambling behaviour was impaired.¹⁴ He observed that "[p]athological gambling almost always involves impaired control of gambling behaviour, both in deciding whether to commence a gambling session and deciding when to stop".¹⁵
22. The experts made their diagnosis having regard to the Appellant's gambling behaviour at Crown.¹⁶ The gambling records, upon which the primary judge relied, establish that the Appellant (a) gambled significant sums of money over short periods of time; (b) consistently placed bets at the highest betting limits; (c) gambled beyond predetermined limits; (d) chased losses; and (e) sometimes gambled for long periods over successive days (J[290],[326]-[328],[340]-[343],[510],[530]-[541]). None of the experts qualified their opinions as to the Appellant's condition and impaired capacity because there were instances when he could have gambled at the casino, but did not do so.
23. In the Court of Appeal, Bongiorno JA stated (CA[207]) that the primary judge dismissed the relevance of the Appellant's pathological gambling condition because "*it was a diagnosis made many years before the appellant's gambling relevant to this proceeding*". No reference to the judgment of the primary judge is provided in support of that reasoning and it is factually incorrect. The Appellant was diagnosed by all four experts as suffering from a pathological gambling condition between 2004 and 2006 while he was gambling at Crown's casino. The primary judge accepted their evidence (J[1]& [444]).

⁹ Professor Blaszczynski (a psychiatrist) and Mr Healey (a psychologist) were called by the Appellant. Dr Coman (a psychologist) and Dr Alcock (a psychiatrist) were called by the Respondents. The diagnosis of the Appellant as a pathological gambler is found at paragraph 28 of Professor Blaszczynski's report dated 4 November 2008, paragraph 8 of Mr Healey's report dated 30 October 2008, paragraphs 65, 78 and 79 of Dr Coman's report dated 1 May 2009 and paragraphs 33 and 38 of Dr Alcock's report prepared on 29 April 2009.

¹⁰ See paragraph 10 of his report.

¹¹ See paragraphs 41, 43 and 46 of his report.

¹² See paragraph 54 of his report.

¹³ At T 1021.16.

¹⁴ See paragraph 74 of his report.

¹⁵ See paragraph 33 of his report.

¹⁶ See paragraphs 41, 46, 48, 50 of Professor Blaszczynski's report.

24. Bongiorno JA also reasoned (CA[207]) that the primary judge dismissed the relevance of the Appellant's condition on the basis that the "*diagnosis of someone as a pathological gambler, as DSM-IV is careful to point out, says nothing as to that person's capacity to exert control over his behaviour at any particular time.*"¹⁷ The primary judge did not dismiss the relevance of the Appellant's condition on the basis suggested by Bongiorno JA. He dismissed its relevance because he doubted that "*an examination of disadvantage is best approached by seeking to ascertain whether there exists in the vulnerable party a diminished ability to make a judgment about his or her own best interests*" (J[432]). The justification suggested by Bongiorno JA ignores the evidence of all four experts who based their diagnosis, in part, upon the Appellant's gambling behaviour at Crown between 2004 and 2006. It also leads to the astounding conclusion that, notwithstanding that the Appellant was suffering from a pathological gambling condition between 2004 and 2006, the essential feature of that condition (a failure to control one's urge to gamble) was not operative on any of the multiple occasions on which he gambled at the casino.
25. Second, the approach of the primary judge led him to the wrong enquiry. The primary judge stated that the Appellant's case depended upon whether he could prove that he could not resist the inducements dangled before him by Crown (J[17]). That was not the issue. The issue was whether the Appellant's pathological gambling condition affected his ability to conserve his own interests, or to make a judgment in his own best interests,¹⁸ when he was at the gambling table determining whether to enter into a wagering transaction. The experts agreed that it did.
26. Third, the primary judge appeared to place store in the fact that the Appellant had available to him and was aware of his right to self exclude (J[16]). The existence of that mechanism did not remove the operative impairment from which the Appellant was labouring when he entered into a wagering transaction. Further, the authorities make it plain that the fact the impairment is due to the claimant's own behaviour, or could otherwise be removed by the Appellant, does not affect his entitlement.¹⁹ In any event, the Appellant's failure to self exclude was indicative of his condition.²⁰ As the primary judge found (J[427]), the Appellant's primary choice to gamble was influenced by his addiction to the gaming tables.
27. In the Court of Appeal, Mandie JA reasoned that the primary judge had given "*proper regard*" to the Appellant's ability to protect his own interests. He referred (CA[23],[26]) to the primary judge's remarks (at J[444]) that in late 2004 and early 2005, the Appellant's level of functioning in each of the personal, familial, financial, vocational and legal levels was unremarkable. Those remarks of the primary judge (as is evident from their context) were not addressed to whether the Appellant had a disability but to the issue of whether Crown had notice of his disability. Further, the primary judge could not have concluded by reference to those matters alone that the

¹⁷ See also Mandie JA's reasons (CA[25],[26] & [27])

¹⁸ *Amadio* at 462

¹⁹ *Blomley* at 405 per Fullagar J and at 429 per Kitto J; *Tzferios v Polites* (1994) ANZ ConvR 32 at 35-36 per Brooking J; *Bridgewater* at [115] where Gummow, Gaudron and Kirby JJ endorsed the observations of Jacobs ACJ in *Diprose v Louth [No 2]* to the effect that it "*is an oversimplification to say that because the respondent acted as he did with his eyes wide open, and with a full understanding of what he was doing, he was not in a position of disadvantage...*". See also *Bridgewater* at [118].

²⁰ See Mr Healey's evidence at T1018 – T1020. See paragraph 56 of the report of Professor Blaszczyński.

Appellant's ability to conserve his interests was unaffected. The Appellant's disability was operative when entering or about to enter a wagering transaction. Other indicia existed which evidenced the Appellant's disability.²¹ Similarly, Bongiorno JA stated (CA[202]) that the primary judge found that the Appellant was capable of conserving his own interests. The primary judge did not make that finding either explicitly or implicitly. He rejected the principles propounded by Mason J in *Amadio*. Moreover, the findings of the primary judge were that the Appellant's pathological gambling condition affected his "judgment", "thinking" and "actions" (J[440]).

Notice of Special Disadvantage

10. 28. The primary judge found that Crown did not have notice of the Appellant's special disadvantage (J[21]). His Honour reached that conclusion without applying the widely accepted principles of constructive knowledge stated by Mason and Deane JJ in *Amadio*.
29. Actual knowledge is not required to attract the equitable jurisdiction. A defendant is taken to have notice of the plaintiff's special disadvantage if he or she knows or "ought to know" of the special disadvantage.²² A defendant "ought to know" of the special disadvantage if he or she "is aware of the possibility that a situation of special disadvantage may exist or is aware of facts that would raise that possibility in the mind of any reasonable person" (emphasis added).²³ Further, a defendant will be deemed to have knowledge for the purpose of the equitable jurisdiction where "any reasonable person" would be put on enquiry. Wilful ignorance is not to be distinguished in its equitable consequences from knowledge.²⁴
30. Crown's own conduct admitted of an awareness of the "possibility" that a situation of special disadvantage may exist. Mr Craigie was aware that there was a condition known as pathological gambling and his belief was that it was "a medical condition involving an inability to control gambling".²⁵ Crown's internal literature also recognized the existence of the condition.²⁶ When Crown initiated contact with the Appellant in late 2004, it had a residual concern about the Appellant's standing as a some time problem gambler (J[493]) and required the Appellant to undergo a medical assessment as to his gambling condition and provide it with a report clearing him of any "any gambling problems" (J[219],[220],[224]). In addition, when the Appellant commenced gambling at the casino, Mr Williams, concerned by the Appellant's pattern of gambling, asked Mr Horman to keep an eye on him (J[292]). Mr Horman was not qualified to assess the Appellant (J[468]). The primary judge concluded (J[661]) that "[Crown] knew of a problem...and might have acknowledged, if asked in 2004 whether the problem would re-surface when Mr Kakavas returned to the Casino, that that was a possibility."

²¹ The relevant indicia are addressed by the experts in their reports.

²² *Amadio* at 462 per Mason J; *Berbatis* [55] per Gummow and Hayne JJ, *Tzferios v Polites* (1994) ANZ ConvR 32 at 35.

²³ *Amadio* at 467 per Mason J, *Tzferios v Polites* (1994) ANZ ConvR 32 at 35, per Brooking J, *Lopwell Pty Ltd v Clarke* (2009) 3 BFRA 807 at [54], *Nichols v Jessup* [1986] 1 NZLR 226 at 235.

²⁴ *Amadio* per Mason J at 467 and at 479 per Deane J; *Nichols v Jessup* [1986] 1 NZLR 226 at 235; and *Tzferios v Polites* (1994) ANZ ConvR 32

²⁵ See the evidence of Mr Craigie at T 1298.31-1299.1 & T 1311.9.

²⁶ The condition was addressed in Crown's Responsible Gaming Liaison Officer Training Manual which was tendered as exhibit D21.

31. Alternatively, Crown was aware of facts that would raise the possibility that a situation of special disadvantage may exist “*in the mind of any reasonable person*”. In particular, (a) Crown was aware, when it contacted the Appellant, that he was a man who had a history of gambling problems for which he had been medically treated;²⁷ (b) Crown was aware that in 2004 the Appellant was gambling and losing millions of dollars in Las Vegas (J[177] & [181]-[184]); (c) Crown knew that Mr Healey had declined to provide the Appellant with a medical clearance (J[213],[494],[583] & [584]); (d) Crown was in possession of a letter from Ms Janine Brooks, which stated that she was “*unable to do an assessment of his suitability for re-admittance*” to Crown (J[10], [224]-[226]).
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32. The findings of the primary judge were also such as to have put any reasonable person on inquiry. In such circumstances, Crown could not shelter behind its failure to make proper inquiry. In this regard, the primary judge (J[503]) agreed that Crown should have approached Mr Healey for an assessment of the Appellant having known that he had previously treated the Appellant for gambling problems and (J[507]) “*insisted*” upon a report from him as a pre-condition to his return. His Honour found that the “*likely outcome*”, had that course been adopted, would have been a report to the effect that the Appellant should never gamble again.²⁸ The primary judge also observed that Crown might have asked that the Appellant be examined by one of its own in-house psychologists (J[505]). The evidence established that Crown employed psychologists who could and would have been available to make an assessment of the Appellant’s gambling condition at the time.²⁹
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33. The primary judge sought to justify Crown’s failure to take such simple measures on a basis which was untenable. His Honour stated that “*Ms Brooks’ report told Crown, and Crown accepted that the plaintiff was not under a disability and that this was a reasonable conclusion*” (J[506]) and at that “*the Brooks report fulfilled all that Crown reasonably required*” (J[500]). The Brooks report did not tell Crown that the Appellant was not under a disability. On the contrary, Ms Brooks stated that the Appellant was previously unknown to her and that she was “*unable to do an assessment for his re-admittance to the Crown Casino*”. The primary judge accepted that Ms Brooks did not make a professional assessment of the Appellant (J[10] & [225]) and that Crown was careless in accepting the Brooks report rather than insisting on a report from Mr Healey (J[496]).
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34. The primary judge also held that Crown was entitled to rely upon the Appellant’s own statements (as relayed to Ms Brooks) (J[500]) to the effect that he had conquered his gambling problem. However, the Appellant’s statements did not represent an opinion as to his condition from a suitably qualified psychiatrist or psychologist. Ms Brooks did not see fit to make a favourable diagnosis based upon the Appellant’s statements to her. Further, the primary judge had excused Crown’s failure to have the Appellant examined by its own psychologists because they were not independent (J[505]).³⁰ In the light of such reasoning, the Appellant’s view of himself could hardly be said to
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²⁷ The history of which Crown was found to be aware is set out paragraphs 6(a),(b),(c) and (i) of these submissions.

²⁸ In this regard, see Mr Healey’s report at paragraph 6 and at evidence at T 1010.

²⁹ See Mr Craigie’s evidence at T 1314.

³⁰ Neither Mr Craigie nor Mr Horman offered this as an explanation for why Crown failed to take this step.

constitute a proper basis upon which Crown could rely to satisfy itself that the Appellant was not under a special disadvantage. Moreover, the Appellant's statements as relayed via the Brooks report were equivocal. The Appellant raised the possibility of a relapse (J[225]). Finally, no finding was made by the primary judge that the relevant decision makers in Crown relied upon the Appellant's statements in the Brooks report. The primary judge found (J[226]) that Mr Craigie and Mr Aldridge did not see the report, Mr Horman could not recall seeing the report, and Mr Williams thought it was fine but that it was really a matter for Mr Horman. Mr Williams' evidence was that he was not involved in the deliberations for the revocation of the WOL (J[227]) and that it was up to Mr Horman to determine whether the Brooks report was satisfactory.³¹

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35. In the Court of Appeal, Bongiorno JA held that the principle of constructive knowledge had no application because the trial judge's findings were that Crown was "entitled" to accept the Applicant as he sought to be accepted. That reasoning does not provide a basis for discarding the principles of constructive knowledge. Bongiorno JA also held that a conclusion that Crown should have embarked upon further investigation was precluded by the primary judge's findings. On the contrary, the primary judge found that Crown continued to have a residual concern about the Appellant's gambling problem (J[292],[493]) and required him to obtain a medical opinion clearing him from any gambling problems. The primary judge found further that Crown should have made enquiries of Mr Healey as a pre-condition to his return (J[503], [507]).

Taking Advantage

36. The primary judge concluded that Crown did not act unconscientiously (J[21]).

37. A party suffering a special disadvantage is entitled to relief if, with knowledge or notice of the special disadvantage, the stronger party obtains a benefit from the impugned dealing, whether by inducing or procuring the dealing, or by passively accepting the dealing by assenting to it.³² Crown acted unconscientiously by accepting the benefit of its transactions with the Appellant in circumstances where it
30 knew or ought to have known of his special disadvantage.

38. The primary judge wrongly dismissed passive acceptance of a benefit as a basis upon which equity would intervene (J[438]). His Honour considered that to require Crown to reject the Appellant's custom, even in circumstances where it reasonably suspected that he was a pathological gambler, would "*require the casino to assume the mantle of god.*" This observation by the primary judge has no legal significance and, moreover, it was completely inapposite in the light of the circumstances as found by him. This was not a case where Crown was asked to seek out and prevent a patron from gambling within its premises. This was a case where Crown, for commercial gain, initiated contact with a former patron whom it knew had previously suffered
40 gambling problems³³ and, having attracted his interest (which was unsurprising given his continuing addiction), induced him to gamble and continue gambling at its casino without obtaining a medical report stating that he was no longer suffering from any

³¹ See evidence of Williams at T 2080.11-15.

³² *Amadio* at 467 per Mason J, *Bridgewater* at [76] and [122], per Gaudron, Gummow and Kirby JJ.

³³ See (J [25],[463],[493]) and paragraphs 6(a),(b), (c), and (i) of these submissions.

gambling problems. Such conduct was unconscionable within the meaning of the equitable jurisdiction³⁴ and the TPA, the stated object of which is to enhance the welfare of Australians.³⁵ Mr Fleming, a Crown employee who objected to Crown revoking the Appellant's WOL, properly warned Crown that it should not court the Appellant.³⁶

39. The findings of the primary judge reveal the extent of Crown's deliberate conduct. Between 2001 and 2004, the Appellant had little contact with Crown and made no serious attempt to return to Crown (J[157] & [171]).³⁷ In 2004, Crown, through Mr Kerry Packer (J[580]), learned that the Appellant was travelling well financially and gambling and losing money in Las Vegas: (J[177]-[184]). Crown's executives took the view that the Appellant's return to gamble at the casino was to be encouraged (J[9] & [580]). Crown initiated contact with the Appellant (J[214]) and revoked his WOL which had been in place since June 1998. Having attained his interest, Crown provided the Appellant with inducements which had the purpose and effect of influencing him to gamble at Crown: (J[232], [233], [592], [606], [643], [644] & [646],[661]). Many of them were not offered to any other domestic Australian player³⁸ and some were outside the standard premium player arrangements (J[266],[306],[312]). An example of the effect of Crown's conduct upon the Appellant is described by the primary judge at J[643] (emphasis added):

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"There is no doubt that, when Harry Kakavas-having won \$4.5m-left the Casino on Saturday 10 September 2005, Crown wanted him to return; and the sooner the better. No matter that Crown's cheque for his winnings had not yet been cleared; no matter that the plaintiff protested that he was neglecting his work; no matter that he could not supply front money because the winning cheque could not be cleared over a week-end; despite all these considerations, the Crown jet was ready to fly Mr Kakavas back to Melbourne at a moment's notice. Crown was, in addition, prepared to waive front money, and to concede the plaintiff's wish for a \$300,000 hand limit. I accept the plaintiff's evidence that this was the message conveyed to him by Mr Williams. I also accept that, persuaded by this Williams pitch, the plaintiff succumbed when in other circumstances he would not have returned to Crown's doors as early as Monday 12 September."

40. Crown was not relieved from its unconscientious conduct because the Appellant partook in the negotiations for rebates, commissions and other benefits. Those negotiations do not tell against the existence of the Appellant's condition or his entitlement to relief as the primary judge appeared to suggest (J[18]). The Appellant was a pathological gambler. Negotiating for the highest betting limits and for as much money as possible (through rebates, commissions, cash cheque facilities and the like) was consistent with and indicative of his condition.³⁹

³⁴ See by way of analogy *Bridgewater* at [119], and [122], where Gaudron, Gummow and Kirby JJ emphasized that the "initiative" leading to the impugned transactions was taken by the stronger party.

³⁵ See section 2 of the TPA.

³⁶ See (J[195]); Mr Fleming was general manager of the service and security department and a member of the POI Committee in late 2004 (J[193]); Mr Fleming was not called to give evidence.

³⁷ See evidence of Horman at T 1599.1-21.

³⁸ This was the evidence of Mr Aldridge, a Crown Executive: see T 1820.

³⁹ See paragraphs 11 and 46 of the report of Professor Blaszczynski.

The fairness of the gambling transactions

41. In the Court of Appeal, Mandie JA held (CA[33]) that the Appellant was not at a disadvantage vis-à-vis Crown because the wagering transactions were “*standard gambling transactions*” and “*were not unfair, unjust or unreasonable*”. Similar observations were made by Bongiorno JA (CA[209]). That reasoning was wrong as a matter of fact. The gambling transactions were not “*fair, just and reasonable*” because the Appellant, being subject to an IEO, could not receive or retain any winnings (CA[230]). Further, the improvidence of the transactions lay not in a consideration of whether they were standard transactions, but because they were made with a person who suffered from a pathological gambling condition. From the Appellant’s perspective the transactions were harmful. As Deane J observed in *Amadio* at 475, “[n]otwithstanding that adequate consideration may have moved from the stronger party, a transaction may be unfair, unreasonable and unjust from the view point of the party under the disability.”⁴⁰
- 10
42. The reasoning of the Court of Appeal immunizes casino operators from the reach of the equitable jurisdiction and s. 51AA of the TPA. Provided a casino offers standard terms and conditions to known pathological gamblers (or any other person with a vulnerability constituting a special disadvantage), it will escape liability.

IEO

- 20 43. The Appellant claimed that Crown acted unconscionably in initiating contact with the Appellant and inducing him to gamble at the casino when it knew or ought to have known that he was subject to the IEO and was thus unable to receive or retain any winnings from gambling (being a matter not known to him). The Appellant had everything to lose by, and nothing to gain from, gambling at the casino in the period between June 2005 and August 2006. Accordingly, the Appellant was suffering from a special disadvantage.
- 30 44. The findings of the primary judge were sufficient to establish the Appellant’s claim. The primary judge found that (a) on or about 28 September 2000, the NSW Chief Commissioner of Police directed that the Appellant be excluded from Star City Casino (J[138]); (b) Mr Craigie and Mr Horman became aware of the IEO in November 2000 (J[143],[144],[145],[146],[559]); (c) Mr Craigie was aware that the *Casino Control Act* prevented a person the subject of an interstate exclusion order from gambling in the casino (J[221]), (d) the knowledge of Mr Craigie and Mr Horman was the knowledge of Crown (J[86]) (e) the Appellant did not know that he was unable to receive or retain winnings when gambling at the casino (J[24],[26]); and (f) had the Appellant known the true position (that by reason of the IEO he was unable to receive or retain his winnings), he would have declined to have anything to do with the casino (J[26]).
- 40 45. Crown’s case at trial was that it did not know that the Appellant was subject to the IEO. The primary judge rejected that case. His Honour disbelieved Mr Horman’s evidence on this issue, finding that his evidence on this matter was “*unimpressive*” (J[559]). His Honour found that Mr Horman became aware of the IEO in late 2000, from his own enquiries with his police and casino contacts and from being told of it

⁴⁰ See also Fullagar J in *Blomley* at 405

by the Appellant (J [559]). His Honour found that Mr Horman referred to the IEO in a memorandum dated 5 November 2000, which he sent to Crown's officers including Mr Craigie (J[143]-[144]); an email to the Casino Crime Unit on 16 November 2000 (J[559]); an email dated 22 December 2000 which he sent to Mr Craigie and Mr McDonald (J[150] [559]); and an email which he sent to Mr Fleming on 30 January 2003 (J[166]).

- 10 46. The primary judge dismissed the IEO claim on the basis that Crown did not at any time bring to "*its collective mind*" the connection between the Appellant and the IEO (J[27]) and that when the issue of revoking the WOL was under consideration, the relevant officers at Crown did not appreciate the significance of the IEO (J[570]). His Honour concluded that because Crown did not bring the NSW position to mind, it did not form part of any unconscientious decision to welcome the Appellant as a patron. The primary judge reached that conclusion notwithstanding that he concluded that Crown was seriously careless in relation to the IEO (J[26]) and should have made appropriate enquiries of the Appellant's licence to enter the casino and that, had it done so, the IEO would have been rediscovered (J[25]).
- 20 47. Bongiorno JA upheld the reasoning of the primary judge (CA[76], [184]-[189] & [227]-[234]) and summarised, without explanation or elaboration, the relevant conclusion of the primary judge as one being concerned with the "*lack of realisation by Crown*" as to the IEO's effect on the Appellant's position or status (CA[229]). His Honour observed that had Crown realised the true situation, it would have been guilty of fraud in the fullest legal sense (CA[230]).
48. The reasoning below contains several errors which have consequences for the application of the equitable jurisdiction to Crown and to corporations generally.
- 30 49. First, the underlying premise of the reasoning of the courts below, namely, that Crown did not bring the IEO to mind, is unsustainable. The primary judge found that the IEO resonated in Mr Horman's mind in late 2004 when Crown was actively contemplating the Appellant's return (J[166] & [197]).⁴¹ The primary judge also found that Mr Doggett had a telephone conversation with the Appellant on 8 or 9 December 2004, in which he explained that Crown was "*being very pedantic with your application...because you've been excluded from other casinos and you were excluded by the Chief Commissioner of Police in New South Wales*" (J[222], [583] & [584]). The Court of Appeal did not deal with these factual findings as to actual knowledge, and it failed to address the Appellant's submissions on this matter. Further, Bongiorno JA did not quote the evidence of the Appellant's telephone conversation with Mr Doggett fully and accurately (CA[77]). The quotation in Bongiorno JA's judgment omits the following significant words: "*because you've been excluded from other casinos and you were excluded by the Chief Commissioner of Police in New South Wales*".⁴²
- 40 50. Second, the reasoning of the courts below introduces a gloss upon established authority regarding knowledge, namely lack of realisation. Crown's officers (Mr Horman and Mr Craigie), who dealt with the Appellant's return, knew of the facts which created the special disadvantage. Therefore, Crown had knowledge of the

⁴¹ See also Mr Horman's evidence at T 1467.19.

⁴² Compare the reasons of Bongiorno JA at CA[77] with the reasons of the primary judge at J[222]

disadvantage. The equitable doctrine does not excuse the stronger party from knowledge because he does not “bring to mind” facts known to him or “realise” their significance. As Deane J stated in *Amadio*, dishonesty or moral obliquity is not required to enliven the equitable jurisdiction.⁴³

51. Third, the reasoning below overlooks the principles of attribution of corporate knowledge. The primary judge’s findings were such that Crown was fixed with knowledge of the IEO in late 2004 when initiating contact with the Appellant and revoking his WOL. Mr Horman and Mr Craigie acquired knowledge of the IEO in 2000. As the primary judge found (J[86]), their knowledge was the company’s knowledge under the primary rules of attribution. Under those principles, knowledge once gained by a corporation is neither forgotten nor lost.⁴⁴ That conclusion was fortified by the fact that the Appellant’s IEO was recorded in Crown’s internal documents and would, according to the primary judge, have been discovered upon inquiry (J[25]).
52. The primary judge’s reference to Crown’s failure to bring to its “collective mind” the connection between the Appellant and the IEO adds an unwarranted gloss upon the principles of corporate knowledge. It is not supported authority. Under the rules of attribution, a company is deemed to have knowledge of information obtained by its directors and officers in the course of their duties. The “collective mind” requirement is also contrary to the principle that the knowledge of several directors and officers can be aggregated to form the state of mind of a company.⁴⁵ In any event, aggregation was not required in the present case because the officers who knew the relevant facts (Messrs Craigie & Horman) made the decision to have the Appellant return to the casino in late 2004. The same two officers were involved in a confidential communication on 22 December 2000, concerning an application by the Appellant to revoke his WOL, in which his IEO was raised as a consideration (J[150]).
53. Fourth, the reasoning below ignored the principles of constructive knowledge propounded by Mason and Deane JJ in *Amadio*. The primary judge’s findings established that Crown “was aware of the possibility that [a situation of special disadvantage] may exist” or was at the very least “aware of facts that would raise that possibility in the mind of any reasonable person”. Alternatively, the primary judge’s findings were such that “any reasonable person” would have been put upon inquiry. In this respect, the primary judge found that Crown was seriously careless in relation to the IEO (J[26]) in that it should have made appropriate enquiries of the Appellant’s licence to enter the casino and that had it done so the IEO would have been rediscovered (J[25]). In the Court of Appeal, Bongiorno JA (CA[231]) dismissed the relevance of these primary findings on the basis that “this is not a negligence case”. Carelessness is not a matter which is relevant only in the context of a negligence claim. Carelessness goes directly to the issue of constructive knowledge.
54. The reasoning of the courts below has far-reaching consequences which should be eschewed. It undermines corporate responsibility by enabling corporations which are

⁴³ At 478.

⁴⁴ *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327 at [114] per Callinan J (**Rogers**); *Fightvision Pty Ltd v Onisforou & Ors* (1999) 47 NSWLR 473 at [244]; *El Ajou v Dollar Land Holdings plc* [1994] 2 All ER 685; and *Real Estate Opportunities Ltd v Aberdeen Asset Managers Jersey Ltd & Ors* [2007] 2 All ER 791 at [50] per Lady Justice Arden

⁴⁵ *Dunlop v Woollahra City Council* [1975] 2 NSWLR 446 at 485 per Wootten J

less assiduous in seeking, keeping and retrieving information to escape liability for unconscionable conduct under consumer protection legislation and the general law.⁴⁶ As Callinan J noted in rejecting inadvertence or forgetfulness in the context of a defamation claim against a corporate publisher, “[t]he more geographically separated its offices or employees were, the more employees it had, the more forgetful they were, or the less assiduous it was in seeking, keeping and retrieving information, the greater would be its chances of escaping liability”.⁴⁷

10 55. The reasoning below also overlooks and is inconsistent with Crown’s statutory duties under the *Casino Control Act*. From 19 June 2002, Crown was required by virtue of s. 76(1) of the *Casino Control Act* to compile a list of excluded persons on a daily basis. In that list, Crown was required to include all persons the subject of an interstate exclusion order of which it “is or was aware”.⁴⁸ Crown was required under s. 76(2) to provide that list to regulatory personnel to facilitate the removal of any such persons from the casino. Accordingly, as from 19 June 2002, Crown had a statutory obligation to include the Appellant on its daily list of excluded persons because it “was” aware of his IEO. Breach of that statutory obligation was not excused by a lack of realisation, forgetfulness, a failure to appreciate the significance of the IEO or a failure to bring the IEO to mind.

20 56. Bongiorno JA also concluded that the Appellant suffered no detriment as a result of gambling at the casino whilst subject to the IEO because he was credited with his winnings (CA[232]). That conclusion was not open. The primary judge found that the Appellant would not have gambled at Crown had he known the true position (J[26]).⁴⁹ The true position would have become known to the Appellant had Crown forfeited the winnings “payable” to him when he first gambled at the casino, as required by s.78B of the *Casino Control Act*. If it had done so, the Appellant would not (upon the primary judge’s finding) have continued to gamble at the casino and would not have suffered the loss which he did (\$20.5 million) to the benefit of Crown. The relief granted under the equitable doctrine “is one which denies to those who act unconscientiously the fruits of their wrongdoing.”⁵⁰

30 **PART VII: LEGISLATION**

57. The appeal concerns, in part, the following legislative provisions: s. 51AA of the TPA; and ss. 3, 76, 77, 78, 78AA, 78AB, 78A and 78B of the *Casino Control Act* (**Relevant Provisions**).

40 58. Notwithstanding the enactment of the *Competition and Consumer Act* 2010 (Cth), by virtue of the *Trade Practices Amendment (Australian Consumer Law) Act* (No. 2) 2010 (Cth), s. 51AA of the TPA continues to apply to relevant conduct that occurred before 1 January 2011. The latter provision has not been amended between (i) the time at which the Appellant’s cause of action arose thereunder and (ii) the time of making these submissions. This provision is set out in full in **Annexure A** to these submissions.

⁴⁶ *Rogers* at [114] per Callinan J

⁴⁷ *Rogers* at [114] per Callinan J

⁴⁸ See s. 76(1) of the *Casino Control Act*

⁴⁹ See the like conclusion expressed by Bongiorno JA at CA[230].

⁵⁰ *Blomley* at 429 per Kitto J

59. The current version of the *Casino Control Act* is authorised version no. 083. This version incorporates amendments as at 1 July 2012. Each Relevant Provision in this current version is set out in full in **Annexure B** to these submissions.
60. As to the legislative history of each Relevant Provision in the current version of the *Casino Control Act*:
- (a) The definition of “*interstate exclusion order*” in s. 3 has not changed since it was introduced by the *Gaming Legislation (Amendment) Act 2002* (Vic) (being Act no. 38 of 2002).
 - 10 (b) Since the IEO came into existence in September 2000, s. 76 has been amended twice. That section was amended by s. 12(1)(a) of the *Gaming Legislation (Amendment) Act 2002* (Vic). The next amendment was introduced by s. 9 of the *Racing and Gaming Acts (Police Powers) Act 2005* (Vic) (being Act no. 55 of 2005).
 - (c) Since the IEO came into existence in September 2000, s. 77 has been amended twice. It was first amended by s. 12(3) of the *Gaming Legislation (Amendment) Act 2002* (Vic). The next change was introduced by s. 10 of the *Racing and Gaming Acts (Police Powers) Act 2005* (Vic).
 - 20 (d) Since the IEO came into existence in September 2000, s. 78(2) has been amended twice. It was amended by s. 12(4) of the *Gaming Legislation (Amendment) Act 2002* (Vic). The next amendment was introduced by s. 12(1)(a)-(c) of the *Racing and Gaming Acts (Police Powers) Act 2005* (Vic).
 - (e) Sections 78AA and 78AB were inserted by s. 9 of the *Racing and Gaming Acts (Police Powers) Act 2005* (Vic).
 - (f) Section 78A was inserted by s. 13 of the *Gaming Legislation (Amendment) Act 2002* (Vic). It was amended by s. 14 of the *Racing and Gaming Acts (Police Powers) Act 2005* (Vic).
 - (g) Section 78B was inserted by s. 12.1.2 of the *Gaming Legislation (Amendment) Act 2002* (Vic) (being Act no. 114 of 2003). The relevant insertion appears in item 94 of Schedule 5 to that amending legislation.
 - 30 (h) Section 78B(1)(b) was amended by s. 33(a)(i) of the *Gambling Legislation Amendment (Responsible Gambling and Other Measures) Act 2008* (Vic) (being Act no. 71 of 2008). Section 78B(1)(c) was repealed by s. 33(a)(ii) of the same amending legislation.
61. Authorised version no. 044 of the *Casino Control Act* incorporates amendments as at 6 December 2000. Each Relevant Provision in existence at that date is set out in full in **Annexure C** to these submissions.
62. Authorised version no. 051 of the *Casino Control Act* incorporates amendments as at 19 June 2002. Each Relevant Provision in existence at that date is set out in full in **Annexure D** to these submissions.

63. Authorised version no. 060 of the *Casino Control Act* incorporates amendments as at 1 July 2004. Each Relevant Provision in existence at that date is set out in full in **Annexure E** to these submissions.
64. Authorised version no. 066 of the *Casino Control Act* incorporates amendments as at 25 August 2005. Each Relevant Provision in existence at that date is set out in full in **Annexure F** to these submissions.
65. Authorised version no. 067 of the *Casino Control Act* incorporates amendments as at 14 September 2005. Each Relevant Provision in existence at that date is set out in full in **Annexure G** to these submissions.
- 10 66. The Appellant notes that, in the period from 1 July 2004 to 13 September 2005, ss. 70 to 79 of the *Casino Control Act* did not undergo any relevant or significant changes.

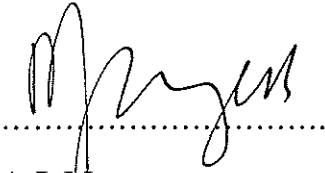
PART VIII: ORDERS SOUGHT

67. The Appellant seeks the orders set out on page 2 of the Notice of Appeal filed on 2 January 2013 as follows:
- (1) The appeal be allowed with costs.
 - (2) The Orders of the Court of Appeal be set aside and in lieu thereof order that:
 - (a) The Appellant's appeal to that Court be allowed with costs.
 - (b) Orders 1, 2 and 3 of the orders made by the Honourable Justice Harper on 8 December 2009 be set aside.
 - 20 (c) The orders made by the Honourable Justice Harper on 16 December 2009 be set aside.
 - (d) The Respondents pay the Appellant the sum of \$20.5 million together with interest calculated from 17 August 2006.
 - (e) The Respondents pay the Appellant's costs of the trial.
 - (f) The First Respondent's counterclaim be dismissed.

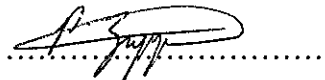
PART IX: ORAL ARGUMENT

68. The Appellant estimates that his oral argument will require about four hours.

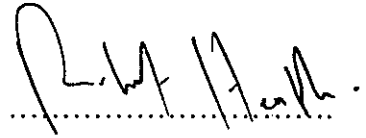
DATED: 25 January 2013



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Annexure A



Trade Practices Act 1974

Act No. 51 of 1974 as amended

This compilation was prepared on 30 August 2010
taking into account amendments up to Act No. 103 of 2010

Volume 1 includes: Table of Contents
Sections 1 – 119

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Volume 2 includes: Table of Contents
Sections 10.01 – 178
Schedules 1 and 2

Volume 3 includes: Note 1
Table of Acts
Act Notes
Table of Amendments
Note 2
Table A

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Part IVA—Unconscionable conduct**51AAB Part does not apply to financial services**

- (1) Section 51AA does not apply to conduct engaged in in relation to financial services.
- (2) Section 51AB does not apply to the supply, or possible supply, of services that are financial services.

51AA Unconscionable conduct within the meaning of the unwritten law of the States and Territories

- (1) A corporation must not, in trade or commerce, engage in conduct that is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.
- (2) This section does not apply to conduct that is prohibited by section 51AB or 51AC.

51AB Unconscionable conduct

- (1) A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.
- (2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a corporation has contravened subsection (1) in connection with the supply or possible supply of goods or services to a person (in this subsection referred to as the *consumer*), the court may have regard to:
 - (a) the relative strengths of the bargaining positions of the corporation and the consumer;
 - (b) whether, as a result of conduct engaged in by the corporation, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the corporation;
 - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;

Annexure B

Authorised Version No. 083 Casino Control Act 1991

No. 47 of 1991

Authorised Version incorporating amendments as at
1 July 2012

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purposes	1
2 Commencement	2
3 Definitions	2
3A What is intoxication?	11
4 Meaning of <i>associate</i>	12
5 <i>Repealed</i>	13
PART 2—LICENSING OF CASINOS	14
6 Licensed casinos declared lawful	14
7 Ministerial directions as to requirements for casinos	15
8 Application for casino licence	16
9 Matters to be considered in determining applications	17
10 Investigation of application	18
11 Commission may require further information etc.	19
12 Updating of application	20
13 Determination of applications	21
13A Licence not personal property	22
14 Authority may agree to exclusivity	22
15 Management agreement	22
16 Amendment of conditions	23
17 Commission to define casino premises	24
18 Duration of casino licence	24
19 Mortgage etc. of casino licence	24
20 Cancellation, suspension or variation of casino licence	24
21 Surrender of licence	27
22 Appointment of a manager if licence cancelled or suspended	27

inspector has the same meaning as in the
Gambling Regulation Act 2003;

S. 3(1) def. of
inspector
substituted by
Nos 37/1994
s. 229(c),
17/1996
s. 24(b),
114/2003
s. 12.1.2
(Sch. 5
item 1(e)).

interstate Chief Commissioner means the chief
officer (however designated) of the police
force of another State or a Territory;

S. 3(1) def. of
*interstate
Chief
Commissioner*
inserted by
No. 38/2002
s. 3(2)(b).

interstate exclusion order means an order made
by an interstate Chief Commissioner of a
similar nature to an exclusion order made
under section 74;

S. 3(1) def. of
*interstate
exclusion
order*
inserted by
No. 38/2002
s. 3(2)(b).

jackpot means the combination of letters,
numbers, symbols or representations
required to be displayed on the reels or video
screen of a gaming machine so that the
winnings in accordance with the prize payout
scale displayed on the machine are payable
from money which accumulates as
contributions are made to a special prize
pool;

S. 3(1) def. of
jackpot
inserted by
No. 93/1993
s. 4(1)(e).

junket means an arrangement whereby a person or
a group of people is introduced to a casino
operator by a junket organiser or promoter
who receives a commission based on the
turnover of play in the casino attributable to
the persons introduced by the organiser or
promoter or otherwise calculated by
reference to such play;

S. 3(1) def. of
junket
inserted by
No. 36/1994
s. 4.

- (3) If the Chief Commissioner of Police revokes an exclusion order, he or she must notify each casino operator, the Commission and each interstate Chief Commissioner of the revocation.

S. 75(3) substituted by No. 38/2002 s. 11, amended by No. 114/2003 s. 12.1.2 (Sch. 5 item 91).

- (4) When an exclusion order is revoked by a casino operator or by the person for the time being in charge of a casino, the casino operator must give notice of the revocation to the Commission as soon as practicable after it occurs.

S. 75(4) amended by No. 114/2003 s. 12.1.2 (Sch. 5 item 91).

Penalty: 20 penalty units.

76 List of excluded persons

- (1) A casino operator must, immediately before gaming or betting commences in the casino on any day—
- (a) prepare a list of names bearing the date of that day; or
 - (b) add the date of that day to an unchanged list of names applicable under this subsection on the last preceding day—

S. 76(1) amended by Nos 36/1994 s. 20(l), 38/2002 s. 12(1)(a), 55/2005 s. 9.

those names being the names of persons who, immediately before the only day, or each day, of which the date appears on the list, were the subject of exclusion orders under section 72 for the casino, or exclusion orders under section 74 for the casino or casino complex, or interstate exclusion orders, of which the operator is or was aware.

Penalty: 50 penalty units.

Casino Control Act 1991
No. 47 of 1991
Part 5—Casino Operations

s. 76

S. 76(2)(a)
amended by
No. 36/1994
s. 20(m).

(2) The operator must—

(a) on each day on which the casino is open for gaming and betting, provide an inspector on duty in the casino with a copy of the list referred to in subsection (1) that bears the date of that day; and

S. 76(2)(b)
amended by
No. 38/2002
s. 12(1)(b).

(b) notify an inspector on duty in the casino of the making, or the revocation, of an exclusion order or interstate exclusion order of which the operator becomes aware during that day.

Penalty: 50 penalty units.

S. 76(3)
substituted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 92).

(3) A person must not provide any part of a list prepared under subsection (1) to any person except—

(a) the casino operator; or

(b) a casino employee; or

(c) the Commission; or

(d) an inspector; or

(e) a person approved by the Commission for the purpose.

Penalty: 10 penalty units.

S. 76(4)
inserted by
No. 38/2002
s. 12(2),
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 93).

(4) As soon as practicable after becoming aware of the making or revocation of an interstate exclusion order, the Chief Commissioner of Police must notify each casino operator and the Commission.

77 Excluded person not to enter casino or casino complex

- (1) A person the subject of an exclusion order under section 72 relating to a casino must not enter or remain in the casino.

Penalty: 20 penalty units.

- (2) A person the subject of an exclusion order under section 74 relating to a casino or the casino complex must not enter, or remain in, the casino or casino complex.

Penalty: 20 penalty units.

- (3) A person the subject of an interstate exclusion order must not enter or remain in a casino.

Penalty: 20 penalty units.

77A Proceedings against certain excluded persons

Despite section 10.5.31 of the **Gambling Regulation Act 2003**, a proceeding for an offence against section 77(2) or (3) may only be brought by a member of the police force.

78 Removal of excluded persons from casino

- (1) This section applies to the following persons in a casino—

- (a) the person for the time being in charge of the casino;
(b) an agent of the casino operator;
(c) a casino employee.

- (2) A person to whom this section applies who reasonably believes that a person the subject of an exclusion order under section 72 is in the casino, must notify an inspector as soon as practicable.

Penalty: 20 penalty units.

S. 77
amended by
No. 38/2002
s. 12(3),
substituted by
No. 55/2005
s. 10.

S. 77A
inserted by
No. 55/2005
s. 11.

S. 78(2)
amended by
Nos 38/2002
s. 12(4),
55/2005
s. 12(1)(a)–(c).

Casino Control Act 1991
No. 47 of 1991
Part 5—Casino Operations

s. 78AA

S. 78(4)
amended by
No. 33/2004
s. 208(1).

S. 78(4)(a)
amended by
Nos 38/2002
s. 12(4),
55/2005
s. 12(2).

S. 78AA
inserted by
No. 55/2005
s. 13.

(3) The inspector must remove the person from the casino or cause the person to be removed from the casino.

(4) It is lawful for a person to whom this section applies, using no more force than is reasonably necessary—

(a) to prevent a person the subject of an exclusion order under section 72 from entering the casino; and

(b) to remove such a person from the casino or cause such a person to be removed from the casino—

but nothing in this section authorises a person to do anything in contravention of the **Private Security Act 2004**.

78AA Notification requirements for exclusion orders made under section 74

- (1) This section applies to the following persons in a casino—
- (a) the person for the time being in charge of the casino;
 - (b) an agent of the casino operator;
 - (c) a casino employee.
- (2) A person to whom this section applies who reasonably believes that a person the subject of an exclusion order under section 74 or an interstate exclusion order is in the casino, must notify a member of the police force as soon as practicable.

Penalty: 20 penalty units.

78AB Power of Commission and inspectors to notify

- (1) If the Commission or an inspector reasonably believes that a person the subject of an exclusion order under section 74 or an interstate exclusion order is in the casino, the Commission or inspector may notify a member of the police force.
- (2) A function of the Commission under this section may be performed by any commissioner.

S. 78AB
inserted by
No. 55/2005
s. 13.

78A No advertising to excluded persons

- (1) A casino operator must not knowingly send or direct by any means advertising or other promotional material relating to the casino to a person who is the subject of an exclusion order under section 72 or 74 or an interstate exclusion order.

S. 78A
inserted by
No. 38/2002
s. 13.

Penalty: 50 penalty units.

- (2) For the purposes of subsection (1), a casino operator does not send or direct material to a person only because the casino operator makes the material available generally to members of the public.

S. 78A(1)
amended by
No. 55/2005
s. 14.

Examples

Examples of making material available generally to members of the public include publishing it on the Internet, television or other medium or displaying it on a billboard.

78B Forfeiture of winnings

- (1) This section applies to a person who is—
 - (a) subject to an exclusion order; or
 - (b) subject to an interstate exclusion order.

S. 78B
inserted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 94).

S. 78B(1)(b)
amended by
No. 71/2008
s. 33(a)(i).

Casino Control Act 1991
No. 47 of 1991
Part 5—Casino Operations

s. 79

S. 78B(1)(c)
repealed by
No. 71/2008
s. 33(a)(ii).

- * * * * *
- (2) If a person to whom this section applies enters or remains in a casino in contravention of this Act, all winnings (including linked jackpots) paid or payable to the person in respect of gaming on gaming machines or playing any game approved under section 60 in the casino—
- (a) are forfeited to the State; and
 - (b) must be paid to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (3) If winnings referred to in subsection (2) comprise or include a non-monetary prize, the casino operator must pay the value of that prize to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (4) In determining the value of a non-monetary prize for the purposes of subsection (3), any amount of GST payable in respect of the supply to which the prize relates is to be taken into account.
- (5) Any dispute between a person to whom this section applies and a casino operator as to the amount of winnings forfeited under this section must be investigated and determined by an inspector.

79 Gambling in the casino by certain persons prohibited

S. 79(1)
amended by
No. 36/1994
s. 20(n).

- (1) An authorised person must not gamble or bet in a casino except to the extent that it may be necessary to do so in the exercise of his or her functions in the course of the administration of this Act.

Annexure C

Version No. 044
Casino Control Act 1991
Act No. 47/1991

Version incorporating amendments as at 6 December 2000

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	2
4. Meaning of "associate"	8
5. Staff of Authority	9
PART 2—LICENSING OF CASINOS	10
6. Licensed casinos declared lawful	10
7. Ministerial directions as to requirements for casinos	11
8. Application for casino licence	12
9. Matters to be considered in determining applications	12
10. Investigation of application	13
11. Authority may require further information etc.	14
12. Updating of application	15
13. Determination of applications	16
14. Authority may agree to exclusivity	16
15. Management agreement	16
16. Amendment of conditions	17
17. Authority to define casino premises	18
18. Duration of casino licence	18
19. Mortgage etc. of casino licence	18
20. Cancellation, suspension or variation of casino licence	18
21. Surrender of licence	21
22. Appointment of a manager if licence cancelled or suspended	21
PART 3—SUPERVISION AND CONTROL OF CASINO OPERATORS	24
Division 1—Directions, investigations etc.	24
23. Directions to operator	24
24. General investigations	24
25. Regular investigations of casino operator's suitability etc.	25

Casino Control Act 1991
Act No. 47/1991

s. 3

"casino operator" means a person who is the holder of a licence;

"chips" means any tokens used instead of money for the purpose of gaming;

"decision" in relation to the Director or the Authority, includes determination;

"Director" means the Director of Casino Surveillance appointed under section 94;

"electronic monitoring system" means any electronic or computer or communications system or device that is so designed that it may be used, or adapted, to send or receive data from gaming equipment in relation to the security, accounting or operation of gaming equipment;

S. 3(1) def. of "electronic monitoring system" inserted by No. 93/1993 s. 4(1)(a).

"employ" includes engage under a contract for services;

"exclusion order" means a written or oral order under section 72 prohibiting a person from entering, or remaining in, a casino;

S. 3(1) def. of "exclusion order" amended by No. 17/1996 s. 24(a).

"game" means a game of chance or a game that is partly a game of chance and partly a game requiring skill;

* * * * *

S. 3(1) def. of "Gaming Commission" inserted by No. 93/1993 s. 4(1)(b), repealed by No. 37/1994 s. 229(b).

except with the written approval of the Chief Commissioner.

- (4) When an exclusion order is revoked by a casino operator or by the person for the time being in charge of a casino, the casino operator must give notice of the revocation to the Director as soon as practicable after it occurs.

Penalty: 20 penalty units.

76. List of excluded persons

S. 76(1)
amended by
No. 36/1994
s. 20(l).

- (1) A casino operator must, immediately before gaming or betting commences in the casino on any day—
- (a) prepare a list of names bearing the date of that day; or
 - (b) add the date of that day to an unchanged list of names applicable under this sub-section on the last preceding day—

those names being the names of persons who, immediately before the only day, or each day, of which the date appears on the list, were the subject of exclusion orders for the casino of which the operator is or was aware.

Penalty: 50 penalty units.

- (2) The operator must—
- (a) on each day on which the casino is open for gaming and betting, provide an inspector on duty in the casino with a copy of the list referred to in sub-section (1) that bears the date of that day; and

S. 76(2)(a)
amended by
No. 36/1994
s. 20(m).

- (b) notify an inspector on duty in the casino of the making, or the revocation, of an

exclusion order of which the operator becomes aware during that day.

Penalty: 50 penalty units.

(3) A person must not provide any part of a list prepared under sub-section (1) to any person except—

- (a) the casino operator; or
- (b) a casino employee; or
- (c) the Authority; or
- (d) the Director; or
- (e) an inspector; or
- (f) a person approved by the Director for the purpose.

Penalty: 10 penalty units.

77. Excluded person not to enter casino

A person the subject of an exclusion order relating to a casino must not enter or remain in the casino.

Penalty: 20 penalty units.

78. Removal of excluded persons from casino

(1) This section applies to the following persons in a casino—

- (a) the person for the time being in charge of the casino;
- (b) an agent of the casino operator;
- (c) a casino employee.

(2) A person to whom this section applies who knows that a person the subject of an exclusion order is

Casino Control Act 1991
Act No. 47/1991

in the casino, must notify an inspector as soon as practicable.

Penalty: 20 penalty units.

- (3) The inspector must remove the person from the casino or cause the person to be removed from the casino.
- (4) It is lawful for a person to whom this section applies, using no more force than is reasonably necessary—
- (a) to prevent a person the subject of an exclusion order from entering the casino; and
 - (b) to remove such a person from the casino or cause such a person to be removed from the casino—

but nothing in this section authorises a person to do anything in contravention of the **Private Agents Act 1966**.

79. *Gambling in the casino by certain persons prohibited*

S. 79(1)
amended by
No. 36/1994
s. 20(n).

- (1) An authorised person must not gamble or bet in a casino except to the extent that it may be necessary to do so in the exercise of his or her functions in the course of the administration of this Act.

S. 79(2)
substituted by
No. 36/1994
s. 12.

- (2) A special employee (as defined in Part 4) in a casino must not gamble or bet in the casino.

Penalty: 20 penalty units.

S. 79(2A)
inserted by
No. 36/1994
s. 12.

- (2A) If a person—
- (a) has a special relationship with a casino within the meaning of section 40(1); and
 - (b) is required under section 40(2) to apply for a licence and—

Annexure D

Version No. 051
Casino Control Act 1991
Act No. 47/1991

Version incorporating amendments as at 19 June 2002

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	2
4. Meaning of "associate"	9
5. Staff of Authority	10
PART 2—LICENSING OF CASINOS	11
6. Licensed casinos declared lawful	11
7. Ministerial directions as to requirements for casinos	12
8. Application for casino licence	13
9. Matters to be considered in determining applications	13
10. Investigation of application	15
11. Authority may require further information etc.	15
12. Updating of application	16
13. Determination of applications	17
14. Authority may agree to exclusivity	18
15. Management agreement	18
16. Amendment of conditions	19
17. Authority to define casino premises	19
18. Duration of casino licence	20
19. Mortgage etc. of casino licence	20
20. Cancellation, suspension or variation of casino licence	20
21. Surrender of licence	23
22. Appointment of a manager if licence cancelled or suspended	23
PART 3—SUPERVISION AND CONTROL OF CASINO OPERATORS	25
Division 1—Directions, investigations etc.	25
23. Directions to operator	25
24. General investigations	26

*Casino Control Act 1991**Act No. 47/1991*

(b) as a result of making a bet on the device, winnings may become payable—

and includes any machine declared to be a gaming machine under sub-section (3) but does not include interactive gaming equipment within the meaning of the **Interactive Gaming (Player Protection) Act 1999** that is used or intended to be used for the purposes of interactive games within the meaning of that Act and not for gaming of any other kind;

"gaming operator" has the same meaning as in the **Gaming Machine Control Act 1991**;

S. 3(1) def. of "gaming operator" inserted by No. 44/1995 s. 4.

"inspector" means a person appointed under Division 3 of Part 7;

S. 3(1) def. of "inspector" substituted by Nos 37/1994 s. 229(c), 17/1996 s. 24(b).

"interstate Chief Commissioner" means the chief officer (however designated) of the police force of another State or a Territory;

S. 3(1) def. of "interstate Chief Commissioner" inserted by No. 38/2002 s. 3(2)(b).

"interstate exclusion order" means an order made by an interstate Chief Commissioner of a similar nature to an exclusion order made under section 74;

S. 3(1) def. of "interstate exclusion order" inserted by No. 38/2002 s. 3(2)(b).

- (a) give a copy of the order to the casino operator and the Director and, if practicable, make available to the casino operator a photograph of the person who is the subject of the order; and
 - (b) notify each interstate Chief Commissioner of the making of the order.
- (3) For the avoidance of doubt, an exclusion order given under this section is not subject to appeal under section 73.

75. Duration of exclusion orders

- (1) An exclusion order remains in force in respect of a person unless and until it is revoked by the person who gave the order.
- (2) An exclusion order given by a person for the time being in charge of a casino may be revoked by any other person who is for the time being in charge of the casino or by the casino operator.
- (3) If the Chief Commissioner of Police revokes an exclusion order, he or she must notify each casino operator, the Director and each interstate Chief Commissioner of the revocation.
- (4) When an exclusion order is revoked by a casino operator or by the person for the time being in charge of a casino, the casino operator must give notice of the revocation to the Director as soon as practicable after it occurs.

S. 75(3)
substituted by
No. 38/2002
s. 11.

Penalty: 20 penalty units.

76. List of excluded persons

- (1) A casino operator must, immediately before gaming or betting commences in the casino on any day—
 - (a) prepare a list of names bearing the date of that day; or

S. 76(1)
amended by
Nos 36/1994
s. 20(l),
38/2002
s. 12(1)(a).

- (b) add the date of that day to an unchanged list of names applicable under this sub-section on the last preceding day—

those names being the names of persons who, immediately before the only day, or each day, of which the date appears on the list, were the subject of exclusion orders for the casino, or interstate exclusion orders, of which the operator is or was aware.

Penalty: 50 penalty units.

- (2) The operator must—

S. 76(2)(a)
amended by
No. 36/1994
s. 20(m).

- (a) on each day on which the casino is open for gaming and betting, provide an inspector on duty in the casino with a copy of the list referred to in sub-section (1) that bears the date of that day; and

S. 76(2)(b)
amended by
No. 38/2002
s. 12(1)(b).

- (b) notify an inspector on duty in the casino of the making, or the revocation, of an exclusion order or interstate exclusion order of which the operator becomes aware during that day.

Penalty: 50 penalty units.

- (3) A person must not provide any part of a list prepared under sub-section (1) to any person except—

- (a) the casino operator; or
- (b) a casino employee; or
- (c) the Authority; or
- (d) the Director; or
- (e) an inspector; or
- (f) a person approved by the Director for the purpose.

Penalty: 10 penalty units.

Casino Control Act 1991

s. 77

Act No. 47/1991

- (4) As soon as practicable after becoming aware of the making or revocation of an interstate exclusion order, the Chief Commissioner of Police must notify each casino operator and the Director.

S. 76(4)
inserted by
No. 38/2002
s. 12(2).

77. Excluded person not to enter casino

S. 77
amended by
No. 38/2002
s. 12(3) (ILA
s. 39B(1)).

- (1) A person the subject of an exclusion order relating to a casino must not enter or remain in the casino.

Penalty: 20 penalty units.

- (2) A person the subject of an interstate exclusion order must not enter or remain in a casino.

S. 77(2)
inserted by
No. 38/2002
s. 12(3).

Penalty: 20 penalty units.

78. Removal of excluded persons from casino

- (1) This section applies to the following persons in a casino—

- (a) the person for the time being in charge of the casino;
- (b) an agent of the casino operator;
- (c) a casino employee.

- (2) A person to whom this section applies who knows that a person the subject of an exclusion order or interstate exclusion order is in the casino, must notify an inspector as soon as practicable.

S. 78(2)
amended by
No. 38/2002
s. 12(4).

Penalty: 20 penalty units.

- (3) The inspector must remove the person from the casino or cause the person to be removed from the casino.

- (4) It is lawful for a person to whom this section applies, using no more force than is reasonably necessary—

- (a) to prevent a person the subject of an exclusion order or interstate exclusion order from entering the casino; and

S. 78(4)(a)
amended by
No. 38/2002
s. 12(4).

(b) to remove such a person from the casino or cause such a person to be removed from the casino—

but nothing in this section authorises a person to do anything in contravention of the **Private Agents Act 1966**.

S. 78A
inserted by
No. 38/2002
s. 13.

78A. No advertising to excluded persons

(1) A casino operator must not knowingly send or direct by any means advertising or other promotional material relating to the casino to a person who is the subject of an exclusion order relating to the casino or an interstate exclusion order.

Penalty: 50 penalty units.

(2) For the purposes of sub-section (1), a casino operator does not send or direct material to a person only because the casino operator makes the material available generally to members of the public.

Examples

Examples of making material available generally to members of the public include publishing it on the Internet, television or other medium or displaying it on a billboard.

79. Gambling in the casino by certain persons prohibited

S. 79(1)
amended by
No. 36/1994
s. 20(n).

(1) An authorised person must not gamble or bet in a casino except to the extent that it may be necessary to do so in the exercise of his or her functions in the course of the administration of this Act.

S. 79(2)
substituted by
No. 36/1994
s. 12.

(2) A special employee (as defined in Part 4) in a casino must not gamble or bet in the casino.

Penalty: 20 penalty units.

Annexure E

Version No. 060 Casino Control Act 1991

Act No. 47/1991

Version incorporating amendments as at 1 July 2004

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	2
4. Meaning of "associate"	10
5. <i>Repealed</i>	11
PART 2—LICENSING OF CASINOS	12
6. Licensed casinos declared lawful	12
7. Ministerial directions as to requirements for casinos	13
8. Application for casino licence	14
9. Matters to be considered in determining applications	15
10. Investigation of application	16
11. Commission may require further information etc.	17
12. Updating of application	18
13. Determination of applications	19
14. Authority may agree to exclusivity	19
15. Management agreement	20
16. Amendment of conditions	21
17. Commission to define casino premises	22
18. Duration of casino licence	22
19. Mortgage etc. of casino licence	22
20. Cancellation, suspension or variation of casino licence	22
21. Surrender of licence	25
22. Appointment of a manager if licence cancelled or suspended	25

Casino Control Act 1991

Act No. 47/1991

Part 1—Preliminary

s. 3

S. 3(1) def. of "inspector" substituted by Nos 37/1994 s. 229(c), 17/1996 s. 24(b), 114/2003 s. 12.1.2 (Sch. 5 item 1(e)).

S. 3(1) def. of "interstate Chief Commissioner" inserted by No. 38/2002 s. 3(2)(b).

S. 3(1) def. of "interstate exclusion order" inserted by No. 38/2002 s. 3(2)(b).

S. 3(1) def. of "jackpot" inserted by No. 93/1993 s. 4(1)(e).

S. 3(1) def. of "junket" inserted by No. 36/1994 s. 4.

"inspector" has the same meaning as in the **Gambling Regulation Act 2003**;

"interstate Chief Commissioner" means the chief officer (however designated) of the police force of another State or a Territory;

"interstate exclusion order" means an order made by an interstate Chief Commissioner of a similar nature to an exclusion order made under section 74;

"jackpot" means the combination of letters, numbers, symbols or representations required to be displayed on the reels or video screen of a gaming machine so that the winnings in accordance with the prize payout scale displayed on the machine are payable from money which accumulates as contributions are made to a special prize pool;

"junket" means an arrangement whereby a person or a group of people is introduced to a casino operator by a junket organiser or promoter who receives a commission based on the turnover of play in the casino attributable to the persons introduced by the organiser or promoter or otherwise calculated by reference to such play;

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 76

- (4) When an exclusion order is revoked by a casino operator or by the person for the time being in charge of a casino, the casino operator must give notice of the revocation to the Commission as soon as practicable after it occurs.

S. 75(4)
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 91).

Penalty: 20 penalty units.

76. List of excluded persons

- (1) A casino operator must, immediately before gaming or betting commences in the casino on any day—
- (a) prepare a list of names bearing the date of that day; or
 - (b) add the date of that day to an unchanged list of names applicable under this sub-section on the last preceding day—

S. 76(1)
amended by
Nos 36/1994
s. 20(l),
38/2002
s. 12(1)(a).

those names being the names of persons who, immediately before the only day, or each day, of which the date appears on the list, were the subject of exclusion orders for the casino, or interstate exclusion orders, of which the operator is or was aware.

Penalty: 50 penalty units.

- (2) The operator must—
- (a) on each day on which the casino is open for gaming and betting, provide an inspector on duty in the casino with a copy of the list referred to in sub-section (1) that bears the date of that day; and
 - (b) notify an inspector on duty in the casino of the making, or the revocation, of an exclusion order or interstate exclusion order of which the operator becomes aware during that day.

S. 76(2)(a)
amended by
No. 36/1994
s. 20(m).

S. 76(2)(b)
amended by
No. 38/2002
s. 12(1)(b).

Penalty: 50 penalty units.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 77

S. 76(3)
substituted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 92).

Victorian Legislation Parliamentary Documents

S. 76(4)
inserted by
No. 38/2002
s. 12(2),
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 93).

S. 77
amended by
No. 38/2002
s. 12(3) (LA
s. 39B(1)).

S. 77(2)
inserted by
No. 38/2002
s. 12(3).

- (3) A person must not provide any part of a list prepared under sub-section (1) to any person except—
- (a) the casino operator; or
 - (b) a casino employee; or
 - (c) the Commission; or
 - (d) an inspector; or
 - (e) a person approved by the Commission for the purpose.

Penalty: 10 penalty units.

- (4) As soon as practicable after becoming aware of the making or revocation of an interstate exclusion order, the Chief Commissioner of Police must notify each casino operator and the Commission.

77. Excluded person not to enter casino

- (1) A person the subject of an exclusion order relating to a casino must not enter or remain in the casino.

Penalty: 20 penalty units.

- (2) A person the subject of an interstate exclusion order must not enter or remain in a casino.

Penalty: 20 penalty units.

78. Removal of excluded persons from casino

- (1) This section applies to the following persons in a casino—

- (a) the person for the time being in charge of the casino;

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 78A

- (b) an agent of the casino operator;
 - (c) a casino employee.
- (2) A person to whom this section applies who knows that a person the subject of an exclusion order or interstate exclusion order is in the casino, must notify an inspector as soon as practicable.
- Penalty: 20 penalty units.
- (3) The inspector must remove the person from the casino or cause the person to be removed from the casino.
- (4) It is lawful for a person to whom this section applies, using no more force than is reasonably necessary—
- (a) to prevent a person the subject of an exclusion order or interstate exclusion order from entering the casino; and
 - (b) to remove such a person from the casino or cause such a person to be removed from the casino—

S. 78(2)
amended by
No. 38/2002
s. 12(4).

S. 78(4)(a)
amended by
No. 38/2002
s. 12(4).

but nothing in this section authorises a person to do anything in contravention of the **Private Agents Act 1966**.

78A. No advertising to excluded persons

- (1) A casino operator must not knowingly send or direct by any means advertising or other promotional material relating to the casino to a person who is the subject of an exclusion order relating to the casino or an interstate exclusion order.

Penalty: 50 penalty units.

S. 78A
inserted by
No. 38/2002
s. 13.

Casino Control Act 1991

Act No. 47/1991

Part 5—Casino Operations

s. 78B

S. 78B
inserted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 94).

- (2) For the purposes of sub-section (1), a casino operator does not send or direct material to a person only because the casino operator makes the material available generally to members of the public.

Examples

Examples of making material available generally to members of the public include publishing it on the Internet, television or other medium or displaying it on a billboard.

78B. Forfeiture of winnings

- (1) This section applies to a person who is—
- (a) subject to an exclusion order; or
 - (b) subject to an interstate exclusion order; or
 - (c) a minor.
- (2) If a person to whom this section applies enters or remains in a casino in contravention of this Act, all winnings (including linked jackpots) paid or payable to the person in respect of gaming on gaming machines or playing any game approved under section 60 in the casino—
- (a) are forfeited to the State; and
 - (b) must be paid to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (3) If winnings referred to in sub-section (2) comprise or include a non-monetary prize, the casino operator must pay the value of that prize to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (4) In determining the value of a non-monetary prize for the purposes of sub-section (3), any amount of GST payable in respect of the supply to which the prize relates is to be taken into account.

Casino Control Act 1991

Act No. 47/1991

Part 5—Casino Operations

s. 79

- (5) Any dispute between a person to whom this section applies and a casino operator as to the amount of winnings forfeited under this section must be investigated and determined by an inspector.

79. Gambling in the casino by certain persons prohibited

- (1) An authorised person must not gamble or bet in a casino except to the extent that it may be necessary to do so in the exercise of his or her functions in the course of the administration of this Act.

S. 79(1)
amended by
No. 36/1994
s. 20(n).

- (2) A special employee (as defined in Part 4) in a casino must not gamble or bet in the casino.

S. 79(2)
substituted by
No. 36/1994
s. 12.

Penalty: 20 penalty units.

- (2A) If a person—

- (a) has a special relationship with a casino within the meaning of section 40(1); and
(b) is required under section 40(2) to apply for a licence and—
(i) the requirement has not been withdrawn in writing; or
(ii) the association or employment constituting the special relationship is not terminated—

S. 79(2A)
inserted by
No. 36/1994
s. 12.

the person must not gamble or bet in the casino.

Penalty: 20 penalty units.

- (3) If an authorised person ceases to be an authorised person, he or she must not gamble or bet in a casino during the next 12 months.

S. 79(3)
amended by
No. 36/1994
s. 20(o).

Penalty: 20 penalty units.

Annexure F

Version No. 066
Casino Control Act 1991
Act No. 47/1991

Version incorporating amendments as at 25 August 2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	2
4. Meaning of "associate"	10
5. <i>Repealed</i>	11
PART 2—LICENSING OF CASINOS	12
6. Licensed casinos declared lawful	12
7. Ministerial directions as to requirements for casinos	13
8. Application for casino licence	14
9. Matters to be considered in determining applications	15
10. Investigation of application	16
11. Commission may require further information etc.	17
12. Updating of application	18
13. Determination of applications	19
14. Authority may agree to exclusivity	20
15. Management agreement	20
16. Amendment of conditions	21
17. Commission to define casino premises	22
18. Duration of casino licence	22
19. Mortgage etc. of casino licence	22
20. Cancellation, suspension or variation of casino licence	22
21. Surrender of licence	25
22. Appointment of a manager if licence cancelled or suspended	25

Casino Control Act 1991

Act No. 47/1991

Part 1—Preliminary

s. 3

S. 3(1) def. of "inspector" substituted by Nos 37/1994 s. 229(c), 17/1996 s. 24(b), 114/2003 s. 12.1.2 (Sch. 5 item 1(e)).

"inspector" has the same meaning as in the **Gambling Regulation Act 2003**;

S. 3(1) def. of "interstate Chief Commissioner" inserted by No. 38/2002 s. 3(2)(b).

"interstate Chief Commissioner" means the chief officer (however designated) of the police force of another State or a Territory;

S. 3(1) def. of "interstate exclusion order" inserted by No. 38/2002 s. 3(2)(b).

"interstate exclusion order" means an order made by an interstate Chief Commissioner of a similar nature to an exclusion order made under section 74;

S. 3(1) def. of "jackpot" inserted by No. 93/1993 s. 4(1)(e).

"jackpot" means the combination of letters, numbers, symbols or representations required to be displayed on the reels or video screen of a gaming machine so that the winnings in accordance with the prize payout scale displayed on the machine are payable from money which accumulates as contributions are made to a special prize pool;

S. 3(1) def. of "junket" inserted by No. 36/1994 s. 4.

"junket" means an arrangement whereby a person or a group of people is introduced to a casino operator by a junket organiser or promoter who receives a commission based on the turnover of play in the casino attributable to the persons introduced by the organiser or promoter or otherwise calculated by reference to such play;

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 76

- (4) When an exclusion order is revoked by a casino operator or by the person for the time being in charge of a casino, the casino operator must give notice of the revocation to the Commission as soon as practicable after it occurs.

S. 75(4)
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 91).

Penalty: 20 penalty units.

76. List of excluded persons

- (1) A casino operator must, immediately before gaming or betting commences in the casino on any day—
- (a) prepare a list of names bearing the date of that day; or
- (b) add the date of that day to an unchanged list of names applicable under this sub-section on the last preceding day—

S. 76(1)
amended by
Nos 36/1994
s. 20(l),
38/2002
s. 12(1)(a).

those names being the names of persons who, immediately before the only day, or each day, of which the date appears on the list, were the subject of exclusion orders for the casino, or interstate exclusion orders, of which the operator is or was aware.

Penalty: 50 penalty units.

- (2) The operator must—
- (a) on each day on which the casino is open for gaming and betting, provide an inspector on duty in the casino with a copy of the list referred to in sub-section (1) that bears the date of that day; and
- (b) notify an inspector on duty in the casino of the making, or the revocation, of an exclusion order or interstate exclusion order of which the operator becomes aware during that day.

S. 76(2)(a)
amended by
No. 36/1994
s. 20(m).

S. 76(2)(b)
amended by
No. 38/2002
s. 12(1)(b).

Penalty: 50 penalty units.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 77

S. 76(3)
substituted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 92).

(3) A person must not provide any part of a list prepared under sub-section (1) to any person except—

- (a) the casino operator; or
- (b) a casino employee; or
- (c) the Commission; or
- (d) an inspector; or
- (e) a person approved by the Commission for the purpose.

Penalty: 10 penalty units.

S. 76(4)
inserted by
No. 38/2002
s. 12(2),
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 93).

(4) As soon as practicable after becoming aware of the making or revocation of an interstate exclusion order, the Chief Commissioner of Police must notify each casino operator and the Commission.

S. 77
amended by
No. 38/2002
s. 12(3) (LA
s. 39B(1)).

77. Excluded person not to enter casino

(1) A person the subject of an exclusion order relating to a casino must not enter or remain in the casino.

Penalty: 20 penalty units.

S. 77(2)
inserted by
No. 38/2002
s. 12(3).

(2) A person the subject of an interstate exclusion order must not enter or remain in a casino.

Penalty: 20 penalty units.

78. Removal of excluded persons from casino

(1) This section applies to the following persons in a casino—

- (a) the person for the time being in charge of the casino;
- (b) an agent of the casino operator;
- (c) a casino employee.

Casino Control Act 1991

Act No. 47/1991

Part 5—Casino Operations

s. 78A

- (2) A person to whom this section applies who knows that a person the subject of an exclusion order or interstate exclusion order is in the casino, must notify an inspector as soon as practicable.

S. 78(2)
amended by
No. 38/2002
s. 12(4).

Penalty: 20 penalty units.

- (3) The inspector must remove the person from the casino or cause the person to be removed from the casino.

- (4) It is lawful for a person to whom this section applies, using no more force than is reasonably necessary—

S. 78(4)
amended by
No. 33/2004
s. 208(1).

- (a) to prevent a person the subject of an exclusion order or interstate exclusion order from entering the casino; and

S. 78(4)(a)
amended by
No. 38/2002
s. 12(4).

- (b) to remove such a person from the casino or cause such a person to be removed from the casino—

but nothing in this section authorises a person to do anything in contravention of the **Private Security Act 2004**.

78A. No advertising to excluded persons

S. 78A
inserted by
No. 38/2002
s. 13.

- (1) A casino operator must not knowingly send or direct by any means advertising or other promotional material relating to the casino to a person who is the subject of an exclusion order relating to the casino or an interstate exclusion order.

Penalty: 50 penalty units.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 78B

-
- (2) For the purposes of sub-section (1), a casino operator does not send or direct material to a person only because the casino operator makes the material available generally to members of the public.

Examples

Examples of making material available generally to members of the public include publishing it on the Internet, television or other medium or displaying it on a billboard.

S. 78B
inserted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 94).

78B. Forfeiture of winnings

- (1) This section applies to a person who is—
- (a) subject to an exclusion order; or
 - (b) subject to an interstate exclusion order; or
 - (c) a minor.
- (2) If a person to whom this section applies enters or remains in a casino in contravention of this Act, all winnings (including linked jackpots) paid or payable to the person in respect of gaming on gaming machines or playing any game approved under section 60 in the casino—
- (a) are forfeited to the State; and
 - (b) must be paid to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (3) If winnings referred to in sub-section (2) comprise or include a non-monetary prize, the casino operator must pay the value of that prize to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (4) In determining the value of a non-monetary prize for the purposes of sub-section (3), any amount of GST payable in respect of the supply to which the prize relates is to be taken into account.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 79

- (5) Any dispute between a person to whom this section applies and a casino operator as to the amount of winnings forfeited under this section must be investigated and determined by an inspector.

79. Gambling in the casino by certain persons prohibited

- (1) An authorised person must not gamble or bet in a casino except to the extent that it may be necessary to do so in the exercise of his or her functions in the course of the administration of this Act.

S. 79(1)
amended by
No. 36/1994
s. 20(n).

- (2) A special employee (as defined in Part 4) in a casino must not gamble or bet in the casino.

S. 79(2)
substituted by
No. 36/1994
s. 12.

Penalty: 20 penalty units.

- (2A) If a person—

S. 79(2A)
inserted by
No. 36/1994
s. 12.

- (a) has a special relationship with a casino within the meaning of section 40(1); and
- (b) is required under section 40(2) to apply for a licence and—
- (i) the requirement has not been withdrawn in writing; or
- (ii) the association or employment constituting the special relationship is not terminated—

the person must not gamble or bet in the casino.

Penalty: 20 penalty units.

- (3) If an authorised person ceases to be an authorised person, he or she must not gamble or bet in a casino during the next 12 months.

S. 79(3)
amended by
No. 36/1994
s. 20(o).

Penalty: 20 penalty units.

Annexure G

Version No. 067
Casino Control Act 1991
Act No. 47/1991

Version incorporating amendments as at 14 September 2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purposes	1
2. Commencement	2
3. Definitions	2
4. Meaning of "associate"	11
5. <i>Repealed</i>	12
PART 2—LICENSING OF CASINOS	13
6. Licensed casinos declared lawful	13
7. Ministerial directions as to requirements for casinos	14
8. Application for casino licence	15
9. Matters to be considered in determining applications	16
10. Investigation of application	17
11. Commission may require further information etc.	18
12. Updating of application	19
13. Determination of applications	20
14. Authority may agree to exclusivity	21
15. Management agreement	21
16. Amendment of conditions	22
17. Commission to define casino premises	23
18. Duration of casino licence	23
19. Mortgage etc. of casino licence	23
20. Cancellation, suspension or variation of casino licence	23
21. Surrender of licence	26
22. Appointment of a manager if licence cancelled or suspended	26

Casino Control Act 1991

Act No. 47/1991

Part 1—Preliminary

s. 3

"interstate Chief Commissioner" means the chief officer (however designated) of the police force of another State or a Territory;

S. 3(1) def. of "interstate Chief Commissioner" inserted by No. 38/2002 s. 3(2)(b).

"interstate exclusion order" means an order made by an interstate Chief Commissioner of a similar nature to an exclusion order made under section 74;

S. 3(1) def. of "interstate exclusion order" inserted by No. 38/2002 s. 3(2)(b).

"jackpot" means the combination of letters, numbers, symbols or representations required to be displayed on the reels or video screen of a gaming machine so that the winnings in accordance with the prize payout scale displayed on the machine are payable from money which accumulates as contributions are made to a special prize pool;

S. 3(1) def. of "jackpot" inserted by No. 93/1993 s. 4(1)(e).

"junket" means an arrangement whereby a person or a group of people is introduced to a casino operator by a junket organiser or promoter who receives a commission based on the turnover of play in the casino attributable to the persons introduced by the organiser or promoter or otherwise calculated by reference to such play;

S. 3(1) def. of "junket" inserted by No. 36/1994 s. 4.

"licence", except in Part 4, means a licence granted under Part 2;

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 76

- (3) If the Chief Commissioner of Police revokes an exclusion order, he or she must notify each casino operator, the Commission and each interstate Chief Commissioner of the revocation.

S. 75(3)
substituted by
No. 38/2002
s. 11,
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 91).

- (4) When an exclusion order is revoked by a casino operator or by the person for the time being in charge of a casino, the casino operator must give notice of the revocation to the Commission as soon as practicable after it occurs.

S. 75(4)
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 91).

Penalty: 20 penalty units.

76. List of excluded persons

- (1) A casino operator must, immediately before gaming or betting commences in the casino on any day—
- (a) prepare a list of names bearing the date of that day; or
- (b) add the date of that day to an unchanged list of names applicable under this sub-section on the last preceding day—

S. 76(1)
amended by
Nos 36/1994
s. 20(l),
38/2002
s. 12(1)(a),
55/2005 s. 9.

those names being the names of persons who, immediately before the only day, or each day, of which the date appears on the list, were the subject of exclusion orders under section 72 for the casino, or exclusion orders under section 74 for the casino or casino complex, or interstate exclusion orders, of which the operator is or was aware.

Penalty: 50 penalty units.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 76

(2) The operator must—

S. 76(2)(a)
amended by
No. 38/1994
s. 20(m).

(a) on each day on which the casino is open for gaming and betting, provide an inspector on duty in the casino with a copy of the list referred to in sub-section (1) that bears the date of that day; and

S. 76(2)(b)
amended by
No. 38/2002
s. 12(1)(b).

(b) notify an inspector on duty in the casino of the making, or the revocation, of an exclusion order or interstate exclusion order of which the operator becomes aware during that day.

Penalty: 50 penalty units.

S. 76(3)
substituted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 92).

(3) A person must not provide any part of a list prepared under sub-section (1) to any person except—

(a) the casino operator; or

(b) a casino employee; or

(c) the Commission; or

(d) an inspector; or

(e) a person approved by the Commission for the purpose.

Penalty: 10 penalty units.

S. 76(4)
inserted by
No. 38/2002
s. 12(2),
amended by
No. 114/2003
s. 12.1.2
(Sch. 5
item 93).

(4) As soon as practicable after becoming aware of the making or revocation of an interstate exclusion order, the Chief Commissioner of Police must notify each casino operator and the Commission.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 77

77. Excluded person not to enter casino or casino complex

- (1) A person the subject of an exclusion order under section 72 relating to a casino must not enter or remain in the casino.

Penalty: 20 penalty units.

- (2) A person the subject of an exclusion order under section 74 relating to a casino or the casino complex must not enter, or remain in, the casino or casino complex.

Penalty: 20 penalty units.

- (3) A person the subject of an interstate exclusion order must not enter or remain in a casino.

Penalty: 20 penalty units.

S. 77
amended by
No. 38/2002
s. 12(3),
substituted by
No. 55/2005
s. 10.

77A. Proceedings against certain excluded persons

Despite section 10.5.31 of the **Gambling Regulation Act 2003**, a proceeding for an offence against section 77(2) or (3) may only be brought by a member of the police force.

S. 77A
inserted by
No. 55/2005
s. 11.

78. Removal of excluded persons from casino

- (1) This section applies to the following persons in a casino—

- (a) the person for the time being in charge of the casino;
- (b) an agent of the casino operator;
- (c) a casino employee.

- (2) A person to whom this section applies who reasonably believes that a person the subject of an exclusion order under section 72 is in the casino, must notify an inspector as soon as practicable.

Penalty: 20 penalty units.

S. 78(2)
amended by
Nos 38/2002
s. 12(4),
55/2005
s. 12(1)(a)–(c).

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 78AA

S. 78(4)
amended by
No. 33/2004
s. 208(1).

S. 78(4)(a)
amended by
Nos 38/2002
s. 12(4),
55/2005
s. 12(2).

(3) The inspector must remove the person from the casino or cause the person to be removed from the casino.

(4) It is lawful for a person to whom this section applies, using no more force than is reasonably necessary—

(a) to prevent a person the subject of an exclusion order under section 72 from entering the casino; and

(b) to remove such a person from the casino or cause such a person to be removed from the casino—

but nothing in this section authorises a person to do anything in contravention of the **Private Security Act 2004**.

S. 78AA
inserted by
No. 55/2005
s. 13.

78AA. Notification requirements for exclusion orders made under section 74

- (1) This section applies to the following persons in a casino—
- (a) the person for the time being in charge of the casino;
 - (b) an agent of the casino operator;
 - (c) a casino employee.
- (2) A person to whom this section applies who reasonably believes that a person the subject of an exclusion order under section 74 or an interstate exclusion order is in the casino, must notify a member of the police force as soon as practicable.

Penalty: 20 penalty units.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 78AB

78AB. Power of Commission and inspectors to notify

- (1) If the Commission or an inspector reasonably believes that a person the subject of an exclusion order under section 74 or an interstate exclusion order is in the casino, the Commission or inspector may notify a member of the police force.
- (2) A function of the Commission under this section may be performed by any commissioner.

S. 78AB
inserted by
No. 55/2005
s. 13.

78A. No advertising to excluded persons

S. 78A
inserted by
No. 38/2002
s. 13.

- (1) A casino operator must not knowingly send or direct by any means advertising or other promotional material relating to the casino to a person who is the subject of an exclusion order under section 72 or 74 or an interstate exclusion order.

S. 78A(1)
amended by
No. 55/2005
s. 14.

Penalty: 50 penalty units.

- (2) For the purposes of sub-section (1), a casino operator does not send or direct material to a person only because the casino operator makes the material available generally to members of the public.

Examples

Examples of making material available generally to members of the public include publishing it on the Internet, television or other medium or displaying it on a billboard.

Casino Control Act 1991
Act No. 47/1991

Part 5—Casino Operations

s. 78B

S. 78B
inserted by
No. 114/2003
s. 12.1.2
(Sch. 5
item 94).

78B. Forfeiture of winnings

- (1) This section applies to a person who is—
 - (a) subject to an exclusion order; or
 - (b) subject to an interstate exclusion order; or
 - (c) a minor.
- (2) If a person to whom this section applies enters or remains in a casino in contravention of this Act, all winnings (including linked jackpots) paid or payable to the person in respect of gaming on gaming machines or playing any game approved under section 60 in the casino—
 - (a) are forfeited to the State; and
 - (b) must be paid to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (3) If winnings referred to in sub-section (2) comprise or include a non-monetary prize, the casino operator must pay the value of that prize to the Commission for payment into the Community Support Fund under the **Gambling Regulation Act 2003**.
- (4) In determining the value of a non-monetary prize for the purposes of sub-section (3), any amount of GST payable in respect of the supply to which the prize relates is to be taken into account.
- (5) Any dispute between a person to whom this section applies and a casino operator as to the amount of winnings forfeited under this section must be investigated and determined by an inspector.